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SUPREME COURT

OF THE

PHILIPPINES

FROM

NOVEMBER 15, 2010 TO NOVEMBER 17, 2010

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. HOJ-10-03. November 15, 2010]
(Formerly A.M. OCA IPI No. 09-04-HOJ)

THELMA T. BABANTE-CAPLES, *complainant, vs.* **PHILBERT B. CAPLES, Utility Worker II, Hall of Justice, Municipal Trial Court, La Paz, Leyte,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED.— In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct.

2. ID.; ID.; ADMINISTRATIVE CODE OF 1987; IMMORAL CONDUCT; ABANDONMENT OF FAMILY AND COHABITING WITH ANOTHER WOMAN IS SUBJECT TO DISCIPLINARY ACTION.— Immoral conduct is conduct which is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." In several cases, we have ruled that abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that

is subject to disciplinary action. Respondent's act of maintaining an illicit relationship with a woman not his wife comes within the purview of disgraceful and immoral conduct, defined and punished in Section 46(b)(5) of Subtitle A, Title I, Book V of the Administrative Code of 1987. The disciplinary authority may impose the penalty of removal from the service, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding his salary for six months, or reprimand.

3. **ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE COMMISSION; IMMORAL CONDUCT; PENALTY.—** Under the *Revised Uniform Rules on Administrative Cases in the Civil Service Commission*, adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

4. **ID.; ID.; ID.; ID.; ID.; RESIGNATION FROM OFFICE AFTER THE FILING OF ADMINISTRATIVE CASE WILL NOT RENDER THE SAME MOOT AND ACADEMIC.—** The penalty of dismissal recommended by the Investigating Judge can no longer be imposed since respondent resigned from the judiciary on February 23, 2010. However, his resignation from office does not render the present administrative case moot and academic. Neither does it free him from liability. The resignation of a public servant does not preclude the finding of administrative liability to which he or she shall still be answerable. Complainant filed the case before respondent resigned from office. Cessation from office because of resignation does not warrant the dismissal of the administrative complaint filed against him while he was still in the service. x x x Time and again, we have stressed adherence to the principle that public office is a public trust. The good of the service and the degree of morality, which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct affecting morality, integrity, and efficiency while holding office should be left

without proper and commensurate sanction, all attendant circumstances taken into account.

APPEARANCES OF COUNSEL

Joseph N. Escalona for complainant.

D E C I S I O N

NACHURA, *J.*:

In an Affidavit-Complaint[1] dated March 5, 2009, Thelma T. Babante-Caples (complainant) charged her husband, Philbert B. Caples (respondent), Utility Worker II, Hall of Justice, Municipal Trial Court (MTC), La Paz, Leyte, with Immorality.

In his Counter-Affidavit[2] dated May 12, 2009, respondent vehemently denies all the allegations stated in the complaint. He contends that the same are untrue, baseless, malicious, and exaggerated.

The Report[3] dated October 5, 2009 of the Office of the Court Administrator (OCA) recommended that the complaint be referred to the Executive Judge of the Regional Trial Court (RTC) of Abuyog, Leyte, for investigation, report, and recommendation.

In a Resolution[4] dated November 25, 2009, the Court referred the instant case to Judge Buenaventura A. Pajaron (Judge Pajaron), Executive Judge, RTC, Abuyog, Leyte, for investigation, report, and recommendation.

Lengthy hearings were conducted by Judge Pajaron, at which complainant and her witnesses Pedro A. Caducoy, Jr. and Francisco Cadion Daro, Jr. testified in support of the complaint. On the other hand, counsel for respondent manifested that respondent

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

[2] *Id.* at 80-84.

[3] *Id.* at 90-92.

[4] *Id.* at 93-94.

was not willing to testify, and waived his right to present evidence because respondent already submitted his resignation letter to the OCA.

The testimonies of the witnesses are summarized as follows.

Complainant, 39 years old, married, and a public school teacher, narrated that she is the legal wife of respondent and that they have two (2) legitimate children. She stated that their happy and blissful marriage was shattered because of the infidelity of respondent, who had an illicit relationship with one Rennalyn Cordovez.[5] She further narrated that the affair of the two has become public knowledge in their community, and the public display of their immorality has caused so much pain to her and to their children.

On February 6, 2008, complainant pleaded with her philandering husband, who had a drinking session with his paramour in a nearby videoke house, to stop his immoral conduct. She stated that, instead of heeding her plea, respondent physically assaulted her by slapping her face several times. As if the beating he inflicted on complainant was not enough, respondent left the conjugal dwelling on March 18, 2008 to join his mistress Rennalyn Cordovez in Dulag, Leyte.

On April 14, 2008, complainant sought the assistance of the MTC Judge of La Paz, Leyte, where her husband was working, to help her with her problem. She claims that, during the meeting arranged by the Judge, her husband asked for forgiveness for what he had done. However, after a short while, her husband resumed his immoral act and deprived his family of moral and financial support. Complainant alleged that her husband's mistress has given birth to a child, and that they are now living in the poblacion of the Municipality of Tolosa, Leyte.

Pedro A. Caducoy, Jr., 25 years old, married, and a *barangay tanod* of Barangay Palale, MacArthur, Leyte, testified that he personally knows respondent because his house is located 10 meters

[5] Also referred to as Renalyn Cordoves in some parts of the Investigation, Report, and Recommendation.

away from the conjugal home of complainant and respondent; that he personally knows Rennalyn Cordovez because she is also a resident of Barangay Palale, and his house is located 15 meters away from her house; that in December 2007, he saw respondent enter the compound of Rennalyn Cordovez on board a motorcycle at eleven o'clock in the evening; that he saw Rennalyn Cordovez standing outside the gate and holding a cellphone before respondent would enter the compound, which happened several times; and that there is a street light located in front of the gate of the compound.

Francisco Cadion Dado, Jr. testified that, when he visited his aunt in Tolosa, Leyte, he saw the house where respondent and his paramour lived together behind the marketplace, and that the house of his aunt was about 50 meters away from the house where respondent and his paramour lived. The witness also testified that he saw them twice.

Respondent manifested through his counsel that he would not testify; thus, the Investigating Judge considered respondent to have waived his right to present evidence on his behalf. Respondent was given the opportunity to be heard and refute the charges against him by adducing evidence; yet, he chose not to testify and adduce evidence. Instead, respondent tendered his resignation letter to the OCA of the Supreme Court.

The Investigating Judge averred that he proceeded to receive further evidence because, in *Faelden v. Lagura*,[6] we held that "where the resignation of a court employee has not been acted upon, he remains an employee of the judiciary."

On the basis of the foregoing findings, Judge Pajaron recommended that respondent be dismissed from the service.

In administrative proceedings, only substantial evidence,[7] *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The

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[6] A.M. No. P-05-1977, October 9, 2007, 535 SCRA 245.

[7] *Dadulo v. Court of Appeals*, G.R. No. 175451, April 13, 2007, 521 SCRA 357.

standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct.

We find Judge Pajaron's findings to be in order — a result of a meticulous and dispassionate analysis of the testimonies. But we modify the penalty to be imposed.

Immoral conduct is conduct which is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."[8] In several cases,[9] we have ruled that abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.

Respondent's act of maintaining an illicit relationship with a woman not his wife comes within the purview of disgraceful and immoral conduct, defined and punished in Section 46(b)(5) of Subtitle A, Title I, Book V of the Administrative Code of 1987. The disciplinary authority may impose the penalty of removal from the service, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding his salary for six months, or reprimand.

Under the *Revised Uniform Rules on Administrative Cases in the Civil Service Commission*, adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

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[8] *Cojuangco, Jr. v. Atty. Palma*, 481 Phil. 646, 656 (2004).

[9] *Sealana-Abbu v. Laurenciana-Huraño*, A.M. No. P-05-2091, August 28, 2007, 531 SCRA 289; *Dela Torre-Yadao v. Cabanatan*, A.M. Nos. P-05-1953 and P-05-1954, June 8, 2005, 459 SCRA 332, 338, citing *Maguad v. De Guzman*, 365 Phil. 12, 19 (1999); *Lauro v. Lauro*, 411 Phil. 12, 17 (2001); *Bucatcat v. Bucatcat*, 380 Phil. 555, 566-567 (2000).

In *Ecube-Badel v. Badel*,[10] this Court suspended a court employee for one (1) year for having illicit relations with another woman not his wife with whom he begot a child.

In a recent case, Alberto R. Elape, Process Server, was suspended for six (6) months and one (1) day for maintaining an illicit relationship.[11]

The penalty of dismissal recommended by the Investigating Judge can no longer be imposed since respondent resigned from the judiciary on February 23, 2010. However, his resignation from office does not render the present administrative case moot and academic. Neither does it free him from liability. The resignation of a public servant does not preclude the finding of administrative liability to which he or she shall still be answerable.[12] Complainant filed the case before respondent resigned from office. Cessation from office because of resignation does not warrant the dismissal of the administrative complaint filed against him while he was still in the service.[13]

Under the circumstances, we deem it reasonable to impose the penalty of a fine in the amount of ₱30,000.00 to be deducted from his accrued leave credits, if sufficient. If not, then he should be required to pay the amount of ₱30,000.00.

Time and again, we have stressed adherence to the principle that public office is a public trust. The good of the service and the degree of morality, which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct affecting morality, integrity, and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.

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[10] 339 Phil. 510, 516 (1997).

[11] *Elape v. Elape*, A.M. No. P-08-2431, April 16, 2008, 551 SCRA 403.

[12] *Pagano v. Nazarro, Jr.*, G.R. No. 149072, September 21, 2007, 533 SCRA 622.

[13] *Cabarloc v. Judge Cabusora*, 401 Phil. 376, 385 (2000).

WHEREFORE, respondent Philbert B. Caples is found *GUILTY* of Immorality, and is ordered to pay a *FINE* in the amount of Thirty Thousand Pesos (₱30,000.00) to be deducted from his accrued leave credits, if sufficient. Otherwise, he shall pay the amount of ₱30,000.00 directly to this Court.

Let a copy of this Decision be filed in the personal record of respondent.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2584. November 15, 2010]

ALFREDO YAESO, *complainant, vs.* **Legal Researcher/ Officer-in-Charge REYNALDO R. ENOLPE and Sheriff IV GENEROSO B. REGALADO, both of the Regional Trial Court, Branch 16, Cebu City; and Sheriff IV CONSTANCIO V. ALIMURUNG, Regional Trial Court, Branch 18, Cebu City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM.— Time and again, this Court has emphasized that the conduct or behavior of all officials and employees of an agency involved in the administration of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by, among others, strict propriety and decorum in order to

earn and maintain the respect of the public for the judiciary. All employees of the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.

2. ID.; ID.; ID.; SHERIFF; IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE, EMPHASIZED.— The Court has even higher expectations from its sheriffs. Sheriffs play an important role in the administration of justice, and they should always invigorate and hold inviolate the tenet that a public office is a public trust. Being at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court. By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion. Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders, lest they undermine the integrity of their office and the efficient administration of justice.

3. ID.; ID.; ID.; ID.; DUTY IN THE EXECUTION OF JUDGMENT FOR SPECIFIC ACT; A SPECIAL ORDER OF THE COURT IS REQUIRED TO REMOVE IMPROVEMENTS ON PROPERTY SUBJECT OF EXECUTION.— It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. Despite being exposed to hazards that come with the implementation of the judgment, the sheriff must perform his duties by the book. Before the removal of an improvement from the subject premises, there must be a special order, hearing, and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides: Sec. 10. *Execution of judgment for specific act.* x x x (d) *Removal of improvements on property subject of execution.* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements **except upon special order of the court**, issued upon motion of the judgment obligee after due hearing

and after the former has failed to remove the same within a reasonable time fixed by the court. The above-stated rule is clear and needs no interpretation. The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that 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. Sheriff Alimurung's compliance with the Rules of Court, especially in the implementation of judgments, is not merely directory but mandatory. He is expected to know the rules of procedure, particularly when they pertain to his function as an officer of the court.

4. ID.; ID.; ID.; ID.; ID.; ID.; VIOLATION OF THE RULE IS ABUSE OF AUTHORITY; PROPER PENALTY; CASE AT BAR.— The culpability of Sheriff Alimurung is clear, given the facts of the case. It appears that he demolished the improvements on the subject property on the strength of a writ of execution alone. As an assisting sheriff, he was bound by the same duties as Sheriff Regalado. As clearly provided in the writ of execution, he was merely directed to facilitate the issuance of the notice to vacate and to forcibly eject spouses Yaeso from the subject premises; and to satisfy the judgment debt, first through the goods and chattels of the spouses, then through their lands and buildings not exempt from execution. Since there was no order in the writ for the demolition of the improvements on the land subject of the ejectment case, Alimurung's failure to observe the procedure set forth in the Rules of Court constitutes abuse of authority. His ignorance of the Rules is inexcusable. x x x We have consistently held that when a respondent's inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his duties, he is either too incompetent and undeserving of the position and title he holds, or he is too vicious that the oversight or omission was deliberately done in bad faith and with grave abuse of judicial authority. On the penalty to be imposed, we are guided by *Guariño v. Ragsac*, which is on all fours with this case. Sheriff Alimurung should be meted the penalty of suspension from office for six months and one day.

RESOLUTION

NACHURA, *J.*:

This is an administrative complaint filed by Alfredo Yaeso (Yaeso) against respondents Reynaldo R. Enolpe (Enolpe), Acting Branch Clerk of Court, Regional Trial Court (RTC), Branch 16, Cebu City; Generoso B. Regalado (Regalado), Sheriff IV of the same RTC Branch; and Constancio V. Alimurung (Alimurung), Sheriff IV, RTC, Branch 18, Cebu City, for *Abuse of Authority, Grave Misconduct, and Ignorance of the Law*.

The case stemmed from the following facts:

A case for ejectment was filed with the Municipal Trial Court in Cities (MTCC), Branch 1, Cebu City, docketed as Civil Case No. R-50920, entitled "*Teodorico P. Oliva, Jr. v. Maria C. Yaeso and Alfredo Yaeso*."[1] On August 2, 2006, the MTCC rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants-spouses Alfredo Yaeso and Maria C. Yaeso, as follows:
>
> 1. Directing defendants-spouses Alfredo Yaeso and Maria C. Yaeso, including all other persons in the premises claiming rights under them, to vacate from the premises/residential building in question;
>
> 2. Directing the defendants to pay plaintiff the following amounts:
>
> a) ₱5,000.00 monthly rental for the use and occupation of the premises, to be reckoned from September 6, 2005 until defendants-spouses Alfredo and Maria Yaeso will vacate the premises;
>
> b) ₱5,000.00 as attorney's fees; and
>
> [c)] Costs of suit.
>
> Defendants' Counterclaim is hereby DISMISSED for lack of merit.

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[1] *Rollo*, Vol. I, pp. 252-256.

SO ORDERED.[2]

Spouses Yaeso appealed to the RTC, Branch 16, docketed as Civil Case No. CEB-32855. During the pendency of the appeal, Teodorico Oliva, Jr. (Oliva), plaintiff-appellee therein, filed a motion for execution pending appeal on the ground that spouses Yaeso failed to post a supersedeas bond and to periodically deposit the monthly rentals.

In the Order[3] dated June 15, 2007, the RTC granted the motion for execution pending appeal. The corresponding Writ of Execution[4] was issued on June 18, 2007 by Enolpe. In the said writ, Regalado, as the RTC Sheriff, was commanded to facilitate the issuance of the notice to vacate and to forcibly eject spouses Yaeso from the subject premises; and to satisfy the judgment debt, first through the goods and chattels of the spouses, then through their lands and buildings not exempt from execution.[5] Pursuant thereto, Regalado issued a Notice to Vacate[6] the subject premises. In the Order[7] dated June 27, 2007, Alimurung was appointed as Assisting Sheriff and was tasked to implement the writ of execution.

In the course of the implementation of the writ, Alimurung demolished spouses Yaeso's house without a court order for the purpose.

Hence, the affidavit-complaint.

Yaeso faults Enolpe for issuing the writ of execution despite the pendency of the appeal before the RTC; Regalado, for directing the spouses to vacate the premises, and to pay Oliva sums of

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[2] *Id.* at 88-89.

[3] *Id.* at 6.

[4] *Id.* at 12-13.

[5] *Id.* at 13.

[6] *Id.* at 11.

[7] *Id.* at 7.

money and attorney's fees; and Alimurung, for demolishing spouses Yaeso's house without a special order to do so.[8]

After Enolpe, Regalado, and Alimurung filed their respective comments, we referred the instant administrative complaint to Executive Judge Meinrado P. Paredes (Judge Paredes) of the RTC, Cebu City, for investigation, report, and recommendation.[9]

On July 30, 2009, Judge Paredes recommended the dismissal of the complaint against Enolpe and Regalado as they merely performed their official duties in issuing the writ of execution and in implementing the said writ, respectively. He, however, recommended that Alimurung be held liable for simple misconduct and be suspended for two months.[10] Judge Paredes found that there was overwhelming evidence showing that Alimurung caused the demolition of spouses Yaeso's house without any writ of demolition.

Upon referral of the case to the Office of the Court Administrator (OCA) for evaluation, the OCA adopted Judge Paredes' findings and made these recommendations:

WHEREFORE, in view of the foregoing, respectfully submitted, for the consideration of the Honorable Court, are the following recommendations:

1. that the **REPORT**, dated 30 July 2009, of Executive Judge Meinrado Paredes, Regional Trial Court, Cebu City, be **NOTED**;
2. that respondent Constancio V. Alimurung, Sheriff IV, Regional Trial Court, Branch 18, Cebu City, be found guilty of simple misconduct and be **SUSPENDED** for **TWO (2) MONTHS**, with **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severity;
3. that the charges against respondent Reynaldo R. Enolpe, Legal Researcher/Officer-in-Charge, Regional Trial Court, Branch 16, Cebu City, be **DISMISSED** for lack of merit; and

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[8] *Id.* at 1-5.

[9] *Id.* at 117-118.

[10] *Id.* at 282-304.

4. that the charges against respondent Generoso B. Regalado, Sheriff IV, Regional Trial Court, Branch 16, Cebu City, be **DISMISSED** for lack of merit.[11]

Time and again, this Court has emphasized that the conduct or behavior of all officials and employees of an agency involved in the administration of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by, among others, strict propriety and decorum in order to earn and maintain the respect of the public for the judiciary.[12]

All employees of the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.[13]

The Court has even higher expectations from its sheriffs. Sheriffs play an important role in the administration of justice, and they should always invigorate and hold inviolate the tenet that a public office is a public trust. Being at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court. By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion. Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders, lest they undermine the integrity of their office and the efficient administration of justice.[14]

It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this

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[11] Memorandum, p. 7; *rollo*, Vol. II.

[12] *Quilo v. Jundarino*, A.M. No. P-09-2644, July 30, 2009, 594 SCRA 259, 278.

[13] *Id.* at 279.

[14] *Id.* at 279-280; *Caja v. Nanquil*, 481 Phil. 488, 518 (2004).

delicate task is the sheriff. Despite being exposed to hazards that come with the implementation of the judgment, the sheriff must perform his duties by the book.[15]

Before the removal of an improvement from the subject premises, there must be a special order, hearing, and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:

> Sec. 10. *Execution of judgment for specific act.*
>
> xxx xxx xxx
>
> (d) *Removal of improvements on property subject of execution.* – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements **except upon special order of the court**, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.[16]

The above-stated rule is clear and needs no interpretation. The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that 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.[17] Sheriff Alimurung's compliance with the Rules of Court, especially in the implementation of judgments, is not merely directory but mandatory. He is expected to know the rules of procedure, particularly when they pertain to his function as an officer of the court.[18]

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[15] *Caja v. Nanquil, supra,* at 518-519.

[16] Emphasis supplied.

[17] *Guariño v. Ragsac*, A.M. No. P-08-2571, August 27, 2009, 597 SCRA 235.

[18] *Katipunan ng Tinig sa Adhikain, Inc. (KATIHAN) v. Maceren*, A.M. No. MTJ-07-1680, August 17, 2007, 530 SCRA 395, 404.

The culpability of Sheriff Alimurung is clear, given the facts of the case. It appears that he demolished the improvements on the subject property on the strength of a writ of execution alone. As an assisting sheriff, he was bound by the same duties as Sheriff Regalado. As clearly provided in the writ of execution, he was merely directed to facilitate the issuance of the notice to vacate and to forcibly eject spouses Yaeso from the subject premises; and to satisfy the judgment debt, first through the goods and chattels of the spouses, then through their lands and buildings not exempt from execution. Since there was no order in the writ for the demolition of the improvements on the land subject of the ejectment case, Alimurung's failure to observe the procedure set forth in the Rules of Court constitutes abuse of authority.[19] His ignorance of the Rules is inexcusable. His failure to strictly comply with the prescribed procedure has left a stain not only on himself but, more importantly, in the office he holds which may lead to the erosion of the people's faith and confidence in the judicial system.[20]

Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by the sheriffs' actions, they may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[21]

We have consistently held that when a respondent's inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his duties, he is either too incompetent and undeserving of the position and title he holds, or he is too vicious that the oversight or omission was deliberately done in bad faith and with grave abuse of judicial authority.[22]

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[19] *Guariño v. Ragsac, supra* note 17, at 238-239.

[20] *Caja v. Nanquil, supra* note 14, at 519.

[21] *Metro Manila Transit Corp. v. Santiago*, 489 Phil. 1, 10 (2005); *V.C. Ponce Co., Inc. v. Eduarte*, 397 Phil. 498, 514 (2000).

[22] *Torres v. Sicat, Jr.*, 438 Phil. 109, 117 (2002).

On the penalty to be imposed, we are guided by *Guariño v. Ragsac*,[23] which is on all fours with this case. Sheriff Alimurung should be meted the penalty of suspension from office for six months and one day.

As to the cases against Enolpe and Regalado, the Court finds the recommendation of the OCA well-taken. Accordingly, the complaint against them should be dismissed.

WHEREFORE, premises considered, respondent Constancio V. Alimurung is *SUSPENDED* for SIX (6) MONTHS and ONE (1) DAY, and is *STERNLY WARNED* that a repetition of the same or similar act will be dealt with more severely.

The complaint against respondents Reynaldo R. Enolpe and Generoso B. Regalado is *DISMISSED* for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-09-2700. November 15, 2010]
(Formerly OCA I.P.I. No. 08-2976-P)

Atty. NOREEN T. BASILIO, Clerk of Court, *complainant, vs.* **MELINDA M. DINIO, Court Stenographer III, Branch 129, Regional Trial Court, Caloocan City,** *respondent.*

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[23] *Supra* note 17.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; COURT STENOGRAPHERS; RULE ON PAYMENT FOR REQUESTS OF COPIES OF THE TSN; VIOLATED IN CASE AT BAR.— In addressing the allegations against her, respondent excused herself from liability by arguing that her failure to remit the TSN fees was justified by the expenses she incurred in doing most of her transcription at home. Due to the heavy workload and the limited number of stenographers in their court, the respondent admitted, and even took pride in, the fact that she brings home ninety-five percent (95%) of her work. Though one may find commendable her zealousness in bringing home her transcripts for transcription, it is still not an excuse for her not to remit a portion of her collection from requests of copies of TSN. Section 11, Rule 141 of the Rules of Court clearly provides that payment for requests of copies of the TSN shall be made to the Clerk of Court, and that a third of the portion of such payment accrues to the Judicial Development Fund (*JDF*), with only two-thirds thereof to be paid to the stenographer concerned. Thus, the stenographer is not entitled to the full amount of the TSN fees. Payment likewise cannot be made to her as the payment is an official transaction that must be made to the Clerk of Court.

2. ID.; ID.; ID.; ID.; BRINGING STENOGRAPHIC NOTES TO BE TRANSCRIBED AT HOME IS VIOLATION OF THE LAW.— As correctly observed by the OCA, the respondent's act of bringing stenographic notes to be transcribed at home is irregular and not permitted by law. Section 14, Rule 136 of the Rules of Court states that no record shall be taken from the clerk's office without an order from the court, except as otherwise provided by the rules. Stenographic notes are deemed official documents that form part of the record of a case. In the absence of an authorization from the court, the stenographic notes cannot be removed from the record and be brought home, even if the purpose is to work on these notes.

3. ID.; ID.; ID.; PROPER DECORUM; CHARGE OF DISRESPECTFUL CONDUCT, MANIFESTED IN CASE AT BAR.— On the charge of disrespectful conduct, respondent displayed her lack of respect to her superior in the reckless and impolite manner she retorted to Atty. Basilio, particularly

when she dared her to go to Judge Pe Aguirre's chambers to report her receipt of the money paid. Atty. Basilio, as then Clerk of Court of Branch 129, held a higher rank than the respondent and had every right to enforce and correct what she correctly considered a violation of regulations. Thus, the respondent should have accorded her the respect she deserved even if, at the time the complaint was filed, she had been an official of the court for only eight months. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions.

4. ID.; ID.; ADMINISTRATIVE CHARGE; RESIGNATION OF COMPLAINANT CO-EMPLOYEE HAS NO EFFECT TO THE CASE.— The fact that the complainant resigned three (3) months after the filing of the present complaint cannot, in any way, be an indication of guilt on her part, as the respondent insinuated. Neither can such resignation have the effect of exonerating the respondent from liability. In the first place, Atty. Basilio is not the party accused of committing an irregularity in the performance of duty. If someone should show any sign of guilt, it should be the respondent and not the complaining party. Secondly, the Court already acquired jurisdiction over the present case upon the filing of the administrative complaint. Jurisdiction, once acquired, is not lost by the resignation of the complaining party; it continues until the case is terminated.

5. ID.; ID.; COURT EMPLOYEES; FAILURE TO COMPLY WITH COURT'S RESOLUTION WARRANTS ADDITIONAL PENALTY.— In addition to the penalty for the charges the respondent faces, we impose on her a fine of one thousand pesos (₱1,000.00) for her failure to comply with this Court's resolution dated July 28, 2010. This resolution required her and complainant Atty. Basilio to show cause why they should not be disciplinarily dealt with or held in contempt for their failure to file the manifestations this Court ordered. The respondent's non-compliance cannot be condoned as it is an added manifestation of the disregard she has for authority.

D E C I S I O N

BRION, *J.*:

In a Report dated August 11, 2008,[1] Atty. Noreen T. Basilio (*Atty. Basilio*), Clerk of Court of Branch 129, Regional Trial Court (*RTC*), Caloocan City, accused Court Stenographer Melinda M. Dinio (*Dinio*) of disrespectful conduct and insubordination due to the latter's refusal to remit to the Office of the Clerk of Court (Caloocan City) a portion of the amount of three hundred pesos (₱300.00) she received as payment for a copy of her stenographic notes.

According to Atty. Basilio, as testified to by Court Aide Teodorico B. Ibas (*Ibas*)[2] and Court Stenographer Evelyn R. Santander (*Santander*),[3] Atty. Jobert Pahilga (*Atty. Pahilga*) came into their office on July 30, 2008, at around 9:30 in the morning. He approached stenographers Dinio and Santander and requested for a copy of the stenographic notes taken at the hearings of his case. Atty. Pahilga paid them the amount of five hundred pesos (₱500.00); two hundred pesos (₱200.00) to Santander and three hundred pesos (₱300.00) to Dinio, with the request that the transcripts be made available before his next scheduled hearing.

After Atty. Pahilga left the office, Atty. Basilio advised the stenographers to remit a portion of the amount they received to the Office of the Clerk of Court, in compliance with Section 11, Rule 141 of the Rules of Court,[4] and Administrative Matter

[1] *Rollo*, pp. 1-5.

[2] *Id.* at 8-9.

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

[4] Sec. 11. Stenographers. – Stenographers shall give certified transcript of notes taken by them to every person requesting the same upon payment to the Clerk of Court of (a) TEN (₱10.00) PESOS for each page of not less than two hundred and fifty words before the appeal is taken and (b) FIVE (₱5.00) PESOS for the same page, after the filing of the appeal, provided, however, that one-third (1/3) of the total charges shall accrue to the Judiciary Development Fund (JDF) and the remaining two-thirds (2/3) to the stenographer concerned. (10a)

(*A.M.*) No. 04-2-04-SC.[5] Dinio, in an angry tone, protested: *"wala akong pera, wala namang nakakita ah, niyayari ko pa nga yan sa bahay, ako gumagastos, ako nagbabayad ng kuryente at ilaw."*(I don't have any money. Besides, no one saw it. I finished them at home, spending my own money to pay for electricity.) Atty. Basilio retorted that she was witness to the payment by Atty. Pahilga, and told her that there was no reason for her not to remit the money considering that the other stenographers were remitting the payments made to them. Furious with Atty. Basilio's comments, Dinio – pointing at the judge's chambers – shouted at her, "*eh di magsumbong ka, pumasok ka dun! Ngayon na!*" (I don't care if you report me. Go there! Now!). Atty. Basilio was stunned by Dinio's reaction and was rendered speechless.

Hours after the incident, Atty. Basilio reported the matter to Hon. Thelma C. Trinidad-Pe Aguirre (*Judge Pe Aguirre*), the Presiding Judge of Branch 129. Judge Pe Aguirre called for a meeting the next day to remind the office staff to observe administrative rules and regulations. Atty. Basilio noticed that after the meeting, Dinio did not even express any remorse on how she had treated her. Nor did Dinio ever remit the money paid to the Office of the Clerk of Court.

In her Comment,[6] Dinio admitted the truth of her alleged verbal statement that she transcribes her stenographic notes at home. She explained that due to the heavy workload in their branch – consisting of attending hearings of cases, transcribing stenographic notes, and typing the drafts and final copies of orders and decisions issued by the court – she had to bring work home every night and finish the transcripts in the wee hours of the morning to prevent the accumulation of pending notes for transcription. In order to offset the expenses of doing her work at home and to buy things she regularly needs for her work, such as a tape recorder, blank tapes and batteries, she

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[5] *Re: Proposed Revision of Rule 141, Revised Rules of Court;* this Resolution of the Court increased the fee for each page of certified copies of any record, judgment or entry from six pesos (₱6.00) to ten pesos (₱10.00).

[6] *Rollo,* pp. 15-17.

charges the requesting parties the amount of ten pesos (₱10.00) per page of the transcript of stenographic notes (*TSN*), which is the amount prescribed under the Rules of Court and by A.M. No. 04-2-04-SC.

Dinio added that she has been working with the court for almost fifteen (15) years and it is only now that someone filed a complaint against her. She supposed that Atty. Basilio's allegations resulted from a misunderstanding as the latter was new and could have not been that acquainted with how people in the office often joked around and how these jokes are not to be taken seriously. Atty. Basilio could have misinterpreted her words, said in jest, as acts of insubordination.

From a review of the case records, the Office of the Court Administrator (*OCA*) found Dinio liable for disrespectful conduct and violation of Section 14, Rule 136 and Section 11, Rule 141 of the Rules of Court (*Rules*) for the non-remittance of payment of TSN. While the offense committed by Dinio carries a penalty of suspension from one (1) month and 1 day to six (6) months, the OCA deemed it reasonable and sufficient to recommend the imposition of a fine of five thousand pesos (₱5,000.00) in order not to hamper office operations. The OCA also recommended that Dinio be given a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In a Resolution dated October 23, 2009,[7] this Court ordered the redocketing of the instant complaint as a regular administrative matter and required the parties to manifest their willingness to submit the matter for resolution within ten days from notice, based on the pleadings already filed.

For failure of both parties to file their manifestation, this Court, in another Resolution,[8] required them to show cause why they should not be disciplinarily dealt with, or held in contempt, and to comply with its order within ten (10) days from notice.

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[7] *Id.* at 30.

[8] *Id.* at 34; dated July 28, 2010.

In a letter dated August 31, 2010,[9] Mr. Nestor G. Dela Cruz (*Dela Cruz*), Officer-in-Charge of Branch 129, RTC Caloocan City, informed this Court that their office had received a letter-envelope addressed to Atty. Basilio, containing a notice of this Court's resolution dated July 28, 2010. As Atty. Basilio was no longer connected with their office as of December 2008, and upon the instructions of Judge Pe-Aguirre, Dela Cruz advised her of the notice, by mobile phone; she responded by indicating her intent to secure a copy of the "show cause" resolution.

THE COURT'S RULING

We agree with the OCA's evaluation of the evidence and the applicable law, and, thus, find respondent Melinda M. Dinio, Court Stenographer III, Branch 129, RTC, Caloocan City, liable for disrespectful conduct toward a superior and for violation of Section 14, Rule 136 and Section 11, Rule 141 of the Rules of Court. We, likewise, affirm the OCA's recommended penalty of a fine of five thousand pesos (₱5,000.00) considering that this is the respondent's first offense.

In addressing the allegations against her, respondent excused herself from liability by arguing that her failure to remit the TSN fees was justified by the expenses she incurred in doing most of her transcription at home. Due to the heavy workload and the limited number of stenographers in their court, the respondent admitted, and even took pride in, the fact that she brings home ninety-five percent (95%) of her work. Though one may find commendable her zealousness in bringing home her transcripts for transcription, it is still not an excuse for her not to remit a portion of her collection from requests of copies of TSN. Section 11, Rule 141 of the Rules of Court clearly provides that payment for requests of copies of the TSN shall be made to the Clerk of Court, and that a third of the portion of such payment accrues to the Judicial Development Fund (*JDF*), with only two-thirds thereof to be paid to the stenographer concerned. Thus, the stenographer is not entitled to the full amount of the TSN fees. Payment likewise cannot be made to

[9] *Id.* at 35.

her as the payment is an official transaction that must be made to the Clerk of Court.

As correctly observed by the OCA, the respondent's act of bringing stenographic notes to be transcribed at home is irregular and not permitted by law. Section 14, Rule 136 of the Rules of Court states that no record shall be taken from the clerk's office without an order from the court, except as otherwise provided by the rules. Stenographic notes are deemed official documents that form part of the record of a case.[10] In the absence of an authorization from the court, the stenographic notes cannot be removed from the record and be brought home, even if the purpose is to work on these notes.

On the charge of disrespectful conduct, respondent displayed her lack of respect to her superior in the reckless and impolite manner she retorted to Atty. Basilio, particularly when she dared her to go to Judge Pe Aguirre's chambers to report her receipt of the money paid. Atty. Basilio, as then Clerk of Court of Branch 129, held a higher rank than the respondent and had every right to enforce and correct what she correctly considered a violation of regulations. Thus, the respondent should have accorded her the respect she deserved even if, at the time the complaint was filed, she had been an official of the court for only eight months. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions.[11]

Furthermore, the fact that the complainant resigned three (3) months after the filing of the present complaint cannot, in any way, be an indication of guilt on her part, as the respondent insinuated. Neither can such resignation have the effect of exonerating the respondent from liability. In the first place, Atty.

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[10] *De Guzman v. Bagadiong,* A.M. No. P-96-1220, February 27, 1998, 286 SCRA 585.

[11] *In Re: Ms. Edna S. Cesar, RTC, Br. 171, Valenzuela City,* A.M. No. 00-11-526-RTC, September 16, 2002, 388 SCRA 703, citing *Ibay v. Lim,* A.M. No. P-99-1309, September 11, 2000, 340 SCRA 107; *Navarro v. Navarro,* A.M. No. 00-01, September 6, 2000, 339 SCRA 709.

Basilio is not the party accused of committing an irregularity in the performance of duty. If someone should show any sign of guilt, it should be the respondent and not the complaining party. Secondly, the Court already acquired jurisdiction over the present case upon the filing of the administrative complaint. Jurisdiction, once acquired, is not lost by the resignation of the complaining party; it continues until the case is terminated.[12]

In addition to the penalty for the charges the respondent faces, we impose on her a fine of one thousand pesos (₱1,000.00) for her failure to comply with this Court's resolution dated July 28, 2010. This resolution required her and complainant Atty. Basilio to show cause why they should not be disciplinarily dealt with or held in contempt for their failure to file the manifestations this Court ordered. The respondent's non-compliance cannot be condoned as it is an added manifestation of the disregard she has for authority.

WHEREFORE, we find Melinda M. Dinio, Court Stenographer III, Branch 129, Regional Trial Court, Caloocan City, *GUILTY* of disrespectful conduct and for violation of the provisions of Rules 136 and 141 of the Rules of Court and a *FINE* of Five Thousand Pesos (₱5,000.00) is IMPOSED on her, with the *STERN WARNING* that a repetition of the same or similar offense will be dealt with more severely.

She is, likewise, *FINED* One Thousand Pesos (₱1,000.00) for her failure to comply with the Resolution of this Court dated July 28, 2010.

SO ORDERED.

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

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[12] *Office of the Ombudsman v. Estandarte,* G.R. No. 168670, April 13, 2007, 521 SCRA 155.

THIRD DIVISION

[A.M. No. P-10-2818. November 15, 2010]
(Formerly A.M. No. 10-4-54-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **GREGORIO B. SADDI, Clerk of Court, MTC, Sasmuan, Pampanga,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; DUTIES AS CUSTODIAN OF COURT FUNDS.— Clerks of court, as the chief administrative officers of their respective courts, must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and its proceedings. They are judicial officers entrusted to perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively. 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 depositories for they are not supposed to keep such funds in their custody.

2. ID.; ID.; ID.; ID.; ID.; SC ADMINISTRATIVE CIRCULAR NO. 3-2000 AND RELATED CIRCULARS ON JDF COLLECTIONS AND OTHER COURT COLLECTIONS. — In particular, SC Administrative Circular No. 3-2000 provides for the duty of the clerk of court to receive JDF collections in their respective courts, issue the proper receipt therefor and maintain a separate cash book properly marked as "CASH BOOK FOR JUDICIARY DEVELOPMENT FUND." The clerk of court shall deposit such collections every day and render the proper Monthly Report of Collections and Deposits for said Fund within 10 days after the end of every month. Collection shall be deposited in the designated depositary bank, the Land Bank of the Philippines (LBP) or its branches. In the absence of an LBP branch, Postal Money Orders payable to the Chief Accountant, OCA, shall be purchased from the local post office and sent to the latter for deposit to the JDF Savings Account.

The daily collections for the Fund shall be deposited every day with the nearest LBP branch for the account of the JDF or, if depositing daily is not possible, deposits for the Fund shall be made at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period indicated. These procedural guidelines apply in like manner to the General Fund received by clerks of court. Meanwhile, SC Circular No. 50-95 provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the LBP by the clerk of court concerned within 24 hours from receipt. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer. Complimentary to these, OCA Circular No. 113-2004 requires clerks of court to submit monthly reports for three funds, namely, JDF, Special Allowance for the Judiciary Fund and Fiduciary Fund.

3. ID.; ID.; ID.; ID.; ID.; ID.; VIOLATION THEREOF CONSTITUTES GROSS DISHONESTY, GRAVE MISCONDUCT AND EVEN MALVERSATION OF PUBLIC FUNDS, ALSO GROSS NEGLECT OF DUTY.— The Court enjoins clerks of court to strictly observe the rules and regulations relative to the management of court funds received by them. Saddi's failure to turn over up to this time the full amount of his collections from October 24, 2007 to December 31, 2007 and July 11, 2008 to August 31, 2009 and to adequately explain and present evidence thereon constitute gross dishonesty, grave misconduct, and even malversation of public funds. On the other hand, the delayed remittance of his cash collections for November 1, 2003 to August 31, 2007, and failure to submit monthly reports of court funds he received constitute gross neglect of duty. The failure to submit monthly reports of the court funds he received further constitutes violations of SC Circular No. 50-95 and OCA Circular No. 113-2004.

4. ID.; ID.; ID.; ID.; SC CIRCULAR NO. 26-97 ON ISSUANCE OF OFFICIAL RECEIPTS; VIOLATED WHEN HANDWRITTEN RECEIPT WAS ISSUED FOR PAYMENT OF EXECUTION FEE.— As regards the handwritten receipt he issued, Saddi likewise violated SC Circular No. 26-97. x x x Saddi's act of issuing a handwritten receipt for the payment

of the execution fee did not satisfy the requirement of SC Circular No. 26-97 for a clerk of court to issue *official receipts* promptly for all monies received by him. The circular specifically provides for the form which said official receipts may take, that is, either in the form of stamps or officially numbered receipts – never handwritten. Moreover, there is no indication that Saddi properly accounted for, remitted and reported such payment under the JDF Account.

5. ID.; ID.; ID.; GROSS DISHONESTY, GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY WARRANTS DISMISSAL FROM SERVICE; PENALTY IN LIEU OF DISMISSAL WHERE ERRING COURT EMPLOYEE WAS ALREADY DROPPED FROM THE ROLLS.— By these deplorable acts of gross dishonesty, grave misconduct and gross neglect of duty, Saddi has, no doubt, undermined the people's faith in the courts and, ultimately, in the administration of justice. Dishonesty alone, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. Dishonesty has no place in the Judiciary. Gross neglect of duty and grave misconduct, likewise, carry the same penalty. In this case, however, we can no longer impose the penalty of dismissal upon Saddi, who was dropped from the rolls effective August 3, 2009 for being AWOL. Nonetheless, the forfeiture of his benefits except accrued leave credits, restitution of his undeposited collections and payment of interest that said collections would have earned had they been deposited on time are in order.

D E C I S I O N

VILLARAMA, JR., *J.*:

This administrative matter stemmed from a financial audit conducted by the Court Management Office on the cash and accounts of the Clerk of Court and OIC/Clerks of Court of the Municipal Trial Court (MTC), Sasmuan, Pampanga, covering the period September 1, 2007 to October 31, 2009. The examination was prompted by the request of Judge Janice R.

Yulo-Antero, Acting Presiding Judge therein, for an urgent financial audit of MTC, Sasmuan, Pampanga.

In a Memorandum[1] dated March 26, 2010, the audit team reported to Court Administrator Jose Midas P. Marquez, that it was able to account for 12 booklets and 103 pieces of unused official receipts as of the audit cut-off date, October 31, 2009. The cash count conducted on November 9, 2009 revealed no shortage or overage. No shortage was likewise noted during the period of accountability of the OIC/Clerks of Court Albert M. David and Nelia U. Lacsa. Shortages were only discovered for the periods of accountability of Clerk of Court Gregorio B. Saddi from October 24, 2007 to December 31, 2007 and July 11, 2008 to August 31, 2009.

In particular, the audit team computed a shortage because Saddi failed to deposit collections in the following court funds: **₱20,105.00** in the Judiciary Development Fund (JDF), **₱33,352.20** in the Special Allowance for the Judiciary Fund, **₱16,000.00** in the Sheriff's Trust Fund, **₱65,100.00** in the Fiduciary Fund, and **₱12,000.00** in the Mediation Fund, or a total of **₱146,557.20**. Saddi received a copy of the Memorandum dated November 27, 2007, which required him to explain in writing why no administrative charge should be filed against him for the delay in remitting the collections, but he did not comply. A previous audit of MTC-Sasmuan, Pampanga also revealed that Saddi had previously incurred a shortage of ₱217,367.00 for the period of November 1, 2003 to August 31, 2007, although he later restituted the amount in full on October 5, 2007.

The audit team further reported that Saddi did not prepare and submit monthly financial reports of his collections to the Court in violation of OCA Circular No. 113-2004.[2] Thus, the audit team recommended that Saddi be held liable for gross neglect of duties, dishonesty as an accountable officer in charge of collecting money belonging to the court, and for violating

[1] *Rollo*, pp. 10-21.

[2] The circular prescribes that all monthly reports of collections, deposits and withdrawals shall be submitted not later than the 10th day of each succeeding month to the Chief Accountant of the Supreme Court.

SC Administrative Circular No. 5-93,[3] as amended by Administrative Circular No. 3-2000, and SC Circular No. 50-95.[4]

The audit team also disclosed that in a letter dated January 4, 2010, Judge Yulo-Antero informed Executive Judge Pamela Ann A. Maximo that Saddi had issued a handwritten receipt on August 25, 2009 for the amount of ₱500.00 which he received as execution fee from the plaintiff in Civil Case No. 794. He failed to issue the necessary writ of execution pending appeal and was ordered by Judge Yulo-Antero on November 9, 2009, to explain in writing why he only issued a handwritten receipt. Saddi, however, submitted no explanation.

Further, the audit team called the Court Administrator's attention to an earlier administrative case involving Saddi, docketed as A.M. No. 07-10-260-MTC.[5] In said case, the Court resolved to drop Saddi from the rolls effective January 2, 2007 for having been absent without official leave (AWOL). The Court later granted Saddi's motion for reconsideration and resolved, instead, to suspend him for two months for absenteeism with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

Despite the Court's warning, however, Saddi incurred further absences without official leave. In a letter dated October 23, 2009 addressed to Executive Judge Pamela Ann A. Maximo, Judge Yulo-Antero disclosed that Saddi did not report to work from September 2, 2009 to October 9, 2009. Again, he offered no explanation for his absences. Hence, Judge Yulo-Antero recommended that Saddi be dropped from the rolls.

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[3] SC Circular No. 5-93 mandates that collections for the Judiciary Development Fund (JDF) shall be deposited every day with the local or nearest Land Bank of the Philippines (LBP) branch.

[4] SC Circular No. 50-95 provides that all collections of funds must be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, to the nearest depository bank.

[5] *Re: Absence Without Official Leave (AWOL) of Mr. Gregorio B. Saddi, Clerk of Court II, MTC, Sasmuan, Pampanga*, December 13, 2007, 540 SCRA 39, 41.

Upon the foregoing facts, the audit team recommended that:

1. This report be docketed as a regular administrative complaint against Mr. Gregorio B. Saddi, Clerk of Court, MTC, Sasmuan, Pampanga for dishonesty, gross neglect of duty and grave misconduct;

2. **MR. GREGORIO B. SADDI**, Clerk of Court, be **DIRECTED** within ten (10) days from receipt of notice to:

2.1. **RESTITUTE** the shortages incurred on the following funds:

Special Allowance for the Judiciary Fund	₱ 33,352.20	Schedule 1
Judiciary Dev't. Fund	20,105.00	Schedule 2
Sheriff's Trust Fund	16,000.00	Schedule 3
Fiduciary Fund	65,100.00	Schedule 4
Mediation Fund	12,000.00	Schedule 5
Total	**₱ 146,557.20**	

2.2. **PAY** a **FINE** of **TEN THOUSAND PESOS (₱10,000.00)** for the delayed remittances of his collections which should have earned interest if the same were remitted on time;

2.3. **PAY** Five Hundred Pesos (₱500.00) for deposit to the JDF Account pertaining to the amount collected from the plaintiff in Civil Case No. 794 for the payment of execution fee wherein no writ of execution pending appeal was issued; and

2.4. **SUBMIT** to the Fiscal Monitoring Division, FMO-OCA the copies of the machine validated deposit slips, all within ten (10) days from receipt of notice as proof of compliance in items 2.1 and 2.3.

3. **MR. GREGORIO B. SADDI** be **DISMISSED** from the service for gross dishonesty, gross neglect of duty and grave misconduct with forfeiture of all benefits except accrued leave credits and with prejudice to reemployment in any branch or instrumentality of the government including government owned or controlled [corporations] or in case of failure to restitute the shortages amounting to ₱146,557.20 and ₱500.00, including fine of ₱10,000.00, the money value of his accrued leave credits shall be applied to his accountabilities dispensing with the usual documentary requirements;

4. **FINANCIAL MANAGEMENT OFFICE, OFFICE OF THE COURT ADMINISTRATOR DIRECTED**

4.1. to **APPLY** the computed Terminal Leave Pay Benefits of [Mr.] Gregorio B. Saddi to the shortages found on [his] books of accounts in the order of priority as follows:

Fund	***Amount***	***For Deposit/ Payable to***
Fiduciary Fund	₱ 65,100.00	Fiduciary Fund Acct. of MTC-Sasmuan
Sheriff's Trust Fund	16,000.00	STF Account of MTC-Sasmuan
Special Allowance for the Judiciary Fund	33,352.20	SAJF Account
Judiciary Dev't. Fund	20,105.00	JDF Account
Mediation Fund	12,000.00	MF Account
Total	**₱146,557.20**	

4.2. to **INFORM** the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator on the action taken [thereon] so the said Office can finalize this audit on the accountabilities of Mr. Saddi and likewise advise the incumbent Clerk of Court [of the] procedure on how or when to deposit the amount deducted from the Terminal leave Pay of Mr. Saddi;

5. **MS. NELIA U. LA[C]SA and MR. ALBERT M. DAVID**, OIC-Clerk of Court and former OIC-Clerk of Court, respectively, be **CLEARED** of their financial accountability as of October 31, 2009 is concerned; and

6. Acting Presiding Judge **JANICE R. YULO-ANTERO** be **DIRECTED** to **STRICTLY MONITOR** the financial transactions of MTC, Sasmuan, Pampanga in strict adherence to the issuances of the Court to avoid the incurrence of violations committed by Mr. Gregorio B. Saddi and institute reforms that will strengthen the internal control system in the management of judiciary funds otherwise she

will be held equally liable for the infractions committed by the employees under her command/supervision.[6]

On March 26, 2010, the Court Administrator issued a Memorandum[7] to the Chief Justice adopting *in toto* as the OCA's recommendation, the recommendations of the audit team.

We sustain the findings and recommendation of the OCA.

The OCA correctly found cause to hold Saddi administratively liable for the following infractions: (1) incurring a cash shortage due to undeposited collections in the amount of ₱146,557.20 during his period of accountability; (2) failure to prepare a monthly report of his collections; (3) issuing a handwritten receipt in the amount of ₱500.00 as payment for the execution fee in Civil Case No. 794; and (4) going on AWOL from September 2, 2009 to October 9, 2009. For all these, Saddi gave no explanation.

Clerks of court, as the chief administrative officers of their respective courts, must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and its proceedings. They are judicial officers entrusted to perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively. 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 depositories for they are not supposed to keep such funds in their custody.

In particular, SC Administrative Circular No. 3-2000 provides for the duty of the clerk of court to receive JDF collections in their respective courts, issue the proper receipt therefor and maintain a separate cash book properly marked as "CASH BOOK FOR JUDICIARY DEVELOPMENT FUND." The clerk of court shall deposit such collections every day and render the proper Monthly Report of Collections and Deposits for said Fund within 10 days after the end of every month.

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[6] *Rollo*, pp. 18-20.

[7] *Id.* at 1-3.

Collection shall be deposited in the designated depositary bank, the Land Bank of the Philippines (LBP) or its branches. In the absence of an LBP branch, Postal Money Orders payable to the Chief Accountant, OCA, shall be purchased from the local post office and sent to the latter for deposit to the JDF Savings Account. The daily collections for the Fund shall be deposited every day with the nearest LBP branch for the account of the JDF or, if depositing daily is not possible, deposits for the Fund shall be made at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period indicated. These procedural guidelines apply in like manner to the General Fund received by clerks of court.

Meanwhile, SC Circular No. 50-95 provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the LBP by the clerk of court concerned within 24 hours from receipt. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer. Complimentary to these, OCA Circular No. 113-2004 requires clerks of court to submit monthly reports for three funds, namely, JDF, Special Allowance for the Judiciary Fund and Fiduciary Fund.

In a Memorandum dated November 27, 2007, the OCA directed Saddi to explain why he should not be administratively charged for the delayed remittances of the judiciary funds in his custody. Similarly, on November 9, 2009, he was ordered by Judge Yulo-Antero to explain in writing the handwritten receipt he issued for the payment of the execution fee in Civil Case No. 794. On both occasions, however, Saddi failed to comply. And while Saddi had restituted in full the shortages found during a previous audit, the same will not absolve him of administrative liability.[8]

The Court enjoins clerks of court to strictly observe the rules and regulations relative to the management of court funds received by them. Saddi's failure to turn over up to this time the full

[8] *Id.* at 15.

amount of his collections from October 24, 2007 to December 31, 2007 and July 11, 2008 to August 31, 2009 and to adequately explain and present evidence thereon constitute gross dishonesty, grave misconduct, and even malversation[9] of public funds.[10] On the other hand, the delayed remittance of his cash collections for November 1, 2003 to August 31, 2007, and failure to submit monthly reports of court funds he received constitute gross neglect of duty.[11] The failure to submit monthly reports of the court funds he received further constitutes violations of SC Circular No. 50-95 and OCA Circular No. 113-2004.

As regards the handwritten receipt he issued, Saddi likewise violated SC Circular No. 26-97. Said circular provides,

TO: ALL JUDGES AND CLERKS OF COURTS OF THE REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS

SUBJECT: LEGAL FEES FORM FOR LOWER COURTS

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[9] Art. 217 of the Revised Penal Code provides:

ART. 217. *Malversation of public funds or property – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

xxx xxx xxx

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

[10] *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar,* A.M. No. P-09-2721 (Formerly A.M. No. 09-9-162-MCTC), February 16, 2010, 612 SCRA 509, 531.

[11] See *Sollesta v. Mission*, A.M. No. P-03-1755 (Formerly OCA I.P.I. No. 02-1328-P), April 29, 2005, 457 SCRA 519, 534.

To eradicate the practice of some clerks of court of retaining the original copy of the official receipt issued in acknowledgment of payment for file with the record of the case instead of issuing the same to the payor, JUDGES and CLERKS OF COURT are hereby DIRECTED to:

1) Compel their collecting officials to strictly comply with the provisions of the AUDITING AND ACCOUNTING MANUAL, Art. VI, Sec[s]. 61 and 113, to wit:

ARTICLE VI – Accountable Forms

Sec. 61. *Kinds of Accountable Forms* -

(a) *Official Receipts* – For proper accounting and control of collections, **collecting officers shall promptly issue official receipts for all monies received by them**. These receipts may be in the form of stamps or officially numbered receipts xxx.

Sec. 113. *Issuance of official receipt* – For proper accounting and control of revenues, **no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof**. Th[ese] receipts may be in the form of stamps xxx or officially numbered receipts, subject to proper custody and accountability.

2) Cause the attachment of the Legal Fees Form for lower courts x x x which is to be provided by the Property Division of the Office of the Court Administrator, to the record of the case in lieu of the official receipt.

Non-compliance with this CIRCULAR shall be dealt with administrative sanctions. (Emphasis supplied.)

Saddi's act of issuing a handwritten receipt for the payment of the execution fee did not satisfy the requirement of SC Circular No. 26-97 for a clerk of court to issue *official receipts* promptly for all monies received by him. The circular specifically provides for the form which said official receipts may take, that is, either in the form of stamps or officially numbered receipts – never handwritten. Moreover, there is no indication that Saddi properly accounted for, remitted and reported such payment under the JDF Account.

By these deplorable acts of gross dishonesty, grave misconduct and gross neglect of duty, Saddi has, no doubt, undermined the people's faith in the courts and, ultimately, in the administration of justice.[12] Dishonesty alone, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. Dishonesty has no place in the Judiciary.[13] Gross neglect of duty and grave misconduct, likewise, carry the same penalty.

In this case, however, we can no longer impose the penalty of dismissal upon Saddi, who was dropped from the rolls effective August 3, 2009 for being AWOL. Nonetheless, the forfeiture of his benefits except accrued leave credits, restitution of his undeposited collections and payment of interest that said collections would have earned had they been deposited on time are in order.

WHEREFORE, the Court finds and declares:

(1) Gregorio B. Saddi, Clerk of Court, MTC, Sasmuan, Pampanga *GUILTY* of Gross Dishonesty, Grave Misconduct, Gross Neglect of Duty and of violating SC Circular No. 26-97. Let all his retirement benefits be forfeited, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. He is further *DIRECTED* to:

(a) *RESTITUTE* the amount of ₱146,557.20, representing the amount of shortage in his collections from October 24, 2007 to December 31, 2007 and July 11, 2008 to August 31, 2009, and the amount of ₱500.00, representing the execution fee in Civil Case No. 794;

(b) *PAY* the amount of *INTEREST* which the Court would have earned had the collections been deposited on time. The money value of his accrued leave credits shall be applied to

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[12] *Id.* at 536.

[13] *Dela Peña v. Sia*, A.M. No. P-06-2167 (Formerly OCA I.P.I. No. 04-2079-P), June 27, 2006, 493 SCRA 8, 20.

his accountabilities dispensing with the usual documentary requirements;

(c) *SUBMIT* to the Fiscal Monitoring Division, Court Management Office, OCA, copies of the machine-validated deposit slips, all within 10 days from receipt of notice as proof of compliance with (a) and (b) above.

(2) The Financial Management Office, OCA is *ORDERED* to:

(2.1) *APPLY* the computed terminal leave pay benefits of Gregorio B. Saddi to the shortage found on his books of accounts in the following order of priority:

Fund	Amount	For Deposit/ Payable to
Fiduciary Fund	₱ 65,100.00	Fiduciary Fund Acct. of MTC-Sasmuan
Sheriff's Trust Fund	16,000.00	STF Account of MTC-Sasmuan
Special Allowance for the Judiciary Fund	33,352.20	SAJF Account
Judiciary Dev't. Fund	20,105.00	JDF Account
Mediation Fund	12,000.00	MF Account
Total	₱146,557.20	

(2.2) *INFORM* the Fiscal Monitoring Division, Court Management Office, OCA on the action taken thereon so the said Office can finalize this audit on the accountabilities of Mr. Saddi and likewise advise the incumbent Clerk of Court of the procedure on how or to which account the amount deducted from the Terminal Leave Pay of Saddi shall be deposited;

(3) The Fiscal Monitoring Division, Court Management Office, OCA is directed to *DETERMINE* the exact amount of interest which respondent is liable for;

(4) Nelia U. Lacsa and Albert M. David, OIC-Clerk of Court and former OIC-Clerk of Court, respectively, are *CLEARED* of their financial accountability as of October 31, 2009; and

(5) The Office of the Court Administrator is directed to *FILE* the appropriate criminal charges against Gregorio B. Saddi.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 143511. November 15, 2010]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **JOEY B. TEVES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; THREE UNAUTHORIZED ABSENCES WITHIN A THREE-YEAR PERIOD IS NOT SUFFICIENT CAUSE FOR DISMISSAL.— [R]espondent's termination for committing three unauthorized absences within a three-year period had no basis; thus, there was no valid cause for respondent's dismissal. Even assuming that respondent's absenteeism constitutes willful disobedience, such offense does not warrant respondent's dismissal. Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal. There must be a reasonable proportionality between the offense and the penalty.

2. ID.; ID.; MANAGEMENT PREROGATIVE MUST BE EXERCISED IN GOOD FAITH; DISMISSAL OF EMPLOYEE MUST BE FOR JUST CAUSE, WITHOUT ABUSE OF DISCRETION.— While management has the

prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket. Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe. This is not only the law's concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.

3. ID.; ID.; ILLEGAL DISMISSAL; WARRANTS REINSTATEMENT AND PAYMENT OF BACK WAGES. — Considering that respondent was illegally dismissed from service, he is entitled to be reinstated, without loss of seniority rights and the payment of backwages from the time respondent's compensation was withheld from him until his reinstatement on November 12, 1997.

4. ID.; ID.; INFRACTIONS; UNAUTHORIZED ABSENCES FOR NINE DAYS JUSTIFY THIRTY DAYS SUSPENSION.— Since we find that respondent's absence from February 11 to 19, 1992 was unjustified and unauthorized, thus, his suspension for thirty days would be in order.

APPEARANCES OF COUNSEL

Abello Concepcion Regala & Cruz for petitioner.
Liberty O. Castañeda for respondent.

D E C I S I O N

PERALTA, *J.*:

For review on *certiorari* are the Decision[1] dated April 24, 2000 and the Resolution[2] dated May 31, 2000 of the Court of Appeals (CA) in CA- G.R. SP No. 50852, affirming the Decision of the National Labor Relations Commission (NLRC) which ordered the reinstatement of respondent Joey B. Teves to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated.

The antecedent facts are as follows:

Respondent was employed by petitioner Philippine Long Distance Telephone Company in 1981 as Clerk II until his termination from service on June 1, 1992. Petitioner terminated respondent through an Inter-Office Memorandum[3] dated May 29, 1992 on account of his three (3) unauthorized leaves of absence committed within three (3) years in violation of petitioner's rules and regulations.

Respondent was absent from August 23 to September 3, 1990 as his wife gave birth on August 25 but was only discharged from the hospital on September 2, 1990 due to complications; since they had no household help, he had to attend to his wife's needs in the hospital, as well as the needs of their four kids, including bringing them to school. Respondent called up through a third party to inform petitioner that he would go on an extended leave. Upon his reporting for work on September 4, 1990, he wrote petitioner a letter[4] confirming his leave of absence without pay for that period and stating the reasons thereof, with his wife's medical certificate attached. Dissatisfied, petitioner required

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Cancio C. Garcia and Romeo J. Callejo, Sr. (retired members of this Court), concurring; *rollo*, pp. 32-39.

[2] *Id.* at 41.

[3] *Id.* at 51.

[4] *Id* at 42.

respondent to submit further explanation which the latter did reiterating his previous explanation. However, in petitioner's Inter-Office Memorandum[5] dated October 3, 1990, it found respondent's explanation to be unacceptable and unmeritorious for the latter's failure to call, notify or request petitioner for such leave; thus, petitioner suspended respondent from work without pay for 20 days, effective October 8, 1990.

Respondent was absent from May 29 to June 12, 1991. He was sent a Memorandum[6] reminding him of the July 2, 1990 Memorandum requiring written application prior to a leave of absence without pay and was directed to report for work on June 13, 1991 at ten o'clock in the evening lest he be meted a disciplinary action. Respondent reported for work on even date, and was required to explain in writing why no disciplinary action should be taken against him for his unauthorized leave of absence. In a Memorandum[7] dated June 17, 1991, respondent explained that his absences were due to the fact that his eldest and youngest daughter were sick and had to be confined at the nearby clinic; and the medical certificate confirming said confinement was to follow. Further, respondent alleged that he had relayed said message to an officemate, Luis V. Marquez, who unfortunately did not also report for work. As petitioner found respondent's explanation insufficient, respondent was suspended without pay for 45 days effective July 17, 1991.

Eight months thereafter, respondent availed of a seven-day leave of absence and extended such leave to complete his annual vacation leave, which was to end on February 11, 1992. However, respondent failed to report for work from February 11 to February 19, 1992. Petitioner then sent him a Memorandum[8] dated February 19, 1992, directing him to report for duty within 72 hours, otherwise, his services would be terminated for abandonment of work. Respondent reported for duty and was

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[5] *Id.* at 43.

[6] *Id.* at 45.

[7] *Id.* at 47.

[8] *Id.* at 48.

served another Memorandum requiring him to explain in writing why no disciplinary action should be taken against him for his unauthorized absences. In his explanation, respondent stated that he incurred said absences because he had many accounts in the office which were already due and demandable and thought of prolonging such payment by absenting himself. He further stated that he realized that what he did was wrong and only worsened his situation and asked for another chance. Petitioner found such explanation totally unacceptable. Thus, in an Inter-Office Memorandum[9] dated May 29, 1992 addressed to respondent, the latter was terminated from service effective June 1, 1992 due to his third unauthorized absence within a three-year period.

On March 9, 1993, respondent filed a Complaint for illegal suspension, illegal dismissal, payment of two Christmas bonuses and monthly rice subsidy. Petitioner filed its Position Paper.

On May 13, 1994, Labor Arbiter (LA) Benigno C. Villarente, Jr. rendered his Decision,[10] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring that the dismissal of complainant is LEGAL. Conformably with the preceding discussions, however, respondent is hereby directed to extend complainant financial assistance in the amount of TWENTY THOUSAND PESOS (₱20,000.00).
>
> Complainant's claims for bonuses and rice subsidy have not been substantiated and are, therefore, hereby DISMISSED.[11]

In his decision, the LA found that (1) respondent had committed his third unauthorized absence within a three-year period and did not offer an acceptable reason therefor; (2) respondent's repeated unauthorized absences displayed his irresponsibility and lackluster attitude towards work; (3) the reasons for his absences which related to the need to attend to his family cannot

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[9] *Id.* at 51.

[10] *Id.* at 52-56.

[11] *Id.* at 56.

mitigate his apparent neglect of duty to his employer; and (4) his absences were in violation of petitioner's rules and regulations. The LA found that respondent was not denied due process, since he was notified of all his infractions and was allowed each time to submit his explanation. The LA awarded financial assistance to respondent as a measure of compassionate justice taking into consideration respondent's 11 years of service and since the infraction committed did not amount to a serious misconduct nor did it involve moral turpitude.

Respondent interposed an appeal with the NLRC.

On January 30, 1997, the NLRC rendered its Decision[12] reversing the LA's Decision, the decretal portion of which reads:

> WHEREFORE, the instant appeal is hereby given due course. The appealed decision is hereby SET ASIDE. Respondent is hereby declared guilty of illegally terminating complainant Joey B. Teves' employment. As such, respondent Philippine Long Distance Telephone Company is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated. Respondents are likewise ordered to pay complainant's unpaid wages for the period covering 15-31 May 1992, 13th month pay, Christmas Bonuses, accrued rice subsidy of one (1) sack a month, or its money equivalent of ₱350.00 at the time of his dismissal.[13]

In reversing the LA, the NLRC found that respondent's absences from August 23 to September 3, 1990 was brought to petitioner's attention when respondent called through a third party that respondent would go on an extended leave. Moreover, the reason for his prolonged absence, *i.e.*, the unforeseen complications of his wife's condition after giving birth, supported by a medical certificate, was an eventuality that needed to be attended to with priority which should have been accorded credence and favorably considered; and that dismissing such

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[12] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra, concurring; *id.* at 58-73.

[13] *Id.* at 72-73.

explanation and placing respondent under suspension, when his leave of absence was without pay, merely exacerbated his family's plight.

The NLRC found that respondent's failure to verify whether his message for petitioner through a co-employee that his (respondent) two daughters were sick and confined at a nearby clinic was duly delivered constituted a neglect of duty. However, the NLRC took into consideration respondent's reason for such absence and stated that certain leniency should have been accorded respondent and that his suspension for 45 days was too harsh for the said offense.

While the NLRC found the reason offered by respondent for his absences from February 11 to 19, 1992 unacceptable and unreasonable, respondent should have only been penalized accordingly. The NLRC found that respondent's dismissal from service was illegal, since he had been heavily punished for each and every offense imputed to him and that in his eleven years of service, this was the first time that he was falsely charged.

The NLRC found that petitioner failed to controvert respondent's claims for unpaid salary from May 15 to 31, 1990, 13th month pay and Christmas bonuses and rice subsidy for one month or its money equivalent.

Petitioner's motion for reconsideration was denied by the NLRC in a Resolution[14] dated February 26, 1997.

On May 29, 1997, petitioner filed before us a Petition for *Certiorari* with prayer for the issuance of a temporary restraining order and/or injunction assailing the January 30, 1997 Decision and February 26, 1997 Resolution of the NLRC. Respondent filed his Comment thereto. Petitioner then filed a Reply.

On November 12, 1997, respondent filed a Manifestation[15] stating that he had already been reinstated by petitioner effective November 10, 1997[16] in compliance with the NLRC Decision.

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

[15] CA *rollo*, pp. 85-86.

[16] *Id.* at 87.

Subsequently, in a Resolution[17] dated December 9, 1998, we referred the petition to the CA in accordance with the *St. Martin Funeral Home v. National Labor Relations Commission*[18] ruling.

On April 24, 2000, the CA rendered its assailed Decision, which affirmed and reiterated the NLRC decision.

The CA found that (1) petitioner complied with the two-notice requirement which was essential to respondent's right to due process; (2) respondent was given a notice to explain in writing why no disciplinary action should be meted on him for his unauthorized absences from February 11 to 19, 1992; and (3) when respondent's explanation proved unacceptable to petitioner, respondent was sent another notice informing him of his termination by reason of three unauthorized absences within a three-year period, a conduct which was circumscribed in petitioner's rules and regulations. Notwithstanding compliance with the requirement of due process, the CA affirmed the illegality of respondent's dismissal finding that respondent's comportment cannot be characterized as grave so as to constitute grave misconduct; that his first two leaves of absence were satisfactorily justified; and that he should not have been suspended from service by reason of such absences. However, the CA found that respondent's failure to report for work on February 11 to 19, 1992 appeared to be the only unauthorized and unjustified leave of absence during his 11 years of stay with petitioner, and it did not merit the harsh penalty of dismissal.

Petitioner filed a motion for reconsideration, but was denied by the CA in a Resolution dated May 31, 2000.

Hence, this petition. Petitioner raises the following arguments in its Memorandum.

A.

IT IS ALREADY SETTLED THAT RESPONDENT'S PREVIOUS ABSENCES WERE UNJUSTIFIED AND UNAUTHORIZED IN

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[17] *Id.* at 178-179.

[18] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

LIGHT OF HIS VOLUNTARY ACCEPTANCE AND COMPLIANCE WITH THE SUSPENSIONS IMPOSED IN CONNECTION WITH SAID ABSENCES. HENCE, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT MERELY COMMITTED ONE INSTANCE OF UNAUTHORIZED ABSENCE.

B.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR AND ABUSE OF DISCRETION IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED CONSIDERING THAT:

1. THE TERMINATION OF RESPONDENT'S SERVICES IS JUSTIFIED APPLYING THE TOTALITY OF INFRACTIONS DOCTRINE.

2. THERE IS SUBSTANTIAL AND UNDISPUTED EVIDENCE ESTABLISHING THAT RESPONDENT IS AN ABSENTEE EMPLOYEE WHO HAS A PROPENSITY TO SIMPLY DISAPPEAR WITHOUT EVEN GIVING HIS EMPLOYER THE COURTESY OF A PRIOR NOTICE.[19]

Petitioner contends that the CA erred when it found that (1) what was involved in this case was merely one instance of an unauthorized leave of absence as all of respondent's absences—where he was previously sanctioned were unauthorized; (2) the imposition of the penalty of suspension to respondent was justified and he had long been estopped from questioning the same; (3) respondent was suspended not so much for the reason behind the absences, but because of the manner by which he incurred the absence, *i.e.*, by not informing petitioner causing undue prejudice to the company's operations; (4) respondent had a propensity to simply disappear without giving petitioner the courtesy of a prior notice; and (5) respondent never questioned the suspensions meted on him, but instead voluntarily complied with the suspensions without protest.

Petitioner argues that respondent's past infractions could be used as supporting justification to a subsequent similar offense

[19] *Rollo,* pp. 219-220.

which would merit respondent's dismissal; that the CA erred when it did not apply the totality of infractions doctrine but limited respondent's offenses to just one offense; and that respondent's acts of absenting himself without prior notice, despite previous disciplinary actions, should be considered in its totality and not in isolation from one another.

Petitioner contends that the management's right to prescribe rules and regulations cannot be denied and that the employer may justly discharge from employment an employee who violates company rules and regulations. Petitioner avers that respondent's length of service in the company cannot work in his favor, but should be taken against him.

The issue for resolution is whether or not sufficient ground exists for respondent's dismissal from service.

Respondent was terminated from employment by reason of his third unauthorized absence from February 11 to 19, 1992. Respondent absented himself because he had many accounts in the office which were already due and demandable, and he thought that absenting himself from work would prolong the payment of his financial obligations; and that he realized that his action was wrong which worsened his situation and asked for another chance. Such explanation was found by petitioner to be unacceptable; thus, respondent was terminated effective June 1, 1992 for committing three unauthorized absences within a three-year period. Petitioner found respondent to have committed the other two incidents of unauthorized absences from August 23 to September 3, 1990 and from May 29 to June 12, 1991.

The LA found that respondent's dismissal was legal. However, the NLRC found that the two previous incidents of respondent's alleged unauthorized absences were justified, and that while his absence from February 11 to 19, 1992 was unacceptable and unreasonable, he should have been penalized therefor accordingly, but not with dismissal from service. The CA affirmed the NLRC's findings and concluded that respondent's absences from February 11 to 19, 1992 was his first and only unauthorized absences during his 11 years of stay, and it did not merit the harsh penalty of dismissal.

Petitioner claims that respondent is an absentee employee who has a propensity to simply disappear without giving his employer the courtesy of prior notice; and that respondent was not sanctioned for the reasons given for his absences, but because of his failure to inform or give prior notice to petitioner.

We find partial merit in this argument.

Respondent's first alleged unauthorized absences were from August 23 to September 3, 1990, wherein he went on leave without pay. In his letter dated September 4, 1990 addressed to petitioner, which he submitted upon reporting for work, as well as in his response dated September 10, 1990 to petitioner's memorandum dated September 7, 1990, respondent explained that his absences were due to the fact that his wife gave birth on August 25, but was only discharged from the hospital on September 2, 1990 due to complications; and that since they had no household help, he had to attend to his wife's needs in the hospital, as well as the needs of their four kids, including bringing them to school. Petitioner found the explanation unacceptable and unmeritorious as he did not bother to call, notify or request for a leave of absence; thus, respondent was suspended from service without pay equivalent to 20 days.

Respondent's second alleged unauthorized absences were from May 29 to June 12, 1991. When asked to explain his absences during the said period, respondent explained that his eldest and youngest daughters were sick and were confined at a nearby clinic; and that he relayed such emergency and the fact that he would not be able to report for work to a co-employee, Luis V. Marquez, who unfortunately did not also report for work. Petitioner noted respondent's negligence in failing to notify it of his intention to go on leave, or to verify whether the request for leave, allegedly through a third party, had been approved. Petitioner suspended respondent for 45 days.

Notably, the alleged two prior incidents of respondent's unauthorized absences above-mentioned were due to a family emergency or sickness. Respondent's explanations should have been given a kind consideration by petitioner. An employee

cannot anticipate when sickness or emergencies in the family may happen, thus, he may not be able to give prior notice or seek prior approval of his absence, but could only do so after the occurrence of the incident.

However, respondent had shown that he had given petitioner prior notice of his absences from August 23 to September 3, 1990. As the NLRC found, petitioner admitted that "on August 23, 1990, he (respondent) called up through a third party to inform PLDT that he would go on an extended leave." Such admission was even reiterated in petitioner's petition for *certiorari* filed with us. Notably, when respondent returned for work on September 4, 1990, he immediately submitted a letter to petitioner explaining his absence and attaching a medical certificate thereto to attest to the reason of his absence. Thus, the suspension imposed on him was not proper.

As to respondent's second unauthorized absence, while respondent had relayed his inability to report for work on May 29, 1991 to a co-employee, who unfortunately did not also report for work, he was negligent in not verifying whether his notice of absence had reached petitioner, and the duration of his absence. In fact, in petitioner's Inter-Office Memorandum dated June 12, 1991 sent to respondent, the former asked the latter to report for duty on June 13, 1991 as he had been absent since May 29, to which respondent complied. While respondent offered a justifiable reason for his absences from May 29 to June 12, 1990, *i.e.*, his two daughters were sick and confined at a nearby clinic, however, we find that he failed to give petitioner prior notice of his absence, thus, such absence was properly considered as unauthorized.

Thus, respondent's absence from February 11 to 19, 1991 which was made to prolong payment of his demandable financial obligations in the office, and which absence was found by both the NLRC and the CA to be unjustified, was respondent's second unauthorized absence. We find that respondent's termination for committing three unauthorized absences within a three-year period had no basis; thus, there was no valid cause for respondent's dismissal.

Even assuming that respondent's absenteeism constitutes willful disobedience, such offense does not warrant respondent's dismissal.[20] Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal.[21] There must be a reasonable proportionality between the offense and the penalty.[22]

Petitioner's claim that the alleged previous infractions may be used as supporting justification to a subsequent similar offense, which would merit dismissal, finds no application in this case. Respondent's absence from August 23 to September 3, 1990 was justified and not unauthorized as there was prior notice. His absence from May 29 to June 12, 1991, although found to be unauthorized, was not at all unjustified. Thus, his absence during the period from February 11 to 19, 1991, being the only unauthorized and unjustified absence and his second unauthorized absence, should not merit the penalty of dismissal.

While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements.[23] The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said

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[20] *Procter and Gamble Philippines v. Bondesto*, 468 Phil. 932, 942 (2004).

[21] *Id*.

[22] *Id*.

[23] See *Marival Trading Inc. v. NLRC*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 730.

prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.[24]

Dismissal is the ultimate penalty that can be meted to an employee.[25] Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe.[26] This is not only the law's concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[27]

Petitioner contends that respondent's length of service in the company cannot work in his favor but, if to be considered at all, should even be taken against him relying on the case of *Philippine Airlines, Inc. (PAL) v. NLRC*.[28] *PAL* has no application in this case as it involves a case of a supervisor occupying a position of responsibility, who used trip passes which were falsified to reflect higher priority and space classification than what she and her husband were entitled to on vacation travel in violation of the company policy which served as PAL's basis for losing its trust and confidence on the employee. We considered the infraction committed, together with her twenty years of employment in the company, as reflecting her regrettable lack of loyalty to the company, which loyalty she should have strengthened instead of betrayed. In contrast, the instant infraction committed by respondent during his eleven-year stay with petitioner did not involve the betrayal of petitioner's trust and confidence. Moreover, there was no basis for respondent's termination, on the ground that he had committed his third

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[24] *Id*.

[25] *Procter and Gamble Philippines v. Bondesto, supra* note 20.

[26] See *De Guzman v. NLRC*, 371 Phil. 192, 205 (1999).

[27] *Id.*,citing *Meracap v. International Ceramics Manufacturing Co., Inc.*, 92 SCRA 412 (1979); see also *Michael Inc. v. NLRC*, 326 Phil. 472, 476 (1996); *Almira v. B.F. Goodrich Phils. Inc*., 157 Phil. 110, 121-122 (1974).

[28] G.R. No. 87353, July 3, 1991, 198 SCRA 748.

unauthorized absence within the three-year period as discussed earlier in the decision.

Considering that respondent was illegally dismissed from service, he is entitled to be reinstated, without loss of seniority rights and the payment of backwages from the time respondent's compensation was withheld from him until his reinstatement on November 12, 1997. However, since we find that respondent's absence from February 11 to 19, 1992 was unjustified and unauthorized, thus, his suspension for thirty days would be in order. Hence, the amount equivalent to the thirty-day suspension, which respondent should have served for his absence on February 11 to 19, 1992, should be deducted from the backwages to be awarded to him.

WHEREFORE, the Decision dated April 24, 2000 and the Resolution dated May 31, 2000 of the Court of Appeals in CA-G.R. SP No. 50852, are hereby *AFFIRMED* with *MODIFICATION* that the amount equivalent to respondent's thirty-day suspension is deducted from the award of backwages from the time his compensation was withheld up to his reinstatement on November 12, 1997.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Abad,* and *Mendoza, JJ.,* concur.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated November 3, 2010.

THIRD DIVISION

[G.R. No. 159460. November 15, 2010.]

SOLIDBANK CORPORATION (now known as FIRST METRO INVESTMENT CORPORATION), *petitioner, vs.* **ERNESTO U. GAMIER, ELENA R. CONDEVILLAMAR, JANICE L. ARRIOLA and OPHELIA C. DE GUZMAN,** *respondents.*

[G.R. No. 159461. November 15, 2010.]

SOLIDBANK CORPORATION and/or its successor-in-interest, FIRST METRO INVESTMENT CORPORATION, DEOGRACIAS N. VISTAN AND EDGARDO MENDOZA, JR., *petitioners, vs.* **SOLIDBANK UNION AND ITS DISMISSED OFFICERS AND MEMBERS, namely: EVANGELINE J. GABRIEL, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S. PASCUA, EVELYN A. SIA, MA. VICTORIA M. VIDALLON, AUREY A. ALJIBE, REY ANTHONY M. AMPARADO, JOSE A. ANTENOR, AUGUSTO D. ARANDIA, JR., JANICE L. ARRIOLA, RUTH SHEILA MA. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANALO T. CABRERA, RACHE M. CASTILLO, VICTOR O. CHUA, VIRGILIO Y. CO, JR., LEOPOLDO S. DABAY, ARMAND V. DAYANG-HIRANG, HUBERT V. DIMAGIBA, MA. LOURDES CECILIA B. EMPARADOR, FELIX D. ESTACIO, JR., JULIETA T. ESTRADA, MARICEL G. EVALLA, JOSE G. GUISADIO, JOSE RAINARIO C. LAOANG, ALEXANDER A. MARTINEZ, JUAN ALEX C. NAMBONG, JOSEPHINE M. ONG, ARMANDO B. OROZCO, ARLENE R. RODRIGUEZ, NICOMEDES P. RUIZO, JR., DON A. SANTANA, ERNESTO R. SANTOS, JR., EDNA M. SARONG, GREGORIO S. SECRETARIO, ELLEN M. SORIANO, ROSIE C. UY, ARVIN D. VALENCIA, FERMIN JOSSEPH B. VENTURA, JR., EMMANUEL C. YAPTANCO,**

ERNESTO C. ZUNIGA, ARIEL S. ABENDAN, EMMA R. ABENDAN, PAULA AGNES A. ANGELES, JACQUILINE B. BAQUIRAN, JENNIFER S. BARCENAS, ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, RODERICK M. BELLO, MICHAEL MATTHEW B. BILLENA, LEOPE L. CABENIAN, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULING, MARGARETTE B. CORDOVA, MA. EDNA V. DATOR, RANIEL C. DAYAO, RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS, CARMINA M. DEGALA, EPHRAIM RALPH A. DELFIN, KAREN M. DEOCERA, CAROLINA C. DIZON, MARCHEL S. ESQUEJJO, JOCELYN I. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, MENCHIE R. FRANCISCO, ERNESTO U. GAMIER, MACARIO RODOLFO N. GARCIA, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, MA. JINKY P. GELERA, MA. TERESA G. GONZALES, GONZALO G. GUINIT, EMILY H. GUINO-O, FERDINAND S. HABIJAN, JUN G. HERNANDEZ, LOURDES D. IBEAS, MA. ANGELA L. JALANDONI, JULIE T. JORNACION, MANUEL C. LIM, MA. LOURDES A. LIM, EMERSON V. LUNA, NOLASCO B. MACATANGAY, NORMAN C. MANACO, CHERRY LOU B. MANGROBANG, MARASIGAN G. EDMUNDO, ALLEN M. MARTINEZ, EMELITA C. MONTANO, ARLENE P. NOBLE, SHIRLEY A. ONG, LOTIZ E. ORTIZ LUIS, PABLITO M. PALO, MARY JAINE D. PATINO, GEOFFREY T. PRADO, OMEGA MELANIE M. QUINTANO, ANES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON B. REYES, SALVACION N. ROGADO, ELMOR R. ROMANA, JR., LOURDES U. SALVADOR, ELMER S. SAYLON, BENHARD E. SIMBULAN, MA. TERESA S. SOLIS, MA. LOURDES ROCEL E. SOLIVEN, EMILY C. SUY AT, EDGAR

ALLAN P. TACSUAN, RAYMOND N. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA O. TISON, EVELYN T. UYLANGCO, CION E. YAP, MA. OPHELIA C. DE GUZMAN, MA. HIDELISA P. IRA, RAYMUND MARTIN A. ANGELES, MERVIN S. BAUTISTA, ELENA R. CONDEVILLAMAR, CHERRY T. CO, LEOPOLDO V. DE LA ROSA, DOROTEO S. FROILAN, EMMANUEL B. GLORIA, JULIETEL JUBAC AND ROSEMARIE L. TANG, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE AND LABOR DISPUTE; ELUCIDATED.— Article 212 of the Labor Code, as amended, defines strike as *any* temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees. The term "strike" shall comprise not only *concerted work stoppages*, but also slowdowns, *mass leaves*, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities and similar activities. Thus, the fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.

2. ID.; ID.; STRIKE; WHEN STRIKE IS A PROHIBITED ACTIVITY.— The right to strike, while constitutionally recognized, is not without legal constrictions. Article 264 (a) of the Labor Code, as amended, provides: Art. 264. Prohibited activities. – (a) x x x No strike or lockout shall be declared **after assumption of jurisdiction by the President or the Secretary** or after certification or submission of the dispute to compulsory or voluntary arbitration **or during the pendency of cases involving the same grounds for the strike**

or lockout. x x x The Court has consistently ruled that once the Secretary of Labor assumes jurisdiction over a labor dispute, such jurisdiction should not be interfered with by the application of the coercive processes of a strike or lockout. A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption order and/or certification is a prohibited activity and thus illegal. Article 264 (a) of the Labor Code, as amended, also considers it a prohibited activity to declare a strike "during the pendency of cases involving the same grounds for the same strike."

3. ID.; ID.; PROHIBITED ACTIVITIES; ILLEGAL STRIKE; LIABILITY DISTINGUISHED BETWEEN UNION OFFICERS AND MEMBERS AND THEIR PARTICIPATION; ELUCIDATED.— The liabilities of individual respondents must be determined under Article 264 (a) of the Labor Code, as amended: Art. 264. Prohibited activities.— x x x Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment**, even if a replacement had been hired by the employer during such lawful strike. x x x The foregoing shows that the law makes a distinction between union officers and members. For knowingly participating in an illegal strike or participating in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service. However, a worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status. We have held that the responsibility of union officers, as main players in an illegal strike, is greater than that of the members and, therefore, limiting the penalty

of dismissal only for the former for participation in an illegal strike is in order. Hence, with respect to respondents who are union officers, the validity of their termination by petitioners cannot be questioned. Being fully aware that the proceedings before the Secretary of Labor were still pending as in fact they filed a motion for reconsideration of the March 24, 2000 Order, they cannot invoke good faith as a defense. For the rest of the individual respondents who are union members, the rule is that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she committed illegal acts during a strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. Liability for prohibited acts is to be determined on an individual basis.

4. ID.; ID.; ID.; ID.; ID.; ILLEGAL ACTS THAT MAY BE COMMITTED BY UNION MEMBERS.— Petitioners have not adduced evidence on such illegal acts committed by each of the individual respondents who are union members [to warrant dismissal from employment]. x x x [T]he acts which were held to be prohibited activities are the following: x x x where the strikers shouted slanderous and scurrilous words against the owners of the vessels; where the strikers used unnecessary and obscene language or epithets to prevent other laborers to go to work, and circulated libelous statements against the employer which show actual malice; where the protestors used abusive and threatening language towards the patrons of a place of business or against co-employees, going beyond the mere attempt to persuade customers to withdraw their patronage; where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace and perpetrated acts of violence and coercion to prevent work from being performed; and where the strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace. x x x

5. ID.; ID.; ILLEGAL DISMISSAL; AWARD OF BACKWAGES NOT PROPER IN VIEW OF PARTICIPATION IN "ILLEGAL" STRIKE.— The award of backwages is a legal consequence of a finding of illegal dismissal. Assuming that respondent-union members have indeed reported back to work

at the end of the concerted mass actions, but were soon terminated by petitioners who found their explanation unsatisfactory, they are not entitled to backwages in view of the illegality of the said strike. Thus, we held in *G & S Transport Corporation v. Infante* — It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. x x x With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally** locked out, suspended **or dismissed** or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar**. Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief.

6. ID.; ID.; ID.; REINSTATEMENT; AS THE SAME IS NO LONGER POSSIBLE, IN LIEU THEREOF, AWARD OF SEPARATION PAY ON ONE (1) MONTH SALARY FOR EACH YEAR OF SERVICE IS IN ORDER.— But since reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, not to mention the fact that Solidbank had long ceased its banking operations, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.

7. ID.; ID.; ID.; LIABILITY OF CORPORATION EMPLOYER CANNOT BE CHARGED AGAINST ITS OFFICERS WHO ARE NOT GUILTY OF BAD FAITH.— Article 212 (e) does not state that corporate officers are personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code. It is basic that a corporation is invested by law with a personality

separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. In labor cases, in particular, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. Bad faith is never presumed. Bad faith does not simply connote bad judgment or negligence — it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud.

APPEARANCES OF COUNSEL

Esteban Y. Mendoza & Calvin L. Kohchet-Chua Mendoza Pangan for Solidbank Corporation.

Antonio B. Fidelino for respondents.

Eulogio Leram for Ernesto U. Gamier.

Potenciano A. Flores, Jr. for respondents in CA SP 67730.

Lizardo Carlos & Associates for E. Condevillamar & Ariola.

Thomas M. Valmonte for Ma. Ophelia C. De Guzman.

D E C I S I O N

VILLARAMA, JR., *J.*:

The consolidated petitions before us seek to reverse and set aside the Decision[1] dated March 10, 2003 of the Court of Appeals (CA) in CA-G.R. SP Nos. 67730 and 70820 which denied the petitions for *certiorari* filed by Solidbank Corporation (Solidbank) and ordered the reinstatement of the above-named individual respondents to their former positions.

[1] *Rollo*, Vol. I, pp. 128-142. Penned by Associate Justice Romeo A. Brawner (deceased) and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine.

The Antecedents

Sometime in October 1999, petitioner Solidbank and respondent Solidbank Employees' Union (Union) were set to renegotiate the economic provisions of their 1997-2001 Collective Bargaining Agreement (CBA) to cover the remaining two years thereof. Negotiations commenced on November 17, 1999 but seeing that an agreement was unlikely, the Union declared a deadlock on December 22, 1999 and filed a Notice of Strike on December 29, 1999.[2] During the collective bargaining negotiations, some Union members staged a series of mass actions. In view of the impending actual strike, then Secretary of Labor and Employment Bienvenido E. Laguesma assumed jurisdiction over the labor dispute, pursuant to Article 263 (g) of the Labor Code, as amended. The assumption order dated January 18, 2000 directed the parties "to cease and desist from committing any and all acts that might exacerbate the situation."[3]

In his Order[4] dated March 24, 2000, Secretary Laguesma resolved all economic and non-economic issues submitted by the parties, as follows:

> WHEREFORE, premises considered, judgment is hereby issued:
>
> a. Directing Solidbank Corporation and Solidbank Union to conclude their Collective Bargaining Agreement for the years 2000 and 2001, incorporating the dispositions above set forth;
>
> b. Dismissing the unfair labor practice charge against Solidbank Corporation;
>
> c. Directing Solidbank to deduct or check-off from the employees' lump sum payment an amount equivalent to seven percent (7%) of their economic benefits for the first (1st) year, inclusive of signing bonuses, and to remit or turn over the said sum to the Union's authorized representative, subject to the requirements of check-off;

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[2] *Id.* at 214.

[3] *Id.* at 212-213.

[4] *Id.* at 214-220.

d. Directing Solidbank to recall the show-cause memos issued to employees who participated in the mass actions if such memos were in fact issued.

SO ORDERED.[5]

Dissatisfied with the Secretary's ruling, the Union officers and members decided to protest the same by holding a rally infront of the Office of the Secretary of Labor and Employment in Intramuros, Manila, simultaneous with the filing of their motion for reconsideration of the March 24, 2000 Order. Thus, on April 3, 2000, an overwhelming majority of employees, including the individual respondents, joined the "mass leave" and "protest action" at the Department of Labor and Employment (DOLE) office while the bank's provincial branches in Cebu, Iloilo, Bacolod and Naga followed suit and "boycotted regular work."[6] The union members also picketed the bank's Head Office in Binondo on April 6, 2000, and Paseo de Roxas branch on April 7, 2000.

As a result of the employees' concerted actions, Solidbank's business operations were paralyzed. On the same day, then President of Solidbank, Deogracias N. Vistan, issued a memorandum[7] addressed to all employees calling their absence from work and demonstration infront of the DOLE office as an illegal act, and reminding them that they have put their jobs at risk as they will be asked to show cause why they should not be terminated for participating in the union-instigated concerted action. The employees' work abandonment/boycott lasted for three days, from April 3 to 5, 2000.

On the third day of the concerted work boycott (April 5, 2000), Vistan issued another memorandum,[8] this time declaring that the bank is prepared to take back employees who will report

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[5] *Id.* at 219-220.

[6] *Id.* at 224.

[7] *Id.* at 246.

[8] *Id.* at 247-248.

for work starting April 6, 2000 "provided these employees were/ are not part of those who led or instigated or coerced their co-employees into participating in this illegal act." Out of the 712 employees who took part in the three-day work boycott, a total of 513 returned to work and were accepted by the bank. The remaining 199 employees insisted on defying Vistan's directive, which included herein respondents Ernesto U. Gamier, Elena R. Condevillamar, Janice L. Arriola and Ophelia C. De Guzman. For their failure to return to work, the said 199 employees were each issued a show-cause memo directing them to submit a written explanation within twenty-four (24) hours why they should not be dismissed for the "illegal strike x x x in defiance of x x x the Assumption Order of the Secretary of Labor x x x resulting [to] grave and irreparable damage to the Bank," and placing them under preventive suspension.[9]

The herein 129 individual respondents were among the 199 employees who were terminated for their participation in the three-day work boycott and protest action. On various dates in June 2000, twenty-one (21) of the individual respondents executed Release, Waiver and Quitclaim in favor of Solidbank.[10]

On May 8, 2000, Secretary Laguesma denied the motions for reconsideration filed by Solidbank and the Union.[11]

The Union filed on May 11, 2000 a Motion for Clarification of certain portions of the Order dated March 24, 2000, and on May 19, 2000 it filed a Motion to Resolve the Supervening Issue of Termination of 129 Striking Employees. On May 26, 2000, Secretary Laguesma granted the first motion by clarifying that the contract-signing bonus awarded in the new CBA should likewise be based on the adjusted pay. However, the Union's second motion was denied,[12] as follows:

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[9] *Id.* at 249 and 294.

[10] *Id.* at 871, 914-954.

[11] *Id.* at 254-255.

[12] *Id.* at 903-904.

This Office cannot give due course to the Union's second motion. The labor dispute arising from the termination of the Bank employees is an issue that ought to be entertained in a separate case. The assumption order of January 18, 2000 covered only the bargaining deadlock between the parties and the alleged violation of the CBA provision on regularization. We have already resolved both the deadlock and the CBA violation issues. The only motion pending before us is the motion for clarification, which we have earlier disposed of in this Order. Thus, the only option left is for the Union to file a separate case on the matter.[13]

In the meantime, the Monetary Board on July 28, 2000 approved the request of Metropolitan Bank and Trust Company (Metrobank) to acquire the existing non-real estate assets of Solidbank in consideration of assumption by Metrobank of the liabilities of Solidbank, and to integrate the banking operations of Solidbank with Metrobank. Subsequently, Solidbank was merged with First Metro Investment Corporation, and Solidbank, the surviving corporation, was renamed the First Metro Investment Corporation (FMIC).[14] By August 31, 2000, Solidbank ceased banking operations after surrendering its expanded banking license to the Bangko Sentral ng Pilipinas. Petitioners duly filed a Termination Report with the DOLE and granted separation benefits to the bank's employees.[15]

Respondents Gamier, Condevillamar, Arriola and De Guzman filed separate complaints for illegal dismissal, moral and exemplary damages and attorney's fees on April 28, May 15 and May 29, 2000, respectively (NLRC NCR Case Nos. [S]30-04-01891-00, 30-05-03002-00 and 30-05-02253-00). The cases were consolidated before Labor Arbiter Potenciano S. Cañizares, Jr. Respondent Union joined by the 129 dismissed employees filed a separate suit against petitioners for illegal dismissal, unfair labor practice and damages (NLRC NCR Case No. 30-07-02920-00 assigned to Labor Arbiter Luis D. Flores).

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[13] *Id.* at 904.

[14] *Id.* at 256-282.

[15] *Id.* at 48-49, 1074.

Labor Arbiters' Rulings

In his Decision dated November 14, 2000, Labor Arbiter Potenciano S. Cañizares, Jr. dismissed the complaints of Gamier, Condevillamar, Arriola and De Guzman. It was held that their participation in the illegal strike violated the Secretary of Labor's return to work order upon the latter's assumption of the labor dispute and after directing the parties to execute their new CBA.[16]

On March 16, 2001, Labor Arbiter Luis D. Flores rendered a decision[17] in favor of respondents Union and employees, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants' dismissal as illegal and unjustified and ordering the respondents Solidbank Corporation and/or its successor-in-interest First Metro Investment Corporation and/or Metropolitan Bank and Trust Company and/or Deogracias Vistan and/or Edgardo Mendoza to reinstate complainants to their former positions. Concomitantly, said respondents are hereby ordered to jointly and severally pay the complainants their full backwages and other employee's benefits from the time of their dismissal up to the date of their actual reinstatement; payment of ten (10%) percent attorney's fees; payment of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) each as moral damages and ONE HUNDRED THOUSAND PESOS (₱100,000.00) each as exemplary damages which are computed, at the date of this decision in the amount of THIRTY THREE MILLION SEVEN HUNDRED NINETY FOUR THOUSAND TWO HUNDRED TWENTY TWO PESOS and 80/100 (₱33,794,222.80), by the Computation and Examination Unit of this branch and becomes an integral part of this Decision.
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> SO ORDERED.[18]

Respondents Gamier, Condevillamar, Arriola and De Guzman appealed the decision of Labor Arbiter Cañizares, Jr. to the National Labor Relations Commission (NLRC NCR CA

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[16] *Id.* at 312-313.

[17] *Id.* at 609-626.

[18] *Id.* at 625-626.

No. 027342-01). Petitioners likewise appealed from the decision of Labor Arbiter Flores (NLRC NCR CA No. 028510-01).

Rulings of the NLRC

On July 23, 2001, the NLRC's Second Division rendered a Decision[19] reversing the decision of Labor Arbiter Flores, as follows:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a new one entered dismissing the complaint for illegal dismissal and unfair labor practice for lack of merit. As equitable relief, respondents are hereby ordered to pay complainants separation benefits as provided under the CBA at least one (1) month pay for every year of service whichever is higher.
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> SO ORDERED.[20]

The Second Division ruled that the mass action held by the bank employees on April 3, 2000 infront of the Office of the Secretary of Labor was not a legitimate exercise of the employees' freedom of speech and assembly. Such was a strike as defined under Article 212 (o) of the Labor Code, as amended, which does not distinguish as to whom the action of the employees is directed against, nor the place/location where the concerted action of the employees took place. Complainants Gamier, Condevillamar, Arriola and De Guzman did not report for work and picketed the DOLE premises on April 3, 2000; they continuously refused to report back to work until April 7, 2000 when they were issued a Notice of Termination. It was stressed that the mass action of the bank employees was an incident of a labor dispute, and hence the concerted work abandonment was a prohibited activity contemplated under Article 264 (a) of the Labor Code, as amended, upon assumption of jurisdiction by the Secretary of Labor. Citing this Court's ruling in the case of *Telefunken Semiconductors Employees Union-FFW v. Court*

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[19] *Id.* at 633-647. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[20] *Id.* at 646.

of Appeals,[21] the Second Division found there was just and valid cause for the dismissal of complainants.[22]

On the charge of forum shopping with respect to twenty-one (21) individual complainants who have voluntarily settled their claims against Solidbank, the said cases not having been dismissed by the Labor Arbiter despite proper motion,[23] the Second Division found that complainants admitted in their Answer that the said employees preferred to pursue their own independent action against the bank and their names were stricken out from the original complaint; hence, the Labor Arbiter erred in granting relief to said employees. Nevertheless, it held that the complaint will not be dismissed on this ground as the issue of forum shopping should have been raised in the proceedings before the Labor Arbiter.[24]

Respondents filed a motion for reconsideration while the petitioners filed a partial motion for reconsideration. Both motions were denied under Resolution[25] dated September 28, 2001.

As to respondents' appeal, the NLRC's Third Division by Decision[26] dated January 31, 2002, reversed the decision of Labor Arbiter Cañizares, Jr., as follows:

> WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one entered finding the respondent Solidbank Corporation liable for the illegal dismissal of complainants Ernesto U. Gamier, Elena P. Condevillamar, Janice L. Arriola and Maria Ophelia C. de Guzman, and ordering the respondent bank to reinstate the complainants to their former positions without loss of seniority rights and to pay full backwages reckoned from the time of their illegal dismissal up to the time of their actual/payroll reinstatement.

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[21] G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565.

[22] *Rollo*, Vol. I, pp. 643-646.

[23] *Id.* at 864-886.

[24] *Id.* at 642-643.

[25] *Id.* at 650-654.

[26] *Id.* at 403-418. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

Should reinstatement not be feasible, respondent bank is further ordered to pay complainants their separation pay in accordance with the provisions of the subsisting Collective Bargaining Agreement.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[27]

The Third Division held that the protest action staged by the bank's employees before the DOLE did not amount to a strike but rather an exercise of their right to express frustration and dissatisfaction over the decision rendered by the Secretary of Labor. Hence, it cannot be concluded that the activity is per se illegal or violative of the assumption order considering that at the time, both parties had pending motions for reconsideration of the Secretary's decision. Moreover, it was found that Gamier, Condevillamar, Arriola and De Guzman were not fully investigated on the charge that they had instigated or actively participated in an illegal activity; neither was it shown that the explanations submitted by them were considered by the management. Since said employees had presented evidence of plausible and acceptable reasons for their absence at the workplace at the time of the protest action, their termination based on such alleged participation in the protest action was unjustified.[28]

Respondents filed a "partial motion" while the petitioners filed a motion for reconsideration of the Decision dated January 31, 2002. Both motions were denied under Resolution[29] dated March 8, 2002.

On November 20, 2001, petitioners filed a petition for *certiorari* before the CA assailing the July 23, 2001 Decision and Resolution dated September 28, 2001 of the NLRC's Second Division insofar as it ordered the payment of separation benefits to the 129 terminated employees of Solidbank who participated in the mass action/strike (**CA-G.R. SP No. 67730**).[30]

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[27] *Id.* at 417-418.

[28] *Id.* at 413-417.

[29] *Id.* at 420-421.

[30] CA *rollo* (CA-G.R. SP No. 67730), pp. 2-43.

On May 23, 2002, petitioners filed a separate petition in the CA (**CA-G.R. SP No. 70820**) seeking the reversal of the January 31, 2002 Decision and Resolution dated March 8, 2002 of the NLRC's Third Division and praying for the following reliefs: (1) immediate issuance of a TRO and writ of preliminary injunction to restrain/enjoin the NLRC from issuing a writ of execution in NLRC CA No. 027342-01; (2) the petition be consolidated with CA-G.R. SP No. 67730 before the Thirteenth Division and CA-G.R. SP No. 68054 before the Third Division, or if consolidation is no longer possible, that the petition be resolved independently of the aforesaid cases; and (3) granting the petition by annulling and setting aside the January 31, 2002 Decision of the NLRC, and reinstating the November 14, 2000 Decision of Labor Arbiter Cañizares, Jr.[31]

On August 9, 2002, petitioners filed a Manifestation before the Fifteenth Division (CA-G.R. SP No. 67730) attaching thereto a copy of the Decision[32] (dated July 26, 2002) rendered by the CA's Special Third Division in CA-G.R. SP No. 68998, a petition for *certiorari* separately filed by Metrobank which also sought to annul and set aside the July 23, 2001 Decision of the NLRC's Second Division insofar as it ordered the payment of separation benefits to the dismissed employees of Solidbank. In the said decision, the CA's Fourteenth Division gave due course to the petition of Metrobank and affirmed the July 23, 2001 decision of the NLRC but reversed and set aside the portion of the decision ordering the payment of separation benefits.[33]

On September 11, 2002, respondents filed an Omnibus Motion and Counter-Manifestation arguing that petitioners' Manifestation constitutes a judicial admission that Metrobank engaged in forum shopping; it was thus prayed that CA-G.R. SP No. 68998 be consolidated with CA-G.R. SP No. 67730, the latter having a lower case number. Further, respondents attached a copy of

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[31] CA *rollo* (CA-G.R. SP No. 70820), pp. 2-43.

[32] CA *rollo* (CA-G.R. SP No. 67730), pp. 457-467. Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Josefina Guevara-Salonga and Amelita G. Tolentino.

[33] *Id.* at 467.

the Decision[34] dated August 29, 2002 rendered by the CA's Second Division in CA-G.R. SP No. 68054, the petition separately filed by the Union and the 129 terminated employees of Solidbank from the July 23, 2001 Decision of the NLRC's Second Division. The CA's Second Division granted the petition in CA-G.R. SP No. 68054 and reinstated the March 16, 2001 Decision of Labor Arbiter Flores.

CA-G.R. SP Nos. 67730 and 70820 were consolidated before the Twelfth Division.

Court of Appeals' Ruling

On March 10, 2003, the CA rendered its Decision[35] the dispositive portion of which reads:

> WHEREFORE, the twin petitions are hereby DENIED. The dismissal of private respondents are hereby declared to be illegal. Consequently, petitioner is ordered to reinstate private respondents to their former position, consonant with the Decision of this Court in CA-G.R. SP No. 68054.
>
> SO ORDERED.[36]

First, on the issue of forum shopping, the CA found that while there were indeed two cases filed respecting the same matter of illegality of the dismissal of certain employees of Solidbank, it appears that the individual complainants have no hand in initiating the case before the Labor Arbiter for which the Union filed the complaint in behalf of its members. Hence, the individual complainants cannot be said to have deliberately or consciously sought two different fora for the same issues and causes of action. Petitioners, moreover, failed to call the attention of the Labor Arbiter as to the fact of filing of similar complaints by four employees.

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[34] *Id.* at 480-491. Penned by Associate Justice Rodrigo V. Cosico and concurred in Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

[35] *Supra* note 1.

[36] *Id.* at 141.

As to the nature of the mass action resorted to by the employees of Solidbank, the CA ruled that it was a legitimate exercise of their right to free expression, and not a strike proscribed when the Secretary of Labor assumed jurisdiction over the impassé between Solidbank and the Union in the collective bargaining negotiations. The CA thus reasoned:

> … while conceding that the aggregated acts of the private respondents may have resulted in a stoppage of work, such was the necessary result of the exercise of a Constitutional right. It is beyond cavil that **the mass action was done, not to exert any undue pressure on the petitioner with regard to wages or other economic demands, but to express dissatisfaction over the decision of the Labor Secretary subsequent to his assumption of jurisdiction. Surely, this is one course of action that is not enjoined even when a labor dispute is placed under the assumption of the said Labor Secretary.** To allow an act of the Labor Secretary – one man in the Executive Department – to whittle down a freedom guaranteed by the Bill of Rights would be to place upon that freedom a limitation never intended by the several framers of our Constitution. In effect, it would make a right enshrined in the Fundamental Law that was ratified by the Sovereign People, subordinate to a prerogative granted by the Labor Code, a statutory enactment made by mere representatives of the People. This anomaly We cannot allow.
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> xxx xxx xxx
>
> Was private respondents' act of massing in front of the DOLE Building calculated by them to cause work stoppage, or were they merely airing their grievance over the ruling of the Labor Secretary in exercise of their civil liberties? Who can divine the motives of their hearts? But when two different interpretations are possible, the courts must lean towards that which gives meaning and vitality to the Bill of Rights. x x x[37] (Emphasis supplied.)

On April 2, 2003, petitioners filed a motion for reconsideration but this was denied by the CA in its Resolution[38] dated August 7, 2003.

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[37] *Id.* at 139-141.

[38] *Id.* at 144-145.

The Petitions

G.R. No. 159460

Petitioners argued that the CA erred in holding that the mass action of April 3, 2000 infront of the Office of the Secretary of Labor was not a strike considering that it had all the elements of a strike and the respondents judicially admitted that it was a strike. The CA deemed the mass action as an exercise of the respondents' freedom of expression but such constitutional right is not absolute and subject to certain well-defined exceptions. Moreover, a mass action of this nature is considered a strike and not an exercise of one's freedom of expression, considering further that the Secretary's Order dated January 18, 2000 is a valid exercise of police power.

Petitioners assail the CA in not considering the damage and prejudice caused to the bank and its clients by respondents' illegal acts. Respondents' mass actions crippled banking operations. Over-the-counter transactions were greatly undermined. Checks for clearing were significantly delayed. On-line transactions were greatly hampered, causing inestimable damage to the nationwide network of automated teller machines. Respondent Union's actions clearly belie its allegation that its mass action was merely intended to protest and express their dissatisfaction with the Secretary's Order dated March 24, 2000.

In view of the illegal strike conducted in violation of the Secretary's assumption order, petitioners maintain that the dismissal of respondents was not illegal, as consistently ruled by this Court in many cases. Even granting *arguendo* that their termination was illegal, the CA erred in ordering the reinstatement of respondents and holding that Solidbank, FMIC and Metrobank are solidarily liable to the respondents. Lastly, the CA erred in not finding that respondents were guilty of forum shopping as respondents' claim that they did not know the Union had filed a complaint was unbelievable under the circumstances.[39]

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[39] *Rollo,* Vol. II, pp. 1729-1730.

G.R. No. 159461

Petitioners contend that the CA erred in ruling that the dismissal of respondents Gamier, Condevillamar, Arriola and De Guzman was illegal, considering that this was not an issue raised in the petition for *certiorari* before the appellate court. What was raised by petitioners was only the propriety of the award of separation pay by the NLRC which in fact declared their dismissal to be valid and legal.

Petitioners maintain that respondents are not entitled to separation pay even if the dismissal was valid because they committed serious misconduct and/or illegal act in defying the Secretary's assumption order. Moreover, the CA also erred in disregarding the Release, Waiver and Quitclaim executed by twenty-one (21) individual respondents who entered into a compromise agreement with Solidbank.[40]

Issues

The fundamental issues to be resolved in this controversy are: (1) whether the protest rally and concerted work abandonment/boycott staged by the respondents violated the Order dated January 18, 2000 of the Secretary of Labor; (2) whether the respondents were validly terminated; and (3) whether the respondents are entitled to separation pay or financial assistance.

Our Ruling

Article 212 of the Labor Code, as amended, defines strike as *any* temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees.[41] The term "strike" shall comprise not only

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[40] *Id.* at 1730-1730-A.

[41] *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission*, G.R. Nos. 103560 & 103599, July 6, 1995, 245 SCRA 627, 635-636.

concerted work stoppages, but also slowdowns, *mass leaves,* sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities and similar activities.[42] Thus, the fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.[43]

After a thorough review of the records, we hold that the CA patently erred in concluding that the concerted mass actions staged by respondents cannot be considered a strike but a legitimate exercise of the respondents' right to express their dissatisfaction with the Secretary's resolution of the economic issues in the deadlocked CBA negotiations with petitioners. It must be stressed that the concerted action of the respondents was not limited to the protest rally infront of the DOLE Office on April 3, 2000. Respondent Union had also picketed the Head Office and Paseo de Roxas Branch. About 712 employees, including those in the provincial branches, boycotted and absented themselves from work in a concerted fashion for three continuous days that virtually paralyzed the employer's banking operations. Considering that these mass actions stemmed from a bargaining deadlock and an order of assumption of jurisdiction had already been issued by the Secretary of Labor to avert an impending strike, there is no doubt that the concerted work abandonment/boycott was the result of a labor dispute.

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,[44] petitioners union and members held similar protest rallies infront of the offices of BLR and DOLE Secretary and at the company plants. We declared that said mass actions constituted illegal strikes:

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[42] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Suplicio Lines, Inc.*,G.R. No. 140992, March 25, 2004, 426 SCRA 319, 326, citing Sec. 2, P.D. No. 823, as amended by P.D. No. 849.

[43] *Bangalisan v. Hon. CA*, 342 Phil. 586, 594 (1997) cited in *Gesite v. Court of Appeals*, G.R. Nos. 123562-65, November 25, 2004, 444 SCRA 51, 57.

[44] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 200-202.

Petitioner Union contends that the protests or rallies conducted on February 21 and 23, 2001 are not within the ambit of strikes as defined in the Labor Code, since they were legitimate exercises of their right to peaceably assemble and petition the government for redress of grievances. Mainly relying on the doctrine laid down in the case of *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, it argues that the protest was not directed at Toyota but towards the Government (DOLE and BLR). It explains that the protest is not a strike as contemplated in the Labor Code. The Union points out that in *Philippine Blooming Mills Employees Organization*, the mass action staged in Malacañang to petition the Chief Executive against the abusive behavior of some police officers was a proper exercise of the employees' right to speak out and to peaceably gather and ask government for redress of their grievances.

The Union's position fails to convince us.

While the facts in *Philippine Blooming Mills Employees Organization* are similar in some respects to that of the present case, the Union fails to realize one major difference: there was no labor dispute in *Philippine Blooming Mills Employees Organization.* **In the present case, there was an on-going labor dispute arising from Toyota's refusal to recognize and negotiate with the Union, which was the subject of the notice of strike filed by the Union on January 16, 2001**. Thus, the Union's reliance on *Philippine Blooming Mills Employees Organization* is misplaced, as it cannot be considered a precedent to the case at bar.

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Applying pertinent legal provisions and jurisprudence, we rule that the protest actions undertaken by the Union officials and members on February 21 to 23, 2001 are not valid and proper exercises of their right to assemble and ask government for redress of their complaints, but are illegal strikes in breach of the Labor Code. The Union's position is weakened by the lack of permit from the City of Manila to hold "rallies." **Shrouded as demonstrations, they were in reality temporary stoppages of work perpetrated through the concerted action of the employees who deliberately failed to report for work on the convenient excuse that they will hold a rally at the BLR and DOLE offices in Intramuros, Manila, on February 21 to 23, 2001**. x x x (Emphasis supplied.)

Moreover, it is explicit from the directive of the Secretary in his January 18, 2000 Order that the Union and its members shall refrain from committing "any and all acts that might exacerbate the situation,"[45] which certainly includes concerted actions. For all intents and purposes, therefore, the respondents staged a strike ultimately aimed at realizing their economic demands. Whether such pressure was directed against the petitioners or the Secretary of Labor, or both, is of no moment. All the elements of strike are evident in the Union-instigated mass actions.

The right to strike, while constitutionally recognized, is not without legal constrictions.[46] Article 264 (a) of the Labor Code, as amended, provides:

> Art. 264. Prohibited activities. – (a) x x x
>
> No strike or lockout shall be declared **after assumption of jurisdiction by the President or the Secretary** or after certification or submission of the dispute to compulsory or voluntary arbitration **or during the pendency of cases involving the same grounds for the strike** or lockout.
>
> xxx xxx xxx (Emphasis supplied.)

The Court has consistently ruled that once the Secretary of Labor assumes jurisdiction over a labor dispute, such jurisdiction should not be interfered with by the application of the coercive processes of a strike or lockout.[47] A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption order and/or certification is a prohibited activity and thus illegal.[48]

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[45] *Supra* note 3.

[46] *Philcom Employees Union v. Philippine Global Communications,* G.R. No. 144315, July 17, 2006, 495 SCRA 214, 244.

[47] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, supra* note 21 at 582.

[48] *Philcom Employees Union v. Philippine Global Communications, supra* note 46 at 243. See also *Philippine Airlines, Inc. v. Brillantes,* G.R. No. 119360, October 10, 1997, 280 SCRA 515, 516, citing *Phil. Airlines, Inc. v. Secretary of Labor and Employment,* G.R. No. 88210, January 23, 1991, 193 SCRA 223; *Union of Filipro Employees v. Nestle Philippines,*

Article 264 (a) of the Labor Code, as amended, also considers it a prohibited activity to declare a strike "during the pendency of cases involving the same grounds for the same strike."[49] There is no dispute that when respondents conducted their mass actions on April 3 to 6, 2000, the proceedings before the Secretary of Labor were still pending as both parties filed motions for reconsideration of the March 24, 2000 Order. Clearly, respondents knowingly violated the aforesaid provision by holding a strike in the guise of mass demonstration simultaneous with concerted work abandonment/boycott.

Notwithstanding the illegality of the strike, we cannot sanction petitioners' act of indiscriminately terminating the services of individual respondents who admitted joining the mass actions and who have refused to comply with the offer of the management to report back to work on April 6, 2000. The liabilities of individual respondents must be determined under Article 264 (a) of the Labor Code, as amended:

> Art. 264. Prohibited activities.— x x x
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> xxx xxx xxx
>
> Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: Provided, That **mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment**, even if a replacement had been hired by the employer during such lawful strike.
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> xxx xxx xxx

Inc., G.R. Nos. 88710-13, December 19, 1990, 192 SCRA 396; *Federation of Free Workers v. Inciong*, G.R. No. 49983, April 20, 1992, 208 SCRA 157; and *St. Scholastica's College v. Torres*, G.R. No. 100158, June 29, 1992, 210 SCRA 565.

[49] *Philcom Employees Union v. Philippine Global Communications, id.* at 246.

The foregoing shows that the law makes a distinction between union officers and members. For knowingly participating in an illegal strike or participating in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.[50]

However, a worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status.[51] We have held that the responsibility of union officers, as main players in an illegal strike, is greater than that of the members and, therefore, limiting the penalty of dismissal only for the former for participation in an illegal strike is in order.[52] Hence, with respect to respondents who are union officers, the validity of their termination by petitioners cannot be questioned. Being fully aware that the proceedings before the Secretary of Labor were still pending as in fact they filed a motion for reconsideration of the March 24, 2000 Order, they cannot invoke good faith as a defense.[53]

For the rest of the individual respondents who are union members, the rule is that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must

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[50] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions,* G.R. Nos. 169829-30, April 16, 2008, 551 SCRA 594, 612, citing *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils, Inc.*, G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 458-459 and *Stamford Marketing Corp. v. Julian,* G.R. No. 145496, February 24, 2004, 423 SCRA 633, 648.

[51] *Id.*

[52] *Nissan Motors Philippines, Inc. v. Secretary of Labor and Employment,* G.R. Nos. 158190-91, 158276 and 158283, June 21, 2006, 491 SCRA 604, 624, citing *Association of Independent Unions in the Philippines v. NLRC,* G.R. No. 120505, March 25, 1999, 305 SCRA 219.

[53] See *Sukhothai Cuisine and Restaurant v. Court of Appeals,* G.R. No. 150437, July 17, 2006, 495 SCRA 336, 348, citing *First City Interlink Transportation Co., Inc. v. Sec. Confesor,* 338 Phil. 635, 644 (1997).

be proof that he or she committed illegal acts during a strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. Liability for prohibited acts is to be determined on an individual basis.[54]

Petitioners have not adduced evidence on such illegal acts committed by each of the individual respondents who are union members. Instead, petitioners simply point to their admitted participation in the mass actions which they knew to be illegal, being in violation of the Secretary's assumption order. However, the acts which were held to be prohibited activities are the following:

> … where the strikers shouted slanderous and scurrilous words against the owners of the vessels; where the strikers used unnecessary and obscene language or epithets to prevent other laborers to go to work, and circulated libelous statements against the employer which show actual malice; where the protestors used abusive and threatening language towards the patrons of a place of business or against co-employees, going beyond the mere attempt to persuade customers to withdraw their patronage; where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace and perpetrated acts of violence and coercion to prevent work from being performed; and where the strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace. x x x[55]

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[54] *Id.* at 355-356, citing *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., supra* note 42 at 328 and *Asso. of Independent Unions in the Phil. v. NLRC,* 364 Phil. 697, 708-709 (1999).

[55] *Id.* at 351, citing *United Seamen's Union of the Phil. v. Davao Shipowners Association,* G.R. Nos. L-18778 and L-18779, August 31, 1967, 20 SCRA 1226, 1240; *Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations,* G.R. No. L-19778, September 30, 1964, 12 SCRA 124, 132; *Liberal Labor Union v. Phil. Can Co.,* 91 Phil. 72, 78 (1952); *Linn v. United Plan Guard Workers,* 15 L.Ed 2d 582; 31 AM. JUR. § 245, p. 954; 116 A.L.R. 477, 505; 32 A.L.R. 756; 27 A.L.R. 375; *cited in* 2 C.A. AZUCENA, The Labor Code With Comments and Cases p. 500 (1999) and *Asso. of Independent Unions in the Phil. v. NLRC, id.* at 706-707.

The dismissal of herein respondent-union members are therefore unjustified in the absence of a clear showing that they committed specific illegal acts during the mass actions and concerted work boycott.

Are these dismissed employees entitled to backwages and separation pay?

The award of backwages is a legal consequence of a finding of illegal dismissal. Assuming that respondent-union members have indeed reported back to work at the end of the concerted mass actions, but were soon terminated by petitioners who found their explanation unsatisfactory, they are not entitled to backwages in view of the illegality of the said strike. Thus, we held in *G & S Transport Corporation v. Infante*[56]—

> It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. x x x
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> xxx xxx xxx
>
> With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course**, **the laborer was able, willing and ready to work but was illegally** locked out, suspended **or dismissed** or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar.** (Emphasis supplied.)

Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief. But since reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, not to mention the fact

[56] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301-302.

that Solidbank had long ceased its banking operations, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.[57] For the twenty-one (21) individual respondents who executed quitclaims in favor of the petitioners, whatever amount they have already received from the employer shall be deducted from their respective separation pay.

Petitioners contended that in view of the blatant violation of the Secretary's assumption order by the striking employees, the award of separation pay is unjust and unwarranted. That respondent-members themselves knowingly participated in the illegal mass actions constitutes serious misconduct which is a just cause under Article 282 for terminating an employee.

We are not persuaded.

As we stated earlier, the Labor Code protects an ordinary, rank-and-file union member who participated in such a strike from losing his job, provided that he did not commit an *illegal act* during the strike.[58] Article 264 (e) of the Labor Code, as amended, provides for such acts which are generally prohibited during concerted actions such as picketing:

> No person engaged in picketing shall commit any act of **violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.** (Emphasis supplied.)

Petitioners have not adduced substantial proof that respondent-union members perpetrated any act of violence, intimidation, coercion or obstruction of company premises and public thoroughfares. It did not submit in evidence photographs, police reports, affidavits and other available evidence.

As to the issue of solidary liability, we hold that Metrobank cannot be held solidarily liable with Solidbank for the claims of the latter's dismissed employees. There is no showing that

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[57] *Id.* at 304.

[58] *Id.* at 300.

Metrobank is the successor-in-interest of Solidbank. Based on petitioners' documentary evidence, Solidbank was merged with FMIC, with Solidbank as the surviving corporation, and was later renamed as FMIC. While indeed Solidbank's banking operations had been integrated with Metrobank, there is no showing that FMIC has ceased business operations. FMIC as successor-in-interest of Solidbank remains solely liable for the sums herein adjudged against Solidbank.

Neither should individual petitioners Vistan and Mendoza be held solidarily liable for the claims adjudged against petitioner Solidbank. Article 212 (e)[59] does not state that corporate officers are personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31[60] of the Corporation Code.

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[61] In labor cases, in particular, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of corporate

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[59] Art. 212. x x x

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(e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

[60] SEC. 31. *Liability of directors, trustees or officers.*— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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[61] *Carag v. National Labor Relations Commission,* G.R. No. 147590, April 2, 2007, 520 SCRA 28, 55.

employees done with malice or in bad faith.[62] Bad faith is never presumed.[63] Bad faith does not simply connote bad judgment or negligence — it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud.[64]

Respondents have not satisfactorily proven that Vistan and Mendoza acted with malice, ill-will or bad faith. Hence, said individual petitioners are not liable for the separation pay of herein respondents-union members.

WHEREFORE, the petitions are *PARTLY GRANTED*. The Decision dated March 10, 2003 of the Court of Appeals in CA-G.R. SP Nos. 67730 and 70820 is hereby *SET ASIDE*. Petitioner Solidbank Corporation (now FMIC) is hereby *ORDERED* to pay each of the above-named individual respondents, except union officers who are hereby declared validly dismissed, separation pay equivalent to one (1) month salary for every year of service. Whatever sums already received from petitioners under any release, waiver or quitclaim shall be deducted from the total separation pay due to each of them.

The NLRC is hereby directed to determine who among the individual respondents are union members entitled to the separation pay herein awarded, and those union officers who were validly dismissed and hence excluded from the said award.

No costs.

SO ORDERED.

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

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[62] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos,* G.R. No. 113907, April 20, 2001, 357 SCRA 77, 93-94.

[63] See *McLeod v. NLRC,* G.R. No. 146667, January 23, 2007, 512 SCRA 222, 246, citing *Lim v. Court of Appeals,* 380 Phil. 60 (2000) and *Del Rosario v. National Labor Relations Commission,* G.R. No. 85416, July 24, 1990, 187 SCRA 777.

[64] *Ford Philippines, Inc. v. Court of Appeals,* G.R. No. 99039, February 3, 1997, 267 SCRA 320, 328.

SECOND DIVISION

[G.R. No. 167835. November 15, 2010]

SPOUSES ALFREDO and ENCARNACION CHING, *petitioners, vs.* **FAMILY SAVINGS BANK, and SHERIFF OF MANILA,** *respondents.*

[G.R. No. 188480. November 15, 2010]

ALFREDO CHING, *petitioner, vs.* **FAMILY SAVINGS BANK and THE SHERIFF OF MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUBSEQUENT SUBMISSION OF REQUIRED DOCUMENTS IN A PETITION CONSTITUTED SUBSTANTIAL COMPLIANCE THEREWITH.— This Court has maintained that the subsequent and substantial compliance of a party-litigant may warrant the relaxation of the rules of procedure.

2. ID.; ID.; EXECUTION OF JUDGMENTS; LEVY AND SALE OF PROPERTY; REDEMPTION THEREOF; FAILURE TO REDEEM PROPERTY WITHIN THE PRESCRIBED PERIOD TRANSFERS OWNERSHIP TO THE PURCHASER.— It is settled that execution is enforced by the fact of levy and sale. The result of such execution was that title over the subject property was vested immediately in the purchaser subject only to the Spouses Ching's right to redeem the property within the period provided for by law. The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is, like any other right, entitled to protection and must be respected until extinguished by redemption. Since, the Spouses Ching failed to redeem the subject property within the period allowed by law, they have been divested of their rights over the property.

3. ID.; ID.; ID.; ID.; ID.; ID.; RIGHT TO REQUEST FOR ISSUANCE OF WRIT OF POSSESSION THEREIN NEVER

PRESCRIBES.— [T]his Court, in *Paredes v. Court of Appeals*, citing *Rodil v. Benedicto*, categorically held that the right of the applicant or a subsequent purchaser to request for the issuance of a writ of possession of the land never prescribes. A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. It may be issued in several instances, among which is in execution sales.

4. ID.; ID.; ID.; ID.; ID.; ID.; ISSUANCE OF WRIT OF POSSESSION THEREIN IS A MINISTERIAL ACT; ENFORCING THE SAME BY DESIGNATING ANOTHER SHERIFF AS PER MOTION IS PROPER; CASE AT BAR. — Alfredo is assailing the validity of the RTC Order dated March 28, 2006, which granted the Bank's Urgent *Ex Parte* Motion To Resolve Motion for Designation of Another Sheriff to Serve/Enforce Writ of Possession/Court Processes. It is to be noted that the said Order was but an ancillary motion emanating from the writ of possession granted earlier by the RTC. Corollarily, with regard to a petition for writ of possession, it is well to state that the proceeding is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. Consequently, so too was the nature of the urgent motion, it was *ex-parte* and summary in nature. Moreover, it is settled that the issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. To be sure, regardless of whether or not there is a pending action for nullification of the sale at public auction, the purchaser is entitled to a writ of possession without prejudice to the outcome of such action. Undeniably, Alfredo failed to redeem the property within the redemption period and, thereafter, ownership was consolidated in favor of the Bank and a new certificate of title, TCT No. 221703, was issued in its name. It was, therefore, a purely ministerial duty for the trial court to issue a writ of possession in favor of the Bank and issue the

Order granting the motion for designation of another sheriff to serve the writ, which is merely an order enforcing the writ of possession.

5. ID.; ID.; DOCTRINE OF *RES JUDICATA*; JUSTIFICATION. — The doctrine of *res judicata* is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *republicae ut sit litium*, and (2) the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari et eadem causa*. A contrary doctrine would certainly subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.

6. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; BURDEN AND RESPONSIBILITY OF JUDICIAL OFFICER, EMPHASIZED.— Time and again, this Court has emphasized the heavy burden and responsibility of court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. A judge should keep in mind that the delicate nature of work of those involved in the administration of justice, from the highest judicial official to the lowest personnel, requires them to live up to the strictest standard of honesty, integrity and uprightness.

APPEARANCES OF COUNSEL

Martinez Martinez Alcudia Law Offices for Sps. Alfredo and Encarnacion Ching.

Froilan M. Bacungan & Associates for Alfredo Ching.

Benedicto Verzosa Felipe & Burkley for Family Savings Bank.

D E C I S I O N

PERALTA, *J.*:

Before this Court are two consolidated[1] cases. In G.R. No. 167835, the spouses Alfredo and Encarnacion Ching (the Spouses Ching), *via* a petition for review on *certiorari*, are seeking to annul and set aside the Resolutions of the Court of Appeals (CA), dated November 17, 2004 and April 7, 2005 in CA-G.R. SP No. 87217. While in G.R. No. 188480, Alfredo Ching (Alfredo), also *via* a petition for review on *certiorari*, is assailing the Decision[2] dated July 31, 2008 rendered by the CA in CA-G.R. SP No. 96675, dismissing the petition, and the Resolution dated June 19, 2009 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Cheng Ban Yek and Co., Inc. secured a loan from Family Savings Bank (Bank), now BPI Family Bank, with Alfredo acting as surety. On August 6, 1981, the Bank filed a Complaint with the then Court of First Instance (CFI) of Manila, for collection of a sum of money against Cheng Ban Yek and Co., Inc. and Alfredo, docketed as Civil Case No. 142309. On August 12, 1982, the CFI rendered summary judgment in favor of the Bank. Alfredo and Cheng Ban Yek and Co., Inc. appealed the summary judgment before the CA.[3] The CA later issued a Decision affirming the summary judgment. Also, the subsequent petition filed before this Court questioning the CA decision was dismissed for having been filed out of time.[4]

Meanwhile, upon motion of the Bank, the CFI issued an Order granting execution pending appeal. Consequently, the conjugal property of the Spouses Ching, covered by Transfer

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[1] *Rollo* (G.R. No. 188480), p. 121.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., concurring; *id.* at 34-47.

[3] CA-G.R. CV No. 02421.

[4] G.R. No. 73708.

Certificate of Title (TCT) No. S-3151, was attached, levied, and thereafter sold at public auction on October 10, 1983, wherein the Bank emerged as the highest bidder.

G.R. No. 167835

On March 30, 2004, after more than two decades since the levy and auction sale, the Bank filed a Motion to Retrieve Records, For Issuance of Final Deed of Conveyance, To Order Register of Deeds of Makati City to Transfer Title and For Writ of Possession[5] before the Regional Trial Court (RTC) of Manila, Branch 40. Alfredo opposed[6] the motion and his wife, Encarnacion Ching (Encarnacion), filed a Motion for Leave to Intervene and to Admit Complaint-in-Intervention.[7]

On August 12, 2004, the RTC issued an Order[8] granting the Bank's motion and denying Encarnacion's motion, the dispositive portion of which reads:

> WHEREFORE, Order is issued directing the retrieval from the archives of the Court records of this case granting aforesaid motion of plaintiff and ORDERING:
>
> 1. the issuance of a Final Deed of Conveyance by Deputy Sheriff Ferdinand J. Guerrero or the Clerk of Court/*Ex-Officio* Sheriff or any of her duly authorized deputy sheriffs, all of this Court, to plaintiff herein (renamed Family Bank and Trust Co., Inc.) as the highest bidder at the public auction sale;
>
> 2. the Register of Deeds of Makati City to issue a new title in the name of Family Bank and Trust Co., Inc. (formerly Family Savings Bank), after payment of the required taxes and fees; and
>
> 3. the issuance of a Writ of Possession directing the Clerk of Court/*Ex-Officio* Sheriff of this court or any of her deputies to place herein plaintiff, thru its duly authorized officers and employees, in possession of the subject property presently covered by TCT No. S-3151.

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[5] CA *rollo* (CA-G.R. SP No. 96675), pp. 135-140.

[6] *Id.* at 141-179.

[7] *Id.* at 180-187.

[8] *Id.* at 206-209.

SO ORDERED.

In granting the motion, the RTC ratiocinated, to wit:

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1. The validity of the execution issued on September 22, 1982 by this Court thru Hon. Augusto E. Villarin is already "*res judicata*" when it was raised on appeal by co-defendant Alfredo Ching with the Honorable Court of Appeals in CA-G.R. CV No. 02421, which dismissed the appeal and the dismissal was affirmed by the Honorable Supreme Court when co-defendant Alfredo Ching's Petition for Review was dismissed for being filed out of time per its Decision dated February 24, 2003, in G.R. No. 118830 (Annex F of plaintiff's aforesaid motion to retrieve records *etc*., dated March 26, 2004, pages 46-55 of record) which Decision has become final and executory on November 4, 2003 (Annex G-1, *supra*, Entry of Judgment; page 56 of record).

2. The judgment of this Court had not prescribed since it was timely executed on October 10, 1983 and the herein plaintiff's motion to retrieve records, *etc*. dated March 26, 2004, seeks only to transfer the registration of title in its name and to take possession of the property as the new owner thereof by virtue of the execution sale and the return of the writ of execution to this Court by the executing Deputy Sheriff, Ferdinand J. Guerrero.

3. The issue as to whether the conjugal property of the spouses Alfredo Ching and Encarnacion Ching could validly be levied upon and executed to answer for the personal debt of Mr. Alfredo Ching arising from his execution of an accommodation surety, has been resolved by the Honorable Supreme Court in its aforesaid Decision, dated February 24, 2003 (Annex F, *supra*) when it held that:

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4. Plaintiff does not seek to execute the final decision of the Honorable Supreme Court in G.R. No. 118830. The statement in paragraph 2 above is reiterated.

5. The cited cases of *Ayala Investment and Development Corporation v. CA*, 286 SCRA 272 (1998) and *Alfredo Ching and Encarnacion Ching v. CA*, G.R. No. 124642, February 24, 2004, are not *res judicata* in the instant case, since the parties involved are not the same and the facts are completely different. The former

case was also cited by them in their motion for reconsideration, dated March 28, 2003 (pages 155-166 of record) and amended motion for reconsideration, dated March 31, 2003 (pages 169-187 of record) with the Honorable Supreme Court in G.R. 118830, but the same was denied with finality in its Resolution, dated October 13, 2003 (page 188 of record).

6. Defendant Alfredo Ching and movant Encarnacion Ching are to blame since they did not redeem the property within the one (1) year redemption period which expired on October 20, 1984 and which resulted in the forfeiture of the property in favor of the plaintiff as the purchaser at the public auction sale.

7. Plaintiff is not liable for damages and, in the first place, this Court has no jurisdiction to award said damages claimed by spouses Ching.

8. The execution of the final Decision of this Court had been completed in 1983. Movant Encarnacion Ching cannot anymore intervene under Section 2, Rule 19 of the 1997 Rules of Civil Procedure, as amended.[9]

The Spouses Ching filed a Motion for Reconsideration,[10] but it was denied in the Order[11] dated September 28, 2004.

Aggrieved, the Spouses Ching filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 87217, arguing that the August 12, 2004 Order of the RTC was an act in grave abuse of discretion.

On November 17, 2004, the CA issued a Resolution[12] dismissing the petition for failure to attach copies of pertinent pleadings and relevant documents to the petition, the decretal portion of which reads:

For failure to attach copies of all pleadings and documents relevant and pertinent to the instant petition, the same is hereby **DISMISSED**.

SO ORDERED.

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[9] *Id.*

[10] *Id.* at 210-232.

[11] *Id.* at 233.

[12] *Rollo* (G.R. No. 167835), pp. 34-35.

The Spouses Ching then filed a motion for reconsideration, but it was denied in the Resolution[13] dated April 7, 2005.

Hence, the petition docketed as **G.R. No. 167835**.

G.R. No. 188480

In the meantime, during the course of the proceedings in the RTC, the Bank filed an Urgent *Ex Parte* Motion to Cancel TCT No. S-3151,[14] praying for the RTC to order the Register of Deeds of Makati City, to cancel TCT No. S-3151 in the names of the Spouses Ching, and issue a new title in its name.

On June 30, 2005 the RTC issued an Order[15] granting the *ex parte* motion. Alfredo filed a motion for reconsideration, which the Bank opposed.

During the pendency of the motion, the Bank filed another Urgent *Ex Parte* Motion to Modify Order[16] dated June 30, 2005 praying that an Order be issued directing the Register of Deeds of Makati City to cancel not only the original TCT No. S-3151, but also the original duplicate owner's certificate of title.

On August 25, 2005, the RTC issued an Order[17] granting the second *ex parte* motion. Alfredo filed a motion for reconsideration, which the Bank also opposed.

On December 1, 2005, the RTC issued an Order[18] denying both motions.

Consequently, the Bank was able to effect the cancellation of TCT No. S-3151 with the Register of Deeds of Makati City, as well as cause the issuance of TCT No. 221703[19] in its name.

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

[14] CA *rollo* (CA-G.R. SP No. 96675), pp. 336-338.

[15] *Id.* at 339.

[16] *Id.* at 355-356.

[17] *Id.* at 357.

[18] *Id.* at 365-368.

[19] *Id.* at 369-371.

The Spouses Ching then filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 93199, questioning the Orders of the RTC dated June 30, 2005, August 25, 2005, and December 1, 2005, claiming that these were issued with grave abuse of discretion on the part of the RTC judge.

While the case was pending before the CA, and on account of there having been no temporary restraining order or writ of preliminary injunction issued, the Bank filed an Urgent *Ex Parte* Motion to Resolve Motion for Designation of Another Sheriff to Serve/Enforce Writ of Possession/Court Processes.[20] The motion was stamped as received by the RTC on March 29, 2006. However, it appears that in its Order[21] dated March 28, 2006, or a day before the motion was filed, the RTC already granted the urgent *ex parte* motion.

In relation thereto, Alfredo filed an Urgent Motion to Recall and Set Aside Order[22] dated March 28, 2006, which the Bank opposed.

On May 2, 2006, the RTC issued an Order[23] denying the motion. Alfredo filed a motion for reconsideration, but it was denied in the Order[24] dated August 18, 2006.

Aggrieved, Alfredo filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 96675.

On July 31, 2008, the CA rendered a Decision[25] affirming the Orders of the RTC and dismissing the petition for lack of merit. Alfredo filed a motion for reconsideration, but it was denied in the Resolution[26] dated June 19, 2009.

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[20] *Id.* at 407-408.

[21] *Id.* at 40.

[22] *Id.* at 409-420.

[23] *Id.* at 41-42.

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

[25] *Rollo* (G.R. No. 188480), pp. 34-47.

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

In affirming the assailed Orders of the RTC, the CA opined that since the urgent *ex parte* motion of the Bank merely sought for the designation of another sheriff to enforce the writ of possession previously issued by the court, it is a non-litigious motion which may be acted upon by the RTC *ex parte* without prejudice to the rights of Alfredo. As regards the discrepancy between the date of filing the *ex parte* motion and the date of the issuance of the RTC Order, the CA held that considering that the said issue was only raised for the first time before the CA, the issue could not be touched upon without violating the rule on due process. It stressed that an issue which was not averred in the complaint cannot be raised for the first time on appeal.

In addition, the CA ruled that title and ownership to the property is consolidated upon the lapse of the period of redemption. It is automatic upon the failure of the judgment obligor to exercise his right of redemption within the period allowed by law. Thus, title may be consolidated in the name of the purchaser even without a new title issued in his name. The term *title*, as used in consolidation, does not pertain to the certificate of title, or piece of paper, issued by the Register of Deeds, which is a mere evidence of ownership. It is synonymous with ownership.[27]

Hence, the petition docketed as **G.R. No. 188480**.

The Court's Ruling

Both petitions being interrelated, it is best to resolve the issues collectively. In *G.R. No. 167835*, the Spouses Ching raise the following issues:

A. WHETHER OR NOT THE COURT OF APPEALS' DISMISSAL OF THE PETITION FOR *CERTIORARI* IN CA-G.R. SP NO. 82717 IS IN ACCORD WITH LAW AND/OR APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.

B. WHETHER OR NOT THE TRIAL COURT'S QUESTIONED RULINGS IN CIVIL CASE NO. 142309 ARE IN GRAVE

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27 *Id.* at 45-46.

ABUSE OF DISCRETION, ARE NOT IN ACCORD WITH LAW AND/OR APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, AND WORK TO DO AN INJUSTICE TO HEREIN PETITIONERS.[28]

While in *G.R. No. 188480*, Alfredo raises the following issues:

A. THE COURT OF APPEALS, IN DENYING THE PETITION IN CA-G.R. SP NO. 96675 AND UPHOLDING THE ACTIONS OF THE LOWER COURT JUDGE, EFFECTIVELY AFFIRMED A VIOLATION OF THE CONSTITUTIONAL RIGHT OF A THIRD PARTY – WHO IS NOT A DEFENDANT IN CIVIL CASE NO. 142309 – AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS.

B. THE COURT OF APPEALS, IN DENYING THE PETITION IN CA-G.R. SP NO. 96675, ACTED IN A MANNER INCONSISTENT WITH THE RULING OF THE HONORABLE SUPREME COURT IN *COMETA V. INTERMEDIATE APPELLATE COURT (151 SCRA 563)* AND *YSMAEL V. COURT OF APPEALS (G.R. NO. 132497, 16 NOVEMBER 1999)* THAT BOTH MILITATED AGAINST THE IMPLEMENTATION OF A WRIT OF POSSESSION ON PROPERTY ON WHICH HAS BEEN IMPROPERLY AND/OR INCOMPLETELY EXECUTED.

C. THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING – AND IN NOT CONSIDERING AS GRAVE ABUSE OF DISCRETION, IF NOT TOTALLY ANOMALOUS – THE ACTION OF THE LOWER COURT JUDGE OF ISSUING AN ORDER GRANTING RESPONDENT BANK'S URGENT *EX PARTE* MOTION EVEN *BEFORE* SAID MOTION WAS ACTUALLY FILED.[29]

The Spouses Ching contend, among other things, that their subsequent submission of the documents, which the CA deemed relevant and pertinent to the petition in G.R. No. 167835, constituted substantial compliance with the Rules. Consequently, by invoking strict compliance with the Rules in dismissing the

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[28] *Rollo* (G.R. No. 167835), p. 400.

[29] *Rollo* (G.R. No. 188480), pp. 19-20.

petition and denying the motion for reconsideration, the CA relied more on technicalities than resolving the case on the merits.

The Bank, on the other hand, argues that the resolution of the CA dismissing the petition for failure to attach all relevant and pertinent pleadings and documents has legal basis, totally substantiated by the facts of the case, and supported by jurisprudence.

Indeed, this Court has maintained that the subsequent and substantial compliance of a party-litigant may warrant the relaxation of the rules of procedure.[30] Thus, in *Jaro v. Court of Appeals*,[31] it was elucidated that:

> x x x In *Cusi-Hernandez v. Diaz* and *Piglas-Kamao v. National Labor Relations Commission*, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that petitioners substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."
>
> We cannot see why the same leniency cannot be extended to petitioner. x x x
>
> If we were to apply the rules of procedure in a very rigid and technical sense, as what the Court of Appeals would have it in this case, the ends of justice would be defeated. In *Cusi-Hernandez v. Diaz*, where the formal requirements were liberally construed and substantial compliance was recognized, we explained that rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. Hence, a strict and rigid application of technicalities that tend to frustrate

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[30] *Hipol v. National Labor Relations Commission (Fifth Division)*, G.R. No. 181818, December 18, 2008, 574 SCRA 852, 856.

[31] 427 Phil. 532 (2002).

rather than promote substantial justice must be avoided. We further declared that:

> Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better.

In the similar case of *Piglas-Kamao v. National Labor Relations Commission*, we stressed the policy of the courts to encourage the full adjudication of the merits of an appeal.[32]

In the case at bar, the CA dismissed the petition in CA-G.R. SP No. 87217 for the Spouses Ching's failure to attach copies of all pleadings and documents which the CA deemed relevant to the petition. However, in their Motion for Reconsideration,[33] the Spouses Ching stressed that they have effectively complied and cured their procedural lapses by submitting all the pleadings and documents required by the CA in their Amended Petition.[34] The Spouses Ching even explained that the said documents and pleadings were not relevant and pertinent to the petition, yet they still submitted them. Hence, the amended petition filed by the Spouses Ching should have been given due course by the CA.

Nonetheless, this Court deems that the ends of justice would be better served if the issues raised by the Spouses Ching in their petition before the CA in CA-G.R. SP No. 87217 be resolved in the present petition.

In their petition, the Spouses Ching mainly argues that the trial court gravely erred in granting the Bank's motion, because the RTC no longer had jurisdiction to issue the questioned Orders since the Bank failed to execute the judgment, to consolidate title, and to secure possession of the subject property.[35] They

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[32] *Id.* at 547-548.

[33] CA *rollo* (CA-G.R. SP No. 87217), pp. 459-469.

[34] *Id.* at 203-268.

[35] *Id.* at 220.

maintain that the RTC erred in totally disregarding the ruling of this Court in the cases of *Ayala Investment & Development Corp. v. Court of Appeals*[36] and *Ching v. Court of Appeals*.[37] Finally, the Spouses Ching posit that the execution sale of the subject property was void, considering that the property was conjugal in nature and Encarnacion was not a party to the original action.

The arguments and contentions of the Spouses Ching cannot be upheld.

First, the Spouses Ching's reliance on prescription is unavailing in the case at bar. The Spouses Ching are implying that the RTC violated Section 6, Rule 39 of the Rules of Court, *viz*.:

> Sec. 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

However, it must be noted that contrary to their allegation, the summary judgment of the RTC in Civil Case No. 142309 had in fact already been enforced. During the pendency of the case, the subject property was already levied upon. Subsequently, after summary judgment and while the case was on appeal, the RTC granted the Bank's motion for execution pending appeal. Consequently, on October 10, 1983, an auction sale of the subject property was conducted, with the Bank emerging as the highest bidder. Later, a Certificate of Sale in its favor was executed by the Sheriff and, thereafter, inscribed as a memorandum of encumbrance on TCT No. S-3151.[38]

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[36] 349 Phil. 942 (1998).

[37] 467 Phil. 830 (2004).

[38] CA *rollo* (CA-G.R. SP No. 87217). p. 90.

It is settled that execution is enforced by the fact of levy and sale. The result of such execution was that title over the subject property was vested immediately in the purchaser subject only to the Spouses Ching's right to redeem the property within the period provided for by law.[39] The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is, like any other right, entitled to protection and must be respected until extinguished by redemption.[40] Since, the Spouses Ching failed to redeem the subject property within the period allowed by law, they have been divested of their rights over the property.

Verily, the Bank's "Motion to Retrieve Records, For Issuance of Final Deed of Conveyance, To Order the Register of Deeds of Makati City to Transfer Title and For Writ of Possession" was merely a consequence of the execution of the summary judgment as the judgment in Civil Case No. 142309 had already been enforced when the lot was levied upon and sold at public auction, with the Bank as the highest bidder.

Moreover, contrary to the Spouses Ching's contention, this Court, in *Paredes v. Court of Appeals*,[41] citing *Rodil v. Benedicto*,[42] categorically held that the right of the applicant or a subsequent purchaser to request for the issuance of a writ of possession of the land never prescribes. A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[43] It may be issued in several instances, among which is in execution sales.

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[39] See *Heirs of Gaudencio Blancaflor v. Court of Appeals*, 364 Phil. 454, 462-463 (1999).

[40] *Id.* at 863.

[41] G.R. No. 147074, July 15, 2005, 463 SCRA 504, 525.

[42] 184 Phil. 107 (1980).

[43] H. BLACK, *BLACK'S LAW DICTIONARY* 1611 (6th ed.).

There was, therefore, no grave error on the part of the RTC in granting the motion.

Second, the applicability of the cases of *Ayala Investment & Development Corp. v. Court of Appeals* and *Ching v. Court of Appeals* to the present case cannot be sustained. Suffice it to say that these cases involved different parties and sets of facts, therefore, they did not operate as *res judicata* or a case barred by prior judgment in this particular case. However, what could operate as *res judicata* in this petition is the case of *Spouses Alfredo and Encarnacion Ching v. Court of Appeals*[44] and that of *Cheng Ban Yek & Co. v. Intermediate Appellate Court (IAC)*.[45]

The doctrine of *res judicata* is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — *republicae ut sit litium*, and (2) the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari et eadem causa*. A contrary doctrine would certainly subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[46]

In *Cheng Ban Yek & Co. v. IAC*, the petition arose when Cheng Ban Yek & Co., together with Alfredo, appealed the summary judgment in Civil Case No. 142309 to the CA. The CA, however, affirmed *in toto* the judgment rendered by the lower court. The matter was then elevated before this Court *via* a petition for review, docketed as G.R. No. 73708, but it was eventually dismissed for having been filed out of time and for lack of merit. Therefore, the decision in Civil Case No. 142309 became final.

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[44] 446 Phil. 121 (2003).

[45] G.R. No. 73708.

[46] *Heirs of the Late Faustina Adalid v. Court of Appeals*, G.R. No. 122202, May 26, 2005, 459 SCRA 27, 41.

In *Spouses Alfredo and Encarnacion Ching v. Court of Appeals*, the case arose when the Spouses Ching, in an effort to prevent the deputy sheriff from consolidating the sale of the subject property, filed an annulment case, Civil Case No. 8389, with the RTC of Makati City. The Spouses Ching sought to declare void the levy and sale on execution of their conjugal property by arguing that the branch sheriff had no authority to levy upon a property belonging to the conjugal partnership. The RTC later rendered judgment in favor of the Spouses Ching and declared as void the levy and sale on execution upon their conjugal property. The Bank then elevated the decision to the CA, which decision was reversed and set aside by the latter on the ground that the annulment case was barred by *res judicata* in another annulment case. The Spouses Ching sought recourse before this Court, but the petition was denied and the assailed decision of the CA was affirmed.

It is undeniable, therefore, that the disquisitions of this Court in the above-cited cases are controlling and should be given great weight and consideration in the resolution of the issues raised by the Spouses Ching in the present petition. All matters relevant to the action must, and should, conform to these precedent cases; otherwise, parallel actions emanating from the same case could lead to conflicting conclusions. The winning party would not enjoy the fruits of his victory; instead, it would be an empty victory, ultimately ending in the denial of justice on the part on the righteous litigant.

Third, the Spouses Ching maintain that the subject property could not be levied upon and be sold at public auction because it is conjugal in nature. This Court, in G.R. No. 118830, had this to say:

> In any case, even without the intervention of Encarnacion Ching in the collection case, it appears that Alfredo Ching was able to raise the conjugal nature of the property in both the trial court and appellate court. A perusal of the records reveals that petitioner Alfredo Ching filed a Motion for Reconsideration and to Quash Writ of Execution before the CFI of Manila. In the motion, he specifically argued that the execution was invalid for having been enforced upon

their conjugal property. Alfredo Ching raised this argument again on appeal in CA G.R. CV No. 02421. Evidently, due process has been afforded to petitioners as regards the execution on their conjugal property.[47]

Verily, the issue of the conjugal nature of the subject property has been passed upon by the courts and this Court several times; it is no longer a novel contention. The Spouses Ching cannot, therefore, raise the same argument again and again. The Spouses Ching could not even raise such an argument to bar or prevent the RTC from granting a writ of possession to the Bank or any other motion in furtherance or as a consequence of the issuance of such writ. From the foregoing, the Spouses Ching's petition would logically fail.

Alfredo also contends that the issuance of the Order dated March 28, 2006 by the CA, in CA-G.R. SP No. 96675, was highly irregular, considering that the motion which the said Order granted was filed a day after its issuance, or on March 29, 2009. Alfredo insists that contrary to the conclusion of the CA, he has raised the matter of the Order's irregular issuance in his urgent motion to recall and set aside the said order.

For its part, the Bank contends, among other things, that the March 28, 2006 Order was but a result of the lower court's failure to act on the Bank's earlier *ex parte* motion dated October 7, 2005. Moreover, the Bank insists that the only logical reason why the lower court stamped "March 29, 2006" as the date of receipt of the *ex parte* motion is that the said date was erroneously and inadvertently stamped on the pleading as its date of receipt.

Be it inadvertence or a simple mistake in stamping the appropriate date, to remand the case to the RTC for it to issue a new order granting the motion for the designation of a new sheriff would not only be impractical, it would cause more injustice to the parties and protract an already long and dragging litigation.

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[47] *Spouses Alfredo and Encarnacion Ching v. Court of Appeals, supra* note 44.

It must be stressed, however, that the RTC Judge should have been more cautious when he issued the Order, taking into consideration the respective dates wherein the motion was received and the corresponding order issued. Time and again, this Court has emphasized the heavy burden and responsibility of court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided.[48] A judge should keep in mind that the delicate nature of work of those involved in the administration of justice, from the highest judicial official to the lowest personnel, requires them to live up to the strictest standard of honesty, integrity and uprightness.[49]

Alfredo is assailing the validity of the RTC Order dated March 28, 2006, which granted the Bank's Urgent *Ex Parte* Motion To Resolve Motion for Designation of Another Sheriff to Serve/Enforce Writ of Possession/Court Processes. It is to be noted that the said Order was but an ancillary motion emanating from the writ of possession granted earlier by the RTC. Corollarily, with regard to a petition for writ of possession, it is well to state that the proceeding is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[50] Consequently, so too was the nature of the urgent motion, it was *ex-parte* and summary in nature.

Moreover, it is settled that the issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of

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[48] *Office of the Court Administrator v. Cabe*, A.M. No. P-96-1185, June 26, 2000, 334 SCRA 348.

[49] *Reyes-Domingo v. Morales,* A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6.

[50] *Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 119.

possession becomes a matter of right.[51] To be sure, regardless of whether or not there is a pending action for nullification of the sale at public auction, the purchaser is entitled to a writ of possession without prejudice to the outcome of such action.[52] Undeniably, Alfredo failed to redeem the property within the redemption period and, thereafter, ownership was consolidated in favor of the Bank and a new certificate of title, TCT No. 221703, was issued in its name. It was, therefore, a purely ministerial duty for the trial court to issue a writ of possession in favor of the Bank and issue the Order granting the motion for designation of another sheriff to serve the writ, which is merely an order enforcing the writ of possession.

We note, with affirmation, the discussion of the CA on the matter:

> The right of the purchaser to the possession of the property after the period of redemption has lapsed and no redemption was made under the old rule, has not been changed with the advent of the 1997 Rules of Civil Procedure. The only significant change is the time when the period of redemption period would start. Under the old Rules, the redemption period would commence after the sale, while under the present Rule, the period to reckon with is the date of registration of the certificate of sale with the proper Registry of Deeds.
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> In the instant case, there is no dispute that the property of the petitioner was sold in an execution sale in favor of the respondent bank and that no redemption was made by the former over the said property within the required one-year period. It has been held that a writ of possession may be issued in favor of the purchaser in an execution sale when the deed of conveyance has been executed and delivered to him after the period of redemption has expired and no redemption has been made by the judgment debtor. After such period, the judgment debtor would be divested of his ownership of the property. Thus, just like in extrajudicial foreclosure, the issuance of the writ of possession after the lapse of the period of redemption is ministerial on the part of the court.

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[51] *Lam v. Metropolitan Bank and Trust Company*, G.R. No. 178881, February 18, 2008, 546 SCRA 200, 206.

[52] *Oliveros v. Presiding Judge, RTC, Br. 24, Binan, Laguna, supra* note 50, at 121-122.

It is the contention of the petitioner that a writ of possession could only be validly issued upon consolidation of title and ownership in the name of the purchaser. We agree. The petitioner then argues that a valid consolidation could be obtained only upon filing of a separate action with the RTC acting as a cadastral court. That we don't agree. The petitioner cited the case of *Padilla, Jr. v. Philippine Producers' Cooperative Marketing Association, Inc.*, to support his argument. The said case involved the issuance of a new title in the name of the purchaser. In fact, the primary issue therein is whether in implementing the involuntary transfer of title of real property levied and sold on execution, it is enough for the executing party to file a motion with the court which rendered judgment, or does he need to file a separate action with the Regional Trial Court. There is nothing therein which states that a new title in the name of the purchaser is necessary for the validity of the writ of possession. On the contrary, a perusal of the said case would reveal that a purchaser, by virtue of a levy and an execution sale, would become the new lawful owner of the property sold if not redeemed within the one-year period.

Following the argument of the petitioner, he might have confused consolidation of title and ownership with the issuance or application for a new title after the redemption as provided for in Section 75 of Presidential Decree No. 1529. Title and ownership to the property is consolidated upon the lapse of the period of redemption. It is automatic upon the failure of the judgment obligor to exercise his right of redemption within the period allowed by law. Title may be consolidated in the name of the purchaser even without a new title issued in his name. The term "title" as used in consolidation does not pertain to the certificate of title, or piece of paper, issued by the Register of Deeds, which is a mere evidence of ownership. It is synonymous with ownership.

There is neither law nor jurisprudence which requires that the certificate of title to the property must first be cancelled and a new one be issued in favor of the purchaser before a valid consolidation of title and ownership could be said to have taken place, and before a court could issue a writ of possession, or an order designating a sheriff to enforce such writ.

Not even the pendency of another action with the appellate courts involving the validity of the writ of possession can stop the enforcement of the said writ in the absence of any restraining order or injunctive writ from the said courts. Accordingly, considering

that this Court and the Supreme Court have not issued any temporary restraining order or preliminary injunction against the order of the court *a quo* for the issuance of writ of possession, we see no cogent reason why the said writ could not be effectively enforced.

The RTC, therefore, acted well within its jurisdiction in issuing the questioned order granting the urgent *ex-parte* motion of the respondent bank which proceeds from the writ of possession which had long been issued. For all the foregoing, there is no need to address the other issues.[53]

As regards petitioners' remaining arguments, suffice it to say that this is not an appeal from the Decision and Orders of the RTC in the collection case in Civil Case No. 142309 which, to reiterate, has become final and executory,[54] the correctness of the judgment is, therefore, not in issue. Accordingly, there is no need to address the other errors allegedly committed by the trial court in issuing the assailed Orders.

WHEREFORE, premises considered, and subject to the above disquisitions, both petitions are *DENIED*. The Resolutions of the Court of Appeals, dated November 17, 2004 and April 7, 2005, in CA-G.R. SP No. 87217; and the Decision and Resolution dated July 31, 2008 and June 19, 2009, respectively, in CA-G.R. SP No. 96675, are *AFFIRMED*.

SO ORDERED.

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

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[53] *Rollo* (G.R. No. 188480), pp. 44-46.

[54] *Spouses Alfredo and Encarnacion Ching v. Court of Appeals, supra* note 44.

SECOND DIVISION

[G.R. No. 171631. November 15, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **AVELINO R. DELA PAZ, ARSENIO R. DELA PAZ, JOSE R. DELA PAZ, and GLICERIO R. DELA PAZ, represented by JOSE R. DELA PAZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED.— In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts. It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.

2. CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE; WHO MAY APPLY.— Section 14 (1) of PD 1529, otherwise known as the *Property Registration Decree* provides: SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. From the foregoing, respondents need to prove that (1) the land forms part of the alienable and disposable land of the public domain; and (2) they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier. These the respondents must prove by no less than clear, positive and convincing evidence.

3. ID.; ID.; REGALIAN DOCTRINE; LANDS THAT BELONG TO THE STATE; PRESUMPTION OF STATE OWNERSHIP MUST BE OVERCOME BY INCONTROVERTIBLE EVIDENCE.— Under the Regalian doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.

4. ID.; ID.; ID.; ID.; ID.; SURVEYOR'S ANNOTATION THAT LAND IS ALIENABLE AND DISPOSABLE, INSUFFICIENT. — In *Republic v. Sarmiento*, the Court ruled that the notation of the surveyor-geodetic engineer on the blue print copy of the conversion and subdivision plan approved by the Department of Environment and Natural Resources (DENR) Center, that "this survey is inside the alienable and disposable area, Project No. 27-B. L.C. Map No. 2623, certified on January 3, 1968 by the Bureau of Forestry," is insufficient and does not constitute incontrovertible evidence to overcome the presumption that the land remains part of the inalienable public domain. Further, in *Republic v. Tri-plus Corporation*, the Court held that: In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government

that the lands applied for are alienable and disposable. In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed. Respondents failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable. Furthermore, in *Republic of the Philippines v. Rosila Roche*, the Court held that the applicant bears the burden of proving the status of the land. In this connection, the Court has held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO), or the Provincial Environment and Natural Resources Office (PENRO) of the DENR. He must also prove that the DENR Secretary had approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO. Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable. Clearly, the surveyor's annotation presented by respondents is not the kind of proof required by law to prove that the subject land falls within the alienable and disposable zone. Respondents failed to submit a certification from the proper government agency to establish that the subject land is part of the alienable and disposable portion of the public domain. In the absence of incontrovertible evidence to prove that the subject property is already classified as alienable and disposable, we must consider the same as still inalienable public domain.

5. ID.; ID.; LAND REGISTRATION APPLICANT; CANNOT RELY ON MERE CONCLUSIONS OF LAW BUT MUST IMPRESS THE FACTS AND CIRCUMSTANCES EVIDENCING ALLEGED OWNERSHIP AND POSSESSION OF THE LAND SINCE JUNE 12, 1945.— It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice. An applicant in a land registration case cannot just

harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land.

6. ID.; ID.; ID.; ID.; TAX DECLARATION AS EVIDENCE; APPRECIATION THEREOF IN CASE AT BAR. – Respondents' earliest evidence can be traced back to a tax declaration issued in the name of their predecessors-in-interest only in the year 1949. At best, respondents can only prove possession since said date. What is required is open, exclusive, continuous and notorious possession by respondents and their predecessors-in-interest, under a *bona fide* claim of ownership, *since June 12, 1945* or earlier. Respondents failed to explain why, despite their claim that their predecessors-in interest have possessed the subject properties in the concept of an owner even before June 12, 1945, it was only in 1949 that their predecessors-in-interest started to declare the same for purposes of taxation. Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Frederick F. Vallestero for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] of the Court of Appeals (CA), dated February 15, 2006, in CA-

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe, concurring; *rollo,* pp. 53-60.

G.R. CV No. 84206, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 167, in LRC Case No. N-11514, granting respondents' application for registration and confirmation of title over a parcel of land located in *Barangay* Ibayo, Napindan, Taguig, Metro Manila.

The factual milieu of this case is as follows:

On November 13, 2003, respondents Avelino R. dela Paz, Arsenio R. dela Paz, Jose R. dela Paz, and Glicerio R. dela Paz, represented by Jose R. dela Paz (Jose), filed with the RTC of Pasig City an application for registration of land[3] under Presidential Decree No. 1529 (PD 1529) otherwise known as the *Property Registration Decree*. The application covered a parcel of land with an area of 25,825 square meters, situated at Ibayo, Napindan, Taguig, Metro Manila, described under survey Plan Ccn-00-000084, (Conversion Consolidated plan of Lot Nos. 3212 and 3234, MCADM 590-D, Taguig Cadastral Mapping). Together with their application for registration, respondents submitted the following documents: (1) Special power of attorney showing that the respondents authorized Jose dela Paz to file the application; (2) Conversion Consolidated plan of Lot Nos. 3212 and 3234, MCADM 590-D, Taguig Cadastral Mapping (Ccn-00-000084) with the annotation that the survey is inside L.C. Map No. 2623 Proj. No. 27-B classified as alienable/ disposable by the Bureau of Forest Development, Quezon City on January 03, 1968; (3) Technical Descriptions of Ccn-00-000084; (4) Geodetic Engineer's Certificate; (5) Tax Declaration No. FL-018-01466; (6) *Salaysay ng Pagkakaloob* dated June 18, 1987; (7) *Sinumpaang Pahayag sa Paglilipat sa Sarili ng mga Pagaari ng Namatay* dated March 10, 1979; (8) Certification that the subject lots are not covered by any land patent or any public land application; and (9) Certification by the Office of the Treasurer, Municipality of Taguig, Metro Manila, that the tax on the real property for the year 2003 has been paid.

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[2] *Rollo,* pp. 61-64.

[3] Records, pp. 1-6.

Respondents alleged that they acquired the subject property, which is an agricultural land, by virtue of *Salaysay ng Pagkakaloob*[4] dated June 18, 1987, executed by their parents Zosimo dela Paz and Ester dela Paz (Zosimo and Ester), who earlier acquired the said property from their deceased parent Alejandro dela Paz (Alejandro) by virtue of a *Sinumpaang Pahayag sa Paglilipat sa Sarili ng mga Pag-aari ng Namatay*[5] dated March 10, 1979. In their application, respondents claimed that they are co-owners of the subject parcel of land and they have been in continuous, uninterrupted, open, public, adverse possession of the same, in the concept of owner since they acquired it in 1987. Respondents further averred that by way of tacking of possession, they, through their predecessors-in-interest have been in open, public, adverse, continuous, and uninterrupted possession of the same, in the concept of an owner even before June 12, 1945, or for a period of more than fifty (50) years since the filing of the application of registration with the trial court. They maintained that the subject property is classified as alienable and disposable land of the public domain.

The case was set for initial hearing on April 30, 2004. On said date, respondents presented documentary evidence to prove compliance with the jurisdictional requirements of the law.

Petitioner Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), opposed the application for registration on the following grounds, among others: (1) that neither the applicants nor their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question for a period of not less than thirty (30) years; (2) that the muniments of title, and/or the tax declarations and tax payments receipts of applicants, if any, attached to or alleged in the application, do not constitute competent and sufficient evidence of *bona fide* acquisition of the land applied for; and (3) that the parcel of land applied for is a portion of public domain belonging to the Republic not

[4] *Id.* at 11-12.

[5] *Id.* at 13-14.

subject to private appropriation. Except for the Republic, there was no other oppositor to the application.

On May 5, 2004, the trial court issued an Order of General Default[6] against the whole world except as against the Republic. Thereafter, respondents presented their evidence in support of their application.

In its Decision dated November 17, 2004, the RTC granted respondents' application for registration of the subject property. The dispositive portion of the decision states:

> WHEREFORE, affirming the order of general default hereto entered, judgment is hereby rendered AFFIRMING and CONFIRMING the title of AVELINO R. DELA PAZ, Arsenio R. dela Paz, Jose R. dela Paz and Glicerio R. dela Paz, all married and residents of and with postal address at No. 65 Ibayo, Napindan, Taguig, Metro Manila, over a parcel of land described and bounded under Plan Ccn-00-000084 (consolidation of Lots No. 3212 and 3234, Mcadm-590-D, Taguig, Cadastral Mapping, containing Twenty-Five Thousand Eight Hundred Twenty-Five (25,825) Square Meters, more or less, situated at Barangay Ibayo, Napindan, Taguig, Metro Manila, under the operation of P.D. 1529, otherwise known as the Property Registration Decree.
>
> After the decision shall have been become final and executory and, upon payment of all taxes and other charges due on the land, the order for the issuance of a decree of registration shall be accordingly undertaken.
>
> SO ORDERED.[7]

Aggrieved by the Decision, petitioner filed a Notice of Appeal.[8] The CA, in its Decision dated February 15, 2006, dismissed the appeal and affirmed the decision of the RTC. The CA ruled that respondents were able to show that they have been in continuous, open, exclusive and notorious possession of the subject property through themselves and their predecessors-in-interest. The CA found that respondents acquired the subject

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[6] *Id.* at 55

[7] *Rollo*, pp. 63-64.

[8] Records, pp. 100-101.

land from their predecessors-in-interest, who have been in actual, continuous, uninterrupted, public and adverse possession in the concept of an owner since time immemorial. The CA, likewise, held that respondents were able to present sufficient evidence to establish that the subject property is part of the alienable and disposable lands of the public domain. Hence, the instant petition raising the following grounds:

I

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER GRANTING RESPONDENTS' APPLICATION FOR REGISTRATION OF THE SUBJECT LOT CONSIDERING THAT THE EVIDENCE ON RECORD FAILED TO ESTABLISH THAT RESPONDENTS HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE SUBJECT LOT IN THE CONCEPT OF AN OWNER.

II

THE COURT OF APPEALS ERRED IN ORDERING THE REGISTRATION OF THE SUBJECT LOT IN RESPONDENTS' NAME CONSIDERING THAT NO EVIDENCE WAS FORMALLY OFFERED TO PROVE THAT THE SAME IS WITHIN THE ALIENABLE AND DISPOSABLE AREA OF THE PUBLIC DOMAIN.[9]

In its Memorandum, petitioner claims that the CA's findings that respondents and their predecessors-in-interest have been in open, uninterrupted, public, and adverse possession in the concept of owners, for more than fifty years or even before June 12, 1945, was unsubstantiated. Respondents failed to show actual or constructive possession and occupation over the subject land in the concept of an owner. Respondents also failed to establish that the subject property is within the alienable and disposable portion of the public domain. The subject property remained to be owned by the State under the Regalian Doctrine.

In their Memorandum, respondents alleged that they were able to present evidence of specific acts of ownership showing open, notorious, continuous and adverse possession and occupation in the concept of an owner of the subject land. To prove their

[9] *Rollo*, pp. 32-33.

continuous and uninterrupted possession of the subject land, they presented several tax declarations, dated 1949, 1966, 1974, 1979, 1980, 1985, 1991, 1994 and 2000, issued in the name of their predecessors-in-interest. In addition, respondents presented a tax clearance issued by the Treasurer's Office of the City of Taguig to show that they are up to date in their payment of real property taxes. Respondents maintain that the annotations appearing on the survey plan of the subject land serves as sufficient proof that the land is within the alienable and disposable portion of the public domain. Finally, respondents assert that the issues raised by the petitioner are questions of fact which the Court should not consider in a petition for review under Rule 45.

The petition is meritorious.

In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.[10] It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[11]

In the present case, the records do not support the findings made by the CA that the subject land is part of the alienable and disposable portion of the public domain.

Section 14 (1) of PD 1529, otherwise known as the *Property Registration Decree* provides:

SEC. 14. *Who may apply*.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[10] *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071, 181415, July 7, 2009, 592 SCRA 169, 195, 196; *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, 505.

[11] *FGU Insurance Corporation v. Court of Appeals*, 494 Phil. 342, 356 (2005).

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

From the foregoing, respondents need to prove that (1) the land forms part of the alienable and disposable land of the public domain; and (2) they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier.[12] These the respondents must prove by no less than clear, positive and convincing evidence.[13]

Under the Regalian doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain.[14] The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.[15]

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[12] *Mistica v. Republic*, G.R. No. 165141, September 11, 2009, 599 SCRA 401, 408, citing *In Re: Application for Land Registration of Title, Fieldman Agricultural Trading Corporation v. Republic*, 550 SCRA 92, 103 (2008).

[13] *Mistica v. Republic*, *supra*, at 408-409.

[14] *Republic v. Tri-Plus Corporation*, G.R. No. 150000, September 26, 2006, 503 SCRA 91,101-102.

[15] *Secretary of the Department of Environment and Natural Resources v.Yap*, G.R. Nos. 167707 and 173775, October 8, 2008, 568 SCRA 164, 192.

To support its contention that the land subject of the application for registration is alienable, respondents presented survey Plan Ccn-00-000084[16] (Conversion Consolidated plan of Lot Nos. 3212 & 3234, MCADM 590-D, Taguig Cadastral Mapping) prepared by Geodetic Engineer Arnaldo C. Torres with the following annotation:

> This survey is inside L.C. Map No. 2623 Proj. No. 27-B clasified (sic) as alienable/disposable by the Bureau of Forest Development, Quezon City on Jan. 03, 1968.

Respondents' reliance on the afore-mentioned annotation is misplaced.

In *Republic v. Sarmiento*,[17] the Court ruled that the notation of the surveyor-geodetic engineer on the blue print copy of the conversion and subdivision plan approved by the Department of Environment and Natural Resources (DENR) Center, that "this survey is inside the alienable and disposable area, Project No. 27-B. L.C. Map No. 2623, certified on January 3, 1968 by the Bureau of Forestry," is insufficient and does not constitute incontrovertible evidence to overcome the presumption that the land remains part of the inalienable public domain.

Further, in *Republic v. Tri-plus Corporation*,[18] the Court held that:

> In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that

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[16] Exhibit "N-3", records, p. 7.

[17] G.R. No. 169397, March 13, 2007, 518 SCRA 250, 259, citing *Menguito v. Republic*, 401 Phil. 274 (2000).

[18] *Supra* note 14, at 102.

the lands applied for are alienable and disposable. In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed. Respondents failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable.

Furthermore, in *Republic of the Philippines v. Rosila Roche*,[19] the Court held that the applicant bears the burden of proving the status of the land. In this connection, the Court has held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO), or the Provincial Environment and Natural Resources Office (PENRO) of the DENR. He must also prove that the DENR Secretary had approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO. Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable.

Clearly, the surveyor's annotation presented by respondents is not the kind of proof required by law to prove that the subject land falls within the alienable and disposable zone. Respondents failed to submit a certification from the proper government agency to establish that the subject land is part of the alienable and disposable portion of the public domain. In the absence of incontrovertible evidence to prove that the subject property is already classified as alienable and disposable, we must consider the same as still inalienable public domain.[20]

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[19] G.R. No. 175846, July 6, 2010, citing *Republic v. T.A.N. Properties, Inc.*, 555 SCRA 477, 488-489 (2008).

[20] *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 596.

Anent respondents' possession and occupation of the subject property, a reading of the records failed to show that the respondents by themselves or through their predecessors-in-interest possessed and occupied the subject land since June 12, 1945 or earlier.

The evidence submitted by respondents to prove their possession and occupation over the subject property consists of the testimonies of Jose and Amado Geronimo (Amado), the tenant of the adjacent lot. However, their testimonies failed to establish respondents' predecessors-in-interest' possession and occupation of subject property since June 12, 1945 or earlier. Jose, who was born on March 19, 1939,[21] testified that since he attained the age of reason he already knew that the land subject of this case belonged to them.[22] Amado testified that he was a tenant of the land adjacent to the subject property since 1950,[23] and on about the same year, he knew that the respondents were occupying the subject land.[24]

Jose and Amado's testimonies consist merely of general statements with no specific details as to when respondents' predecessors-in-interest began actual occupancy of the land subject of this case. While Jose testified that the subject land was previously owned by their parents Zosimo and Ester, who earlier inherited the property from their parent Alejandro, no clear evidence was presented to show Alejandro's mode of acquisition of ownership and that he had been in possession of the same on or before June 12, 1945, the period of possession required by law. It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice.[25] An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts

[21] *Id.* at 39.

[22] *Id.* at 8.

[23] *Id.* at 10.

[24] *Id.* at 16.

[25] *Mistica v. Republic, supra* note 12, at 410-411.

and circumstances evidencing the alleged ownership and possession of the land.[26]

Respondents' earliest evidence can be traced back to a tax declaration issued in the name of their predecessors-in-interest only in the year 1949. At best, respondents can only prove possession since said date. What is required is open, exclusive, continuous and notorious possession by respondents and their predecessors-in-interest, under a *bona fide* claim of ownership, *since June 12, 1945* or earlier.[27] Respondents failed to explain why, despite their claim that their predecessors-in interest have possessed the subject properties in the concept of an owner even before June 12, 1945, it was only in 1949 that their predecessors-in-interest started to declare the same for purposes of taxation. Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership.[28]

The foregoing pieces of evidence, taken together, failed to paint a clear picture that respondents by themselves or through their predecessors-in-interest have been in open, exclusive, continuous and notorious possession and occupation of the subject land, under a *bona fide* claim of ownership **since June 12, 1945** or earlier.

Evidently, since respondents failed to prove that (1) the subject property was classified as part of the disposable and alienable land of the public domain; and (2) they and their predecessors-in-interest have been in open, continuous, exclusive,

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[26] *Lim v. Republic*, G.R. Nos. 158630 and 162047, September 4, 2009, 598 SCRA 247, 262.

[27] *Republic v. Bibonia*, G.R. No. 157466, June 21, 2007, 525 SCRA 268, 276-277.

[28] *Arbias v. Republic*, *supra* note 20, at 593-594.

and notorious possession and occupation thereof under a bona *fide* claim of ownership since June 12, 1945 or earlier, their application for confirmation and registration of the subject property under PD 1529 should be denied.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated February 15, 2006, in CA-G.R. CV No. 84206, affirming the Decision of the Regional Trial Court of Pasig City, Branch 167, in LRC Case No. N-11514, is *REVERSED* and *SET ASIDE*. The application for registration and confirmation of title filed by respondents Avelino R. dela Paz, Arsenio R. dela Paz, Jose R. dela Paz, and Glicerio R. dela Paz, as represented by Jose R. dela Paz, over a parcel of land, with a total area of twenty-five thousand eight hundred twenty-five (25,825) square meters situated at *Barangay* Ibayo, Napindan, Taguig, Metro Manila, is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Carpio Morales,[*] *Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176946. November 15, 2010.]

CONSTANCIA G. TAMAYO, JOCELYN G. TAMAYO, and ARAMIS G. TAMAYO, collectively known as HEIRS OF CIRILO TAMAYO, *petitioners, vs.* **ROSALIA ABAD SEÑORA, ROAN ABAD SEÑORA, and JANETE ABAD SEÑORA,** *respondents.*

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated May 13, 2009.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER.— As a rule, the jurisdiction of this Court in cases brought to it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court. The issues raised by petitioners are questions of fact necessarily calling for a reexamination and reevaluation of the evidence presented at the trial. A question of fact arises when the doubt or difference pertains to the truth or falsehood of alleged facts, or when the query necessarily solicits calibration of the whole evidence, considering the credibility of witnesses, the existence and relevance of specific circumstances, and their relation to one another and to the whole situation. The Court has consistently ruled that findings of fact of trial courts are entitled to great weight and should not be disturbed, except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of witnesses while testifying. It is not a function of this Court to analyze and weigh evidence all over again. The factual findings of the CA affirming those of the trial court are final and conclusive; hence, they are binding on this Court. The Court will not disturb such factual findings unless there are compelling or exceptional reasons.

2. ID.; EVIDENCE; TESTIMONIAL EVIDENCE.— To be credible, testimonial evidence should not only come from the mouth of a credible witness but it should also be credible, reasonable, and in accord with human experience. It should be positive and probable such that it is difficult for a rational mind not to find it credible.

3. CIVIL LAW; DAMAGES; LOSS OF EARNING CAPACITY; ELUCIDATED.— The award of damages for loss of earning capacity is concerned with the determination of losses or damages sustained by respondents, as dependents and intestate heirs of the deceased. This consists not of the full amount of his earnings, but of the support which they received or would have received from him had he not died as a consequence of the negligent act. Thus, the amount recoverable is not the loss of the victim's entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received.

4. ID.; ID.; ID.; HOW DETERMINED; CASE AT BAR.— Indemnity for loss of earning capacity is determined by computing the net earning capacity of the victim. The CA correctly modified the RTC's computation. The RTC had misapplied the formula generally used by the courts to determine net earning capacity, which is, to wit: Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses). Life expectancy shall be computed by applying the formula (2/3 x [80 - age at death]) adopted from the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. Hence, the RTC erred in modifying the formula and using the retirement age of the members of the PNP instead of "80." On the other hand, gross annual income requires the presentation of documentary evidence for the purpose of proving the victim's annual income. The victim's heirs presented in evidence Señora's pay slip from the PNP, showing him to have had a gross monthly salary of ₱12,754.00. Meanwhile, the victim's net income was correctly pegged at 50% of his gross income in the absence of proof as regards the victim's living expenses.

APPEARANCES OF COUNSEL

May S. Aguilar for petitioners.
Edgardo A. Arandia for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioners Constancia G. Tamayo (Constancia), Jocelyn G. Tamayo, and Aramis G. Tamayo are assailing the Decision[1] dated March 22, 2006 and the Resolution[2] dated February 6, 2007 of the Court of Appeals

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Rebecca de Guia-Salvador, concurring; *rollo*, pp. 32-50.

[2] *Id.* at 51-52.

(CA) in CA-G.R. CV No. 63171. The CA affirmed, with modification, the decision[3] of the Regional Trial Court (RTC) of Parañaque City in Civil Case No. 96-0339.

The factual antecedents, as found by the RTC and affirmed by the CA, are as follows:

On September 28, 1995, at about 11:00 a.m., Antonieto M. Señora (Señora), then 43 years old and a police chief inspector of the Philippine National Police (PNP),[4] was riding a motorcycle and crossing the intersection of Sucat Road towards Filipinas Avenue, when a tricycle allegedly bumped his motorcycle from behind. As a result, the motorcycle was pushed into the path of an Isuzu Elf Van (delivery van), which was cruising along Sucat Road and heading towards South Superhighway. The delivery van ran over Señora, while his motorcycle was thrown a few meters away. He was recovered underneath the delivery van and rushed to the Medical Center of Parañaque, where he was pronounced dead on arrival.[5]

The tricycle was driven by Leovino F. Amparo (Amparo), who testified that it was the delivery van that bumped Señora's motorcycle. He said that he did not see how the motorcycle could have been hit by his tricycle since he was looking at his right side, but when he heard a sound, he looked to his left and saw Señora already underneath the delivery van. He also said that when he was brought to the police station for investigation, he brought his tricycle to disprove the claim of the delivery van driver by showing that his tricycle sustained no damage.[6]

The delivery van, on the other hand, was driven by Elmer O. Polloso (Polloso) and registered in the name of Cirilo Tamayo (Cirilo). While trial was ongoing, Cirilo was suffering from lung cancer and was bedridden. His wife, petitioner Constancia,

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[3] Penned by Judge Rolando G. How; CA *rollo*, pp. 72-78.

[4] *Id.* at 72-73.

[5] *Id.* at 72.

[6] *Id.* at 74.

testified on his behalf. Constancia narrated that she and her husband were managing a single proprietorship known as Tamayo and Sons Ice Dealer. She testified that it was Cirilo who hired their drivers. She claimed that, as employer, her husband exercised the due diligence of a good father of a family in the selection, hiring, and supervision of his employees, including driver Polloso. Cirilo would tell their drivers not to drive fast and not to be too strict with customers.[7]

One of Cirilo's employees, Nora Pascual (Pascual), also testified. She alleged that she was working as auditor and checker for Tamayo and Sons Ice Dealer. She testified that she and another employee were with Polloso in the delivery van at the time of the incident. She narrated that, while they were traversing Sucat Road, she saw a motorcycle going towards Filipinas Avenue. Pascual said that, when they reached the intersection of Sucat Road and Filipinas Avenue, Polloso blew the horn. She then saw a tricycle bump the rear of the motorcycle. She said that Polloso stopped the delivery van. When they alighted, they saw the motorcycle already under the delivery van. Pascual further testified that Polloso was a careful driver who drove the truck slowly and followed traffic rules. She also said that Cirilo called for a meeting before the delivery trucks left and told his drivers to be careful in their driving and to be courteous to their customers.[8]

On March 2, 1999, the court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, defendants Leovino F. Amparo, Elmer O. Polloso and Cirilo Tamayo are found liable jointly and severally to plaintiffs and ordered to pay the latter the amounts of ₱105,100.00 for actual damages, ₱50,000.00 for loss of life, ₱1,152,360.00 for loss of earnings and ₱30,000.00 for attorney's fees.
>
> SO ORDERED.[9]

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[7] *Id.* at 75.

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

[9] *Id.* at 78.

The RTC found Polloso guilty of negligence. It held that Polloso failed to slow down or come to a full stop at the intersection, causing the delivery van to run over Señora. The RTC also found that the truck was traveling fast on the outer lane, the lane customarily considered to be for slow-moving vehicles.[10]

The RTC held Amparo similarly guilty of negligence. It found that the tricycle had bumped into Señora's motorcycle and pushed it towards the truck's path. It said that the statement to that effect made by witness Pascual was made immediately after the accident and could be considered a "spontaneous reaction to a startling occurrence."[11]

However, the RTC said that, even if the tricycle bumped into Señora's motorcycle from behind, the collision could have been avoided had Polloso observed the elementary rule of driving that one must slow down, or come to a full stop, when crossing an intersection.[12]

In addition, the RTC found Cirilo to be solidarily liable for Señora's death. It held that Constancia's testimony was hearsay and unsupported by any documentary evidence. The RTC also brushed aside Pascual's testimony because, as checker and auditor, she had no participation in hiring the company's drivers. Thus, Cirilo was held vicariously liable for the acts and omissions of Polloso.[13]

Finally, in determining the liability for loss of income, the RTC modified the formula in determining life expectancy, 2/3 x (80 – age of victim at the time of death). The RTC considered the retirement age of the members of the PNP, which was 55 years old. Thus, the formula that the RTC used was 2/3 x (55 – age of the victim at the time of death).

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[10] *Id.* at 76.

[11] *Id.* at 77.

[12] *Id*.

[13] *Id*.

On appeal, the CA affirmed the RTC's decision, but modified the finding on the deceased's net earning capacity. The CA used the formula:

> Net earning capacity = life expectancy x gross annual income less living expenses[14]

with life expectancy computed as—

> 2/3 x (80 – age of deceased)[15]

and living expenses fixed at half of the victim's gross income.

Thus, Señora's net earning capacity was computed to be ₱1,887,847.00.[16]

The CA disposed of the case in this wise:

> WHEREFORE, the Decision dated March 2, 1999 rendered by the Regional Trial Court of Parañaque City, Branch 257 is **AFFIRMED** with the **MODIFICATION** as to the amount representing loss of earnings to ₱1,887,847.00
>
> SO ORDERED.[17]

Petitioners' Motion for Reconsideration was denied in a Resolution dated February 6, 2007.[18]

Petitioners are now before this Court, assailing the CA's Decision and Resolution. They raise the issues of who was negligent in the incident and what was the proximate cause of Señora's death.[19] In particular, they submit the following Assignment of Errors:

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[14] *Rollo*, p. 49.

[15] *Id*.

[16] *Id.* at 50.

[17] *Id*.

[18] *Id.* at 51-52.

[19] *Id.* at 10.

I

THE HONORABLE COURT OF APPEALS GR[IE]VOUSLY ERRED IN HOLDING DEFENDANT ELMER POLLOSO NEGLIGENT UNDER THE OBTAINING CIRCUMSTANCES.

II

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED IN DECLARING THE JOINT NEGLIGENCE OF DEFENDANTS LEOVINO AMPARO AND ELMER POLLOSO TO BE THE PROXIMATE CAUSE OF THE DEATH OF ANTONIETO SEÑORA.

III

THE HONORABLE COURT OF APPEALS ERRED IN ADJUDGING DEFENDANT CIRILO TAMAYO SOLIDARILY LIABLE FOR THE DEATH OF ANTONIETO SEÑORA.[20]

The petition has no merit and is hereby denied.

As a rule, the jurisdiction of this Court in cases brought to it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court.[21]

The issues raised by petitioners are questions of fact necessarily calling for a reexamination and reevaluation of the evidence presented at the trial.

A question of fact arises when the doubt or difference pertains to the truth or falsehood of alleged facts, or when the query necessarily solicits calibration of the whole evidence, considering the credibility of witnesses, the existence and relevance of specific circumstances, and their relation to one another and to the whole situation.[22]

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[20] *Id.* at 18-19.

[21] *Romago Electric Co., Inc. v. Court of Appeals*, 388 Phil. 964, 975 (2000).

[22] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 605-606, citing *The Secretary of Education v. Heirs of Rufino Dulay, Sr.*, G.R. No. 164748, January 27, 2006, 480 SCRA 452, 460.

The Court has consistently ruled that findings of fact of trial courts are entitled to great weight and should not be disturbed, except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of witnesses while testifying. It is not a function of this Court to analyze and weigh evidence all over again.[23] The factual findings of the CA affirming those of the trial court are final and conclusive;[24] hence, they are binding on this Court.

The Court will not disturb such factual findings unless there are compelling or exceptional reasons.[25] No such reasons exist in this case.

The Court holds that the RTC and the CA correctly found Polloso negligent.

To be credible, testimonial evidence should not only come from the mouth of a credible witness but it should also be credible, reasonable, and in accord with human experience.[26] It should be positive and probable such that it is difficult for a rational mind not to find it credible.[27]

If, as Pascual testified, the truck stopped when the tricycle bumped the motorcycle from behind,[28] then there would have been no accident. Even if the motorcycle was nudged into the path of the truck, as she claimed, there would have been no impact if the truck itself was not moving, and certainly not an

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[23] *Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation*, G.R. No. 141715, October 12, 2005, 472 SCRA 445, 451, citing *Uriarte v. People*, 403 Phil. 513, 519 (2001).

[24] *Larena v. Mapili*, 455 Phil. 944, 950 (2003).

[25] *Spouses Francisco v. Court of Appeals*, 449 Phil. 632, 647 (2003).

[26] *People v. Mallari*, 452 Phil. 210, 220 (2003), citing *People v. Atad*, 334 Phil. 235, 248 (1997); *People v. Gonzales*, 396 Phil. 11, 30 (2000); *People v. Magallano*, 334 Phil. 276, 283 (1997).

[27] See *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 556.

[28] TSN, December 10, 1997, p. 871.

impact that would pin the motorcycle's driver under the truck and throw the motorcycle a few meters away.

The Court likewise finds that the CA did not err in upholding Cirilo's solidary liability for Señora's death. The RTC correctly disregarded the testimonies of Cirilo's wife and his employee, leaving no other evidence to support the claim that he had exercised the degree of diligence required in hiring and supervising his employees.

Finally, the Court sustains the award for loss of earning capacity by the CA.

The award of damages for loss of earning capacity is concerned with the determination of losses or damages sustained by respondents, as dependents and intestate heirs of the deceased. This consists not of the full amount of his earnings, but of the support which they received or would have received from him had he not died as a consequence of the negligent act. Thus, the amount recoverable is not the loss of the victim's entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received.[29]

Indemnity for loss of earning capacity is determined by computing the net earning capacity of the victim.[30]

The CA correctly modified the RTC's computation. The RTC had misapplied the formula[31] generally used by the courts to determine net earning capacity, which is, to wit:

Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses).

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[29] *Candano Shipping Lines, Inc. v. Sugata-on*, G.R. No. 163212, March 13, 2007, 518 SCRA 221, 236, citing *Villa Rey Transit, Inc. v. Court of Appeals*, 31 SCRA 511, 517.

[30] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 640.

[31] *Candano Shipping Lines, Inc. v. Sugata-on, supra* note 29, at 235.

Life expectancy shall be computed by applying the formula (2/3 x [80 - age at death]) adopted from the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality.[32] Hence, the RTC erred in modifying the formula and using the retirement age of the members of the PNP instead of "80."

On the other hand, gross annual income requires the presentation of documentary evidence for the purpose of proving the victim's annual income.[33] The victim's heirs presented in evidence Señora's pay slip from the PNP, showing him to have had a gross monthly salary of ₱12,754.00.[34] Meanwhile, the victim's net income was correctly pegged at 50% of his gross income in the absence of proof as regards the victim's living expenses.[35]

Consequently, the Court sustains the award of ₱1,887,847.00 as damages for loss of earning capacity. All other aspects of the assailed Decision are affirmed.

WHEREFORE, the foregoing premises considered, the Decision dated March 22, 2006 and the Resolution dated February 6, 2007 of the Court of Appeals in CA-G.R. CV No. 63171 are hereby *AFFIRMED*.

SO ORDERED.

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

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[32] *Id.* at 235-236, citing *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 393 (2005).

[33] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598, 615.

[34] Records, p. 160.

[35] *Licyayo v. People*, *supra* note 33, at 616.

THIRD DIVISION

[G.R. No. 178899. November 15, 2010]

PHILIPPINE BUSINESS BANK, *petitioner, vs.* **FELIPE CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS; WHERE THE FACTS APPEAR UNDISPUTED FROM THE PLEADINGS, THE COURT IS ALLOWED TO DECIDE THE CASE SUMMARILY BY APPLYING THE LAW TO THE MATERIAL FACTS.— PBB's motion for partial summary judgment against respondent Chua was based on Section 1, Rule 35 of the Rules, which provides: Section 1. *Summary Judgment for claimant.* — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. A summary judgment, or accelerated judgment, is a procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.

2. ID.; ID.; ID.; PARTIAL SUMMARY JUDGMENT; SPECIFIES THE DISPUTED FACTS THAT HAVE TO BE SETTLED IN THE COURSE OF TRIAL; AKIN TO A RECORD OF PRE-TRIAL, AN INTERLOCUTORY ORDER, RATHER THAN A FINAL JUDGMENT.— The rendition by the court of a summary judgment does not always result in the full adjudication of all the issues raised in a case. For these instances, Section 4, Rule 35 of the Rules provides: Section

4. *Case not fully adjudicated on motion*. – If on motion under this Rule, **judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary**, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an **order specifying the facts that appear without substantial controversy**, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. **The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly**. This is what is referred to as a partial summary judgment. A careful reading of this section reveals that a partial summary judgment was never intended to be considered a "final judgment," as it does not "[put] an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for." The Rules provide for a partial summary judgment as a means to *simplify* the trial process by allowing the court to focus the trial only on the assailed facts, considering as established those facts which are not in dispute. After this sifting process, the court is instructed to issue an order, the partial summary judgment, which specifies the disputed facts that have to be settled in the course of trial. In this way, the partial summary judgment is more akin to a record of pre-trial, an interlocutory order, rather than a final judgment.

3. ID.; ID.; JUDGMENTS; FINAL JUDGMENT DISTINGUISHED FROM AN INTERLOCUTORY ORDER.— The differences between a "final judgment" and an "interlocutory order" are well-established. We said in *Denso (Phils.) Inc. v. Intermediate Appellate Court* that: [A] final judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights

and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move . . . and ultimately, of course, to cause the execution of the judgment once it becomes "*final*" or, to use the established and more distinctive term, "*final and executory*." x x x Unlike a ***final*** **judgment or order, which is appealable, as above pointed out, an interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case**.

4. ID.; ID.; SUMMARY JUDGMENTS; PARTIAL SUMMARY JUDGMENT; AN INTERLOCUTORY ORDER NEVER MEANT TO BE TREATED SEPARATELY FROM THE MAIN CASE.— [T]he partial summary judgment envisioned by the Rules is an interlocutory order that was never meant to be treated separately from the main case. As we explained in *Guevarra v. Court of Appeals*: It will be noted that the judgment in question is a "partial summary judgment." It was rendered only with respect to the private respondents' first and second causes of action alleged in their complaint. It was not intended to cover the other prayers in the said complaint, nor the supplementary counterclaim filed by the petitioners against the private respondents, nor the third-party complaint filed by the petitioners against the Security Bank and Trust Company. **A partial summary judgment "is not a final or appealable judgment**." (Moran, Vol. 2, 1970 Edition, p. 189, citing several cases.) "**It is merely a pre-trial adjudication that said issues in the case shall be deemed established for the trial of the case**." (Francisco, Rules of Court, Vol. II, p. 429.) xxx The partial summary judgment rendered by the trial court being merely interlocutory and not 'a final judgment,' it is puerile to discuss whether the same became final and executory due to the alleged failure to appeal said judgment within the supposed period of appeal. What the rules contemplate is that **the appeal from the partial summary judgment shall be taken together with the judgment that may be rendered in the entire case after a trial is conducted on the material facts on which a substantial controversy exists**. This is on the assumption that the partial summary judgment was validly rendered, which, as shown above, is not true in the case at bar.

5. ID.; ID.; ID.; ID.; ID.; PROPER REMEDY TO ASSAIL THE SAME IS *NOT CERTIORARI* BUT APPEAL ONCE ALL THE

ISSUES HAVE BEEN COMPLETELY RESOLVED IN THE FINAL JUDGMENT.— The propriety of the summary judgment may be corrected only on appeal or other direct review, not a petition for *certiorari*, since it imputes error on the lower court's judgment. It is well-settled that *certiorari* is not available to correct errors of procedure or mistakes in the judge's findings and conclusions of law and fact. As we explained in *Apostol v. Court of Appeals*: As a legal recourse, the special civil action of *certiorari* is a limited form of review. The jurisdiction of this Court is narrow in scope; it is restricted to resolving errors of jurisdiction, not errors of judgment. Indeed, as long as the courts below act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review. In light of these findings, we affirm the CA's ruling that the partial summary judgment is an interlocutory order which could not become a final and executory judgment. xxx [T]his issue would be better resolved in the proper appeal, to be taken by the parties once the court *a quo* has completely resolved all the issues involved in the present case in a final judgment. If we were to resolve this issue now, we would be preempting the CA, which has primary jurisdiction over this issue. Lastly, taking jurisdiction over this issue now would only result in multiple appeals from a single case which concerns the same, or integrated, causes of action.

APPEARANCES OF COUNSEL

Arturo S. Santos Law Office for petitioner.
Isidro S. Escano for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Philippine Business Bank (*PBB*) challenging the decision of the Court of Appeals (*CA*) in CA-G.R. SP No. 94883 dated

[1] Under Rule 45 of the Rules of Court, *rollo*, pp. 12-33.

February 8, 2007,[2] insofar as it overturned the Regional Trial Court's (*RTC*'s) order dated December 16, 2005 declaring the finality of its Partial Summary Judgment and granting the issuance of a writ of execution against respondent Felipe Chua (*respondent Chua*). PBB also seeks to overturn the resolution of the CA dated July 18, 2007, which denied its motion for reconsideration.

FACTUAL ANTECEDENTS

From the records, the following facts are not in dispute.

On March 22, 2002, Tomas Tan (*Tan*), a stockholder and director/Treasurer of CST Enterprises, Inc. (*CST*), filed a derivative suit for the Declaration of Unenforceability of Promissory Notes and Mortgage, Nullity of Secretary's Certificate, Injunction, Damages with Prayer for the Issuance of Temporary Restraining Order/Writ of Preliminary Injunction against PBB, Francis Lee, Alfredo Yao, Rodulfo Besinga, Stephen Taala, Rose Robles, Henry Ramos, Yu Heng, Mabuhay Sugar Central, Inc., Nancy Chan, Henry Chan, John Dennis Chua, Jaime Soriano, Voltaire Uychutin, Peter Salud, Edgar Lo, respondent Felipe Chua, and John Does before the Makati City Regional Trial Court.[3]

In Tan's amended complaint dated January 9, 2003, he alleged that sometime in February 2001, before he went abroad for medical treatment, he turned over to respondent Chua, a director and the President of CST, the original copies of Transfer Certificate of Title Nos. 124275 and 157581, titles to lands owned by, and registered in the name of, CST. In January 2002, the respondent informed him that CST's properties had been fraudulently used as collateral for loans allegedly taken out in CST's name, but without proper authority from CST stockholders and/or the Board of Directors.[4]

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[2] Penned by Associate Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justice Mariano C. Del Castillo (now a Member of this Court), and Associate Justice Lucenito N. Tagle, *id.* at 40-53.

[3] Docketed as Civil Case No. 02-299.

[4] *Rollo*, pp. 62-65.

From his investigation, Tan discovered that **a certain Atty. Jaime Soriano had issued a Secretary's certificate, which stated that John Dennis Chua was authorized during a duly constituted CST board meeting to open a bank account and obtain credit facilities under the name of CST with PBB. This Secretary's Certificate also authorized John Dennis Chua to use CST's properties as security for these loans**.[5] Using this Secretary's Certificate, John Dennis Chua took out loans with PBB in the total amount of Ninety-One Million One Hundred Thousand Pesos (₱91,100,000.00),[6] and used CST properties as collateral.[7] **Respondent Chua signed as co-maker with John Dennis Chua, who signed both as the representative of CST, as well as in his personal capacity, on six promissory notes to PBB to evidence parts of this loan.**[8]

When PBB threatened to foreclose the mortgage on these properties after CST defaulted,[9] Tan filed the present complaint, essentially arguing that the loans/promissory notes and mortgage made out in CST's name are unenforceable against it, since they were entered into by persons who were unauthorized to bind the company.[10]

In its Amended Answer,[11] PBB claimed that the loans to CST, as well as the corresponding mortgage over CST properties, were all valid and binding since the loan applications and documents accomplished by John Dennis Chua were supported by the duly accomplished secretary's certificate, which authorized him to obtain credit facilities in behalf of CST. In addition, the original copies of the titles to the properties were offered to PBB as collaterals.

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[5] *Id.* at 65.

[6] *Id.* at 78.

[7] *Id.* at 80.

[8] *Id.* at 76.

[9] *Id.* at 95.

[10] *Ibid.*

[11] *Id.* at 105-198.

PBB's Amended Answer also included a cross-claim against respondent Chua, demanding payment of the promissory notes he signed as co-maker with John Dennis Chua.[12]

In respondent Chua's Answer to the Cross-Claim of PBB,[13] he claimed that he never applied for a loan with the PBB. He further denied authorizing John Dennis Chua to apply for any loans in CST's name, or to use CST properties as security for any loans.[14] Nevertheless, **he admitted that he signed, as co-maker, six promissory notes covering the loans obtained by John Dennis Chua with PBB.** According to respondent Chua, he executed these promissory notes after the loans had already been consummated, "in a sincere effort to persuade John Dennis Chua to pay off the unauthorized loan and retrieve from cross-claimant PBB the CST titles."[15]

PBB subsequently filed a Motion for Partial Summary Judgment based on Section 1, Rule 35 of the 1997 Rules of Civil Procedure (*Rules*), claiming that since respondent Chua already admitted the execution of the promissory notes in favor of PBB amounting to Seventy Five Million Pesos (₱75,000,000.00),[16] insofar as its cross-claim against him was concerned, there was no genuine issue on any material fact on the issue of his liability to PBB.

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[12] *Id.* at 190.

[13] *Id.* at 209-214.

[14] *Id.* at 209.

[15] *Id.* at 210.

[16] Summary of Promissory Notes

Date of Promissory Notes	Due Date	Amount
April 17, 2001	April 12, 2002	₱10,000,000.00
April 5, 2001	April 1, 2002	12,000,000.00
April 25, 2001	April 19, 2002	23,000,000.00
June 20, 2001	June 14, 2002	8,000,000.00
June 22, 2001	June 17, 2002	7,000,000.00
June 28, 2001	June 24, 2002	15,000,000.00

Id. at 224-229.

PBB argued that although respondent Chua claimed that he signed the promissory notes merely to persuade John Dennis Chua to pay off his loan to PBB, he was still liable as an accommodation party under Section 29 of the Negotiable Instruments Law.[17]

THE RTC'S PARTIAL SUMMARY JUDGMENT

Acting on PBB's motion, the RTC issued a partial summary judgment on PBB's cross-claim on July 27, 2005, finding respondent Chua liable as a signatory to the promissory notes amounting to Seventy-Five Million Pesos (₱75,000,000.00). The RTC reasoned that by signing as a co-maker, he obligated himself to pay the amount indicated in the promissory notes, even if he received no consideration in return. Thus, the RTC ordered him to pay PBB the amount of ₱75,000,000.00, plus interests and costs.[18]

In its order dated December 16, 2005, the RTC resolved respondent Chua's Notice of Appeal, as well as PBB's Motion to Disallow Appeal and to Issue Execution. Citing Section 1, Rule 41 of the Rules, the RTC ruled that respondent Chua could not file a notice of appeal. Instead, he should have filed a special civil action for *certiorari* under Rule 65 of the Rules. However, since the period for filing a *certiorari* petition had already lapsed without respondent filing any petition, the partial summary judgment had become final and executory. Thus, it ordered the issuance of a writ of execution for the satisfaction of the partial summary judgment in favor of PBB.[19]

On December 21, 2005, the RTC issued an order appointing Renato Flora as the special sheriff to implement the writ of

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[17] Section 29. *Liability of accommodation party*. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefore and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

[18] *Rollo*, pp. 254-257.

[19] *Id.* at 258-260.

execution. In line with this order, Renato Flora, on December 23, 2005, issued a Notice of Levy and Sale on Execution of Personal Properties, addressed to respondent Chua. He proceeded with the execution sale, and on December 28, 2005, he issued a certificate of sale over respondent Chua's 900 shares of stock in CST in favor of PBB. He also posted a notice of sheriff's sale on January 10, 2006 over respondent Chua's five parcels of land located in Las Pinas, Pasay City, and Muntinlupa.[20]

THE COURT OF APPEALS DECISION

Respondent Chua filed a petition for *certiorari* and *mandamus* with the CA to challenge: (a) the December 16, 2005 order, granting PBB's motion to disallow his appeal; (b) the December 21, 2005 order, granting PBB's motion to appoint Renato Flora as special sheriff to implement the writ of execution; and (c) the February 16, 2006 order denying his motion for reconsideration and to suspend execution. In essence, respondent Chua alleged that the RTC acted with grave abuse of discretion in disallowing his appeal of the partial summary judgment, and in issuing a writ of execution. Significantly, respondent Chua did not question the propriety of the partial summary judgment.

On February 8, 2007, the CA issued the assailed decision, partly affirming the RTC order dated December 16, 2005 on the matter of the disallowance of respondent Chua's appeal. The CA held that respondent Chua could not appeal the partial summary judgment while the main case remained pending, in keeping with Section 1(g), Rule 41 of the Rules.

However, the CA held that the RTC committed grave abuse of discretion when it issued the writ of execution against respondent Chua. As found by the CA, the RTC grievously erred when it held that the partial judgment had become final and executory when respondent Chua failed to avail of the proper remedy of *certiorari* within the 60 day reglementary period under Rule 65. Since a partial summary judgment does not finally dispose of the action, it is merely an interlocutory, not a final, order. Thus, it could not attain finality.

[20] *Id.* at 285-286.

The CA further noted that *certiorari* is an independent action and not part of the appeal proceedings, and failure to file a *certiorari* petition would **not** result in the finality of the judgment or final order. The RTC, thus, committed grave abuse of discretion amounting to lack of jurisdiction when it granted the issuance of a writ of execution, and the corresponding writ of execution issued by the court *a quo*, as well as the subsequent implementing proceedings, were void.

THE PETITION

PBB submits two issues for our resolution:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN APPLYING JURISPRUDENCE NOT ON ALL FOURS [WITH] THE FACTUAL BACKDROP OF THE CASE.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN RECALLING AND SETTING ASIDE THE WRIT OF EXECUTION AND ALL THE PROCEEDINGS TAKEN FOR ITS IMPLEMENTATION ON THE WRONG NOTION THAT THE PARTIAL SUMMARY JUDGMENT HAS NOT BECOME FINAL AND EXECUTORY.

THE RULING

We **DENY** the petition for being unmeritorious.

Nature of Partial Summary Judgment

PBB's motion for partial summary judgment against respondent Chua was based on Section 1, Rule 35 of the Rules, which provides:

> Section 1. *Summary Judgment for claimant.* — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

A summary judgment, or accelerated judgment, is a procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial.[21] When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.[22]

The rendition by the court of a summary judgment does not always result in the full adjudication of all the issues raised in a case. For these instances, Section 4, Rule 35 of the Rules provides:

Section 4. *Case not fully adjudicated on motion*. – If on motion under this Rule, **judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary**, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an **order specifying the facts that appear without substantial controversy,** including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. **The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly.**

This is what is referred to as a partial summary judgment. A careful reading of this section reveals that a partial summary judgment was never intended to be considered a "final judgment," as it does not "[put] an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover

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[21] *Monterey Foods Corporation v. Eserjose*, G.R. No. 153126, September 11, 2003, 410 SCRA 627, 632.

[22] *Bungcayao v. Fort Ilocandia Property Holdings*, G.R. No. 170483, April 19, 2010.

the remedy he sues for."[23] The Rules provide for a partial summary judgment as a means to *simplify* the trial process by allowing the court to focus the trial only on the assailed facts, considering as established those facts which are not in dispute.

After this sifting process, the court is instructed to issue an order, the partial summary judgment, which specifies the disputed facts that have to be settled in the course of trial. In this way, the partial summary judgment is more akin to a record of pre-trial,[24] an interlocutory order, rather than a final judgment.

The differences between a "final judgment" and an "interlocutory order" are well-established. We said in *Denso (Phils.) Inc. v. Intermediate Appellate Court*[25] that:

> [A] final judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move . . . and ultimately, of course, to cause the execution of the judgment once it becomes "*final*" or, to use the established and more distinctive term, "*final and executory*."
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[23] *Black's Law Dictionary*, Fifth Edition, p. 756 (1979).

[24] Defined in Section 7, Rule 18 of the Rules, which states:

> Sec. 7. *Record of pre-trial.* — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

[25] G.R. No. 75000, February 27, 1987, 148 SCRA 280.

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules x x x **Unlike a *final* judgment or order, which is appealable, as above pointed out, an interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**[26]

Bearing in mind these differences, there can be no doubt that the **partial summary judgment envisioned by the Rules is an interlocutory order that was never meant to be treated separately from the main case.** As we explained in *Guevarra v. Court of Appeals*:[27]

It will be noted that the judgment in question is a "partial summary judgment." It was rendered only with respect to the private respondents' first and second causes of action alleged in their complaint. It was not intended to cover the other prayers in the said complaint, nor the supplementary counterclaim filed by the petitioners against the private respondents, nor the third-party complaint filed by the petitioners against the Security Bank and Trust Company. **A partial summary judgment "is not a final or appealable judgment."** (Moran, Vol. 2, 1970 Edition, p. 189, citing several cases.) **"It is merely a pre-trial adjudication that said issues in the case shall be deemed established for the trial of the case."** (Francisco, Rules of Court, Vol. II, p. 429.)

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[26] *Id*. at 286-287, citing *Investments, Inc. v. Court of Appeals*, 147 SCRA 334 (1987); *PLDT Employees' Union v. PLDT Co. Free Tel. Workers' Union*, 97 Phil. 424 (1955), citing Moran, *Comments on the Rules*, 1952 ed., Vol. I, pp. 894-895, *Nico v. Blanco*, 81 Phil. 213 (1948) and *Hodges v. Villanueva*, 90 Phil. 255 (1951); *Mejia v. Alimorong*, 4 Phil. 572 (1905); *Rios v. Ros*, 79 Phil. 243 (1947); *Kapisanan ng mga Manggagawa sa MRR Co. v. Yard Crew Union, et al.*, 109 Phil. 1143 (1960); *Antonio v. Samonte*, 1 SCRA 1072 (1961); *Acting Director, National Bureau of Investigation v. Hon. Caluag, et al.*, 2 SCRA 536 (1961); *Bairan v. Tan Siu Lay, et al.*, 18 SCRA 1235 (1966); *Dela Cruz v. Hon. Paras and San Miguel*, 69 SCRA 556 (1976); *Valdez v. Hon. Bagaso, et al.*, 82 SCRA 22 (1978).

[27] G.R. No. L-49017, August 30, 1983, 124 SCRA 297.

The partial summary judgment rendered by the trial court being merely interlocutory and not 'a final judgment,' it is puerile to discuss whether the same became final and executory due to the alleged failure to appeal said judgment within the supposed period of appeal. What the rules contemplate is that **the appeal from the partial summary judgment shall be taken together with the judgment that may be rendered in the entire case after a trial is conducted on the material facts on which a substantial controversy exists.** This is on the assumption that the partial summary judgment was validly rendered, which, as shown above, is not true in the case at bar.[28]

We reiterated this ruling in the cases of *Province of Pangasinan v. Court of Appeals*[29] and *Government Service Insurance System v. Philippine Village Hotel, Inc.*[30]

Applicability of Guevarra

PBB asserts that our pronouncement in the cases of *Guevarra*, *Province of Pangasinan*, and *Government Service Insurance System* cannot be applied to the present case because these cases involve factual circumstances that are completely different from the facts before us. While the partial summary judgments in the cited cases decided only some of the causes of action presented, leaving other issues unresolved, PBB insists that as far as its cross-claim against respondent Chua is concerned, the court *a quo*'s partial summary judgment is a full and complete adjudication because the award is for the whole claim.[31] According to PBB, whatever the court decides as regards the main case, this will not affect the liability of respondent Chua as a solidary debtor in the promissory notes, since the creditor can proceed against any of the solidary debtors. In other words, no substantial controversy exists between PBB and respondent Chua, and there is nothing more to be done on this particular issue.

We do not agree with PBB's submission.

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[28] *Id.* at 315-316.

[29] G.R. No. 104266, March 31, 1993, 220 SCRA 726.

[30] G.R. No. 150922, September 21, 2004, 438 SCRA 567.

[31] *Rollo*, p. 368.

In the *Guevarra* case, the Court held that the summary judgment rendered by the lower court was in truth a partial summary judgment because it failed to resolve the other causes of action in the complaint, as well as the counterclaim and the third party complaint raised by the defendants.

Contrary to PBB's assertions, the same could be said for the case presently before us. The partial summary judgment in question resolved only the cross-claim made by PBB against its co-defendant, respondent Chua, based on the latter's admission that he signed promissory notes as a co-maker in favor of PBB. This is obvious from the dispositive portion of the partial summary judgment, quoted below for convenient reference:

WHEREFORE, a partial summary judgment is hereby rendered on the cross-claim of cross-defendant Philippine Business Bank against cross-defendant Felipe Chua, ordering the latter to pay the former as follows:

1. The amount of Ten Million (₱10,000,000.00) Pesos, representing the value of the Promissory Note dated April 17, 2001, plus interest thereof at the rate of 16% from April 12, 2002, until fully paid;

2. The amount of Twelve Million (₱12,000,000.00) Pesos, representing the value of the Promissory Note dated April 5, 2001, plus interest thereon at the rate of 17% from April 1, 2002, until fully paid;

3. The amount of Twenty Three Million (₱23,000,000.00) Pesos, representing the value of the Promissory Note dated April 25, 2001, plus interest thereon at the rate of 16% from April 19, 2002, until fully paid;

4. The amount of Eight Million (₱8,000,000.00) Pesos, representing the value of the Promissory Note dated June 20, 2001, plus interest thereon at the rate of 17% from June 20, 2001, until fully paid;

5. The amount of Seven Million (₱7,000,000.00) Pesos, representing the value of the Promissory Note dated June 22, 2001, plus interest thereon at the rate of 17% from June 17, 2002, until fully paid;

6. The amount of Fifteen Million (₱15,000,000.00) Pesos, representing the value of the Promissory Note dated June 28, 2001, plus interest thereon at the rate of 17% from June 24, 2002, until fully paid;

7. Plus cost of suit.

SO ORDERED. [32]

Clearly, this **partial summary judgment did not dispose of the case as the main issues raised in plaintiff Tomas Tan's complaint,** *i.e.*, the validity of the secretary's certificate which authorized John Dennis Chua to take out loans, and execute promissory notes and mortgages for and on behalf of CST, as well as the validity of the resultant promissory notes and mortgage executed for and on behalf of CST, **remained unresolved**.

Chua shares common interest with co-defendant- debtors

Still, PBB insists that the partial summary judgment is a final judgment as regards PBB's cross-claim against respondent Chua since respondent Chua's liability will not be affected by the resolution of the issues of the main case.

On its face, the promissory notes were executed by John Dennis Chua in two capacities – as the alleged representative of CST, and in his personal capacity. Thus, while there can be no question as to respondent Chua's liability to PBB (since he already admitted to executing these promissory notes as a co-maker), still, the court *a quo*'s findings on: (a) whether John Dennis Chua was properly authorized to sign these promissory notes on behalf of CST, and (b) whether John Dennis Chua actually signed these promissory notes in his personal capacity, would certainly have the effect of determining whether respondent Chua has the right to go after CST and/or John Dennis Chua for reimbursement on any payment he makes on these promissory notes, pursuant to Article 1217 of the Civil Code, which states:

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[32] Annex "K", Petition; *rollo,* pp. 254-257.

Article 1217. 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 the payment may claim from his co-debtors only 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.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

In other words, PBB has a common cause of action against respondent Chua with his alleged co-debtors, John Dennis Chua and CST, it would simply not be proper to treat respondent Chua separately from his co-debtors.

Moreover, we cannot turn a blind eye to the clear intention of the trial court in rendering a partial summary judgment. Had the trial court truly intended to treat PBB's cross-claim against respondent Chua separately, it could easily have ordered a separate trial *via* Section 2, Rule 31 of the Rules, which states:

Section 2. Separate trials. – The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues.

That the trial court did not do so belies PBB's contention.

It has also not escaped our attention that **PBB**, in its Motion to Disallow Appeal and to Issue Execution Against Cross-Defendant Felipe Chua,[33] **already admitted that the partial summary judgment is not a judgment or final order that completely disposes of the case**. In its own words:

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3. However, the remedy availed of by [respondent Chua] is patently erroneous because under Rule 41 Section 1 of the Rules of Court,

[33] *Id.* at 429-434.

an appeal may be taken only from a judgment or final order that completely disposes the case;

4. **The judgment rendered by [the RTC] dated July 27, 2005 is only a partial summary judgment against [respondent Chua], on the crossclaim of cross-claimant Philippine Business Bank. The main case which involves the claim of plaintiffs against the principal defendants is still pending and has not yet been adjudged** by [the RTC].[34]

Thus, PBB cannot now be allowed to deny the interlocutory nature of the partial summary judgment.

Certiorari not the proper remedy

PBB also maintains that the partial summary judgment attained finality when respondent Chua failed to file a *certiorari* petition, citing the last paragraph of Section 1, Rule 41 of the Rules as basis. We quote:

Section 1. Subject of appeal. – An appeal maybe taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

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(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third party complaints, while the main case is pending, unless the court allows an appeal therefrom;

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In all the above instances where the judgment, or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Contrary to PBB's contention, however, *certiorari* was not the proper recourse for respondent Chua. The propriety of the summary judgment may be corrected only on appeal or

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[34] *Id.* at 430.

other direct review, not a petition for *certiorari*,[35] since it imputes error on the lower court's judgment. It is well-settled that *certiorari* is not available to correct errors of procedure or mistakes in the judge's findings and conclusions of law and fact.[36] As we explained in *Apostol v. Court of Appeals*:[37]

> As a legal recourse, the special civil action of *certiorari* is a limited form of review. The jurisdiction of this Court is narrow in scope; it is restricted to resolving errors of jurisdiction, not errors of judgment. Indeed, as long as the courts below act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[38]

In light of these findings, we affirm the CA's ruling that the partial summary judgment is an interlocutory order which could not become a final and executory judgment, notwithstanding respondent Chua's failure to file a *certiorari* petition to challenge the judgment. Accordingly, the RTC grievously erred when it issued the writ of execution against respondent Chua.

In view of this conclusion, we find it unnecessary to resolve the issue raised by respondent Chua on the validity of the RTC's appointment of a special sheriff for the implementation of the execution writ.

Propriety of Summary Judgment Reserved for Appeal

As a final point, we note that respondent Chua has raised with this Court the issue of the propriety of the partial summary judgment issued by the RTC. Notably, respondent Chua never raised this issue in his petition for *certiorari* before the CA. It is well settled that no question will be entertained on appeal

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[35] See *Heirs of Roxas v. Garcia*, G.R. No. 146208, August 12, 2004, 436 SCRA 253.

[36] *La Campana Development Corporation v. See*, G.R. No. 149195, June 26, 2006, 492 SCRA 584.

[37] G.R. No. 141854, October 15, 2008, 569 SCRA 80.

[38] *Id.* at 92.

unless it has been raised in the proceedings below.[39] Basic considerations of due process impel the adoption of this rule.[40]

Furthermore, this issue would be better resolved in the proper appeal, to be taken by the parties once the court *a quo* has completely resolved all the issues involved in the present case in a final judgment. If we were to resolve this issue now, we would be preempting the CA, which has primary jurisdiction over this issue.

Lastly, taking jurisdiction over this issue now would only result in multiple appeals from a single case which concerns the same, or integrated, causes of action. As we said in *Santos v. People*:[41]

> Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case would necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit and *AFFIRM* the Decision of the Court of Appeals in CA-G.R. SP No. 94883 dated February 8, 2007, as well as its Resolution dated July 18, 2007. Costs against the petitioner, Philippine Business Bank.

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[39] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010. See *Sanchez, et al. v. Court of Appeals, et al.*, G.R. No. 108947, September 29, 1997, 279 SCRA 647; *Chua v. Timan*, G.R. No. 170452, August 13, 2008, 562 SCRA 146, citing *Lim v. Queensland Tokyo Commodities, Inc.*, 373 SCRA 31, 41 (2002).

[40] *Genesis Transport Service, Inc. v. Unyon ng Malayang Manggagawa ng Genesis Transport*, G.R. No. 182114, April 5, 2010, citing *Pag-Asa Steel Works v. Court of Appeals*, 486 SCRA 475 (2006).

[41] G.R. No. 173176, August 26, 2008, 563 SCRA 341, 359, citing *Sitchon v. Sheriff of Occidental Negros*, 80 Phil. 397, 399 (1948).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179487. November 15, 2010]

ROMEO ILISAN *y* PIABOL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** The Court generally defers to the trial court's evaluation of the credibility of witnesses and their testimonies, for it is in a better position to decide questions of credibility, having heard the witnesses themselves and observed their attitude and deportment during trial. In the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, we are doctrinally bound by the trial court's assessment of the credibility of witnesses. The application of this rule becomes even more stringent when such findings are sustained by the appellate court, as in the present case.

2. **ID.; ID.; ID.; NOT AFFECTED BY THE FACT THAT WITNESSES ARE RELATIVES OF THE VICTIM, AND THAT THERE WAS NO ILL-MOTIVE.—** The fact that Gabriel Gaton is the victim's brother does not impair his credibility as a witness. Relationship by itself does not give rise to a presumption of bias or ulterior motive, nor does it *ipso facto* diminish the credibility or tarnish the testimony of a witness. On the contrary, a witness' relationship to a victim of a crime

would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the culprit. The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would actually deter them from implicating persons other than the true culprits. x x x [A]side from the prosecution witnesses' relationship with the other participants in the fight, petitioner failed to show any other basis for the ill motive he imputes against them. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.

3. ID.; ID.; PARAFFIN TEST FOR DISCHARGE OF FIREARM; NEGATIVE RESULTS THEREOF, NOT CONCLUSIVE.— Petitioner's reliance on the negative results of the paraffin test conducted on him the day after the fateful event must fail. Our ruling in *People v. Manalo,* is *apropos:* [E]ven if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol. Indeed, paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun. Conversely, the absence of gunpowder nitrates on petitioner's hands, the day after the incident, does not conclusively establish that he did not fire a gun; neither are the negative results yielded by the paraffin test an insurmountable proof of his innocence. x x x Thus, the positive, clear, and categorical testimonies of the three eyewitnesses to the crime deserve full merit in both probative weight and credibility over the negative results of the paraffin test conducted on petitioner and his witnesses' anomalous claims.

4. CRIMINAL LAW; HOMICIDE; PENALTY AND APPLYING THE INDETERMINATE SENTENCE LAW. – Homicide is punishable by *reclusion temporal.* There being no mitigating or aggravating circumstance proven in the case at bar, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve (12) years). Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, imposed by the RTC, and affirmed with modification by the CA, is correct.

5. ID.; ID.; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND ACTUAL DAMAGES, AWARDED.— Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is proper. Moral damages must also be awarded because these are mandatory in cases of homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is correct. x x x Actual damages pertain to the actual expenses incurred by the victim's heirs in relation to his death, *i.e.*, burial and funeral expenses. To justify an award therefor, it is necessary for a party to produce competent proof or the best evidence obtainable, such as receipts.

APPEARANCES OF COUNSEL

Vallestero & Associates Law Office for petitioner.
The Solicitor General 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, assailing the August 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 29937, which affirmed with modification the June 14, 2005 decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding petitioner Romeo Ilisan guilty beyond reasonable doubt of homicide.

The RTC and the CA similarly arrived at the following factual findings:

On February 3, 2002, a baptismal celebration was held at the residence of Ricky Silva in Barangay Nagkaisang Nayon, Novaliches, Quezon City. Among those who attended were petitioner and one Joey Gaton (Gaton). They belonged to different groups of guests.[3]

While Gaton and petitioner were having a drinking spree with their respective groups, one of petitioner's companions apparently got irked by the way Gaton looked at him. This prompted petitioner and his companions to maul Gaton. A melee then ensued; in the course of which, petitioner shot Gaton at the abdomen, causing the latter's instantaneous death.[4] The gun used by petitioner was a .45 caliber pistol.

On February 7, 2002, an Information for murder was filed against petitioner with the RTC of Quezon City, Branch 81, *viz.*:

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[1] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring; *rollo*, pp. 38-48.

[2] CA *rollo*, pp. 42-51.

[3] *Id.* at 43.

[4] *Id.*; Certificate of Death of Joey Gaton (Records, p. 15); The medico-legal report concluded that Joey Gaton's cause of death was hemorrhagic shock secondary to gunshot wound of the abdomen (Records, p. 143).

That on or about 3rd day of February, 2002, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and feloniously with intent to kill, and with treachery and evident premeditation and with use of superior strength assault, attack and employ personal violence upon the person of one JOEY GATON *Y* GARALDE, by then and there shooting him with a gun hitting him on his trunk, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of JOEY GATON *Y* GARALDE.

CONTRARY TO LAW.[5]

When arraigned on March 18, 2002, petitioner pleaded not guilty to the offense charged.[6]

Evidence for the prosecution consisted mainly of the testimonies of Gabriel Gaton, the victim's brother, Marlon Dellamas, and Edgardo Dag-um, both neighbors of the victim, who all positively identified petitioner as the gunman. Gabriel Gaton was summoned to the place of the incident while his brother was being mauled; Marlon Dellamas went to the scene of the incident to look for his brother Jojo; and Edgardo Dag-um was at the place where the mauling and shooting transpired.

In his defense, petitioner and his witnesses, Jomarie Ilisan and Jaime Escasinas, petitioner's brother and cousin, respectively, claimed that another guest, Chito Partisala, a jail guard in Bicutan, was the assailant. The defense also presented Engineer Leonard Jabonillo, Forensic Chemist of the Central Police District Crime Laboratory, who testified that petitioner tested negative for gunpowder residue when paraffin tests were conducted on him a day after the incident.

In its June 14, 2005 decision, the RTC accorded more weight to the positive testimonies of the prosecution witnesses over the declarations of the defense. There being no adequate proof that treachery and evident premeditation qualified the killing of Gaton, the RTC convicted petitioner of homicide, *viz*.:

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[5] Records, p. 1.

[6] *Id.* at 32.

IN VIEW OF THE FOREGOING, the Court finds accused ROMEO ILISAN *y* PIABOL guilty beyond reasonable doubt of the crime of Homicide punishable under Article 249 of the Revised Penal Code. Applying the provisions of the Indeterminate Sentence Law and there being no mitigating or aggravating circumstances, the accused is hereby sentenced to suffer imprisonment for a term ranging from eight years and one day of *prision mayor* as minimum to fourteen years and eight months of *reclusion temporal* as maximum, and to indemnify the heirs of the deceased in the amounts of ₱75,000.00 as actual damages, ₱50,000.00 for the death of the victim and ₱50,000.00 as moral damages.

The period during which said accused was under detention should be deducted from the service of his sentence. Let a mittimus order be issued for service of sentence.[7]

On appeal to the CA, petitioner questioned the credibility of the prosecution witnesses who allegedly harbored ill motive against him because they were either related to the victim or to one of the participants in the commotion. Petitioner also argued that the negative results of the paraffin residue test conducted on him strongly indicate his innocence.[8]

In a Decision dated August 23, 2007, the CA affirmed the RTC's finding of guilt, but modified the amount of actual damages awarded and the maximum period of the penalty imposed by adding one (1) more day thereto, *viz*.:

WHEREFORE, the trial court's Decision dated June 14, 2005 is affirmed, subject to the modification of the maximum period of the indeterminate sentence to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, and the reduction of the award of actual damages to ₱58,520.00.[9]

Hence, the present petition wherein petitioner reiterates the issues he raised before the CA.

We deny the petition.

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[7] *Supra* note 2, at 50-51.

[8] Brief for the Appellant; CA *rollo*, pp. 65-87.

[9] *Supra* note 1, at 47.

The Court generally defers to the trial court's evaluation of the credibility of witnesses and their testimonies, for it is in a better position to decide questions of credibility, having heard the witnesses themselves and observed their attitude and deportment during trial.[10] In the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[11] The application of this rule becomes even more stringent when such findings are sustained by the appellate court,[12] as in the present case.

We see no misappreciation of facts committed by the courts *a quo*, which were uniform in their reliance on the prosecution's version. Both were correct in concluding that the identity of petitioner and his actual shooting of Gaton were established beyond moral certainty through the testimonies of three (3) witnesses, namely: (i) Gabriel Gaton, who was summoned to the place of the incident while his brother Gaton was being mauled; (ii) Marlon Dellamas, who went to the scene of the incident to look for his brother; and (iii) Edgardo Dag-um, who was in the vicinity when the shooting transpired. Their ensuing testimonies are notable:

Gabriel Gaton:

Q: When Helen Dellamas went to your house and told you that your brother was being mauled, what did you do, if you did anything?

A: We went to the place and we saw a person holding a gun.

Q: You said that you went to the place, where was this place located?

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[10] *People v. Dela Cruz*, G.R. No. 184792, October 12, 2009, 603 SCRA 455, 464.

[11] *People v. Ballesta*, G.R. No. 181632, September 25, 2008, 566 SCRA 400, 416; *People v. Benito*, 363 Phil. 90, 98 (1999).

[12] *People v. Ballesta*, *supra*, at 416; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

A: Near our house, sir.

Q: Now, you said that you saw a man when you went there, what else did you see?

A: I saw him pointing a gun at my brother Joey.

Q: How far were you when you saw that man who was pointing a gun at your brother Joey?

A: (Witness indicating a distance of 10 meters more or less.)

Q: And how far was the man with a gun from your brother Joey?

A: (Witness indicating a distance of 2 meters.)

Q: What was the position of your brother Joey when the man was pointing his gun to your brother Joey?

A: Sidewise, sir.

Q: What happened after you saw the man pointing a gun at your brother?

A: I shouted: Don't (*Huwag naman*) but he ignored me and then the gun went off.

Q: What happened after the gun went off?

A: After firing the gun, he pointed the gun to the bystanders.

Q: What happened to your brother?

A: He fell down, sir.[13]

Marlon Dellamas:

Q: Please tell this Honorable Court what [you were] doing [at] that time?

A: I was looking for my brother Joey Dellamas.

Q: If you can remember, were there many people on that alley?

A: Yes sir.

Q: And what was the [lighting] condition of that alley at that time?

A: It was very bright at that time.

[13] TSN, June 20, 2002, pp. 4-6.

Q: At that time and place, was there any unusual incident that transpired on that place?

A: Yes ma'am, there was. They were arguing.

Q: You said that they were arguing, tell this Honorable Court who was arguing, could you please be specific?

A: The visitors of the owner of the house, ma'am.

xxx xxx xxx

Q: What happened after they entered the gate which you said was opened?

A: The person who was armed with a gun shot at Joey Gaton.

Q: How far were you when this person shot Joey Gaton, how far were you to this person?

A: I was very near, ma'am. I was about a meter only away from them.

xxx xxx xxx

Q: And what happened after this person who you just identified as Romeo Ilisan shot Joey Gaton, what happened?

A: Joey Gaton fell down, ma'am.[14]

Edgardo Dag-um:

Q: While you were enjoying yourself with your companions, do you recall of any unusual incident that happened?

A: Yes, sir, we heard shouts.

Q: Where did [those] shouts c[o]me from?

A: From outside.

Q: When you heard [the] shouts, what did you do?

A: We went out the premises of the house of my sister.

xxx xxx xxx

Q: And what did you see outside?

A: There were persons quarrelling, sir.

[14] TSN, May 23, 2002, pp. 3-6.

Q: Do you know those persons who were quarrelling [at] that time?

xxx xxx xxx

A: I saw my brother-in-law Jojo Dellamas and Joey Gaton being mauled by some male persons.

xxx xxx xxx

Q: And when you saw people attacking your brother-in-law and Joey Gaton, what else happened?

A: When some of the neighbors were approaching the scene of the incident, those male persons who were mauling my brother-in-law entered the yard of the house of Jaime E[s]casinas.

Q: Mr. Witness, you said a while ago that Joey Gaton was already dead, how did he die?

A: He was shot, sir.

Q: Who shot him?

A: Romeo Ilisan, sir.

xxx xxx xxx

Q: You pointed to Romeo Ilisan as the person who shot Joey Gaton, how far were you when Romeo Ilisan shot Joey Gaton?

A: About two (2) meters away sir.

Q: What kind of firearm did this Romeo Ilisan use in shooting Joey Gaton?

A: .45, sir.[15]

The fact that Gabriel Gaton is the victim's brother does not impair his credibility as a witness. Relationship by itself does not give rise to a presumption of bias or ulterior motive, nor does it *ipso facto* diminish the credibility or tarnish the testimony of a witness. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in

[15] TSN, July 31, 2002, pp. 3-6.

vindicating the crime to accuse somebody other than the culprit. The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would actually deter them from implicating persons other than the true culprits.[16]

There is likewise no indication that Marlon Dellamas and Edgardo Dag-um were improperly motivated when they testified against petitioner. As aptly observed by the Office of the Solicitor General in its Comment,[17] aside from the prosecution witnesses' relationship with the other participants in the fight, petitioner failed to show any other basis for the ill motive he imputes against them. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[18]

Petitioner's reliance on the negative results of the paraffin test conducted on him the day after the fateful event must fail. Our ruling in *People v. Manalo*,[19] is *apropos:*

> [E]ven if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol.

Indeed, paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm.

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[16] *People v. Quilang*, 371 Phil. 241, 255 (1999); *People v. Villanueva*, 362 Phil. 17, 34 (1999).

[17] *Rollo*, pp. 53-59.

[18] *People v. Ballesta*, *supra* note 11, at 416; *People v. Rendoque*, 379 Phil. 671, 685 (2000).

[19] G.R. Nos. 96123-24, March 8, 1993, 219 SCRA 656, 663.

The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun.[20] Conversely, the absence of gunpowder nitrates on petitioner's hands, the day after the incident, does not conclusively establish that he did not fire a gun; neither are the negative results yielded by the paraffin test an insurmountable proof of his innocence.

The courts *a quo* also correctly rejected the version of the defense as a mere afterthought intended to exculpate petitioner, *viz.*:

> If it is true that they saw Chito Partisala sh[o]ot Joey, why they did not tell the policeman who arrived at the crime scene immediately that Partisala was the gunman. Why did Jomarie wait until somebody pointed to the accused as the gunman before he told them that it [was] Partisala who shot the victim.[21]

Thus, the positive, clear, and categorical testimonies of the three eyewitnesses to the crime deserve full merit in both probative weight and credibility over the negative results of the paraffin test conducted on petitioner and his witnesses' anomalous claims.

We now go to the penalty imposed. Homicide is punishable by *reclusion temporal.*[22] There being no mitigating or aggravating circumstance proven in the case at bar, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.[23]

Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve (12) years). Hence, the

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[20] *People v. Cajumocan*, G.R. No. 155023, May 28, 2004, 430 SCRA 311, 317-318; *People v. De Guzman*, 320 Phil. 158, 169-170 (1995).

[21] *Supra* note 2, at 48.

[22] REVISED PENAL CODE, Art. 249.

[23] REVISED PENAL CODE, Art. 64, par. 1.

indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, imposed by the RTC, and affirmed with modification by the CA, is correct.

The civil indemnity and moral damages awarded by the RTC and the CA were also in order and consistent with current jurisprudence.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[24] Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is proper.[25]

Moral damages must also be awarded because these are mandatory in cases of homicide, without need of allegation and proof other than the death of the victim.[26] The award of ₱50,000.00 as moral damages[27] is correct.

We must, however, modify the actual damages awarded by the CA. Actual damages pertain to the actual expenses incurred by the victim's heirs in relation to his death, *i.e.*, burial and funeral expenses. To justify an award therefor, it is necessary for a party to produce competent proof or the best evidence obtainable, such as receipts.[28] In this case, the actual expenses incurred for the wake and burial of the victim were duly shown by receipts marked as Exhibits "K", "L", "M", and "M-1"[29] in

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[24] *Tarapen v. People*, G.R. No. 173824, August 28, 2008, 563 SCRA 577, 603-604, citing *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[25] *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 592-593; *Tarapen v. People*, *supra* note 24, at 604; *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 400.

[26] *Tarapen v. People*, *supra* note 24, at 604; *People v. Bajar*, 460 Phil. 683, 700 (2003).

[27] *People v. Lusabio, Jr.*, *supra* note 25, at 593; *People v. Bajar*, *supra*, at 700.

[28] *Tarapen v. People*, *supra* note 24, at 604; citing *People v. Jamiro*, 344 Phil. 700, 722 (1997).

[29] Records, pp. 146-149.

the aggregate amount of ₱88,520.00. But the CA awarded only ₱58,520.00, which, after a perusal of the records, appears to have been caused by the non-inclusion of Exhibit "L", a receipt for ₱30,000.00 paid by the victim's wife to La Funeraria Novaliches for the deceased's autopsy and embalming treatment, and use of mortuary equipment for the interment. Having convincingly proved the nature of the expense in the amount of ₱30,000.00 in Exhibit "L", it is only right to increase the actual damages awarded to the victim's heirs to ₱88,520.00.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The August 23, 2007 Decision of the Court of Appeals is *AFFIRMED* with modification that the award of actual damages is increased to ₱88,520.00.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181560. November 15, 2010]

VITARICH CORPORATION, *petitioner, vs.* **CHONA LOSIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW, AS DISTINGUISHED FROM QUESTIONS OF FACT, ARE PROPER; EXCEPTIONS.—

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated June 28, 2010.

As a general rule, a petition for review under Rule 45 of the Rules of Court covers questions of law only. Questions of fact are not reviewable and passed upon by this Court in its exercise of judicial review. The distinction between questions of law and questions of fact has been well defined. A **question** *of law* exists when the doubt or difference centers on what the law is on a certain state of facts. A **question of fact**, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts. The rule, however, admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; ONE WHO ALLEGES THE SAME HAS THE BURDEN OF PROOF.— As a general rule, one who pleads payment has the burden of proving it. In *Jimenez v. NLRC*, the Court ruled that the burden rests on the debtor to prove payment, rather than on the creditor to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. True, the law requires in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, however, the burden of proof is on Losin because she alleges an affirmative defense, namely, payment. Losin failed to discharge that burden.

3. ID.; ID.; ID.; ID.; RECEIPTS AND MERCANTILE DOCUMENTS AS PROOF OF PAYMENT; APPRECIATION

THEREOF.— After examination of the evidence presented, this Court is of the opinion that Losin failed to present a single official receipt to prove payment. This is contrary to the well-settled rule that a receipt, which is a written and signed acknowledgment that money and goods have been delivered, is the best evidence of the fact of payment although not exclusive. All she presented were copies of the list of checks allegedly issued to Vitarich through its agent Directo, a Statement of Payments Made to Vitarich, and apparently copies of the pertinent history of her checking account with Rizal Commercial Banking Corporation *(RCBC).* At best, these may only serve as documentary records of her business dealings with Vitarich to keep track of the payments made but these are not enough to prove payment. Article 1249, paragraph 2 of the Civil Code provides: The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall **produce the effect of payment only when they have been cashed**, or when through the fault of the creditor they have been impaired.

4. ID.; DAMAGES; INTEREST; LEGAL INTEREST OF 6% PER ANNUM FOR PAYMENT OF SUM OF MONEY INCREASED TO 12% PER ANNUM FROM FINALITY OF DECISION UNTIL ITS SATISFACTION, THE INTERIM PERIOD DEEMED EQUIVALENT TO FORBEARANCE OF CREDIT.— Inasmuch as the case at bar involves an obligation not arising from a loan or forbearance of money, but consists in the payment of a sum of money, the legal rate of interest is 6% *per annum* of the amount demanded. Interest shall continue to run from February 12, 1997, the date when Vitarich demanded payment of the sum amounting to ₱921,083.10 from Losin (and not from the time of the filing of the Complaint) until finality of the Decision (not until fully paid). The rate of interest shall increase to 12% *per annum* only from such finality until its satisfaction, the interim period being deemed to be equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Rey D. Cartojano for petitioner.
Melquiades Cedeño for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking to reverse and set aside the November 26, 2007 Decision[1] of the Court of Appeals, Cagayan de Oro *(CA-CDO)*, in CA G.R. CV No.73726,[2] which *reversed* the August 9, 2001 Decision of the Regional Trial Court, Branch 23, General Santos City *(RTC)*, in Civil Case No. 6287, in favor of petitioner Vitarich Corporation *(Vitarich)*.

THE FACTS:

Respondent Chona Losin *(Losin)* was in the fastfood and catering services business named Glamours Chicken House, with address at Parang Road, Cotabato City. Since 1993, Vitarich, particularly its Davao Branch, had been her supplier of poultry meat.[3] In 1995, however, her account was transferred to the newly opened Vitarich branch in General Santos City.

In the months of July to November 1996, Losin's orders of dressed chicken and other meat products allegedly amounted to ₱921,083.10. During this said period, Losin's poultry meat needs for her business were serviced by Rodrigo Directo *(Directo)* and Allan Rosa *(Rosa)*, both salesmen and authorized collectors of Vitarich, and Arnold Baybay *(Baybay)*, a supervisor of said corporation. Unfortunately, it was also during the same period that her account started to experience problems because of the fact that Directo delivered stocks to her even without prior booking which is the customary process of doing business with her.[4]

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[1] *Rollo*, pp. 20-34. Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justice Teresita Dy-Liacco Flores and Associate Michael P. Elbinias, concurring.

[2] Petitioner Vitarich Corporation was the plaintiff-appellee in CA G.R. CV No.73726 while Chona Losin was the defendant-appellant.

[3] *Rollo*, p. 21.

[4] *Id.* at 22.

On August 24, 1996, Directo's services were terminated by Vitarich without Losin's knowledge. He left without turning over some supporting invoices covering the orders of Losin. Rosa and Baybay, on the other hand, resigned on November 30, 1996 and December 30, 1996, respectively. Just like Directo, they did not also turn over pertinent invoices covering Losin's account.[5]

On February 12, 1997, demand letters were sent to Losin covering her alleged unpaid account amounting to ₱921,083.10. Because of said demands, she checked her records and discovered that she had an overpayment to Vitarich in the amount of ₱500,000.00. She relayed this fact to Vitarich and further informed the latter that checks were issued and the same were collected by Directo.[6]

It appears that Losin had issued three (3) checks amounting to ₱288,463.30 which were dishonored either for reasons—Drawn Against Insufficient Funds (DAIF) or Stop Payment.[7]

On March 2, 1998, Vitarich filed a complaint for Sum of Money against Losin, Directo, Rosa, and Baybay before the RTC.

On August 9, 2001, the RTC rendered its Decision[8] in favor of Vitarich, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff, ordering defendant Chona Losin to pay plaintiff the following:

1. ₱297,462.50 representing the three checks which had been stopped payment with interest at 12% per annum from the date of this Decision until the whole amount is fully paid;

2. ₱101,450.20 representing the unpaid sales (Exhibits 'L' and 'M') with interest at 12% from date of this Decision until the whole amount is fully paid;

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[5] *Id.*

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

[7] *Id.* at 23.

[8] *Id.* at 39-48.

3. ₱20,000.00 in concept of attorney's fees; and

4. The cost of suit.

As to the complaint against defendant Allan Rosa and Arnold Baybay, the same is dismissed. The complaint against Rodrigo Directo still remains and is hereby ordered archived until he could be served with summons.

SO ORDERED.[9]

Not satisfied with the RTC decision, Losin appealed to the CA presenting the following:

ASSIGNMENT OF ERRORS:

I. THE LOWER COURT ERRED IN NOT APPRECIATING THE OVERPAYMENT MADE BY DEFENDANT-APPELLANT TO VITARICH CORPORATION;

II. THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF THE THREE (3) CHECKS WITH STOP PAYMENT ORDERS AND WITHOUT ANY ANTECEDENT DOCUMENTARY EVIDENCES FOR THE TWO (2) CHECKS, NAMELY: RCBC CHECK NO. CX 046324 AND RCBC CHECK NO. CX 046327 ; AND

III. THE LOWER COURT ERRED IN NOT FINDING VITARICH CORPORATION NEGLIGENT IN THE SELECTION OF ITS EMPLOYEES AND NEITHER FINDING THE CORPORATION LIABLE FOR DAMAGES A CLEAR VIOLATION OF ARTICLE 2180 OF THE CIVIL CODE.[10]

On November 26, 2007, the CA rendered the assailed decision in favor of Losin. Pertinently, the said decision reads:

It is axiomatic that we should not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstances of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason is that the trial court is in a

[9] *Id.* at 48.

[10] CA *rollo*, p. 16.

better position to determine questions involving credibility having heard the witnesses and having observed their deportment and manner of testifying during the trial unless there is showing that the findings of the lower court are totally devoid of support or glaringly erroneous as to constitute palpable error or grave abuse of discretion. This is such an instance.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. Thus, the elements of agency are (i) consent, express or implied, of the parties to establish the relationship; (ii) the object is the execution of a juridical act in relation to a third person; (iii) the agent acts as a representative and not for himself; and (iv) the agent acts within the scope of his authority.

The Civil Code defines a contract of agency as follows:

> "*Art. 1868*. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

As far as Losin is concerned, Directo was a duly authorized agent of Vitarich Corporation. As such, it fell upon Directo to place her orders of dressed chicken and other related products to their General Santos City branch. All such orders were taken from the Vitarich bodega by Directo as testified by Alona Calinawan, then bookkeeper of Vitarich from March 1995 to September 1998, who was responsible for all the customers' accounts, receivables and withdrawals of dressed chicken from their bodega.

A perusal of the records would show that Vitarich included in their list of collectibles from Losin several amounts that were not supported by their Charge Sales Invoices such as ₱44,987.70, ₱3,300.00; ₱28,855.40; ₱98,166.20; ₱73,806.00; and ₱93,888.80 and which form part of their total claim of ₱912,083.10. Furthermore, Vitarich also submitted Charge Sales Invoices showing the amount of ₱70,000.00, ₱41,792.40, ₱104,137.40 and ₱158,522.80 as part of their exhibits but which amounts are not included in its summary statement of collectibles against Losin.

It is noted that the dressed chicken and other related products as manifested by the Charge Sales Invoices, were taken out of the bodega and received by Directo, who is now 'at large.' There was no evidence presented by Vitarich to prove that aforesaid stocks were delivered

to Losin. Contrary to what Vitarich claimed that Directo resigned on August 24, 1996, exhibit 'X' shows that he was 'terminated.' The fact can not be put aside that Directo was the salesman and authorized collector and by law, the agent of Vitarich. Criminal acts committed by Directo by his non-remittance of the proceeds of the checks given by Losin, is his separate accountability with Vitarich and should not be imputed to their client, Losin. In fact, defendant Directo absconded when plaintiff-appellee started to question his 'collectibles.' The totality of Directo's acts clearly indicated a deliberate attempt to escape liability.

The Civil Code provides:

> "Art. 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation **shall not prejudice the latter if they were not given notice thereof**."
>
> "Art. 1922. If the agent had general powers, revocation of the agency **does not prejudice third persons who acted in good faith** and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons." (Emphasis Ours)

The reason for the law is obvious. Since the third persons have been made to believe by the principal that the agent is authorized to deal with them, they have the right to presume that the representation continues to exist in the absence of notification by the principal.

Nowhere in the records can it be found that Losin was notified of the fact that Directo was no longer representing the interest of Vitarich and that the latter has terminated Directo's services. There is also an absence of any proof to show that Directo's termination has been published in a newspaper of general circulation.

It is well settled that a question of fact is to be determined by the evidence offered to support the particular contention. In defendant-appellant's 'Statement of Payments Made to Vitarich,' prepared and signed by Losin's bookkeeper, Imelda S. Cinco, all the checks enumerated therein coincides with the bank statements submitted by RCBC, thus corroborating Losin's claim that she has paid Vitarich. Vitarich's contention that 'defendant Baybay tried very hard to hide his accountabilities to the plaintiff x x x but failed to explain why the account remained unpaid,' confirms its belief that their own agents as such, are accountable for transactions made with third persons.

"As a Sales Supervisor, he is principally liable for the behavior of his subordinates (Directo & Rosa) and for the enforcement of company rules" which may have gone beyond their authority to do such acts.

Anent the third assigned error that the lower court erred in not finding Vitarich negligent in the selection of its employees thereby making the former liable for damages under Article 2180 of the Civil Code, We find the same to be without basis as said article explicitly holds that:

> "'ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> **Employers shall be liable for the damages caused by their employees** and household helpers **acting within the scope of their assigned tasks**, even though the former are not engaged in any business or industry.
>
> xxx xxx xxx."

Pursuant to Article 2180 of the Civil Code, that vicarious liability attaches only to an employer when the tortuous conduct of the employee relates to, or is in the course of, his employment. The question to ask should be whether at the time of the damage or injury, the employee is engaged in the affairs or concerns of the employer or, independently, in that of his own? Vitarich incurred no liability when Directo's conduct, act or omission went beyond the range of his employment.

Section 1, Rule 133 of the Rules of Court provides:

> "SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner

> of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number."

"Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

xxx xxx xxx

We reviewed the factual and legal issues of this case in light of the general rules of evidence and the burden of proof in civil cases, as explained by the Supreme Court in *Jison v. Court of Appeals*:

> "xxx Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favour, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favour of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendants. The concept of 'preponderance of evidence' refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth."

Hence, Vitarich who has the burden of proof must produce such quantum of evidence, with the former having to rely on the strength of its own evidence and not on the weakness of the defendant-appellant Losin's.

In this light, we have meticulously perused the records of this case and [found] that the court *a quo* had erred in appreciating the evidence presented.

In deciding this appeal, the Court relies on the rule that a party who has the burden of proof in a civil case must establish his cause of action by a preponderance of evidence. When the evidence of the parties is in equipoise, or when there is a doubt as to where the preponderance of evidence lies, the party with the burden of proof fails and the petition/complaint must thus be denied. We find that plaintiff-appellee Vitarich failed to prove that the goods were never delivered and received by Losin, said charge sales invoices being undated and unsigned by Losin being the consignee of the goods.

On the other hand, Losin could not also prove that she has overpaid Vitarich. Hence, her contention that she has overpaid Vitarich and her prayer for refund of the alleged overpaid amount, must necessarily fail.

ACCORDINGLY, the instant appeal is hereby **GRANTED** and the appealed judgment is hereby **SET ASIDE** and **VACATED**. No pronouncement as to cost.

SO ORDERED.[11]

Hence, this petition for review alleging that—

AS THE FINDINGS OF FACTS OF THE COURT OF APPEALS SQUARELY CONTRADICTS THAT OF THE TRIAL COURT, PETITIONER HUMBLY REQUESTS THE SUPREME COURT TO INQUIRE INTO THE ERRONEOUS CONCLUSIONS OF FACTS MADE BY THE COURT OF APPEALS.[12]

As a general rule, a petition for review under Rule 45 of the Rules of Court covers questions of law only. Questions of fact are not reviewable and passed upon by this Court in its exercise of judicial review. The distinction between questions of law and questions of fact has been well defined. A ***question of law*** exists when the doubt or difference centers on what the law is on a certain state of facts. A ***question of fact***, on the other

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[11] *Rollo*, pp. 24-33.

[12] *Id.* at 11.

hand, exists if the doubt centers on the truth or falsity of the alleged facts.[13]

The rule, however, admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) **when the findings are contrary to those of the trial court;** (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[14]

The aforementioned exceptions, particularly the seventh exception, finds relevance in the case at bench since the findings of the CA are clearly in conflict with that of the trial court. For this reason, the Court is constrained to reevaluate the evidence adduced by both parties to resolve the issues which boil down to whether or not Losin is liable to Vitarich and, if so, to what extent.

The Court resolves the issues partly in favor of Vitarich.

Initially, Vitarich claims a total of **₱921,083.10** from respondent Losin, Directo, Rosa and Baybay *(defendants in Civil Case No. 6287 for Sum of Money).* According to Vitarich, "[t]he successive and sudden resignations of defendants Directo, Baybay and Rosa and the sudden change of mind of defendant Losin after previously acknowledging her accounts are part of an

[13] *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, 481 Phil. 550, 561 (2004).

[14] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504, citing *Uy v. Villanueva*, G.R. No. 157851, June 29, 2007, 526 SCRA 73, 83-84.

elaborate and sinister scheme of defendants, acting singly or collectively, in conspiracy or not, in defrauding plaintiff corporation xxx."[15]

The RTC ruled in favor of Vitarich, ordering Losin to pay the following: ***(1)*** ₱297,462.50 representing the three (3) checks, the payment for which was stopped, with corresponding interest at 12% per annum from the date of the RTC decision until fully paid; ***(2)*** ₱101,450.20 for the unpaid sales also with interest at 12% per annum from the date of the RTC decision until fully paid; ***(3)*** ₱20,000.00 for attorney's fees; and ***(4)*** cost of suit.[16] It appears that Vitarich did not challenge this part of the RTC decision anymore.[17]

After Losin obtained a favorable RTC decision, Vitarich now seeks relief from this Court through this petition for review.

After an assessment of the evidentiary records, the Court opines and so holds that the CA erred in reversing the RTC decision. Losin is clearly liable to Vitarich.

Records bear out that Losin transacted with Vitarich's representative Directo.[18] Vitarich presented several charge sales invoices[19] and statement of account[20] to support Losin's accountability for the products delivered to her. A total of ₱921,083.10 was initially charged to her. Losin, on the other hand, presented a copy of the list of checks allegedly issued to Vitarich through its agent Directo,[21] and a Statement of Payments Made to Vitarich[22] to support her allegation of payment.

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[15] Records, p. 5.

[16] *Rollo*, p. 48.

[17] *Id.* at 110-122; CA *rollo*, pp. 44-53.

[18] TSN, September 24, 1999, pp. 92-93.

[19] Exhs. "A" to "M".

[20] Exh. "N".

[21] Exhs. "1" to "3".

[22] Exh. "4".

It is worth noting that both Vitarich and Losin failed to make a proper recording and documentation of their transactions making it difficult to reconcile the evidence presented by the parties to establish their respective claims.

As a general rule, one who pleads payment has the burden of proving it. In *Jimenez v. NLRC*,[23] the Court ruled that the burden rests on the debtor to prove payment, rather than on the creditor to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

True, the law requires in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court[24] provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, however, the burden of proof is on Losin because she alleges an affirmative defense, namely, payment. Losin failed to discharge that burden.

After examination of the evidence presented, this Court is of the opinion that Losin failed to present a single official receipt to prove payment.[25] This is contrary to the well-settled rule that a receipt, which is a written and signed acknowledgment that money and goods have been delivered, is the best evidence of the fact of payment although not exclusive.[26] All she presented were copies of the list of checks allegedly issued to Vitarich through its agent Directo,[27] a Statement of Payments Made to Vitarich,[28] and apparently copies of the pertinent history of her

[23] G.R. No. 116960, 326 Phil. 89, 95 (1996).

[24] SECTION 1. *Burden of proof.*—Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[25] TSN, September 24, 1999, pp. 95-97; TSN, February 8, 2001, pp. 273-275.

[26] *Alonzo v. San Juan*, 491 Phil. 232, 244 (2005).

[27] Exhs. "1" to "3".

[28] Exh. "4".

checking account with Rizal Commercial Banking Corporation *(RCBC).* At best, these may only serve as documentary records of her business dealings with Vitarich to keep track of the payments made but these are not enough to prove payment.

Article 1249, paragraph 2 of the Civil Code provides:

> The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall **produce the effect of payment only when they have been cashed**, or when through the fault of the creditor they have been impaired. [Emphasis supplied]

In the case at bar, no cash payment was proved. It was neither confirmed that the checks issued by Losin were actually encashed by Vitarich. Thus, the Court cannot consider that payment, much less overpayment, made by Losin.

Now, the Court ascertains the extent of Losin's liability. A perusal of the records shows that Vitarich included in its list of collectibles,[29] several amounts that were not properly supported by Charge Sales Invoice, to wit, ***(1)*** ₱44,987.70; ***(2)*** ₱3,300.00; ***(3)*** ₱28,855.40; ***(4)*** ₱98,166.20; ***(5)*** ₱73,806.00; and ***(6)*** ₱93,888.80.[30] It bears noting that the Charge Sales Invoices presented for the amounts listed as collectibles were undated and unsigned by Losin, the supposed consignee of the goods (except Exh. L). Of the six amounts, the Court particularly considered the ₱93,888.80 as it was the amount of one of the checks issued by Losin. Indeed, the Court cannot disregard the fact that Losin issued a corresponding check for the following amounts: ***(1)*** **₱93,888.96** (dated August 27, 1996);[31] ***(2)*** **₱50,265.00** (dated August 30, 1996);[32] and ***(3)*** **₱144,309.50** (dated August 31, 1996).[33] The Court believes that Losin would not have issued those checks had she not received the goods so delivered to her. The first two (2) checks were apparently received

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[29] Exh. "N".

[30] *Rollo*, p. 26; *See* Exhs. "A" to "N".

[31] Exh. "W-4".

[32] Exh. "W-3".

[33] Exh. "W-2".

by the Vitarich but were not encashed because of Losin's instruction to RCBC. Thus, Losin is liable to Vitarich but not for the total amount of the three (3) mentioned checks but only for the amount of ₱93,888.96 and ₱50,265.00 corresponding to the first two (2) checks. Losin cannot be held liable for the amount of the third check ₱144,309.50 because Vitarich *did not* claim for this amount. The amount of ₱144,309.50 for some reason, was not among those listed in the list of collectibles of Vitarich.[34]

Aside from the earlier mentioned liabilities, the Court also holds Losin liable for the amount of ₱78,281.00 which was also among those listed as collectible by Vitarich. Although the Charge Sales Invoice[35] bearing this amount was undated, it nevertheless, appears that the goods corresponding to this amount were actually received by Losin's mother. This was even testified to by Rosa[36] and confirmed by Losin herself.[37] With the exception of the amounts corresponding to the two (2) checks discussed above and the amount of ₱18,281.00 as appearing in Exh. L, the other amounts appearing on the rest of the Charge Sales Invoice and on the Statement of Account presented by Vitarich cannot be charged on Losin for failure of Vitarich to prove that these amounts are chargeable to her. Vitarich even failed to prove that the rest of the goods as appearing on the other Charge Sales Invoices were actually delivered and received by her or her representative since these Charge Sales Invoices were undated and unsigned. Thus, Losin is liable to pay Vitarich the amounts of **₱93,888.96**, **₱50,265.00** and **₱78,281.00** or a total of **₱222,434.96** only.

Inasmuch as the case at bar involves an obligation not arising from a loan or forbearance of money, but consists in the payment of a sum of money, the legal rate of interest is 6% *per annum* of the amount demanded.[38] Interest shall continue to run from

[34] See Exh. "N".

[35] Exh. "L".

[36] TSN, October 25, 2000, pp. 249-250.

[37] TSN, February 8, 2001, p. 269.

[38] Article 2209 of the Civil Code of the Philippines.

February 12, 1997, the date when Vitarich demanded payment of the sum amounting to ₱921,083.10 from Losin (and not from the time of the filing of the Complaint) until finality of the Decision (not until fully paid). The rate of interest shall increase to 12% *per annum* only from such finality until its satisfaction, the interim period being deemed to be equivalent to a forbearance of credit.[39]

Regarding the grant of attorney's fees, the Court agrees with the RTC that said award is justified. Losin refused to pay Vitarich despite the latter's repeated demands. It was left with no recourse but to litigate and protect its interest. We, however, opt to reduce the same to ₱10,000.00 from ₱20,000.00.

The claims against Rosa and Baybay who allegedly did not fully account for their sales transactions have not been substantially proven by evidence. In fact, it appears that Rosa and Baybay resigned. Resignation would not have been possible unless accountabilities with Vitarich had been settled first. It was only the services of Directo that was apparently terminated by Vitarich.[40] Summons, however, was not served on him, so he could not be made to account for the shortages of collection.

WHEREFORE, the November 26, 2007 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The August 9, 2001 Decision of the Regional Trial Court of General Santos City, Branch 23, is *REINSTATED* subject to *MODIFICATIONS.* Thus, the dispositive portion should read as follows:

WHEREFORE**,** judgment is hereby rendered ordering Chona Losin to pay Vitarich Corporation the following:

(1) ~~*P222,434.96*~~ representing the two checks, with Check Nos. CX 046324 dated August 27, 1996 and CX 046325 dated August 30, 1996 which had been stopped payment and the amount as appearing in Charge Sales Invoice marked as Exhibit 'L' subject to an interest rate of 6% *per annum* from February 12, 1997, the date when Vitarich demanded

[39] *Tropical Homes, Inc. v. CA*, 338 Phil. 930, 944 (1997).

[40] See Exh. "X".

payment of the sum amounting to ₱921,083.10 from Losin until finality of the Decision. The rate of interest shall increase to 12% *per annum* only from such finality until its satisfaction, the interim period being deemed to be equivalent to a forbearance of credit;

(2) ₱10,000.00 representing attorney's fees; and

(3) Cost of suit.

The complaint against Allan Rosa and Arnold Baybay is dismissed. The complaint against Rodrigo Directo is ordered archived until he could be served with summons.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181635. November 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NONOY EBET,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCOMPLETE ENTRY IN THE POLICE BLOTTER MUST NOT OVERCOME THE POSITIVE AND CATEGORICAL IDENTIFICATION OF APPELLANT AS ONE OF THE PERPETRATORS.— The incomplete entry in the police blotter must not overcome the positive and categorical identification of appellant as one of the perpetrators. In *People v. Sabadao,* the appellants therein faulted two (2) prosecution witnesses for, either giving incomplete statements

or not giving any statement to the police authorities. However, this Court was not persuaded and ruled that: x x x It is a matter of judicial experience that an affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate. To be sure, a sworn statement taken *ex parte* is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination. Notwithstanding the entry in the police blotter, Evelyn and Joan Parcasio, on the day after the crime was committed, executed their respective sworn statements, positively identifying the appellant as one of the culprits.

2. ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT THEREOF, AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY BINDING AND CONCLUSIVE.— [I]t is only the incomplete police blotter that appears to be inconsistent. However, the said inconsistency has been cured by the sworn statements and the testimonies given in open court. With that in perspective, this Court, therefore, has no reason to dispute the trial court's appreciation of the credibility of the prosecution witnesses' testimonies. Deeply entrenched in our jurisprudence is the rule that the assessment of the credibility of witnesses is a domain best left to the trial court judge, because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts — and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.

3. CRIMINAL LAW; ROBBERY WITH HOMICIDE; WHEN A HOMICIDE TAKES PLACE BY REASON OF OR ON THE OCCASION OF THE ROBBERY, ALL THOSE WHO TOOK PART SHALL BE GUILTY THEREOF WHETHER OR NOT THEY ACTUALLY PARTICIPATED IN THE KILLING; EXCEPTION; NOT PRESENT.— When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing. The records are bereft of any evidence to prove, or even remotely suggest, that appellant attempted to prevent the killing. Therefore, the basic principle in conspiracy that the "act of one is the act of all," applies in this case.

4. REMEDIAL LAW; EVIDENCE; CONSPIRACY; ELABORATED; ONCE SHOWN, THE ACT OF ONE IS THE ACT OF ALL THE CONSPIRATORS.— To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.

5. ID.; ID.; ALIBI; TO PROSPER, THE REQUIREMENTS OF TIME AND PLACE MUST BE STRICTLY MET.— Appellant claims that he was butchering a pig at the house of Agri Saud located at *Barangay* Perez, Kidapawan City from 5:00 p.m. until 9:00 p.m. of February 3, 1997. The said alibi has been supported by the testimonies of two witnesses. However, appellant failed to prove that it was impossible for him to be physically present at the place where the crime had taken place and when the crime was being committed. For alibi to prosper, it must strictly meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but it must also be demonstrated that it was physically impossible for him to have been at the crime scene at the time the crime was committed.

6. ID.; ID.; ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND MUST BE BRUSHED ASIDE WHEN THE IDENTITY OF THE ACCUSED HAS BEEN SUFFICIENTLY AND POSITIVELY ASCERTAINED.— This Court has always upheld that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before this Court is the appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00257, dated July 31, 2007, which sustained the judgment[2] of the Regional Trial Court (RTC) in Criminal Case No. 86-97 dated October 12, 1999, finding appellant Nonoy Ebet guilty beyond reasonable doubt of the crime of Robbery with Homicide.

The facts, as shown in the records, are the following:

On February 3, 1997, around 7:30 p.m., three (3) men entered the house of the spouses Gabriel Parcasio and Evelyn Parcasio. Of the three men, Evelyn recognized one of them to be appellant Ebet, having been a constant visitor of her husband. Upon entering, one of the unidentified men poked a gun at Evelyn, while another unidentified man wielding a knife, held Evelyn's daughter, Joan. At that moment, Evelyn saw appellant holding a knife and standing at the door of the house. The men asked Evelyn where her husband was hiding and compelled her to lead them to the house's underground. After the two unidentified men reached the underground, Evelyn heard her husband shout for her and her daughters to run, which the latter did. Thereafter, a gunshot was heard, as well as a commotion underground. Joan, after hearing the gunshot, returned to the house fearing that her mother was shot. It was then that the men accosted her and asked for her money. With no money to give, the men took her bag worth One Hundred Thirty Pesos (₱130.00), a wrist watch worth One Hundred Twenty-Five Pesos (₱125.00) and Thirty Pesos

[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring; *rollo*, pp. 4-20.

[2] Penned by Judge Rodolfo M. Serrano; CA *rollo*, pp. 15-23.

(₱30.00) cash, the total of which is Two Hundred Eighty-Five Pesos (₱285.00). When the men left the premises, Evelyn went back to their house and saw her husband bleeding to death due to multiple stab wounds. The husband eventually died due to the said stab wounds.

Thus, an Information[3] dated July 10, 1997 was filed, charging appellant with the crime of Robbery with Homicide, which reads:

> That on or about February 3, 1997, in the Municipality of Kidapawan, Province of Cotabato, Philippines, the said accused, in company with JOHN DOE and PETER DOE, whose identities are still unknown and at large, armed with handgun and knife, conspiring, confederating and mutually helping one another, with intent to gain by means of violence and intimidation, did then and there, willfully and forcibly get, rob and carry away, one (1) wrist watch worth ONE HUNDRED TWENTY-FIVE PESOS (₱125.00); one (1) school bag worth ONE HUNDRED THIRTY PESOS (₱130.00); and cash amounting to THIRTY PESOS (₱30.00), with the total amount of TWO HUNDRED EIGHTY-FIVE PESOS (₱285.00), Philippine Currency, owned by JOAN PARCASIO, to the damage and prejudice of JOAN PARCASIO.
>
> That on the same occasion, above-named accused with intent to kill, willfully, unlawfully and feloniously attack, assault, stab, shot and use physical violence to the person of GABRIEL PARCASIO, JR., thus inflicting upon the latter multiple stab wounds in the different parts of his body, which caused his death thereafter.
>
> CONTRARY TO LAW.

When arraigned[4] on September 17, 1997, appellant, assisted by counsel, pleaded not guilty to the crime charged against him.

Consequently, the trial on the merits ensued.

The prosecution presented the testimonies of Evelyn Parcasio and Joan Parcasio, testifying as to the facts narrated earlier.

For his defense, appellant presented his own testimony, as well as those of Virgilio Balili, Fernando Saud and Feliciano Jordan. Based on their testimonies, the following transpired:

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[3] Records, p. 1.

[4] *Id*. at 22.

On February 3, 1997, appellant was in the house of Agri Saud, which was 200 meters away from the house of Gabriel and Evelyn Parcasio. Appellant was in the said house from 5:00 p.m. until 9:00 p.m. He was there butchering a pig, together with Agri Saud, Efren Leon, Willy Estigoy and Feliciano Jordan. Appellant claimed that he never left the house or the group from the time he arrived at Agri Saud's house until they dispersed later in the evening.

The trial court found appellant guilty beyond reasonable doubt of the crime of Robbery with Homicide. The dispositive portion of the Decision reads:

> WHEREFORE, prescinding from the foregoing facts and considerations, the Court finds accused Nonoy Ebet guilty beyond reasonable doubt as principal by direct participation of the crime of Robbery with Homicide, hereby sentenced him to suffer the penalty of *Reclusion Perpetua*. He is hereby ordered to indemnify the heirs of Gabriel Parcasio the sum of ₱50,000.00.
>
> With costs *de officio*.
>
> IT IS SO ORDERED.[5]

A Notice of Appeal[6] was filed and this Court accepted the appeal. However, in a Resolution[7] dated September 15, 2004, this Court transferred the case to the CA, in conformity with *People of the Philippines v. Efren Mateo y Garcia*,[8] modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the resolution of this Court's *en banc*, dated September 19, 1995, in Internal Rules of the Supreme Court in cases similarly involving the

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

[6] *Id*. at 24.

[7] *Id.* at 161.

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

death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VIII of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

On July 31, 2007, the CA affirmed with modification the decision of the trial court. The dispositive portion of the Decision reads:

> WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION that appellant shall pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages and to return the wrist watch, school bag and ₱30.00 in cash or pay its reasonable value in the total amount of ₱285.00 in case restitution is not feasible, to the heirs of the victim.
>
> SO ORDERED.[9]

Hence, the present appeal.

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

I

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESS.

II.

THE TRIAL COURT ERRED IN NOT GIVING ANY PROBATIVE VALUE TO THE DEFENSE OF ALIBI BY THE ACCUSED.

According to appellant, the prosecution witnesses failed to positively identify him. He also argues that the trial court, in rejecting the defense of alibi, simply adopted the general principle of alibi as a defense, being inherently weak, but failed to point out any inconsistencies and falsities to his testimony, as well as those of the other witnesses for the defense.

On the other hand, the Office of the Solicitor General (OSG) in its Brief,[11] argued the following:

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[9] CA *rollo*, p. 180.

[10] *Id*. at 35-54.

[11] *Id*. at 90-119.

I

THE TRIAL COURT CORRECTLY GAVE FULL CREDENCE TO THE PROSECUTION EVIDENCE.

II

IN THE LIGHT OF THE POSITIVE AND UNERRING IDENTIFICATION OF APPELLANT BY THE PROSECUTION WITNESS, THE TRIAL COURT CORRECTLY REJECTED HIS DEFENSE OF DENIAL AND ALIBI.

The OSG insists that the prosecution witnesses positively and categorically recognized and identified appellant as one of the perpetrators; thus, the trial court correctly appreciated the evidence presented by the prosecution. It further posits that appellant's defense of denial and alibi was correctly rejected by the trial court, because those defenses cannot prevail over the positive identification of appellant.

With both arguments from the parties under consideration, this Court finds the appeal unmeritorious.

In *People v. De Jesus*,[12] this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus:

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. *Robbery with violence against or intimidation of persons – Penalties.* — Any person guilty of robbery with the use of violence against or any person shall suffer:

> The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

(1) the taking of personal property is committed with violence or intimidation against persons;

[12] 473 Phil. 405 (2004).

(2) the property taken belongs to another;

(3) the taking is *animo lucrandi*; and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery.[13]

The trial court, in finding appellant guilty beyond reasonable doubt of the crime of robbery with homicide, gave credence to the testimonies of the prosecution witnesses. As it explained:

The court finds the testimonies of Evelyn and Joan Parcasio as truthworthy, honest and straightforward. It is significant to note that the prosecution's testimonies have not been assailed. No motive was advanced by the defense why the witnesses will falsely testify and implicate the herein accused in the commission of such a heinous crime. Thus, it has been ruled by the Supreme Court "that when there is no evidence indicating that the principal witness for the prosecution was moved by improper motive, the presumption is that he was not

[13] *Id*. at 426-428, citing *People v. Pedroso*, 336 SCRA 163 (2000), *People v. Salazar*, 277 SCRA 67 (1997), *People v. Abuyan*, 213 SCRA 569 (1992), *People v. Ponciano,* 204 SCRA 627 (1991), *People v. Mangulabnan*, 99 Phil. 992 (1956), *People v. Puloc*, 202 SCRA 179 (1991), *People v. Corre, Jr.*, 363 SCRA 165 (2001), *People v. Carrozo*, 342 SCRA 600 (2000), *People v. Verzosa*, 294 SCRA 466 (1998), and *People v. Palijon*, 343 SCRA 486 (2000).

so moved, and his testimony is entitled to full faith and credit. Denial, like alibi is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (*People vs. Belibet*, 194 SCRA 588).

Moreover, circumstantial evidence have been duly established in the case at bar which is in conformity with the rules of court. That accused Nonoy Ebet in the company [of] two (2) unidentified persons entered the house of Gabriel Parcasio, once inside took [the] personal properties of Joan, daughter of Gabriel, and thereafter the accused took turns in stabbing Gabriel Parcasio to death.[14]

Appellant's main contention is that the trial court was wrong in giving credence to the testimonies of the prosecution's witnesses. According to him, he was not positively identified by the said witnesses. However, this Court finds otherwise.

The following are the testimonies of the witnesses for the prosecution which clearly show that the appellant was categorically identified as one of the men who took part in the perpetration of the crime:

Testimony of Evelyn Parcasio:

Q Now, in that evening of February 3, 1997, was there any unusual incident that happened in your house?
A At more or less 7:30, three (3) persons entered our house. The two (2) of them I do not know, only one (1) I know.

Q Who is that one (1) you know?
A Yes, sir.

Q Can you go down and pinpoint him?
A **Witness taps the shoulder of a person who, when asked his name, he answered that he is Nonoy Ebet.**

Q How do you know him to be Nonoy Ebet?
A He is always in our house. He is always eating with my husband in our house.

Q You said these three (3) entered your house?
A Yes, sir.

[14] CA *rollo*, pp. 21-22.

Q What happened after that?
A Upon entering the house, he poked a gun on me and one of them pointed a knife to my daughter Joan.

Q What about this Nonoy Ebet?
A **Nonoy Ebet was standing in front of the door of my house holding the knife.**[15]

Testimony of Joan Parcasio:

Q Now, on that evening at around 7:00 o'clock of February 3, 1997, can you recall whether there was an unusual incident that happened?
A Yes, sir.

Q Can you recall what was that unusual incident that happened?
A We were robbed and my father was killed.

Q What is the name of your father?
A Gabriel Parcasio, Jr.

Q You said you were held up, how many persons robbed you?
A Three (3) persons.

Q Were you able to identify them?
A Only one perpetrator I know.

Q You said you were able to identify one of the perpetrators, if this one which you were able to identify is inside this courtroom, please point at him?
A **Witness tapped the shoulder of a person with a stripe polo shirt and who, when asked his name, answered Nonoy Ebet.**

Q **This Nonoy Ebet is one of those who robbed you and likewise killed your father?**
A **Yes, sir.**

Q What was the weapon used in killing your father?
A Hunting knife. [16]

According to appellant, the testimony of Joan Parcasio during the trial was contrary to her earlier statement with the police

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[15] TSN, October 16, 1997, pp. 3-5; records, pp. 39-41. (Emphasis supplied.)

[16] TSN, November 5, 1997, pp. 4-5; *id*. at 64-65. (Emphasis supplied.)

authorities of Kidapawan City, Cotabato. The police blotter[17] contains the following:

> Entry/Date/Time
> 15-02/03-97/2000H
>
> -JOAN PARCASIO, 18 years old, student resident of Barangay Upper Manongol, Kidapawan, Cotabato reported this station and requested to put on record, that they were allegedly and forcibly entered by three unidentified men while the one is wearing mask and declared hold-up. His father GABRIEL PARCASIO, 44 years old, a farmer attempted to resist, but the assailant shot him once, by an undetermined type of hand-gun and stabbed him for several times, hitting the different parts of his body. The neighbor of the victim, wife and child, brought him to Kidapawan Medical Specialist, but he was expired upon arrival at the said hospital. Money carting them away by the perpetrators amounting to ₱30.00 Philippine currency and one wrist watch amounting to ₱1,000.00. Incident happened at about 7:00 p.m., February 3, 1997. Case referred to investigation section for proper disposition.

Appellant points out that the above contents of the police blotter are corroborated by the testimony of his own witness, Virgilio Balili, who narrated that right after the commission of the crime, he was approached by Evelyn, Jean and Joan Parcasio. When Balili asked if they knew the identities of the perpetrators, Evelyn, Jean and Joan answered in the negative, thus:

> Q When Evelyn, Jean and Joan Parcasio approached you, what did you do?
> A I asked them if they were able to identify the perpetrators.
>
> Q And what did they tell you?
> A They answered me that they did not know the assailant.[18]
>
> xxx xxx xxx
>
> Q You said on the way you had a conversation with Evelyn, Jean and Joan Parcasio, please tell us what the content of your conversation? What was the subject matter of your conversation?

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[17] Records, p. 108.

[18] TSN, September 22, 1998, pp. 6-7; *id*. at 135-136.

A I asked them to tell the truth so that we could help them.

Q So what was the answer?

A They answered, "What could we do because we were not able to identify those people?"[19]

The above argument of appellant deserves scant consideration. The incomplete entry in the police blotter must not overcome the positive and categorical identification of appellant as one of the perpetrators. As correctly pointed out by the OSG:

> The entry in the police blotter was incomplete. In fact, as stated therein, the case was referred to the investigation section for proper disposition. It must be noted that Item No. 2 was entered at 2000 hours or 8 in the evening or about thirty (30) minutes after the incident. The culprits, including the appellant, were still on the loose. This explains the reason why Joan, still distraught over the sudden and unexpected death of her father, hesitated to divulge the identity of appellant as one of the perpetrators of the gory killing of her father.[20]

In *People v. Sabadao*,[21] the appellants therein faulted two (2) prosecution witnesses for, either giving incomplete statements or not giving any statement to the police authorities. However, this Court was not persuaded and ruled that:

> x x x It is a matter of judicial experience that an affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate. To be sure, a sworn statement taken *ex parte* is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination.[22]

Notwithstanding the entry in the police blotter, Evelyn and Joan Parcasio, on the day after the crime was committed, executed their respective sworn statements, positively identifying the appellant as one of the culprits. Thus:

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[19] *Id.* at 8; *id.* at 138.

[20] CA *rollo*, p. 107.

[21] 398 Phil. 346 (2000).

[22] *Id.* at 368.

Evelyn Parcasio's Sworn Statement:

02. Q – Why are you here in the Office of the Investigation Section?
A – To file a formal complaint against the persons who robbed us and killed my husband.

03. Q – What is the name of your husband who was killed by the robbers?
A – Gabriel Parcasio Jr., sir.

04. Q – When and where did this incident happen?
A – It happened on February 3, 1997 at about 7:00 o'clock in the evening inside our residence at Brgy. Upper Manongol, Kidapawan, Cotabato.

05. Q – You mentioned that you were held-up? How many are they?
A – They were three (3) of them.

06. Q – Can you recognize or identify them?
A – I could only identify one of them in the person of alias NONOY EBET.

xxx xxx xxx

16. Q – You mentioned that you could only identify one of the perpetrators as one *alias* Nonoy Ebet. How come that you were able to identify him?
A – Because he is always at our house conversing with my husband and sometimes eat with us.[23]

Joan Parcasio's sworn statement:

02. Q – Why are you here in the Office of the Investigation Section?
A – To give my voluntary statement in connection to the complaint of my mother Evelyn Parcasio to persons of *alias* NONOY EBET and his two other companions which I could not identify.

03. Q – What is the complaint of your mother against these persons?

A – For robbing us and killing my father Gabriel Parcasio, Jr.

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[23] Records, pp. 6-7.

xxx xxx xxx

19. Q – You mentioned in your statement that you were able to identify one of the perpetrators as one NONOY EBET. How were you able to identify him?

A – Because while one of his companions was holding me at the point of a knife, I saw *Alias* Nonoy Ebet standing in front of our door.

20. Q – How far was he from you?
A – More or less one meter.

21. Q – Was there light at the house during that time?
A – Yes, sir.

22. Q – Do you know the person of *Alias* Nonoy Ebet?
A – Yes, sir. He used to go to the house and talk with my father and sometimes we served coffee to him as *merienda*.[24]

Clearly, it is only the incomplete police blotter that appears to be inconsistent. However, the said inconsistency has been cured by the sworn statements and the testimonies given in open court. With that in perspective, this Court, therefore, has no reason to dispute the trial court's appreciation of the credibility of the prosecution witnesses' testimonies. Deeply entrenched in our jurisprudence is the rule that the assessment of the credibility of witnesses is a domain best left to the trial court judge, because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts – and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[25]

Appellant further reasons out that, if it were indeed him who was seen standing near or in front of the Parcasio family's door, that fact alone cannot be the basis to consider him as one of the perpetrators of the crime. However, the said argument is inconsequential.

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[24] *Id*. at 8-9.

[25] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230, citing *Heirs of Florentino Remetio v. Villareal*, 490 SCRA 43, 47 (2006).

When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing.[26] The records are bereft of any evidence to prove, or even remotely suggest, that appellant attempted to prevent the killing. Therefore, the basic principle in conspiracy that the "act of one is the act of all," applies in this case. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.[27] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary,[28] since all the conspirators are principals. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.[29]

As to the failure of the trial court in finding merit to the defense of denial and alibi presented by appellant, this Court is in complete agreement.

Appellant claims that he was butchering a pig at the house of Agri Saud located at *Barangay* Perez, Kidapawan City from 5:00 p.m. until 9:00 p.m. of February 3, 1997. The said alibi has been supported by the testimonies of two witnesses. However, appellant failed to prove that it was impossible for him to be

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[26] *People of the Philippines v. Rene Baron y Tangarocan*, G.R. No. 185209, June 28, 2010, citing *People v. Reyes*, 369 Phil. 61, 80 (1999).

[27] *People v. De Jesus*, *supra* note 12, at 429, citing *People v. Tulin*, 364 SCRA 11 (2001).

[28] *Id*., citing *People v. Quinicio*, 365 SCRA 252 (2001).

[29] *Id*., citing *People v. Morial*, 363 SCRA 96 (2001).

physically present at the place where the crime had taken place and when the crime was being committed. For alibi to prosper, it must strictly meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but it must also be demonstrated that it was physically impossible for him to have been at the crime scene at the time the crime was committed.[30]

This Court has always upheld that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony.[31]

WHEREFORE, the appeal is hereby *DENIED* and the Decision dated July 31, 2007 of the Court of Appeals, in CA-G.R. CR-H.C. No. 00257, which sustained with modification, the judgment of the Regional Trial Court finding appellant Nonoy Ebet guilty beyond reasonable doubt of the crime of Robbery with Homicide, is hereby *AFFIRMED*.

SO ORDERED.

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

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[30] *People v. Pagsanjan*, 442 Phil. 667, 686 (2002).

[31] *Vidar v. People*, *supra* note 25, at 231, citing *People v. Corpuz*, 482 SCRA 435, 450 (2006).

THIRD DIVISION

[G.R. No. 184362. November 15, 2010]

MILLENNIUM ERECTORS CORPORATION, *petitioner, vs.* **VIRGILIO MAGALLANES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; PRESENCE OF PROCEDURAL FLAWS INCLUDING LACK OF VERIFICATION AND PROOF OF SERVICE IS NOT FATAL; RULES OF PROCEDURE SHOULD NOT BE APPLIED IN A VERY RIGID AND TECHNICAL SENSE IN LABOR CASES.— The NLRC did not err in treating respondent's motion for reconsideration as an appeal, the presence of some procedural flaws including the lack of verification and proof of service notwithstanding. **In labor cases, rules of procedure should not be applied in a very rigid and technical sense.** They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. **Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed**.

2. ID.; ID.; ID.; LACK OF VERIFICATION DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE; REQUIREMENT REGARDING VERIFICATION OF A PLEADING IS FORMAL NOT JURISDICTIONAL.— Respecting the lack of verification, *Pacquing v. Coca-Cola Philippines, Inc.* instructs: **As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional**. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to

secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

3. ID.; ID.; ID.; SERVICE OF PLEADINGS; REQUIREMENT OF PROOF OF SERVICE MAY BE DISPENSED WITH IN APPEALS IN LABOR CASES.— As for the requirement on proof of service, it may also be dispensed with since in appeals in labor cases, non-service of copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect which calls for the dismissal of the appeal.

4. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE; PROJECT EMPLOYEE; DEFINED; DISTINGUISHED FROM REGULAR EMPLOYEE; RESPONDENT WAS A REGULAR, NOT A PROJECT EMPLOYEE.— [T]he Court finds that, indeed, respondent was a regular, not a project employee. *Saberola v. Suarez* reiterates the well-settled definition of "project employee," *viz*: A project employee is one whose "**employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season." And *Equipment Technical Services v. Court of Appeals* emphasizes the difference between a regular employee and a project employee: As the Court has consistently held, the **service of project employees are coterminus [*sic*] with the project** and may be terminated upon the end or completion of that project or project phase for which they were hired. **Regular employees, in contrast, enjoy security of tenure** and are entitled to hold on to their work or position until their services are terminated by any of the modes recognized under the Labor Code. Petitioner's various payrolls dating as early as 2001 show that respondent had been employed by it. As aptly observed by the appellate court, these documents, rather than sustaining petitioner's argument, only serve to support respondent's contention that

he had been employed in various projects, if not for 16 years, at the very least two years prior to his dismissal.

5. ID.; ID.; REGULAR EMPLOYMENT; CONTINUED REHIRING OF THE EMPLOYEE-RESPONDENT CONVERTS HIS STATUS FROM A PROJECT EMPLOYEE TO THAT OF A REGULAR EMPLOYEE; EFFECT THEREOF.— Assuming *arguendo* that petitioner hired respondent initially on a per project basis, his continued rehiring, as shown by the sample payrolls converted his status to that of a regular employee. Following *Cocomangas Beach Hotel Resort v. Visca*, the repeated and continuing need for respondent's services is sufficient evidence of the necessity, if not indispensability, of his services to petitioner's business and, as a regular employee, he could only be dismissed from employment for a just or authorized cause. Petitioner having failed to discharge its burden of proving that it terminated the services of respondent for cause and with due process, the challenged decision must remain.

APPEARANCES OF COUNSEL

Zachary O. Waytan for petitioner.
Macario J. Ga for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Virgilio Magallanes started working in 1988 as a utility man for Laurencito Tiu (Tiu), Chief Executive Officer of Millennium Erectors Corporation (petitioner), Tiu's family, and Kenneth Construction Corporation. He was assigned to different construction projects undertaken by petitioner in Metro Manila, the last of which was for a building in Libis, Quezon City. In July of 2004 he was told not to report for work anymore allegedly due to old age, prompting him to file on August 6, 2004 an illegal dismissal complaint[1] before the Labor Arbiter.

[1] CA *rollo*, p. 32.

In its Position Paper,[2] petitioner claimed that respondent was a project employee whom it hired for a building project in Libis on January 30, 2003, to prove which it submitted the employment contract[3] signed by him; that on August 3, 2004, respondent's services were terminated as the project was nearing completion; and he was given financial assistance[4] in the amount of ₱2,000, for which he signed a quitclaim and waiver.[5] Petitioner likewise submitted a termination report to the Department of Labor and Employment (DOLE) dated August 17, 2004.

Rebutting respondent's claim that he was employed since 1988, petitioner contended that it was incorporated only in February 2000, and Kenneth Construction Corporation which was established in 1989 and dissolved in 2000, was a separate and distinct entity.

By Decision[6] of November 25, 2005, the Labor Arbiter ruled in favor of petitioner and dismissed the complaint, holding that respondent knew of the nature of his employment as a project employee, he having executed an employment contract specifying therein the name of and duration of the project from January 2003 until its completion; and that the services of respondent were terminated due to the completion of the project as shown by the termination report submitted to the DOLE. The Labor Arbiter noted that respondent admitted having been assigned to several building projects and that he failed to give pertinent details of his dismissal – such as who terminated him, when he was terminated, and what were the "overt" acts leading to his dismissal.

On appeal, the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision[7] of February 6, 2007

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[2] *Id.* at 46-53.

[3] *Id.* at 54.

[4] See Cash Voucher, *id.* at 56.

[5] *Id.* at 57.

[6] *Id.* at 27-29. Penned by Labor Arbiter Jose G. de Vera.

[7] *Id.* at 20-26. Penned by Commissioner (now Court of Appeals Associate Justice) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

holding that respondent was a regular, not a project employee, as the employment contract he supposedly signed contained the date of commencement but not a specific date when it would end, contrary to the rule that the duration and scope of similar contracts should be clearly set forth therein; and that based on the payrolls[8] petitioner submitted and contrary to its claim that respondent was hired in January 2003, he had been employed in 2001, not 2003, lending weight to his claim that he had worked for petitioner for 16 years prior to the filing of his complaint.

The NLRC thus concluded that while respondent's work as a utility man may not have been necessary or desirable in the usual business of petitioner as a construction company, that he performed the same functions continuously for 16 years converted an otherwise casual employment to regular employment, hence, his termination without just or authorized cause amounted to illegal dismissal.

Petitioner moved for reconsideration of the NLRC decision, contending that respondent's motion for reconsideration which it treated as an appeal was not perfected, it having been belatedly filed; that there was no statement of the date of receipt of the appealed decision; and that it lacked verification and copies thereof were not furnished the adverse parties. Petitioner's motion was denied.

The Court of Appeals, to which petitioner appealed, affirmed the NLRC's ruling by Decision[9] of April 11, 2008. Petitioner's motion for reconsideration having been denied by Resolution[10] of August 28, 2008, it filed the present petition for review.

Petitioner contends that the Labor Arbiter's Decision dismissing the complaint had become final and executory following

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[8] *Id.* at 64-65.

[9] *Rollo*, pp. 24-34. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S. E. Veloso.

[10] *Id.* at 35. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S. E. Veloso.

respondent's failure to perfect his appeal, maintaining that the requirements for perfection of an appeal and for proof of service are not mere rules of technicality which may easily be set aside.

The petition fails.

The NLRC did not err in treating respondent's motion for reconsideration as an appeal, the presence of some procedural flaws including the lack of verification and proof of service notwithstanding.

In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided**. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed**.[11] (emphasis supplied)

Respecting the lack of verification, *Pacquing v. Coca-Cola Philippines, Inc.*[12] instructs:

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served. (emphasis supplied)

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[11] *Tres Reyes v. Maxim's Tea House*, G.R. No. 140853, February 27, 2003, 398 SCRA 288.

[12] G.R. No. 157966, January 31, 2008, 543 SCRA 344, 356-357.

As for the requirement on proof of service, it may also be dispensed with since in appeals in labor cases, non-service of copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect which calls for the dismissal of the appeal.[13]

On the merits of the case, the Court finds that, indeed, respondent was a regular, not a project employee.

Saberola v. Suarez[14] reiterates the well-settled definition of "project employee," *viz*:

> A project employee is one whose "**employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season." (emphasis and underscoring supplied)

And *Equipment Technical Services v. Court of Appeals*[15] emphasizes the difference between a regular employee and a project employee:

> As the Court has consistently held, the **service of project employees are coterminus [*sic*] with the project** and may be terminated upon the end or completion of that project or project phase for which they were hired. **Regular employees, in contrast, enjoy security of tenure** and are entitled to hold on to their work or position until their services are terminated by any of the modes recognized under the Labor Code. (emphasis and underscoring supplied)

Petitioner's various payrolls dating as early as 2001 show that respondent had been employed by it. As aptly observed by the appellate court, these documents, rather than sustaining petitioner's argument, only serve to support respondent's

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[13] *Remerco Garments Manufacturing v. Minister of Labor and Employment*, G.R. Nos. L-56176-77 February 28, 1985, 135 SCRA 167.

[14] G.R. No. 151227, July 14, 2008, 558 SCRA 135, 142.

[15] G.R. No. 1576, October 08, 2008, 568 SCRA 122, 130.

contention that he had been employed in various projects, if not for 16 years, at the very least two years prior to his dismissal.

Assuming *arguendo* that petitioner hired respondent initially on a per project basis, his continued rehiring, as shown by the sample payrolls converted his status to that of a regular employee. Following *Cocomangas Beach Hotel Resort v. Visca*,[16] the repeated and continuing need for respondent's services is sufficient evidence of the necessity, if not indispensability, of his services to petitioner's business and, as a regular employee, he could only be dismissed from employment for a just or authorized cause.

Petitioner having failed to discharge its burden of proving that it terminated the services of respondent for cause and with due process, the challenged decision must remain.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186053. November 15, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NISAIDA SUMERA NISHINA, represented by ZENAIDA SUMERA WATANABE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FILING OF RECORD ON APPEAL; WHEN NOT REQUIRED.— Section 1, Rule 109 of the 1997 Rules of Civil Procedure specifies the orders or

[16] G.R. No. 167045, August 29, 2008, 563 SCRA 705

judgments in special proceedings which may be the subject of an appeal xxx. The rule contemplates *multiple* appeals during the pendency of special proceedings. A record on appeal – in addition to the notice of appeal – is thus required to be filed as the original records of the case should remain with the trial court to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by said court and held to be final. In the present case, the filing of a record on appeal was *not* necessary since no other matter remained to be heard and determined by the trial court *after* it issued the appealed order granting respondent's petition for cancellation of birth record and change of surname in the civil registry.

2. ID.; ID.; ID.; RULING IN ZAYCO CASE (G.R. NO. 170243, APRIL 16, 2008) INAPPLICABLE TO CASE AT BAR.— The appellate court's reliance on *Zayco v. Hinlo, Jr.* in denying petitioner's motion for reconsideration is misplaced. x x x. In *Zayco,* unlike in the present case, a record on appeal was obviously necessary as the proceedings before the trial court involved the administration, management and settlement of the decedent's estate–matters covered by Section 1 of Rule 109 wherein *multiple* appeals could, and did in that case, call for them.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Reyes Cruz Mauleon Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Nisaida Sumera Nishina (respondent), represented by her mother Zenaida Sumera Watanabe (Zenaida), filed before the Regional Trial Court (RTC) of Malolos, Bulacan a verified petition for cancellation of birth record and change of surname in the civil registry of Malolos, Bulacan, docketed as Special Proceedings No. 106-M-2007.[1]

[1] Records, pp. 4-20.

In her petition, respondent alleged the following:

She was born on October 31, 1987[2] in Malolos, Bulacan to her Filipino mother Zenaida and Japanese father Koichi Nishina who were married on February 18, 1987.[3] Her father later died.[4] On July 19, 1989, her mother married another Japanese, Kenichi Hakamada.[5]

As they could not find any record of her birth at the Malolos civil registry, respondent's mother caused the late registration of her birth in 1993 under the surname of her mother's second husband, **"Hakamada."**[6] Her mother and Hakamada eventually divorced.[7]

On May 29, 1996, her mother married another Japanese, Takayuki Watanabe,[8] who later adopted her by a decree[9] issued by the Tokyo Family Court of Japan on January 25, 2001. The adoption decree was filed and recorded in the civil registry of Manila in 2006.[10]

In 2007, it surfaced that her birth was in fact originally registered at the Malolos Civil Registry under the name "Nisaida Sumera **Nishina**,"[11] hence, her filing before the RTC of her petition praying that her *second* birth certificate bearing the surname **"Hakamada,"** issued through late registration in 1993, be cancelled; and that in light of the decree of adoption, her surname

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[2] Annex "A" (Certificate of Live Birth) of Petition in Sp. Proc. No. 106-M-2007, *id.* at 8.

[3] Annex "B" (Certificate of Marriage), *id.* at 9.

[4] Respondent's petition did not indicate the date Koichi Nishina died.

[5] Annex "C" (Certificate of Marriage), records, p. 10.

[6] Annex "D", *id.* at 11.

[7] Annex "E" ("Family Registry" of Kenichi Hakamada), *id.* at 12.

[8] Annex "F", *id.* at 13.

[9] Annexes "G" and "H", *id.* at 14-20.

[10] Exhibits "N" and "O," TSN, September 26, 2007, p. 6; *id.* at 61.

[11] TSN, *id.* at 7-8; pp. 62-63 (emphasis supplied).

"**Nishina**" in the *original* birth certificate be changed to "**Watanabe.**"[12]

After hearing the petition, Branch 83 of the RTC, by Order[13] of October 8, 2007, granted respondent's petition and directed the Local Civil Registry of Malolos "to cancel the *second* birth record of Nisaida Sumera Hakamada issued in 1993 [bearing] Registry No. 93-06684 and to change it [in its stead] Registry No. 87-04983, particularly the surname of [respondent] from NISAIDA SUMERA **NISHINA** to NISAIDA SUMERA **WATANABE**."[14]

A copy of the October 8, 2007 Order was received on December 13, 2007 by the OSG which filed, on behalf of petitioner, a notice of appeal.[15]

Before the Court of Appeals, respondent filed a motion to dismiss[16] the appeal, alleging that petitioner adopted a wrong mode of appeal since it did not file a *record on appeal* as required under Sections 2 and 3, Rule 41 (appeal from the RTCs) of the 1997 Rules of Civil Procedure reading:

SEC. 2. *Modes of appeal*. –

(a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. **No record on appeal shall be required except in special proceedings and other cases of *multiple or separate* appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.**

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[12] *Ibid.*

[13] Records, pp. 53-55.

[14] *Id.* at 55.

[15] *Id.* at 69.

[16] CA *rollo*, pp. 13-19.

SEC. 3. *Period of ordinary appeal*. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. **Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.** However, an appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. (*A.M. No. 01-1-03- SC, June 19, 2001*)

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (emphasis, underscoring and italics supplied)

xxx xxx xxx

SEC. 9. *Perfection of appeal; effect thereof*. – x x x.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

xxx xxx xxx

Opposing the motion, petitioner countered that a record on appeal is required only in proceedings where *multiple* appeals may arise, a situation not obtaining in the present case.[17]

By Resolution[18] of September 2, 2008, the appellate court dismissed petitioner's appeal, holding that since respondent's petition before the RTC "is classified as a special proceeding," petitioner should have filed *both* notice of appeal and a record on appeal within 30 days from receipt of the October 8, 2007 Order granting respondent's petition, and by not filing a record on appeal, petitioner "never perfected" its appeal.[19]

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[17] *Id.* at 50-54.

[18] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rosmari D. Carandang; *id.* at 60-63.

[19] *Id.* at 63.

Its motion for reconsideration having been denied by Resolution[20] of December 22, 2008, petitioner filed the present petition for review on *certiorari*.

The petition is meritorious.

Section 1, Rule 109 of the 1997 Rules of Civil Procedure specifies the orders or judgments in special proceedings which may be the subject of an appeal, *viz*:

> SECTION 1. *Orders or judgments from which appeals may be taken*. – An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:
>
> (a) Allows or disallows a will;
>
> (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;
>
> (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
>
> (d) Settles the account of an executor, administrator, trustee or guardian;
>
> (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and
>
> (f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing unless it be an order granting or denying a motion for a new trial or for reconsideration.

The above-quoted rule contemplates *multiple* appeals during the pendency of special proceedings. A record on appeal – in addition to the notice of appeal – is thus required to be filed as the original records of the case should remain with the trial

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[20] *Id.* at 74-76.

court[21] to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by said court and held to be final.[22]

In the present case, the filing of a record on appeal was *not* necessary since no other matter remained to be heard and determined by the trial court *after* it issued the appealed order granting respondent's petition for cancellation of birth record and change of surname in the civil registry.

The appellate court's reliance on *Zayco v. Hinlo, Jr.*[23] in denying petitioner's motion for reconsideration is misplaced. In *Zayco* which was a *petition for letters of administration of a deceased person's estate*, the decedent's children appealed the trial court's *order appointing the grandson of the decedent as administrator of the estate*. Their notice of appeal and record on appeal were denied due course by the trial court on the ground that the appealed order is interlocutory and not subject to appeal. But even if the appeal were proper, it was belatedly filed. On *certiorari* by the decedent's children, the appellate court sustained the trial court. On petition for review, this Court reversed the appellate court, holding that "[a]n order appointing an administrator of a deceased person's estate is a final determination of the rights of the parties in connection with the administration, management and settlement of the decedent's estate," hence, the order is "final" and "appealable."[24] The Court also held that the appeal was filed on time.

In *Zayco*, unlike in the present case, a record on appeal was obviously necessary as the proceedings before the trial court involved the administration, management and settlement of the decedent's estate–matters covered by Section 1 of Rule 109 wherein *multiple* appeals could, and did in that case, call for them.

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[21] FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. II, Eighth Revised Edition (2000), p. 195.

[22] *Roman Catholic Archbishop of Manila v. CA*, G.R. No. 111324, July 5, 1996, 327 Phil. 810, 819.

[23] G.R. No. 170243, April 16, 2008, 551 SCRA 613.

[24] *Id.* at 616-617.

WHEREFORE, the petition is *GRANTED.* The Court of Appeals Resolutions of September 2, 2008 and December 22, 2008 in CA G.R. CV No. 90346 are *REVERSED* and *SET ASIDE.* The appeal of petitioners before the appellate court is *REINSTATED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187984. November 15, 2010]

FRANCISCO A. LABAO, *petitioner, vs.* **LOLITO N. FLORES, AMADO A. DAGUISONAN, PEPE M. CANTAR, JULIO G. PAGENTE, JESUS E. ARENA, CRISPIN A. NAVALES, OSCAR M. VENTE, ARTEMIO B. ARAGON, ARNOLD M. CANTAR, ALBERTO T. CUADERO, RASMI E. RONQUILLO, PEDRO R. GABUTAN, ELPEDIO E. MENTANG,[*] WILFREDO R. MIÑOSA,[**] RODERICK P. NAMBATAC, MARCIAL D. RIVERA, SANDE E. CASTIL,[***] CRISOSTOMO B. ESIC, and AMBROSIO M. CANTAR,[****]** *respondents.*

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[*] Known as "Elpedito Mentang" in other parts of the record.

[**] Known as "Wilfredo R. Miñoza" in other parts of the record.

[***] Known as "Sandy A. Castil" in other parts of the record.

[****] Known as "Ambrocio M. Cantar, Jr." and "Ambrosio M. Cantar, Jr." in other parts of the record.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; 60-DAY PERIOD FOR FILING THE PETITION IS INEXTENDIBLE.— Under Section 4 of Rule 65 of the 1997 Rules of Civil Procedure, *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.

2. ID.; RULES OF PROCEDURE; LIBERALLY CONSTRUED BUT THE PROVISIONS ON REGLEMENTARY PERIODS ARE STRICTLY APPLIED.— Time and again, we have stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system. While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a pleading is a jurisdictional caveat that even this Court cannot trifle with.

3. ID.; ID.; SHOULD NOT BE BELITTLED OR DISMISSED BUT MUST BE STRICTLY OBSERVED; EXCEPTIONS.— [P]rocedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed. However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable

negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

4. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; CLIENT IS BOUND BY THE ACTS, EVEN MISTAKES, OF HIS COUNSEL IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTION.— In the present case, the respondents' petition for *certiorari* was filed twenty-eight (28) days late from Atty. Plando's October 13, 2006 receipt of the September 29, 2006 resolution. The respondents insist that they should not suffer for Atty. Plando's negligence in failing to inform them of the September 29, 2006 resolution, and the reckoning date for the 60-day period should be their December 6, 2006 notice. The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. The failure of a party's counsel to notify him on time of the adverse judgment, to enable him to appeal therefrom, is negligence that is not excusable.

5. ID.; ID.; ID.; ID.; NOTICE SENT TO COUNSEL OF RECORD IS BINDING UPON THE CLIENT AND THE NEGLECT OF COUNSEL TO INFORM HIM OF AN ADVERSE JUDGMENT RESULTING IN THE LOSS OF HIS RIGHT TO APPEAL IS NOT A GROUND FOR SETTING ASIDE A JUDGMENT VALID AND REGULAR ON ITS FACE; RATIONALE.— We have repeatedly held that **notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face**. We cannot sustain the respondents' argument that they cannot be bound by Atty. Plando's negligence since this would set a dangerous precedent. It would enable every party-litigant to render inoperative any adverse order or decision of the courts

or tribunals, through the simple expedient of alleging his/her counsel's gross negligence.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE APPELLATE COURT HAS NO JURISDICTION TO ENTERTAIN A PETITION ASSAILING A FINAL AND EXECUTORY RESOLUTION; EXPLAINED.— We thus find that the CA erred in acting on the respondents' petition for *certiorari* despite its late filing. The NLRC resolution was already final and executory, and the CA had no jurisdiction to entertain the petition, except to order its dismissal. The NLRC's resolution became final ten (10) days after counsel's receipt, and the respondents' failure to file the petition within the required (60)-day period rendered it impervious to any attack through a Rule 65 petition for *certiorari*. Thus, no court can exercise jurisdiction to review the resolution. Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

APPEARANCES OF COUNSEL

Romero A. Boniel for petitioner.
Edgardo Prospero for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Francisco A. Labao (*petitioner*) to challenge the decision[2] and resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 01472-MIN.[4]

The Factual Antecedents

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

The petitioner is the proprietor and general manager of the San Miguel Protective Security Agency (*SMPSA*), a licensed security-service contractor. Respondents Lolito N. Flores, Amado A. Daguisonan, Pepe M. Cantar, Julio G. Pagente, Jesus E. Arena, Crispin A. Navales, Oscar M. Vente, Artemio B. Aragon, Arnold M. Cantar, Alberto T. Cuadero, Rasmi E. Ronquillo, Pedro R. Gabutan, Elpedio E. Mentang, Wilfredo R. Miñosa, Roderick P. Nambatac, Marcial D. Rivera, Sande E. Castil, Crisostomo B. Esic, Ambrosio M. Cantar (*respondents*) and Jimmy O. Bicoy, were SMPSA security guards assigned to the National Power Corporation, Mindanao Regional Center (*NPC-MRC*), Ditucalan, Iligan City. Each of the respondents had a monthly salary of ₱7,020.00.

On July 27, 2004, the petitioner issued a memorandum requiring all security guards to submit their updated personal data files, security guard professional license, and other pertinent documents

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[1] Pursuant to Rule 45 of the Rules of Court; *rollo*, pp.74-95.

[2] Dated September 5, 2008; penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Edgardo A. Camello and Edgardo T. Lloren; *id.* at 100-123.

[3] Dated April 22, 2009; *id.* at 154-158.

[4] Entitled *"Jimmy O. Bicoy, et al. v. San Miguel Protective Security Agency and/or Francisco A. Labao; Lolito N. Flores, et al. v. SMPSA and/or Francisco A. Labao; Pedro Gabutan, et al. v. SMPSA and/or Francisco A. Labao."*

by July 30, 2004 for reevaluation in connection with the SMPSA's new service contract with the NPC-MRC. [5]

When respondents failed to comply with the petitioner's directive, despite several notices to do so, the petitioner relieved them from NPC-MRC duty starting September and October 2004, and ordered them to report to the Senior Operations Officer, Nemesio Sombilon, for new assignments.

Sometime in March and April 2005, the respondents filed individual complaints with the Iligan City Sub-Regional Arbitration Branch of the National Labor Relations Commission (*NLRC*) for illegal dismissal and money claims, claiming they were constructively dismissed when they were not given new assignments for a period of over 6 months, despite repeated requests for NPC-MRC redeployment and for new assignments. The complaints were consolidated.

The petitioner and SMPSA denied the charge of constructive dismissal. They countered that the respondents' relief from NPC-MRC duty was a valid exercise of its management prerogative. Furthermore, they issued a notice (dated January 17, 2005)[6] directing the respondents to report to SMPSA's main office for new assignments, but the latter failed or refused to comply without any valid reasons.

The Labor Arbiter Ruling

In a December 27, 2005 decision, Labor Arbiter (*LA*) Noel Augusto S. Magbanua dismissed the consolidated complaints for lack of merit. He held that the respondents' relief from NPC-MRC duty was due to their failure to comply with SMSPA's requirement for its employees to submit updated documents to meet NPC-MRC contract renewal requirements. According to the LA, this was a legitimate exercise of NPC-MRC's management prerogative, in light of the information it received that some security guards carried falsified documents.[7]

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[5] *Rollo,* p. 211.

[6] *Id.* at 266-284.

[7] *Id.* at 289-294.

The respondents appealed the dismissal of their complaints to the NLRC.

The NLRC Ruling

In a July 31, 2006 resolution, the NLRC affirmed the LA decision. It noted that the respondents' relief was in good faith, without grave abuse of discretion, and in the best interest of the business enterprise since SMPSA merely exercised its management prerogative and discretion to protect its business interest.[8]

It also noted that the respondents' temporary off-detail did not exceed the 6-month period permitted by law, since the respondents were directed, through the January 17, 2005 notice, to report for a new assignment on January 25, 2005, but they failed or refused to do so.

In a September 29, 2006 resolution, the NLRC denied the respondents' subsequent motion for reconsideration.[9] The respondents' counsel, Atty. Demosthenes R. Plando, received the September 29, 2006 resolution on **October 13, 2006**.

Eighty-eight (88) days later, or on **January 9, 2007**, the respondents, through their new counsel, filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, alleging that they were informed of the September 29, 2006 resolution on **December 6, 2006**, while Bicoy received a copy of the resolution on **November 6, 2006**.

The CA Ruling

In its September 5, 2008 decision, the CA set aside the NLRC resolution, finding that the respondents were constructively dismissed when they were not given new assignments for more than 6 months, from September and October 2004, when the respondents were "off-detailed," until March and April 2005, when they filed their individual complaints for illegal dismissal. The appellate court noted that the January 17, 2005 notice to

[8] *Id.* at 319-326.

[9] *Id.* at 340-342.

report for new assignments did not toll the 6-month "floating status" period since the respondents failed to receive the notice before the appointed date, as SMPSA sent the notice by registered mail, which normally takes at least 5 working days to reach the intended recipients.[10]

Finding that reinstatement was no longer viable under the circumstances, the CA awarded the respondents separation pay at one (1) month's salary for every year of service, plus full backwages, allowances and other statutory benefits under the law.

The petitioner and SMPSA moved for reconsideration, arguing that the CA should have dismissed the petition outright for late filing, and that there was no compelling reason for the reversal of the LA and the NLRC's factual findings.[11]

In its April 22, 2009 resolution, the CA modified its September 5, 2008 decision by dismissing Bicoy's petition for having been filed out of time. However, it considered the respondents' petition as timely filed. It also opined that disregarding any procedural lapses best served substantial justice.[12]

The petitioner then filed the present petition. Bicoy, with respondents Castil, Esic, and Ambrocio M. Cantar filed a separate appeal, docketed as G.R. No. 190848. The Court denied this appeal in its April 5, 2010 resolution for late filing and for non-compliance with Rules 45 and 46 of the Rules of Court.

The Petition

The petitioner argues that: (a) the respondents' CA petition for *certiorari* was filed 28 days late; (b) the respondents' new counsel concealed Atty. Plando's October 13, 2006 receipt of the September 26, 2006 resolution and relied on the respondents' December 6, 2006 notice of the resolution; and (c) the evidence on record supports the LA and NLRC decisions.

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[10] *Supra* note 2.

[11] *Id.* at 124-145.

[12] *Supra* note 3.

The Case for the Respondents

In contrast, the respondents submit that: (a) December 6, 2006 is the reckoning date of the 60-day period; (b) Atty. Plando's October 13, 2006 receipt did not bind them because his secretary, Sonia M. Barnachea, misplaced the September 29, 2006 resolution and they should not suffer for her negligence; and (c) the evidence on record does not support the LA and NLRC rulings.

Issue

The core issues boil down to whether the CA erred in acting on the respondents' petition despite its late filing, and in reversing the LA and NLRC decisions.

The Court's Ruling

We find the petition meritorious.

Timeliness of the CA petition for certiorari

Under Section 4 of Rule 65 of the 1997 Rules of Civil Procedure,[13] *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed.[14] The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.[15]

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[13] SEC. 4. Where petition filed. — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

[14] *Philemploy Services and Resources, Inc. v. Rodriguez,* G.R. No. 152616, March 31, 2006, 486 SCRA 302, 324, citing *Abbott Laboratories Phils., Inc. v. Abbott Laboratories Employees Union*, 380 Phil. 364 (2000), and *St. Martin Funeral Home v. NLRC*, 356 Phil. 811 (1998).

[15] *Laguna Metts Corporation v. Court of Appeals*, G.R. No. 185220, July 27, 2009, 594 SCRA 139, 143, citing *De Los Santos v. Court of Appeals*,

Time and again, we have stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system.[16] While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[17] The timeliness of filing a pleading is a jurisdictional caveat that even this Court cannot trifle with.[18]

Viewed in this light, procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed.

However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without

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G.R. No. 147912, April 26, 2006, 488 SCRA 351; *Yutingco v. Court of Appeals*, 435 Phil. 83, 91 (2002).

[16] *Mejillano v. Lucillo*, G.R. No. 154717, June 19, 2009, 590 SCRA 1, 9; *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, January 20, 2006, 479 SCRA 298, 303.

[17] *Villa v. Heirs of Enrique Altavas*, G.R. No. 162028, July 14, 2008, 558 SCRA 157, 166; *Moneytrend Lending Corporation v. Court of Appeals*, G.R. No 165580, February 20, 2006, 482 SCRA 705, 714. *Prudential Guarantee and Assurance, Inc. v. Court of Appeals*, 480 Phil. 134 (2004); *FJR Garments Industries v. Court of Appeals*, 130 SCRA 216, 218 (1984).

[18] *National Power Corporation v. Laohoo*, G.R. No. 151973, July 23, 2009, 593 SCRA 564, 579-580; *Bank of America, NT & SA v. Gerochi, Jr.*, G.R. No. 73210, February 10, 1994, 230 SCRA 9, 15.

appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.[19] Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

Negligence of former counsel binds the respondents

In the present case, the respondents' petition for *certiorari* was filed twenty-eight (28) days late from Atty. Plando's October 13, 2006 receipt of the September 29, 2006 resolution. The respondents insist that they should not suffer for Atty. Plando's negligence in failing to inform them of the September 29, 2006 resolution, and the reckoning date for the 60-day period should be their December 6, 2006 notice.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[20] The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[21] The failure of a party's counsel to notify him on time of the adverse judgment, to enable him to appeal therefrom, is negligence that is not excusable. We have repeatedly held that **notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face**.[22]

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[19] *Lim v. Delos Santos*, G.R. No. 172574, July 31, 2009, 594 SCRA 607, 616-617; *Villena v. Rupisan*, G.R. No. 167620, April 3, 2007, 520 SCRA 346, 358-359.

[20] *Philux, Inc. v. National Labor Relations Commission*, G.R. No. 151854, September 3, 2008, 564 SCRA 21, 33; *Producers Bank of the Phils. v. Court of Appeals*, 430 Phil. 812, 830 (2002).

[21] *Ibid.*

[22] *Rivera v. Court of Appeals*, G.R. No. 157040, February 12, 2008, 544 SCRA 434, 451-452; *Manaya v. Alabang Country Club Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140*; Trust International Paper*

We cannot sustain the respondents' argument that they cannot be bound by Atty. Plando's negligence since this would set a dangerous precedent. It would enable every party-litigant to render inoperative any adverse order or decision of the courts or tribunals, through the simple expedient of alleging his/her counsel's gross negligence.

We thus find that the CA erred in acting on the respondents' petition for *certiorari* despite its late filing. The NLRC resolution was already final and executory, and the CA had no jurisdiction to entertain the petition, except to order its dismissal.

Immutability of NLRC resolution

The NLRC's resolution became final ten (10) days after counsel's receipt, and the respondents' failure to file the petition within the required (60)-day period rendered it impervious to any attack through a Rule 65 petition for *certiorari*. Thus, no court can exercise jurisdiction to review the resolution.[23]

Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[24] All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party.[25] Just as a losing party has

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Corporation v. Pelaez, G.R. No. 164871, August 22, 2006, 499 SCRA 552, 561-562; *Azucena v. Foreign Manpower Services*, 484 Phil. 316, 327 (2004); *Mercury Drug Corporation v. Court of Appeals*, 390 Phil. 902, 913-914 (2000).

[23] *Philippine Commercial and Industrial Bank v. Court of Appeals*, 391 Phil. 145, 153 (2000).

[24] *Peña v. Government Service Insurance System*, G.R No.159520, September 19, 2006, 502 SCRA 383, 404.

[25] Rules of Court, Rule 39, Sec. 1. *Execution upon judgments or final orders.*— Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceedings upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. x x x

the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[26] After all, a denial of a petition for being time-barred is tantamount to a decision on the merits.[27] Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[28]

WHEREFORE, the present petition is *GRANTED*. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 01472-MIN are *REVERSED and SET ASIDE*. The decision of the Labor Arbiter is *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189533. November 15, 2010]

MA. IMELDA PINEDA-NG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[26] *Bello v. National Labor Relations Commission*, G.R. No. 146212, September 5, 2007, 532 SCRA 234, 242.

[27] *National Power Corporation v. Laohoo, supra* note 18, at 590; *Videogram Regulatory Board v. Court of Appeals*, G.R. No. 106564, November 28, 1996, 265 SCRA 50, 56.

[28] *Estinozo v. Court of Appeals*, G.R. No. 150276, February 12, 2008, 544 SCRA 422, 432.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; EXPLAINED.— Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion, but less than evidence which would justify a conviction.

2. ID.; ID.; ID.; THE TRIAL COURT'S DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST WILL NOT BE REVIEWED BY THE SUPREME COURT; EXCEPTION; NOT PRESENT.— The general rule is that this Court does not review factual findings of the trial court, which include the determination of probable cause for the issuance of a warrant of arrest. It is only in exceptional cases where this Court sets aside the conclusions of the prosecutor and the trial court judge on the existence of probable cause, such as cases when the Court finds it necessary in order to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice. The facts obtaining in this case do not warrant the application of the exception.

3. ID.; ID.; ID.; A FINDING THEREOF DOES NOT REQUIRE AN INQUIRY ON THE SUFFICIENCY OF EVIDENCE TO PROCURE A CONVICTION; A REASONABLE BELIEF THAT THE ACT COMPLAINED OF CONSTITUTES THE OFFENSE CHARGED IS ENOUGH.— [W]e respect the findings of the CA when it held that Judge Reyes did not solely rely on the findings of the City Prosecutor in reversing her earlier Order. We observed, among others, that when Judge Reyes quoted our ruling in *People v. CA*, she underscored a portion thereof, clearly indicative of her reliance on said jurisprudence. Thus, it cannot be validly argued that Judge Reyes simply and blindly adhered to the recommendation of the City Prosecutor in rendering the assailed Order, bereft of any factual

and legal basis. Furthermore, we also accord respect to the factual findings of the City Prosecutor and the CA that petitioner indeed encashed these allegedly anomalous checks. Suffice it to state that a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction – it is enough that there is a reasonable belief that the act or omission complained of constitutes the offense charged.

APPEARANCES OF COUNSEL

Roque & Roque Law Firm for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated July 10, 2009.

The facts are summarized as follows:

On December 19, 2007, an Information[3] for Qualified Theft was filed against: (1) Richard Francisco (Francisco), Branch Manager of private complainant Philippine Business Bank (bank) located in Dolores, City of San Fernando, Pampanga; (2) Mailada Marilag-Aquino[4] (Aquino); and (3) petitioner Ma. Imelda Pineda-Ng[5] (petitioner).

The prosecution found that Aquino had drawn and issued the following checks in favor of petitioner:

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[1] *Rollo*, pp. 24-42.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia, concurring; *id.* at 113-124.

[3] *Id.* at 66-67.

[4] Also referred to as Maidala Marilag-Aquino in some pleadings and documents.

[5] Also referred to as Imelda Ng in some pleadings and documents.

Drawee Bank	Check No.	Date	Payor	Amount
Planters Bank	0204036	February 07, 2007	Imelda Ng	₱ 625,000.00
China Bank	A0666301	February 21, 2007	Imelda Ng	1,180,000.00
China Bank	A0666309	February 26, 2007	Cash	1,560,000.00
China Bank	A0666310	February 26, 2007	Cash	1,390,000.00
China Bank	A0666308	February 27, 2007	Imelda Ng	2,080,000.00
Planters Bank	0204030	February 28, 2007	Imelda Ng	900,000.00
China Bank	A0661638	February 28, 2007	Cash	1,000,000.00
			TOTAL:	**₱8,735,000.00**

In turn, petitioner presented these seven (7) checks for payment before the bank by virtue of her Bill Purchase Accommodation facility through Francisco, who, in excess of his authority, approved the payment of these checks despite the fact that each check had a face value of more than ₱100,000.00 and that the same were actually drawn from Closed Accounts and/or drawn against insufficient funds.[6]

Petitioner filed a Motion for Reconsideration,[7] which was, however, denied by the City Prosecutor because the Information was already filed before the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 42, presided over by Judge Maria Amifaith Fider-Reyes (Judge Reyes).[8] In her Order[9] dated January 11, 2008, Judge Reyes found probable cause to hold Francisco liable, and fixed his bail at ₱400,000.00; while she ordered the dismissal of the case against Aquino and petitioner for absence of probable cause. Aggrieved, the bank filed its Motion for Reconsideration,[10] to which petitioner filed her own Comment and Opposition.[11]

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[6] *Supra* note 3; please also see City Prosecutor's resolution dated December 19, 2007 (*rollo*, pp. 53-60).

[7] *Rollo*, pp. 61-65.

[8] *Id.* at 68.

[9] *Id.* at 81 and 84 (wrong pagination).

[10] *Id.* at 88-99.

[11] *Id.* at 102-111.

On April 30, 2008, Judge Reyes, acting on the bank's motion for reconsideration, issued an Order[12] reversing her earlier ruling, this time finding probable cause against Aquino and petitioner, cancelling the bail fixed for Francisco, and directing the issuance of warrants of arrest to all the accused. No bail was recommended.

Unperturbed, petitioner filed a Petition for *Certiorari* before the CA. In its Decision[13] dated July 10, 2009, the CA dismissed the petition for lack of merit. The CA took note that, while it appeared that Judge Reyes, other than exhaustively quoting *People v. CA*,[14] failed to fully amplify her own findings, it could not be said that she did not review the records of the case, and that she merely relied on the findings of the City Prosecutor. The CA stressed that, at the outset, in her Order dated January 11, 2008 issued in petitioner's favor, Judge Reyes categorically indicated that she reviewed the records of the case. The CA ratiocinated that the judge already had knowledge of the case and that she need not reiterate or mention in the assailed Order that she reviewed the case. After all, Judge Reyes had the power to set aside her previous Order. Moreover, the CA held that while it is true that there is no crime of "Conspiracy to Commit Qualified Theft" as argued by petitioner, the Information charged all the accused with consummated Qualified Theft; thus, Aquino and petitioner were charged as principals by direct participation. Subsequently, the CA denied petitioner's motion for reconsideration in its Resolution[15] dated September 8, 2009.

Hence, this Petition ascribing grave abuse of discretion to the CA insofar as "*the impugned decision and resolution of the Court of Appeals are inconsistent with and not supported by the law, the facts, as well as, the settled jurisprudence laid down by the Honorable Supreme Court on the matter of filing of criminal cases against the accused where there is no evidence*

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[12] *Id.* at 44-52.

[13] *Supra* note 2.

[14] 361 Phil. 401 (1999).

[15] *Rollo*, pp. 126-127.

sufficient to engender a well-founded belief that an offense was committed."[16]

Petitioner claims that being a bank client and not an employee of the bank, she could not be held liable for Qualified Theft, and that there is no such crime as Conspiracy to Commit Qualified Theft. Petitioner avers that Judge Reyes merely relied on the findings and recommendation of the City Prosecutor when she did not clearly state the basis for the assailed Order, thus, violating petitioner's constitutional rights to liberty and presumption of innocence.[17]

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), asseverates that the petition for *certiorari* filed before the CA was validly dismissed because the assailed RTC Order was based on Judge Reyes' fair evaluation of the records; hence, there was no grave abuse of discretion committed by the judge when she issued the order. The OSG also states that the petition raises factual matters, and issues of fact are not proper subjects of a petition for *certiorari*, the same being limited to issues of jurisdiction and grave abuse of discretion. The OSG then submits that the determination of what should be charged in the Information is within the exclusive authority of the executive branch.[18]

We deny the Petition.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable

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[16] *Id.* at 26.

[17] *Supra* note 1; please see petitioner's Reply (*id.* at 184-191).

[18] *Rollo*, pp. 153-179.

cause implies probability of guilt and requires more than bare suspicion, but less than evidence which would justify a conviction.[19]

The general rule is that this Court does not review factual findings of the trial court, which include the determination of probable cause for the issuance of a warrant of arrest. It is only in exceptional cases where this Court sets aside the conclusions of the prosecutor and the trial court judge on the existence of probable cause, such as cases when the Court finds it necessary in order to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice. The facts obtaining in this case do not warrant the application of the exception.[20]

Moreover, we respect the findings of the CA when it held that Judge Reyes did not solely rely on the findings of the City Prosecutor in reversing her earlier Order. We observed, among others, that when Judge Reyes quoted our ruling in *People v. CA*,[21] she underscored a portion thereof, clearly indicative of her reliance on said jurisprudence. Thus, it cannot be validly argued that Judge Reyes simply and blindly adhered to the recommendation of the City Prosecutor in rendering the assailed Order, bereft of any factual and legal basis. Furthermore, we also accord respect to the factual findings of the City Prosecutor and the CA that petitioner indeed encashed these allegedly anomalous checks. Suffice it to state that a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction – it is enough that there is a reasonable belief that the act or omission complained of constitutes the offense charged.[22]

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[19] *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 352.

[20] *De Joya v. Marquez*, G.R. No. 162416, January 31, 2006, 481 SCRA 376, 381.

[21] *Supra* note 14, at 415-416.

[22] *Ang-Abaya v. Ang*, G.R. No. 178511, December 4, 2008, 573 SCRA 129, 142.

In view of the foregoing disquisitions, we find no further need to resolve the other issues raised by petitioner, absent any reversible error on the part of the CA in rendering the assailed Decision.

WHEREFORE, the instant Petition is *DENIED*. No Costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189844. November 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO VILLANUEVA BAGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION THEREOF IS ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION; PRESENT IN CASE AT BAR.— As a rule, the trial court's evaluation of the credibility of the witnesses and their testimonies is entitled to great weight and will not be disturbed on appeal. This rule does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended, or misapplied by the trial court. In the instant case, there are circumstances, which, when properly appreciated, would warrant accused-appellant's acquittal.

2. ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; PREVAILS AND THE

ACCUSED SHALL BE ACQUITTED WHERE THE PROSECUTION FAILS TO MEET THE REQUIRED QUANTUM OF EVIDENCE.— Nothing less than the Constitution itself mandates that an accused shall be presumed innocent until the contrary is proved. The prosecution has the burden to overcome such presumption and prove the guilt of accused-appellant beyond reasonable doubt. In doing so, it must rely on the strength of its own evidence and not on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may not even present any defense on its behalf, in which case, the presumption of innocence prevails and the accused is acquitted.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. Likewise, it is fundamental to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. The term *corpus delicti* means the actual commission by someone of the particular crime charged.

4. ID.; ID.; ID.; EXISTENCE OF DANGEROUS DRUGS IS A CONDITION *SINE QUA NON* FOR CONVICTION; IDENTITY OF THE PROHIBITED DRUG MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— [T]he existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime. In fact, the existence of the dangerous drug is essential to a judgment of conviction. It is, therefore, essential that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

5. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT; IMPORTANCE OF.— Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of

possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x

6. ID.; ID.; ID.; BUY-BUST OPERATION; DUE REGARD TO CONSTITUTIONAL AND LEGAL SAFEGUARDS MUST BE UNDERTAKEN.— A careful review of the records of the instant case raises serious doubts as to the identity of the drug in question. While a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken. It is the duty of the courts to ascertain if the operation were subject to any police abuse.

7. ID.; ID.; ID.; NO REASONABLE GUARANTY AS TO THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ILLEGAL DRUG WHERE TESTIMONIES OF THE PROSECUTION WITNESSES ARE INCONSISTENT.— PO2 Manlapig stated that he marked the plastic sachet containing the illegal drug with his markings, "FM," and sent it to the crime laboratory. On the other hand, SPO1 Hidalgo similarly testified to marking the sachet with "FM-MBV1" and sent it to the crime laboratory as well. This contradiction raises the question: Is the sachet of *shabu* allegedly seized from accused-appellant the very same object tested by the crime laboratory and offered in court as evidence? The evidence presented by the prosecution is clearly insufficient to provide an affirmative answer. Both PO1 Manlapig and SPO2 Hidalgo testified to turning the plastic sachet over to the crime laboratory. Because of this inconsistency, there is no reasonable

guaranty as to the integrity and evidentiary value of the confiscated illegal drug.

8. ID.; ID.; SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS (IRR); NON-COMPLIANCE THEREWITH WILL NOT BE EXCUSED WHEN THERE IS LACK OF ACCEPTABLE JUSTIFICATION FOR FAILURE TO DO SO.— Even though non-compliance with Sec. 21 of the IRR may be excused, such cannot be relied upon when there is lack of any acceptable justification for failure to do so. The Court, citing *People v. Sanchez*, explained that "the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds." In this case, the prosecution provided no explanation as to why there was a contradiction as to the markings on the confiscated drugs. This is similar to what happened in *Zarraga v. People*, where the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*.

9. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; WHEN MORAL CERTAINTY AS TO CULPABILITY HANGS IN THE BALANCE, ACQUITTAL ON REASONABLE DOUBT INEVITABLY BECOMES A MATTER OF RIGHT.— Summing up all the circumstances, it behooves this Court not to blindingly accept the testimony of a lone witness, as we ruled: "When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right."

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the August 26, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02946 entitled *People of the Philippines v. Mario Villanueva Baga*, which affirmed the August 17, 2007 Decision[2] in Criminal Case No. Q-02-110865 of the Regional Trial Court (RTC), Branch 80 in Quezon City. The RTC found accused-appellant Mario Villanueva Baga guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charge against Baga stemmed from the following Information:

> That on or about the 22nd day of July, 2002, in Quezon City Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero four (0.04) gram of Methylamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to law.[3]

On November 11, 2002, accused-appellant was arraigned, and he pleaded "not guilty" to the offense charged.[4] Thereafter, trial on the merits ensued.

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[1] *Rollo*, pp. 2-14. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Isaias P. Dicdican and Romeo F. Barza.

[2] CA *rollo*, pp. 15-24. Penned by Judge Ma. Theresa Dela Torre-Yadao.

[3] Records, p. 1.

[4] *Id.* at 13.

During trial, the prosecution presented as its witnesses Engr. Leonard M. Jabonillo, Police Officer 2 (PO2) Florante Manlapig, and Senior Police Officer 1 (SPO1) Wilfredo Hidalgo. Subsequently, the parties agreed to stipulate on the testimony of Engr. Jabonillo, the Forensic Chemist. On the other hand, the defense presented accused-appellant as its sole witness.

The Prosecution's Version of Facts

On July 22, 2002, the Station Drug Enforcement Unit (SDEU) of Police Station 1 in La Loma, Quezon City received an information from a police asset about the drug peddling activities of a certain Mario Baga. The chief of the SDEU then formed a buy-bust team composed of PO2 Manlapig, who was designated as poseur-buyer; and SPO1 Hidalgo and PO2 Romeo Paday, who would act as back-ups. The buy-bust money, PhP 100, was marked by PO2 Manlapig with his initials, "FM."

Afterwards, the team, whose members were all dressed in civilian clothes, was dispatched along with the informant on board an L-300 van. They left the police station at around 4:45 in the afternoon and reached the target area at 12-A Kaingin Bukid, *Barangay* Samson, Quezon City, 10 minutes later.

Upon arriving, PO2 Manlapig and the informant went ahead followed by the other members of the team. At the target area, PO2 Manlapig and the informant saw the target of the operation who turned out to be accused-appellant. The informant then introduced PO2 Manlapig to accused-appellant. Thereupon, PO2 Manlapig gave the marked money to accused-appellant, who, in turn, gave PO2 Manlapig a plastic sachet. PO2 Manlapig examined the plastic sachet, and when he determined that it contained *shabu*, he executed the pre-arranged signal by drawing his gun. The back-up officers then rushed to the scene, joining PO2 Manlapig, and together they arrested accused-appellant and took him to the police station.

While on their way to the police station, PO2 Manlapig took custody of the suspected illegal drug subject of the transaction, while SPO1 Hidalgo took the marked money with him. At the precinct, SPO1 Hidalgo marked the plastic sachet with "FM-

MBVI," which stands for Florante Manlapig and Mario Baga, and forwarded it with a referral letter to the crime laboratory for examination. Likewise, he prepared the affidavit of the arresting officers. Accused-appellant was subjected to inquest proceedings at the City Prosecutor's Office and was charged accordingly.

Version of the Defense

In contrast, accused-appellant strongly denied having sold any illegal drug to the poseur-buyer. He insisted that on July 22, 2002, at around 5 o'clock in the afternoon, he was at Kaingin Road on his way to return some rented VCDs when two men in civilian clothes suddenly accosted him. He asked them why he was being arrested, but the two told him to do his explanation at the police station. He was then brought to La Loma Police Station, where he was informed by one of the apprehending officers, whom he came to know later as PO2 Manlapig, that charges would be filed against him for sale of illegal drugs.

Ruling of the Trial Court

After trial, the RTC found accused-appellant guilty of the crime. The dispositive portion of the Decision dated August 17, 2007 reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the offense charged. Accordingly, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, there being no mitigating nor aggravating circumstances that attended the commission of the offense.
>
> The illegal drug subject of this case is hereby forfeited in favor of the Government [and to be] turned over to the Philippine Drug Enforcement Agency for proper disposition.
>
> SO ORDERED.[5]

On appeal to the CA, accused-appellant disputed the lower court's finding of guilt beyond reasonable doubt of the crime charged. He argued that the testimonial evidence presented by

[5] CA *rollo*, p. 24.

the prosecution was contradictory and insufficient to overturn the presumption of innocence.

Ruling of the Appellate Court

On August 26, 2009, the CA affirmed the judgment of the lower court. The dispositive portion of the CA Decision reads:

> WHEREFORE, the decision dated August 17, 2007 of the Regional Trial Court, Branch 80, Quezon City, in Criminal Case No. Q-20-110865 is **AFFIRMED** *in toto*.
>
> SO ORDERED.[6]

Accused-appellant timely filed a notice of appeal from the CA Decision.

The Issue

Accused-appellant assigns the following lone assignment of error:

> The court *a quo* erred in finding the accused-appellant guilty of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

Our Ruling

The appeal is meritorious.

Accused-appellant argues that the lower court erred in relying on the testimony of prosecution witnesses while totally disregarding the version of the defense. He stresses that the police officers who testified in the case are seasoned witnesses who can deliver practiced testimonies and parry cross-examination, and, thus, posits that it was the duty of the lower court to minutely examine said testimonies. He likewise faults the lower court for giving credence to the testimony of poseur-buyer PO2 Manlapig which is uncorroborated, and points out the alleged contradictory testimonies of SPO2 Hidalgo and PO2 Manlapig on the role of the former in the buy-bust operation.

We agree with accused-appellant.

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

As a rule, the trial court's evaluation of the credibility of the witnesses and their testimonies is entitled to great weight and will not be disturbed on appeal. This rule does not apply where it is shown that any fact of weight and substance has been overlooked, misapprehended, or misapplied by the trial court.[7] In the instant case, there are circumstances, which, when properly appreciated, would warrant accused-appellant's acquittal.

Nothing less than the Constitution itself mandates that an accused shall be presumed innocent until the contrary is proved.[8] The prosecution has the burden to overcome such presumption and prove the guilt of accused-appellant beyond reasonable doubt. In doing so, it must rely on the strength of its own evidence and not on the weakness of the defense.

In fact, if the prosecution fails to meet the required quantum of evidence, the defense may not even present any defense on its behalf, in which case, the presumption of innocence prevails and the accused is acquitted.[9]

In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[10] Likewise, it is fundamental to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. The term *corpus delicti* means the actual commission by someone of the particular crime charged.[11]

Moreover, the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous

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[7] *People v. Casimiro*, G.R. No. 146277, June 20, 2002, 383 SCRA 390, 398; citing *People v. Laxa*, G.R. No. 138501, July 20, 2001, 361 SCRA 622 and *People v. de los Santos*, G.R. No. 126998, September 14, 1999, 314 SCRA 303.

[8] CONSTITUTION, Art. II, Sec. 14(2).

[9] *People v. Lorenzo*, G.R. No. 184760, April 23, 2010.

[10] *Id.*; *People v. Ong*, G.R. No. 175940, February 6, 2008, 544 SCRA 123, 132.

[11] *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 152-153.

drugs, it being the very *corpus delicti* of the crime.[12] In fact, the existence of the dangerous drug is essential to a judgment of conviction. It is, therefore, essential that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[13]

The importance of establishing the chain of custody cannot be overemphasized. In *Malillin v. People*,[14] the Court explained its significance, thus:

> Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.
>
> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the

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[12] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

[13] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[14] *Id.* at 631-634.

time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility,

that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

A careful review of the records of the instant case raises serious doubts as to the identity of the drug in question. While a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken.[15] It is the duty of the courts to ascertain if the operation were subject to any police abuse.

As aptly pointed out by accused-appellant, the testimonies of the prosecution witnesses were contradictory and uncorroborated. The prosecution only presented one witness to testify about the alleged buy-bust operation. Although jurisprudence provides that the testimony of a single witness, if credible and positive, is sufficient to produce a conviction, such is not enough to overturn the constitutional mandate of presumption of innocence.

The following testimonies highlight the contradictory testimonies of the witnesses:

Testimony of PO2 Manlapig

July 1, 2003

(DIRECT)

Q- On July 22, 2002, did you report for work?

A- Yes, sir.

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[15] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433, 439; *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339, 341.

Q- What were the things assigned to you when you reported for work on said date and time?

A- I was assigned by our chief as poseur buyer, sir.

Q- For what?

A- In a buy-bust operation, sir.[16]

xxx xxx xxx

Q- Who would be your companions?

A- SPO1 Wilfredo Hidalgo and PO2 Romeo Paday, sir.

Q- What preparation if any did you do as designated poseur buyer?

A- We prepared a buy bust money, sir.[17] (Emphasis supplied.)

xxx xxx xxx

Q- I am showing to you a photocopy of the php100.00, kindly go over the same and tell the court what is the relation of the photocopy with the one you are referring to?

A- This is the buy bust money sir, we used in the buy bust operation.

Q- Why did you say so?

A- Because of my secret marking, sir.

Q- Where is it placed?

Witness pointing to the lower right corner portion. What is this marking?

A- "FM," sir.

Q- What does "FM" [stand] for, Mr. Witness?

A- Florante Manlapig, sir.[18]

xxx xxx xxx

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[16] TSN, July 1, 2003, p. 4.

[17] *Id.* at 5.

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

Q- When you were dispatched, what do you mean by that?

A- It was recorded in the blotter book, sir.[19]

xxx xxx xxx

Q- Who were your companions?

A- SPO1 Wilfredo Hidalgo and PO2 Romeo Paday, sir.[20]

xxx xxx xxx

Q- When you reached the target area, what did you do?

A- I was introduced by our informant, sir.

Q- To whom?

A- To Mario Baga, sir.

Q- After you were introduced, what happened next?

A- After I handed the buy bust money, I received on plastic sachet and after I received the plastic sachet and it was positive of *shabu*, I gave my pre-arranged signal, sir.

Q- Mr. Witness, why did you give the money to the person you just described?

A- To buy *shabu*.

Q- So, there was a transaction between you?

A- Yes, sir.[21] (Emphasis supplied.)

xxx xxx xxx

Q- So after your companions arrived, what happened next?

A- We arrested Mario Baga, sir.

Q- What did you do when you arrested him?

A- We brought him to the office for proper disposition, sir.

Q- How about the buy bust money, where was it after he was arrested?

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[19] *Id.* at 6.

[20] *Id.* at 7.

[21] *Id.* at 8.

A- It was with SPO1 Wilfredo Hidalgo, sir.

Q- How about the drug you purchased, who was in possession of the same when you left the target area going to the precint (sic)?

A- It was with me, sir.

Q- When you reached the precinct, what did you do with it?

A- I put my marking, sir.

Q- What happened with the *shabu*?

A- We brought it to the PNP Crime Laboratory, sir.

Q- How about the marked money, what was done in the marked money at the precinct? What did he do with it?

A- It was in his custody, sir.[22] (Emphasis supplied.)

xxx xxx xxx

Q- Where is now the *shabu*?

A- It was in the custody of the PNP Crime Laboratory, sir.

Q- How about the original buy bust money?

A- With the investigator.[23] (Emphasis supplied.)

xxx xxx xxx

(CROSS)

Q- These officers, what is the purpose of the back-up officers? Why did they have to accompany you in the target area?

A- So that there are persons that would assist me in case I could not handle the situation.

Q- When you alighted from the vehicle, where were your back-up officers?

A- They followed us.

Q- So they were behind you?

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[22] *Id.* at 9-10.

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

A- Yes, ma'am.

Q- They were walking beside you?

A- Yes, ma'am.

Q- How many [were] you then?

A- 3 plus the informant 4, ma'am.

Q- So you have two back-up officers, is that correct?

A- Yes, ma'am.

Q- What are the names?

A- Wilfredo Hidalgo and PO2 Romeo Paday, ma'am.[24] (Emphasis supplied.)

xxx xxx xxx

(RE-DIRECT)

Q- You mentioned the drug purchased from the accused, if shown to you, would you be able to identify it?

A- Yes, sir.

Q- Showing to you a plastic sachet containing the substance, previously marked as Exhibit F, kindly go over the same and tell the court, what relation has this from the one you purchased from the accused?

A- This is the plastic sachet, sir.

Q- Why do you say so?

A- Because of my marking FM, sir.

Q- What does FM [stand] for?

A- Florante Manlapig, sir.[25] (Emphasis supplied.)

xxx xxx xxx

August 17, 2006

(DIRECT)

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[24] *Id.* at 14-15.

[25] TSN, August 10, 2006, p. 7.

Q- As poseur buyer what did you bring then?

A- The buy bust money.

Q- Do you have this buy bust money with you right now?

A- It is not with me right now. It is with the investigator.

Q- Who is the investigator?

A- SPO2 Wilfredo Hidalgo.[26] (Emphasis supplied.)

(CROSS)

Q- And did you, Mr. Witness, report to the PDEA that a certain One Hundred Peso bill will be used as a buy bust money in connection with anti illegal drug operation against Mario Baga?

A- Yes, sir.

Q- So when did you do that, Mr. Witness?

A- Before we conducted the operation.

Q- And so considering that the alleged buy bust operation took place on July 22, 2002 are you now trying to imply that you coordinated with the PDEA the use of that One Hundred Peso bill sometime in July 21, 2002?

A- Yes, sir.

Q- Do you have tangible proof to show to this Honorable Court that you really coordinated with the PDEA?

A- There was a pre-operation report.

Q- Where is that pre-operation report you are saying, Mr. Witness?

A- It is stated in our affidavit.

COURT:

Q- Where is that report?

A- In our office, Your Honor.

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[26] TSN, August 17, 2006, p. 2.

ATTY. GAYAPA

Q- x x x Mr. Witness, who is now in possession of that pre-operation report?

A- It is with the investigator.[27]

xxx xxx xxx

(REDIRECT)

Q- So are you now telling us that you did not coordinate with the local officials then and the PDEA?

A- We coordinated with the *barangay*.

Q- How about the PDEA?

A- Insofar as PDEA is concerned, sir, we did not coordinate with them. But with respect to the PDEA, I don't know if our desk officer coordinated with them.[28]

Testimony of SPO2 Hidalgo

August 17, 2006

(DIRECT)

Q- Mr. Witness, as investigator in this case on the date of 22 of July 2202, what did you receive? What confiscated items did you receive from the arresting officer and the poseur buyer?

A- White heat sealed transparent sachet of undetermined quantity of the known *shabu*.

Q- What else, Mr. Witness, other than heat sealed transparent sachet?

A- Buy bust money which was recovered by the apprehending officers.[29]

xxx xxx xxx

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[27] *Id.* at 4-5.

[28] *Id.* at 9.

[29] *Id.* at 14-15.

Q- In whose possession the buy bust money right now, Mr. Witness?

A- During the inquest procedure, Your Honor, it was the apprehending officer or the affiant who were accompanied by SPO2 Romeo Paday.[30]

xxx xxx xxx

Q- In whose possession the buy bust money?

A- As far as I know it is with SPO1 Florante Manlapig because he was the one who brought the suspect to the Office of the Prosecutor for inquest.[31] (Emphasis supplied.)

xxx xxx xxx

Q- What other documents did you prepare?

A- I prepared the documents for the crime laboratory.

Q- What are these documents? Can you specify, Mr. Witness, to determine the confiscated item if it is a dangerous drug?

A- I sent the confiscated specimen to the crime laboratory for them to determine if it is dangerous drugs or not.[32]

xxx xxx xxx

Q- How sure are you that this is the sachet you are referring to a while ago?

A- I have my markings there, sir, FM-MBV1.[33] (Emphasis supplied.)

xxx xxx xxx

(CROSS)

Q- Am I correct in saying now that as an investigator you did not go to the place where the alleged buy bust took place to determine whether indeed buy bust operation was undertaken then, am I correct?

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[30] *Id.* at 15.

[31] *Id.* at 16.

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

[33] *Id.* at 18.

A- Yes, sir.

Q- So what you just prepared here your investigation is only a paper investigation conducted in the precinct?

A- Yes, sir.

Q- And so, Mr. Witness, by the way you identified before this Honorable Court the alleged confiscated *shabu*. Am I correct in saying that you did not prepare any physical inventory of the *shabu*?

A- I did not prepare.[34] (Emphasis supplied.)

Several inconsistencies in the testimonies of the prosecution witnesses can easily be spotted. *First*, PO2 Manlapig testified that SPO1 Hidalgo acted as one of his back-up officers in the buy-bust operation, but SPO1 Hidalgo refuted this in his testimony and testified that he never went to the place where the buy-bust operation took place. He said that he was only the investigator, tasked with preparing documents.

PO2 Manlapig	SPO1 Hidalgo
Q- So you have two back-up officers, is that correct?	Q- Am I correct in saying now that as an investigator you did not go to the place where the alleged buy bust took place to determine whether indeed buy bust operation was undertaken then, am I correct?
A- Yes, ma'am.	
Q- What are the names?	
A- Wilfredo Hidalgo and PO2 Romeo Paday, ma'am.[35]	A- Yes, sir.[36]

This alone casts doubt on whether the buy-bust operation actually took place. The other alleged back-up, PO2 Romeo Paday, was never presented to shed light on what actually happened.

Second, PO2 Manlapig stated that he marked the plastic sachet containing the illegal drug with his markings, "FM," and sent it

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

[35] TSN, July 1, 2003, pp. 14-15.

[36] TSN, August 17, 2006, p. 21.

to the crime laboratory. On the other hand, SPO1 Hidalgo similarly testified to marking the sachet with "FM-MBV1" and sent it to the crime laboratory as well.

PO2 Manlapig

Q- What happened with the *shabu*?

A- We brought it to the PNP Crime Laboratory, sir.[37]

x x x x

Q- Showing to you a plastic sachet containing the substance, previously marked as Exhibit F, kindly go over the same and tell the court, what relation has this from the one you purchased from the accused?

A- This is the plastic sachet, sir.

Q- Why do you say so?

A- Because of my marking FM, sir.[38]

SPO1 Hidalgo

Q- What are these documents? Can you specify, Mr. Witness, to determine the confiscated item if it is a dangerous drug?

A- I sent the confiscated specimen to the crime laboratory for them to determine if it is dangerous drugs or not.[39]

x x x x

Q- How sure are you that this is the sachet you are referring to a while ago?

A- I have my markings there, sir, FM-MBV1.[40]

This contradiction raises the question: Is the sachet of *shabu* allegedly seized from accused-appellant the very same object tested by the crime laboratory and offered in court as evidence? The evidence presented by the prosecution is clearly insufficient to provide an affirmative answer. Both PO1 Manlapig and SPO2 Hidalgo testified to turning the plastic sachet over to the crime laboratory. Because of this inconsistency, there is no reasonable guaranty as to the integrity and evidentiary value of the confiscated illegal drug.

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[37] TSN, July 1, 2003, p. 10.

[38] TSN, August 10, 2006, p. 7.

[39] TSN, August 17, 2006, p. 17.

[40] *Id.* at 18.

More importantly, Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165 clearly outlines the post-procedure in taking custody of seized drugs, *viz*:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Even though non-compliance with Sec. 21 of the IRR may be excused, such cannot be relied upon when there is lack of any acceptable justification for failure to do so. The Court, citing *People v. Sanchez*,[41] explained that "the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds."[42]

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[41] G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[42] *People v. Lorenzo*, G.R. No. 184760, April 23, 2010.

In this case, the prosecution provided no explanation as to why there was a contradiction as to the markings on the confiscated drugs. This is similar to what happened in *Zarraga v. People*,[43] where the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*.

Third, there was also confusion as to who has custody of the original buy-bust money; and finally, there were inconsistencies on whether a pre-operation report was actually prepared or not.

Summing up all these circumstances, it behooves this Court not to blindingly accept the testimony of a lone witness, as we ruled: "When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right."[44]

WHEREFORE, the CA Decision dated August 26, 2009 affirming the judgment of conviction of the RTC, Branch 80 in Quezon City is *REVERSED* and *SET ASIDE*. Accused-appellant Mario Baga *y* Villanueva is hereby *ACQUITTED* on reasonable doubt and is accordingly ordered immediately released from custody, unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.*, concur.

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[43] G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647-648; cited in *People v. Lorenzo, supra*.

[44] *Malillin v. People, supra* note 13, at 639.

[*] Additional member per Special Order No. 913 dated November 2, 2010.

THIRD DIVISION

[G.R. No. 190515. November 15, 2010]

CIRTEK EMPLOYEES LABOR UNION-FEDERATION OF FREE WORKERS, *petitioner, vs.* **CIRTEK ELECTRONICS, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; STRIKES AND LOCKOUTS; ARTICLE 263 (G) OF THE LABOR CODE; THE SECRETARY OF LABOR MAY RESOLVE ALL ISSUES INVOLVED IN A CONTROVERSY INCLUDING THE AWARD OF WAGE INCREASES AND BENEFITS; ARBITRAL AWARD, NATURE OF.— It is well-settled that the Secretary of Labor, in the exercise of his power to assume jurisdiction under Art. 263 (g) of the Labor Code, may resolve all issues involved in the controversy including the award of wage increases and benefits. While an arbitral award cannot *per se* be categorized as an agreement voluntarily entered into by the parties because it requires the intervention and imposing power of the State thru the Secretary of Labor when he assumes jurisdiction, the arbitral award can be considered an **approximation of a collective bargaining agreement** which would otherwise have been entered into by the parties, hence, it has the force and effect of a valid contract obligation.

2. ID.; ID.; ID.; THE FILING AND SUBMISSION OF THE MEMORANDUM OF AGREEMENT (MOA) WILL NEITHER DIVEST THE SECRETARY OF LABOR OF HIS JURISDICTION NOR RESTRICT HIS LEEWAY IN DECIDING THE MATTERS BEFORE HIM.— That the arbitral award was higher than that which was purportedly agreed upon in the MOA is of no moment. For the Secretary, in resolving the CBA deadlock, is not limited to considering the MOA as basis in computing the wage increases. He could, as he did, consider the financial documents submitted by respondent as well as the parties' bargaining history and respondent's financial outlook and improvements as stated in its website. It bears noting that **since the filing and submission of the MOA did not have the effect of divesting the Secretary**

of his jurisdiction, or of automatically disposing the controversy, then **neither should the provisions of the MOA restrict the Secretary's leeway** in deciding the matters before him.

3. ID.; RULES OF PROCEDURE; PAROL EVIDENCE SHOULD NOT BE STRICTLY APPLIED TO LABOR CASES; THE LABOR ARBITER IS NOT PRECLUDED FROM ACCEPTING AND EVALUATING EVIDENCE OTHER THAN WHAT IS STATED IN THE COLLECTIVE BARGAINING AGREEMENT.— The appellate court's brushing aside of the "*Paliwanag*" and the minutes of the meeting that resulted in the conclusion of the MOA because they were not verified and notarized, thus violating, so the appellate court reasoned, the rules on parol evidence, does not lie. Like any other rule on evidence, parol evidence should not be strictly applied in labor cases. The **reliance on the parol evidence rule is misplaced**. **In labor cases** pending before the Commission or the Labor Arbiter, **the rules of evidence prevailing in courts of law or equity are not controlling**. Rules of procedure and evidence are not applied in a very rigid and technical sense in labor cases. Hence, the Labor Arbiter is not precluded from accepting and evaluating evidence other than, and even contrary to, what is stated in the CBA.

4. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; NOT MERELY CONTRACTUAL IN NATURE BUT IMBUED WITH PUBLIC INTEREST, THUS, MUST BE CONSTRUED LIBERALLY AND YIELD TO THE COMMON GOOD.— While a contract constitutes the law between the parties, this is so in the present case with respect to the CBA, not to the MOA in which even the union's signatories had expressed reservations thereto. But even assuming *arguendo* that the MOA is treated as a new CBA, since it is imbued with public interest, it must be construed liberally and yield to the common good. **While the terms and conditions of a CBA constitute the law between the parties, it is not, however, an ordinary contract to which is applied the principles of law governing ordinary contracts**. A CBA, as a labor contract within the contemplation of Article 1700 of the Civil Code of the Philippines which governs the relations between labor and capital, **is not merely contractual in nature but impressed with public interest, thus, it must yield to the common**

> **good**. As such, it must be construed liberally rather than narrowly and technically, and the courts must place a practical and realistic construction upon it, giving due consideration to the context in which it is negotiated and purpose which it is intended to serve.

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioner.
Herminio F. Valerio for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Cirtek Electronics, Inc. (respondent), an electronics and semi-conductor firm situated inside the Laguna Technopark, had an existing Collective Bargaining Agreement (CBA) with Cirtek Employees Labor Union-Federation of Free Workers (petitioner) for the period January 1, 2001 up to December 31, 2005. Prior to the 3rd year of the CBA, the parties renegotiated its economic provisions but failed to reach a settlement, particularly on the issue of wage increases. Petitioner thereupon declared a bargaining deadlock and filed a Notice of Strike with the National Conciliation and Mediation Board-Regional Office No. IV (NCMB-RO IV) on April 26, 2004. Respondent, upon the other hand, filed a Notice of Lockout on June 16, 2004.

While the conciliation proceedings were ongoing, respondent placed seven union officers including the President, a Vice President, the Secretary and the Chairman of the Board of Directors under preventive suspension for allegedly spearheading a boycott of overtime work. The officers were eventually dismissed from employment, prompting petitioner to file another Notice of Strike which was, after conciliation meetings, converted to a voluntary arbitration case. The dismissal of the officers was later found to be legal, hence, petitioner appealed.

In the meantime, as amicable settlement of the CBA was deadlocked, petitioner went on strike on June 20, 2005. By Order[1] dated June 23, 2005, the Secretary of Labor assumed jurisdiction over the controversy and issued a Return to Work Order which was complied with.

Before the Secretary of Labor could rule on the controversy, respondent created a Labor Management Council (LMC) through which it concluded with the remaining officers of petitioner a Memorandum of Agreement (MOA)[2] providing for daily wage increases of ₱6.00 per day effective January 1, 2004 and ₱9.00 per day effective January 1, 2005. Petitioner submitted the MOA via Motion and Manifestation[3] to the Secretary of Labor, alleging that the remaining officers signed the MOA under respondent's assurance that should the Secretary order a higher award of wage increase, respondent would comply.

By Order[4] dated March 16, 2006, the Secretary of Labor resolved the CBA deadlock by awarding a wage increase of from ₱6.00 to ₱10.00 per day effective January 1, 2004 and from ₱9.00 to ₱15.00 per day effective January 1, 2005, and adopting all other benefits as embodied in the MOA.

Respondent moved for a reconsideration of the Decision as petitioner's vice-president submitted a "*Muling Pagpapatibay ng Pagsang-ayon sa Kasunduan na may Petsang ika-4 ng Agosto 2005,*"[5] stating that the union members were waiving their rights and benefits under the Secretary's Decision. Reconsideration of the Decision was denied by Resolution[6] of August 12, 2008, hence, respondent filed a petition for *certiorari* before the Court of Appeals.

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[1] DOLE records, pp. 20-22. Penned by Secretary Patricia A. Sto. Tomas.

[2] *Id.* at 251-289.

[3] *Id.* at 290-293.

[4] CA *rollo*, pp. 47-51.

[5] DOLE records, p. 383.

[6] *Id.* at. 393-403. Penned by Undersecretary Romeo C. Lagman.

By Decision[7] of September 24, 2009, the appellate court ruled in favor of respondent and accordingly set aside the Decision of the Secretary of Labor. It held that the Secretary of Labor gravely abused his discretion in not respecting the MOA. It did not give credence to the minutes of the meeting[8] that attended the forging of the MOA as it was not verified, nor to the "*Paliwanag*"[9] submitted by respondent union members explaining why they signed the MOA as it was not notarized.

Petitioner's motion for reconsideration having been denied by Resolution[10] of December 2, 2009, the present petition was filed, maintaining that the Secretary of Labor's award is in order, being in accord with the parties' CBA history — respondent having already granted ₱15.00 per day for 2001, ₱10.00 per day for 2002, and ₱10.00 per day for 2003, and that the Secretary has the power to grant awards higher than what are stated in the CBA.

Respecting the MOA, petitioner posits that it was "surreptitiously entered into [in] bad faith," it having been forged without the assistance of the Federation of Free Workers or counsel, adding that respondent could have waited for the Secretary's resolution of the pending CBA deadlock or that the MOA could have been concluded before representatives of the Secretary of Labor.

The relevant issues for resolution are 1) whether the Secretary of Labor is authorized to give an award higher than that agreed upon in the MOA, and 2) whether the MOA was entered into and ratified by the remaining officers of petitioner under the condition, which was not incorporated in the MOA, that respondent would honor the Secretary of Labor's award in the event that it is higher.

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[7] CA *rollo*, pp. 312-323. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Remedios A. Salazar-Fernando and Isaias P. Dicdican.

[8] *Id.* at 340.

[9] *Id.* at 216-222.

[10] *Id.* at 368-369. *Ibid.*

The Court resolves both issues in the affirmative.

It is well-settled that the Secretary of Labor, in the exercise of his power to assume jurisdiction under Art. 263 (g)[11] of the Labor Code, may resolve all issues involved in the controversy including the award of wage increases and benefits.[12] While an arbitral award cannot *per se* be categorized as an agreement voluntarily entered into by the parties because it requires the intervention and imposing power of the State thru the Secretary of Labor when he assumes jurisdiction, the arbitral award can be considered an **approximation of a collective bargaining agreement** which would otherwise have been entered into by the parties, hence, it has the force and effect of a valid contract obligation.[13]

That the arbitral award was higher than that which was purportedly agreed upon in the MOA is of no moment. For the Secretary, in resolving the CBA deadlock, is not limited to considering the MOA as basis in computing the wage increases. He could, as he did, consider the financial documents[14] submitted

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[11] (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, **the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it** or certify the same to the Commission for compulsory arbitration**. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order**. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return-to-work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

x x x (emphasis supplied)

[12] *International Pharmaceutical, Inc. v. Hon. Secretary of Labor and Associated Labor Union*, G.R. Nos. 92981-83, January 8, 1992, 205 SCRA 59.

[13] Vide *Manila Electric Company v. Quisumbing*, G.R. No. 127598, February 22, 2000, citing *Mindanao Terminal and Brokerage Service, Inc. v. Confesor*, 338 Phil. 671.

[14] DOLE records, pp. 303-305; 129-250; 32-48.

by respondent as well as the parties' bargaining history and respondent's financial outlook and improvements as stated in its website.[15]

It bears noting that **since the filing and submission of the MOA did not have the effect of divesting the Secretary of his jurisdiction**, or of automatically disposing the controversy, then **neither should the provisions of the MOA restrict the Secretary's leeway** in deciding the matters before him.

The appellate court's brushing aside of the "*Paliwanag*" and the minutes of the meeting that resulted in the conclusion of the MOA because they were not verified and notarized, thus violating, so the appellate court reasoned, the rules on parol evidence, does not lie. Like any other rule on evidence, parol evidence should not be strictly applied in labor cases.

The **reliance on the parol evidence rule is misplaced**. **In labor cases** pending before the Commission or the Labor Arbiter, **the rules of evidence prevailing in courts of law or equity are not controlling**. Rules of procedure and evidence are not applied in a very rigid and technical sense in labor cases. Hence, the Labor Arbiter is not precluded from accepting and evaluating evidence other than, and even contrary to, what is stated in the CBA.[16] (emphasis supplied)

While a contract constitutes the law between the parties, this is so in the present case with respect to the CBA, not to the MOA in which even the union's signatories had expressed reservations thereto. But even assuming *arguendo* that the MOA is treated as a new CBA, since it is imbued with public interest, it must be construed liberally and yield to the common good.

While the terms and conditions of a CBA constitute the law between the parties, it is not, however, an ordinary contract to which is applied the principles of law governing ordinary contracts. A CBA, as a labor contract within the contemplation of Article 1700 of the Civil Code of the Philippines which governs

[15] *Id.* at 306-307.

[16] *Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc.*, G.R. No. 142824, December 19, 2001, 372 SCRA 658.

the relations between labor and capital, **is not merely contractual in nature but impressed with public interest, thus, it must yield to the common good**. As such, it must be construed liberally rather than narrowly and technically, and the courts must place a practical and realistic construction upon it, giving due consideration to the context in which it is negotiated and purpose which it is intended to serve.[17] (emphasis and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Decision dated September 24, 2009 and the Resolution dated December 2, 2009 of the Court of Appeals are *REVERSED* and *SET ASIDE* and the Order dated March 16, 2006 and Resolution dated August 12, 2008 of the Secretary of Labor are *REINSTATED*.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191069. November 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SULPICIO SONNY BOY TAN *y* PHUA,** *accused-appellant.*

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[17] *Davao Integrated Port Stevedoring v. Abarquez,* G.R. No. 102132, March 19, 1993, 220 SCRA 197-198.

[*] Additional member per Raffle dated November 15, 2010 in lieu of Associate Justice Arturo D. Brion.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS; NON-COMPLIANCE THEREWITH DOES NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR MAKE THE ITEMS SEIZED INADMISSIBLE.— [C]ontrary to the assertions of accused-appellant, Sec. 21 of the IRR need not be followed with pedantic rigor. It is settled that non-compliance with Sec. 21 does not render an accused's arrest illegal or make the items seized inadmissible. What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE ADMISSION OR PRESENTATION OF THE SEIZED PROHIBITED DRUGS MUST BE PRECEDED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT THE PROPONENT CLAIMS IT TO BE; EXPLAINED; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— As a mode of authenticating evidence, the chain of custody rule requires that the admission or presentation of an exhibit, such as the seized prohibited drugs, be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. As held by this Court in *Malillin v. People*, this would ideally include the testimonies of all persons who handled the specimen, *viz*: x x x from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. In the instant case, there was substantial compliance with the law and the integrity of the drugs seized was preserved.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; THE

ACCUSED IS DEEMED TO HAVE WAIVED ANY QUESTION AS TO ANY DEFECT IN HIS ARREST AND IS LIKEWISE DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THE COURT WHEN HE ENTERED A PLEA OF NOT GUILTY AND PARTICIPATED IN THE TRIAL.— [A]ccused-appellant challenges the legality of his warrantless search and arrest for the first time in his appeal. [A]ccused-appellant never raised this issue before his arraignment. He never questioned the legality of his arrest until his appeal. On this alone, the contention must fail. It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground **before his arraignment**. Any objection involving the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In the instant case, accused-appellant even requested a reinvestigation during his initial arraignment, and, as a result, his arraignment was postponed. He could have questioned the validity of his warrantless arrest at this time but he did not. His arraignment was then rescheduled where he entered a plea of not guilty and participated in the trial. Thus, he is deemed to have waived any question as to any defect in his arrest and is likewise deemed to have submitted to the jurisdiction of the court.

4. ID.; ID.; ID.; WARRANTLESS ARREST; PERSON TO BE ARRESTED IS ACTUALLY COMMITTING AN OFFENSE; A WARRANTLESS ARREST MUST BE PRECEDED BY THE EXISTENCE OF PROBABLE CAUSE; PROBABLE CAUSE, DEFINED AND DISCUSSED.— [S]ec. 5, Rule 113 of the Rules on Criminal Procedure clearly provides for the instances when a person may be arrested without a warrant. x x x. [T]he case at bar falls under Sec. 5(a) of Rule 113, that is, when the person to be arrested is actually committing an offense, the peace officer may arrest him even without a warrant. However, a warrantless arrest must still be preceded by the existence of probable cause. Probable cause is defined as "a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged." In *People v. Mariacos*, the Court further expounded on the

definition of probable cause: It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

5. ID.; ID.; ID.; ID.; WARRANTLESS SEARCH AND ARREST OF THE APPELLANT WHO WAS FOUND IN POSSESSION OF A DANGEROUS DRUG, DECLARED LEGAL AND VALID.— Here, the arresting officers had sufficient probable cause to make the arrest in view of the fact that they themselves heard accused-appellant say, "Hey Joe, want to buy Valium 10, Cialis, Viagra?" which, in turn, prompted them to ask accused-appellant what he was selling. When accused-appellant showed them the items, they identified 120 tablets of Valium 10, a regulated drug. The police officers then became obligated to arrest accused-appellant, as he was actually committing a crime in their presence—possession of a dangerous drug, a violation of Sec. 11, Art. II of RA 9165. Therefore, it is without question that the warrantless search and arrest of accused-appellant are legal and valid.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.— All things considered, this Court sees no compelling reason to disturb the findings of the trial court. The prosecution succeeded in establishing, with moral certainty, all the elements of the crime of illegal possession of dangerous drugs: (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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the October 26, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03245 entitled *People of the Philippines v. Sulpicio Sonny Boy Tan y Phua*, which affirmed the December 18, 2007 Decision[2] in Criminal Case No. 06-426 of the Regional Trial Court (RTC), Branch 65 in Makati City. The RTC found accused-appellant Sulpicio Sonny Boy Tan *y* Phua guilty of violation of Section 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charge against accused-appellant stemmed from the following Information:

> That on or about the 20th day of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control, 120 tablets of Valium 10 mg weighing a total of nineteen point six (19.6) grams, said tablets contain Diazepam which is a dangerous drug, in violation of the above-cited law.
>
> Contrary to law.[3]

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison.

[2] CA *rollo*, pp. 11-16. Penned by Judge Edgardo M. Caldona.

[3] Records, p. 1.

On March 21, 2006, accused-appellant was initially arraigned, and he pleaded "not guilty" to the charge against him. However, on March 22, 2006, his counsel *de oficio*, Atty. Clarence S. Dizon, filed a motion to allow accused-appellant to withdraw his earlier plea and for reinvestigation of the case. Seeing as there was no objection from the prosecution, the RTC granted the motion.

After finding that there exists probable cause against accused-appellant for violation of Sec. 11, Art. II of RA 9165, the prosecution filed on July 11, 2006 a motion to set the case for arraignment and trial.[4] The motion was granted by the RTC.[5]

Thus, on July 18, 2006, accused-appellant, assisted by counsel *de oficio*, Atty. Eliza B. Yu, re-entered his previous plea of "not guilty" to the offense charged.[6]

During pre-trial, the parties entered into stipulation with regard to the Final Investigation Report and the Acknowledgment Receipt issued by the Makati City Police Station through Police Officer 2 (PO2) Rafael Castillo.[7] Likewise, the parties stipulated as to the testimony of the forensic chemist, Police Senior Inspector Richard Allan B. Mangalip, who established the existence of the request for drug test dated February 20, 2006 and the result dated February 22, 2006,[8] yielding positive result for the presence of Diazepam, a dangerous drug.[9]

After the pre-trial conference, trial on the merits ensued.

During the trial, the prosecution presented as its witness Senior Police Officer 2 (SPO2) Edmundo Geronimo. Thereafter, the defense counsel stipulated as merely corroborative the testimonies of PO1 Victoriano Cruz, Jr., SPO1 Carlo Quilala, and PO3 Giovanni Avendano.

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[4] *Id.* at 22.

[5] *Id.* at 26.

[6] *Id.* at 30.

[7] *Id.* at 37.

[8] *Id.* at 41-42.

[9] *Id.* at 91.

On the other hand, the defense presented as its sole witness, Sonny Boy, accused-appellant himself.

From the evidence adduced by the prosecution, it appears that on February 20, 2006, at around 1:15 in the morning, SPO2 Geronimo, SPO1 Quilala, PO3 Avendano, and PO1 Cruz of the Makati City Philippine National Police (PNP) conducted a manhunt operation against a suspect in a robbery case involving Korean nationals along P. Burgos, *Barangay* Poblacion, Makati City.[10] While on board their civilian vehicle, they chanced upon a male individual selling certain items to two foreigners. They heard him say, "Hey Joe, want to buy Valium 10, Cialis, Viagra?"[11] Curious, they inquired and the male individual told them that he was selling Viagra and Cialis, while, at the same time, showing them the contents of his bag which yielded 120 tablets of Valium 10.[12]

The male individual, who later turned out to be Sonny Boy, was immediately searched and placed under arrest, after which they informed him of the nature of his apprehension and of his constitutional rights. Sonny Boy was then brought to the office of the Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), where the items recovered from him were marked and inventoried by PO1 Cruz. The items were turned over to the duty investigator.[13]

In contrast, Sonny Boy interposed the defense of denial. He maintained that he was merely watching cars as a parking boy along P. Burgos when two men suddenly held and invited him for questioning.[14] They asked him if he knew any drug pushers and, if he did, to identify them. When he was unable to do so, they charged him for violation of Sec. 11, Art. II of RA 9165, which is the subject of the instant case.

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[10] CA *rollo*, p. 13.

[11] TSN, April 17, 2007, pp. 4-6.

[12] CA *rollo*, p. 13.

[13] TSN, April 17, 2007, p. 8.

[14] CA *rollo*, p. 13.

Ruling of the Trial Court

After trial, the RTC found accused-appellant guilty of the crime. The dispositive portion of its December 18, 2007 Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused, SULPICIO SONNY BOY TAN *y* PHUA, **GUILTY**, beyond reasonable doubt of the charge for violation of Sec. 11 Art. 11, RA 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Four Hundred Thousand (₱400,000.00).
>
> xxx xxx xxx
>
> SO ORDERED.[15]

On appeal to the CA, accused-appellant disputed the lower court's finding of his guilt beyond reasonable doubt of the crime charged. He argued that the prosecution failed to establish every link in its chain of custody and that the warrantless search and arrest done by the police officers were illegal.

Ruling of the Appellate Court

On October 26, 2009, the CA affirmed the judgment of the lower court finding that the prosecution succeeded in establishing, with moral certainty, all the elements of illegal possession of dangerous drugs. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the decision of the Regional Trial Court in Crim. Case No. 06-426 dated December 18, 2007, finding accused-appellant Sulpicio Sonny Boy Tan *y* Phua, guilty beyond reasonable doubt of violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED WITH MODIFICATION** in that accused-appellant is sentenced to suffer the penalty of life imprisonment and to pay a **fine** of **Five Hundred Thousand Pesos (₱500,000.00).**
>
> SO ORDERED.[16]

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[15] *Id.* at 15-16.

[16] *Rollo*, p. 19.

Accused-appellant timely filed a notice of appeal from the decision of the CA.

The Issues

Accused-appellant assigns the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN ADMITTING THE PROHIBITED DRUGS IN EVIDENCE DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN ITS CHAIN OF CUSTODY.

II.

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS SEARCH AND ARREST AS ILLEGAL.

III.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

Our Ruling

The appeal has no merit.

Chain of Custody Was Properly Established

Accused-appellant maintains in his *Brief* that the police officers failed to mark, inventory, and photograph the prohibited items allegedly seized from him at the time of his apprehension. Further, he contends that "the prosecution failed to establish how the prohibited items, which were marked by PO1 Cruz, received and inventoried by PO2 Castillo, were turned over to PO1 Mendoza for delivery to the PNP Crime Laboratory for examination."[18] He argues that "[t]o successfully prove that the chain of custody was unbroken, every link in the chain,

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[17] CA *rollo*, p. 28.

[18] *Id.* at 32.

meaning everyone who held and took custody of the specimen, must testify as to that degree of precaution undertaken to preserve it."[19]

Such argument must fail.

The Implementing Rules and Regulations (IRR) of RA 9165 provides:

> SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items** x x x. (Emphasis supplied.)

Evidently, the law itself lays down exceptions to its requirements. Thus, contrary to the assertions of accused-appellant, Sec. 21 of the IRR need not be followed with pedantic rigor. It is settled that non-compliance with Sec. 21 does not

[19] *Id.* at 34.

render an accused's arrest illegal or make the items seized inadmissible.[20] What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."[21]

As a mode of authenticating evidence, the chain of custody rule requires that the admission or presentation of an exhibit, such as the seized prohibited drugs, be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[22] As held by this Court in *Malillin v. People*, this would ideally include the testimonies of all persons who handled the specimen, *viz*:

> x x x from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[23]

In the instant case, there was substantial compliance with the law and the integrity of the drugs seized was preserved. The testimony of SPO2 Geronimo categorically established the manner by which the prohibited drugs were handled from the moment they were seized from accused-appellant up to the time they were turned over to the duty officer and investigator at SAID-SOTF, who, in turn, turned them over to the PNP Crime Laboratory for examination. All this was narrated by SPO2 Geronimo, as follows:

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[20] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636; citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[21] *People v. Del Monte, id.*

[22] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 392.

[23] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

Prosecutor Henry M. Salazar:

Q: Mr. Witness, last February 20, 2006, about 1:15 in the early morning, can you tell us where were you?

SPO2 Eduardo Geronimo:

A: On that particular date and time, 1:15 a.m., February 20, 2006, we are conducting a manhunt operation against the suspect of a Robbery Break-in on Korean Nationals.

Q: And where were you conducting, Mr. Witness, this follow up operation?

A: Along P. Burgos Street, Barangay Poblacion, Makati City.

Q: Can you tell us who were with you, Mr. Witness?

A: SPO1 Carlo C. Quilala, PO3 Giovanni P. Avendano and PO1 Victoriano J. Cruz, Jr.[24]

xxx xxx xxx

Q: In this particular time, 1:15 a.m., February 20, 2006, you mentioned that you were conducting a follow-up operation regarding a Robbery Break-in on Korean Nationals, where were you in particular at that time?

A: We were on board our issued civilian vehicle Tamaraw FX with Plate Number SED-894.

Q: Where were you positioned or located at that time?

A: We were on stop position in front of the Makati Palace Hotel, more or less 5 meters away [sic] we stopped.

Q: On that position, Mr. Witness, can you tell us if you can recall of any incident, which caught your attention at that time?

A: On that moment, we were having surveillance against the suspect on the Robbery Break-in. We caught the attention of one male person who was selling items to two (2) foreigners.

Q: How did you come to know Mr. Witness, that this male person was engaged in selling items to these two (2) male foreigners?

[24] TSN, April 17, 2007, p. 4.

A: After we saw and heard male person named Sulpicio Sonny Boy Tan, we immediately alighted from our vehicle and accosted said person and brought him near our vehicle.

Q: What did you hear from this male person, Mr. Witness, which caused you to accost him and bring him near your vehicle?

A: We actually heard him saying, "Hey Joe, want to buy Valium 10, Cialis, Viagra."[25]

xxx xxx xxx

Q: And what did you tell this person when you accost him and brought him near your vehicle?

A: We asked him what are those items he was selling?

Q: When you asked him what item was he selling at that time, what did he tell to your group?

A: He told us only Viagra, Cialis.

Q: And what did you do at that time after he informed you that he was selling Viagra and Cialis?

A: He showed it to us, and then we brought him in front of our vehicle and he showed us the contents of his bag.

Q: And what did you find inside his bag at that time?

A: Right on top of the hood of our vehicle he showed us everything and we learned that not only Viagra, Cialis but he has also Valium 10, 120 tablets.[26]

xxx xxx xxx

Q: Now, after these items which you've just mentioned considering of Valium 10, Viagra, Cialis were brought out from his bag and placed on top of the hood of you(r) vehicle, what did you do next at that time?

A: After seeing the other drugs, Valium 10, we effected the arrest and we brought him to SAID-SOTF.

Q: And what happened after you brought this male person to the SAID-SOTF?

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

[26] *Id.* at 6-7.

A: We turned over the suspect.

Q: How about the items which you claimed to be with him at that time, what did you do with them?

A: We turned over the suspect as well as the evidence we seized from him.

Q: After having turned over these items, Mr. Witness, what else did you do?

A: Afterwards, sir, we executed our Affidavit of Arrest that the investigator required.

Q: How about the items, what did you do with these from which you recovered from this male person?

A: On February 20, 2008, we turned it over to the duty officer and to the investigator, sir.

Q: Before turning it over, Mr. Witness, what did you do with these items?

A: We put markings on them, sir.

Q: Who marked these items, Mr. Witness?

A: One of my colleague[s], sir, PO1 Victoriano Cruz.

Q: Where were you at that time when PO1 Cruz marked these items recovered from this male person?

A: We were already at the office of SAID-SOTF, right in front of him, sir.

Q: And what markings were placed by PO1 Cruz on these items?

A: He put "Kokoy" for 120 tablets of Valium 10.[27]

Q: How about the other items, Mr. Witness, what markings were placed by PO1 Cruz?

A: 'Kokoy 2,' 'Kokoy 3,' 'Kokoy 4.'

Q: And after that, what else did you do at that time?

A: We left the suspect to the investigation and then we brought him to the jail.

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

Q: In connection with the apprehension of this male person, can you recall having executed an affidavit or any document?

A: We executed our Joint Affidavit of Arrest, sir.[28]

Moreover, it bears stressing that during the September 18, 2007 hearing, both parties stipulated to the effect that the testimony of PO1 Cruz, as contained in the Joint Affidavit of Arrest, is corroborative with that of all the other affiants.[29] Similarly, during the pre-trial conference, the parties stipulated on the testimony of PO2 Castillo, the investigator who issued the Acknowledgment Receipt[30] of the seized drugs on behalf of SAID-SOTF and the Final Investigation Report[31] on the incident. And lastly, the parties also stipulated on the testimony of the forensic chemist who conducted the laboratory examination on the seized drugs and issued Physical Science Report Nos. D-125-06S[32] and DT-130-06S,[33] which both yielded positive results for dangerous drugs. It was, in fact, due to these stipulations that all other testimonies were dispensed with, as agreed to by both parties.

Therefore, it is evidently clear that the chain of custody of the illicit drug found in accused-appellant's presence was unbroken.

Warrantless Search and Arrest Were Legal and Valid

Further, accused-appellant challenges the legality of his warrantless search and arrest for the first time in his appeal. He argues that such was illegal, since none of the instances wherein a search and seizure may be done validly without a warrant was present.

Such argument is untenable.

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[28] Records, pp. 129-134.

[29] *Id.* at 81.

[30] *Id.* at 89.

[31] *Id.* at 88.

[32] *Id.* at 91.

[33] *Id.* at 93.

First of all, accused-appellant never raised this issue before his arraignment. He never questioned the legality of his arrest until his appeal. On this alone, the contention must fail. It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground **before his arraignment**.[34] Any objection involving the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[35]

In the instant case, accused-appellant even requested a reinvestigation during his initial arraignment, and, as a result, his arraignment was postponed. He could have questioned the validity of his warrantless arrest at this time but he did not. His arraignment was then rescheduled where he entered a plea of not guilty and participated in the trial. Thus, he is deemed to have waived any question as to any defect in his arrest and is likewise deemed to have submitted to the jurisdiction of the court.

What is more, Sec. 5, Rule 113 of the Rules on Criminal Procedure clearly provides for the instances when a person may be arrested without a warrant, to wit:

Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

(a) **When, in his presence, the person to be arrested** has committed, **is actually committing**, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment

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[34] *Rebellion v. People*, G.R. No. 175700, July 5, 2010.

[35] *Id.*; citing *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135, 149.

or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied.)

Undoubtedly, the case at bar falls under Sec. 5(a) of Rule 113, that is, when the person to be arrested is actually committing an offense, the peace officer may arrest him even without a warrant. However, a warrantless arrest must still be preceded by the existence of probable cause. Probable cause is defined as "a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged."[36]

In *People v. Mariacos*, the Court further expounded on the definition of probable cause:

> It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.
>
> The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[37]

Here, the arresting officers had sufficient probable cause to make the arrest in view of the fact that they themselves heard accused-appellant say, "Hey Joe, want to buy Valium 10, Cialis, Viagra?"[38] which, in turn, prompted them to ask accused-appellant what he was selling. When accused-appellant showed them the

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[36] *People v. Mariacos*, G.R. No. 188611, June 16, 2010.

[37] *Id.*; citing *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 709 and *People v. Aruta*, 351 Phil. 868, 880 (1998).

[38] Records, p. 131.

items, they identified 120 tablets of Valium 10, a regulated drug. The police officers then became obligated to arrest accused-appellant, as he was actually committing a crime in their presence–— possession of a dangerous drug, a violation of Sec. 11, Art. II of RA 9165. Therefore, it is without question that the warrantless search and arrest of accused-appellant are legal and valid.

All things considered, this Court sees no compelling reason to disturb the findings of the trial court. The prosecution succeeded in establishing, with moral certainty, all the elements of the crime of illegal possession of dangerous drugs: (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.[39]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03245 finding accused-appellant Sulpicio Sonny Boy Tan *y* Phua guilty of the crime charged is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.*, concur.

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[39] *People v. Dela Cruz*, G.R. No. 182348, November 20, 2008, 571 SCRA 469, 475; citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430.

[*] Additional member per Special Order No. 913 dated November 2, 2010.

SECOND DIVISION

[A.M. No. P-07-2379. November 17, 2010]
(Formerly OCA I.P.I. No. 03-1742-P)

ANTONIO T. RAMAS-UYPITCHING, JR., *complainant, vs.* **VINCENT HORACE U. MAGALONA, Sheriff IV, Regional Trial Court, Branch 46, Bacolod City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; CONDUCT THEREOF.— Sheriffs play an important role in the administration of justice and they should always hold inviolate and invigorate the tenet that a public office is a public trust. Being in the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and integrity of the court. By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion. As such, they must discharge their duties with due care and utmost diligence, because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the process of the administration of justice and, as agents of the law, high standards are expected of them. Respondent was remiss in the performance of his duty as an officer of the court as he failed to abide by what was ordained in the *alias* writ.

2. ID.; ID.; ID.; ID.; DUTY THEREOF TO EXECUTE A VALID WRIT IS MINISTERIAL AND NOT DISCRETIONARY; SHOULD DETERMINE WITH REASONABLE CERTAINTY THE PROPER SUBJECT OF THE LEVY ON EXECUTION.— The duty of a sheriff to execute a valid writ is ministerial and not discretionary. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. He is supposed to execute the order of the court strictly to the letter.

The *Alias* Writ of Execution, dated January 7, 2003, relative to Civil Case No. 4657, directed the respondent to enforce the Decision dated October 23, 1996 of the Court of Appeals against the named stockholders of therein defendant Powroll. Prudence dictates that he should have determined with reasonable certainty the specific properties of therein defendant Powroll which may be the proper subject of the levy on execution.

3. ID.; ID.; ID.; ID.; NO AUTHORITY TO LEVY ON EXECUTION UPON THE PROPERTY OF ANY PERSON OTHER THAN THAT OF THE JUDGMENT DEBTOR; A SHERIFF OVERSTEPS HIS AUTHORITY WHEN HE LEVIED ON THE PROPERTY OF THE STOCKHOLDERS IN AN ACTION AGAINST THE CORPORATION ONLY.— A sheriff has no authority to levy on execution upon the property of any person other than that of the judgment debtor. If he does so, the writ of execution affords him no justification, for such act is not in obedience to the mandate of the writ. A sheriff oversteps his authority when he disregards the distinct and separate personality of the corporation from that of an officer and stockholder of the corporation by levying on the property of the former in an action against the latter only. A corporation is clothed with a personality separate and distinct from that of its stockholders, and that it may not be held liable for the personal indebtedness of its stockholders.

4. ID.; ID.; ID.; ID.; MAY BE FINED, SUSPENDED OR DISMISSED FROM OFFICE WHERE RIGHTS OF INDIVIDUALS ARE JEOPARDIZED BY THEIR ACTIONS.— Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, they may be properly fined, suspended or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.

5. ID.; ID.; ID.; ID.; THE DISMISSAL OF THE EMPLOYEE FROM THE SERVICE FOR PREVIOUS INFRACTIONS DOES NOT RENDER THE PRESENT ADMINISTRATIVE CASE AGAINST HIM MOOT; LEVYING ON THE PROPERTY BELONGING TO A COMPANY NOT NAMED AS DEFENDANT IN THE CASE CONSTITUTES A

VIOLATION OF SECTION 9 (B) RULE 39 OF THE RULES OF COURT.— Respondent's dismissal from the service does not preclude his being adjudged administratively liable herein. Such fact does not render the present case moot. Despite being dismissed from the service, the Court, in certain cases, imposed a fine, *i.e.*, ₱20,000.00 and ₱40,000.00, against the erring court employee to be deducted from one's accrued leave credits. Prescinding from the foregoing, the Court finds respondent guilty of violating Section 9 (b), Rule 39 of the Rules of Court, considered a less grave offense, when, instead of faithfully implementing the *alias* writ upon the properties subject of the writ therein defendant Powroll and its stockholders, he arrogated upon himself the authority to levy the three motorcycles belonging to RUSI Marketing, which was not even a party to the case. While respondent's defense, that he enforced the *alias* writ upon RUSI Marketing on the pretext that its stockholders are also the stockholders of therein defendant Powroll, may be regarded as an act done in good faith, yet the same is not totally acceptable. It may seem that the list of stockholders of both companies are the same, but such fact did not give respondent the blanket authority to undertake the levy on the properties of RUSI Marketing as the said company was not named as a defendant in Civil Case No. 4657 and there was no judgment rendered against it by reason of the cause of action by therein plaintiff against therein defendant Powroll. Moreover, RUSI Marketing is a separate entity from that of its stockholders and, therefore, its properties do not necessarily include the properties of its stockholders.

6. ID.; ID.; ID.; ID.; VIOLATION OF SECTION 9(B), RULE 39 OF THE RULES OF COURT; IRREGULAR IMPLEMENTATION OF THE *ALIAS* WRIT OF EXECUTION; PROPER PENALTY AFTER CONSIDERING AGGRAVATING AND MITIGATING CIRCUMSTANCES.— Section 53, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, provides that in the determination of the penalties to be imposed, mitigating, aggravating, and alternative circumstances attendant to the commission of the offense shall be considered. Applying this rule, since respondent is no longer a first-time offender (per A.M. No. P-07-2398, where he was dismissed from the service), such fact is considered an aggravating circumstance which warrants an

increase of the ₱5,000.00 fine supposedly to be imposed on respondent and, corollarily, considering the good faith of respondent, treated as mitigating circumstance, which attended the irregular implementation of the subject *alias* writ, a fine of ₱20,000.00 is deemed appropriate, to be deducted from his accrued leave credits, if any. Should his accrued leave credits be not sufficient, then he is required to pay the amount of the fine directly to the Court.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an administrative complaint,[1] dated July 1, 2003, filed by complainant Antonio T. Ramas-Uypitching, Jr., manager of Ramas-Uypitching Sons, Inc. (RUSI) Marketing, against Vincent Horace U. Magalona, Sheriff IV of the Regional Trial Court, Branch 46, Bacolod City, Negros Occidental, for grave misconduct and gross dishonesty, relative to the execution of judgment in Civil Case No. 4657, entitled *Spouses Ireneo and Mariles Geronca v. Powroll Construction Co., Inc., et al.*, where respondent levied three (3) motorcycles belonging to RUSI Marketing even if said company was never a party to the said case and, consequently, the actuation of respondent created a bad image on the company and affected its business dealings with suppliers, customers, and the public.

In his Affidavit[2] dated July 3, 2003, which was appended to the complainant's complaint, Juan Jan Abrasaldo, branch manager of RUSI Marketing, alleged that after a decision had been rendered by the trial court in Civil Case No. 4657 in favor of therein plaintiffs, respondent, on January 28, 2003, served a copy of the *alias* writ of execution upon RUSI Marketing and proceeded to levy its three motorcycles. According to Abrasaldo, after he protested the levy on the ground that RUSI Marketing was not a party to the case, respondent left the premises, but later came

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[1] *Rollo*, p. 1.

[2] *Id*. at 2-3.

back with a police officer, so he was constrained to surrender the motorcycles to respondent.

In his Comment dated October 16, 2006, respondent countered that he merely performed his duties and responsibilities as court sheriff, pursuant to the *Alias* Writ of Execution dated January 7, 2003, which was issued in connection with Civil Case No. 4657, directing the satisfaction of the judgment against the properties of all the stockholders of therein defendant Powroll Construction Co., Inc. (Powroll). He averred that the three motorcycles, registered and owned by RUSI Marketing, were levied because the stockholders[3] of therein defendant Powroll were also the same stockholders of RUSI Marketing, as reflected in the latter's company records. He added that as a result of the implementation of the *alias* writ of execution, both parties had an out of court settlement and, consequently, therein plaintiff's counsel informed the trial court that judgment had been fully satisfied.

Complainant, in his Rejoinder (*should be* Reply) to Comment, dated November 6, 2006, maintained that the *Alias* Writ of Execution was directed only against therein defendant Powroll and its stockholders and, therefore, respondent acted beyond the scope of his authority when he levied RUSI Marketing's three motorcycles on the pretext that the stockholders of therein defendant Powroll and RUSI Marketing were the same. He argued that RUSI Marketing was a distinct and separate entity from therein defendant Powroll and, therefore, beyond the coverage of the *Alias* Writ of Execution. He stated that Abrasaldo never revealed company records of its branches to third parties and that RUSI Marketing only kept operations records, not the stockholders' record. He also said that the out of court settlement was a private matter between the parties in the civil case and, therefore, irrelevant to the issue of respondent's acting beyond the scope of his authority.

The Office of the Court Administrator (OCA) found respondent guilty of grave misconduct for acting beyond the scope of his

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[3] Segundo S. Ramas-Uypitching, Ernesto R. Ramas-Uypitching, Willis R. Ramas-Uypitching, Roberto R. Ramas-Uypitching, Sylvia R. Ramas-Uypitching, and Gina Ramas-Uypitching.

authority when he implemented the writ of execution on RUSI Marketing, which was not a party to the case, and recommended that the complaint against respondent be redocketed as a regular administrative complaint and that respondent, being a first-time offender, be suspended from the service for one (1) year with a stern warning that a repetition of the same or similar act shall be dealt with more severely in the future.

The OCA's recommendation should be modified, in view of the supervening event that respondent was already dismissed from the service during the pendency of this case.[4]

Sheriffs play an important role in the administration of justice and they should always hold inviolate and invigorate the tenet that a public office is a public trust. Being in the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and integrity of the court. By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion.[5] As such, they must discharge their duties with due care and utmost diligence, because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the process of the administration of justice and, as agents of the law, high standards are expected of them.[6] Respondent was remiss in the performance of his duty as an officer of the court as he failed to abide by what was ordained in the *alias* writ.

The duty of a sheriff to execute a valid writ is ministerial and not discretionary. When a writ is placed in the hands of a sheriff,

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[4] Per verification, although the present A.M. No. P-07-2379 against respondent (then his first administrative offense) was filed prior to A.M. No. P-07-2398 (*Ireneo Geronca v. Vincent Horace U. Magalona*), however, the latter case was decided earlier on February 13, 2008. Respondent's Motion for Partial Reconsideration dated October 24, 2008, in A.M. No. P-07-2398, was denied with finality in the Court's Resolution of November 25, 2008.

[5] *Caja v. Nanquil*, 481 Phil. 488, 518 (2004).

[6] *Teodosio v. Somosa*, A.M. No. P-09-2610 (Formerly OCA IPI No. 09-3072-P), August 13, 2009, 595 SCRA 539, 556.

it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. He is supposed to execute the order of the court strictly to the letter.[7] The *Alias* Writ of Execution,[8] dated January 7, 2003, relative to Civil Case No. 4657, directed

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[7] *Sismaet v. Sabas*, 473 Phil. 230, 239-240 (2004).

[8] *Rollo*, pp. 4-6.

TO: The *Ex-Officio* Provincial Sheriff of Negros Occidental or any of his lawful Deputies:

GREETINGS:

WHEREAS, a Decision dated September 6, 1993 had been rendered in the above-entitled case, the dispositive portion of which reads as follows:

WHEREFORE, finding the preponderance of evidence to be in favor of the plaintiffs, this Court renders judgment against the defendants who are jointly and severally ordered to pay plaintiffs the following:

1) ₱40,000.00 — representing for actual damages for the repair of the truck;

2) ₱42,000.00 — representing unearned income of the truck from September 17, 1987 to December, 1987;

3) ₱20,000.00 — representing moral damages;

4) ₱5,000.00 — exemplary damages;

5) ₱2,000.00 — representing attorney's fees and ₱400.00 for every Court appearance;

and to pay the costs.

Defendants' counterclaims against plaintiffs are hereby dismissed for lack of merit.

Furnish copies of this Decision to counsels on record.

SO ORDERED.

Bacolod City, Philippines, September 6, 1993.

(Sgd.) ANITA AMORA-DE CASTRO
Presiding Judge

WHEREAS, the Fifteenth Division of the Court of Appeals rendered a Decision in the above-entitled case, the dispositive portion of which reads as follows:

WHEREFORE, the Decision of the Court *a quo* is AFFIRMED with respect to the defendants Powroll Construction Co., Inc. and Virgilio Roche only, the case is DISMISSED as against defendant Segundo Ramas Uypitching.

the respondent to enforce the Decision dated October 23, 1996 of the Court of Appeals against the named stockholders of therein defendant Powroll. Prudence dictates that he should have

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No pronouncement as to costs.

SO ORDERED.

(Sgd.) SALOME A. MONTOYA
Associate Justice

WE CONCUR:

(Sgd.) GODARDO A. JACINTO
Associate Justice

(Sgd.) MAXIMIANO C. ASUNCION
Associate Justice

WHEREAS, an Order dated February 23, 1998 was issued in this case, the dispositive portion of which reads:

Let Writ of Execution be issued in this case.

SO ORDERED.

Bacolod City, Philippines, February 23, 1998.

(Sgd.) EMMA C. LABAYEN
Presiding Judge

WHEREAS, on December 20, 2002, this Court issued an Order, the dispositive portion of which reads:

ACCORDINGLY, the Clerk of Court is hereby ordered to issue as *Alias* Writ of Execution to enforce the Decision in this case which has long become final and executory and which has remained unsatisfied up to this date. As prayed for, let an *Alias* Writ of Execution be issued against the following stockholders of the defendant Corporation with unpaid subscriptions, to wit:

1. Segundo S. Ramas-Uypitching
2. Ernesto R. Ramas-Uypitching
3. Willis R. Ramas-Uypitching
4. Roberto R. Ramas-Uypitching
5. Sylvia R. Ramas-Uypitching
6. Gina N. Ramas-Uypitching

SO ORDERED.

Bacolod City, Philippines, December 20, 2002.

(Sgd.) GEORGE S. PATRIARCA
Presiding Judge

NOW, THEREFORE, you are hereby commanded to execute the Decision of the Court of Appeals dated October 23, 1996, in the manner and form prescribed by law and that you make your return of service to this Court with your proceedings indorsed thereon, within sixty (60) days after its receipt by you.

determined with reasonable certainty the specific properties of therein defendant Powroll which may be the proper subject of the levy on execution.

A sheriff has no authority to levy on execution upon the property of any person other than that of the judgment debtor. If he does so, the writ of execution affords him no justification, for such act is not in obedience to the mandate of the writ.[9] A sheriff oversteps his authority when he disregards the distinct and separate personality of the corporation from that of an officer and stockholder of the corporation by levying on the property of the former in an action against the latter only. A corporation is clothed with a personality separate and distinct from that of its stockholders, and that it may not be held liable for the personal indebtedness of its stockholders.[10]

Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, they may be properly fined, suspended or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[11]

In *Del Rosario v. Bascar, Jr.*,[12] therein respondent deputy sheriff, in the process of enforcing the writ of execution of a decision ordering specific performance and payment of a fine of ₱2,000.00, made an unreasonable and unnecessary levy on three parcels of land. He allocated unto himself the power of the court to pierce the veil of corporate entity and improvidently assuming that since therein complainant was the treasurer of

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WITNESS THE HONORABLE GEORGE S. PATRIARCA, Presiding Judge of this Court, this 7th day of January, 2003 in the City of Bacolod, Philippines.

(Sgd.) Atty. DIALINDA C. DOMINGUEZ
Clerk of Court V

[9] *Villareal v. Rarama*, 317 Phil. 589, 598 (1995).

[10] *Booc v. Bantuas*, 406 Phil. 740, 744 (2001).

[11] *Metro Manila Transit Corp. v. Santiago*, 489 Phil. 1, 10 (2005).

[12] A.M. No. P-88-255, March 3, 1992, 206 SCRA 678.

the corporation, they are one and the same. In the absence of malice on his part and prejudice caused to third party, respondent's explanation that he merely wanted to protect the interest of the prevailing parties over the subject lots in controversy was taken into account and, accordingly, he was merely fined in the amount of ₱5,000.00. In *Booc v. Bantuas*,[13] the Court imposed a fine of ₱5,000.00 on therein respondent who, despite being apprised by therein Presiding Judge that the sale should involve only the shares of stock, proceeded to auction the property belonging to the corporation based on the rationale that the levy on the property was impelled partly by ignorance of Corporation Law and partly by mere overzealousness to comply with his duties and not by bad faith or blatant disregard of the trial court's order. In *Sibulo v. San Jose*,[14] a fine of ₱5,000.00 was imposed on therein sheriff for gross neglect in the performance of his duties when he failed to implement the writ of execution with reasonable dispatch.

During the pendency of this case, herein respondent was found guilty, in *Geronca v. Magalona*,[15] of dereliction of duty for failure to observe the proper procedure under Section 9, Rule 141 of the Rules of Court in the collection of fees for his expenses from the party requesting the execution of a writ and, also, of grave misconduct and dishonesty for unlawfully collecting the ₱10,000.00 execution fee, refusal to surrender the proceeds of the auction sale, and failure to turn over the motorcycle keys to therein complainant despite repeated demands. Accordingly, respondent was dismissed from the service with forfeiture of all his benefits, except accrued leave credits, and disqualified from reemployment in any government agency, including government-owned or controlled corporations.

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[13] *Supra* note 10.

[14] A.M. No. P-05-2088, November 11, 2005, 474 SCRA 464, 471.

[15] A.M. No. P-07-2398 (Formerly OCA IPI No. 03-1621-P), February 13, 2008, 545 SCRA 1. Therein complainant, also therein plaintiff and judgment obligee in Civil Case No. 4657, entitled *Spouses Ireneo and Mariles Geronca v. Powroll Construction Co., et al*., filed an administrative complaint against therein respondent (also herein respondent) for wrongful implementation of the writ of execution.

Respondent's dismissal from the service does not preclude his being adjudged administratively liable herein. Such fact does not render the present case moot.[16] Despite being dismissed from the service, the Court, in certain cases, imposed a fine, *i.e.*, ₱20,000.00[17] and ₱40,000.00,[18] against the erring court employee to be deducted from one's accrued leave credits.

Prescinding from the foregoing, the Court finds respondent guilty of violating Section 9 (b),[19] Rule 39 of the Rules of Court,

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[16] *Narag v. Manio*, A.M. No. P-08-2579, June 22, 2009, 590 SCRA 206, 213; *OCA v. Cunting*, A.M. No. P-04-1917 (Formerly A.M. No. 04-10-297-MTCC), December 10, 2007, 539 SCRA 494, 511; *Sibulo v. San Jose*, *supra* note 14.

[17] *Narag v. Manio*, *supra.* The Court imposed a fine of ₱20,000.00 on therein court interpreter for dishonesty and misconduct in soliciting money from therein complainant and for conduct unbecoming a court employee in recommending a private attorney to a prospective litigant and, after receipt of money, failed to fulfil her promise to cause the preparation of the petition.

[18] *OCA v. Cunting*, *supra* note 12. Therein Clerk of Court was fined ₱40,000.00 for gross neglect of duty, dishonesty and grave misconduct due to failure to return the missing court funds despite repeated demands.

[19] SEC. 9 — x x x

(b) *Satisfaction by levy*. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment oblige, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

considered a less grave offense, when, instead of faithfully implementing the *alias* writ upon the properties subject of the writ therein defendant Powroll and its stockholders, he arrogated upon himself the authority to levy the three motorcycles belonging to RUSI Marketing, which was not even a party to the case. While respondent's defense, that he enforced the *alias* writ upon RUSI Marketing on the pretext that its stockholders are also the stockholders of therein defendant Powroll, may be regarded as an act done in good faith, yet the same is not totally acceptable. It may seem that the list of stockholders of both companies are the same, but such fact did not give respondent the blanket authority to undertake the levy on the properties of RUSI Marketing as the said company was not named as a defendant in Civil Case No. 4657 and there was no judgment rendered against it by reason of the cause of action by therein plaintiff against therein defendant Powroll. Moreover, RUSI Marketing is a separate entity from that of its stockholders and, therefore, its properties do not necessarily include the properties of its stockholders.

Section 53, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[20] provides that in the determination of the penalties to be imposed, mitigating, aggravating, and alternative circumstances attendant to the commission of the offense shall be considered. Applying this rule, since respondent is no longer a first-time offender (per A.M. No. P-07-2398,[21] where he was dismissed from the service), such fact is considered an aggravating circumstance which warrants an increase of the ₱5,000.00 fine supposedly to be imposed on respondent and, corollarily, considering the good faith of respondent, treated as mitigating circumstance, which attended the irregular implementation of the subject *alias* writ, a fine of ₱20,000.00 is deemed appropriate, to be deducted from his accrued leave credits, if any. Should his accrued leave credits be not sufficient, then he is required to pay the amount of the fine directly to the Court.

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[20] Civil Service Resolution No. 991936 dated August 31, 1999, effective September 27, 1999.

[21] *See* note 15.

WHEREFORE, respondent Vincent Horace Magalona, Sheriff IV of the Regional Trial Court, Branch 46, Bacolod City, is found *GUILTY* of violation of Section 9(b), Rule 39 of the Rules of Court. In view of respondent's previous dismissal from the service, a *FINE* of ₱20,000.00 is instead imposed on him, to be deducted from his accrued leave credits, if sufficient; otherwise, he is *ORDERED* to pay the amount of the fine directly to this Court.

The Employees Leave Division, Office of Administrative Services of the Office of the Court Administrator, is *DIRECTED* to compute respondent's accrued leave credits, if any, and deduct therefrom the amount representing the payment of the fine.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154366. November 17, 2010]

CEBU BIONIC BUILDERS SUPPLY, INC. and LYDIA SIA, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, JOSE TO CHIP, PATRICIO YAP and ROGER BALILA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; POWER TO SUE AND BE SUED IN ANY COURT IS LODGED WITH THE BOARD OF DIRECTORS WHILE PHYSICAL ACTS, LIKE THE SIGNING OF DOCUMENTS,

CAN BE PERFORMED BY NATURAL PERSONS DULY AUTHORIZED FOR THE PURPOSE BY CORPORATE BY-LAWS OR BY A SPECIFIC ACT OF THE BOARD OF DIRECTORS.— Except for the powers which are expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence, a corporation has no powers. It exercises its powers through its board of directors and/or its duly authorized officers and agents. Thus, its power to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. In this case, respondents To Chip, Yap and Balila obviously overlooked the Secretary's Certificate attached to the instant petition, which was executed by the Corporate Secretary of Cebu Bionic. Unequivocally stated therein was the fact that the Board of Directors of Cebu Bionic held a special meeting on July 26, 2002 and they thereby approved a Resolution authorizing Lydia Sia to elevate the present case to this Court in behalf of Cebu Bionic x x x.

2. REMEDIAL LAW; APPEALS; SHALL RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS; PRESENT; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— Section 1, Rule 45 of the Rules of Court categorically states that the petition filed thereunder shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. The above rule, however, admits of certain exceptions, one of which is when the findings of the Court of Appeals are contrary to those of the trial court. x x x [T]his exception is attendant in the case at bar.

3. ID.; MOTION FOR RECONSIDERATION; IF NOT SEASONABLY FILED, RENDERS THE DECISION FINAL AND EXECUTORY; PROCEDURAL RULES MAY BE RELAXED IN THE HIGHER INTEREST OF SUBSTANTIAL JUSTICE; APPLIED.— Indeed, the appellate court's Decision dated February 14, 2001 would have ordinarily attained finality for failure of respondents to seasonably file their Motion for Reconsideration thereon. However, we agree with the Court of Appeals that the higher interest of substantial justice will be better served if respondents' procedural lapse will be excused. Verily, we had occasion to apply this liberality in the application of procedural rules in *Barnes v. Padilla* where we aptly declared that – The failure of the petitioner to file his motion for reconsideration within the period fixed by law renders the decision final and executory. Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. 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. In this case, what are involved are the property rights of the parties given that, ultimately, the fundamental issue to be determined is who among the petitioners and respondents To Chip, Yap and Balila has the better right to purchase the subject properties. More importantly, the merits of the case sufficiently called for the suspension of the rules in order to settle conclusively the rights and obligations of the parties herein.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; STAGES AND PERFECTION OF CONTRACT; NO PERFECTED CONTRACT OF LEASE ABSENT CONCURRENCE OF OFFER AND ACCEPTANCE ON THE TERMS OF THE PROPOSED LEASE AGREEMENT.— The Court rules that x x x no new contract of lease was ever perfected between petitioners and DBP. In *Metropolitan Manila Development Authority v.*

JANCOM Environmental Corporation, we emphasized that: Under Article 1305 of the Civil Code, "[a] contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." A contract undergoes three distinct stages — preparation or negotiation, its perfection, and finally, its consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof (*Bugatti vs. CA*, 343 SCRA 335 [2000]). Article 1315 of the Civil Code, provides that a contract is perfected by mere consent. Consent, on the other hand, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract (See Article 1319, Civil Code). x x x. In the case at bar, there was no concurrence of offer and acceptance *vis-à-vis* the terms of the proposed lease agreement.

5. ID.; ID.; LEASE; A LEASE FROM MONTH-TO-MONTH IS WITH A DEFINITE PERIOD AND EXPIRES AT THE END OF EACH MONTH UPON THE DEMAND TO VACATE BY THE LESSOR; APPLIED.— The contention that the lease contract between petitioners and Rudy Robles did not expire, given that it did not have a definite term and the parties thereto failed to terminate the same, deserves scant consideration. x x x Crystal clear from the [second paragraph of the terms and conditions of the contract of lease between petitioners and Rudy Robles] is that the lease is on a month-to-month basis. Relevantly, the well-entrenched principle is that a lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor. As held by the Court of Appeals in the assailed Amended Decision, the above-mentioned lease contract was duly terminated by DBP by virtue of its letter dated June 18, 1987. We reiterate that the letter explicitly directed the petitioners to come to the office of the DBP if they wished to enter into a new lease agreement with the said bank. Otherwise, if no contract of lease was executed within 30 days from the date

of the letter, petitioners were to be considered uninterested in entering into a new contract and were thereby ordered to vacate the property. As no new contract was in fact executed between petitioners and DBP within the 30-day period, the directive to vacate, thus, took effect. DBP's letter dated June 18, 1987, therefore, constituted the written notice that was required to terminate the lease agreement between petitioners and Rudy Robles. From then on, the petitioners' continued possession of the subject property could be deemed to be without the consent of DBP.

6. ID.; ID.; ID.; ARTICLE 1670 OF THE CIVIL CODE, INAPPLICABLE TO THE CASE AT BAR; THE LESSOR'S DEMAND TO VACATE THE PREMISES IF NO NEW LEASE CONTRACT IS ENTERED INTO NEGATES THE CONSTITUTION OF AN IMPLIED NEW LEASE; LESSEE'S CONTINUED POSSESSION OF THE PREMISES DEEMED WITHOUT THE ACQUIESCENCE OF THE LESSOR.— [P]etitioners' assertion that Article 1670 of the Civil Code is not applicable to the instant case is correct. The reason, however, is not that the existing contract was continued by DBP, but because the lease was terminated by DBP, which termination was accompanied by a demand to petitioners to vacate the premises of the subject property. Article 1670 states that "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." In view of the order to vacate embodied in the letter of DBP dated June 18, 1987 in the event that no new lease contract is entered into, the petitioners' continued possession of the subject properties was without the acquiescence of DBP, thereby negating the constitution of an implied lease.

7. ID.; ID.; ID.; THE SUBSEQUENT ACCEPTANCE BY THE LESSOR OF RENTAL PAYMENTS DOES NOT, ABSENT ANY CIRCUMSTANCE THAT MAY DICTATE A CONTRARY CONCLUSION, LEGITIMIZE THE UNLAWFUL CHARACTER OF THE LESSEE'S

POSSESSION, NOR GIVE RISE TO AN IMPLIED LEASE.— Contrary to the ruling of the RTC, DBP's acceptance of petitioners' rental payments of ₱5,000.00 for the period of November 1990 to March 1991 did not likewise give rise to an implied lease between petitioners and DBP. In *Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals*, we held that "the subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of their possession." In the present case, the petitioners' rental payments to DBP were made in lump sum on March 22, 1991. Significantly, said payments were remitted only after petitioners were notified of the sale of the subject properties to respondents To Chip, Yap and Balila and after the petitioners were given a final demand to vacate the properties.

8. ID.; ID.; ID.; IMPLIED LEASE; ONLY THOSE TERMS WHICH ARE GERMANE TO THE LESSEE'S RIGHT OF CONTINUED ENJOYMENT OF THE PROPERTY LEASED ARE REVIVED IN THE IMPLIED NEW LEASE; SPECIAL AGREEMENTS IN THE PRIOR LEASE CONTRACT, WHICH BY NATURE ARE FOREIGN TO THE RIGHT OF OCCUPANCY OR ENJOYMENT OF THE PROPERTY LEASE, SUCH AS THE RIGHT OF FIRST REFUSAL, WAS NOT RENEWED THEREWITH.— [H]aving determined that the petitioners and DBP neither executed a new lease agreement, nor entered into an implied lease contract, it follows that petitioners' claim of entitlement to a right of first refusal has no leg to stand on. Furthermore, even if we were to grant, for the sake of argument, that an implied lease was constituted between petitioners and the DBP, the right of first refusal that was contained in the prior lease contract with Rudy Robles was not renewed therewith. This is in accordance with the ruling in *Dizon v. Magsaysay*, which involved the issue of whether a provision regarding a preferential right to purchase is revived in an implied lease under Article 1670, to wit: "[T]he other terms of the original contract" which are revived in the implied new lease under Article 1670 are only those terms which are germane to the lessee's right of continued enjoyment of the property leased. This is a reasonable construction of the provision, which is based on the presumption that when the lessor allows the lessee to continue enjoying possession

of the property for fifteen days after the expiration of the contract he is willing that such enjoyment shall be for the entire period corresponding to the rent which is customarily paid – in this case up to the end of the month because the rent was paid monthly. Necessarily, if the presumed will of the parties refers to the enjoyment of possession the presumption covers the other terms of the contract related to such possession, such as the amount of rental, the date when it must be paid, the care of the property, the responsibility for repairs, *etc*. But no such presumption may be indulged in with respect to special agreements which by nature are foreign to the right of occupancy or enjoyment inherent in a contract of lease. DBP cannot, therefore, be accused of violating the rights of petitioners when it offered the subject properties for sale, and eventually sold the same to respondents To Chip, Yap and Balila, without first notifying petitioners. Neither were the said respondents bound by any right of first refusal in favor of petitioners. Consequently, the sale of the subject properties to respondents was valid. Petitioners' claim for rescission was properly dismissed.

APPEARANCES OF COUNSEL

Emmanuel R. Pacquiao for petitioners.
Malilong & Associates for DBP.
Zosa & Quijano Law Offices for Jose To Chip, *et al.*

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Resolution[2] dated February 5, 2002 and the Amended Decision[3] dated July 5, 2002 of the Court of Appeals in CA-G.R. CV No. 57216. In the Resolution dated February 5, 2002, the Court of Appeals admitted the

[1] *Rollo*, pp. 3-37.

[2] *Id.* at 38; penned by Associate Justice Bernardo P. Abesamis with Associate Justices Godardo A. Jacinto and Eliezer R. de los Santos, concurring.

[3] *Id.* at 39-45.

Motion for Reconsideration[4] of herein respondents Development Bank of the Philippines (DBP), Jose To Chip, Patricio Yap and Roger Balila, notwithstanding the fact that the same was filed more than six months beyond the reglementary period. Said motion prayed for the reversal of the Court of Appeals Decision[5] dated February 14, 2001, which affirmed the Decision[6] dated April 25, 1997 of the Regional Trial Court (RTC) of Cebu, Branch 8, in Civil Case No. CEB-10104 that ruled in favor of petitioners. In the Amended Decision of July 5, 2002, the Court of Appeals reversed its previous Decision dated February 14, 2001 and dismissed the petitioners' complaint for lack of merit.

The facts leading to the instant petition are as follows:

On June 2, 1981, the spouses Rudy R. Robles, Jr. and Elizabeth R. Robles entered into a **mortgage contract**[7] with DBP in order to secure a loan from the said bank in the amount of ₱500,000.00. The properties mortgaged were a parcel of land situated in Tabunoc, Talisay, Cebu, which was then covered by Transfer Certificate of Title (TCT) No. T- 47783 of the Register of Deeds of Cebu, together with all the existing improvements, and the commercial building to be constructed thereon[8] (subject properties). Upon completion, the commercial building was named the State Theatre Building.

On October 28, 1981, Rudy Robles executed a **contract of lease** in favor of petitioner Cebu Bionic Builders Supply, Inc. (Cebu Bionic), a domestic corporation engaged in the construction business, as well as the sale of hardware materials. The contract pertinently provides:

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[4] CA *rollo*, pp. 220-225.

[5] *Id.* at 186-193.

[6] Records, pp. 348-365; penned by Presiding Judge Antonio T. Echavez.

[7] *Id.* at 294-295.

[8] *Id.*, back of p. 294.

CONTRACT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

This Lease Contract made and entered into, by and between:

RUDY ROBLES, JR., Filipino, of legal age, married and resident of 173 Maria Cristina Ext., Cebu City, hereinafter referred to as the LESSOR,

- and -

CEBU BIONIC BUILDER SUPPLY, represented by LYDIA SIA, Filipino, of legal age, married and with address at 240 Magallanes St., Cebu City hereinafter known as the LESSEE;

WITNESSETH:

The LESSOR is the owner of a commercial building along Tabunok, Talisay, Cebu, known as the State Theatre Building.

The LESSOR agrees to lease unto the LESSEE and the LESSEE accepts the lease from the LESSOR, a portion of the ground floor thereof, consisting of one (1) unit/store space under the following terms and conditions:

1. The LESSEE shall pay a monthly rental of One Thousand (₱1,000.00) Pesos, Philippine Currency. The rental is payable in advance within the first five (5) days of the month, without need of demand;

2. **That the term of this agreement shall start on November 1, 1981 and shall terminate on the last day of every month thereafter; provided however that this contract shall be automatically renewed on a month to month basis if no notice, in writing, is sent to the other party to terminate this agreement after fifteen (15) days from receipt of said notice**;

xxx xxx xxx

9. **Should the LESSOR decide to sell the property during the term of this lease contract or immediately after the expiration of the lease, the LESSEE shall have the first option to buy and shall match offers from outside parties**.[9] (Emphases ours.)

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[9] *Rollo*, pp. 231-232.

The above contract was not registered by the parties thereto with the Registry of Deeds of Cebu.

Subsequently, the spouses Robles failed to settle their loan obligation with DBP. The latter was, thus, prompted to effect extrajudicial foreclosure on the subject properties.[10] On February 6, 1987, DBP was the lone bidder in the foreclosure sale and thereby acquired ownership of the mortgaged subject properties.[11] On October 13, 1988, a final Deed of Sale[12] was issued in favor of DBP.

Meanwhile, on June 18, 1987, DBP sent a letter to Bonifacio Sia, the husband of petitioner Lydia Sia who was then President of Cebu Bionic, notifying the latter of DBP's acquisition of the State Theatre Building. Said letter reads:

June 18, 1987

Mr. Bonifacio Sia
Bionic Builders' Inc.
State Theatre Bldg.
Tabunok, Talisay, Cebu

Sir:

This refers to the commercial space you are occupying in the acquired property of the Bank, formerly owned by Rudy Robles, Jr.

Please be informed that said property has been acquired through foreclosure on February 6, 1987. Considering thereat, we require you to remit the rental due for June 1987.

If you wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:

1. The lease will be on month to month basis, for a maximum period of one (1) year;
2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one

[10] *Id.* at 234-235.

[11] *Id.* at 236.

[12] Records, p. 114.

year period (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;

3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.

We consider, temporarily, the current monthly rental based on the six-month receipts, which we require you to submit, until such time when we will fix the amount accordingly.

If the contract of lease is not executed within thirty (30) days from date hereof, it is construed that you are not interested in leasing the premises and will vacate within the said period.

Please be guided accordingly.

Truly yours,

(SGD)LUCILO S. REVILLAS
Branch Head[13] (Emphases ours.)

On July 7, 1987, the counsel of Bonifacio Sia replied to the above letter, to wit:

July 7, 1987

Mr. Lucilo S. Revillas
Branch Head
Development Bank of the Philippines

Dear Mr. Revillas,

This has reference to your letter of 18 June 1987 which you sent to my client, Mr. Bonifacio Sia of Cebu Bionic Builders' Supply – the lessee of a commercial space of the State Theatre Bldg., located at Tabunok, Talisay, Cebu.

My client is amenable to the terms contained in your letter except the following:

1. In lieu of item no. 2 thereof, my client will deposit with your bank the amount of ₱10,000.00, as assigned time deposit;

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[13] *Id.* at 56.

2. The 30 days notice you mentioned in your letter, (3), is too short. My client is requesting for at least 60 days notice.

I sincerely hope that you will give due course to this request.

Thank you.

Truly yours,

(SGD) ANASTACIO T. MUNTUERTO, JR.[14]

Thereafter, on November 14, 1989, a Certificate of Time Deposit[15] for ₱11,395.64 was issued in the name of Bonifacio Sia and the same was allegedly remitted to DBP as advance rental deposit.

For reasons unclear, however, no written contract of lease was executed between DBP and Cebu Bionic.

In the meantime, subsequent to the acquisition of the subject properties, DBP offered the same for sale along with its other assets. Pursuant thereto, DBP published a series of invitations to bid on such properties, which were scheduled on January 19, 1989,[16] February 23, 1989,[17] April 13, 1989,[18] and November 15, 1990.[19] As no interested bidder came forward, DBP publicized an Invitation on Negotiated Sale/Offer, the relevant terms and conditions of which stated:

INVITATION ON NEGOTIATED SALE/OFFER

The DEVELOPMENT BANK OF THE PHILIPPINES, Cebu Branch, will receive SEALED NEGOTIATED OFFERS/PURCHASE PROPOSALS tendered at its Branch Office, DBP Building, Osmeña Boulevard, Cebu City for the sale of its acquired assets mentioned hereinunder **within the "15-Day-Acceptance-Period" starting from NOVEMBER 19, 1990 up to 12:00 o'clock noon of**

[14] *Rollo*, p. 247.

[15] Records, p. 58.

[16] *Id.* at 115.

[17] *Id.* at 116-117.

[18] *Id.* at 118-119.

[19] *Id.* at 61.

DECEMBER 3, 1990. Sealed offers submitted shall be opened by the Committee on Negotiated Offers at exactly 2:00 o'clock in the afternoon of the last day of the acceptance period in order to determine the highest and/or most advantageous offer.

Item No.	Description/Location	Starting Price
	xxx xxx	xxx
II	Commercial land, Lot No. 3681-C-3, having an area of 396 sq. m., situated in Tabunok, Talisay, Cebu and covered by TCT No. T-65199 (DBP), including the commercial building thereon.	₱1,838,100.00
	xxx xxx	xxx

A pre-numbered Acknowledgment Receipt duly signed by at least two (2) of the Committee members shall be issued to the offeror acknowledging receipt of such offer.

Negotiated offers may be made in CASH or TERMS, the former requiring a deposit of 10% and the latter 20% of the starting price, either in the form of cash or cashier's/manager's check to be enclosed in the sealed offer.

xxx xxx xxx

Interested negotiated offerors are requested to see Atty. Apolinar K. Panal, Jr., Acquired Asset in Charge (Tel. No. 9-63-25), in order to secure copies of the Letter-Offer form and Negotiated Sale Rules and Procedures.

NOTE: **If no offer is received during the above stated acceptance period, the properties described above shall be sold to the first offeror who submits an acceptable proposal on a "First-Come-First-Served" basis**.

City of Cebu, Philippines, November 16, 1990.

(SGD.) TIMOTEO P. OLARTE
Branch Head[20] (Emphases ours.)

[20] *Id.* at 103.

In the morning of December 3, 1990, the last day for the acceptance of negotiated offers, petitioners submitted through their representative, Judy Garces, a letter-offer form, offering to purchase the subject properties for ₱1,840,000.00. Attached to the letter-offer was a copy of the Negotiated Sale Rules and Procedures issued by DBP and a manager's check for the amount of ₱184,000.00, representing 10% of the offered purchase price. This offer of petitioners was not accepted by DBP, however, as the corresponding deposit therefor was allegedly insufficient.

After the lapse of the above-mentioned 15-day acceptance period, petitioners did not submit any other offer/proposal to purchase the subject properties.

On December 17, 1990, respondents To Chip, Yap and Balila presented their letter-offer[21] to purchase the subject properties on a cash basis for ₱1,838,100.00. Said offer was accompanied by a downpayment of 10% of the offered purchase price, amounting to ₱183,810.00. On even date, DBP acknowledged the receipt of and accepted their offer. On December 28, 1990, respondents To Chip, Yap and Balila paid the balance of the purchase price and DBP issued a Deed of Sale[22] over the subject properties in their favor.

On January 11, 1991, the counsel of respondents To Chip, Yap and Balila sent a letter[23] addressed to the proprietor of Cebu Bionic, informing the latter of the transfer of ownership of the subject properties. Cebu Bionic was ordered to vacate the premises within thirty (30) days from receipt of the letter and directed to pay the rentals from January 1, 1991 until the end of the said 30-day period.

The counsel of Cebu Bionic replied[24] that his client received the above letter on January 11, 1991. He stated that he has instructed Cebu Bionic to verify first the ownership of the subject

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[21] *Rollo*, pp. 240-241.

[22] Records, pp. 22-23.

[23] *Id.* at 93.

[24] *Id.* at 94.

properties since it had the preferential right to purchase the same. He likewise requested that he be furnished a copy of the deed of sale executed by DBP in favor of respondents To Chip, Yap and Balila.

On February 15, 1991, respondent To Chip wrote a letter[25] to the counsel of Cebu Bionic, insisting that he and his co-respondents Yap and Balila urgently needed the subject properties to pursue their business plans. He also reiterated their demand for Cebu Bionic to vacate the premises.

Shortly thereafter, on February 27, 1991, the counsel of respondents To Chip, Yap and Balila sent its final demand letter[26] to Cebu Bionic, warning the latter to vacate the subject properties within seven (7) days from receipt of the letter, otherwise, a case for ejectment with damages will be filed against it.[27]

Despite the foregoing notice, Cebu Bionic still paid[28] to DBP, on March 22, 1991, the amount of ₱5,000.00 as monthly rentals on the unit of the State Theatre Building it was occupying for period of November 1990 to March 1991.

On April 10, 1991, petitioners filed against respondents DBP, To Chip, Yap and Balila a **complaint**[29] for specific performance, cancellation of deed of sale with damages, injunction with a

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[25] *Id.* at 95-96.

[26] *Id.* at 97.

[27] On April 2, 1991, respondents To Chip, Yap and Balila filed an action for ejectment against Cebu Bionic, which was docketed as Civil Case No. 616 before the Municipal Trial Court (MTC) of Talisay, Cebu, Branch 001. On April 13, 1993, the MTC ruled in favor of respondents, ordering Cebu Bionic to vacate the premises of the commercial space they were leasing in the subject properties and to pay respondents the fair rental value for the use of the property until such time that Cebu Bionic shall have vacated. (CA *rollo*, pp. 69-73.) On appeal by Cebu Bionic, the RTC affirmed the decision of the MTC in a Decision dated October 25, 1993. (CA *rollo*, pp. 74-78.) Cebu Bionic, thereafter, filed a petition for review before the Court of Appeals. On March 9, 1994, the Court of Appeals resolved to deny the petition as the same was filed out of time. (CA *rollo*, pp. 79-80.)

[28] Records, pp. 59-60.

[29] *Id.* at 1-13.

prayer for the issuance of a writ of preliminary injunction.[30] The complaint was docketed as Civil Case No. CEB-10104 in the RTC.

Petitioners alleged, *inter alia*, that Cebu Bionic was the lessee and occupant of a commercial space in the State Theatre Building from October 1981 up to the time of the filing of the complaint. During the latter part of 1990, DBP advertised for sale the State Theatre Building and the commercial lot on which the same was situated. In the prior invitation to bid, the bidding was scheduled on November 15, 1990; while in the next, under the 15-day acceptance period, the submission of proposals was to be made from November 19, 1990 up to 12:00 noon of December 3, 1990. Petitioners claimed that, at about 10:00 a.m. on December 3, 1990, they duly submitted to Atty. Apolinar Panal, Jr., Chief of the Acquired Assets of DBP, the following documents, namely:

6.1 **Letter-offer form, offering to purchase the property advertised, for the price of ₱1,840,000,** which was higher than the starting price of ₱1,838,100.00 on **cash basis**. x x x;

6.2 Negotiated Sale Rules and Procedures, duly signed by plaintiff, x x x;

6.3 Manager's check for the amount of ₱184,000 representing 10% of the deposit dated December 3, 1990 and issued by Allied Banking Corp. in favor of the Development Bank of the Philippines. x x x.[31] (Emphasis ours.)

Petitioners asserted that the above documents were initially accepted but later returned. DBP allegedly advised petitioners that "there was no urgent need for the same x x x, considering that the property will necessarily be sold to [Cebu Bionic] for the reasons that there was no other interested party and that [Cebu Bionic] was a preferred party being the lessee and present

[30] In the original complaint filed, only petitioners Cebu Bionic and Lydia Sia were named as plaintiffs. During trial, the complaint was amended to include Bonifacio Sia as one of the plaintiffs. (TSN, May 16, 1991, p. 2.)

[31] Records, p. 3.

occupant of the property subject of the lease[.]"[32] Petitioners then related that, without their knowledge, DBP sold the subject properties to respondents To Chip, Yap and Balila. The sale was claimed to be simulated and fictitious, as DBP still received rentals from petitioners until March 1991. By acquiring the subject properties, petitioners contended that DBP was deemed to have assumed the contract of lease executed between them and Rudy Robles. As such, DBP was bound by the provision of the lease contract, which stated that:

> 9. Should the Lessor decide to sell the property during the term of this lease contract or immediately after the expiration of the lease, the Lessee shall have the first option to buy and shall match offers from outside parties.[33]

Petitioners sought the rescission of the contract of sale between DBP and respondents To Chip, Yap and Balila. Petitioners also prayed for the issuance of a writ of preliminary injunction, restraining respondents To Chip, Yap and Balila from registering the Deed of Sale in the latter's favor and from undertaking the ejectment of petitioners from the subject properties. Likewise, petitioners entreated that DBP be ordered to execute a deed of sale covering the subject properties in their name and to pay damages and attorney's fees.

In its answer,[34] DBP denied the existence of a contract of lease between itself and petitioners. DBP countered that the letter-offer of petitioners was actually not accepted as their offer to purchase was on a term basis, which therefore required a 20% deposit. The 10% deposit accompanying the petitioners' letter-offer was declared insufficient. DBP stated that the letter-offer form was not completely filled out as the "Term" and "Mode of Payment" fields were left blank. DBP then informed petitioner Lydia Sia of the inadequacy of her offer. After ascertaining that there was no other offeror as of that time, Lydia Sia allegedly summoned back her representative who did

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[32] *Id.* at 4.

[33] *Rollo,* p. 232.

[34] Records, pp. 40-49.

not leave a copy of the letter-offer and the attached documents. DBP maintained that petitioners' documents did not show that the same were received and approved by any approving authority of the bank. The letter-offer attached to the complaint, which indicated that the mode of payment was on a cash basis, was allegedly not the document shown to DBP. In addition, DBP argued that there was no assumption of the lease contract between Rudy Robles and petitioners since it acquired the subject properties through the involuntary mode of extrajudicial foreclosure and its request to petitioners to sign a new lease contract was simply ignored. DBP, therefore, insisted that petitioners' occupancy of the unit in the State Theatre Building was merely upon its acquiescence. The petitioners' payment of rentals on March 22, 1991 was supposedly made in bad faith as they were made to a mere teller who had no knowledge of the sale of the subject properties to respondents To Chip, Yap and Balila. DBP, thus, prayed for the dismissal of the complaint and, by way of counterclaim, asked that petitioners be ordered to pay damages and attorney's fees.

Respondents To Chip, Yap and Balila no longer filed a separate answer, adopting instead the answer of DBP.[35]

In an Order[36] dated July 31, 1991, the RTC granted the prayer of petitioners for the issuance of a writ of preliminary injunction.[37]

On April 25, 1997, the RTC rendered judgment in Civil Case No. CEB-10104, finding meritorious the complaint of the petitioners. Explained the trial court:

It is a fact on record that [petitioners] complied with the requirements of deposit and advance rental as conditions for constitution of lease

[35] *Id.* at 50-51.

[36] *Id.* at 151-157.

[37] Respondents filed a Motion for Reconsideration of the RTC Order dated July 31, 1991 (Records, pp. 166-174), but the same was denied. Respondents filed a petition, elevating the matter to the Court of Appeals, which was docketed as CA-G.R. SP No. 26349. In a Resolution dated December 10, 1992, the Court of Appeals affirmed the order of the RTC, granting the issuance of a writ of preliminary injunction. (Records, pp. 224-232.)

between the parties. [Petitioners] in complying with the requirements, issued a time deposit in the amount of ₱11,395.64 and remitted faithfully its monthly rentals until April, 1991, which monthly rental was no longer accepted by the DBP. **Although there was no formal written contract executed between [respondent] DBP and the [petitioners], it is very clear that DBP opted to continue the old and previous contract including the terms thereon by accepting the requirements contained in paragraph 2 of its letter dated June 18, 1987**. It is also a fact on record that under the lease contract continued by the DBP on the [petitioners], it is provided in paragraph 9 thereof that the lessee shall have the first option to buy and shall match offers from outside parties. **And yet, [respondent] DBP never gave [petitioners] the first option to buy or to match offers from outside parties, more specifically [respondents] To Chip, Balila and Yap.** It is also a fact on record that [respondent] DBP in its letter dated June 18, 1987 to [petitioners] wrote in paragraph 3 thereof, "that in case there is better offer or if a property will be subject of purchase offer, within the term, the lessee is given the option of first refusal, otherwise, he has to vacate the premises within thirty (30) days." **Yet, [respondent] DBP never informed [petitioners] that there was an interested party to buy the property, meaning, [respondents To Chip, Yap and Balila], thus depriving [petitioners] of the opportunity of first refusal promised to them in its letter dated June 18, 1987**. x x x.[38] (Emphases ours.)

As regards the offer of petitioners to purchase the subject properties from DBP, the RTC gave more credence to the petitioners' version of the facts, to wit:

It is also a fact on record that when [respondent] DBP offered the property for negotiated sale under the 15-day acceptance period[, which] ended at noon of December 3, 1991, [Cebu Bionic] submitted its offer, complete with [the required documents.] x x x.

xxx xxx xxx

These requirements, however, were unceremoniously returned by [respondent] bank with the assurance that since there was no other bidder of the said property, there was no urgency for the same and

[38] Records, p. 359.

that [Cebu Bionic] also, in all events, is entitled to first option being the present lessee.

The declaration of Atty. Panal to the effect that Cebu Bionic wanted to buy the property on installment terms, such that the deposit of ₱184,000.00 was insufficient being only 10% of the offer, could not be given much credence as it is refuted by Exh. "H" which is the negotiated offer to purchase form under the 15-day acceptance period accomplished by [petitioners] which shows clearly the written word "Cash" after the printed words "Term" and "Mode of Payment," Exhibit "J", the Manager's check issued by Allied Banking Corporation dated December 3, 1990 in the amount of ₱184,000.00 representing 10% of the offer showing the mode of payment is for cash; Exhibit "K" which is the application for Manager's check in the amount of ₱184,000.00 dated December 3, 1990 showing the beneficiary as DBP. **If it is true that the offer of [petitioners] was for installment payments, then in the ordinary course of human behavior, it would not have wasted effort in securing a Manager's check in the amount of ₱184,000.00 which was insufficient for 20% deposit as required for installment payments. More credible is the explanation [given by] witness Judy Garces when she said that DBP through Atty. Panal returned the documents submitted by her, saying that there was no urgency for the same as there was no other bidder of [the said] property and that Cebu Bionic was entitled to a first option to buy being the present lessee.** In the letter also of [respondent] bank dated June 18, 1987, it is important to note that aside from requiring Cebu Bionic to comply with certain requirements of time deposit and advance rental, as condition for constitution of lease between the parties and which was complied by Cebu Bionic[,] said letter further states in paragraph 3 thereof that "in case there is [a] better offer or if the property will be subject of a purchase offer, within the term, the lessee is given the option of first refusal, otherwise, he has to vacate the premises within thirty days." In answer to the Court's question, however, Atty. Panal admitted that he did not tell [petitioners] that there was another party who was willing to purchase the property, in violation of [petitioners]' right of first refusal.[39] (Emphasis ours.)

Likewise, the RTC found that respondents To Chip, Yap and Balila were aware of the lease contract involving the subject properties before they purchased the same from DBP. Thus:

[39] *Id.* at 359-360.

[Respondent] Jose To Chip lamely pretends ignorance that [petitioners] are lessees of the property, subject matter of this case. He states that he and his partners, the other [respondents], were given assurances by Atty. Panal of the DBP that [Lydia Sia] is not a lessee, although he knew that [petitioners] were presently occupying the property and that it was possessed by [petitioners] even before it was owned by the DBP. x x x.

xxx xxx xxx

[Respondent] Roger Balila, in his testimony, likewise pretended ignorance that he knew that [Lydia Sia] was a lessee of the property. x x x.

xxx xxx xxx

Upon further questioning by the Court, he admitted that [Lydia Sia] was not possessing the building freely; that she was a lessee of Rudy Robles, the former owner, but cleverly insisted in disowning knowledge that [Lydia Sia] was a lessee, denying knowledge that [Lydia Sia] was paying rentals to [respondent] bank. His pretended ignorance x x x was a way of evading [Cebu Bionic's] right of first priority to buy the property under the contract of lease. x x x The Court is convinced that [respondents To Chip, Yap and Balila] knew that [Cebu Bionic] was the present lessee of the property before they bought the same from [respondent] bank. Common observation, knowledge and experience dictates that as a prudent businessman, it was but natural that he ask Lydia Sia what her status was in occupying the property when he went to talk to her, that he ask her if she was a lessee. But he said, all he asked her was whether she was interested to buy the property. x x x.[40]

The trial court, therefore, concluded that:

From the foregoing facts on record, it is thus clear that [petitioner] Cebu Bionic is the present lessee of the property, the lease contract having been continued by [respondent] DBP when it received rental payments up to March of 1991 as well as the advance rental for one year represented by the assigned time deposit which is still in [respondent] bank's possession. The provision, therefore, in the lease contract, on the right of first option to buy and the right of first refusal contained in [respondent] bank's letter dated June 18,

[40] *Id.* at 361-364.

1987, are still subsisting and binding up to the present, not only on [respondent] bank but also on [respondents To Chip, Yap and Balila]. x x x.

xxx xxx xxx

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, judgment is hereby rendered:

(1) Rescinding the Deed of Sale dated December 28, 1990 between [respondent] Development Bank of the Philippines and [respondents] Roger Balila, Jose To Chip and Patricio Yap;

(2) Ordering the [respondent] Development Bank of the Philippines to execute a Deed of Sale over the property, subject matter of this case upon payment by [petitioners] of the whole consideration involved and to complete all acts or documents necessary to have the title over said property transferred to the name of [petitioners];

(3) Costs against [respondents].[41]

DBP forthwith filed a Notice of Appeal.[42] Respondents To Chip, Yap and Balila filed a Motion for Reconsideration[43] of the above decision, but the RTC denied the same in an Order[44] dated July 4, 1997. Said respondents then filed their Notice of Appeal.[45]

On February 14, 2001, the Court of Appeals promulgated its Decision,[46] pronouncing that:

We find nothing erroneous with the judgment rendered by the trial court. Perforce, We sustain it and dismiss the [respondents'] submission.

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[41] *Id.* at 364-365.

[42] *Id.* at 386.

[43] *Id.* at 368-379.

[44] *Id.* at 403-405.

[45] *Id.* at 407.

[46] CA *rollo*, pp. 186-193.

The RTC determined, upon evidence on record after a careful evaluation of the witnesses and their testimonies during the trial that indeed [petitioners'] right of first option was violated and thus, rescission of the sale made by DBP to [respondents To Chip, Yap and Balila] are in order.

xxx xxx xxx

Apparently, DBP accepted [the documents submitted by petitioners] and thereafter, through Atty. Panal (of DBP), returned all of it to the [petitioners] "with the assurance that since there was no other bidder of the said property, there was no urgency for the same and that [Cebu Bionic] also, in all events, is **entitled to first option being the present lessee**.

[DBP] maintains that the return of the documents [submitted by petitioners] was in order since the [petitioners] offered to buy the property in question on installment basis requiring a higher 20% deposit. This, however, was correctly rejected by the trial court[.] x x x

The binding effect of the lease agreement upon the [respondents To Chip, Yap and Balila] must be sustained since from existing jurisprudence cited by the lower court, it was determined during trial that:

> "... **[respondents To Chip, Yap and Balila] knew that [Cebu Bionic] was the present lessee** of the property before they bought the same from [respondent] bank. **Common observation, knowledge and experience dictates that as a prudent businessman, it was but natural that he ask Lydia Sia what her status was in occupying the property when he went to talk to her, that he ask her if she was a lessee. But he said, all he asked her was whether she was interested to buy the property**. x x x.

Moreover, We find that the submissions presented by the [respondents] in their respective briefs argue against questions of facts as found and determined by the lower court. The respondents' contentions consist of crude attempts to question the assessment and evaluation of testimonies and other evidence gathered by the trial court.

It must be remembered that findings of fact as determined by the trial court are entitled to great weight and respect from appellate

courts and should not be disturbed on appeal unless for [strong] and cogent reasons. These findings generally, so long as supported by evidence on record, are not to be disturbed unless there are some facts or evidence which the trial court has misappreciated or overlooked, and which if considered would have altered the results of the entire case. Sad to say for the [respondents], We see no reason to depart from this well-settled legal principle.

WHEREFORE, in view of the foregoing, the judgment of the Regional Trial Court of Cebu City, Branch 8, in **Civil Case No. 10104** is hereby **AFFIRMED *in toto***.[47]

On October 1, 2001, petitioners filed a Motion for Issuance of Entry of Judgment.[48] Petitioners stressed that, based on the records of the case, respondents were served a copy of the Court of Appeals Decision dated February 14, 2001 sometime on March 7, 2001. However, petitioners discovered that respondents have not filed any motion for reconsideration of the said decision within the reglementary period therefor, nor was there any petition for *certiorari* or appeal filed before the Supreme Court.

In response to the above motion, respondents To Chip, Yap and Balila filed on October 8, 2001 a Motion to Admit Motion for Reconsideration.[49] Atty. Francis M. Zosa, the counsel for respondents To Chip, Yap and Balila, explained that he sent copies of the motion for reconsideration to petitioners and DBP *via* personal delivery. On the other hand, the copies of the motion to be filed with the Court of Appeals were purportedly sent to Mr. Domingo Tan, a friend of Atty. Zosa in Quezon City, who agreed to file the same personally with the appellate court in Manila. When Atty. Zosa inquired if the motion for reconsideration was accordingly filed, Mr. Tan allegedly answered in the affirmative. To his surprise, Atty. Zosa received a copy of petitioners' Motion for Issuance of Entry of Judgment. Atty. Zosa, thus, attributed the failure of his clients to file a motion

[47] *Id.* at 189-193.

[48] *Id.* at 212-214.

[49] *Id.* at 215-225.

for reconsideration on the mistake, excusable negligence and/or fraud committed by Mr. Tan.

In the assailed Resolution dated February 5, 2002, the Court of Appeals granted the motion of respondents To Chip, Yap and Balila and admitted the motion for reconsideration attached therewith "in the higher interest of substantial justice."[50]

On July 5, 2002, the Court of Appeals reversed its original Decision dated February 14, 2001, reasoning thus:

> After a judicious review and reevaluation of the evidence and facts on record, we are convinced that DBP had terminated the Robles lease contract. From its letter of June 18, 1987, DBP had expressly notified [petitioners] that *"(I)f they wish to continue on leasing the property x x x" "to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:*
>
> **'1. The lease will be on a month to month basis for a maximum period of one (1) year;**
>
> **'2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one year (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;**
>
> **'3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.'**
>
> *We consider, temporarily, the current monthly rental based on the six-month receipts, which we require you to submit, until such time when we will fix the amount accordingly."*
>
> Evidently, except for the remittance of the monthly rentals up to March 1991, the conditions imposed by DBP have never been complied with. [Petitioners] did not go to the Bank to sign any new written contract of lease with DBP. [Petitioners] also did not put up a surety bond nor cash bond nor assign a time deposit to secure the payment of rental for nine (9) months, although the [petitioners] opened a time deposit but did not assign it to DBP.

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[50] *Rollo*, p. 38.

But even with the remittance and acceptance of the deposit made by [petitioners] equivalent to two (2) months rental and advance of one (1) month rental it does not necessarily follow that DBP opted to continue with the Robles lease. This is because the Robles contract provides:

> **"That the term of the agreement shall start on November 1, 1981 and shall terminate on the last day of every month thereafter, provided however, that this contract shall be automatically renewed on a month to month basis if no notice in writing is sent to the other party to determine to terminate this agreement after fifteen (15) days from the receipt of said notice."**

Here, a notice was sent to [petitioners] on June 18, 1987, informing them that if they "wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease x x x."

[Petitioners] failed to enter into the contract of lease required by DBP for it to continue occupying the leased premises.

Because of [petitioners'] failure to comply with the conditions embodied in the 18 June 1987 letter, it cannot be said that [petitioners] entered into a new contract with DBP where they were given the first option to buy the leased property and to match offers from outside parties.

xxx xxx xxx

Be that as it may, DBP continued to accept the monthly rentals based on the old Robles contract despite the fact that the [petitioners] failed to enter into a written lease contract with it. Corollarily, the relations between the parties is now governed by **Article 1670 of the New Civil Code**, thus:

> "Art. 1670. If at the end of contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived."

xxx xxx xxx

x x x [T]he acceptance by DBP of the monthly rentals does not mean that the terms of the Robles contract were revived. In the case of ***Dizon vs. Court of Appeals***, the Supreme Court declared that:

> "The other terms of the original contract of lease which are revived in the implied new lease under Article 1670 of the New Civil Code are only those terms which are germane to the lessee's right [of] continued enjoyment of the property leased – an implied new lease does not *ipso facto* carry with it any implied revival of any option to purchase the leased premises."

In view of the foregoing, it is clear that [petitioners] had no right to file a case for **rescission of the deed of sale** executed by DBP in favor of [respondents To Chip, Yap and Balila] because said deed of sale did not violate their alleged first option to buy or match offers from outside parties which is legally non-existent and which was not impliedly renewed under **Article 1670 of the Civil Code**.

WHEREFORE, premises considered, the 14 February 2001 Decision is hereby **RECONSIDERED** and another one is **issued REVERSING** the 25 April 1997 Decision of the Regional Trial Court, Branch 8, Cebu City in **Civil Case No. CEB-10104** and the complaint of [petitioners] is **DISMISSED** for lack of merit.[51]

Without seeking a reconsideration of the above decision, petitioners filed the instant petition. In their Comment, respondents opposed the petition on both procedural and substantive grounds.

In petitioners' Memorandum, they summarized the issues to be resolved in the present case as follows:

A) PRELIMINARY ISSUES:

I

WHETHER OR NOT THE VERIFICATION (AND CERTIFICATION OF NON-FORUM SHOPPING) IN THE INSTANT PETITION WAS PROPER AND VALID DESPITE ITS BEING SIGNED BY ONLY ONE OF THE TWO PETITIONERS.

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[51] *Id.* at 40-45.

II

WHETHER OR NOT ONLY QUESTIONS OF LAW AND NOT OF FACT CAN BE RAISED IN THE INSTANT PETITION BEFORE THIS HON. SUPREME COURT.

B) MAIN AND PRINCIPAL ISSUES IN THE INSTANT PETITION:

I

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN ADMITTING RESPONDENTS' MOTION FOR RECONSIDERATION DESPITE ITS BEING FILED OUT OF TIME

II

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN DECLARING THAT PETITIONERS DID NOT ENTER INTO CONTRACT WITH RESPONDENT DBP CONTINUING THE TERMS OF THE ROBLES CONTRACT

III

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT DECLARED THAT THE CONTINUATION BY RESPONDENT DBP OF THE LEASE CONTRACT DID NOT CONTAIN THE RIGHT OF FIRST REFUSAL

IV

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT DECLARED THAT THE LEASE CONTRACT IS GOVERNED BY ART. 1670 OF THE NEW CIVIL CODE

V

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT FAILED TO RECOGNIZE PETITIONERS' RIGHT OF FIRST REFUSAL TO WHICH RESPONDENTS WERE BOUND

VI

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT FAILED TO DECLARE THAT RESPONDENT DBP HAD VIOLATED PETITIONERS' RIGHTS

VII

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN REVERSING ITS OWN JUDGMENT AND DISMISSING PETITIONERS' CLAIM FOR RESCISSION[52]

We shall first resolve the preliminary issues.

Respondents To Chip, Yap and Balila argue that the instant petition should be dismissed outright as the verification and certification of non-forum shopping was executed only by petitioner Lydia Sia in her personal capacity, without the participation of Cebu Bionic.

The Court is not persuaded.

Except for the powers which are expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence, a corporation has no powers. It exercises its powers through its board of directors and/or its duly authorized officers and agents. Thus, its power to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers.[53] Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[54]

In this case, respondents To Chip, Yap and Balila obviously overlooked the Secretary's Certificate[55] attached to the instant petition, which was executed by the Corporate Secretary of Cebu Bionic. Unequivocally stated therein was the fact that the Board of Directors of Cebu Bionic held a special meeting on July 26, 2002 and they thereby approved a Resolution authorizing Lydia Sia to elevate the present case to this Court in behalf of Cebu Bionic, to wit:

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[52] *Id.* at 136-138.

[53] *Pascual and Santos, Inc. v. The Members of the Tramo Wakas Neighborhood Association, Inc.*, G.R. No. 144880, November 17, 2004, 442 SCRA 438, 446.

[54] *Id.* at 446-447.

[55] *Rollo*, p. 56.

Whereas, the board appointed LYDIA I. SIA to act and in behalf of the corporation to file the *CERTIORARI* with the Supreme Court in relations (sic) to the decision of the Court of Appeals dated July 5, 2002 which reversed its own judgment earlier promulgated on February 14, 2001 entitled CEBU BIONIC BUILDERS SUPPLY, INC. and LYDIA SIA, (Petitioners- Appellants) –versus – THE DEVELOPMENT BANK OF THE PHILIPPINES, JOSE TO CHIP, PATRICIO YAP and ROGER BALILA (Respondents- Appelles), docketed CA-G.R. NO. 57216.

Whereas, on mass unanimously motion of all members of directors present hereby approved the appointment of LYDIA I. SIA to act and sign all papers in connection of CA-G.R. NO. 57216.

Resolved and it is hereby resolve to appoint and authorized (sic)LYDIA I. SIA to sign and file with the SUPREME COURT in connection to decision of the Court of Appeals as above mention (sic).[56]

Respondents To Chip, Yap and Balila next argue that the instant petition raises questions of fact, which are not allowed in a petition for review on *certiorari*. They, therefore, submit that the factual findings of the Court of Appeals are binding on this Court.

Section 1, Rule 45 of the Rules of Court categorically states that the petition filed thereunder shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[57]

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[56] *Id*.

[57] *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

The above rule, however, admits of certain exceptions,[58] one of which is when the findings of the Court of Appeals are contrary to those of the trial court. As will be discussed further, this exception is attendant in the case at bar.

We now determine the principal issues put forward by petitioners.

First off, petitioners fault the Court of Appeals for admitting the Motion for Reconsideration of its Decision dated February 14, 2001, which was filed by respondents To Chip, Yap and Balila more than six months after receipt of the said decision. The motion was eventually granted and the Court of Appeals issued its assailed Amended Decision, ruling in favor of respondents.

Indeed, the appellate court's Decision dated February 14, 2001 would have ordinarily attained finality for failure of respondents to seasonably file their Motion for Reconsideration thereon. However, we agree with the Court of Appeals that the higher interest of substantial justice will be better served if respondents' procedural lapse will be excused.

Verily, we had occasion to apply this liberality in the application of procedural rules in *Barnes v. Padilla*[59] where we aptly declared that —

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[58] The well-established exceptions are: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) where there is a grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) 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; (g) when the findings of the Court of Appeals are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) 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 (j) when the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Geronimo v. Court of Appeals*, G.R. No. 105540, July 5, 1993, 224 SCRA 494, 498-499.)

[59] 482 Phil. 903 (2004).

The failure of the petitioner to file his motion for reconsideration within the period fixed by law renders the decision final and executory. Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. 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.[60]

In this case, what are involved are the property rights of the parties given that, ultimately, the fundamental issue to be determined is who among the petitioners and respondents To Chip, Yap and Balila has the better right to purchase the subject properties. More importantly, the merits of the case sufficiently called for the suspension of the rules in order to settle conclusively the rights and obligations of the parties herein.

In essence, the questions that must be resolved are: 1) whether or not there was a contract of lease between petitioners and DBP; 2) if in the affirmative, whether or not this contract contained a right of first refusal in favor of petitioners; and 3) whether or not respondents To Chip, Yap and Balila are likewise bound by such right of first refusal.

Petitioners contend that there was a contract of lease between them and DBP, considering that they had been allowed to occupy the premises of the subject property from 1987 up to 1991 and DBP received their rental payments corresponding to the said period. Petitioners claim that DBP were aware of their lease on the subject property when the latter foreclosed the same and the acquisition of the subject properties through foreclosure did not terminate the lease. Petitioners subscribe to the ruling

[60] *Id.* at 915.

of the RTC that even if there was no written contract of lease, DBP chose to continue the existing contract of lease between petitioners and Rudy Robles by accepting the requirements set down by DBP on the letter dated June 18, 1987. Petitioners likewise posit that the contract of lease between them and Rudy Robles never expired, inasmuch as the contract did not have a definite term and none of the parties thereto terminated the same. In view of the continuation of the lease contract between petitioners and Rudy Robles, petitioners submit that Article 1670 of the Civil Code on implied lease is not applicable on the instant case.

We are not persuaded.

In *Uy v. Land Bank of the Philippines*,[61] the Court held that "[i]n respect of the lease on the foreclosed property, the buyer at the foreclosure sale merely succeeds to the rights and obligations of the pledgor-mortgagor subject to the provisions of Article 1676 of the Civil Code on its possible termination. This article provides that '[t]he purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.' In short, the buyer at the foreclosure sale, as a rule, may terminate an unregistered lease except when it knows of the existence of the lease."

In the instant case, the lease contract between petitioners and Rudy Robles was not registered.[62] During trial, DBP denied having any knowledge of the said lease contract.[63] It asserted that the lease was merely presumed in view of the existence of tenants in the subject property.[64] Nevertheless, DBP recognized and acknowledged this lease contract in its letter dated June 18, 1987, which was addressed to Bonifacio Sia, then President of Cebu Bionic. DBP even required Sia to pay the monthly rental

[61] 391 Phil. 303, 316 (2000).

[62] TSN, May 16, 1991, p. 14.

[63] *Id.*

[64] *Id.* at 16.

for the month of June 1987, thereby exercising the right of the previous lessor, Rudy Robles, to collect the rental payments from the lessee. In the same letter, DBP extended an offer to Cebu Bionic to continue the lease on the subject property, outlining the provisions of the proposed contract and specifically instructing the latter to come to the bank for the execution of the same. DBP likewise gave Cebu Bionic a 30-day period within which to act on the said contract execution. Should Cebu Bionic fail to do so, it would be deemed uninterested in continuing with the lease. In that eventuality, the letter states that Cebu Bionic should vacate the premises within the said period.

Instead of acceding to the terms of the aforementioned letter, the counsel of Cebu Bionic sent a counter-offer to DBP dated July 7, 1987, suggesting a different mode of payment for the rentals and requesting for a 60-day period within which time the parties will execute a new contract of lease.

The parties, however, failed to execute a written contract of lease. Petitioners put the blame on DBP, asserting that no contract was signed because DBP did not prepare it for them. DBP, on the other hand, counters that it was petitioners who did not positively act on the conditions for the execution of the lease contract. In view of the counter-offer of petitioners, DBP and respondents To Chip, Yap and Balila argue that there was no meeting of minds between DBP and petitioners, which would have given rise to a new contract of lease.

The Court rules that, indeed, no new contract of lease was ever perfected between petitioners and DBP.

In *Metropolitan Manila Development Authority v. JANCOM Environmental Corporation*,[65] we emphasized that:

> Under Article 1305 of the Civil Code, "[a] contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." A contract undergoes three distinct stages — preparation or negotiation, its perfection, and finally, its consummation. Negotiation begins from the time the prospective contracting parties manifest

[65] 425 Phil. 961 (2002).

their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof (*Bugatti vs. CA*, 343 SCRA 335 [2000]). Article 1315 of the Civil Code, provides that a contract is perfected by mere consent. Consent, on the other hand, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract (See Article 1319, Civil Code). x x x.[66]

In the case at bar, there was no concurrence of offer and acceptance *vis-à-vis* the terms of the proposed lease agreement. In fact, after the reply of petitioners' counsel dated July 7, 1987, there was no indication that the parties undertook any other action to pursue the execution of the intended lease contract. Petitioners even admitted that they merely waited for DBP to present the contract to them, despite being instructed to come to the bank for the execution of the same.[67]

Contrary to the ruling of the RTC, the Court is also not convinced that DBP opted to continue the existing lease contract between petitioners and Rudy Robles.

The findings of the RTC that DBP supposedly accepted the requirements the latter set forth in its letter dated June 18, 1987 is not well taken. To recapitulate, the third paragraph of the letter reads:

If you wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:

1. The lease will be on month to month basis, for a maximum period of one (1) year;
2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one

[66] *Id.* at 975.

[67] TSN, May 16, 1991, p. 7.

year period (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;

3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.[68]

The so-called "requirements" enumerated in the above paragraph are not really requirements to be complied with by the petitioners for the execution of the proposed lease contract, as apparently considered by the RTC and the petitioners. A close reading of the letter reveals that the items enumerated therein were in fact the salient terms and conditions of the proposed contract of lease, which the DBP and the petitioners were to execute if the latter were so willing. Also, the Certificate of Time Deposit in the amount of ₱11,395.64, which was allegedly paid to DBP as advance rental deposit pursuant to the said requirements, was not even clearly established as such since it was neither secured by a security bond or a cash bond, nor was it assigned to DBP.

The contention that the lease contract between petitioners and Rudy Robles did not expire, given that it did not have a definite term and the parties thereto failed to terminate the same, deserves scant consideration. To recall, the second paragraph of the terms and conditions of the contract of lease between petitioners and Rudy Robles reads:

2. That the term of this agreement shall start on November 1, 1981 and shall terminate on the **last day of every month** thereafter; provided however that **this contract shall be automatically renewed on a month to month basis if no notice, in writing, is sent to the other party to terminate this agreement after fifteen (15) days from receipt of said notice**.[69] (Emphases ours.)

Crystal clear from the above provision is that the lease is on a month-to-month basis. Relevantly, the well-entrenched principle

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[68] *Rollo*, p. 56.

[69] *Id.* at 231-232.

is that a lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor.[70] As held by the Court of Appeals in the assailed Amended Decision, the above-mentioned lease contract was duly terminated by DBP by virtue of its letter dated June 18, 1987. We reiterate that the letter explicitly directed the petitioners to come to the office of the DBP if they wished to enter into a new lease agreement with the said bank. Otherwise, if no contract of lease was executed within 30 days from the date of the letter, petitioners were to be considered uninterested in entering into a new contract and were thereby ordered to vacate the property. As no new contract was in fact executed between petitioners and DBP within the 30-day period, the directive to vacate, thus, took effect. DBP's letter dated June 18, 1987, therefore, constituted the written notice that was required to terminate the lease agreement between petitioners and Rudy Robles. From then on, the petitioners' continued possession of the subject property could be deemed to be without the consent of DBP.

Thusly, petitioners' assertion that Article 1670 of the Civil Code is not applicable to the instant case is correct. The reason, however, is not that the existing contract was continued by DBP, but because the lease was terminated by DBP, which termination was accompanied by a demand to petitioners to vacate the premises of the subject property.

Article 1670 states that "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." In view of the order to vacate embodied in the letter of DBP dated June 18, 1987 in the event that no new lease contract is entered into, the petitioners' continued possession

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[70] *Paterno v. Court of Appeals*, 339 Phil. 154, 161 (1997).

of the subject properties was without the acquiescence of DBP, thereby negating the constitution of an implied lease.

Contrary to the ruling of the RTC, DBP's acceptance of petitioners' rental payments of ₱5,000.00 for the period of November 1990 to March 1991 did not likewise give rise to an implied lease between petitioners and DBP. In *Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals*,[71] we held that "the subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of their possession." In the present case, the petitioners' rental payments to DBP were made in lump sum on March 22, 1991. Significantly, said payments were remitted only after petitioners were notified of the sale of the subject properties to respondents To Chip, Yap and Balila and after the petitioners were given a final demand to vacate the properties. These facts substantially weaken, if not controvert, the finding of the RTC and the argument of petitioners that the latter were faithfully remitting their rental payments to DBP until the year 1991.

Thus, having determined that the petitioners and DBP neither executed a new lease agreement, nor entered into an implied lease contract, it follows that petitioners' claim of entitlement to a right of first refusal has no leg to stand on. Furthermore, even if we were to grant, for the sake of argument, that an implied lease was constituted between petitioners and the DBP, the right of first refusal that was contained in the prior lease contract with Rudy Robles was not renewed therewith. This is in accordance with the ruling in *Dizon v. Magsaysay*,[72] which involved the issue of whether a provision regarding a preferential right to purchase is revived in an implied lease under Article 1670, to wit:

"[T]he other terms of the original contract" which are revived in the implied new lease under Article 1670 are only those terms which are germane to the lessee's right of continued enjoyment of the

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[71] G.R. No. 148562, November 25, 2004, 444 SCRA 193, 199.

[72] 156 Phil. 232 (1974).

property leased. This is a reasonable construction of the provision, which is based on the presumption that when the lessor allows the lessee to continue enjoying possession of the property for fifteen days after the expiration of the contract he is willing that such enjoyment shall be for the entire period corresponding to the rent which is customarily paid – in this case up to the end of the month because the rent was paid monthly. Necessarily, if the presumed will of the parties refers to the enjoyment of possession the presumption covers the other terms of the contract related to such possession, such as the amount of rental, the date when it must be paid, the care of the property, the responsibility for repairs, *etc*. But no such presumption may be indulged in with respect to special agreements which by nature are foreign to the right of occupancy or enjoyment inherent in a contract of lease.[73]

DBP cannot, therefore, be accused of violating the rights of petitioners when it offered the subject properties for sale, and eventually sold the same to respondents To Chip, Yap and Balila, without first notifying petitioners. Neither were the said respondents bound by any right of first refusal in favor of petitioners. Consequently, the sale of the subject properties to respondents was valid. Petitioners' claim for rescission was properly dismissed.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is *DENIED*. The Resolution dated February 5, 2002 and the Amended Decision dated July 5, 2002 of the Court of Appeals in CA-G.R. CV No. 57216 are hereby *AFFIRMED*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[73] *Id.* at 236.

[*] Per Special Order No. 913 dated November 2, 2010.

THIRD DIVISION

[G.R. No. 157644. November 17, 2010]

SPOUSES ERNESTO and VICENTA TOPACIO, as represented by their attorney-in-fact MARILOU TOPACIO-NARCISO, *petitioners, vs.* **BANCO FILIPINO SAVINGS and MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DOCTRINE THEREOF, EXPLAINED; TWO CONCEPTS.— Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. The term literally means a "matter adjudged, judicially acted upon, or settled by judgment." The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. The *rationale* for the rule is that "public policy requires that controversies must be settled with finality at a given point in time." The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) thereof. *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.

2. ID.; ID.; PROPER MODES OF SERVICE; THE DISMISSAL ORDER CANNOT BE DEEMED TO HAVE BECOME FINAL AND EXECUTORY ABSENT A VALID SERVICE.— As a rule, judgments are sufficiently served when they are delivered personally, or through registered mail to the counsel of record, or by leaving them in his office with his clerk or with a person having charge thereof. After service, a judgment

or order which is not appealed nor made subject of a motion for reconsideration within the prescribed 15-day period attains finality. xxx. In the present case, we note that the December 16, 1986 Dismissal Order cannot be deemed to have become final and executory in view of the absence of a valid service, whether personally or *via* registered mail, on the respondent's counsel. We note in this regard that the petitioners do not dispute the CA finding that the "records failed to show that the private respondent was furnished with a copy of the said order of dismissal[.]" Accordingly, the Dismissal Order never attained finality.

3. ID.; APPEALS; A PARTY WHO DELIBERATELY ADOPTS A CERTAIN THEORY UPON WHICH THE CASE IS TRIED AND DECIDED BY THE LOWER COURT WILL NOT BE PERMITTED TO CHANGE THE THEORY ON APPEAL; APPLIED.— The petitioners now claim that the Motion for Reconsideration, filed by the respondent on May 18, 1993 from the September 18, 1992 Order of the RTC, was filed out of time. The petitioners make this claim to justify their contention that the subsequent rulings of the RTC, including the June 2, 1993 and October 1, 1993 Orders, are barred by *res judicata*. We reject this belated claim as the petitioners raised this only for the first time on appeal, particularly, in their Memorandum. In fact, the petitioners never raised this issue in the proceedings before the court *a quo* or in the present petition for review. As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. Thus, to permit the petitioners in this case to change their theory on appeal would thus be unfair to the respondent and offend the basic rules of fair play, justice and due process.

4. ID.; JUDGMENTS; EXECUTION OF JUDGMENTS; EXECUTION BY MOTION OR BY INDEPENDENT

ACTION; NOT APPLICABLE TO AN *EX PARTE* PETITION FOR THE ISSUANCE OF THE WRIT OF POSSESSION AS IT IS NOT IN THE NATURE OF A CIVIL ACTION.— The petitioners finally submit that the writ of possession, issued by the RTC on February 16, 1984, may no longer be enforced by a mere motion, but by a separate action, considering that more than five years had elapsed from its issuance, pursuant to Section 6, Rule 39 of the Rules of Court. xxx. In rejecting a similar argument, the Court held in *Paderes v. Court of Appeals* that Section 6, Rule 39 of the Rules of Court finds application only to civil actions and not to special proceedings. xxx. Subsequently, the Court, in *Republic v. Nillas,* affirmed the dictum in *Sta. Ana* and clarified that "Rule 39 x x x applies only to ordinary civil actions, not to other or extraordinary proceedings not expressly governed by the Rules of Civil Procedure but by some other specific law or legal modality" xxx. In the present case, Section 6, Rule 39 of the Rules of Court is not applicable to an *ex parte* petition for the issuance of the writ of possession as it is not in the nature of a civil action governed by the Rules of Civil Procedure but a judicial proceeding governed separately by Section 7 of Act No. 3135 which regulates the methods of effecting an extrajudicial foreclosure of mortgage.

5. CIVIL LAW; MORTGAGE; ACT NO. 3135 (EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE); THE ISSUANCE AND THE IMMEDIATE IMPLEMENTATION OF THE WRIT OF POSSESSION ARE MINISTERIAL AND MANDATORY; SECTION 6, RULE 39 OF THE RULES OF COURT APPLIES ONLY TO CIVIL ACTIONS.— [Section 7 of Act No. 3135] lays down the procedure that commences from the filing of a motion for the issuance of a writ of possession, to the issuance of the writ of possession by the Court, and finally to the execution of the order by the sheriff of the province in which the property is located. Based on the text of the law, we have also consistently ruled that the duty of the trial court to grant a writ of possession is ministerial; the writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. In fact, the issuance and the immediate implementation of the writ are declared ministerial and mandatory under the law. xxx. Clearly, the exacting procedure provided in Act No. 3135, from

the moment of the issuance of the writ of possession, leaves no room for the application of Section 6, Rule 39 of the Rules of Court which we consistently ruled, as early as 1961 in *Sta. Ana*, to be applicable only to civil actions. From another perspective, the judgment or the order does not have to be executed by motion or enforced by action within the purview of Rule 39 of the Rules of Court.

APPEARANCES OF COUNSEL

N.A. Aranzaso & Associates for petitioners.
Francisco Rivera for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed by petitioner spouses Ernesto and Vicenta Topacio (*petitioners*), assailing the August 26, 2002 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 32389, as well as its March 17, 2003 Resolution[3] denying the petitioners' motion for reconsideration. The CA Decision and Resolution affirmed *in toto* the October 1, 1993 Order of the Regional Trial Court of Valenzuela City, Branch 75, which issued an *alias* writ of possession in favor of the respondent Banco Filipino Savings and Mortgage Bank (*respondent*).

THE BACKGROUND FACTS

The backgrounds facts, as culled from the records, are summarized below.

The petitioners obtained a loan amounting to ₱400,000.00 from the respondent. To secure the loan, the petitioners executed

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-26.

[2] Penned by Associate Justice Bennie A. Adefuin-de la Cruz, and concurred in by Associate Justice Wenceslao I. Agnir, Jr. and Associate Justice Regalado E. Maambong (all retired); *id.* at 27-35.

[3] *Id.* at 36.

on May 8, 1980, a real estate mortgage over Lot 1224-B-1 LRC Psd-15436, covered by TCT No. T-191117 (now 13554) of the Registry of Deeds of Bulacan, in favor of the respondent. The petitioners failed to pay the loan, prompting the respondent to file a Petition for Extrajudicial Foreclosure of Mortgage, pursuant to Act No. 3135. To satisfy the obligation, the Provincial Sheriff of Bulacan, on November 8, 1982, sold the mortgaged property at public auction, where the respondent emerged as the highest bidder. Accordingly, a Certification of Sale was issued in favor of the respondent and registered with the Registry of Deeds.[4]

On May 26, 1983, the respondent filed a Petition for the Issuance of a Writ of Possession[5] over the mortgaged property before the Regional Trial Court, Branch 172, Valenzuela City (*RTC*). In an Order[6] dated December 12, 1983, the RTC granted the petition, conditioned on the posting of a ₱100,000.00 bond. Upon posting of the required bond, the RTC issued, on February 16, 1984, a writ of possession, commanding the sheriff to place the respondent in possession of the property.

The writ of possession was not implemented[7] because, on February 27, 1984, the petitioners, filed with the RTC, a petition to set aside the auction sale and the writ of possession (with application for a temporary restraining order and a writ of preliminary injunction).[8] In an Order dated February 28, 1984, the RTC issued a temporary restraining order enjoining the respondent and the Deputy Sheriff from implementing the writ of possession it previously issued.[9] After hearing, the RTC, issued on March 13, 1984, a writ of preliminary injunction ordering the respondent and the Provincial Sheriff to desist from implementing the writ of possession and to refrain from

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[4] *Id.* at 27.

[5] *Ibid.*

[6] *Id.* at 129.

[7] *Id.* at 159.

[8] *Id.* at 28.

[9] Annex "P", Petition; *id.* at 130.

interfering with and disrupting the possession of the petitioners over the subject parcel of land.[10]

Sometime in April 1984, the respondent filed with the RTC its Motion to Admit Answer with Opposition to the Petition to Set Aside Auction Sale and Writ of Possession with Motion to Dissolve or Lift Preliminary Injunction (*Answer*) which was granted on April 26, 1984.[11] On May 21, 1984, the petitioners filed their Reply thereto, praying that the writ of preliminary injunction previously issued be maintained.[12]

More than two years after the filing of the Answer and the Reply, and after a series of postponements at the instance of both parties, then Presiding Judge Teresita D. Capulong issued an Order dated December 16, 1986, dismissing the respondent's petition for the issuance of a writ of possession on the ground of "failure to prosecute."[13] The Order reads in full:

> When this case was called for hearing, counsel for the oppositors [now petitioners], Atty. Constancio R. Gallamos, was present. Atty. Francisco Rivera [counsel for the respondent] was absent despite notice. Upon petition of the counsel for the oppositors, this case is hereby ordered dismissed for failure to prosecute.
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> SO ORDERED.

No copy of the above Order was served on the respondent[14] whose operations the Monetary Board (Central Bank of the Philippines) shut down on January 25, 1985, for reasons not relevant to the present case.[15]

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[10] Annex "Q", Petition; *id.* at 131.

[11] *Id.* at 28.

[12] *Id.*

[13] Annex "R", Petition; *id.* at 132.

[14] *Id.* at 32.

[15] On January 25, 1985, the Monetary Board issued MB Resolution No. 75 which ordered the closure of the respondent. See *Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines*, G.R. No. 70054, December 11, 1991, 204 SCRA 767, 781.

Nearly six (6) years later (after the Court ordered the reorganization and resumption of the respondent's operations in G.R. No. 70054)[16] or on August 19, 1992, the respondent filed a Motion to Clarify the Order of December 16, 1986. In the same motion, the respondent likewise moved for the issuance of an *alias* writ of possession. [17]

In an Order[18] dated September 18, 1992, the RTC made a clarification that the Order of Dismissal of December 16, 1986 refers to the dismissal of the "main case for issuance of a writ of possession." In that same Order, the RTC denied the respondent's motion for the issuance of an *alias* writ of possession.

On May 18, 1993, the respondent moved for the reconsideration[19] of the September 18, 1992 Order. In an Order[20] dated June 2, 1993, the RTC, this time presided by Judge Emilio L. Leachon, Jr., reconsidered and set aside the Order of December 16, 1986 and granted the respondent's prayer for the issuance of an *alias* writ of possession. The petitioners moved for a reconsideration of the June 2, 1993 Order and prayed that the implementation of the *alias* writ of possession be held in abeyance.

The RTC Ruling

On October 1, 1993, the RTC, now presided by Judge Jaime F. Bautista, issued the assailed Order[21] which denied the petitioners' motion for reconsideration and reiterated its order for the issuance of an *alias* writ of possession in favor of the respondent. The assailed RTC Order is summarized below.

First, the RTC ruled that the Order of Dismissal was granted on a "technicality" and that "[t]he ground of failure to prosecute is manifestly unfounded."[22] The RTC held that "the power of

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[16] *Ibid*.

[17] *Rollo,* pp. 133-136.

[18] *Id.* at 214-216.

[19] *Id*. at 29.

[20] Annex "U", Petition; *id.* at 140-142.

[21] Annex "V", Petition; *id.* at 143-151.

[22] *Id.* at 149.

the trial court to dismiss an action on the ground of *non prosequitur* is not unbounded. The real test x x x is whether under the facts and circumstances, the plaintiff is chargeable with want of due diligence in [failing] to proceed with reasonable promptitude."[23] In the present case, the RTC noted that the records show that the case dragged on for years because of several postponements at the request of both parties, particularly petitioner Ernesto Topacio who went abroad for a long time during the pendency of the case.[24]

Second, the RTC held that the December 16, 1986 Dismissal Order cannot be considered a dismissal on the merits as it was founded not on a substantial ground but on a technical one; it does not amount to a "declaration of the law [on] the respective rights and duties of the parties, based upon the ultimate x x x facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions."[25]

Third, the RTC ruled that the revival by a motion for reconsideration (filed on May 18, 1993) of the February 16, 1984 Order, granting the writ of possession, was seasonably filed by the respondent, pursuant to the period allowed under Section 6, Rule 39 of the Rules of Court. Citing *National Power Corporation v. Court of Appeals*,[26] the RTC held that "[i]n computing the time [limit] for suing out an execution, x x x the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise." The RTC noted that the running of the five-year period under Section 6 of the Rules of Court had

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[23] Citing *Goldloop Properties, Inc. v. Court of Appeal*s, G.R. No. 99431, August 11, 1992, 212 SCRA 498, 509.

[24] *Supra* note 22.

[25] Citing *de Ramos v. Court of Appeals*, G.R. No. 86844, September 1, 1992, 213 SCRA 207, 218.

[26] G.R. No. 93238, August 31, 1992, 213 SCRA 133, 137.

been interrupted by the erroneous issuance of a writ of preliminary injunction; the February 16, 1984 Order never attained finality and was overtaken by the issuance of the Order dated June 2, 1993, granting the issuance of an *alias* writ of execution.[27]

Finally, the RTC held that the respondent, as the winning bidder, "has an absolute right to a writ of possession,"[28] considering that: (1) a writ of possession had been issued on February 16, 1984 and the corresponding bond had already been posted, although the writ was not enforced because of the erroneous injunction issued by Judge Capulong; and (2) there was no redemption by the petitioners.[29]

On October 20, 1993, the petitioners filed their Petition for *Certiorari* and Prohibition under Rule 65 of the 1997 Rules of Court with prayer for the issuance of a preliminary injunction (*petition*), docketed as CA-G.R. SP No. 32389.[30] Before the CA, the petitioners argued that the RTC acted without jurisdiction or with grave abuse of discretion when it: (1) reinstated the respondent's case more than seven (7) years after the December 16, 1986 Dismissal Order became final and executory, and (2) issued an *alias* writ of execution upon a mere motion for reconsideration and not by an independent action pursuant to Section 6, Rule 39 of the Rules of Court.

The CA Ruling

On August 26, 2002, the CA denied the petitioners' petition and affirmed *in toto* the June 2, 1993 and October 1, 1993 Orders of the RTC. The CA found that the December 16, 1986 Order of the RTC does not amount to a dismissal on the merits as it was based on purely technical grounds. It noted that the records show that the respondent was not furnished a copy of

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[27] *Rollo*, p. 150.

[28] *Id.* at 151, citing *Bernardez v. Reyes*, G.R. No. 71832, September 24, 1991, 201 SCRA 648; and *Joven v. Court of Appeals*, G.R. No. 80739, 20 August 1992, 212 SCRA 700.

[29] *Id.* at 149-150.

[30] Annex "C", Petition; *id.* at 37-57.

the Dismissal Order; hence, the case cannot be deemed to be final with respect to the respondent. The CA also agreed with the RTC's conclusion that the delay in the resolution of the case cannot be solely attributed to the respondent and did not warrant its outright dismissal.[31]

The CA held that an independent action for the revival of the writ of possession need not be filed in order to enforce the writ of possession issued on December 12, 1983 since Section 6, Rule 39 of the Rules of Court applies only to civil actions and not to special proceedings,[32] citing *Heirs of Cristobal Marcos v. de Banuvar*.[33]

The Petition

In the present petition,[34] the petitioners contend that the CA erred in affirming the October 1, 1993 Order of the RTC considering that:

1) the December 16, 1986 Dismissal Order constitutes an adjudication on the merits which has already attained finality, and

2) a writ of possession may not be enforced upon mere motion of the applicant after the lapse of more than five (5) years from the time of its issuance.

On the first assignment of error, the petitioners submit that the December 16, 1986 Dismissal Order for failure to prosecute constitutes adjudication upon the merits, considering that the RTC did not declare otherwise, pursuant to Section 3, Rule 17 of the Rules of Court. The petitioners further contend that the Dismissal Order has become final and executory since the respondent belatedly filed the Motion to Clarify the Order of December 16, 1986 on August 19, 1992 or almost six years

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

[32] *Id.* at 34-35.

[33] No. L-22110, September 28, 1968, 25 SCRA 316, 323-324.

[34] *Supra* note 1. Filed after the CA's denial of the petitioners' Motion for Reconsideration by the Resolution dated March 17, 2003.

later. On these premises, the petitioners argue that *res judicata* has set in and consequently, the RTC had no jurisdiction to grant the motion for reconsideration and to issue an *alias* writ of possession in favor of the respondent.[35]

On the second assignment of error, the petitioners contend that pursuant to Section 6, Rule 39 of the Rules of Court, the writ of possession issued on February 16, 1984 may no longer be enforced by a mere motion but by a separate action, considering that more than five years had elapsed from its issuance. The petitioners also argue that Section 6, Rule 39 of the Rules of Court applies to the present case since a petition for the issuance of a writ of possession is neither a special proceeding nor a land registration case.[36]

In their Memorandum, the petitioners additionally submit that they do not dispute that the CA made a finding that the December 16, 1986 Dismissal Order was not properly served. They, however, point out that the CA made no such finding with respect to the September 18, 1992 Order of the RTC. The petitioners contend that the Motion for Reconsideration, filed on May 18, 1993 or eight months later from the September 18, 1992 Order by the respondent, was filed out of time. Thus, they conclude that any subsequent ruling of the RTC, including the June 2, 1993 and October 1, 1993 Orders, is barred by *res judicata*.[37]

OUR RULING

We deny the petition for lack of merit.

A. Preliminary Considerations

Our review of the records, particularly the CA decision, indicates that the CA did not determine the presence or absence of grave abuse of discretion in the RTC decision before it. Given that the petition before the CA was a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, it appears that

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[35] *Id.* at 15-18.

[36] *Id.* at 19-21.

[37] Memorandum for the Petitioners; *id.* at 206.

the CA instead incorrectly reviewed the case on the basis of whether the RTC decision on the merits was correct.

To put the case in its proper perspective, the task before us is to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the RTC decision before it. Stated otherwise, did the CA correctly determine whether the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling on the case?

As discussed below, our review of the records and the CA decision shows that the RTC did not commit grave abuse of discretion in issuing an *alias* writ of possession in favor of the respondent.

B. Applicability of Res Judicata

Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. The term literally means a "matter adjudged, judicially acted upon, or settled by judgment."[38] The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. The *rationale* for the rule is that "public policy requires that controversies must be settled with finality at a given point in time."[39]

The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) thereof. *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having

[38] *Dela Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 589.

[39] *Ibid.*

jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[40]

The petitioners claim that *res judicata* under the first concept applies in the present case because all of the elements thereof are present. In response, the respondent argues that *res judicata* did not set in as the first element is lacking.

We agree with the respondent.

The December 16, 1986 Dismissal Order never attained finality as it was not properly served

The following provisions under Rule 13 of the Rules of Court define the proper modes of service of judgments:[41]

SEC. 2. *Filing and service, defined.* – x x x

Service is the act of providing a party with a copy of the pleading or paper concerned. x x x

SEC. 5. *Modes of service.* – Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 6. *Personal service.* – Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. *Service by mail.* – Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known,

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[40] *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd., et al.*, G.R. No. 169974, April 20, 2010.

[41] See *Belen v. Chavez*, G.R. No. 175334, March 26, 2008, 549 SCRA 472, 485-486.

otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. *Substituted service*. – If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

SEC. 9. *Service of judgments, final orders or resolutions*. – Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

As a rule, judgments are sufficiently served when they are delivered personally, or through registered mail to the counsel of record, or by leaving them in his office with his clerk or with a person having charge thereof. After service, a judgment or order which is not appealed nor made subject of a motion for reconsideration within the prescribed 15-day period attains finality.[42]

In *Philemploy Services and Resources, Inc. v. Rodriguez*,[43] the Court ruled that the Resolution of the National Labor Relations Commission, denying the respondent's motion for reconsideration, cannot be deemed to have become final and executory as there is no conclusive proof of service of the said resolution. In the words of the Court, "there was no proof of actual receipt of the notice of the registered mail by the respondent's counsel."[44] Based on these findings, the Court concluded that the CA properly

[42] *Rubia v. Government Service Insurance System*, G.R. No. 151439, June 21, 2004, 432 SCRA 529, 537.

[43] G.R. No. 152616, March 31, 2006, 486 SCRA 302.

[44] *Id.* at 321.

acquired jurisdiction over the respondent's petition for *certiorari* filed before it; in the absence of a reckoning date of the period provided by law for the filing of the petition, the Court could not assume that it was improperly or belatedly filed.

Similarly, in *Tomawis v. Tabao-Cudang*,[45] the Court held that the decision of the Regional Trial Court did not become final and executory where, from the records, the respondent had not received a copy of the resolution denying her motion for reconsideration.[46] The Court also noted that there was no sufficient proof that the respondent actually received a copy of the said Order or that she indeed received a first notice. Thus, the Court concluded that there could be no valid basis for the issuance of the writ of execution as the decision never attained finality.

In the present case, we note that the December 16, 1986 Dismissal Order cannot be deemed to have become final and executory in view of the absence of a valid service, whether personally or *via* registered mail, on the respondent's counsel. We note in this regard that the petitioners do not dispute the CA finding that the "records failed to show that the private respondent was furnished with a copy of the said order of dismissal[.]"[47] Accordingly, the Dismissal Order never attained finality.

The petitioners now claim that the Motion for Reconsideration, filed by the respondent on May 18, 1993 from the September 18, 1992 Order of the RTC, was filed out of time. The petitioners make this claim to justify their contention that the subsequent rulings of the RTC, including the June 2, 1993 and October 1, 1993 Orders, are barred by *res judicata*.

We reject this belated claim as the petitioners raised this only for the first time on appeal, particularly, in their Memorandum. In fact, the petitioners never raised this issue in

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[45] G.R. No. 166547, September 12, 2007, 533 SCRA 68.

[46] *Id.* at 77.

[47] *Supra* note 14.

the proceedings before the court *a quo* or in the present petition for review.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal.[48] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[49] Thus, to permit the petitioners in this case to change their theory on appeal would thus be unfair to the respondent and offend the basic rules of fair play, justice and due process.[50]

C. Applicability of the Rule on Execution by Motion or by Independent Action

The petitioners finally submit that the writ of possession, issued by the RTC on February 16, 1984, may no longer be enforced by a mere motion, but by a separate action, considering that more than five years had elapsed from its issuance, pursuant to Section 6, Rule 39 of the Rules of Court, which states:

> Sec. 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

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[48] *Lianga Lumber Co. v. Lianga Timber Co., Inc.*, No. L-38685, March 31, 1977, 76 SCRA 197.

[49] *China Airlines Ltd. v. CA, et al.*, G.R. Nos. L-45985 & L-46036, May 18, 1990, 185 SCRA 449.

[50] *Siredy Enterprises, Inc. v. CA, et al.*, G.R. No. 129039, September 17, 2002, 389 SCRA 34.

Section 6, Rule 39 of the Rules of Court only applies to civil actions

In rejecting a similar argument, the Court held in *Paderes v. Court of Appeals*[51] that Section 6, Rule 39 of the Rules of Court finds application only to civil actions and not to special proceedings. Citing *Sta. Ana v. Menla*,[52] which extensively discussed the *rationale* behind the rule, the Court held:

> In a later case [*Sta. Ana v. Menla*, 111 Phil. 947 (1961)], the Court also ruled that **the provision in the Rules of Court to the effect that judgment may be enforced within five years by motion, and after five years but within ten years by an action (Section 6, Rule 39) refers to civil actions and is not applicable to special proceedings**, such as land registration cases. x x x
>
> We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment or decision. Authority for this theory is the provision in the Rules of Court to the effect that judgment may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39). **This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.**

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[51] G.R. Nos. 147074 and 147075, July 15, 2005, 463 SCRA 504, 526-527.

[52] 111 Phil. 947 (1961).

Subsequently, the Court, in *Republic v. Nillas*,[53] affirmed the dictum in *Sta. Ana* and clarified that "Rule 39 x x x applies only to ordinary civil actions, not to other or extraordinary proceedings not expressly governed by the Rules of Civil Procedure but by some other specific law or legal modality," *viz*:

> Rule 39, as invoked by the Republic, applies only to ordinary civil actions, not to other or extraordinary proceedings not expressly governed by the Rules of Civil Procedure but by some other specific law or legal modality such as land registration cases. Unlike in ordinary civil actions governed by the Rules of Civil Procedure, the intent of land registration proceedings is to establish ownership by a person of a parcel of land, consistent with the purpose of such extraordinary proceedings to declare by judicial fiat a status, condition or fact. Hence, upon the finality of a decision adjudicating such ownership, no further step is required to effectuate the decision and a ministerial duty exists alike on the part of the land registration court to order the issuance of, and the LRA to issue, the decree of registration.

In the present case, Section 6, Rule 39 of the Rules of Court is not applicable to an *ex parte* petition for the issuance of the writ of possession as it is not in the nature of a civil action[54] governed by the Rules of Civil Procedure but a judicial proceeding governed separately by Section 7 of Act No. 3135 which regulates the methods of effecting an extrajudicial foreclosure of mortgage. The provision states:

> Section 7. *Possession during redemption period.* In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered,

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[53] G.R. No. 159595, January 23, 2007, 512 SCRA 286, 297.

[54] See *Rayo v. Metropolitan Bank and Trust Company*, G.R. No. 165142, December 10, 2007, 539 SCRA 571, 580, citing *De Vera v. Agloro*, 448 SCRA 203, 215 (2005).

or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and **the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately**.

The above-cited provision lays down the procedure that commences from the filing of a motion for the issuance of a writ of possession, to the issuance of the writ of possession by the Court, and finally to the execution of the order by the sheriff of the province in which the property is located. Based on the text of the law, we have also consistently ruled that the duty of the trial court to grant a writ of possession is ministerial; the writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond.[55] In fact, the issuance and the immediate implementation of the writ are declared ministerial and mandatory under the law.

Thus, in *Philippine National Bank v. Adil,*[56] we emphatically ruled that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. The trial court does not exercise discretion in the issuance thereof;[57] it must grant the issuance of the writ upon compliance with the

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[55] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[56] 203 Phil. 492, 500 (1982).

[57] *GC Dalton Industries, Inc. v. Equitable PCI Bank,* G.R. No. 171169, August 24, 2009, 596 SCRA 723, 729.

requirements set forth by law, and the provincial sheriff is likewise mandated to implement the writ immediately.

Clearly, the exacting procedure provided in Act No. 3135, from the moment of the issuance of the writ of possession, leaves no room for the application of Section 6, Rule 39 of the Rules of Court which we consistently ruled, as early as 1961 in *Sta. Ana*, to be applicable only to civil actions. From another perspective, the judgment or the order does not have to be executed by motion or enforced by action within the purview of Rule 39 of the Rules of Court. [58]

D. Conclusion

In sum, based on these considerations, we find that the RTC committed no grave abuse of discretion in issuing an *alias* writ of possession in favor of the respondent.

WHEREFORE, the present petition is *DENIED*. The August 26, 2002 Decision and the March 17, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 32389 are *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

[58] *Supra* note 53.

FIRST DIVISION

[G.R. No. 160067. November 17, 2010]

NELSON IMPERIAL, *ET AL.*, *petitioners, vs.* MARICEL M. JOSON, *ET AL.*, *respondents.*

[G.R. No. 170410. November 17, 2010]

SANTOS FRANCISCO, *petitioner, vs.* **SPS. GERARD AND MARICEL JOSON,** *respondents.*

[G.R. No. 171622. November 17, 2010]

NELSON IMPERIAL, *ET AL.*, *petitioners, vs.* HILARION FELIX, *ET AL.*, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE ISSUED ONLY FOR THE CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, EXPLAINED.— It bears emphasizing at the outset that the petitions for *certiorari* and prohibition petitioners filed before the CA were all anchored on the grave abuse of discretion supposedly imputable against the RTCs of Naga, Lucena and Parañaque for issuing the rulings therein assailed. Like prohibition, however, the rule is settled that *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Because their function is limited to keeping inferior courts within the bounds of their jurisdiction, the writs therefor may be issued only in cases of lack of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. In the context of said special civil actions, it has been consistently held that grave abuse of discretion implies such capricious and whimsical exercise of judgment as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power

is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.

2. ID.; ID.; ID.; ERRORS OF JUDGMENT INVOLVING THE WISDOM OR LEGAL SOUNDNESS OF A DECISION ARE BEYOND THE PROVINCE THEREOF.— Although the Constitution concededly guarantees that "(a)ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies," it is evident that petitioners' arguments in G.R. No. 160067 have more to do with the wisdom of the assailed rulings of the RTCs of Naga and Parañaque than said courts' jurisdiction to issue the same. Consistent with its function as a remedy for the correction of errors of jurisdiction, however, the rule is settled that errors of judgment involving the wisdom or legal soundness of a decision are beyond the province of a petition for *certiorari*. Not being intended to correct every controversial interlocutory ruling, a writ of *certiorari* cannot be exercised in order to review the judgment of the lower court as to its intrinsic correctness, either upon the law or the facts of the case. As long as the trial court acts within its jurisdiction, any alleged error committed in the exercise of its discretion will, therefore, amount to nothing more than mere errors of judgments, correctible by an appeal and not by a petition for *certiorari*.

3. ID.; COURTS; INTEREST OF JUSTICE RULE, CITED; APPLICATION TO THE CASE AT BAR.— Under the "interest of justice rule," moreover, the determination of which court would be "in a better position to serve the interests of justice" also entails the consideration of the following factors: (a) the nature of the controversy; (b) the comparative accessibility of the court to the parties; and, (c) other similar factors. Considering that majority of the parties live closer to the Parañaque RTC, we cannot hospitably entertain petitioners' insistence that the abatement of the case before said court in favor of the one they filed before the Naga RTC would promote the expeditious and inexpensive disposition of the parties' complaints for damages against each other which are indisputably personal in nature. Even assuming that they would all be called to testify regarding the circumstances surrounding the subject vehicular accident, it also appears that, as residents of Brgy. Inocencio Salud, General Emilio Aguinaldo (GMA), Cavite City, the witnesses Martin, Marvin and Jan-

Jon Sadiwa live closer to the Parañaque RTC rather than the Naga RTC.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO A SPEEDY TRIAL; WHEN VIOLATED; EXPLAINED.— In G.R. No. 170410, on the other hand, we find that petitioner Francisco is similarly out on a limb in insisting that the Lucena RTC gravely abused its discretion in upholding the Sariaya MTC's denial of his motion to dismiss Criminal Case No. 01-99 on the ground that his constitutional right to a speedy trial has been violated. Designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time and to prevent delays in the administration of justice, said right is considered violated only when the proceeding is attended by vexatious, capricious and oppressive delays. In the case of *Corpuz vs. Sandiganbayan*, this Court significantly ruled as follows: "While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent. A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis. In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant." xxx.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DELAYS RESULTING FROM EXTRAORDINARY REMEDIES AGAINST INTERLOCUTORY ORDERS SHALL BE EXCLUDED IN COMPUTING THE TIME WITHIN WHICH TRIAL MUST COMMENCE; ACCUSED'S RIGHT TO SPEEDY TRIAL, NOT VIOLATED IN CASE AT BAR.— Although the *Revised Rules of Criminal Procedure* concededly mandates commencement of the trial

within 30 days from receipt of the pre-trial order and the continuous conduct thereof for a period not exceeding 180 days, Section 3 a (1), Rule 119 provides that delays resulting from extraordinary remedies against interlocutory orders shall be excluded in computing the time within which trial must commence. In determining the right of an accused to speedy trial, moreover, courts are "required to do more than a mathematical computation of the number of postponements of the scheduled hearings of the case" and to give particular regard to the facts and circumstances peculiar to each case. Viewed in the context of the above discussed procedural antecedents as well as the further reassignment of the case to Prosecutor Baligod as a consequence of Prosecutor Sia's subsequent transfer to another government office, we find that the CA correctly brushed aside petitioner Francisco's claim that the postponements of the pre-trial conferences in the case before the Sariaya MTC were violative of his right to a speedy trial.

6. ID.; DEFAULT; DEFAULT ORDER; ISSUANCE THEREOF, WHEN ALLOWED; PARTY-LITIGANTS MUST BE AFFORDED THE AMPLEST OPPORTUNITY TO HAVE THEIR CASES DETERMINED, FREE FROM THE CONSTRAINTS OF TECHNICALITIES.— Although what constitutes a valid ground to excuse litigants and their counsel is also subject to the sound discretion of the judge, the fact that petitioners have filed their answer and third-party complaint in Civil Case No. 01-0325 also militates against the Parañaque RTC's 16 August 2004 order which, at bottom, amounted to their being declared in default. Inasmuch as procedural rules are tools designed to facilitate the adjudication of cases, courts have likewise been exhorted to afford party-litigants the amplest opportunity to have their cases justly determined, free from the constraints of technicalities. Time and again, this Court has espoused a policy of liberality in setting aside orders of default which are frowned upon, as a case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. Thus, the issuance of the orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.

APPEARANCES OF COUNSEL

Aristotle T. Dominguez for petitioners in G.R. Nos. 160067, 170410 & 171622.

Principe Villano Villacorta Clemente & Associates Law Firm for respondents in G.R. Nos. 160067 & 170410.

Cos Farol Buenaventura and Associates Law Offices for A. Lazo, *et al.* in G.R. No. 160067.

Farol & Associates for respondents in G.R. No. 171622.

D E C I S I O N

PEREZ, *J.*:

Filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, the consolidated petitions for review on *certiorari* at bench primarily assail the decisions rendered in the following cases, *viz.*: (a) Decision dated 4 September 2003 of the then Tenth Division of the Court of Appeals (CA) in CA-G.R. SP. No. 74030;[1] (b) Decision dated 26 October 2005 of said Court's then Special Eighth Division in CA-G.R. No. 81262;[2] and, (c) Decision dated 17 February 2006 of the same Court's then Special Sixth Division in CA-G.R. No. 87906.[3]

The Facts

At or about 2:00 o'clock in the morning of 11 May 2001, along the portion of the National Highway in Barangay Concepcion, Sariaya, Quezon, an Isuzu ten-wheeler truck collided with a Fuso six-wheeler truck. Owned by petitioner Nelson Imperial, the Isuzu ten-wheeler truck was then being driven by petitioner Santos Francisco, while the Fuso six-wheeler truck was driven by respondent Santiago Giganto, Jr. who was, at the time, accompanied by a helper or *pahinante*, respondent Samuel Cubeta. After colliding with the Fuso six-wheeler truck, the

[1] *Rollo*, G.R. No. 160067, pp. 53-64.

[2] *Rollo*, G.R. No. 170410, pp. 69-83.

[3] *Rollo*, G.R. No. 171622, pp. 424-428.

Isuzu ten-wheeler truck further rammed into a Kia Besta Van which was, in turn, being driven by respondent Arnel Lazo. The KIA Besta Van was owned by Noel Tagle who was then on board said vehicle, together with the following passengers, namely, Gloria, Jonathan, Jaypee, Jervin, Jerald and Lydia, all surnamed Felix; Marvin, Martin and Jan-Jon, all surnamed Sadiwa; Antonio Landoy; and, respondents Evelyn Felix, and Jasmin Galvez.[4]

There were multiple damages on the vehicles. Much more tragic than that, the accident resulted in the death of Noel Tagle, the owner of the KIA Besta Van, and seven of its passengers, namely, Gloria, Jonathan, Jaypee, Jervin, Jerald and Lydia, all surnamed Felix; and, Antonio Landoy. Although they survived the mishap, on the other hand, respondents Arnel Lazo, Evelyn Felix and Jasmin Galvez all suffered serious physical injuries and were immediately brought to the nearest hospital for treatment.

As a consequence of the collisions, a criminal complaint for Reckless Imprudence Resulting to Multiple Homicide, Multiple Serious Physical Injuries and Damage to Property was filed against petitioners Santos Francisco and Noel Imperial on 16 May 2001. The case was docketed as Criminal Case No. 01-99 before the Municipal Trial Court (MTC) of Sariaya, Quezon.[5]

On 3 July 2001, a complaint for damages was also filed by petitioners Francisco and Imperial against respondents Giganto and Cubeta, the driver and *pahinante* of the Fuso six-wheeler truck, respondent Leticia Pedraja, its alleged registered owner, and respondent Maricel Joson, its alleged present owner. Anchored on the supposed fact that the accident was caused by the recklessness and gross negligence of respondent Giganto, the complaint was docketed as Civil Case No. 2001-0296 before Branch 22 of the Regional Trial Court (RTC) of Naga City. In turn alleging that the mishap was attributable to the negligence of the driver of the Isuzu ten-wheeler truck, respondent Giganto joined respondent Maricel Joson and her husband, respondent

[4] *Rollo,* G.R. No. 160067, p. 80.

[5] *Id.* at 80-81.

Gerard Ferdinand Joson, in filing against petitioners Francisco and Imperial the complaint for damages docketed as Civil Case No. 8314 before Branch 82 of the Metropolitan Trial Court (MeTC) of Valenzuela City.[6]

On 6 August 2001, respondents Giganto and Spouses Joson moved for the dismissal of Civil Case No. 2001-0296 before the Naga RTC, on the ground of *litis pendentia*. Invoking the "interest of justice rule," said respondents argued that Civil Case No. 8314 before the Valenzuela MeTC should be maintained despite petitioners' earlier filing of their complaint for damages before the Naga RTC. Likewise invoking *litis pendentia* and relying on the earlier filing of their complaint, on the other hand, petitioners filed a motion dated 28 September 2001, seeking the dismissal of the complaint for damages respondents Giganto and Spouses Joson filed against them before the Valenzuela MeTC. In a supplement to their motion to dismiss dated 4 February, 2002, however, respondents Giganto and the Spouses Joson argued that it was the case before the Naga RTC which should be dismissed since petitioners not only failed to implead their respective spouses and that of respondent Pedraja but had already received payment from their insurer, the Standard Insurance Company, Inc., for the damages sustained by the Isuzu ten-wheeler truck.[7]

With the Valenzuela MeTC's 28 February 2002 dismissal of the complaint filed against them by respondents Giganto and Spouses Joson, petitioners amended their complaint before the Naga RTC for the purpose of impleading the following additional defendants: (a) the respective spouses of respondents Giganto, Cubeta, Maricel Joson and Leticia Pedraja; (b) the driver of the KIA Besta Van, respondent Lazo; and (c) the surviving spouse of the registered owner thereof, respondent Agnes Tagle. In said amended complaint, petitioners averred, among other matters, that the vehicular accident was caused by negligence of respondents Giganto and Lazo, the drivers of the Fuso six-wheeler truck and the KIA Besta Van, respectively. In a motion

[6] *Id.* at 54.

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

dated 16 March 2002, however, respondents Giganto and Spouses Joson sought the reconsideration of the dismissal of their complaint by the Valenzuela MeTC on the ground that petitioners' claim of priority was effectively discounted by the fact that their amended complaint in Civil Case No. 2001-0296 did not retroact to the date of filing of their original complaint before the Naga RTC.[8]

In the meantime, respondents Lazo, Tagle, Felix and Galvez joined respondents Gregorio Felix and Antonio Landoy, the heirs/relatives of the deceased passengers of the KIA Besta Van, in filing a complaint for damages against petitioners on 13 September 2001. Docketed as Civil Case No. 01-0325 before Branch 74 of the RTC of Parañaque City, said complaint asseverated that petitioner Francisco's negligence was the direct and proximate cause of the mishap. In a motion filed on 19 November 2001 before the Parañaque RTC, however, petitioners sought the dismissal of said complaint in view of the complaints for damages then still pending before the Naga RTC and the Valenzuela MeTC. In turn utilizing the pendency of Civil Case No. 01-0325 before the Parañaque RTC alongside their complaint before the Valenzuela MeTC, respondents Giganto and Spouses Joson filed a motion dated 18 March 2002 praying for the dismissal of petitioners' amended complaint before the Naga RTC on the ground of *litis pendentia*.[9]

On 2 August 2002, the Naga City RTC issued an order dismissing petitioners' amended complaint on the ground that the same was barred by the complaint for damages filed against them before the Parañaque RTC. Differentiating said pleading from a supplemental pleading which only serves to bolster or add something to a primary pleading, the Naga RTC ruled that petitioners' amended complaint supplanted and did not retroact to the time of their original complaint.[10] Subsequent to the Naga RTC's 16 September 2002 denial of petitioners' motion for reconsideration of the foregoing order,[11] the Valenzuela MeTC

[8] *Id.* at 55-56.

[9] *Id.* at 56.

[10] *Id.* at 71-73.

[11] *Id.* at 74-76.

went on to issue an order dated 30 September 2002 reconsidering its earlier dismissal of Civil Case No. 8314 and requiring petitioners to file their answer to the complaint filed by respondents Giganto and the Spouses Joson.[12] In view of the Parañaque RTC's further issuance of the 7 October 2002 order denying their motion to dismiss Civil Case No. 01-0325,[13] petitioners assailed all of the foregoing orders in the petition for *certiorari* and prohibition docketed before the CA as CA-G.R. SP No. 74030.[14]

On 4 September 2003, the CA's then Tenth Division issued a decision in CA-G.R. SP No. 74030 to the following effect: (a) nullifying the Valenzuela MeTC's 30 September 2002 order which reinstated Civil Case No. 8314; (b) affirming the 2 August 2002 and 16 September 2002 orders issued by the Naga RTC which dismissed petitioners' amended complaint in Civil Case No. 2001-0296 on the ground of *litis pendentia*; and, (c) affirming the Parañaque RTC's 7 October 2002 order denying petitioners' motion to dismiss Civil Case No. 01-0325. Finding that the damages in the aggregate sum of ₱576,876.03 asserted by respondents Giganto and Spouses Joson in Civil Case No. 8314 were beyond the jurisdictional amount then cognizable by the Valenzuela MeTC, the CA Tenth Division ruled that no grave abuse of discretion can be imputed against the Naga RTC and the Parañaque RTC whose combined orders gave premium to Civil Case No. 01-0325 over Civil Case No. 2001-0296. In the absence of proof that the greater number of cases pending thereat would actually result in the violation of petitioners' right to a speedy trial, the jurisdiction of the Parañaque RTC was upheld with the added ground that it was the venue most accessible to majority of the parties.[15]

Aggrieved, petitioners assailed the foregoing order in the 9 November 2003 petition for review on *certiorari* docketed before this Court as G.R. No. 160067.[16] In the meantime, the

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[12] *Id.* at 77-78.

[13] *Id.* at 79.

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

[15] *Id.* at 60-64.

[16] *Id.* at 7-52.

Sariaya MTC proceeded to conduct the mandatory pre-trial conference in Criminal Case No. 01-99 after petitioner Francisco entered a plea of not guilty at the arraignment scheduled in the case.[17] Thru his counsel, Atty. Aristotle Dominguez, petitioner Francisco proposed the following facts for stipulation with the prosecution, to wit:

"(a) that the assistant public prosecutor had told the undersigned counsel inside the courtroom during a court break[sic] (upon undersigned's inquiry) that he had already interviewed Arnel Lazo (the driver of the Besta Van carrying the people who were injured and several others who eventually died);

(b) That Arnel Lazo declared during said interview to Prosecutor Zabella that, as opposed to the affidavits of the driver and '*pahinante*' of the FUSO 6-wheeler truck, Arnel Lazo clearly saw the driver of the FUSO 6-wheeler truck attempt an overtake, which attempt was rendered unsuccessful because it was hit by the on-coming 10-wheeler truck driven by the accused herein; and

(c) that for some reason, (the) prosecutor did not and still does not believe the version of events as declared to him by Arnel Lazo in that interview."[18]

In view of Prosecutor Rodolfo Zabella, Jr.'s refusal to stipulate on the foregoing matters, the Sariaya MTC went on to issue a pre-trial order dated 14 August 2001 stating, in part, that "*1.Atty. Dominguez made a proposal for stipulation and admission to the effect that sometime after the arraignment of the accused, he (Atty. Dominguez) was able to talk and interview Arnel Lazo, the driver of the Besta Van who admitted to him that it was his 6-wheeler truck which attempted to overtake another vehicle thereby causing the vehicular (accident) subject of the instant case. The Public Prosecutor did not agree.*"[19] As a consequence, petitioner Francisco filed on 30 August 2001 a motion styled as one "to compel and disqualify Prosecutor Zabella and to correct the pre-trial order" on the ground that the latter

[17] *Rollo*, G.R. No. 170410, p. 70.

[18] *Id.* pp. 17-18.

[19] *Id.* at 71.

cannot refuse to stipulate on matters of which he has personal knowledge and that the Judge's recollection of the proposed stipulation was different from that actually proposed.[20] With the Sariaya MTC's denial of said motion in an order dated 18 October 2001,[21] petitioner Francisco filed a motion for reconsideration on 19 November 2001.[22]

On 9 January 2002, the Sariaya MTC issued an order which, while denying petitioner Francisco's motion for reconsideration, directed that the pre-trial conference be set anew in view of the reassignment of the case to Prosecutor Francis Sia and the appearance of a new private prosecutor in the case.[23] Dissatisfied, petitioner Francisco filed on 1 April 2002 the petition for *certiorari*, prohibition and *mandamus* docketed as Civil Case No. 2002-37 before Branch 58 of the Lucena City RTC. Likewise contending that the nine postponements of the pre-trial conference in Criminal Case No. 01-99 were capricious, vexatious and oppressive, petitioner Francisco further moved for the dismissal of the case on 14 March 2004, on the ground that his constitutional right to a speedy trial had been violated. Upon the Sariaya MTC's 17 April 2002 denial of said motion as well as the motion for reconsideration he subsequently interposed, petitioner Francisco filed yet another petition for *certiorari* and prohibition which was docketed as Civil Case No. 2002-90 before Branch 58 of the Lucena RTC and, later, consolidated with Civil Case No. 2002-37.[24]

On 23 June 2003, the Lucena RTC rendered a consolidated decision in Civil Case Nos. 2002-37 and 2002-90, dismissing petitioner Francisco's petitions for *certiorari*, prohibition and *mandamus* for lack of merit.[25] Elevated by petitioner Francisco to the CA via the petition for *certiorari* thereat docketed as

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[20] *Rollo*, G.R. No. 171622, pp. 185-193.

[21] *Id.* at 194-195.

[22] *Id.* at 196-204.

[23] *Id.* at 205.

[24] *Rollo*, G.R. No. 170410, pp. 71-72.

[25] *Id.* at 72.

CA-G.R. SP No. 81262, said decision was upheld in the 26 October 2005 decision rendered in the case by said court's then Special Eighth Division.[26] Brushing aside the grave abuse of discretion petitioner Francisco imputed against the Lucena RTC, the CA ruled that: (a) the pre-trial order cannot be corrected in the absence of evidence of the error supposedly reflected therein; (b) the Public Prosecutor cannot be compelled to enter into any stipulation that would substantially affect the theory of the prosecution; and, (c) the postponements of the hearings *a quo* were brought about by the assignment of at least three Public Prosecutors to the case and cannot, therefore, be considered capricious and violative of petitioner Francisco's right to a speedy trial.[27] Undaunted, the latter filed the petition for review on *certiorari* docketed before this Court as G.R. No. 170410.[28]

In Civil Case No. 01-0325, on the other hand, petitioners Francisco and Imperial filed with the Parañaque RTC their 14 December 2002 answer, with motion to admit the third-party complaint therein incorporated against respondents Pedraja, Joson, Giganto, Cubeta and their respective spouses.[29] Upon receipt of the Parañaque RTC's 2 June 2003 order requiring them to pay the necessary filing and other docket fees relative to their third-party complaint,[30] petitioners filed a motion for reconsideration dated 17 June 2003, pleading as ground for non-payment of said fees the pendency of their petition for *certiorari* assailing, among other matters, the Naga RTC's dismissal of Civil Case No. 2001-0296.[31] Having issued the 14 November 2003 order holding petitioners' payment of the same fees in abeyance pending the final outcome of said petition for *certiorari*,[32] the Parañaque RTC, upon the motion dated 20

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

[27] *Id.* at 78-82.

[28] *Id.* at 7-67.

[29] *Rollo*, G.R. No. 171622, pp. 157-175.

[30] *Id.* at 208.

[31] *Id.* at 209-211.

[32] *Id.* at 214.

May 2004 filed by respondents Felix, Galvez, Tagle, Lazo and Landoy,[33] issued the 8 June 2004 notice setting the case for pre-trial conference on 16 August 2004 and requiring the parties to file their pre-trial briefs.[34]

However, for failure of petitioners and their counsel to attend the pre-trial conference and to file their pre-trial brief, the Parañaque RTC issued the order dated 16 August 2004 authorizing respondents Hilarion and Gregorio Felix as well as respondents Tagle and Landoy to present their evidence *ex parte*. In said order, respondent Evelyn Felix was likewise declared non-suited alongside respondents Galvez and Lazo whose complaints were, as a consequence, dismissed without prejudice in view of their failure to attend the same pre-trial conference.[35] Aggrieved by the Parañaque RTC's 6 October 2004 denial of their motion for reconsideration of said order,[36] petitioners filed the petition for *certiorari* and prohibition which, under docket of CA-G.R. SP No. 87906, was subsequently denied for lack of merit in the 17 February 2006 Decision eventually rendered by CA's then Special Sixth Division.[37] Petitioners' petition for review on *certiorari* questioning said decision rendered by the CA was docketed before this Court as G.R. No. 171622[38] and, pursuant to the 16 May 2006 report submitted by the Clerk of Court of this Court's Second Division,[39] was consolidated with G.R. Nos. 160067 and 170410.

The Issues

In G.R. No. 160067, petitioners Francisco and Imperial essentially fault the CA for upholding the jurisdiction of the Parañaque RTC over the Naga RTC with respect to the parties'

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[33] *Id.* at 215-217.

[34] *Id.* at 152-154.

[35] *Id.* at 148-149.

[36] *Id.* at 150-151.

[37] *Id.* at 139-144.

[38] *Id.* at 9-138.

[39] *Id.* at 281-284.

causes of action for damages against each other. Calling attention to the lesser case load of the Naga RTC, petitioners argue that the cause for the just, speedy and inexpensive disposition of the case will not be served by the Parañaque RTC. Despite said court's relative proximity to majority of the parties, petitioners likewise maintain that majority of the witnesses material to the complete disposition of the case live closer to the Naga RTC.[40]

In G.R. No. 170410, on the other hand, petitioner Francisco argues that the CA erred in failing to appreciate the fact that the nine postponements of the pre-trial conference in the case attributable to the prosecution amounted to a violation of his constitutional right to a speedy trial.[41]

In G.R No. 171622, petitioners Francisco and Imperial maintain that the CA incorrectly discounted grave abuse of discretion on the part of the Lucena RTC when it authorized Hilarion and Gregorio Felix as well as respondents Tagle and Landoy to present their evidence *ex parte* in Civil Case No. 01-0325.[42]

The Court's Ruling

It bears emphasizing at the outset that the petitions for *certiorari* and prohibition petitioners filed before the CA were all anchored on the grave abuse of discretion supposedly imputable against the RTCs of Naga, Lucena and Parañaque for issuing the rulings therein assailed. Like prohibition,[43] however, the rule is settled that *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Because their function is limited to keeping inferior courts within the bounds of their jurisdiction,[44] the writs therefor may be issued only in cases of lack of jurisdiction

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[40] *Rollo*, G.R. No. 160067, pp. 31-32.

[41] *Rollo*, G.R. No. 170410, pp. 41-65.

[42] *Rollo*, G.R. No. 171622, pp. 71-79.

[43] Sec. 2, Rule 65, *1997 Rules of Civil Procedure.*

[44] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 778 (2004).

or grave abuse of discretion amounting to lack or excess of jurisdiction. In the context of said special civil actions, it has been consistently held that grave abuse of discretion implies such capricious and whimsical exercise of judgment as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[45]

In G.R. No. 160067, petitioners Francisco and Imperial argue that grave abuse of discretion is imputable against both the Naga and Parañaque RTCs for, respectively, dismissing Civil Case No. 2001-0296 and denying the motion to dismiss they have filed in Civil Case No. 01-0325. Contending that the speedy disposition of the parties' causes of action for damages against each other will be better achieved by the Naga RTC, petitioners contrast said court's 121 pending cases as of 31 October 2002[46] to the Parañaque RTC's 1,019 pending cases as of September 2002.[47] While conceding that the Parañaque RTC is nearer to the respective residences of all the parties,[48] petitioners also maintain that the cause for inexpensive resolution of the parties' cases would be best served by the Naga RTC which is purportedly more accessible to the material witnesses whose testimonies are indispensable to the just resolution of the case, namely, Santiago Carale and Manuel Nacion, respondent Francisco's two *pahinantes*, and, Martin, Marvin and Jan-Jon Sadiwa, the passengers of the KIA Besta Van.[49]

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[45] *Sonic Steel Industries v. Court of Appeals*, G.R. No. 165976, 29 July 2010.

[46] *Rollo*, G.R. No. 160067, p. 87.

[47] *Id.* at 89.

[48] Petitioners Francisco and Imperial (Naga City); respondents Cubeta and Spouses Joson (Valenzuela City); respondent Giganto (Mandaluyong City); respondent Pedraja (Antipolo City); respondents Hilarion and Gregorio Felix (Paranaque City); respondent Evelyn Felix (Laguna), respondent Galvez (Negros Occidental); respondent Tagle (La Union); and, respondents Lazo and Landoy (Taguig).

[49] Respondent Francisco's two *pahinantes*, namely Santiago Carale and Manuel Nacion (Naga City); Marvin, Martin and Jan-Jon Sadiwa (GMA, Cavite).

Although the Constitution concededly guarantees that "(a)ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies,"[50] it is evident that petitioners' arguments in G.R. No. 160067 have more to do with the wisdom of the assailed rulings of the RTCs of Naga and Parañaque than said courts' jurisdiction to issue the same. Consistent with its function as a remedy for the correction of errors of jurisdiction,[51] however, the rule is settled that errors of judgment involving the wisdom or legal soundness of a decision are beyond the province of a petition for *certiorari*.[52] Not being intended to correct every controversial interlocutory ruling,[53] a writ of *certiorari* cannot be exercised in order to review the judgment of the lower court as to its intrinsic correctness, either upon the law or the facts of the case.[54] As long as the trial court acts within its jurisdiction, any alleged error committed in the exercise of its discretion will, therefore, amount to nothing more than mere errors of judgments, correctible by an appeal and not by a petition for *certiorari*.[55]

Even prescinding from the foregoing considerations, our perusal of the record also shows that, by filing their answer and third-party complaint against respondents Pedraja, Joson, Giganto and Cubeta in Civil Case No. 01-0325, petitioners have already submitted themselves to the jurisdiction of the Parañaque RTC. In addition, petitioners have filed before said court the following motions and incidents, *viz.*: (a) 17 June 2003 motion for reconsideration of the 2 June 2003 order directing the payment

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[50] Constitution, Art. III, Sec. 16.

[51] *Flaminiano v. Adriano*, G.R. No. 165258, 04 February 2008, 543 SCRA 605, 611.

[52] *Beluso v. COMELEC*, G.R. No. 180711, 22 June 2010.

[53] *Angara v. Fedman Development Corporation*, 483 Phil. 495, 508 (2004).

[54] *A.F. Sanchez Brokerage, Inc. v. Court of Appeals*, 488 Phil. 430, 440 (2004).

[55] *Deutsche Bank Manila v. Chua Yok See*, G.R. No. 165606, 6 February 2006, 481 SCRA 672, 693.

of the filing and other docket fees for said third-party complaint; (b) 11 June 2003 opposition to set the case for hearing;[56] and, (c) 2 September 2004 urgent motion for reconsideration and to set aside order of default.[57] Having filed their third-party complaint as aforesaid and repeatedly sought positive relief from the Parañaque RTC, it stands to reason that petitioners' should no longer be allowed to question said court's jurisdiction over Civil Case No. 01-0325 which, unlike the suit for damages pending before the Naga RTC, additionally involves all the parties indispensable to the complete resolution of the case.

Under the "interest of justice rule," moreover, the determination of which court would be "in a better position to serve the interests of justice" also entails the consideration of the following factors: (a) the nature of the controversy; (b) the comparative accessibility of the court to the parties; and, (c) other similar factors.[58] Considering that majority of the parties live closer to the Parañaque RTC,[59] we cannot hospitably entertain petitioners' insistence that the abatement of the case before said court in favor of the one they filed before the Naga RTC would promote the expeditious and inexpensive disposition of the parties' complaints for damages against each other which are indisputably personal in nature. Even assuming that they would all be called to testify regarding the circumstances surrounding the subject vehicular accident, it also appears that, as residents of Brgy. Inocencio Salud, General Emilio Aguinaldo (GMA), Cavite City, the witnesses Martin, Marvin and Jan-Jon Sadiwa[60] live closer to the Parañaque RTC rather than the Naga RTC.

In G.R. No. 170410, on the other hand, we find that petitioner Francisco is similarly out on a limb in insisting that the Lucena

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[56] *Rollo*, G.R. No. 171622, pp. 218-222.

[57] *Id.* at 233-254.

[58] *Victronics Computers, Inc. v. Regional Trial Court, Branch 63, Makati*, G.R. No. 104019, 25 January 1993, 217 SCRA 517, 534, citing *Roa-Magsaysay v. Magsaysay*, G.R. No. L-49847, 17 July 1980, 98 SCRA 592, 605-606.

[59] *Supra*, note 48.

[60] *Rollo*, G.R. No. 160067, p. 81.

RTC gravely abused its discretion in upholding the Sariaya MTC's denial of his motion to dismiss Criminal Case No. 01-99 on the ground that his constitutional right to a speedy trial has been violated. Designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time and to prevent delays in the administration of justice, said right is considered violated only when the proceeding is attended by vexatious, capricious and oppressive delays.[61] In the case of *Corpuz vs. Sandiganbayan*,[62] this Court significantly ruled as follows:

"While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant." xxx

Petitioner Francisco claims that his right to a speedy trial was violated when the Public Prosecutors assigned to the case failed to attend the nine hearings scheduled by the Sariaya MTC on 10 and 17 October 2001, 7 November 2001, 23 January 2002, 13 March 2002, 4 September 2002, 6 November 2002, 15 January 2003 and 5 March 2003. Far from being vexatious,

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[61] *Caballes v. Court of Appeals*, 492 Phil. 410, 428-429 (2005) citing *Corpuz v. Sandiganbayan*, G.R. No. 162214, 11 November 2004, 442 SCRA 294, 312-313.

[62] 484 Phil. 899, 917-918 (2004).

capricious and oppressive, however, the delays entailed by the postponements of the aforesaid hearings were, to a great extent, attributable to petitioner Francisco's own pursuit of extraordinary remedies against the interlocutory orders issued by the Sariaya MTC and the assignment of at least three public prosecutors to the case, namely, Prosecutors Rodolfo Zabella, Jr., Francis Sia and Joel Baligod. Indeed, the record shows that, on 30 August 2001, petitioner filed a motion styled as one to compel Prosecutor Zabella to agree to his proposed stipulations and/or to disqualify him from the case as well as to correct the pre-trial order issued on 14 August 2001.[63] Considering that said motion was denied by the Sariaya MTC only on 18 October 2001,[64] we find that Prosecutor Zabella's absence at the 10 and 17 October 2001 pre-trial conference in the case can hardly be considered capricious, vexatious and oppressive.

The record further shows that, upon the Sariaya MTC's issuance of the 9 January 2002 order denying his motion for reconsideration of said 18 October 2001 order and setting anew the pre-trial conference in the case,[65] petitioner Francisco proceeded to file on 1 April 2002 the petition for *certiorari*, prohibition and *mandamus* docketed as Civil Case No. 2002-37 before Branch 58 of the Lucena City RTC.[66] Although Prosecutor Sia, as replacement of Prosecutor Zabella, failed to attend the 7 November 2001, 23 January 2002 and 13 March 2002 hearings scheduled in the case, petitioner Francisco cannot, consequently, complain of violation of his right to speedy trial in view of his pending petition for *certiorari*, prohibition and *mandamus* which raised, among other matters, issues pertinent to the conduct of the pre-trial conference by the Sariaya MTC. Without even taking into consideration the additional time Prosecutor Sia understandably needed to study the case, we find that the foregoing developments justified the Sariaya MTC's 17 April 2002 denial of the motion to dismiss filed by petitioner Francisco

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[63] *Rollo*, G.R. No. 170410, p. 18.

[64] *Id.* at 22.

[65] *Rollo*, G.R. No. 171622, p. 205.

[66] *Rollo*, G.R. No. 170410, pp. 71-72.

on the ground that the cancellation of the hearings on the aforesaid dates violated his right to the speedy disposition of the case.[67]

With the Sariaya MTC's 18 July 2002 denial of his motion for reconsideration of said 17 April 2002 order, petitioner Francisco once again elevated the matter to Branch 58 Lucena RTC via the petition for *certiorari* and prohibition which, under docket of Civil Case No. 2002-90, incorporated a prayer for a temporary restraining order and/or writ of preliminary injunction to stop further proceedings in Criminal Case No. 01-99.[68] The same prayer for provisional relief petitioner was reiterated in his 2 January 2003 and 14 March 2003 supplement to the petition which, respectively, took issue against the absence of a prosecutor and/or the complaining witnesses at (a) the 4 September 2002 and 6 November 2001 pre-trial conferences before the Sariaya MTC;[69] and, (b) the similar settings scheduled for 15 January 2003 and 5 March 2003.[70] To our mind, petitioner Francisco's harping on his right to a speedy trial before the Sariaya MTC is materially attenuated by his motion for the disqualification of Prosecutor Zabella from the case and, later, his repeated prayer for the stoppage of the proceedings *a quo* in his petition for *certiorari* and prohibition before the Lucena RTC.

Although the *Revised Rules of Criminal Procedure* concededly mandates commencement of the trial within 30 days from receipt of the pre-trial order[71] and the continuous conduct thereof for a period not exceeding 180 days,[72] Section 3 a (1), Rule 119

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[67] *Id.* at 125.

[68] *Id.* at 87-124.

[69] *Id.* at 129-134.

[70] *Id.* at 135-140.

[71] Sec. 1. *Time to prepare for trial.* – After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order.

[72] Section 2. *Continuous trial until terminated; postponements.* – Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

provides that delays resulting from extraordinary remedies against interlocutory orders shall be excluded in computing the time within which trial must commence. In determining the right of an accused to speedy trial, moreover, courts are "required to do more than a mathematical computation of the number of postponements of the scheduled hearings of the case" and to give particular regard to the facts and circumstances peculiar to each case.[73] Viewed in the context of the above discussed procedural antecedents as well as the further reassignment of the case to Prosecutor Baligod as a consequence of Prosecutor Sia's subsequent transfer to another government office, we find that the CA correctly brushed aside petitioner Francisco's claim that the postponements of the pre-trial conferences in the case before the Sariaya MTC were violative of his right to a speedy trial.

Finally in G.R. No. 171622, petitioners Francisco and Imperial take issue against the Parañaque RTC's issuance of the 8 June 2004 order setting the pre-trial conference in Civil Case No. 01-0325 and requiring the parties to file their respective pre-trial briefs. Calling attention to the fact that respondents Pedraja, Joson, Giganto, Cubeta had yet to file an answer to the third-party complaint incorporated in their 14 December 2002 answer, petitioners argue that the Parañaque RTC's issuance of said 8 June 2004 order was both premature and attended with grave abuse of discretion. Further claiming that they did not receive a copy of said 8 June 2004 order, petitioners asseverate that CA should have nullified the Parañaque RTC's 16 August 2004 order which: (a) authorized respondents Hilarion and Gregorio Felix, Tagle and Landoy to present their evidence *ex parte*; and, (b) dismissed the complaint without prejudice insofar

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The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

The time limitations provided under this section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

[73] *Tan v. People*, G.R. No. 173637, 21 April 2009, 586 SCRA 139, 154-155.

as it concerned respondents Evelyn Felix, Galvez and Lazo who were declared non-suited.

Despite the Parañaque RTC's issuance of the 14 November 2003 order holding in abeyance the payment of the filing and other docket fees for petitioners' third-party complaint, the record is, indeed, bereft of any showing that summons were issued requiring respondents Pedraja, Joson, Giganto and Cubeta to file their answer to the aforesaid pleading. If only in the interest of the orderly, expeditious and complete disposition of the parties' complaints for damages against each other, we find that the Parañaque RTC should have first awaited the full joinder of the issues before its 8 June 2004 grant of the motion to set the case for hearing filed by respondents Felix, Galvez, Tagle, Lazo and Landoy. More so, when it is borne in mind that the necessity for respondents Pedraja, Joson, Giganto and Cubeta to be accorded a chance to participate in the case was rendered imperative by the Naga RTC's 2 August 2002 dismissal of Civil Case No. 2001-0296 and the dismissal of Civil Case No. 8314 before the Valenzuela MeTC pursuant to the 4 September 2003 decision rendered by the CA's Tenth Division in CA-G.R. SP No. 74030.

Although what constitutes a valid ground to excuse litigants and their counsel is also subject to the sound discretion of the judge,[74] the fact that petitioners have filed their answer and third-party complaint in Civil Case No. 01-0325 also militates against the Parañaque RTC's 16 August 2004 order which, at bottom, amounted to their being declared in default. Inasmuch as procedural rules are tools designed to facilitate the adjudication of cases, courts have likewise been exhorted to afford party-litigants the amplest opportunity to have their cases justly determined, free from the constraints of technicalities.[75] Time and again, this Court has espoused a policy of liberality in setting aside orders of default which are frowned upon, as a case is best decided when all contending parties are able to ventilate

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[74] *Khonghun vs. United Coconut Planters Bank*, G.R. No. 154334, 31 July 2006, 497 SCRA 320, 324.

[75] *Go vs. Tan*, 458 Phil. 727, 735 (2003).

their respective claims, present their arguments and adduce evidence in support thereof.[76] Thus, the issuance of the orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.[77]

WHEREFORE, premises considered, the petitions in G.R. Nos. 160067 and 170410 are both *DENIED* for lack of merit. In G.R. No. 171622, the petition is *GRANTED* and the 17 February 2006 decision in CA-G.R. No. 87906 is, accordingly, *REVERSED* and *SET ASIDE.* In lieu thereof, another is entered *NULLIFYING* the Parañaque RTC's 16 August 2004 order and directing said court to: (a) order petitioners Francisco and Imperial to pay the filing and other docket fees for their third-party complaint; (b) order the issuance of summons to respondents Pedraja, Joson, Giganto and Cubeta with respect to said third-party complaint; and, thereafter, (c) to conduct the mandatory pre-trial conference without further delay.

SO ORDERED.

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

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[76] *Sablas v. Sablas*, G.R. No. 144568, 3 July 2007, 526 SCRA 292, 299.

[77] *Acance vs. Court of Appeals*, 493 Phil. 676, 689 (2005).

[*] Additional member in lieu of Associate Justice Mariano C. Del Castillo per Special Order No. 913 dated 2 November 2010.

FIRST DIVISION

[G.R. No. 162206. November 17, 2010]

MONICO V. JACOB and CELSO L. LEGARDA, *petitioners, vs.* **HON. SANDIGANBAYAN FOURTH DIVISION and THE OFFICE OF THE OMBUDSMAN**, *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF AN ACCUSED; RIGHT TO A SPEEDY TRIAL; AN ACCUSED'S RIGHT TO "HAVE A SPEEDY, IMPARTIAL AND PUBLIC TRIAL" IS GUARANTEED IN CRIMINAL CASES BY SECTION 14(2), ARTICLE III OF THE CONSTITUTION.— An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2), Article III[12] of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF AN ACCUSED; RIGHT TO A SPEEDY TRIAL.—Hence, the Revised Rules on Criminal Procedure also include provisions that ensure the protection of such right. As we presented in *Uy v. Hon. Adriano*: Section 1(h), Rule 115 of the Revised Rules of Criminal Procedure provides that the accused is entitled to a speedy, impartial and public trial. Section 2, Rule 119 of the said Rules provides that trial, once commenced, shall be continuous until terminated x x x.

3. ID.; ID.; ID.; ID.; DELAY IN THE TRIAL SHOULD BE CONSIDERED, IN VIEW OF THE ENTIRETY OF THE PROCEEDINGS.— We further emphasized in *Uy* that "speedy trial" is a relative term and necessarily a flexible concept. In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings. Indeed, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.

4. ID.; ID.; ID.; ID.; ID.; RULING IN CASE OF *CORPUZ V. SANDIGANBAYAN*, APPLIED IN CASE AT BAR.— *Corpuz v. Sandiganbayan* is a case originating from exactly the same factual background as the case at bar. Therein petitioners Marialen C. Corpuz and Antonio H. Roman, Sr. were officers of FILSYN Corporation, one of the BOI-registered firms that assigned TCCs to Petron; and were among the accused in Criminal Case No. 25922. They filed a separate Petition for *Certiorari* before us assailing the Resolutions dated February 4, 2002 of the Sandiganbayan Special Fourth Division and December 12, 2003 of the Sandiganbayan Fourth Division. We expounded more extensively in *Corpuz* on the right of the accused to a speedy trial and disposition of the case against him, x x x We went on to lay down in *Corpuz* the test for determining whether an accused was indeed deprived of his right to a speedy trial and disposition of the case against him: In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x In the Petition at bar, Criminal Case Nos. 25922-25939 were filed on April 10, 2000. Petitioner Jacob was arraigned on June 1, 2000, while petitioner Legarda was arraigned on May 18, 2001; with both petitioners pleading not guilty. Since then, there had been no other significant development in the cases since the prosecution repeatedly requested for deferment or postponement of the scheduled hearings as it awaits the result of the reinvestigation of the Office of the Ombudsman. Judge Nario verbally ordered the dismissal of said cases during the hearing on August 20,

2001. Thus, the criminal cases had been pending for about a year and four months by the time they were dismissed by Justice Nario. The accused, including petitioners, had consistently asked in open court that the criminal cases be dismissed every time the prosecution moved for a deferment or postponement of the hearings. The prosecution attributed the delay in the criminal proceedings to : 1) the 23 motions for reinvestigation or reconsideration filed by the accused, which was granted by the Sandiganbayan in its April 17, 2000 Order; and 2) the failure of the Office of the Ombudsman to terminate its reinvestigation and submit its report within the 60-day period fixed by the said graft court.

5. ID.; ID.; ACCUSED'S RIGHT TO A SPEEDY TRIAL *VIS-A-VIS* RIGHT OF STATE TO PROSECUTE; DISMISSAL OF CRIMINAL CASES UNWARRANTED DESPITE OMBUDSMAN'S UNDUE DELAY IN REINVESTIGATION THEREOF; CASE AT BAR.— Irrefragably, there had been an undue and inordinate delay in the reinvestigation of the cases by the Office of the Ombudsman, which failed to submit its reinvestigation report despite the lapse of the 60-day period set by the Sandiganbayan, and even more than a year thereafter. That there were 23 Motions for Reinvestigation filed is insignificant. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. It is simply a chance for the Office of the Ombudsman to review and re-evaluate its findings based on the evidence previously submitted by the parties. The Office of the Ombudsman should have expedited the reinvestigation, not only because it was ordered by the Sandiganbayan to submit a report within a period of 60 days, but also because said Office is bound by the Constitution and Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, to act promptly on complaints and cases pending before it. x x x In *Corpuz*, we warned against the overzealous or precipitate dismissal of a case that may enable the defendant, who may be guilty, to go free without having been tried, thereby infringing the societal interest in trying people accused of crimes rather than granting them immunization because of legal error. x x x We agree with the Sandiganbayan Special Fourth Division that Justice Nario's dismissal of the criminal cases was unwarranted under the circumstances, since the State should not be prejudiced

and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION COMMITTED IN SETTING ASIDE JUSTICE NARIO'S VERBAL ORDER OF DISMISSAL OF CRIMINAL CASE; CASE AT BAR.— Furthermore, the Sandiganbayan Special Fourth Division did not abuse its discretion in setting aside Justice Nario's verbal order, which dismissed Criminal Case Nos. 25922-25939, for not only was such order baseless, as we had previously discussed herein; but more importantly, because it is an utter nullity, as we had ruled in *Corpuz*. x xx Section 1, Rule 120 of the Revised Rules of Criminal Procedure, mandates **that a judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. The rule applies to a final order dismissing a criminal case grounded on the violation of the rights of the accused to a speedy trial. A verbal judgment or order of dismissal is a violation of the provision; hence, such order is, in contemplation of law, not in *esse*, therefore, ineffective.** Justice Nario failed to issue a written resolution dismissing the criminal cases for failure of the prosecution to submit its report on the reinvestigation of the cases within the sixty-day period fixed by the graft court. Moreover, the verbal order was rejected by majority vote of the members of the Sandiganbayan Special Division. In fine, there has been no valid and effective order of dismissal of the cases. The Sandiganbayan cannot then be faulted for issuing the assailed resolutions.

7. ID.; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; HAS NOT YET ATTACHED SINCE THERE IS SO FAR NO VALID DISMISSAL OR TERMINATION OF THE CRIMINAL CASES; CASE AT BAR.— Given that Justice Nario's verbal order dismissing Criminal Case Nos. 25922-25939 is null and void, and does not exist at all in contemplation of law, it follows that petitioners cannot invoke the constitutional right against double jeopardy. To substantiate a claim for double jeopardy, the following must be demonstrated: (1) [A] first

jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof. And legal jeopardy attaches only: (a) upon a valid indictment; (b) before a competent court; (c) after arraignment; (d) [when] a valid plea [has] been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused. In the instant Petition, legal jeopardy has not yet attached since there is so far no valid dismissal or termination of the criminal cases against petitioners.

8. ID.; EVIDENCE; PRESENCE OR ABSENCE OF THE ELEMENTS OF THE CRIME IS EVIDENTIARY IN NATURE; THE SANDIGANBAYAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION NOR ERRED IN NOT CONSIDERING THE GLARING LACK OF EVIDENCE AGAINST PETITIONERS; CASE AT BAR.— Finally, the Sandiganbayan Special Fourth Division did not commit grave abuse of discretion nor erred in not considering the glaring lack of evidence against petitioners. As we pointed out in *Rizon v. Desierto* : Time and again, we have held that a prosecutor does not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. He merely determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof, and should be held for trial. A finding of probable cause, therefore, does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the prosecutor believes that the act or omission complained of constitutes the offense charged. A trial is intended precisely for the reception of prosecution evidence in support of the charge. It is the court that is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at the trial on the merits. Here, there has been no trial yet. Therefore, there has been no occasion yet for the full and exhaustive display of the parties' evidence. The presence or absence of the elements of the crime is evidentiary in nature that shall be passed upon after a full-blown trial on the merits.

APPEARANCES OF COUNSEL

Ammuyutan Purisima Ortega and Desierto for petitioners.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court for the nullification of the Resolutions dated February 4, 2002[1] of the Sandiganbayan Special Fourth Division and December 12, 2003[2] of the Sandiganbayan Fourth Division. In its Resolution dated February 4, 2002, the Sandiganbayan Special Fourth Division set aside the order to dismiss Criminal Case Nos. 25922-25939, among other cases, verbally issued by Associate Justice Narciso S. Nario (Justice Nario), Chairman of the Sandiganbayan Fourth Division, during the court session held on August 20, 2001;[3] while in its Resolution dated December 12, 2003, the Sandiganbayan Fourth Division denied the motions for reconsideration of the petitioners and other accused.

The following facts are duly established from the pleadings of the parties:

From 1993 to 1997, Petron Corporation (Petron), a corporation engaged in the business of refining, marketing and distribution of petroleum products, received Tax Credit Certificates (TCCs) by assignment from 18 private firms[4] registered with the Board

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[1] *Rollo*, pp. 54-59; penned by Associate Justice Nicodemo T. Ferrer with Associate Justices Rodolfo G. Palattao and Catalino R. Castañeda, Jr., concurring, and Associate Justices Narciso S. Nario and Raoul V. Victorino, dissenting.

[2] *Id.* at 47-53.

[3] *Rollo*, pp. 54-58; issued in Criminal Case Nos. 25911-25915; 25917-25939; and 25983-26016.

[4] *Id.* at 356; Filsyn Corporation, Dragon Textile Mills, Inc., Southern Textile Mills, Inc., Fiber Technology Corporation, Diamond Knitting Corp.,

of Investments (BOI). The TCCs were issued by the One Stop Shop Inter-Agency Tax Credit & Duty Drawback Center (OSS), an office under the Department of Finance (DOF), created by virtue of Administrative Order No. 266 dated February 7, 1992. Petron used the assigned TCCs to pay its excise tax liabilities.

The practice was for the BOI-registered firms to sign the Deeds of Assignment upon delivery of the TCCs to Petron. Petron then forwarded said documents to the OSS, with a request for authorization to use said TCCs to pay for its excise tax liabilities. DOF Undersecretary Antonio P. Belicena (Belicena) approved the request of Petron through the issuance of Tax Debit Memoranda (TDM) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR). The BIR Collection Program Division accepted the TCCs as payment for the excise tax liabilities of Petron by issuing its own TDM.[5] The control numbers of the BIR-TDM were indicated on the back of the TCCs, marking the final utilization of the tax credits.[6]

However, the Fact Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman eventually found that the aforementioned transactions involving the TCCs were irregular and violative of the Memorandum of Agreement dated August 29, 1989 between the BOI and the DOF, which implemented Article 21 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.[7]

After the termination of the requisite preliminary investigation, the Office of the Ombudsman issued a Resolution dated March 27, 2000 finding probable cause against several public

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Filstar Textile Industrial Corporation, R.S. Textile Mills, Monte Textile Manufacturing Corporation, Master Colour System Corporation, First Unity Textile Mills, Jantex Philippines, Inc., Unisol Industries & Manufacturing Corporation, Southern Dae Yeong Corporation, Solid Development Corporation, Asia Textiole Mills, Inc., Phelps Dodge Philippines, Inc., Alliance Thread Co., Inc., and Kewalram Philippines, Inc.

[5] BIR Form No. 2321.

[6] *Rollo,* p. 357.

[7] *Id.* at 357-358.

officers and private individuals, including petitioners Monico V. Jacob (Jacob), President, and Celso L. Legarda (Legarda), Vice-President and General Manager for Marketing, both of Petron, for perpetrating the so-called "tax credit scam." On April 10, 2010, the Office of the Ombudsman filed a total of 62 Informations, 18 of which, docketed as Criminal Case Nos. 25922-25939, were against DOF Undersecretary Belicena, OSS Deputy Executive Director Uldarico P. Andutan, Jr., petitioners and other Petron officials, and officers of the BOI-registered firms which assigned the TCCs to Petron, charging them with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioners provided an undisputed account of the events that subsequently took place before the Sandiganbayan:

> On April 14, 2000, petitioners and the four other Petron officers who were similarly charged filed a Motion for Reinvestigation [with the Office of the Ombudsman].
>
> On 17 April 2000, the [Sandiganbayan Fourth Division] issued an Order giving the prosecution a period of sixty (60) days within which —
>
> > … to re-assess its evidence in these cases and to take appropriate action on the said motion for reconsideration of accused movants and to inform the Court within the same period as to its findings and recommendations including the action thereon of the Honorable Ombudsman.
>
> Sixty (60) days passed but the Office of the Ombudsman did not even bother to submit a report on the status of the motions for reconsideration. Months passed, and then, AN ENTIRE YEAR PASSED. There was still nothing from the respondent Office of the Ombudsman.
>
> In the meantime, petitioner Jacob was arraigned on 1 June 2000 while petitioner Legarda was arraigned on 18 May 2001.
>
> On March 20, 2001, in view of a significant development in the Shell cases (then pending with the 5th Division of [the Sandiganbayan]), petitioners and other accused Petron officials filed a Motion to Resolve with the Office of the Ombudsman. In the said

motion, petitioners cited the Memorandum dated 30 January 2001 issued by Special Prosecutor Leonardo P. Tamayo upholding the dropping of the charges against Shell official Pacifico Cruz on the ground that there was no sufficient evidence to prove that he was part of the conspiracy. Petitioners asserted that since their situation/ alleged participation is similar to that of Mr. Pacifico Cruz, they should similarly be dropped from the criminal cases. Despite this, the respondent Office of the Ombudsman took no action.

Considering the time that had lapsed, the [Sandiganbayan Fourth Division], at the hearing on 1 June 2001, expressly warned the prosecution that should it fail to resolve the reconsideration/ investigation, it would order the dismissal of the cases or require the prosecution to show cause why it should not be cited for contempt.

In its Resolution dated 26 June 2001, the [Sandiganbayan Fourth Division] in fact denied the motion of the prosecution for the resetting of the scheduled arraignment and pre-trial on 2 July 2001 "it appearing that the Reinvestigation of these cases has been pending for more than one (1) year now and the court cannot countenance the unreasonable delay attributable to the plaintiff."

In spite of the denial of their motion, the prosecution still failed to submit its report to the [Sandiganbayan Fourth Division] during the 2 July 2001 hearing. Instead they asked for a period of seven (7) more days to resolve the motions for reconsideration. The arraignment (of the other accused) and pre-trial therefore had to be reset again to 17 July 2001.

One day before the schedule (sic) hearing, the prosecution filed a Manifestation requesting the cancellation of the arraignment and pre-trial scheduled the next day on the ground that the motions for reconsideration/reinvestigation were still pending resolution.

Once again, [the Sandiganbayan Fourth Division] gave the prosecution another chance. During the hearing on 17 July 2001, the [Sandiganbayan 4th Division] directed the prosecution, through Prosecutor Orlando Ines, to terminate the reinvestigation within a period of one (1) more month. The arraignment and pre-trial were then reset to 20 August 2001.

At the scheduled hearing on August 20, 2001, Prosecutor Orlando Ines, however, again requested for the deferment of the arraignment and pre-trial on the ground that the resolution on the various motions

for reconsideration/reinvestigation were still pending approval by the Office of the Ombudsman.

In all the hearings conducted in the cases the defense verbally and consistently invoked their right to speedy trial and moved for the dismissal of the cases. In the course of more than one year, however, the [Sandiganbayan 4th Division] kept affording the prosecution one chance after another. The sixty days granted to the prosecution became more than four hundred days – still, there was no resolution in sight.

Thus on 20 August 2001, compelled by its duty to uphold the fundamental law, the [Sandiganbayan Fourth Division, through its Chairman, Justice Nario] issued a verbal order dismissing the cases. The dismissal was duly recorded in the minutes of the hearing of the said date which was attested to by the Clerk of Court and signed by the parties.

On 24 August 2001, the prosecution filed a Motion for Reconsideration with the following prayer: "WHEREFORE, the undersigned Ombudsman Prosecutors prayed (sic) that the Order issued by the Honorable Court for the summary dismissal of all the graft and estafa charges aforecited be SET ASIDE."

On August 31, 2001, the [Sandiganbayan Fourth Division] issued an Order taking cognizance of the Motion for Reconsideration filed by the prosecution and requiring the accused to file their respective comments thereon within five (5) days.

On 4 February 2002, OR SIX (6) MONTHS after [Justice Nario] issued the verbal order of dismissal, the [Sandiganbayan Special Fourth Division] issued an Order setting aside said verbal order.

xxx xxx xxx

In the 4 February 2002 Resolution, this time a Division of five justices (two of whom dissented) rendered a Resolution stating:

> WHEREFORE, the dismissal of these cases orally ordered in open court by the Chairman of the Fourth Division during its court session held on August 20, 2001, and reiterated in his subsequent *ponencia*, is hereby set aside.[8] (Citations omitted.)

[8] *Id.* at 16-25.

The Sandiganbayan Special Fourth Division gave the following reasons for overruling Justice Nario's verbal order dismissing the criminal cases against the accused in the alleged tax credit scam:

> In the present case, (1) there is already a delay of the trial for more than one year now; (2) but it is not shown that the delay is vexatious, capricious and oppressive; (3) it may be that, as stated in the herein dissented Resolution, "at the hearings conducted in these cases, the defense orally, openly and consistently asked for the dismissal of these cases"; however, these oral manifestations were more of "knee-jerk reactions" of the defense counsel in those hearings everytime the prosecution requested for postponement than anything else as said defense counsel did not seriously pursue the dismissal of these cases, such as by reducing their "request" in a formal written motion to dismiss and/or insisting that the court formally rule on their request for dismissal and go on *certiorari* if denied; and (4) considering the nature and importance of the cases, if there is any prejudice that may have resulted as a consequence of the series of postponements, it would be more against the government than against any of the accused; however, be that as it may, none of the herein accused has come out to claim having been thus prejudiced.[9]

On February 26, 2002, petitioners, together with four other co-accused Petron officials, filed a Motion for Reconsideration[10] of the February 4, 2002 Resolution of the Sandiganbayan Special Fourth Division. Other accused also filed their motions for reconsideration and motions to quash/dismiss. The prosecution expectedly opposed all such motions of the accused.

In an *Omnibus* Resolution dated December 12, 2003, the Sandiganbayan Fourth Division ruled in the prosecution's favor and denied all the motions filed by the accused, to wit:

> *Wherefore*, premises considered, this court issues an Omnibus Resolution *denying* all the above-described *Motion to Quash* for lack of merit.

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[9] Sandiganbayan Record of Criminal Case No. 25922, Volume 1, pp. 318-319.

[10] *Id.* at 356-364.

Hence, petitioners come before us *via* the instant Petition for *Certiorari* averring grave abuse of discretion on the part of the Sandiganbayan Special Fourth Division, specifically:

I

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' RIGHT TO SPEEDY TRIAL.

II

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS HAVE NOT BEEN PUT IN DOUBLE JEOPARDY.

III

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT CONSIDERING THE GLARING LACK OF EVIDENCE AGAINST PETITIONERS.[11]

To recall, Justice Nario, as the Chairman of the Sandiganbayan Fourth Division, ordered the dismissal of all criminal cases arising from the purported tax credit scam on the ground that the accused, including petitioners, had already been deprived of their right to a speedy trial and disposition of the cases against them. Petitioners assert that the Sandiganbayan gravely abused its discretion in reversing Justice Nario's order of dismissal of Criminal Case Nos. 25922-25939 because such reversal violated petitioners' constitutional right against double jeopardy.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2), Article III[12] of the Constitution. This right to a speedy trial

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[11] *Rollo*, p. 19.

[12] Sec. 14(2). In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the

may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.[13]

Hence, the Revised Rules on Criminal Procedure also include provisions that ensure the protection of such right. As we presented in *Uy v. Hon. Adriano:*[14]

> Section 1(h), Rule 115 of the Revised Rules of Criminal Procedure provides that the accused is entitled to a speedy, impartial and public trial. Section 2, Rule 119 of the said Rules provides that trial, once commenced, shall be continuous until terminated:
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> > Sec. 2. *Continuous trial until terminated; postponements.* – Trial, once commenced, shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.
> >
> > The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme

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accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x.

[13] *Tan v. People*, G.R. No. 173637, April 21, 2009, 586 SCRA 139, 151-152.

[14] G.R. No. 159098, October 27, 2006, 505 SCRA 625.

Court.

> The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

However, any period of delay resulting from a continuance granted by the court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice is served by taking such action outweigh the best interest of the public and the accused on a speedy trial, shall be deducted.

The trial court may grant continuance, taking into account the following factors:

> (a) Whether or not the failure to grant a continuance in the proceeding would likely make a continuation of such proceeding impossible or result in a miscarriage of justice; and
>
> (b) Whether or not the case taken as a whole is so novel, unusual and complex, due to the number of accused or the nature of the prosecution, or that it is unreasonable to expect adequate preparation within the periods of time established therein.
>
> In addition, no continuance under Section 3(f) of this Rule shall be granted because of congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the prosecutor.[15]

We further emphasized in *Uy* that "speedy trial" is a relative term and necessarily a flexible concept. In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings. Indeed, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.[16]

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[15] *Id.* at 638-639.

[16] *Id.* at 639-640.

Corpuz v. Sandiganbayan[17] is a case originating from exactly the same factual background as the case at bar. Therein petitioners Marialen C. Corpuz and Antonio H. Roman, Sr. were officers of FILSYN Corporation, one of the BOI-registered firms that assigned TCCs to Petron; and were among the accused in Criminal Case No. 25922. They filed a separate Petition for *Certiorari* before us assailing the Resolutions dated February 4, 2002 of the Sandiganbayan Special Fourth Division and December 12, 2003 of the Sandiganbayan Fourth Division.

We expounded more extensively in *Corpuz* on the right of the accused to a speedy trial and disposition of the case against him, thus:

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.
>
> **While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed.** It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. **It secures rights to the accused, but it does not preclude the rights of public justice.** Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[18] (Emphases ours.)

We went on to lay down in *Corpuz* the test for determining whether an accused was indeed deprived of his right to a speedy trial and disposition of the case against him:

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[17] G.R. No. 162214, November 11, 2004, 442 SCRA 294.

[18] *Id.* at 312-313.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily,

Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.[19]

In the Petition at bar, Criminal Case Nos. 25922-25939 were filed on April 10, 2000. Petitioner Jacob was arraigned on June 1, 2000, while petitioner Legarda was arraigned on May 18, 2001; with both petitioners pleading not guilty. Since then, there had been no other significant development in the cases since the prosecution repeatedly requested for deferment or postponement of the scheduled hearings as it awaits the result of the reinvestigation of the Office of the Ombudsman. Judge Nario verbally ordered the dismissal of said cases during the hearing on August 20, 2001. Thus, the criminal cases had been pending for about a year and four months by the time they were dismissed by Justice Nario.

The accused, including petitioners, had consistently asked in open court that the criminal cases be dismissed every time the prosecution moved for a deferment or postponement of the hearings.

The prosecution attributed the delay in the criminal proceedings to: 1) the 23 motions for reinvestigation or reconsideration filed by the accused, which was granted by the Sandiganbayan in its April 17, 2000 Order; and 2) the failure of the Office of the Ombudsman to terminate its reinvestigation and submit its report within the 60-day period fixed by the said graft court.

Irrefragably, there had been an undue and inordinate delay in the reinvestigation of the cases by the Office of the Ombudsman, which failed to submit its reinvestigation report despite the lapse of the 60-day period set by the Sandiganbayan, and even more than a year thereafter. That there were 23 Motions for Reinvestigation filed is insignificant. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. It is simply a chance for the Office of the Ombudsman to review and re-evaluate its findings based on the evidence previously submitted by the parties. The Office

[19] *Id.* at 313-314.

of the Ombudsman should have expedited the reinvestigation, not only because it was ordered by the Sandiganbayan to submit a report within a period of 60 days, but also because said Office is bound by the Constitution[20] and Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989,[21] to act promptly on complaints and cases pending before it.

Nevertheless, while the re-investigation by the Office of the Ombudsman delayed the proceedings in Criminal Case Nos. 25922-25939, the said process could not have been dispensed with as it was undertaken for the protection of the rights of petitioners themselves (and their co-accused) and their rights should not be compromised at the expense of expediency.

In *Corpuz*, we warned against the overzealous or precipitate dismissal of a case that may enable the defendant, who may be guilty, to go free without having been tried, thereby infringing the societal interest in trying people accused of crimes rather than granting them immunization because of legal error.[22] Earlier, in *People v. Leviste*,[23] we already stressed that:

[T]he State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal

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[20] Sec. 12, Article XI of the 1987 Constitution, reads:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[21] Section 13 of Republic Act No. 6770, provides:

Sec. 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

[22] *Corpuz v. Sandiganbayan*, *supra* note 17 at 322.

[23] 325 Phil. 525 (1996).

such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case – in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.[24]

Thus, even though we acknowledge the delay in the criminal proceedings, as well as the prejudice suffered by petitioners and their co-accused by reason thereof, the weighing of interests militate against a finding that petitioners' right to speedy trial and disposition of the cases involving them would have justified the dismissal of Criminal Case Nos. 25922-25939. We agree with the Sandiganbayan Special Fourth Division that Justice Nario's dismissal of the criminal cases was unwarranted under the circumstances, since the State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman. We reiterate our observations in *Corpuz* that:

There can be no denying the fact that the petitioners, as well as the other accused, was prejudiced by the delay in the reinvestigation of the cases and the submission by the Ombudsman/Special Prosecutor of his report thereon. So was the State. We have balanced the societal interest involved in the cases and the need to give substance to the petitioners' constitutional rights and their quest for justice, and we are convinced that the dismissal of the cases is too drastic a remedy to be accorded to the petitioners. The cloud of suspicion may still linger over the heads of the petitioners by the precipitate dismissal of the cases. We repeat — the cases involve the so-called tax credit certificates scam and hundreds of millions of pesos allegedly perpetrated by government officials in connivance with private individuals. The People has yet to prove the guilt of the petitioners of the crimes charged beyond reasonable doubt. We agree with the ruling of the Sandiganbayan that before resorting to the extreme sanction of depriving the petitioner a chance to prove its case by dismissing the cases, the Ombudsman/Special Prosecutor should

[24] *Id.* at 538.

be ordered by the Sandiganbayan under pain of contempt, to explain the delay in the submission of his report on his reinvestigation.[25]

Furthermore, the Sandiganbayan Special Fourth Division did not abuse its discretion in setting aside Justice Nario's verbal order, which dismissed Criminal Case Nos. 25922-25939, for not only was such order baseless, as we had previously discussed herein; but more importantly, because it is an utter nullity, as we had ruled in *Corpuz*.

We held in *Corpuz* that:

In the unanimous Resolution of December 12, 2003, the Sandiganbayan ruled as follows:

> In the cases at bar, the dismissal made in open court by the Chairman, which was not reduced in writing, is not a valid dismissal or termination of the cases. This is because the Chairman cannot unilaterally dismiss the same without the approval or consent of the other members of the Division. The *Sandiganbayan* is a collegiate court and under its internal rules prevailing at the time (Rule XVIII, Section 1(b) of the 1984 *Revised Rules of the Sandiganbayan*, which is now Section 1(b), Rule VIII of the 2002 *Revised Internal Rules of the Sandiganbayan*), an order, resolution or judgment, in order to be valid — that is to say, in order to be considered as an official action of the Court itself — must bear the unanimous approval of the members of the division, or in case of lack thereof, by the majority vote of the members of a special division of five.

We agree with the foregoing ratiocination. Section 1, Rule 120 of the Revised Rules of Criminal Procedure, mandates **that a judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. The rule applies to a final order dismissing a criminal case grounded on the violation of the rights of the accused to a speedy trial. A verbal judgment or order of dismissal is a violation of the provision; hence, such order is, in contemplation of law,**

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[25] *Corpuz v. Sandiganbayan*, *supra* note 17 at 323.

not in *esse*, therefore, ineffective. Justice Nario failed to issue a written resolution dismissing the criminal cases for failure of the prosecution to submit its report on the reinvestigation of the cases within the sixty-day period fixed by the graft court. Moreover, the verbal order was rejected by majority vote of the members of the Sandiganbayan Special Division. In fine, there has been no valid and effective order of dismissal of the cases. The Sandiganbayan cannot then be faulted for issuing the assailed resolutions.

Neither are the petitioners entitled to a writ of *mandamus* to compel the Sandiganbayan to reinstate the cases, considering that **the verbal order of Justice Nario as aforestated does not exist at all in contemplation of law**.[26] (Emphases ours.)

Given that Justice Nario's verbal order dismissing Criminal Case Nos. 25922-25939 is null and void, and does not exist at all in contemplation of law, it follows that petitioners cannot invoke the constitutional right against double jeopardy.

To substantiate a claim for double jeopardy, the following must be demonstrated:

(1) [A] first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof.

And legal jeopardy attaches only: (a) upon a valid indictment; (b) before a competent court; (c) after arraignment; (d) [when] a valid plea [has] been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused.[27]

In the instant Petition, legal jeopardy has not yet attached since there is so far no valid dismissal or termination of the criminal cases against petitioners.

Finally, the Sandiganbayan Special Fourth Division did not commit grave abuse of discretion nor erred in not considering

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[26] *Id.* at 308-309.

[27] *People v. Espinosa*, 456 Phil. 507, 518 (2003).

the glaring lack of evidence against petitioners.

As we pointed out in *Rizon v. Desierto:*[28]

> Time and again, we have held that a prosecutor does not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. He merely determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof, and should be held for trial. A finding of probable cause, therefore, does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the prosecutor believes that the act or omission complained of constitutes the offense charged. A trial is intended precisely for the reception of prosecution evidence in support of the charge. It is the court that is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at the trial on the merits.[29]

Here, there has been no trial yet. Therefore, there has been no occasion yet for the full and exhaustive display of the parties' evidence. The presence or absence of the elements of the crime is evidentiary in nature that shall be passed upon after a full-blown trial on the merits.

WHEREFORE, there being no showing that the impugned Resolutions dated February 4, 2002 of the Sandiganbayan Special Fourth Division and December 12, 2003 of the Sandiganbayan Fourth Division in Criminal Case Nos. 25922-25939 are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the instant Petition for *Certiorari* is *DISMISSED* for lack of merit.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[28] 484 Phil. 62 (2004).

[29] *Id.* at 71.

[*] Per Special Order No. 913 dated November 2, 2010.

FIRST DIVISION

[G.R. No. 166298. November 17, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES JOEL R. UMANDAP and FELICIDAD D. UMANDAP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* IT IS THE INADEQUACY – NOT THE MERE ABSENCE – OF ALL OTHER LEGAL REMEDIES AND THE DANGER OF FAILURE OF JUSTICE WITHOUT THE WRIT THAT MUST USUALLY DETERMINE THE PROPRIETY OF *CERTIORARI.*— The grounds relied upon by the Court of Appeals in asserting that *certiorari* is improper in the case at bar – namely (1) the pronouncement that appeal is the proper remedy, and (2) the failure of LBP to file a Motion for Reconsideration – both stem from the clause in Section 1, Rule 65 of the Rules of Court that requires that there must be "no appeal or any plain, speedy and adequate remedy in the ordinary course of law" before a Petition for *Certiorari* may be filed. We explained the rationale and applicability of this clause in *Jaca v. Davao Lumber Company* - Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when "there is no appeal, nor any plain, speedy and adequate remedy in the course of law," this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of *certiorari* where the appeal is not an adequate remedy or equally beneficial, speedy and sufficient. **It is the inadequacy – not the mere absence – of all other legal remedies and the danger of failure of justice without the writ that must usually determine the propriety of *certiorari.***

2. ID.; ID.; ID.; ID.; WHEN *CERTIORARI* WAS ALLOWED DESPITE THE PRESENCE OF OTHER LEGAL REMEDIES.— Likewise, we enumerated in *Tan v. Court of*

Appeals, the instances where *certiorari* was allowed despite the presence of other legal remedies: It must also be stressed that **what is determinative of the propriety of *certiorari* is the danger of failure of justice without the writ, not the mere absence of all other legal remedies.** Thus, even when appeal is available and is the proper remedy, a writ of *certiorari* has been allowed when the orders of the lower court were issued either in excess of or without jurisdiction. *Certiorari* may also be availed of where an appeal would be slow, inadequate and insufficient and that to strictly observe the general rule would result in a miscarriage of justice. xxx.

3..ID.; CIVIL PROCEDURE; ACTIONS; DISMISSSAL; IN THE CASE AT BAR, THE DISMISSAL WITHOUT PREJUDICE OF THE COMPLAINT WAS NOT MERELY AN INTERLOCUTORY ORDER BUT A FINAL DISPOSITION OF THE COMPLAINT.— In the case at bar, as regards the February 3, 2003 and April 30, 2003 Orders, appeal had been available to assail them. In *Olympia International, Inc. v. Court of Appeals*, we held that: The dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such Order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint.

4. ID.; ID.; ID.; ID.; ID.; THE FAILURE OF THE LAND BANK OF THE PHILIPPINES (LBP) TO FILE AN APPEAL CAUSED THE RIGHT TO APPEAL THE FEBRUARY 3, 2003 AND APRIL 30, 2003 ORDERS TO LAPSE.— The February 3, 2003 and April 30, 2003 Orders, although without prejudice to the refiling of the action, nonetheless finally disposed of the Petition for Judicial Determination of Just Compensation docketed as Civil Case No. 3750, and are thus, appealable. The failure of LBP to file an appeal within fifteen days from its May 29, 2003 receipt of the April 30, 2003 Order caused the right to appeal this Order to lapse. This failure is not excused when LBP itself made the choice to refile the Petition for Judicial Determination of Just Compensation instead of appealing the Order dismissing the original one.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT A SUBSTITUTE FOR A LOST APPEAL; IN THE CASE AT

BAR, NEITHER SHOULD THE LBP BE ALLOWED TO FILE *CERTIORARI* TO ASSAIL THE FEBRUARY 3, 2003 AND APRIL 30, 2003 ORDERS.— At this point, neither should LBP be allowed to file a Petition for *Certiorari* to assail the February 3, 2003 and April 30, 2003 Orders since, as correctly ruled by the appellate court, *certiorari* cannot be a substitute for a lost appeal. Appeal, which had been available to LBP, became unavailable to it because of no other reason than the choice made by LBP itself. On the other hand, in assailing the June 30, 2003 Order, the remedies of a motion for reconsideration (with the RTC) and an appeal (to the Court of Appeals) had both been available to LBP when it received said Order. However, LBP opted instead to file a Petition for *Certiorari* with the Court of Appeals, apparently in order that it could assail not only the June 30, 2003 Order, but the February 3, 2003 and April 30, 2003 Orders as well. x x x We agree with the Court of Appeals that while the Petition for *Certiorari* filed by LBP before it originally assailed the February 3, April 30 and June 30, 2003 Orders of the RTC, the discussions on the February 3, 2003 and April 30, 2003 Orders (which deal with the dismissal of Civil Case No. 3750) have already been mooted. Civil Case No. 3750 was deemed to have been abandoned by LBP with its filing of the same Petition docketed as Civil Case No. 3785 and with its failure to appeal the February 3, 2003 and April 30, 2003 Orders.

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; SPECIAL AGRARIAN COURTS (SAC); HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS AND THE PROSECUTION OF ALL CRIMINAL OFFENSES UNDER R.A. NO. 6657.— Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, provides: "SEC. 56. *Special Agrarian Court.* — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court. The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts

which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations. The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts. The Special Agrarian Courts shall have the power, and prerogatives inherent in or belonging to the Regional Trial Courts. SEC. 57. *Special Jurisdiction.* % The Special Agrarian Courts shall have **original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

7. ID.; ID.; ID.; ID.; PROCEDURE FOR THE DETERMINATION OF COMPENSATION CASES UNDER R.A. NO. 6657.— Since the SAC statutorily exercises ***original*** and ***exclusive*** jurisdiction over all petitions for the determination of just compensation to landowners, it cannot be said that the decision of the adjudicator, if not appealed to the SAC, would be deemed final and executory, under all circumstances. Thus, in the aforementioned case of *Republic v. Court of Appeals*, the SAC dismissed the petition for determination of just compensation on the grounds that (1) the adjudicator's decision should have been appealed to the DARAB pursuant to the latter's rules of procedure as it was then worded; and (2) the petition had been filed more than fifteen days after notice of the decision of the adjudicator. This Court, in affirming the Decision of the Court of Appeals that the petition was improperly dismissed, held: Apart from the fact that only a statute can confer jurisdiction on courts and administrative agencies – rules of procedure cannot – it is noteworthy that the New Rules of Procedure of the DARAB, which was adopted on May 30, 1994, now provide that in the event a landowner is not satisfied with a decision of an agrarian adjudicator, the landowner can bring the matter directly to the Regional Trial Court sitting as Special Agrarian Court. Thus Rule XIII, §11 of the new rules provides: §11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* The decision of the Adjudicator on land valuation and preliminary determination and payment

of just compensation shall not *be appealable to the Board but shall be brought directly to the Regional Trial Courts* designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration. This is an acknowledgment by the DARAB that **the decision of just compensation cases for the taking of lands under R.A. No. 6657 is a power vested in the courts**. Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. **If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case.**

8. ID.; ID.; ID.; ID.; ID.; SECTION 11 OF THE 1994 DARAB RULES IS NOT INCOMPATIBLE WITH THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE SAC, AS THE COURT HELD IN AFFIRMING IN *PHILIPPINE VETERANS BANK V. COURT OF APPEALS* (379 PHIL. 141, 148-149) THE ORDER OF DISMISSAL OF A PETITION FOR DETERMINATION OF JUST COMPENSATION FOR HAVING BEEN FILED BEYOND THE FIFTEEN-DAY PERIOD UNDER SECTION 11 THEREOF.— Any speculation, however, that the fifteen-day period under Section 11 of the 1994 DARAB Rules had been invalidated by *Republic* was foreclosed when we affirmed in *Philippine Veterans Bank v. Court of Appeals* the order of dismissal of a petition for determination of just compensation for having been filed beyond the fifteen-day period under Section 11. In said case, we explained that section 11 is not incompatible with the original

and exclusive jurisdiction of the SAC: "As we held in *Republic v. Court of Appeals*, this rule [Section 11 of 1994 DARAB Rules of Procedure] is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts. The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action."

9. ID.; ID.; ID.; ID.; ID.; POLICY OF LIBERALLY ALLOWING PETITIONS FOR DETERMINATION OF JUST COMPENSATION, EVEN THOUGH THE PROCEDURE UNDER DARAB RULES HAVE NOT BEEN STRICTLY FOLLOWED, WHENEVER CIRCUMSTANCES SO WARRANT.— Notwithstanding this pronouncement, however, the statutorily mandated original and exclusive jurisdiction of the SAC led this Court to adopt, over the years, a policy of liberally allowing petitions for determination of just compensation, even though the procedure under DARAB rules have not been strictly followed, whenever circumstances so warrant: "1. In the 1999 case of *Land Bank of the Philippines v. Court of Appeals*, we held that the SAC properly acquired jurisdiction over the petition to determine just compensation filed by the landowner without waiting for the completion of DARAB's re-evaluation of the land. 2. In the 2004 case of *Land Bank of the Philippines v. Wycoco*, we allowed a direct

resort to the SAC even where no summary administrative proceedings have been held before the DARAB. 3. In the 2006 case of *Land Bank of the Philippines v. Celada*, this Court upheld the jurisdiction of the SAC despite the pendency of administrative proceedings before the DARAB. We held: It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation. 4. In the 2009 case of *Land Bank of the Philippines v. Belista*, this Court permitted a direct recourse to the SAC without an intermediate appeal to the DARAB as mandated under the new provision in the 2003 DARAB Rules of Procedure. We ruled: Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct resort to the SAC in cases involving petitions for the determination of just compensation. In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law. Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.

10. ID.; ID.; ID.; ID.; ID.; ID.; LAND BANK OF THE PHILIPPINES (LBP'S) REFILING OF ESSENTIALLY THE SAME PETITION (FOR JUDICIAL DETERMINATION OF JUST COMPENSATION) WITH A PROPER NON-FORUM SHOPPING CERTIFICATION WHILE THE EARLIER DISMISSAL ORDER HAD NOT ATTAINED FINALITY SHOULD HAVE BEEN ACCEPTED BY THE TRIAL COURT.— In the case at bar, the refiling of the Petition for Judicial Determination of Just Compensation was done within five days from the denial of the Motion for Reconsideration

of the order dismissing the original petition, during which time said dismissal could still be appealed to the Court of Appeals. The SAC even expressly recognized that the rules are silent as regards the period within which a complaint dismissed without prejudice may be refiled. The statutorily mandated original and exclusive jurisdiction of the SAC, as well as the above circumstances showing that LBP did not appear to have been sleeping on its rights in the allegedly belated refiling of the petition, lead us to assume a liberal construction of the pertinent rules. To be sure, LBP's intent to question the RARAD's valuation of the land became evident with the filing of the first petition for determination of just compensation within the period prescribed by the DARAB Rules. Although the first petition was dismissed without prejudice on a technicality, LBP's refiling of essentially the same petition with a proper non-forum shopping certification while the earlier dismissal order had not attained finality should have been accepted by the trial court.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Benjamin B. Padon for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Amended Decision[1] dated September 21, 2004 and Resolution[2] dated December 9, 2004 of the Court of Appeals in CA-G.R. SP No. 78237.

The spouses Joel and Felicidad Umandap were owners of an agricultural land in Sandoval and Mendoza, Roxas, Palawan, with an area of 412.6745 hectares. On August 8, 1989, the

[1] *Rollo*, pp. 72-78; penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Rebecca de Guia-Salvador and Arsenio J. Magpale, concurring.

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

Department of Agrarian Reform (DAR) placed 406.9003 hectares of the said land under the coverage of the Comprehensive Agrarian Reform Program (CARP). The DAR and the Land Bank of the Philippines (LBP) offered to compensate the spouses Umandap the amount of ₱2,512,879.88 for the land. The offer was later raised to ₱3,392,952.78.

Since the spouses Umandap rejected the offer and the parties failed to agree on the appropriate valuation, a summary administrative proceeding for the determination of just compensation was commenced before the DAR's Regional Agrarian Reform Adjudicator (RARAD) Conchita Minas. On **December 9, 2002**, Adjudicator Minas fixed the value of just compensation for the land at ₱23,909,608.86.

LBP, dissatisfied with the valuation, filed with the Regional Trial Court (RTC) of Palawan on **December 26, 2002** a Petition for Judicial Determination of Just Compensation. The Petition was docketed as **Civil Case No. 3750**.

The spouses Umandap filed a Motion to Dismiss the petition, alleging that LBP had no cause of action against them and that the petition failed to attach the proper certification against forum shopping. On February 3, 2003, the RTC issued its Order dismissing the petition on the ground that LBP failed to submit a proper certification against forum shopping. The RTC held that since LBP's Operation Center Manager for Region IV Atty. Delfin Macaraeg is neither an officer nor a director of LBP, he is not qualified to sign the certification without a board resolution delegating such authority to him.

On February 21, 2003, LBP filed a Motion for Reconsideration, attaching thereto a certification signed by LBP President Margarito B. Teves, confirming Atty. Macaraeg's authority to sign the certification. On April 30, 2003, the RTC denied the Motion. LBP received the denial Order on **May 29, 2003**.

On **June 3, 2003**, LBP refiled the Petition, attaching the following: (1) a copy of a special power of attorney executed by LBP Executive Vice President Alfonso B. Cruz designating

Atty. Macaraeg as its duly authorized representative to file the petition and sign the verification and certification against forum shopping; and (2) a resolution by the LBP board of directors allowing executive vice presidents (a) to file appropriate actions or petitions and sign their verifications and certifications against forum shopping before the proper judicial and quasi-judicial tribunals, and (b) to delegate such authority to any group head, regional head or any other responsible officer. The refiled Petition was docketed as **Civil Case No. 3785**.

The spouses Umandap filed a Motion to Dismiss anew, pointing out that Section 11, Rule XIII of the 1994 Department of Agrarian Reform Adjudication Board (DARAB) Rules of Procedure provides for a 15-day reglementary period for filing appeals from the Decision of the Adjudicator, and that the refiled petition was filed beyond this period.

On June 30, 2003, the RTC dismissed the petition, ruling that even though the previous dismissal was without prejudice, LBP nevertheless failed to refile the petition within the period allowed by the DARAB Rules and thus, the Adjudicator's Decision fixing the just compensation for the subject property attained finality.

LBP filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Orders dated February 3, 2003, April 30, 2003 and June 30, 2003.

On March 25, 2004, the Court of Appeals rendered its Decision[3] granting the Petition for *Certiorari*. In nullifying the three assailed Orders, the Court of Appeals ruled that the RTC committed grave abuse of discretion in initially dismissing the Petition for Judicial Determination of Just Compensation on the ground of non-compliance with the certification against forum shopping requirement. In doing so, the Court of Appeals applied *BA Savings Bank v. Sia*,[4] and *Robern Development Corporation*

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[3] *Rollo*, pp. 63-70; penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale, concurring.

[4] 391 Phil. 370, 378 (2000).

v. Quitain[5] wherein the Court allowed the respective corporations' counsels to sign the certification against forum shopping on the ground that they were in the best position to know and certify if a case had already been filed and pending with the courts. The Court of Appeals likewise cited this Court's ruling in *Shipside Incorporated v. Court of Appeals*[6] wherein we enumerated several cases where the belated filing of the certifications were allowed in exceptional circumstances.

The spouses Umandap filed a Motion for Reconsideration of the said Decision. On September 21, 2004, the Court of Appeals rendered the assailed Amended Decision recalling the March 25, 2004 Decision and this time, dismissing the Petition for *Certiorari*. The Court of Appeals held that the refiling of Civil Case No. 3750 as Civil Case No. 3785 caused all issues and discussions regarding the defective non-forum shopping certification of the complaint in Civil Case No. 3750 to be mooted. This being the situation, the Court of Appeals opined that the February 3, 2003 and April 30, 2003 Orders were no longer relevant to the Petition for *Certiorari* before it, leaving only one challenged order, the Order dated June 30, 2003 which dismissed Civil Case No. 3785, to be resolved.

The Court of Appeals proceeded to rule that the Petition for *Certiorari* before it should be dismissed on the following grounds:

1. *Certiorari* is not the proper remedy since the June 30, 2003 Order was with prejudice, as it is based on *res judicata*. The dismissal, therefore, is a final order against which appeal, not *certiorari*, is the proper remedy.[7]

2. The Adjudicator's Decision dated December 9, 2002, which was received by LBP on December 11, 2002, should be appealed to the RTC specially designated as Special Agrarian Courts (SAC) within 15 days from notice thereof. LBP timely filed Civil Case No. 3750 on December 26, 2002, the 15th and

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[5] 373 Phil. 773, 788 (1999).

[6] 404 Phil. 981, 995 (2001).

[7] *Rollo*, p. 75.

last day of the reglementary period. When the case was dismissed without prejudice and the Motion for Reconsideration of LBP was denied in a Resolution received by LBP on May 29, 2003, LBP should have either filed a Petition for *Certiorari* within 60 days from the receipt of the denial, or refiled the case the next day. As LBP failed to do either of these, the Adjudicator's Decision dated December 9, 2002 had already attained finality.[8]

3. *Certiorari* cannot be a substitute for lost appeal.[9]

4. There was no prior Motion for Reconsideration filed before the filing of the Petition for *Certiorari*.[10]

On October 13, 2004, LBP filed a Motion for Reconsideration of the Amended Decision. On December 9, 2004, the Court of Appeals denied the Motion.

On February 10, 2005, LBP filed this Petition for Review on *Certiorari*, based on the following assignment of errors:

FIRSTLY, THE COURT OF APPEALS ERRED IN HOLDING IN ITS AMENDED DECISION THAT THE TRIAL COURT'S JUNE 30, 2003 ORDER DISMISSING CIVIL CASE NO. 3785 IS BASED ON "BAR BY PRIOR JUDGMENT" OR *RES JUDICATA*;

SECONDLY, THE COURT OF APPEALS ERRED IN HOLDING IN ITS AMENDED DECISION THAT LANDBANK RE-FILED THE ACTION "THREE (3) DAYS BEYOND THE REGLEMENTARY (PRESCRIPTIVE) PERIOD THEREBY EFFECTIVELY RENDERING THE DARAB JUDGMENT FINAL AND EXECUTORY";

THIRDLY, THE COURT OF APPEALS, WITH ITS AMENDED DECISION, ERRED IN SETTING ASIDE ITS ORIGINAL DECISION GRANTING LANDBANK'S PETITION FOR *CERTIORARI*, IN REJECTING THEREWITH THE PROPRIETY OF SAID REMEDY FOR THE REASON THAT "IT CANNOT SUBSTITUTE FOR LOST APPEAL…" AND IN IMPUTING ON LANDBANK FAULT THEREFOR; and

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[8] *Id.* at 75-77.

[9] *Id.* at 77.

[10] *Id*.

FOURTHLY, THE COURT OF APPEALS ERRED IN HOLDING IN ITS AMENDED DECISION THAT LANDBANK'S PETITION FOR *CERTIORARI*, EVEN ASSUMING IT TO BE THE PROPER REMEDY, "WILL NOT PROSPER, SINCE NO PRIOR MOTION FOR RECONSIDERATION WAS TAKEN BEFORE FILING THEREOF."[11]

LBP additionally raises the following as the ultimate legal issue involved in this recourse:

WHETHER OR NOT AN ACTION RE-FILED WITHIN "FIVE DAYS" FROM RECEIPT OF THE ORDER DENYING MOTION FOR RECONSIDERATION [OF ITS DISMISSAL], WHICH ACTION WAS ORIGINALLY FILED ON TIME BUT DISMISSED "WITHOUT PREJUDICE" ON GROUND OF LACK OF DEFECTIVE CERTIFICATE OF NON-FORUM SHOPPING, IS BARRED BY PRESCRIPTION OR *RES JUDICATA*.[12]

Propriety of *Certiorari* in assailing the RTC Orders dismissing the Petition for Judicial Determination of Just Compensation

For clarity, the following are the pertinent dates necessary for the disposition of this case:

1. **December 9, 2002** – Adjudicator's Decision fixing just compensation;
2. **December 11, 2002** – LBP received the December 9, 2002 Decision;
3. **December 26, 2002** – LBP filed Petition for Judicial Determination of Just Compensation, which was docketed as Civil Case No. 3750;
4. **February 3, 2003** – RTC issued an Order dismissing Civil Case No. 3750 without prejudice;
5. **February 21, 2003** – LBP filed a Motion for Reconsideration, attaching certification;

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[11] *Id.* at 389-390, as stated in LBP's Memorandum.

[12] *Id*.

6. **April 30, 2003** – RTC issued an Order denying the Motion for Reconsideration;

7. **May 29, 2003** – LBP received the April 30, 2003 Order;

8. **June 3, 2003** – LBP refiled the Petition for Judicial Determination of Just Compensation, which was docketed as Civil Case No. 3785; and

9. **June 30, 2003** – RTC dismissed Civil Case No. 3785 on the ground that the DARAB Decision dated December 9, 2002 had become final.

We should also take note that on February 8, 2003, the 2003 DARAB Rules of Procedure took effect, amending the 1994 DARAB Rules of Procedure by providing, among other things, an appeal to the DARAB from the resolution of the adjudicator.[13] Neither the SAC nor the Court of Appeals discussed the amendment, as the same took effect after the original filing of the Petition for Judicial Determination of Just Compensation, and in fact even after the SAC already dismissed Civil Case No. 3750 without prejudice.

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[13] The 2003 DARAB Rules of Procedure provides:

Rule XIX.

Section 5. **Appeal**. – A party who disagrees with the resolution of the Adjudicator may bring the matter to the Board by filing with the Adjudicator concerned a Notice of Appeal within fifteen (15) days from receipt of the resolution. The filing of a Motion for Reconsideration of said resolution shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the appeal within the remaining period, but in no case shall it be less than five (5) days.

xxx xxx xxx

Section 6. **When Resolution Deemed Final**. – Failure on the part of the aggrieved party to contest the resolution of the Adjudicator within the aforecited reglementary period provided shall be deemed a concurrence by such party with the land valuation, hence, said valuation shall become final and executory.

Section 7. **Filing of Original Action with the Special Agrarian Court for Final Determination**. – The party who disagrees with the decision of the Board may contest the same by filing an original action with the Special Agrarian Court (SAC) having jurisdiction over the subject property within fifteen (15) days from his receipt of the Board's decision. x x x.

Petitioner LBP's first, third and fourth assignments of error deal with the Court of Appeals' ruling that the elevation of the case to it *via* a Petition for *Certiorari* was improper. The Court of Appeals held that since the June 30, 2003 Order was based on *res judicata,* it was rendered *with* prejudice, and is therefore a final order against which appeal, not *certiorari*, is the proper remedy. The Court of Appeals therefore added that *certiorari* cannot be a substitute for a lost appeal. Finally, the appellate court also considered the fact that there was no prior Motion for Reconsideration before the filing of the Petition for *Certiorari*.

These grounds relied upon by the Court of Appeals in asserting that *certiorari* is improper in the case at bar – namely (1) the pronouncement that appeal is the proper remedy, and (2) the failure of LBP to file a Motion for Reconsideration – both stem from the clause in Section 1, Rule 65 of the Rules of Court that requires that there must be "no appeal or any plain, speedy and adequate remedy in the ordinary course of law"[14] before a Petition for *Certiorari* may be filed. We explained the rationale and applicability of this clause in *Jaca v. Davao Lumber Company*[15]—

> Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when "there is no appeal, nor any plain, speedy and adequate remedy in the course of law," this rule is not without exception. The availability of the

[14] Section1, Rule 65 of the Rules of Court provides:

> Section 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, **and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[15] 198 Phil. 493 (1982).

ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of *certiorari* where the appeal is not an adequate remedy or equally beneficial, speedy and sufficient. **It is the inadequacy – not the mere absence – of all other legal remedies and the danger of failure of justice without the writ that must usually determine the propriety of *certiorari*.**[16] (Emphasis supplied.)

Likewise, we enumerated in *Tan v. Court of Appeals*[17] the instances where *certiorari* was allowed despite the presence of other legal remedies:

It must also be stressed that **what is determinative of the propriety of *certiorari* is the danger of failure of justice without the writ, not the mere absence of all other legal remedies.** Thus, even when appeal is available and is the proper remedy, a writ of *certiorari* has been allowed when the orders of the lower court were issued either in excess of or without jurisdiction. *Certiorari* may also be availed of where an appeal would be slow, inadequate and insufficient and that to strictly observe the general rule would result in a miscarriage of justice. x x x.[18] (Emphasis supplied.)

In the case at bar, as regards the February 3, 2003 and April 30, 2003 Orders, appeal had been available to assail them. In *Olympia International, Inc. v. Court of Appeals*,[19] we held that:

The dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such Order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint.[20]

The February 3, 2003 and April 30, 2003 Orders, although without prejudice to the refiling of the action, nonetheless finally disposed of the Petition for Judicial Determination of Just

[16] *Id.* at 517.

[17] 341 Phil. 570 (1997).

[18] *Id.* at 578.

[19] 259 Phil. 841 (1989).

[20] *Id.* at 849-850.

Compensation docketed as Civil Case No. 3750, and are thus, appealable. The failure of LBP to file an appeal within fifteen days from its May 29, 2003 receipt of the April 30, 2003 Order caused the right to appeal this Order to lapse. This failure is not excused when LBP itself made the choice to refile the Petition for Judicial Determination of Just Compensation instead of appealing the Order dismissing the original one. At this point, neither should LBP be allowed to file a Petition for *Certiorari* to assail the February 3, 2003 and April 30, 2003 Orders since, as correctly ruled by the appellate court, *certiorari* cannot be a substitute for a lost appeal. Appeal, which had been available to LBP, became unavailable to it because of no other reason than the choice made by LBP itself.

On the other hand, in assailing the June 30, 2003 Order, the remedies of a motion for reconsideration (with the RTC) and an appeal (to the Court of Appeals) had both been available to LBP when it received said Order. However, LBP opted instead to file a Petition for *Certiorari* with the Court of Appeals, apparently in order that it could assail not only the June 30, 2003 Order, but the February 3, 2003 and April 30, 2003 Orders as well. The question that thus arises is whether an appeal and/or a motion for reconsideration from the June 30, 2003 Order, although available, are nevertheless inadequate, or if there is a danger of failure or miscarriage of justice without the writ.

On this regard, LBP submits that the RTC, designated as SAC, is abdicating its authority and duty in its refusal to determine on the merits the just compensation due to the spouses Umandap, considering that adjudicators are empowered to determine the same only in a preliminary manner. Hence, LBP argued in its Petition that:

> 3.01 The trial court *a quo*, as a Special Agrarian Court (SAC) has the authority and duty to examine, investigate and ascertain the facts of the case on its own or through commissioners. This necessarily requires a determination on the merits independent of the finding and decision of the DARAB Adjudicator. Hence, its questioned Order dated June 30, 2003 (Annex "L") did not only unduly dismissed the action of petitioner but expressly adopted the decision of Adjudicator

Minas. But what DARAB adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the court the ultimate power to decide (*Escano vs. C.A., 323 SCRA 79*). The trial court *a quo* thereby abdicates said authority and duty and subverts its "original and exclusive" jurisdiction as a designated Special Agrarian Court (Vide, *Republic vs. Court of Appeals, 263 SCRA 758*).[21]

After a careful deliberation on this matter, this Court resolves that the novel issues presented by this Petition, particularly those dealing with the original and exclusive jurisdiction of the SAC in the determination of just compensation in agrarian reform cases, demand a meticulous review of the rules pertinent to the case at bar. This Court is of the view that at the very core of this case is a jurisdictional issue, one not reviewable in an ordinary appeal, to wit: *considering our previous pronouncement that adjudicators are empowered only to determine in a preliminary manner the reasonable compensation to be paid to the landowners, leaving to the court the ultimate power to decide, and considering the original and exclusive jurisdiction of the SAC in the determination of just compensation, did the SAC act without jurisdiction in outrightly dismissing the petition for the determination of just compensation*?

Original and Exclusive Jurisdiction of Special Agrarian Courts to Determine Just Compensation

We agree with the Court of Appeals that while the Petition for *Certiorari* filed by LBP before it originally assailed the February 3, April 30 and June 30, 2003 Orders of the RTC, the discussions on the February 3, 2003 and April 30, 2003 Orders (which deal with the dismissal of Civil Case No. 3750) have already been mooted. Civil Case No. 3750 was deemed to have been abandoned by LBP with its filing of the same Petition docketed as Civil Case No. 3785 and with its failure to appeal the February 3, 2003 and April 30, 2003 Orders.

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[21] *Rollo*, p. 51.

In dismissing Civil Case No. 3785, the Court of Appeals affirmed the SAC when it applied Section 11, Rule XIII of the 1994 DARAB Rules of Procedure which provides that:

> Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from notice thereof. x x x.

The Court of Appeals held that since the decision of the adjudicator in the case at bar was received by LBP on December 11, 2002, the appeal to the SAC should be filed on or before December 26, 2002. The original Petition docketed as Civil Case No. 3750 was indeed filed on the last day of the period, December 26, 2002. However, Civil Case No. 3750 was dismissed without prejudice, and the Motion for Reconsideration on the Dismissal Order was denied.

According to the appellate court, the case should have been refiled on the day following the receipt of the denial of the Motion for Reconsideration on the Dismissal Order, offering only as explanation that "a dismissal without prejudice should be refiled within the reglementary (prescriptive) period."[22] Petitioner LBP, on the other hand, argues that it should be allowed to refile the case within five days from the denial of said Motion. LBP asserts in the Petition that:

> 3.07 The SAC/trial court *a quo*, while it made the above justifications for its dismissal of the re-filed petition in its Order dated June 30, 2003 (Annex "L"), expressly recognized that "(T)he Rules of Court are silent as to the period within which a complaint dismissed without prejudice may be re-filed." With this observation, the court should not have faulted or prejudiced petitioner LANDBANK when it re-filed its petition five (5) days after its receipt of the Order denying its motion for reconsideration of the dismissal of the original petition. There being no rule squarely applicable, the trial court should have given due course to the re-filed petition by

[22] *Id.* at 76.

applying, by analogy, the rule that whenever a motion to dismiss is denied the movant is allowed in any event to file his answer within the remaining period but not less than five (5) days (*vide*, Sec. 4, Rule 16, Rules of Court).[23]

As discussed above, LBP likewise points out that a liberal construction of the rules towards the determination of the issues on the merits is even more critical than usual in the case at bar in light of our pronouncements in *Republic v. Court of Appeals*,[24] which were reiterated in *Escaño, Jr. v. Court of Appeals*:[25]

> Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provision of Section 50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. **The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657)** and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* we held that **the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies**, while in *Scoty's Department Store v. Micaller* we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act.[26]

Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, likewise provides:

> SEC. 56. *Special Agrarian Court.* — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

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[23] *Id.* at 54.

[24] 331 Phil. 1070 (1996).

[25] 380 Phil. 20, 26-27 (2000).

[26] *Republic v. Court of Appeals*, *supra* note 24 at 1075-1076.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

The Special Agrarian Courts shall have the power, and prerogatives inherent in or belonging to the Regional Trial Courts.

SEC. 57. *Special Jurisdiction.*— The Special Agrarian Courts shall have **original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied.)

Since the SAC statutorily exercises ***original*** and ***exclusive*** jurisdiction over all petitions for the determination of just compensation to landowners, it cannot be said that the decision of the adjudicator, if not appealed to the SAC, would be deemed final and executory, under all circumstances.

Thus, in the aforementioned case of *Republic v. Court of Appeals*, the SAC dismissed the petition for determination of just compensation on the grounds that (1) the adjudicator's decision should have been appealed to the DARAB pursuant to the latter's rules of procedure as it was then worded; and (2) the petition had been filed more than fifteen days after notice of the decision of the adjudicator. This Court, in affirming the Decision of the Court of Appeals that the petition was improperly dismissed, held:

Apart from the fact that only a statute can confer jurisdiction on courts and administrative agencies – rules of procedure cannot – it

is noteworthy that the New Rules of Procedure of the DARAB, which was adopted on May 30, 1994, now provide that in the event a landowner is not satisfied with a decision of an agrarian adjudicator, the landowner can bring the matter directly to the Regional Trial Court sitting as Special Agrarian Court. Thus Rule XIII, §11 of the new rules provides:

> §11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not *be appealable to the Board but shall be brought directly to the Regional Trial Courts* designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration. (Italics supplied)

This is an acknowledgment by the DARAB that **the decision of just compensation cases for the taking of lands under R.A. No. 6657 is a power vested in the courts.**

Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. **If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case.** In the terminology of §57, the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC and appellate court for the review of administrative decisions.

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. **Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question**.[27] (Emphases supplied.)

It can be observed that in *Republic*, while this Court expressly stated that any effort to convert the original jurisdiction of the RTCs into appellate jurisdiction would be void, there was no pronouncement invalidating Rule XIII, Section 11 of the New Rules of Procedure of the DARAB, which is the source of the fifteen-day period to *appeal* the adjudicator's valuation to the SAC. Nevertheless, the Court affirmed the nullity of the dismissal order despite the fact that the petition for just compensation therein was filed beyond the said fifteen-day period. Said rule was not invalidated because, as this Court held in the same case, the procedure wherein the landowner (or the DAR, as the case may be) who does not agree to the price fixed may bring the matter to the RTC acting as SAC is, in essence, the procedure for the determination of compensation cases under Republic Act No. 6657.[28]

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[27] *Id.* at 1076-1078.

[28] Republic Act No. 6657 provides:

SEC. 16. *Procedure for Acquisition of Private Lands.*— For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

Any speculation, however, that the fifteen-day period under Section 11 of the 1994 DARAB Rules had been invalidated by *Republic* was foreclosed when we affirmed in *Philippine Veterans Bank v. Court of Appeals*[29] the order of dismissal of a petition for determination of just compensation for having been filed beyond the fifteen-day period under Section 11. In said case, we explained that section 11 is not incompatible with the original and exclusive jurisdiction of the SAC:

As we held in *Republic v. Court of Appeals*, this rule [Section 11 of 1994 DARAB Rules of Procedure] is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination

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(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowners, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[29] 379 Phil. 141 (2000).

of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[30]

Notwithstanding this pronouncement, however, the statutorily mandated original and exclusive jurisdiction of the SAC led this Court to adopt, over the years, a policy of liberally allowing petitions for determination of just compensation, even though the procedure under DARAB rules have not been strictly followed, whenever circumstances so warrant:

1. In the 1999 case of *Land Bank of the Philippines v. Court of Appeals*,[31] we held that the SAC properly acquired jurisdiction over the petition to determine just compensation filed by the landowner without waiting for the completion of DARAB's re-evaluation of the land.

2. In the 2004 case of *Land Bank of the Philippines v. Wycoco*,[32] we allowed a direct resort to the SAC even where no summary administrative proceedings have been held before the DARAB.

3. In the 2006 case of *Land Bank of the Philippines v. Celada*,[33] this Court upheld the jurisdiction of the SAC despite

[30] *Id.* at 148-149.

[31] 376 Phil. 252 (1999).

[32] 464 Phil. 83 (2004).

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

the pendency of administrative proceedings before the DARAB. We held:

> It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.[34]

4. In the 2009 case of *Land Bank of the Philippines v. Belista*,[35] this Court permitted a direct recourse to the SAC without an intermediate appeal to the DARAB as mandated under the new provision in the 2003 DARAB Rules of Procedure. We ruled:

> Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct resort to the SAC in cases involving petitions for the determination of just compensation. In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law. Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.[36]

In the case at bar, the refiling of the Petition for Judicial Determination of Just Compensation was done within five days from the denial of the Motion for Reconsideration of the order dismissing the original petition, during which time said dismissal could still be appealed to the Court of Appeals. The SAC even expressly recognized that the rules are silent as regards the period

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[34] *Id.* at 504-505.

[35] G.R. No. 164631, June 26, 2009, 591 SCRA 137.

[36] *Id.* at 148.

within which a complaint dismissed without prejudice may be refiled. The statutorily mandated original and exclusive jurisdiction of the SAC, as well as the above circumstances showing that LBP did not appear to have been sleeping on its rights in the allegedly belated refiling of the petition, lead us to assume a liberal construction of the pertinent rules. To be sure, LBP's intent to question the RARAD's valuation of the land became evident with the filing of the first petition for determination of just compensation within the period prescribed by the DARAB Rules. Although the first petition was dismissed without prejudice on a technicality, LBP's refiling of essentially the same petition with a proper non-forum shopping certification while the earlier dismissal order had not attained finality should have been accepted by the trial court.

In view of the foregoing, we rule that the RTC acted without jurisdiction in hastily dismissing said refiled Petition. Accordingly, the Petition for *Certiorari* before the Court of Appeals assailing this dismissal should be granted.

WHEREFORE, the Amended Decision dated September 21, 2004 and Resolution dated December 9, 2004 of the Court of Appeals in CA-G.R. SP No. 78237 are hereby *SET ASIDE*. The Regional Trial Court, Branch 49, Puerto Princesa City, is directed to *REINSTATE* Land Bank of the Philippines' Petition for Judicial Determination of Just Compensation and to conduct proper proceedings thereon.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

[*] Per Special Order No. 913 dated November 2, 2010.

SECOND DIVISION

[G.R. No. 167715. November 17, 2010]

PHIL PHARMAWEALTH, INC., *petitioner, vs.* **PFIZER, INC. and PFIZER (PHIL.), INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY; PATENTS; RIGHTS OF PATENTEES; LAW RELEVANT IN CASE AT BAR.— Section 37 of Republic Act No. (RA) 165, which was the governing law at the time of the issuance of respondents' patent, provides: **Section. 37.** ***Rights of patentees.*** **-** A patentee shall have the exclusive right to make, use and sell the patented machine, article or product, and to use the patented process for the purpose of industry or commerce, throughout the territory of the Philippines **for the term of the patent**; and such making, using, or selling by any person without the authorization of the patentee constitutes infringement of the patent.

2. ID.; ID.; ID.; ID.; ID.; RIGHT OF A PATENTEE TO MAKE, USE AND SELL A PATENTED PRODUCT, ARTICLE OR PROCESS EXISTS ONLY DURING THE TERM OF THE PATENT; CASE AT BAR.— It is clear from the above-quoted provision of law that the exclusive right of a patentee to make, use and sell a patented product, article or process exists only during the term of the patent. In the instant case, Philippine Letters Patent No. 21116, which was the basis of respondents in filing their complaint with the BLA-IPO, was issued on July 16, 1987. This fact was admitted by respondents themselves in their complaint. They also admitted that the validity of the said patent is until July 16, 2004, which is in conformity with Section 21 of RA 165, providing that the term of a patent shall be seventeen (17) years from the date of issuance thereof. Section 4, Rule 129 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof and

that the admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. In the present case, there is no dispute as to respondents' admission that the term of their patent expired on July 16, 2004. Neither is there evidence to show that their admission was made through palpable mistake. Hence, contrary to the pronouncement of the CA, there is no longer any need to present evidence on the issue of expiration of respondents' patent. On the basis of the foregoing, the Court agrees with petitioner that after July 16, 2004, respondents no longer possess the exclusive right to make, use and sell the articles or products covered by Philippine Letters Patent No. 21116.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; WRIT OF PRELIMINARY INJUNCTION; REQUIREMENTS FOR ISSUANCE THEREOF.—Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, x x x: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

4. ID.; ID.; ID.; ID.; ID.; WHEN THE WRIT MAY BE ISSUED *EX PARTE;* CASE AT BAR.— In this connection, pertinent portions of Section 5, Rule 58 of the same Rules provide that if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, a temporary restraining order may be issued *ex parte*. From the foregoing, it can be inferred that two requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage. In the instant case, it is clear that when the CA issued its January

18, 2005 Resolution approving the bond filed by respondents, the latter no longer had a right that must be protected, considering that Philippine Letters Patent No. 21116 which was issued to them already expired on July 16, 2004. Hence, the issuance by the CA of a temporary restraining order in favor of the respondents is not proper. In fact, the CA should have granted petitioner's motion to dismiss the petition for *certiorari* filed before it as the only issue raised therein is the propriety of extending the writ of preliminary injunction issued by the BLA-IPO (Bureau of Legal Affairs of the Intellectual Property Office). Since the patent which was the basis for issuing the injunction, was no longer valid, any issue as to the propriety of extending the life of the injunction was already rendered moot and academic.

5. COMMERCIAL LAW; INTELLECTUAL PROPERTY; RA NO. 8293; INTELLECTUAL PROPERTY OFFICE; DIRECTOR GENERAL THEREOF HAS EXCLUSIVE APPELLATE JURISDICTION OVER DECISIONS OF THE DIRECTOR OF THE BUREAU OF LEGAL AFFAIRS OFFICE OF THE INTELLECTUAL PROPERTY OFFICE (BLA-IPO); CASE AT BAR.— It is true that under Section 7(b) of RA 8293, otherwise known as the *Intellectual Property Code of the Philippines*, which is the presently prevailing law, the Director General of the IPO exercises exclusive appellate jurisdiction over all decisions rendered by the Director of the BLA-IPO. x x x Based on the foregoing, the Court finds that respondents' initial filing of their complaint with the BLA-IPO, instead of the regular courts, is in keeping with the doctrine of primary jurisdiction owing to the fact that the determination of the basic issue of whether petitioner violated respondents' patent rights requires the exercise by the IPO of sound administrative discretion which is based on the agency's special competence, knowledge and experience. x x x However, what is being questioned before the CA is not a decision, but an interlocutory order of the BLA-IPO denying respondents' motion to extend the life of the preliminary injunction issued in their favor. x x x The propriety of extending the life of the writ of preliminary injunction issued by the BLA-IPO in the exercise of its quasi-judicial power is no longer a matter that falls within the jurisdiction of the said administrative agency, particularly that of its Director General. The resolution of this issue which

was raised before the CA does not demand the exercise by the IPO of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. It is settled that one of the exceptions to the doctrine of primary jurisdiction is where the question involved is purely legal and will ultimately have to be decided by the courts of justice.

6. ID.; ID.; ID.; ID.; ID.; NO REMEDY AVAILABLE FOR INTERLOCUTORY ORDER ISSUED BY BLA-IPO UNDER RA NO. 8293.— RA 8293 is silent with respect to any remedy available to litigants who intend to question an interlocutory order issued by the BLA-IPO. Moreover, Section 1(c), Rule 14 of the Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights simply provides that interlocutory orders shall not be appealable. The said Rules and Regulations do not prescribe a procedure within the administrative machinery to be followed in assailing orders issued by the BLA-IPO pending final resolution of a case filed with them.

7. ID.; ID.; ID.; ID.; ID.; ID.; APPLICABILITY OF THE RULES OF COURT IN A SUPPLETORY MANNER; PROPER REMEDY TO QUESTION INTERLOCUTORY ORDERS OF THE BLA-IPO, IS TO FILE A SPECIAL CIVIL ACTION FOR *CERTIORARI* WITH THE CA; CASE AT BAR.— Hence, in the absence of such a remedy, the provisions of the Rules of Court shall apply in a suppletory manner, as provided under Section 3, Rule 1 of the same Rules and Regulations. Hence, in the present case, respondents correctly resorted to the filing of a special civil action for *certiorari* with the CA to question the assailed Orders of the BLA-IPO, as they cannot appeal therefrom and they have no other plain, speedy and adequate remedy in the ordinary course of law. This is consistent with Sections 1 and 4, Rule 65 of the Rules of Court, as amended.

8. POLITICAL LAW; JUDICIARY; JUDICIAL POWER; COURTS HAVE AUTHORITY TO DETERMINE VALIDITY OF ACTS OF POLITICAL DEPARTMENTS; CASE AT BAR.— It bears to reiterate that the judicial power of the courts, as provided for under the Constitution, includes the authority of the courts to determine in an appropriate action the validity of the acts

of the political departments. Judicial power also includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Hence, the CA, and not the IPO Director General, has jurisdiction to determine whether the BLA-IPO committed grave abuse of discretion in denying respondents' motion to extend the effectivity of the writ of preliminary injunction which the said office earlier issued.

9. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; ELEMENTS THEREOF.— Forum shopping is defined as the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of *certiorari*), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The elements of forum shopping are: (a) identity of parties, or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

10. ID.; ID.; ID.; ID.; ID.; PRESENT WHEN SUBSTANTIALLY SAME RELIEFS ARE SOUGHT IN SEPARATE COMPLAINTS TO ACCOMPLISH THE SAME OBJECTIVE; CASE AT BAR.— Section 2, Rule 2 of the Rules of Court defines a cause of action as the act or omission by which a party violates a right of another. In the instant case, respondents' cause of action in their complaint filed with the IPO is the alleged act of petitioner in importing, distributing, selling or offering for sale Sulbactam Ampicillin products, acts that are supposedly violative of respondents' right to the exclusive sale of the said products which are covered by the latter's patent. However, a careful reading of the complaint filed with the RTC of Makati City would show that respondents

have the same cause of action as in their complaint filed with the IPO. They claim that they have the exclusive right to make, use and sell Sulbactam Ampicillin products and that petitioner violated this right. Thus, it does not matter that the patents upon which the complaints were based are different. The fact remains that in both complaints the rights violated and the acts violative of such rights are identical. In fact, respondents seek substantially the same reliefs in their separate complaints with the IPO and the RTC for the purpose of accomplishing the same objective. It is settled by this Court in several cases that the filing by a party of two apparently different actions but with the same objective constitutes forum shopping.

11. ID.; ID.; ID.; ID.; ID.; ID.; RESPONDENTS GUILTY OF FORUM SHOPPING IN CASE AT BAR.— It is clear from the foregoing that the ultimate objective which respondents seek to achieve in their separate complaints filed with the RTC and the IPO, is to ask for damages for the alleged violation of their right to exclusively sell Sulbactam Ampicillin products and to permanently prevent or prohibit petitioner from selling said products to any entity. Owing to the substantial identity of parties, reliefs and issues in the IPO and RTC cases, a decision in one case will necessarily amount to *res judicata* in the other action. It bears to reiterate that what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issue. Thus, the Court agrees with petitioner that respondents are indeed guilty of forum shopping.

12. ID.; ID.; ID.; ID.; EFFECT WHEN FORUM SHOPPING CONSIDERED DELIBERATE AND WHEN NOT DELIBERATE; CASE AT BAR.—Jurisprudence holds that if the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata*. However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice. In the present case, the Court finds that respondents

did not deliberately violate the rule on non-forum shopping. Respondents may not be totally blamed for erroneously believing that they can file separate actions simply on the basis of different patents. Moreover, in the suit filed with the RTC of Makati City, respondents were candid enough to inform the trial court of the pendency of the complaint filed with the BLA-IPO as well as the petition for *certiorari* filed with the CA. On these bases, only Civil Case No. 04-754 should be dismissed on the ground of *litis pendentia*.

APPEARANCES OF COUNSEL

Jorge Cesar M. Sandiego for petitioner.
Castillo Laman Tan Pantaleon and San Jose for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Resolutions dated January 18, 2005[1] and April 11, 2005[2] by the Court of Appeals (CA) in CA-G.R. SP No. 82734.

The instant case arose from a Complaint[3] for patent infringement filed against petitioner Phil Pharmawealth, Inc. by respondent companies, Pfizer, Inc. and Pfizer (Phil.), Inc., with the Bureau of Legal Affairs of the Intellectual Property Office (BLA-IPO). The Complaint alleged as follows:

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6. Pfizer is the registered owner of Philippine Letters Patent No. 21116 (the "Patent") which was issued by this Honorable Office on July 16, 1987. The patent is valid until July 16, 2004. The claims of this Patent are directed to "a method of increasing the effectiveness

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring; *rollo*, pp. 121-122.

[2] *Id.* at 144-148.

[3] *Rollo*, pp. 62-73.

of a beta-lactam antibiotic in a mammalian subject, which comprises co-administering to said subject a beta-lactam antibiotic effectiveness increasing amount of a compound of the formula IA." The scope of the claims of the Patent extends to a combination of penicillin such as ampicillin sodium and beta-lactam antibiotic like sulbactam sodium.

7. Patent No. 21116 thus covers ampicillin sodium/sulbactam sodium (hereafter "Sulbactam Ampicillin"). Ampicillin sodium is a specific example of the broad beta-lactam antibiotic disclosed and claimed in the Patent. It is the compound which efficacy is being enhanced by co-administering the same with sulbactam sodium. Sulbactam sodium, on the other hand, is a specific compound of the formula IA disclosed and claimed in the Patent.

8. Pfizer is marketing Sulbactam Ampicillin under the brand name "Unasyn." Pfizer's "Unasyn" products, which come in oral and IV formulas, are covered by Certificates of Product Registration ("CPR") issued by the Bureau of Food and Drugs ("BFAD") under the name of complainants. The sole and exclusive distributor of "Unasyn" products in the Philippines is Zuellig Pharma Corporation, pursuant to a Distribution Services Agreement it executed with Pfizer Phils. on January 23, 2001.

9. Sometime in January and February 2003, complainants came to know that respondent [herein petitioner] submitted bids for the supply of Sulbactam Ampicillin to several hospitals without the consent of complainants and in violation of the complainants' intellectual property rights. x x x

xxx xxx xxx

10. Complainants thus wrote the above hospitals and demanded that the latter immediately cease and desist from accepting bids for the supply [of] Sulbactam Ampicillin or awarding the same to entities other than complainants. Complainants, in the same letters sent through undersigned counsel, also demanded that respondent immediately withdraw its bids to supply Sulbactam Ampicillin.

11. In gross and evident bad faith, respondent and the hospitals named in paragraph 9 hereof, willfully ignored complainants' just, plain and valid demands, refused to comply therewith and continued to infringe the Patent, all to the damage and prejudice of complainants. As registered owner of the Patent, Pfizer is entitled to protection under Section 76 of the IP Code.

xxx xxx xxx[4]

Respondents prayed for permanent injunction, damages and the forfeiture and impounding of the alleged infringing products. They also asked for the issuance of a temporary restraining order and a preliminary injunction that would prevent herein petitioner, its agents, representatives and assigns, from importing, distributing, selling or offering the subject product for sale to any entity in the Philippines.

In an Order[5] dated July 15, 2003 the BLA-IPO issued a preliminary injunction which was effective for ninety days from petitioner's receipt of the said Order.

Prior to the expiration of the ninety-day period, respondents filed a Motion for Extension of Writ of Preliminary Injunction[6] which, however, was denied by the BLA-IPO in an Order[7] dated October 15, 2003.

Respondents filed a Motion for Reconsideration but the same was also denied by the BLA-IPO in a Resolution[8] dated January 23, 2004.

Respondents then filed a special civil action for *certiorari* with the CA assailing the October 15, 2003 and January 23, 2004 Resolutions of the BLA-IPO. Respondents also prayed for the issuance of a preliminary mandatory injunction for the reinstatement and extension of the writ of preliminary injunction issued by the BLA-IPO.

While the case was pending before the CA, respondents filed a Complaint[9] with the Regional Trial Court (RTC) of Makati City for infringement and unfair competition with damages against

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[4] *Id.* at 64-66.

[5] Annex "E" to Petition, *rollo*, pp. 74-75.

[6] CA *rollo*, pp. 154-157.

[7] Annex "F" to Petition, *rollo*, pp. 76-77.

[8] CA *rollo*, pp. 32-33.

[9] Annex "I" to Petition, *rollo*, pp. 105-116.

herein petitioner. In said case, respondents prayed for the issuance of a temporary restraining order and preliminary injunction to prevent herein petitioner from importing, distributing, selling or offering for sale sulbactam ampicillin products to any entity in the Philippines. Respondents asked the trial court that, after trial, judgment be rendered awarding damages in their favor and making the injunction permanent.

On August 24, 2004, the RTC of Makati City issued an Order[10] directing the issuance of a temporary restraining order conditioned upon respondents' filing of a bond.

In a subsequent Order[11] dated April 6, 2005, the same RTC directed the issuance of a writ of preliminary injunction "prohibiting and restraining [petitioner], its agents, representatives and assigns from importing, distributing or selling Sulbactam Ampicillin products to any entity in the Philippines."

Meanwhile, on November 16, 2004, petitioner filed a Motion to Dismiss[12] the petition filed with the CA on the ground of forum shopping, contending that the case filed with the RTC has the same objective as the petition filed with the CA, which is to obtain an injunction prohibiting petitioner from importing, distributing and selling Sulbactam Ampicillin products.

On January 18, 2005, the CA issued its questioned Resolution[13] approving the bond posted by respondents pursuant to the Resolution issued by the appellate court on March 23, 2004 which directed the issuance of a temporary restraining order conditioned upon the filing of a bond. On even date, the CA issued a temporary restraining order[14] which prohibited petitioner "from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to any hospital or to any other entity in the

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[10] Records, Vol. 1, p. 382.

[11] Annex "J" to Petition, *rollo*, pp. 117-119.

[12] CA *rollo*, pp. 379-388.

[13] Annex "K" to Petition, *rollo*, pp. 121-122.

[14] Annex "K-1" to Petition, *rollo*, pp. 123-124.

Philippines, or from infringing Pfizer Inc.'s Philippine Patent No. 21116 and impounding all the sales invoices and other documents evidencing sales by [petitioner] of Sulbactam Ampicillin products."

On February 7, 2005, petitioner again filed a Motion to Dismiss[15] the case for being moot and academic, contending that respondents' patent had already lapsed. In the same manner, petitioner also moved for the reconsideration of the temporary restraining order issued by the CA on the same basis that the patent right sought to be protected has been extinguished due to the lapse of the patent license and on the ground that the CA has no jurisdiction to review the order of the BLA-IPO as said jurisdiction is vested by law in the Office of the Director General of the IPO.

On April 11, 2005, the CA rendered its presently assailed Resolution denying the Motion to Dismiss, dated November 16, 2004, and the motion for reconsideration, as well as Motion to Dismiss, both dated February 7, 2005.

Hence, the present petition raising the following issues:

a) Can an injunctive relief be issued based on an action of patent infringement when the patent allegedly infringed has already lapsed?

b) What tribunal has jurisdiction to review the decisions of the Director of Legal Affairs of the Intellectual Property Office?

c) Is there forum shopping when a party files two actions with two seemingly different causes of action and yet pray for the same relief?[16]

In the first issue raised, petitioner argues that respondents' exclusive right to monopolize the subject matter of the patent exists only within the term of the patent. Petitioner claims that since respondents' patent expired on July 16, 2004, the latter no longer possess any right of monopoly and, as such, there is

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[15] CA *rollo*, pp. 428-435.

[16] *Rollo*, pp. 11-12.

no more basis for the issuance of a restraining order or injunction against petitioner insofar as the disputed patent is concerned.

The Court agrees.

Section 37 of Republic Act No. (RA) 165,[17] which was the governing law at the time of the issuance of respondents' patent, provides:

> **Section 37.** ***Rights of patentees.***— A patentee shall have the exclusive right to make, use and sell the patented machine, article or product, and to use the patented process for the purpose of industry or commerce, throughout the territory of the Philippines **for the term of the patent**; and such making, using, or selling by any person without the authorization of the patentee constitutes infringement of the patent.[18]

It is clear from the above-quoted provision of law that the exclusive right of a patentee to make, use and sell a patented product, article or process exists only during the term of the patent. In the instant case, Philippine Letters Patent No. 21116, which was the basis of respondents in filing their complaint with the BLA-IPO, was issued on July 16, 1987. This fact was admitted by respondents themselves in their complaint. They also admitted that the validity of the said patent is until July 16, 2004, which is in conformity with Section 21 of RA 165, providing that the term of a patent shall be seventeen (17) years from the date of issuance thereof. Section 4, Rule 129 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof and that the admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. In the present case, there is no dispute as to respondents' admission that the term of their patent expired on July 16, 2004. Neither is there evidence to show that their admission was made through palpable mistake. Hence, contrary to the pronouncement of the CA, there is no

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[17] An Act Creating a Patent Office, Prescribing its Powers and Duties, Regulating the Issuance of Patents and Appropriating Funds Therefor.

[18] Emphasis supplied.

longer any need to present evidence on the issue of expiration of respondents' patent.

On the basis of the foregoing, the Court agrees with petitioner that after July 16, 2004, respondents no longer possess the exclusive right to make, use and sell the articles or products covered by Philippine Letters Patent No. 21116.

Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*:

> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In this connection, pertinent portions of Section 5, Rule 58 of the same Rules provide that if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, a temporary restraining order may be issued *ex parte*.

From the foregoing, it can be inferred that two requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[19]

In the instant case, it is clear that when the CA issued its January 18, 2005 Resolution approving the bond filed by

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[19] *Angeles City v. Angeles City Electric Corporation*, G.R. No. 166134, June 29, 2010.

respondents, the latter no longer had a right that must be protected, considering that Philippine Letters Patent No. 21116 which was issued to them already expired on July 16, 2004. Hence, the issuance by the CA of a temporary restraining order in favor of the respondents is not proper.

In fact, the CA should have granted petitioner's motion to dismiss the petition for *certiorari* filed before it as the only issue raised therein is the propriety of extending the writ of preliminary injunction issued by the BLA-IPO. Since the patent which was the basis for issuing the injunction, was no longer valid, any issue as to the propriety of extending the life of the injunction was already rendered moot and academic.

As to the second issue raised, the Court, is not persuaded by petitioner's argument that, pursuant to the doctrine of primary jurisdiction, the Director General of the IPO and not the CA has jurisdiction to review the questioned Orders of the Director of the BLA-IPO.

It is true that under Section 7(b) of RA 8293, otherwise known as the *Intellectual Property Code of the Philippines*, which is the presently prevailing law, the Director General of the IPO exercises exclusive appellate jurisdiction over all decisions rendered by the Director of the BLA-IPO. However, what is being questioned before the CA is not a decision, but an interlocutory order of the BLA-IPO denying respondents' motion to extend the life of the preliminary injunction issued in their favor.

RA 8293 is silent with respect to any remedy available to litigants who intend to question an interlocutory order issued by the BLA-IPO. Moreover, Section 1(c), Rule 14 of the Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights simply provides that interlocutory orders shall not be appealable. The said Rules and Regulations do not prescribe a procedure within the administrative machinery to be followed in assailing orders issued by the BLA-IPO pending final resolution of a case filed with them. Hence, in the absence of such a remedy, the provisions

of the Rules of Court shall apply in a suppletory manner, as provided under Section 3, Rule 1 of the same Rules and Regulations. Hence, in the present case, respondents correctly resorted to the filing of a special civil action for *certiorari* with the CA to question the assailed Orders of the BLA-IPO, as they cannot appeal therefrom and they have no other plain, speedy and adequate remedy in the ordinary course of law. This is consistent with Sections 1[20] and 4,[21] Rule 65 of the Rules of Court, as amended.

In the first place, respondents' act of filing their complaint originally with the BLA-IPO is already in consonance with the doctrine of primary jurisdiction.

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[20] Sec. 1. *Petition for certiorari*. – **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied)

[21] Sec. 4. *When and where petition filed*. – The petition may be filed not later than sixty (60) days from notice of the judgment, order of resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from notice of denial of said motion.

If it relates to the acts or omissions of a lower court or of a corporation, board or officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**

In election cases involving an act or omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphasis supplied.)

This Court has held that:

> [i]n cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. The Court has ratiocinated that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where the claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.[22]

Based on the foregoing, the Court finds that respondents' initial filing of their complaint with the BLA-IPO, instead of the regular courts, is in keeping with the doctrine of primary jurisdiction owing to the fact that the determination of the basic issue of whether petitioner violated respondents' patent rights requires the exercise by the IPO of sound administrative discretion which is based on the agency's special competence, knowledge and experience.

However, the propriety of extending the life of the writ of preliminary injunction issued by the BLA-IPO in the exercise of its quasi-judicial power is no longer a matter that falls within the jurisdiction of the said administrative agency, particularly that of its Director General. The resolution of this issue which

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[22] *Fabia v. Court of Appeals*, 437 Phil. 389, 402-403 (2002).

was raised before the CA does not demand the exercise by the IPO of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. It is settled that one of the exceptions to the doctrine of primary jurisdiction is where the question involved is purely legal and will ultimately have to be decided by the courts of justice.[23] This is the case with respect to the issue raised in the petition filed with the CA.

Moreover, as discussed earlier, RA 8293 and its implementing rules and regulations do not provide for a procedural remedy to question interlocutory orders issued by the BLA-IPO. In this regard, it bears to reiterate that the judicial power of the courts, as provided for under the Constitution, includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.[24] Judicial power also includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[25] Hence, the CA, and not the IPO Director General, has jurisdiction to determine whether the BLA-IPO committed grave abuse of discretion in denying respondents' motion to extend the effectivity of the writ of preliminary injunction which the said office earlier issued.

Lastly, petitioner avers that respondents are guilty of forum shopping for having filed separate actions before the IPO and the RTC praying for the same relief.

The Court agrees.

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[23] *Geraldine Gaw Guy and Grace Cheu v. Alvin Agustin T. Ignacio*, G.R. Nos. 167824 and 168622, July 2, 2010; *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 266.

[24] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, 456 Phil. 145, 159 (2003).

[25] *Id.*

Forum shopping is defined as the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of *certiorari*), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[26]

The elements of forum shopping are: (a) identity of parties, or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[27]

There is no question as to the identity of parties in the complaints filed with the IPO and the RTC.

Respondents argue that they cannot be held guilty of forum shopping because their complaints are based on different causes of action as shown by the fact that the said complaints are founded on violations of different patents.

The Court is not persuaded.

Section 2, Rule 2 of the Rules of Court defines a cause of action as the act or omission by which a party violates a right of another. In the instant case, respondents' cause of action in their complaint filed with the IPO is the alleged act of petitioner in importing, distributing, selling or offering for sale Sulbactam Ampicillin products, acts that are supposedly violative of respondents' right to the exclusive sale of the said products

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[26] *Pulido v. Abu*, G.R. No. 170924, July 4, 2007, 526 SCRA 483, 497; *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213.

[27] *Pentacapital Investment Corporation v. Makilito Mahinay*, G.R. No. 171736 and *Pentacapital Corporation v. Makilito Mahinay*, G.R. No. 181482, July 5, 2010; *GD Express Worldwide N.V. v. Court of Appeals (Fourth Division)*, G.R. No. 136978, May 8, 2009, 587 SCRA 333, 346-347.

which are covered by the latter's patent. However, a careful reading of the complaint filed with the RTC of Makati City would show that respondents have the same cause of action as in their complaint filed with the IPO. They claim that they have the exclusive right to make, use and sell Sulbactam Ampicillin products and that petitioner violated this right. Thus, it does not matter that the patents upon which the complaints were based are different. The fact remains that in both complaints the rights violated and the acts violative of such rights are identical.

In fact, respondents seek substantially the same reliefs in their separate complaints with the IPO and the RTC for the purpose of accomplishing the same objective.

It is settled by this Court in several cases that the filing by a party of two apparently different actions but with the same objective constitutes forum shopping.[28] The Court discussed this species of forum shopping as follows:

> Very simply stated, the original complaint in the court *a quo* which gave rise to the instant petition was filed by the buyer (herein private respondent and his predecessors-in-interest) against the seller (herein petitioners) to enforce the alleged perfected sale of real estate. On the other hand, the complaint in the Second Case seeks to declare such purported sale involving the same real property "as unenforceable as against the Bank," which is the petitioner herein. In other words, in the Second Case, the majority stockholders, in representation of the Bank, are seeking to accomplish what the Bank itself failed to do in the original case in the trial court. **In brief, the objective or the relief being sought, though worded differently, is the same, namely, to enable the petitioner Bank to escape from the obligation to sell the property to respondent.**[29]

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[28] *City of Naga v. Asuncion*, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541; *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, *supra* note 24, at 214; *Riesenbeck v. Maceren, Jr.*, G.R. No. 158608, January 27, 2006, 480 SCRA 362, 380; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996); *Danville Maritime Inc. v. Commission on Audit*, G.R. Nos. 85285 & 87150, July 28, 1989, 175 SCRA701.

[29] *First Philippine International Bank v. Court of Appeals, supra,* at 307-308. (Emphasis supplied.)

In *Danville Maritime, Inc. v. Commission on Audit,*[30] the Court ruled as follows:

> In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein – PNOC in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside the questioned letter-directive of the COA dated October 10, 1988 and to direct said body to approve the Memorandum of Agreement entered into by and between the PNOC and petitioner, while in the complaint before the lower court petitioner seeks to enjoin the PNOC from conducting a rebidding and from selling to other parties the vessel "T/T Andres Bonifacio," and for an extension of time for it to comply with the paragraph 1 of the memorandum of agreement and damages. **One can see that although the relief prayed for in the two (2) actions are ostensibly different, the ultimate objective in both actions is the same, that is, the approval of the sale of vessel in favor of petitioner, and to overturn the letter directive of the COA of October 10, 1988 disapproving the sale.**[31]

In the instant case, the prayer of respondents in their complaint filed with the IPO is as follows:

> A. Immediately upon the filing of this action, issue an *ex parte* order (a) temporarily restraining respondent, its agents, representatives and assigns from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to the hospitals named in paragraph 9 of this Complaint or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 21116; and (b) impounding all the sales invoices and other documents evidencing sales by respondent of Sulbactam Ampicillin products.
>
> B. After hearing, issue a writ of preliminary injunction enjoining respondent, its agents, representatives and assigns from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to the hospitals named in paragraph 9 of the Complaint or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 21116; and

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[30] *Supra* note 28.

[31] *Id.* at 716-717.

C. After trial, render judgment:

(i) declaring that respondent has infringed Pfizer Inc.'s Philippine Patent No. 21116 and that respondent has no right whatsoever over complainant's patent;

(ii) ordering respondent to pay complainants the following amounts:

(a) at least ₱1,000,000.00 as actual damages;

(b) ₱700,000.00 as attorney's fees and litigation expenses;

(d) ₱1,000,000.00 as exemplary damages; and

(d) costs of this suit.

(iii) ordering the condemnation, seizure or forfeiture of respondent's infringing goods or products, wherever they may be found, including the materials and implements used in the commission of infringement, to be disposed of in such manner as may be deemed appropriate by this Honorable Office; and

(iv) making the injunction permanent.[32]

In an almost identical manner, respondents prayed for the following in their complaint filed with the RTC:

(a) Immediately upon the filing of this action, issue an *ex parte* order:

(1) temporarily restraining Pharmawealth, its agents, representatives and assigns from importing, distributing, selling or offering for sale infringing sulbactam ampicillin products to various government and private hospitals or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 26810.

(2) impounding all the sales invoices and other documents evidencing sales by pharmawealth of sulbactam ampicillin products; and

[32] *Rollo*, pp. 70-71.

(3) disposing of the infringing goods outside the channels of commerce.

(b) After hearing, issue a writ of preliminary injunction:

(1) enjoining Pharmawealth, its agents, representatives and assigns from importing, distributing, selling or offering for sale infringing sulbactam ampicillin products to various government hospitals or to any other entity in the Philippines, or from otherwise infringing Patent No. 26810;

(2) impounding all the sales invoices and other documents evidencing sales by Pharmawealth of sulbactam ampicillin products; and

(3) disposing of the infringing goods outside the channels of commerce.

(c) After trial, render judgment:

(1) finding Pharmawealth to have infringed Patent No. 26810 and declaring Pharmawealth to have no right whatsoever over plaintiff's patent;

(2) ordering Pharmawealth to pay plaintiffs the following amounts:

(i) at least ₱3,000,000.00 as actual damages;

(ii) ₱500,000.00 as attorney's fees and ₱1,000,000.00 as litigation expenses;

(iii) ₱3,000,000.00 as exemplary damages; and

(iv) costs of this suit.

(3) ordering the condemnation, seizure or forfeiture of Pharmawealth's infringing goods or products, wherever they may be found, including the materials and implements used in the commission of infringement, to be disposed of in such manner as may be deemed appropriate by this Honorable Court; and

(4) making the injunction permanent.[33]

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[33] *Id.* at 112-113.

It is clear from the foregoing that the ultimate objective which respondents seek to achieve in their separate complaints filed with the RTC and the IPO, is to ask for damages for the alleged violation of their right to exclusively sell Sulbactam Ampicillin products and to permanently prevent or prohibit petitioner from selling said products to any entity. Owing to the substantial identity of parties, reliefs and issues in the IPO and RTC cases, a decision in one case will necessarily amount to *res judicata* in the other action.

It bears to reiterate that what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issue.[34]

Thus, the Court agrees with petitioner that respondents are indeed guilty of forum shopping.

Jurisprudence holds that if the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata*.[35] However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.[36] In the present case, the Court finds that respondents did not deliberately violate the rule on non-forum shopping. Respondents may not be totally blamed for erroneously believing that they can file separate actions simply on the basis of different patents. Moreover, in the suit filed

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[34] *Luis K. Lokin, Jr. v. Commission on Elections, et al.*, G.R. Nos. 179431-32 and *Luis K. Lokin, Jr. v. Commission on Elections*, G.R. No. 180443, June 22, 2010.

[35] *Chua v. Metropolitan Bank and Trust Company,* G.R. No. 182311, August 19, 2009, 596 SCRA 524, 541; *Air Materiel Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, April 29, 2008, 552 SCRA 643, 654.

[36] *Id.*

with the RTC of Makati City, respondents were candid enough to inform the trial court of the pendency of the complaint filed with the BLA-IPO as well as the petition for *certiorari* filed with the CA. On these bases, only Civil Case No. 04-754 should be dismissed on the ground of *litis pendentia*.

WHEREFORE, the petition is *PARTLY GRANTED*. The assailed Resolutions of the Court of Appeals, dated January 18, 2005 and April 11, 2005, in CA-G.R. No. 82734, are *REVERSED* and *SET ASIDE*. The petition for *certiorari* filed with the Court of Appeals is *DISMISSED* for being moot and academic.

Civil Case No. 04-754, filed with the Regional Trial Court of Makati City, Branch 138, is likewise *DISMISSED* on the ground of *litis pendentia*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169225. November 17, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **HAMBRECHT & QUIST PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; GENERAL PROVISIONS; SPECIAL COURTS; COURT OF TAX APPEALS (CTA); JURISDICTION OF THE CTA OVER "OTHER MATTERS"

IS FOUND IN PARAGRAPH 1, SECTION 7 OF REPUBLIC ACT NO. 1125, AS AMENDED.—The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit: Section 7. *Jurisdiction*. % The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided - 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**.

2. ID.; ID.; ID.; ID.; ID.; "OTHER MATTERS" COVERS OTHER CASES THAT ARISE OUT OF THE NATIONAL INTERNAL REVENUE CODE OR RELATED LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE.— Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it. Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).

3. ID.; ID.; ID.; ID.; ID.; ID.; THE LEGISLATIVE INTENT IS THAT "OTHER MATTERS" IS INDEPENDENT OF "DISPUTED ASSESSMENTS."— Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter"

must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE; BUREAU OF INTERNAL REVENUE; ONE OF ITS DUTIES IS TO COLLECT ALL NATIONAL INTERNAL REVENUE TAXES, FEES, AND CHARGES.— In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit: Sec. 3. Powers and duties of Bureau. % The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws.

5. ID.; ID.; ID.; ID.; THE PERIOD TO COLLECT TAXES IS WITHIN THREE YEARS FOLLOWING THE ASSESSMENT OF THE TAX.— In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c): **Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax**.

6. ID.; ID.; ID.; ID.; ID.; VALIDITY OF ASSESSMENT VIS-À-VIS RIGHT TO COLLECT TAXES HAS PRESCRIBED, PRESCRIPTION BEING WELL WITHIN THE JURISDICTION OF THE CTA TO DECIDE.—To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to

decide.

7. REMEDIAL LAW; GENERAL PROVISIONS; SPECIAL COURTS; COURT OF TAX APPEALS (CTA); JURISDICTION OF THE CTA OVER "OTHER MATTERS" IS FOUND IN PARAGRAPH 1, SECTION 7 OF REPUBLIC ACT NO. 1125, AS AMENDED; THE COURT HOLDS THAT THE CTA HAS JURISDICTION OVER THE ISSUE OF PRESCRIPTION OF THE BIR'S RIGHT TO COLLECT TAXES.—Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

8. ID.; ID.; ID.; ID.; ID.; PURSUANT TO PARAGRAPH 1, SECTION 11 OF REPUBLIC ACT NO. 1125, AS AMENDED, THE TIMELY FILING OF AN APPEAL DUE TO AN ADVERSE DECISION, RULING OR INACTION OF THE BIR OPERATES TO VALIDATE THE EXERCISE OF JURISDICTION BY THE CTA.—Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

9. TAXATION; NATIONAL INTERNAL REVENUE CODE; BUREAU OF INTERNAL REVENUE; ONE OF ITS DUTIES IS TO COLLECT ALL NATIONAL INTERNAL REVENUE TAXES, FEES, AND CHARGES; THE PERIOD TO COLLECT TAXES IS WITHIN THREE YEARS FOLLOWING THE ASSESSMENT OF THE TAX; TWO REQUISITES WHICH MUST CONCUR BEFORE THE PERIOD TO ENFORCE COLLECTION MAY BE SUSPENDED.— The pertinent provision of the 1986 NIRC is Section 224, to wit: Section 224. Suspension of running of statute. % The running of the statute of limitations provided

in Sections 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter**; when the taxpayer requests for a re-investigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided, That*, if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. The plain and unambiguous wording of the said provision dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request. On this point, we have previously held that: The above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, **the request for reinvestigation must be granted by the CIR**.

10. ID.; ID.; ID.; ID.; ID.; ID.; THE MERE FILING OF A PROTEST LETTER WHICH IS NOT GRANTED DOES NOT OPERATE TO SUSPEND THE RUNNING OF THE PERIOD TO COLLECT TAXES.— Consequently, the mere filing of a protest letter which is not granted does not operate to suspend the running of the period to collect taxes. In the case at bar, the records show that respondent filed a request for reinvestigation on December 3, 1993, however, there is no indication that petitioner acted upon respondent's protest. As the CTA Original Division in C.T.A. Case No. 6362 succinctly pointed out in its Decision, to wit: It is evident that the respondent did not conduct a reinvestigation, the protest having been dismissed on the ground that the assessment has become final and executory. There is nothing in the record that would show what action was taken in connection with the protest of the petitioner. In fact, petitioner did not hear anything from the respondent nor received any communication from the

respondent relative to its protest, not until eight years later when the final decision of the Commissioner was issued (TSN, March 7, 2002, p. 24). **In other words, the request for reinvestigation was not granted**. x x x.

11. REMEDIAL LAW; CIVIL PROCEDURE; ORDINARY CIVIL ACTIONS; JUDGMENT; FINDINGS OF FACT OF THE COURT OF TAX APPEALS ARE GIVEN GREAT WEIGHT BY THE COURTS; CASE AT BAR.— Since the CIR failed to disprove the aforementioned findings of fact of the CTA which are borne by substantial evidence on record, this Court is constrained to uphold them as binding and true. This is in consonance with our oft-cited ruling that instructs this Court to not lightly set aside the conclusions reached by the CTA, which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.

12. ID.; ID.; ID.; ID.; ID.; THE COURT FINDS NO COGENT REASON TO REVERSE THE CTA UNDER THE CIRCUMSTANCES IN THE CASE AT BAR.— Indeed, it is contradictory for the CIR to argue that respondent's December 3, 1993 protest which contained a request for reinvestigation was filed beyond the reglementary period but still claim that the same request for reinvestigation was implicitly granted by virtue of its October 27, 2001 letter. We find no cogent reason to reverse the CTA when it ruled that the prescriptive period for the CIR's right to collect was not suspended under the circumstances of this case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated August 12, 2005 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 73 (C.T.A. Case No. 6362), entitled "*Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*," which affirmed the Decision[2] dated September 24, 2004 of the CTA Original Division in C.T.A. Case No. 6362 canceling the assessment issued against respondent for deficiency income and expanded withholding tax for the year 1989 for failure of petitioner Commissioner of Internal Revenue (CIR) to enforce collection within the period allowed by law.

The CTA summarized the pertinent facts of this case, as follows:

> In a letter dated February 15, 1993, respondent informed the Bureau of Internal Revenue (BIR), through its West-Makati District Office of its change of business address from the 2nd Floor Corinthian Plaza, Paseo de Roxas, Makati City to the 22nd Floor PCIB Tower II, Makati Avenue corner H.V. De la Costa Streets, Makati City. Said letter was duly received by the BIR-West Makati on February 18, 1993.
>
> On November 4, 1993, respondent received a tracer letter or follow-up letter dated October 11, 1993 issued by the Accounts Receivable/ Billing Division of the BIR's National Office and signed by then Assistant Chief Mr. Manuel B. Mina, demanding for payment of alleged deficiency income and expanded withholding taxes for the taxable year 1989 amounting to ₱2,936,560.87.
>
> On December 3, 1993, respondent, through its external auditors, filed with the same Accounts Receivable/Billing Division of the BIR's National Office, its protest letter against the alleged deficiency

[1] *Rollo*, pp. 30-39; penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] *Id*. at 40-62.

tax assessments for 1989 as indicated in the said tracer letter dated October 11, 1993.

The alleged deficiency income tax assessment apparently resulted from an adjustment made to respondent's taxable income for the year 1989, on account of the disallowance of certain items of expense, namely, professional fees paid, donations, repairs and maintenance, salaries and wages, and management fees. The latter item of expense, the management fees, made up the bulk of the disallowance, the examiner alleging, among others, that petitioner failed to withhold the appropriate tax thereon. This is also the same basis for the imposition of the deficiency withholding tax assessment on the management fees. Revenue Regulations No. 6-85 (EWT Regulations) does not impose or prescribe EWT on management fees paid to a non-resident.

On November 7, 2001, nearly eight (8) years later, respondent's external auditors received a letter from herein petitioner Commissioner of Internal Revenue dated October 27, 2001. The letter advised the respondent that petitioner had rendered a final decision denying its protest on the ground that the protest against the disputed tax assessment was allegedly filed beyond the 30-day reglementary period prescribed in then Section 229 of the National Internal Revenue Code.

On December 6, 2001, respondent filed a Petition for Review docketed as CTA Case No. 6362 before the then Court of Tax Appeals, pursuant to Section 7 of Republic Act No. 1125, otherwise known as an 'Act Creating the Court of Tax Appeals' and Section 228 of the NIRC, to appeal the final decision of the Commissioner of Internal Revenue denying its protest against the deficiency income and withholding tax assessments issued for taxable year 1989.[3]

In a Decision dated September 24, 2004, the CTA Original Division held that the subject assessment notice sent by registered mail on January 8, 1993 to respondent's former place of business was valid and binding since respondent only gave formal notice of its change of address on February 18, 1993. Thus, the assessment had become final and unappealable for failure of respondent to file a protest within the 30-day period provided by law. However, the CTA (a) held that the CIR failed to collect

[3] *Id*. at 32-34.

the assessed taxes within the prescriptive period; and (b) directed the cancellation and withdrawal of Assessment Notice No. 001543-89-5668. Petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration of said Decision filed on October 14, 2004 and November 22, 2004, respectively, were denied for lack of merit.

Undaunted, the CIR filed a Petition for Review with the CTA *En Banc* but this was denied in a Decision dated August 12, 2005, the dispositive portion reads:

> WHEREFORE, the Petition for Review is **DENIED DUE COURSE** and the case is accordingly **DISMISSED** for lack of merit.[4]

Hence, the instant Petition wherein the following issues are raised:

> I
>
> WHETHER OR NOT THE COURT OF TAX APPEALS HAS JURISDICTION TO RULE THAT THE GOVERNMENT'S RIGHT TO COLLECT THE TAX HAS PRESCRIBED.
>
> II
>
> WHETHER OR NOT THE PERIOD TO COLLECT THE ASSESSMENT HAS PRESCRIBED.[5]

The petition is without merit.

Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*,[6] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide

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[4] *Id.* at 39.

[5] *Id.* at 12.

[6] 386 Phil. 611 (2000).

"other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

> Section 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.** (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).[7]

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[7] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214, 224.

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):

> **Any internal revenue tax** which has been assessed within the period of limitation above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax.** (Emphases supplied.)

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> Sec. 3. Powers and duties of Bureau. — The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282,[8] belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.

With respect to the second issue, the CIR insists that its right to collect the tax deficiency it assessed on respondent is not barred by prescription since the prescriptive period thereof was allegedly suspended by respondent's request for reinvestigation.

Based on the facts of this case, we find that the CIR's contention is without basis. The pertinent provision of the 1986 NIRC is Section 224, to wit:

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[8] The relevant portion of Section 11, Republic Act No. 1125 states: "Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7 (a)(2) herein."

Section 224. Suspension of running of statute. – The running of the statute of limitations provided in Sections 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a re-investigation which is granted by the Commissioner;** when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided, That,* if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (Emphasis supplied.)

The plain and unambiguous wording of the said provision dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request.

On this point, we have previously held that:

The above section is plainly worded. In order to suspend the running of the prescriptive periods for assessment and collection, **the request for reinvestigation must be granted by the CIR.**[9] (Emphasis supplied.)

Consequently, the mere filing of a protest letter which is not granted does not operate to suspend the running of the period to collect taxes. In the case at bar, the records show that respondent filed a request for reinvestigation on December 3, 1993, however, there is no indication that petitioner acted upon respondent's protest. As the CTA Original Division in C.T.A. Case No. 6362 succinctly pointed out in its Decision, to wit:

It is evident that the respondent did not conduct a reinvestigation, the protest having been dismissed on the ground that the assessment

[9] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 174942, March 7, 2008, 548 SCRA 105, 113.

has become final and executory. There is nothing in the record that would show what action was taken in connection with the protest of the petitioner. In fact, petitioner did not hear anything from the respondent nor received any communication from the respondent relative to its protest, not until eight years later when the final decision of the Commissioner was issued (TSN, March 7, 2002, p. 24). **In other words, the request for reinvestigation was not granted.** x x x.[10] (Emphasis supplied.)

Since the CIR failed to disprove the aforementioned findings of fact of the CTA which are borne by substantial evidence on record, this Court is constrained to uphold them as binding and true. This is in consonance with our oft-cited ruling that instructs this Court to not lightly set aside the conclusions reached by the CTA, which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.[11]

Indeed, it is contradictory for the CIR to argue that respondent's December 3, 1993 protest which contained a request for reinvestigation was filed beyond the reglementary period but still claim that the same request for reinvestigation was implicitly granted by virtue of its October 27, 2001 letter. We find no cogent reason to reverse the CTA when it ruled that the prescriptive period for the CIR's right to collect was not suspended under the circumstances of this case.

WHEREFORE, the petition is *DENIED.* The assailed Decision of the Court of Tax Appeals (CTA) *En Banc* dated August 12, 2005 is *AFFIRMED*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[10] *Rollo,* p. 60.

[11] *Toshiba Information Equipment (Phils.) Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

[*] Per Special Order No. 913 dated November 2, 2010.

THIRD DIVISION

[G.R. No. 169704. November 17, 2010]

ALBERT TENG, doing business under the firm name ALBERT TENG FISH TRADING, and EMILIA TENG-CHUA, *petitioners, vs.* **ALFREDO S. PAHAGAC, EDDIE D. NIPA, ORLANDO P. LAYESE, HERNAN Y. BADILLES and ROGER S. PAHAGAC,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; VOLUNTARY ARBITRATION; ARTICLE 262-A OF THE LABOR CODE DOES NOT PROHIBIT THE FILING OF A MOTION FOR RECONSIDERATION OF VOLUNTARY ARBITRATION AWARDS OR DECISIONS: CASE AT BAR.— On March 21, 1989, Republic Act No. 6715 took effect, amending, among others, Article 263 of the Labor Code which was originally worded as: Art. 263 x x x Voluntary arbitration awards or decisions **shall be final, unappealable, and executory.** As amended, Article 263 is now Article 262-A, which states: Art. 262-A. x x x [T]he award or decision x x x shall contain the facts and the law on which it is based. **It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.** Notably, Article 262-A deleted the word **"unappealable"** from Article 263. The deliberate selection of the language in the amendatory act differing from that of the original act indicates that the legislature intended a change in the law, and the court should endeavor to give effect to such intent.

2.ID.; ID.; ID.; ID.; ALLOWING RECONSIDERATION OF VOLUNTARY ARBITRATION AWARDS OR DECISIONS IS IN LINE WITH THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse *via* a motion for reconsideration or a petition for review under

Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA *via* Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.

3. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; NEED FOR SPECIALIZED ADMINISTRATIVE AGENCIES TO PROMPTLY RESOLVE TECHNICAL MATTERS, SUBJECT TO JUDICIAL REVIEW, INDISPENSABLE; CASE AT BAR.— The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent. By disallowing reconsideration of the VA's decision, Section 7, Rule X1X of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable. In *Industrial Enterprises, Inc. v. Court of Appeals*, we ruled that relief must First be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; PIECES OF EVIDENCE ESTABLISHING THAT THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN

TENG AND RESPONDENTS IN CASE AT BAR.— We agree with the CA's finding that sufficient evidence exists indicating the existence of an employer-employee relationship between Teng and the respondent workers. While Teng alleged that it was the *maestros* who hired the respondent workers, it was his company that issued to the respondent workers identification cards (*IDs*) bearing their names as employees and Teng's signature as the employer. Generally, in a business establishment, IDs are issued to identify the holder as *bona fide* employee of the issuing entity. For the 13 years that the respondent workers worked for Teng, they received wages on a regular basis, in addition to their shares in the fish caught. The worksheet showed that the respondent workers received uniform amounts within a given year, which amounts annually increased until the termination of their employment in 2002. Teng's claim that the amounts received by the respondent workers are mere commissions is incredulous, as it would mean that the fish caught throughout the year is uniform and increases in number each year. More importantly, the element of control – which we have ruled in a number of cases to be a strong indicator of the existence of an employer-employee relationship – is present in this case. Teng not only owned the tools and equipment, he directed how the respondent workers were to perform their job as checkers; they, in fact, acted as Teng's eyes and ears in every fishing expedition.

5. ID.; ID.; ID.; LABOR-ONLY CONTRACTING, PROHIBITED UNDER THE LABOR CODE; CASE AT BAR.— Teng cannot hide behind his argument that the respondent workers were hired by the *maestros*. To consider the respondent workers as employees of the *maestros* would mean that Teng committed impermissible labor-only contracting. As a policy, the Labor Code prohibits labor-only contracting: ART. 106. Contractor or Subcontractor – x x x The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor. x x x **There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such**

employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. x x x In the present case, the *maestros* did not have any substantial capital or investment. Teng admitted that he solely provided the capital and equipment, while the *maestros* supplied the workers. The power of control over the respondent workers was lodged not with the *maestros* but with Teng. As checkers, the respondent workers' main tasks were to count and classify the fish caught and report them to Teng. They performed tasks that were necessary and desirable in Teng's fishing business. Taken together, these incidents confirm the existence of a labor-only contracting which is prohibited in our jurisdiction, as it is considered to be the employer's attempt to evade obligations afforded by law to employees.

6. ID.; ID.; ID.; AS REGULAR EMPLOYEES, WORKERS ENTITLED TO ALL BENEFITS AND RIGHTS APPURTENANT TO REGULAR EMPLOYMENT.— Accordingly, we hold that employer-employee ties exist between Teng and the respondent workers. A finding that the *maestros* are labor-only contractors is equivalent to a finding that an employer-employee relationship exists between Teng and the respondent workers. As regular employees, the respondent workers are entitled to all the benefits and rights appurtenant to regular employment.

7. ID.; ID.; ID.; ID.; DISMISSAL, TWO-FOLD REQUIREMENT.— The dismissal of an employee, which the employer must validate, has a twofold requirement: one is substantive, the other is procedural. Not only must the dismissal be for a just or an authorized cause, as provided by law; the rudimentary requirements of due process – the opportunity to be heard and to defend oneself – must be observed as well. The employer has the burden of proving that the dismissal was for a just cause; failure to show this, as in the present case, would necessarily mean that the dismissal was unjustified and, therefore, illegal.

8. ID.; ID.; ID.; ID.; ID.; UNSUBSTANTIATED SUSPICIONS, NOT A JUST CAUSE FOR TERMINATION; ILLEGAL DISMISSAL, A CASE OF.— The respondent worker's allegation that Teng summarily dismissed them on suspicion

that they were not reporting to him the correct volume of the fish caught in each fishing voyage was never denied by Teng. Unsubstantiated suspicion is not a just cause to terminate one's employment under Article 282 of the Labor Code. To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee at the mercy of his employer, and would emasculate the right to security of tenure. For his failure to comply with the Labor Code's substantive requirement on termination of employment, we declare that Teng illegally dismissed the respondent workers.

APPEARANCES OF COUNSEL

Teresita Gandionco Oledan for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

BRION, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed by petitioners Albert Teng Fish Trading, its owner Albert Teng, and its manager Emilia Teng-Chua, to reverse and set aside the September 21, 2004 decision[2] and the September 1, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 78783. The CA reversed the decision of the Voluntary Arbitrator (*VA*), National Conciliation and Mediation Board (*NCMB*), Region IX, Zamboanga City, and declared that there exists an employer-employee relationship between Teng and respondents Hernan Badilles, Orlando Layese, Eddie Nipa, Alfredo Pahagac, and Roger Pahagac (collectively, *respondent workers*). It also found that Teng illegally dismissed the respondent workers from their employment.

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-37.

[2] Penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justice Estela M. Perlas-Bernabe and Associate Justice Edgardo A. Camello; *id.* at 41-51.

[3] *Id.* at 52-53.

BACKGROUND FACTS

Albert Teng Fish Trading is engaged in deep sea fishing and, for this purpose, owns boats (*basnig*), equipment, and other fishing paraphernalia. As owner of the business, Teng claims that he customarily enters into joint venture agreements with master fishermen (*maestros*) who are skilled and are experts in deep sea fishing; they take charge of the management of each fishing venture, including the hiring of the members of its complement. He avers that the *maestros* hired the respondent workers as **checkers** to determine the volume of the fish caught in every fishing voyage.[4]

On February 20, 2003, the respondent workers filed a complaint for illegal dismissal against Albert Teng Fish Trading, Teng, and Chua before the NCMB, Region Branch No. IX, Zamboanga City.

The respondent workers alleged that Teng hired them, without any written employment contract, to serve as his "eyes and ears" aboard the fishing boats; to classify the fish caught by *bañera*; to report to Teng *via* radio communication the classes and volume of each catch; to receive instructions from him as to where and when to unload the catch; to prepare the list of the provisions requested by the *maestro* and the mechanic for his approval; and, to procure the items as approved by him.[5] They also claimed that they received regular monthly salaries, 13th month pay, Christmas bonus, and incentives in the form of shares in the total volume of fish caught.

They asserted that sometime in September 2002, Teng expressed his doubts on the correct volume of fish caught in every fishing voyage.[6] In December 2002, Teng informed them that their services had been terminated.[7]

In his defense, Teng maintained that he did not have any hand in hiring the respondent workers; the *maestros*, rather

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[4] *Id.* at 14.

[5] *Id.* at 188.

[6] *Id.* at 43.

[7] *Ibid.*

than he, invited them to join the venture. According to him, his role was clearly limited to the provision of the necessary capital, tools and equipment, consisting of *basnig*, gears, fuel, food, and other supplies.[8]

The VA rendered a decision[9] in Teng's favor and declared that no employer-employee relationship existed between Teng and the respondent workers. The dispositive portion of the VA's May 30, 2003 decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.
>
> It follows also, that all other claims are likewise dismissed for lack of merit.[10]

The respondent workers received the VA's decision on **June 12, 2003.**[11] They filed a **motion for reconsideration, which was denied** in an order dated June 27, 2003 and which they received on **July 8, 2003.**[12] The VA reasoned out that Section 6, Rule VII of the 1989 Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings (*1989 Procedural Guidelines*) does not provide the remedy of a motion for reconsideration to the party adversely affected by the VA's order or decision.[13] The order states:

> Under Executive Order No. 126, as amended by Executive Order No. 251, and in order to implement Article 260-262 (b) of the Labor Code, as amended by R.A. No. 6715, otherwise known as the Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings, *inter alia*:
>
> > An award or the Decision of the Voluntary Arbitrators becomes final and executory after ten (10) calendar days from

[8] *Id.* at 14.

[9] *Id.* at 60-69.

[10] *Id.* at 69.

[11] *Id.* at 72.

[12] *Ibid.*

[13] *Id.* at 70.

receipt of copies of the award or decision by the parties (Sec. 6, Rule VII).

Moreover, the above-mentioned guidelines do not provide the remedy of a motion for reconsideration to the party adversely affected by the order or decision of voluntary arbitrators.[14]

On **July 21, 2003,** the respondent-workers elevated the case to the CA. In its decision of September 21, 2004, the CA reversed the VA's decision after finding sufficient evidence showing the existence of employer-employee relationship:

WHEREFORE**,** premises considered, the petition is granted. The questioned decision of the Voluntary Arbitrator dated May 30, 2003 is hereby **REVERSED and SET ASIDE** by ordering private respondent to pay separation pay with backwages and other monetary benefits. For this purpose, the case is **REMANDED** to the Voluntary Arbitrator for the computation of petitioner's backwages and other monetary benefits. No pronouncement as to costs.

SO ORDERED.[15]

Teng moved to reconsider the CA's decision, but the CA denied the motion in its resolution of September 1, 2005.[16] He, thereafter, filed the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, claiming that:

a. the VA's decision is not subject to a motion for reconsideration; and

b. no employer-employee relationship existed between Teng and the respondent workers.

Teng contends that the VA's decision is not subject to a motion for reconsideration in the absence of any specific provision allowing this recourse under Article 262-A of the Labor Code.[17] He cites the 1989 Procedural Guidelines, which, as the VA

[14] *Ibid.*

[15] *Id.* at 50.

[16] *Id.* at 52-53.

[17] *Id.* at 17-18.

declared, does not provide the remedy of a motion for reconsideration.[18] He claims that after the lapse of 10 days from its receipt, the VA's decision becomes final and executory unless an appeal is taken.[19] He argues that when the respondent workers received the VA's decision on June 12, 2003,[20] they had 10 days, or until June 22, 2003, to file an appeal. As the respondent workers opted instead to move for reconsideration, the 10-day period to appeal continued to run; thus, the VA's decision had already become final and executory by the time they assailed it before the CA on July 21, 2003.[21]

Teng further insists that the VA was correct in ruling that there was no employer-employee relationship between him and the respondent workers. What he entered into was a joint venture agreement with the *maestros*, where Teng's role was only to provide *basnig*, gears, nets, and other tools and equipment for every fishing voyage.[22]

THE COURT'S RULING

We resolve to **deny** the petition for lack of merit.

Article 262-A of the Labor Code does not prohibit the filing of a motion for reconsideration.

On March 21, 1989, Republic Act No. 6715[23] took effect, amending, among others, Article 263 of the Labor Code which

[18] *Id.* at 70-71.

[19] *Id.* at 18.

[20] *Id.* at 72.

[21] *Id.*at 19.

[22] *Id.* at 21.

[23] An Act To Extend Protection To Labor, Strengthen The Constitutional Rights Of Workers To Self-Organization, Collective Bargaining And Peaceful Concerted Activities, Foster Industrial Peace And Harmony, Promote The Preferential Use Of Voluntary Modes Of Settling Labor Disputes And Reorganize The National Labor Relations Commission, Amending For These Purposes Certain Provisions Of Presidential Decree No. 442, As Amended, Otherwise Known As The Labor Code Of The Philippines, Appropriating Funds Therefor and For Other Purposes.

was originally worded as:

> Art. 263 x x x Voluntary arbitration awards or decisions **shall be final, unappealable, and executory.**

As amended, Article 263 is now Article 262-A, which states:

> Art. 262-A. x x x [T]he award or decision x x x shall contain the facts and the law on which it is based. **It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.**

Notably, Article 262-A deleted the word **"unappealable"** from Article 263. The deliberate selection of the language in the amendatory act differing from that of the original act indicates that the legislature intended a change in the law, and the court should endeavor to give effect to such intent.[24] We recognized the intent of the change of phraseology in *Imperial Textile Mills, Inc. v. Sampang*,[25] where we ruled that:

> It is true that the present rule [Art. 262-A] makes the voluntary arbitration award final and executory after ten calendar days from receipt of the copy of the award or decision by the parties. **Presumably, the decision may still be reconsidered by the Voluntary Arbitrator on the basis of a motion for reconsideration duly filed during that period.**[26]

In *Coca-Cola Bottlers Phil., Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*,[27] we likewise ruled that the VA's decision **may still be reconsidered on the basis of a motion for reconsideration seasonably filed within 10 days from receipt thereof.**[28] **The seasonable filing of a motion for reconsideration is a mandatory requirement to**

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[24] Agpalo, *Statutory Construction* (2006 ed.), p. 390, citing *Sarcos v. Castillo*, 26 SCRA 853 (1969); *Portillo v. Salvani*, 54 Phil. 543 (1930).

[25] G.R. No. 94960, March 8, 1993, 219 SCRA 651.

[26] *Id.* at 654.

[27] G.R. No. 155651, July 28, 2005, 464 SCRA 507, 516.

[28] *Ibid.*

forestall the finality of such decision.[29] We further cited the 1989 Procedural Guidelines which implemented Article 262-A, *viz*:[30]

> [U]nder Section 6, Rule VII of the same guidelines implementing Article 262-A of the Labor Code, this Decision, as a matter of course, would become final and executory after ten (10) calendar days from receipt of copies of the decision by the parties x x x **unless, in the meantime, a motion for reconsideration or a petition for review to the Court of Appeals under Rule 43 of the Rules of Court** is filed within the same 10-day period.[31]

These rulings fully establish that the absence of a categorical language in Article 262-A does not preclude the filing of a motion for reconsideration of the VA's decision within the 10-day period. Teng's allegation that the VA's decision had become final and executory by the time the respondent workers filed an appeal with the CA thus fails. We consequently rule that the respondent workers seasonably filed a motion for reconsideration of the VA's judgment, and the VA erred in denying the motion because no motion for reconsideration is allowed.

The Court notes that despite our interpretation that Article 262-A does not preclude the filing of a motion for reconsideration of the VA's decision, a contrary provision can be found in Section 7, Rule XIX of the Department of Labor's Department Order (*DO*) No. 40, series of 2003:[32]

> Rule XIX
>
> Section 7. **Finality of Award/Decision. –** The decision, order, resolution or award of the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and **it shall not be subject of a motion for reconsideration.**

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[29] *Ibid.*

[30] *Id.* at 513.

[31] *Id.* at 515-516.

[32] Took effect on March 15, 2003.

Presumably on the basis of DO 40-03, the 1989 Procedural Guidelines was revised in 2005 (*2005 Procedural Guidelines*),[33] whose pertinent provisions provide that:

Rule VII –
DECISIONS

Section 6. ***Finality of Decisions.*** – The decision of the Voluntary Arbitrator shall be final and executory after ten (10) calendar days from receipt of the copy of the decision by the parties.

Section 7. ***Motions for Reconsideration.*** – The decision of the Voluntary Arbitrator is **not subject of a Motion for Reconsideration.**

We are surprised that neither the VA nor Teng cited DO 40-03 and the 2005 Procedural Guidelines as authorities for their cause, considering that these were the governing rules while the case was pending and these directly and fully supported their theory. Had they done so, their reliance on the provisions would have nevertheless been unavailing for reasons we shall now discuss.

In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor,[34] is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.[35]

By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision

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[33] Signed by the Secretary of Labor on March 15, 2005.

[34] Labor Code, Article 5. *Rules and regulations***.** – The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

[35] *Philippine Apparel Workers Union v. NLRC,* No. 50320, July 31, 1981, 106 SCRA 444.

to seek recourse *via* a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA *via* Rule 43 of the Rules of Court requires exhaustion of available remedies[36] as a condition precedent to a petition under that Rule.

The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice.[37] Where Congress has not clearly required exhaustion, sound judicial discretion governs,[38] guided by congressional intent.[39]

By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself[40] and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review,

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[36] De Leon, De Leon, Jr., *Administrative Law: Text and Cases* (2005 ed.), p. 360.

[37] *Id.* at 357.

[38] 2 Am Jur 2d, § 506, 492.

[39] *Ibid.*

[40] Agpalo, *Administrative Law* (2005 ed.), p. 178.

is indispensable.[41] In *Industrial Enterprises, Inc. v. Court of Appeals*,[42] we ruled that relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.[43]

There exists an employer-employee relationship between Teng and the respondent workers.

We agree with the CA's finding that sufficient evidence exists indicating the existence of an employer-employee relationship between Teng and the respondent workers.

While Teng alleged that it was the *maestros* who hired the respondent workers, it was his company that issued to the respondent workers identification cards (*ID*s) bearing their names as employees and Teng's signature as the employer. Generally, in a business establishment, IDs are issued to identify the holder as a *bona fide* employee of the issuing entity.

For the 13 years that the respondent workers worked for Teng, they received wages on a regular basis, in addition to their shares in the fish caught.[44] The worksheet showed that the respondent workers received uniform amounts within a given year, which amounts annually increased until the termination of their employment in 2002.[45] Teng's claim that the amounts

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[41] *Padua, et al. v. Ranada, et al.*, G.R. Nos. 141949 and 151108, October 14, 2002, 390 SCRA 663.

[42] G.R. No. 88550, April 18, 1990, 184 SCRA 426.

[43] *Ibid*.

[44] At the ratio of one *bañera* for every 30 *bañera* of fish caught, *id.* at 42-43.

[45] *Id.* at 42-43, the monthly salaries of the respondent workers from 1989-1998:

1. Alfredo S. Pahagac and Eddie D. Nipa

YEAR	MONTHLY WAGE RATE
1989	₱ 300.00
1989	500.00

received by the respondent workers are mere commissions is incredulous, as it would mean that the fish caught throughout the year is uniform and increases in number each year.

More importantly, the element of control – which we have ruled in a number of cases to be a strong indicator of the existence of an employer-employee relationship – is present in this case. Teng not only owned the tools and equipment, he directed how the respondent workers were to perform their job as checkers; they, in fact, acted as Teng's eyes and ears in every fishing expedition.

Teng cannot hide behind his argument that the respondent workers were hired by the *maestros*. To consider the respondent workers as employees of the *maestros* would mean that Teng committed impermissible labor-only contracting. As a policy, the Labor Code prohibits labor-only contracting:

1992	700.00
1994	1,000.00
1996	1,400.00
1998 until dismissed	1,700.00

2. Hernan Y. Badilles and Roger S. Pahagac

YEAR	MONTHLY WAGE RATE
1990	₱ 500.00
1992	700.00
1994	1,000.00
1996	1,400.00
1998 until dismissed	1,700.00

3. Orlando P. Layese, who was originally hired as second patron in 1989-1995 with share in [the] catch, was subsequently appointed as checker sometime in February 1996 with a fixed monthly wage rate as follows:

YEAR	MONTHLY WAGE RATE
1989-1995	[on commission basis]
1996	₱ 1,500.00
1998 until dismissed	₱ 1,700.00

ART. 106. Contractor or Subcontractor – x x x The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor.

xxx xxx xxx

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Section 5 of the DO No. 18-02,[46] which implements Article 106 of the Labor Code, provides:

Section 5. *Prohibition against labor-only contracting.* – **Labor-only contracting is hereby declared prohibited.** For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

(i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

(ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

In the present case, the *maestros* did not have any substantial capital or investment. Teng admitted that he solely provided the capital and equipment, while the *maestros* supplied the workers. The power of control over the respondent workers was lodged not with the *maestros* but with Teng. As checkers, the respondent

[46] Effective March 16, 2002.

workers' main tasks were to count and classify the fish caught and report them to Teng. They performed tasks that were necessary and desirable in Teng's fishing business. Taken together, these incidents confirm the existence of a labor-only contracting which is prohibited in our jurisdiction, as it is considered to be the employer's attempt to evade obligations afforded by law to employees.

Accordingly, we hold that employer-employee ties exist between Teng and the respondent workers. A finding that the *maestros* are labor-only contractors is equivalent to a finding that an employer-employee relationship exists between Teng and the respondent workers. As regular employees, the respondent workers are entitled to all the benefits and rights appurtenant to regular employment.

The dismissal of an employee, which the employer must validate, has a twofold requirement: one is substantive, the other is procedural.[47] Not only must the dismissal be for a just or an authorized cause, as provided by law; the rudimentary requirements of due process – the opportunity to be heard and to defend oneself – must be observed as well.[48] The employer has the burden of proving that the dismissal was for a just cause; failure to show this, as in the present case, would necessarily mean that the dismissal was unjustified and, therefore, illegal.[49]

The respondent worker's allegation that Teng summarily dismissed them on suspicion that they were not reporting to him the correct volume of the fish caught in each fishing voyage was never denied by Teng. Unsubstantiated suspicion is not a just cause to terminate one's employment

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[47] *Pascua, et al. v. NLRC, et al.*, G.R. No. 123518, March 13, 1998, 287 SCRA 554.

[48] *Ibid.*, citing *Jamer, et al., v. NLRC, et al.*, 278 SCRA 632 (1997).

[49] *Ibid.*, citing, *Metro Transit Organization, Inc. v. NLRC, et al.*, 263 SCRA 313 (1996); *Mapalo v. NLRC, et al.*, 233 SCRA 266 (1994); *Philippine Manpower Services, Inc., et al. v. NLRC, et al.*, 224 SCRA 691 (1993).

under Article 282[50] of the Labor Code. To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee at the mercy of his employer, and would emasculate the right to security of tenure.[51] For his failure to comply with the Labor Code's substantive requirement on termination of employment, we declare that Teng illegally dismissed the respondent workers.

WHEREFORE, we *DENY* the petition and *AFFIRM* the September 21, 2004 decision and the September 1, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 78783. Costs against the petitioners.

SO ORDERED.

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

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[50] Art. 282. Termination by Employer. An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[51] *Supra* note 47, citing, *Sanyo Travel Corp., et al. v. NLRC,* 280 SCRA 129 (1997); *and JGB and Associates, Inc. v. NLRC, et al.,* 254 SCRA 457 (1996).

SECOND DIVISION

[G.R. No. 172716. November 17, 2010]

JASON IVLER *y* AGUILAR, *petitioner, vs.* **HON. MARIA ROWENA MODESTO-SAN PEDRO, Judge of the Metropolitan Trial Court, Branch 71, Pasig City, and EVANGELINE PONCE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; LEGAL STANDING; ACCUSED'S NON-APPEARANCE AT THE ARRAIGNMENT IN CRIMINAL CASE NO. 82366 DID NOT DIVEST HIM OF STANDING TO MAINTAIN HIS SPECIAL CIVIL ACTION FOR *CERTIORARI* SEEKING A PRE-TRIAL RELIEF; CASE AT BAR.— The RTC's dismissal of petitioner's special civil action for *certiorari* to review a *pre-arraignment ancillary question* on the applicability of the Due Process Clause to bar proceedings in Criminal Case No. 82366 finds no basis under procedural rules and jurisprudence. The RTC's reliance on *People v. Esparas* undercuts the cogency of its ruling because *Esparas* stands for a proposition contrary to the RTC's ruling. There, the Court *granted* review to an appeal by an accused who was *sentenced to death* for importing prohibited drugs even though she jumped bail pending trial and was thus tried and convicted *in absentia*. The Court in *Esparas* treated the mandatory review of death sentences under Republic Act No. 7659 as an exception to Section 8 of Rule 124. The mischief in the RTC's treatment of petitioner's non-appearance at his arraignment in Criminal Case No. 82366 as proof of his loss of standing becomes more evident when one considers the Rules of Court's treatment of a defendant who absents himself from post-arraignment hearings. Under Section 21, Rule 114 of the Revised Rules of Criminal Procedure, the defendant's absence merely renders his bondsman potentially liable on its bond (subject to cancellation should the bondsman fail to produce the accused within 30 days); the defendant *retains* his standing and, should he fail to surrender, will be tried *in absentia* and could be convicted or acquitted. Indeed, the 30-

day period granted to the bondsman to produce the accused underscores the fact that mere non-appearance does not *ipso facto* convert the accused's status to that of a fugitive without standing.

2. CRIMINAL LAW; REVISED PENAL CODE; QUASI OFFENSES UNDER ARTICLE 365 THEREOF; RECKLESS IMPRUDENCE IS A CRIME ITSELF, ITS CONSEQUENCES ON PERSONS AND PROPERTY ARE MATERIAL ONLY TO DETERMINE THE PENALTY; CASE AT BAR.— The two charges against petitioner, arising from the same facts, were prosecuted under the same provision of the Revised Penal Code, as amended, namely, Article 365 defining and penalizing quasi-offenses. x x x *Structurally*, these nine paragraphs are collapsible into four sub-groupings relating to (1) the penalties attached to the quasi-offenses of "imprudence" and "negligence" (paragraphs 1-2); (2) a modified penalty scheme for either or both quasi-offenses (paragraphs 3-4, 6 and 9); (3) a generic rule for trial courts in imposing penalties (paragraph 5); and (4) the definition of "reckless imprudence" and "simple imprudence" (paragraphs 7-8). *Conceptually*, quasi-offenses penalize "the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*," unlike willful offenses which punish the *intentional criminal act.* These structural and conceptual features of quasi-offenses set them apart from the mass of intentional crimes under the first 13 Titles of Book II of the Revised Penal Code, as amended. Indeed, the notion that quasi-offenses, whether reckless or simple, are distinct species of crime, separately defined and penalized under the framework of our penal laws, is nothing new. As early as the middle of the last century, we already sought to bring clarity to this field by *rejecting* in *Quizon v. Justice of the Peace of Pampanga* the proposition that "reckless imprudence is not a crime in itself but simply a way of committing it x x x" on three points of analysis: (1) the object of punishment in quasi-crimes (as opposed to intentional crimes); (2) the legislative intent to treat quasi-crimes as distinct offenses (as opposed to subsuming them under the mitigating circumstance of minimal intent) and; (3) the different penalty structures for quasi-crimes and intentional crimes: x x x This explains why the technically correct way to allege quasi-crimes

is to state that their commission *results* in damage, either to person or property.

3. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; PRIOR CONVICTION OR ACQUITTAL OF RECKLESS IMPRUDENCE BARS SUBSEQUENT PROSECUTION FOR THE SAME QUASI-OFFENSE.— The doctrine that reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes such that conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts, undergirded this Court's unbroken chain of jurisprudence on double jeopardy as applied to Article 365 starting with *People v. Diaz*, decided in 1954. There, a full Court, speaking through Mr. Justice Montemayor, ordered the dismissal of a case for "damage to property thru reckless imprudence" because a prior case against the same accused for "reckless driving," arising from the same act upon which the first prosecution was based, had been dismissed earlier. Since then, whenever the same legal question was brought before the Court, that is, whether prior conviction or acquittal of reckless imprudence bars subsequent prosecution for the same quasi-offense, regardless of the consequences alleged for both charges, the Court unfailingly and consistently answered in the affirmative x x x. These cases uniformly barred the second prosecutions as constitutionally impermissible under the Double Jeopardy Clause.

4. ID.; ID.; ID.; ID.; ID.; RATIONALE.— The reason for this consistent stance of extending the constitutional protection under the Double Jeopardy Clause to quasi-offenses was best articulated by Mr. Justice J.B.L. Reyes in *Buan*, where, in barring a subsequent prosecution for "serious physical injuries and damage to property thru reckless imprudence" because of the accused's prior acquittal of "slight physical injuries thru reckless imprudence," with both charges grounded on the same act, the Court explained: Reason and precedent both coincide in that once convicted or acquitted of a specific act of reckless imprudence, the accused may not be prosecuted again for that same act. *For the essence of the quasi offense of criminal negligence under article 365 of the Revised Penal Code lies*

in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty, it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and can not be split into different crimes and prosecutions. x x x

5. CRIMINAL LAW; REVISED PENAL CODE; "COMPLEXING'' OF CRIMES UNDER ARTICLE 48, REVISED PENAL CODE, NOT APPLICABLE TO QUASI CRIMES UNDER ARTICLE 365 THEREOF; CASE AT BAR.— The confusion bedeviling the question posed in this petition, to which the MeTC succumbed, stems from persistent but awkward attempts to harmonize conceptually incompatible substantive and procedural rules in criminal law, namely, Article 365 defining and penalizing quasi-offenses and Article 48 on complexing of crimes, both under the Revised Penal Code. Article 48 is a procedural device allowing single prosecution of multiple felonies falling under either of two categories: (1) when a single act constitutes two or more grave or less grave felonies (thus excluding from its operation light felonies); and (2) when an offense is a necessary means for committing the other. The legislature crafted this procedural tool to benefit the accused who, in lieu of serving multiple penalties, will only serve the maximum of the penalty for the most serious crime. In contrast, Article 365 is substantive rule penalizing not an *act* defined as a felony but "the mental attitude x x x behind the act, the dangerous recklessness, lack of care or foresight x x x," a single mental attitude regardless of the resulting consequences. Thus, Article 365 was crafted as one quasi-crime resulting in one or more consequences. x x x A becoming regard to this Court's place in our scheme of government denying it the power to make laws constrains us to keep inviolate the conceptual distinction between quasi-crimes and intentional felonies under our penal code. Article 48 is incongruent to the notion of quasi-crimes under Article 365. It is conceptually impossible for a *quasi-offense* to stand for (1) a single *act* constituting two or more grave or less grave *felonies*; or (2) an *offense*

which is a necessary means for committing *another*. This is why, way back in 1968 in *Buan*, we rejected the Solicitor General's argument that double jeopardy does not bar a second prosecution for slight physical injuries through reckless imprudence allegedly because the charge for that offense could not be joined with the other charge for serious physical injuries through reckless imprudence following Article 48 of the Revised Penal Code:

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROHIBITION OF SPLITTING OF CHARGES UNDER ARTICLE 365.— Indeed, this is a constitutionally compelled choice. By prohibiting the splitting of charges under Article 365, irrespective of the number and severity of the resulting acts, rampant occasions of constitutionally impermissible second prosecutions are avoided, not to mention that scarce state resources are conserved and diverted to proper use. Hence, we hold that prosecutions under Article 365 should proceed from a single charge regardless of the number or severity of the consequences. In imposing penalties, the judge will do no more than apply the penalties under Article 365 for each consequence alleged and proven. In short, there shall be no splitting of charges under Article 365, and only one information shall be filed in the same first level court.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.

Jan Abegail Ponce and Terencio Angel De Dios Martija & Chipeco for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The petition seeks the review[1] of the Orders[2] of the Regional Trial Court of Pasig City affirming *sub-silencio* a lower court's ruling finding inapplicable the Double Jeopardy Clause to bar a second prosecution for Reckless Imprudence Resulting in Homicide and Damage to Property. This, despite the accused's previous conviction for Reckless Imprudence Resulting in Slight Physical Injuries arising from the same incident grounding the second prosecution.

The Facts

Following a vehicular collision in August 2004, petitioner Jason Ivler (petitioner) was charged before the Metropolitan Trial Court of Pasig City, Branch 71 (MeTC), with two separate offenses: (1) Reckless Imprudence Resulting in Slight Physical Injuries (Criminal Case No. 82367) for injuries sustained by respondent Evangeline L. Ponce (respondent Ponce); and (2) Reckless Imprudence Resulting in Homicide and Damage to Property (Criminal Case No. 82366) for the death of respondent Ponce's husband Nestor C. Ponce and damage to the spouses Ponce's vehicle. Petitioner posted bail for his temporary release in both cases.

On 7 September 2004, petitioner pleaded guilty to the charge in Criminal Case No. 82367 and was meted out the penalty of public censure. Invoking this conviction, petitioner moved to quash the Information in Criminal Case No. 82366 for placing him in jeopardy of second punishment for the same offense of reckless imprudence.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Dated 2 February 2006 and 2 May 2006.

The MeTC refused quashal, finding no identity of offenses in the two cases.[3]

After unsuccessfully seeking reconsideration, petitioner elevated the matter to the Regional Trial Court of Pasig City, Branch 157 (RTC), in a petition for *certiorari* (S.C.A. No. 2803). Meanwhile, petitioner sought from the MeTC the suspension of proceedings in Criminal Case No. 82366, including the arraignment on 17 May 2005, invoking S.C.A. No. 2803 as a prejudicial question. Without acting on petitioner's motion, the MeTC proceeded with the arraignment and, because of petitioner's absence, cancelled his bail and ordered his arrest.[4] Seven days later, the MeTC issued a resolution denying petitioner's motion to suspend proceedings and postponing his arraignment until after his arrest.[5] Petitioner sought reconsideration but as of the filing of this petition, the motion remained unresolved.

Relying on the arrest order against petitioner, respondent Ponce sought in the RTC the dismissal of S.C.A. No. 2803 for petitioner's loss of standing to maintain the suit. Petitioner contested the motion.

The Ruling of the Trial Court

In an Order dated 2 February 2006, the RTC dismissed S.C.A. No. 2803, narrowly grounding its ruling on petitioner's forfeiture of standing to maintain S.C.A. No. 2803 arising from the MeTC's order to arrest petitioner for his non-appearance at the arraignment in Criminal Case No. 82366. Thus, without reaching the merits of S.C.A. No. 2803, the RTC effectively affirmed the MeTC. Petitioner sought reconsideration but this proved unavailing.[6]

Hence, this petition.

Petitioner denies absconding. He explains that his petition in S.C.A. No. 2803 constrained him to forego participation in the

[3] In a Resolution dated 4 October 2004.

[4] In an Order dated 17 May 2005 (Records, p. 142).

[5] In a Resolution dated 24 May 2005.

[6] Denied in an Order dated 2 May 2006.

proceedings in Criminal Case No. 82366. Petitioner distinguishes his case from the line of jurisprudence sanctioning dismissal of appeals for absconding appellants because his appeal before the RTC was a special civil action seeking a pre-trial relief, not a post-trial appeal of a judgment of conviction.[7]

Petitioner laments the RTC's failure to reach the merits of his petition in S.C.A. 2803. Invoking jurisprudence, petitioner argues that his constitutional right not to be placed twice in jeopardy of punishment for the same offense bars his prosecution in Criminal Case No. 82366, having been previously convicted in Criminal Case No. 82367 for the same offense of reckless imprudence charged in Criminal Case No. 82366. Petitioner submits that the multiple consequences of such crime are material only to determine his penalty.

Respondent Ponce finds no reason for the Court to disturb the RTC's decision forfeiting petitioner's standing to maintain his petition in S.C.A. 2803. On the merits, respondent Ponce calls the Court's attention to jurisprudence holding that light offenses (*e.g.* slight physical injuries) cannot be complexed under Article 48 of the Revised Penal Code with grave or less grave felonies (*e.g.* homicide). Hence, the prosecution was obliged to separate the charge in Criminal Case No. 82366 for the slight physical injuries from Criminal Case No. 82367 for the homicide and damage to property.

In the Resolution of 6 June 2007, we granted the Office of the Solicitor General's motion not to file a comment to the petition as the public respondent judge is merely a nominal party and private respondent is represented by counsel.

The Issues

Two questions are presented for resolution: (1) whether petitioner forfeited his standing to seek relief in S.C.A. 2803 when the MeTC ordered his arrest following his non-appearance at the arraignment in Criminal Case No. 82366; and (2) if in the negative,

[7] *Rollo*, pp. 30-33.

whether petitioner's constitutional right under the Double Jeopardy Clause bars further proceedings in Criminal Case No. 82366.

The Ruling of the Court

We hold that (1) petitioner's non-appearance at the arraignment in Criminal Case No. 82366 did not divest him of personality to maintain the petition in S.C.A. 2803; and (2) the protection afforded by the Constitution shielding petitioner from prosecutions placing him in jeopardy of second punishment for the same offense bars further proceedings in Criminal Case No. 82366.

Petitioner's Non-appearance at the Arraignment in Criminal Case No.* 82366 *did not Divest him of Standing to Maintain the Petition in S.C.A. 2803

Dismissals of appeals grounded on the appellant's escape from custody or violation of the terms of his bail bond are governed by the second paragraph of Section 8, Rule 124,[8] in relation to Section 1, Rule 125, of the Revised Rules on Criminal Procedure authorizing this Court or the Court of Appeals to "also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal." The "appeal" contemplated in Section 8 of Rule 124 is a suit to review *judgments of convictions*.

The RTC's dismissal of petitioner's special civil action for *certiorari* to review a *pre-arraignment ancillary question* on the applicability of the Due Process Clause to bar proceedings in Criminal Case No. 82366 finds no basis under procedural rules and jurisprudence. The RTC's reliance on *People v. Esparas*[9] undercuts the cogency of its ruling because *Esparas* stands for a proposition contrary to the RTC's ruling. There, the Court

[8] The provision states: "*Dismissal of appeal for abandonment or failure to prosecute*. – x x x

The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal."

[9] 329 Phil. 339 (1996).

granted review to an appeal by an accused who was *sentenced to death* for importing prohibited drugs even though she jumped bail pending trial and was thus tried and convicted *in absentia*. The Court in *Esparas* treated the mandatory review of death sentences under Republic Act No. 7659 as an exception to Section 8 of Rule 124.[10]

The mischief in the RTC's treatment of petitioner's non-appearance at his arraignment in Criminal Case No. 82366 as proof of his loss of standing becomes more evident when one considers the Rules of Court's treatment of a defendant who absents himself from post-arraignment hearings. Under Section 21, Rule 114[11] of the Revised Rules of Criminal Procedure, the defendant's absence merely renders his bondsman potentially liable on its bond (subject to cancellation should the bondsman fail to produce the accused within 30 days); the defendant *retains* his standing and, should he fail to surrender, will be tried *in absentia* and could be convicted or acquitted. Indeed, the 30-day period granted to the bondsman to produce the accused underscores the fact that mere non-appearance does not *ipso facto* convert the accused's status to that of a fugitive without standing.

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[10] *Id.* at 350.

[11] The provision states: "*Forfeiture of bail.* – When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

(a) produce the body of their principal or give the reason for his non-production; and

(b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted."

Further, the RTC's observation that petitioner provided "no explanation why he failed to attend the scheduled proceeding"[12] at the MeTC is belied by the records. Days before the arraignment, petitioner sought the suspension of the MeTC's proceedings in Criminal Case No. 82366 in light of his petition with the RTC in S.C.A. No. 2803. Following the MeTC's refusal to defer arraignment (the order for which was released days after the MeTC ordered petitioner's arrest), petitioner sought reconsideration. His motion remained unresolved as of the filing of this petition.

Petitioner's Conviction in Criminal Case No. 82367 Bars his Prosecution in Criminal Case No. 82366

The accused's negative constitutional right not to be "twice put in jeopardy of punishment for the same offense"[13] protects him from, among others, post-conviction prosecution for the same offense, with the prior verdict rendered by a court of competent jurisdiction upon a valid information.[14] It is not disputed that petitioner's conviction in Criminal Case No. 82367 was rendered by a court of competent jurisdiction upon a valid charge. Thus, the case turns on the question whether Criminal Case No. 82366 and Criminal Case No. 82367 involve the "same offense." Petitioner adopts the affirmative view, submitting that the two cases concern the same offense of reckless imprudence. The MeTC ruled otherwise, finding that Reckless Imprudence Resulting in Slight Physical Injuries is an entirely separate offense from Reckless Imprudence Resulting in Homicide and Damage to Property "as the [latter] requires proof of an additional fact which the other does not."[15]

We find for petitioner.

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[12] *Rollo*, p. 40.

[13] Section 21, Article III, 1987 Constitution.

[14] Section 7, Rule 117 Revised Rules of Criminal Procedure. The right has, of course, broader scope to cover not only prior guilty pleas but also acquittals and unconsented dismissals to bar prosecutions for the same, lesser or graver offenses covered in the initial proceedings (*id.*).

[15] *Rollo*, p. 97.

Reckless Imprudence is a Single Crime, its Consequences on Persons and Property are Material Only to Determine the Penalty

The two charges against petitioner, arising from the same facts, were prosecuted under the same provision of the Revised Penal Code, as amended, namely, Article 365 defining and penalizing quasi-offenses. The text of the provision reads:

Imprudence and negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of arresto menor in its maximum period shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

A fine not exceeding two hundred pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.

In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in Article sixty-four.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in

which case the court shall impose the penalty next lower in degree than that which should be imposed in the period which they may deem proper to apply.

2. When, by imprudence or negligence and with violation of the Automobile Law, to death of a person shall be caused, in which case the defendant shall be punished by *prision correccional* in its medium and maximum periods.

Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in this hand to give.

Structurally, these nine paragraphs are collapsible into four sub-groupings relating to (1) the penalties attached to the quasi-offenses of "imprudence" and "negligence" (paragraphs 1-2); (2) a modified penalty scheme for either or both quasi-offenses (paragraphs 3-4, 6 and 9); (3) a generic rule for trial courts in imposing penalties (paragraph 5); and (4) the definition of "reckless imprudence" and "simple imprudence" (paragraphs 7-8). *Conceptually*, quasi-offenses penalize "the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*,"[16] unlike willful offenses which punish the *intentional criminal act*. These structural and conceptual features of quasi-offenses set them apart from the mass of intentional crimes under the first 13 Titles of Book II of the Revised Penal Code, as amended.

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[16] *Quizon v. Justice of the Peace of Pampanga*, 97 Phil. 342, 345 (1955) (emphasis in the original).

Indeed, the notion that quasi-offenses, whether reckless or simple, are distinct species of crime, separately defined and penalized under the framework of our penal laws, is nothing new. As early as the middle of the last century, we already sought to bring clarity to this field by *rejecting* in *Quizon v. Justice of the Peace of Pampanga* the proposition that "reckless imprudence is not a crime in itself but simply a way of committing it x x x"[17] on three points of analysis: (1) the object of punishment in quasi-crimes (as opposed to intentional crimes); (2) the legislative intent to treat quasi-crimes as distinct offenses (as opposed to subsuming them under the mitigating circumstance of minimal intent) and; (3) the different penalty structures for quasi-crimes and intentional crimes:

> The proposition (inferred from Art. 3 of the Revised Penal Code) that "reckless imprudence" is not a crime in itself but simply a way of committing it and merely determines a lower degree of criminal liability is too broad to deserve unqualified assent. There are crimes that by their structure cannot be committed through imprudence: murder, treason, robbery, malicious mischief, *etc*. In truth, criminal negligence in our Revised Penal Code is treated as a mere quasi offense, and dealt with separately from willful offenses. It is not a mere question of classification or terminology. *In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the imprudencia punible*. x x x
>
> *Were criminal negligence but a modality in the commission of felonies, operating only to reduce the penalty therefor, then it would be absorbed in the mitigating circumstances of Art. 13, specially the lack of intent to commit so grave a wrong as the one actually committed*. Furthermore, the theory would require that the corresponding penalty should be fixed in proportion to the penalty prescribed for each crime when committed willfully. For each penalty for the willful offense, there would then be a corresponding penalty for the negligent variety. But instead, our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor* maximum, to *prision correccional* [*medium*], if the willful act would

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[17] *Id.*

constitute a grave felony, notwithstanding that the penalty for the latter could range all the way from prision mayor to death, according to the case. *It can be seen that the actual penalty for criminal negligence bears no relation to the individual willful crime, but is set in relation to a whole class, or series, of crimes.*[18] (Emphasis supplied)

This explains why the technically correct way to allege quasi-crimes is to state that their commission *results* in damage, either to person or property.[19]

Accordingly, we found the Justice of the Peace in *Quizon* without jurisdiction to hear a case for "Damage to Property through Reckless Imprudence," its jurisdiction being limited to trying charges for Malicious Mischief, an intentional crime conceptually incompatible with the element of imprudence obtaining in quasi-crimes.

Quizon, rooted in Spanish law[20] (the normative ancestry of our present day penal code) and since repeatedly

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[18] *Id.* at 345-346.

[19] We observed in *Quizon*: "Much of the confusion has arisen from the common use of such descriptive phrases as 'homicide through reckless imprudence,' and the like; *when the strict technical offense is, more accurately, 'reckless imprudence resulting in homicide'; or 'simple imprudence causing damages to property.'*'' (*Id.* at 345; emphasis supplied)

[20] In *People v. Buan*, 131 Phil. 498, 500-502 (1968), which applied *Quizon*'s logic, the Court canvassed relevant jurisprudence, local and Spanish:

[T]he quasi-offense of criminal negligence under article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. *The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty, it does not qualify the substance of the offense*. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and cannot be split into different crimes and prosecutions. *This has been the constant ruling of the Spanish Supreme Court, and is also that of this Court in its most recent decisions on the matter*.

Thus, in *People vs. Silva*, L-15974, January 30, 1962, where as a result of the same vehicular accident one man died, two persons were seriously injured while another three suffered only slight physical injuries, we ruled

reiterated,[21] stands on solid conceptual foundation. The contrary doctrinal pronouncement in *People v. Faller*[22] that "[r]eckless

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that the acquittal on a charge of slight physical injuries through reckless imprudence, was a bar to another prosecution for homicide through reckless imprudence. In *People vs. Diaz*, L-6518, March 30, 1954, the ruling was that the dismissal by the Municipal Court of a charge of reckless driving barred a second information of damage to property through reckless imprudence based on the same negligent act of the accused. In *People vs, Belga*, 100 Phil. 996, dismissal of an information for physical injuries through needless imprudence as a result of a collision between two automobiles was declared, to block two other prosecutions, one for damage to property through reckless imprudence and another for multiple physical injuries arising from the same collision. The same doctrine was reasserted in *Yap vs. Lutero, et al*., L-12669, April 30, 1959. In none of the cases cited did the Supreme Court regard as material that the various offenses charged for the same occurrence were triable in Courts of differing category, or that the complainants were not the individuals.

As for the Spanish jurisprudence, Cuello Calon, in his Derecho Penal (12th Ed.), Vol. I, p. 439, has this to say:

> *Aun cuando de un solo hecho imprudente se originen males diversos, como el hecho culposo es uno solo, existe un solo delito de imprudencia. Esta es jurisprudencia constante del Tribunal Supremo. De acuerdo con esta doctrina el automovilista imprudente que atropella y causa lesiones a dos personas y ademas daños, no respondera de dos delitos de lesiones y uno de daños por imprudencia, sino de un solo delito culposo.*

The said author cites in support of the text the following decisions of the Supreme Court of Spain (footnotes 2 and 3).

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> *Si con el hecho imprudente se causa la muerte de una persona y ademas se ocasionan daños, existe un solo hecho punible, pues uno solo fue el acto, aun cuando deben apreciarse dos enorden a la responsabilidad civil, 14 diciembre 1931 si a consecuencia de un solo acto imprudente se produjeron tres delitos, dos de homicidio y uno de daños, como todos son consecuencia de un solo acto culposo, no cabe penarlos por separado,* 2 *abril* 1932. (Emphasis supplied)

[21] *E.g. Samson v. Court of Appeals*, 103 Phil. 277 (1958); *People v. Cano*, 123 Phil. 1086 (1966); *Pabulario v. Palarca*, 129 Phil. 1 (1967); *Corpus v. Paje*, 139 Phil. 429 (1969).

[22] 67 Phil. 529 (1939) (affirming a conviction for malicious mischief upon a charge for "damage [to property] through reckless imprudence"). A logical

impudence is not a crime in itself x x x [but] simply a way of committing it x x x,"[23] has long been abandoned when the Court *en banc* promulgated *Quizon* in 1955 nearly two decades after the Court decided *Faller* in 1939. *Quizon* rejected *Faller*'s conceptualization of quasi-crimes by holding that quasi-crimes under Article 365 are distinct species of crimes and not merely methods of committing crimes. *Faller* found expression in post-*Quizon* jurisprudence[24] only by dint of lingering doctrinal confusion arising from an indiscriminate fusion of criminal law rules defining Article 365 crimes and the complexing of intentional crimes under Article 48 of the Revised Penal Code which, as will be shown shortly, rests on erroneous conception of quasi-crimes. Indeed, the *Quizonian* conception of quasi-crimes undergirded a related branch of jurisprudence applying the Double Jeopardy Clause to quasi-offenses, barring second prosecutions for a quasi-offense alleging one resulting act after a prior conviction or acquittal of a quasi-offense alleging another resulting act but arising from the same reckless act or omission upon which the second prosecution was based.

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consequence of a Fallerian conceptualization of quasi-crimes is the sanctioning of the split prosecution of the consequences of a single quasi offense such as those allowed in *El Pueblo de Filipinas v. Estipona*, 70 Phil. 513 (1940) (finding the separate prosecutions of damage to property and multiple physical injuries arising from the same recklessness in the accused's operation of a motor vehicle not violative of the Double Jeopardy Clause).

[23] 67 Phil. 529 (1939).

[24] *E.g. Lontok v. Gorgonio*, 178 Phil. 525, 528 (1979) (holding that the "less grave offense" of "damage to property through reckless imprudence" (for ₱2,340) cannot be complexed under Article 48 of the penal code with a prescribed " slight offense" of "*lesiones leves* through reckless imprudence," citing *Faller*); *Arcaya v. Teleron*, 156 Phil. 354, 362 (1974) (noting, by way of dicta in a ruling denying relief to an appeal against the splitting of two charges for "less serious physical injuries and damage to property amounting to ₱10,000 though reckless imprudence" and "slight physical injuries though reckless imprudence," that the *Quizon* doctrine, as cited in *Corpus v. Paje*, 139 Phil. 429 (1969) and *People v. Buan*, 131 Phil. 498 (1968), "may not yet be settled in view of the contrary dictum" in *Faller*).

Prior Conviction or Acquittal of Reckless Imprudence Bars Subsequent Prosecution for the Same Quasi-Offense

The doctrine that reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes such that conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts, undergirded this Court's unbroken chain of jurisprudence on double jeopardy as applied to Article 365 starting with *People v. Diaz,*[25] decided in 1954. There, a full Court, speaking through Mr. Justice Montemayor, ordered the dismissal of a case for "damage to property thru reckless imprudence" because a prior case against the same accused for "reckless driving," arising from the same act upon which the first prosecution was based, had been dismissed earlier. Since then, whenever the same legal question was brought before the Court, that is, whether prior conviction or acquittal of reckless imprudence bars subsequent prosecution for the same quasi-offense, regardless of the consequences alleged for both charges, the Court unfailingly and consistently answered in the affirmative in *People v. Belga*[26] (promulgated in 1957 by the Court *en banc,* per Reyes, *J.*), *Yap v. Lutero*[27] (promulgated in 1959, unreported, per Concepcion, *J.*), *People v. Narvas*[28] (promulgated in 1960 by the Court *en banc*, per Bengzon *J.*), *People v. Silva*[29] (promulgated in 1962 by the Court *en banc*,

[25] 94 Phil. 715 (1954).

[26] 100 Phil. 996 (1957) (barring subsequent prosecutions for physical injuries thru reckless imprudence and damage to property thru reckless imprudence following an acquittal for "reckless imprudence with physical injury").

[27] 105 Phil. 1307 (1959) (Unrep.) (barring subsequent prosecution for "serious physical injuries" following an acquittal for "reckless driving").

[28] 107 Phil. 737 (1960) (barring subsequent prosecution for "damage to property thru reckless imprudence" following a conviction for "multiple slight and serious physical injuries thru reckless imprudence.")

[29] No. L-15974, 30 January 1962, 4 SCRA 95 (barring subsequent prosecution for "homicide thru reckless imprudence" following an acquittal for "slight physical injuries thru reckless imprudence").

per Paredes, *J.*), *People v. Macabuhay*[30] (promulgated in 1966 by the Court *en banc*, per Makalintal, *J.*), *People v. Buan*[31] (promulgated in 1968 by the Court *en banc*, per Reyes, J.B.L., acting *C. J.*), *Buerano v. Court of Appeals*[32] (promulgated in 1982 by the Court *en banc*, per Relova, *J.*), and *People v. City Court of Manila*[33] (promulgated in 1983 by the First Division, per Relova, *J.*). These cases uniformly barred the second prosecutions as constitutionally impermissible under the Double Jeopardy Clause.

The reason for this consistent stance of extending the constitutional protection under the Double Jeopardy Clause to quasi-offenses was best articulated by Mr. Justice J.B.L. Reyes in *Buan*, where, in barring a subsequent prosecution for "serious physical injuries and damage to property thru reckless imprudence" because of the accused's prior acquittal of "slight physical injuries thru reckless imprudence," with both charges grounded on the same act, the Court explained:[34]

> Reason and precedent both coincide in that once convicted or acquitted of a specific act of reckless imprudence, the accused may not be prosecuted again for that same act. *For the essence of the quasi offense of criminal negligence under article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken*

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[30] 123 Phil. 48 (1966) (barring subsequent prosecution for "damage to property thru reckless imprudence" following an acquittal for two counts of "slight physical injuries thru reckless imprudence.")

[31] 131 Phil. 498 (1968) (barring subsequent prosecution for "serious physical injuries and damage to property thru reckless imprudence" following an acquittal for "slight physical injuries thru reckless imprudence").

[32] 200 Phil. 486 (1982) (reversing a subsequent conviction for "damage to property thru reckless imprudence" following a conviction for "slight and serious physical injuries thru reckless imprudence").

[33] 206 Phil. 555 (1983) (barring subsequent prosecution for "homicide thru reckless imprudence" following a conviction for "serious physical injuries thru reckless imprudence").

[34] 131 Phil. 498, 500 (1968).

into account to determine the penalty, it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and can not be split into different crimes and prosecutions.[35] x x x (Emphasis supplied)

Evidently, the *Diaz* line of jurisprudence on double jeopardy merely extended to its logical conclusion the reasoning of *Quizon.*

There is in our jurisprudence *only one* ruling going against this unbroken line of authority. Preceding *Diaz* by more than a decade, *El Pueblo de Filipinas v. Estipona*,[36] decided by the pre-war colonial Court in November 1940, allowed the subsequent prosecution of an accused for reckless imprudence resulting in damage to property despite his previous conviction for multiple physical injuries arising from the same reckless operation of a motor vehicle upon which the second prosecution was based. *Estipona'*s inconsistency with the post-war *Diaz* chain of jurisprudence suffices to impliedly overrule it. At any rate, all doubts on this matter were laid to rest in 1982 in *Buerano*.[37] There, we reviewed the Court of Appeals' conviction of an accused for "damage to property for reckless imprudence" despite his prior conviction for "slight and less serious physical injuries thru reckless imprudence," arising from the same act upon which the second charge was based. The Court of Appeals had relied on *Estipona.* We reversed on the strength of *Buan:*[38]

Th[e] view of the Court of Appeals *was inspired by the ruling of this Court in the pre-war case of People vs. Estipona decided on November 14, 1940*. **However, in the case of *People vs. Buan,* 22 SCRA 1383 (March 29, 1968), this Court, speaking thru Justice J. B. L. Reyes, held that** –

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[35] *Id.*

[36] 70 Phil. 513 (1940), also cited in other sources as *People v. Estipona*.

[37] *Supra* note 32.

[38] *Supra* note 31.

> Reason and precedent both coincide in that once convicted or acquitted of a specific act of reckless imprudence, the accused may not be prosecuted again for that same act. For the essence of the quasi offense of criminal negligence under Article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty, it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and can not be split into different crimes and prosecutions.
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> **. . .** the exoneration of this appellant, Jose Buan, by the Justice of the Peace (now Municipal) Court of Guiguinto, Bulacan, of the charge of slight physical injuries through reckless imprudence, **prevents his being prosecuted for serious physical injuries through reckless imprudence in the Court of First Instance of the province, where both charges are derived from the consequences of one and the same vehicular accident, because the second accusation places the appellant in second jeopardy for the same offense**.[39] (Emphasis supplied)

Thus, for all intents and purposes, *Buerano* had effectively overruled *Estipona*.

It is noteworthy that the Solicitor General in *Buerano*, in a reversal of his earlier stance in *Silva, joined causes with the accused*, a fact which did not escape the Court's attention:

> Then Solicitor General, now Justice Felix V. Makasiar, in his MANIFESTATION dated December 12, 1969 (page 82 of the *Rollo*) *admits that the Court of Appeals erred in not sustaining petitioner's plea of double jeopardy and submits that "its affirmatory decision dated January 28, 1969, in Criminal Case No. 05123-CR finding petitioner guilty of damage to property*

[39] *Buerano v. Court of Appeals*, 200 Phil. 486, 491 (1982).

through reckless imprudence should be set aside, without costs." *He stressed that "if double jeopardy exists where the reckless act resulted into homicide and physical injuries. then the same consequence must perforce follow where the same reckless act caused merely damage to property-not death-and physical injuries.* Verily, the value of a human life lost as a result of a vehicular collision cannot be equated with any amount of damages caused to a motor vehicle arising from the same mishap."[40] (Emphasis supplied)

Hence, we find merit in petitioner's submission that the lower courts erred in refusing to extend in his favor the mantle of protection afforded by the Double Jeopardy Clause. A more fitting jurisprudence could not be tailored to petitioner's case than *People v. Silva*,[41] a *Diaz* progeny. There, the accused, who was also involved in a vehicular collision, was charged in two separate Informations with "Slight Physical Injuries thru Reckless Imprudence" and "Homicide with Serious Physical Injuries thru Reckless Imprudence." Following his acquittal of the former, the accused sought the quashal of the latter, invoking the Double Jeopardy Clause. The trial court initially denied relief, but, on reconsideration, found merit in the accused's claim and dismissed the second case. In affirming the trial court, we quoted with approval its analysis of the issue following *Diaz* and its progeny *People v. Belga*:[42]

On June 26, 1959, the lower court reconsidered its Order of May 2, 1959 and dismissed the case, holding: —

> [T]he Court believes that the case falls squarely within the doctrine of double jeopardy enunciated in *People v. Belga*, x x x In the case cited, Ciriaco Belga and Jose Belga were charged in the Justice of the Peace Court of Malilipot, Albay, with the crime of physical injuries through reckless imprudence arising from a collision between the two automobiles driven by them (Crim. Case No. 88). Without the aforesaid complaint having been dismissed or otherwise disposed of, two other

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[40] *Id.* at 491-492.

[41] No. L-15974, 30 January 1962, 4 SCRA 95.

[42] *Supra* note 26.

criminal complaints were filed in the same justice of the peace court, in connection with the same collision one for damage to property through reckless imprudence (Crim. Case No. 95) signed by the owner of one of the vehicles involved in the collision, and another for multiple physical injuries through reckless imprudence (Crim. Case No. 96) signed by the passengers injured in the accident. Both of these two complaints were filed against Jose Belga only. After trial, both defendants were acquitted of the charge against them in Crim. Case No. 88. Following his acquittal, Jose Belga moved to quash the complaint for multiple physical injuries through reckless imprudence filed against him by the injured passengers, contending that the case was just a duplication of the one filed by the Chief of Police wherein he had just been acquitted. The motion to quash was denied and after trial Jose Belga was convicted, whereupon he appealed to the Court of First Instance of Albay. In the meantime, the case for damage to property through reckless imprudence filed by one of the owners of the vehicles involved in the collision had been remanded to the Court of First Instance of Albay after Jose Belga had waived the second stage of the preliminary investigation. After such remand, the Provincial Fiscal filed in the Court of First Instance two informations against Jose Belga, one for physical injuries through reckless imprudence, and another for damage to property through reckless imprudence. Both cases were dismissed by the Court of First Instance, upon motion of the defendant Jose Belga who alleged double jeopardy in a motion to quash. On appeal by the Prov. Fiscal, the order of dismissal was affirmed by the Supreme Court in the following language:

> The question for determination is whether the acquittal of Jose Belga in the case filed by the chief of police constitutes a bar to his subsequent prosecution for multiple physical injuries and damage to property through reckless imprudence.

In the case of *Peo[ple] v. F. Diaz*, G. R. No. L-6518, prom. March 30, 1954, the accused was charged in the municipal court of Pasay City with reckless driving under Sec. 52 of the Revised Motor Vehicle Law, for having driven an automobile in a 'fast and reckless manner ... thereby causing an accident.' After the accused had pleaded not guilty the case was dismissed

in that court for 'failure of the Government to prosecute'. But some time thereafter the city attorney filed an information in the Court of First Instance of Rizal, charging the same accused with damage to property thru reckless imprudence. The amount of the damage was alleged to be ₱249.50. Pleading double jeopardy, the accused filed a motion, and on appeal by the Government we affirmed the ruling. Among other things we there said through Mr. Justice Montemayor —

> The next question to determine is the relation between the first offense of violation of the Motor Vehicle Law prosecuted before the Pasay City Municipal Court and the offense of damage to property thru reckless imprudence charged in the Rizal Court of First Instance. One of the tests of double jeopardy is whether or not the second offense charged necessarily includes or is necessarily included in the offense charged in the former complaint or information (Rule 113, Sec. 9). Another test is whether the evidence which proves one would prove the other that is to say whether the facts alleged in the first charge if proven, would have been sufficient to support the second charge and vice versa; or whether one crime is an ingredient of the other. x x x
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The foregoing language of the Supreme Court also disposes of the contention of the prosecuting attorney that the charge for slight physical injuries through reckless imprudence could not have been joined with the charge for homicide with serious physical injuries through reckless imprudence in this case, in view of the provisions of Art. 48 of the Revised Penal Code, as amended. The prosecution's contention might be true. But neither was the prosecution obliged to first prosecute the accused for slight physical injuries through reckless imprudence before pressing the more serious charge of homicide with serious physical injuries through reckless imprudence. Having first prosecuted the defendant for the lesser offense in the Justice of the Peace Court of Meycauayan, Bulacan, which acquitted the defendant, the prosecuting attorney is not now in a position to press in this case the more serious charge of homicide with serious physical injuries through reckless

> imprudence which arose out of the same alleged reckless imprudence of which the defendant have been previously cleared by the inferior court.[43]

Significantly, the Solicitor General had urged us in *Silva* to reexamine *Belga* (and hence, *Diaz*) "for the purpose of delimiting or clarifying its application."[44] We declined the invitation, thus:

> The State in its appeal claims that the lower court erred in dismissing the case, on the ground of double jeopardy, upon the basis of the acquittal of the accused in the JP court for Slight Physical Injuries, thru Reckless Imprudence. In the same breath said State, thru the Solicitor General, admits that the facts of the case at bar, fall squarely on the ruling of the Belga case x x x, upon which the order of dismissal of the lower court was anchored. *The Solicitor General, however, urges a re-examination of said ruling, upon certain considerations for the purpose of delimiting or clarifying its application. We find, nevertheless, that further elucidation or disquisition on the ruling in the Belga case, the facts of which are analogous or similar to those in the present case, will yield no practical advantage to the government. On one hand, there is nothing which would warrant a delimitation or clarification of the applicability of the Belga case. It was clear*. On the other, this Court has reiterated the views expressed in the *Belga* case, in the identical case of *Yap v. Hon. Lutero, et al.*., L-12669, April 30, 1959.[45] (Emphasis supplied)

Article 48 Does not Apply to Acts Penalized Under Article 365 of the Revised Penal Code

The confusion bedeviling the question posed in this petition, to which the MeTC succumbed, stems from persistent but awkward attempts to harmonize conceptually incompatible substantive and procedural rules in criminal law, namely, Article 365 defining and penalizing quasi-offenses and Article 48

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[43] No. L-15974, 30 January 1962, 4 SCRA 95, 97-100 (internal citations omitted).

[44] *Id.* at 100.

[45] *Id.*

on complexing of crimes, both under the Revised Penal Code. Article 48 is a procedural device allowing single prosecution of multiple felonies falling under either of two categories: (1) when a single act constitutes two or more grave or less grave felonies (thus excluding from its operation light felonies[46]); and (2) when an offense is a necessary means for committing the other. The legislature crafted this procedural tool to benefit the accused who, in lieu of serving multiple penalties, will only serve the maximum of the penalty for the most serious crime.

In contrast, Article 365 is a substantive rule penalizing not an *act* defined as a felony but "the mental attitude x x x behind the act, the dangerous recklessness, lack of care or foresight x x x,"[47] a single mental attitude regardless of the resulting consequences. Thus, Article 365 was crafted as one quasi-crime resulting in one or more consequences.

Ordinarily, these two provisions will operate smoothly. Article 48 works to combine in a single prosecution multiple intentional crimes falling under Titles 1-13, Book II of the Revised Penal Code, when proper; Article 365 governs the prosecution of imprudent acts and their consequences. However, the complexities of human interaction can produce a hybrid quasi-offense not falling under either models – that of a *single* criminal negligence resulting in multiple *non-crime* damages to persons and property with varying penalties corresponding to light, less grave or grave offenses. The ensuing prosecutorial dilemma is obvious: how should *such* a quasi-crime be prosecuted? Should Article 48's framework apply to "complex" the *single quasi-offense* with its multiple (*non-criminal*) consequences (excluding those amounting to light offenses which will be tried separately)? Or should the prosecution proceed under a single charge, collectively alleging all the consequences of the single quasi-

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[46] Defined under Article 9, paragraph 3 of the Revised Penal Code, as amended, thus: "Light felonies are those infractions of law for the commission of which a penalty of *arresto menor* or a fine not exceeding 200 pesos or both is provided."

[47] *Quizon v. Justice of the Peace of Pampanga*, 97 Phil. 342, 345 (1955).

crime, to be penalized separately following the scheme of penalties under Article 365?

Jurisprudence adopts *both* approaches. Thus, one line of rulings (*none of which involved the issue of double jeopardy*) applied Article 48 by "complexing" one quasi-crime with its multiple consequences[48] unless one consequence amounts to a light felony, in which case charges were split by grouping, on the one hand, resulting acts amounting to grave or less grave felonies and filing the charge with the second level courts and, on the other hand, resulting acts amounting to light felonies and filing the charge with the first level courts.[49] Expectedly, this is the approach

[48] *E.g. People v. Lara*, 75 Phil. 786 (1946) (involving "*homicidio por imprudencia temeraria*" with several victims [or, roughly, "multiple homicide thru reckless imprudence"]); *People v. Agito*, 103 Phil. 526 (1958) (involving "triple homicide and serious physical injuries through reckless imprudence").

[49] *E.g. People v. Turla*, 50 Phil. 1001 (1927) (sustaining a dismissal on demurrer of a criminal case for the prosecutor's failure to amend a charge for "damage to property and of *lesions leves* [slight physical injuries] through negligence and imprudence" to remove the charge for the slight offense, under Article 89 of the penal code, the precursor of Article 48); *Arcaya v. Teleron*, 156 Phil. 354 (1974) (finding no grave abuse of discretion in the filing of separate charges for "less serious physical injuries and damage to property amounting to ₱10,000 though reckless imprudence" and "slight physical injuries though reckless imprudence" arising from the same facts); *Lontok v. Gorgonio*, 178 Phil. 525 (1979) (granting a petition to split a single charge for "reckless imprudence resulting in damage to property and multiple [slight] physical injuries" by limiting the petitioner's trial to "reckless imprudence resulting in damage to property"). See also *Reodica v. Court of Appeals*, 354 Phil. 90 (1998) (holding that the "less grave felony of reckless imprudence resulting in damage to property" (for ₱8,542) cannot be complexed under Article 48 of the Revised Penal Code with "the light felony of reckless imprudence resulting in physical injuries," citing *Lontok*); *People v. De Los Santos*, 407 Phil. 724 (2001) (applying Article 48 of the penal code to hold the accused liable for the "complex crime of reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries" (upon an information charging "multiple murder, multiple frustrated murder and multiple attempted murder.") In a dicta, the decision stated that separate informations should have been filed for the slight physical injuries the victims sustained which cannot be complexed with the more serious crimes under Article 48.)

the MeTC impliedly sanctioned (and respondent Ponce invokes), even though under Republic Act No. 7691,[50] the MeTC has now exclusive original jurisdiction to impose the most serious penalty under Article 365 which is *prision correccional* in its medium period.

Under this approach, the issue of double jeopardy will not arise if the "complexing" of acts penalized under Article 365 involves only resulting acts penalized as grave or less grave felonies because there will be a single prosecution of all the resulting acts. The issue of double jeopardy arises if one of the resulting acts is penalized as a light offense and the other acts are penalized as grave or less grave offenses, in which case Article 48 is not deemed to apply and the act penalized as a light offense is tried separately from the resulting acts penalized as grave or less grave offenses.

The second jurisprudential path nixes Article 48 and sanctions a single prosecution of all the effects of the quasi-crime collectively alleged in one charge, regardless of their number or severity,[51]

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[50] Section 2 of RA 7691 provides: "Section 2. Section 32 of [Batas Pambansa Blg. 129] is hereby amended to read as follows:

'Sec. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases*. — Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

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(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: *Provided, however*, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.'" (Underlining supplied)

[51] *E.g. Angeles v. Jose*, 96 Phil. 151 (1954) (reversing the ruling of the then Court of First Instance of Manila which dismissed for lack of jurisdiction a complaint for "damage to property in the sum of ₱654.22, and with less

penalizing each consequence separately. Thus, in *Angeles v. Jose*,[52] we interpreted paragraph three of Article 365, in relation to a charge alleging "reckless imprudence resulting in damage to property and less serious physical injuries," as follows:

> [T]he third paragraph of said article, x x x reads as follows:
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> > When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damage to three times such value, but which shall in no case be less than 25 pesos.
>
> The above-quoted provision simply means that if there is only damage to property the amount fixed therein shall be imposed, *but if there are also physical injuries there should be an additional penalty for the latter. The information cannot be split into two; one for the physical injuries, and another for the damage to property*, x x x.[53] (Emphasis supplied)

By "additional penalty," the Court meant, logically, the penalty scheme under Article 365.

Evidently, these approaches, while parallel, are irreconcilable. Coherence in this field demands choosing one framework over the other. Either (1) we allow the "complexing" of a single

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serious physical injuries through reckless negligence," holding improper the splitting of the charge). We relied on *Angeles* for our ruling in *People v. Villanueva*, 111 Phil. 897 (1962) resolving similar jurisdictional issue and *People v. Cano*, 123 Phil. 1086, 1090 (1966) (reversing a dismissal order which found the complexing of "damage to property with multiple [slight] physical injuries through reckless imprudence" improper, holding that the Information did not and could not have complexed the effect of a single quasi-offense per *Quizon*. The Court noted that "it is merely alleged in the information that, thru reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of its passengers serious physical injuries, upon others less serious physical injuries and upon still others slight physical injuries, in addition to damage to property").

[52] *Angeles v. Jose*, 96 Phil. 151, 152 (1954).

[53] Thus, we were careful to label the crime in question as "*what may be called* a complex crime of physical injuries and damage to property" (*id.*,

quasi-crime by breaking its resulting acts into separate offenses (except for light felonies), thus re-conceptualize a quasi-crime, abandon its present framing under Article 365, discard its conception under the *Quizon* and *Diaz* lines of cases, and treat the multiple consequences of a quasi-crime as separate intentional felonies defined under Titles 1-13, Book II under the penal code; or (2) we forbid the application of Article 48 in the prosecution and sentencing of quasi-crimes, require single prosecution of all the resulting acts regardless of their number and severity, separately penalize each as provided in Article 365, and thus maintain the distinct concept of quasi-crimes as crafted under Article 365, articulated in *Quizon* and applied to double jeopardy adjudication in the *Diaz* line of cases.

A becoming regard of this Court's place in our scheme of government denying it the power to make laws constrains us to keep inviolate the conceptual distinction between quasi-crimes and intentional felonies under our penal code. Article 48 is incongruent to the notion of quasi-crimes under Article 365. It is conceptually impossible for a *quasi-offense* to stand for (1) a single *act* constituting two or more grave or less grave *felonies*; or (2) an *offense* which is a necessary means for committing *another*. This is why, way back in 1968 in *Buan*, we rejected the Solicitor General's argument that double jeopardy does not bar a second prosecution for slight physical injuries through reckless imprudence allegedly because the charge for that offense could not be joined with the other charge for serious physical injuries through reckless imprudence following Article 48 of the Revised Penal Code:

> The Solicitor General stresses in his brief that the charge for slight physical injuries through reckless imprudence could not be joined with the accusation for serious physical injuries through reckless imprudence, because Article 48 of the Revised Penal Code allows only the complexing of grave or less grave felonies. **This**

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emphasis supplied), because our prescription to impose "additional penalty" for the second consequence of less serious physical injuries, defies the sentencing formula under Article 48 requiring imposition of "the penalty for the most serious crime x x x the same to be applied in its maximum period."

same argument was considered and rejected by this Court in the case of *People vs.* [*Silva*] x x x:

> [T]he prosecution's contention might be true. But neither was the prosecution obliged to first prosecute the accused for slight physical injuries through reckless imprudence before pressing the more serious charge of homicide with serious physical injuries through reckless imprudence. *Having first prosecuted the defendant for the lesser offense in the Justice of the Peace Court of Meycauayan, Bulacan, which acquitted the defendant, the prosecuting attorney is not now in a position to press in this case the more serious charge of homicide with serious physical injuries through reckless imprudence which arose out of the same alleged reckless imprudence of which the defendant has been previously cleared by the inferior court.*

[W]e must perforce rule that the exoneration of this appellant x x x by the Justice of the Peace x x x of the charge of slight physical injuries through reckless imprudence, prevents his being prosecuted for serious physical injuries through reckless imprudence in the Court of First Instance of the province, where both charges are derived from the consequences of one and the same vehicular accident, because the second accusation places the appellant in second jeopardy for the same offense.[54] (Emphasis supplied)

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[54] *Supra* note 31 at 502 (internal citation omitted). This also explains why in *People v. Cano* we described as "not altogether accurate" a trial court and a litigant's assumption that a charge for "damage to property with multiple [slight] physical injuries through reckless imprudence" involved two crimes corresponding to the two *effects* of the single quasi-crime albeit complexed as a single charge:

> [A]ppellee and the lower court have seemingly assumed that said information thereby charges two offenses, namely (1) slight physical injuries thru reckless imprudence; and (2) damage to property, and serious and less serious physical injuries, thru reckless negligence — which are sought to be complexed. This assumption is, in turn, apparently premised upon the predicate that the *effect or consequence of defendants negligence, not the negligence itself, is the principal or vital factor in said offenses. Such predicate is not altogether accurate*.
>
> As early as July 28, 1955 this Court, speaking thru Mr. Justice J.B.L. Reyes, had the occasion to state, in *Quizon vs. Justice of the Peace of Bacolor, Pampanga* x x x, that:

Indeed, this is a constitutionally compelled choice. By prohibiting the splitting of charges under Article 365, irrespective of the number and severity of the resulting acts, rampant occasions of constitutionally impermissible second prosecutions are avoided, not to mention that scarce state resources are conserved and diverted to proper use.

Hence, we hold that prosecutions under Article 365 should proceed from a single charge regardless of the number or severity of the consequences. In imposing penalties, the judge will do no more than apply the penalties under Article 365 for each consequence alleged and proven. In short, there shall be no splitting of charges under Article 365, and only one information shall be filed in the same first level court.[55]

Our ruling today secures for the accused facing an Article 365 charge a stronger and simpler protection of their constitutional right under the Double Jeopardy Clause. True, they are thereby denied the beneficent effect of the favorable sentencing formula

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The proposition (inferred from Art. 3 of the Revised Penal Code) that "reckless imprudence is not a crime in itself but simply a way of committing it and merely determines a lower degree of criminal liability" is too broad to deserve unqualified assent. There are crimes that by their structure can not be committed through imprudence: murder, treason, robbery, malicious mischief, *etc*. In truth, criminal negligence in our Revised Penal Code is treated as a mere quasi-offense, and dealt separately from willful offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the "*imprudencia punible*." Much of the confusion has arisen from the common use of such descriptive phrases as "homicide through reckless imprudence," and the like; when the strict technical offense is more accurately, "reckless imprudence resulting in homicide," or "simple imprudence causing damages to property." (*People v. Cano*, 123 Phil. 1086,1090 (1966), (Emphasis supplied), reiterated in *Pabulario v. Palarca*, 129 Phil. 1 (1967) (reversing a lower court which quashed a charge alleging reckless imprudence resulting in damage to property and multiple slight physical injuries).

[55] See Section 32(2), Batas Pambansa Blg. 129, as amended by Republic Act No. 7691.

under Article 48, but any disadvantage thus caused is more than compensated by the certainty of non-prosecution for quasi-crime effects qualifying as "light offenses" (or, as here, for the more serious consequence prosecuted belatedly). If it is so minded, Congress can re-craft Article 365 by extending to quasi-crimes the sentencing formula of Article 48 so that only the most severe penalty shall be imposed under a single prosecution of all resulting acts, whether penalized as grave, less grave or light offenses. This will still keep intact the distinct concept of quasi-offenses. Meanwhile, the lenient schedule of penalties under Article 365, befitting crimes occupying a lower rung of culpability, should cushion the effect of this ruling.

WHEREFORE, we *GRANT* the petition. We *REVERSE* the Orders dated 2 February 2006 and 2 May 2006 of the Regional Trial Court of Pasig City, Branch 157. We *DISMISS* the Information in Criminal Case No. 82366 against petitioner Jason Ivler *y* Aguilar pending with the Metropolitan Trial Court of Pasig City, Branch 71 on the ground of double jeopardy.

Let a copy of this ruling be served on the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.

Carpio Morales,[*] *Peralta, Abad,* and *Mendoza, JJ.*, concur.

[*] Designated additional member per Raffle dated 22 September 2010.

SECOND DIVISION

[G.R. No. 178610. November 17, 2010]

HONGKONG AND SHANGHAI BANKING CORP., LTD. STAFF RETIREMENT PLAN, (now HSBC Retirement Trust Fund, Inc.), *petitioner, vs.* **SPOUSES BIENVENIDO AND EDITHA BROQUEZA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PURE OBLIGATIONS UNDER ARTICLE 1179 THEREOF; CREDITOR MAY DEMAND IMMEDIATE PAYMENT WHEN NO DATE OF PAYMENT IS INDICATED IN THE PROMISSORY NOTES; CASE AT BAR.— In ruling for HSBCL-SRP, we apply the first paragraph of Article 1179 of the Civil Code: Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is **demandable at once.** x x x . We affirm the findings of the MeTC and the RTC that there is no date of payment indicated in the Promissory Notes. The RTC is correct in ruling that since the Promissory Notes do not contain a period, HSBCL-SRP has the right to demand immediate payment. Article 1179 of the Civil Code applies. The spouses Broqueza's obligation to pay HSBCL-SRP is a pure obligation. The fact that HSBCL-SRP was content with the prior monthly check-off from Editha Broqueza's salary is of no moment. Once Editha Broqueza defaulted in her monthly payment, HSBCL-SRP made a demand to enforce a pure obligation.

2. ID.; ID.; ID.; EXTINGUISHMENT THEREOF; PAYROLL DEDUCTION, NOT SOLE SOURCE OF PAYMENT FOR LOANS IN CASE AT BAR.— Despite the spouses Broqueza's protestations, the payroll deduction is merely a convenient mode of payment and not the sole source of payment for the loans. HSBCL-SRP never agreed that the loans will be paid only through salary deductions. Neither did HSBCL-SRP agree that if Editha Broqueza ceases to be an employee of HSBC, her obligation to pay the loans will be suspended. HSBCL-SRP can immediately demand payment of the loans at any time

because the obligation to pay has no period. Moreover, the spouses Broqueza have already incurred in default in paying the monthly installments.

3. ID.; ID.; ID.; LOAN AGREEMENT INVOLVING DEBTOR-CREDITOR RELATIONS, FOUNDED ON CONTRACT, MAY BE ENFORCED THROUGH A SEPARATE CIVIL ACTION IN THE REGULAR COURTS AND NOT BEFORE THE LABOR ARBITER; CASE AT BAR.— Finally, the enforcement of a loan agreement involves "debtor-creditor relations founded on contract and does not in any way concern employee relations. As such it should be enforced through a separate civil action in the regular courts and not before the Labor Arbiter."

APPEARANCES OF COUNSEL

Cruz Enverga and Lucero for petitioner.
Tañada Vivo and Tan for respondents.

D E C I S I O N

CARPIO, *J.*:

G.R. No. 178610 is a petition for review[1] assailing the Decision[2] promulgated on 30 March 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 62685. The appellate court granted the petition filed by Fe Gerong (Gerong) and Spouses Bienvenido and Editha Broqueza (spouses Broqueza) and dismissed the consolidated complaints filed by Hongkong and Shanghai Banking Corporation, Ltd. - Staff Retirement Plan (HSBCL-SRP) for recovery of sum of money. The appellate court reversed and set aside the Decision[3] of Branch 139 of the Regional Trial Court of Makati City (RTC) in Civil Case No. 00-787 dated 11

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 27-41. Penned by Associate Justice Ruben T. Reyes, with Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman, concurring.

[3] *Id.* at 49-54. Penned by Judge Florentino A. Tuason, Jr.

December 2000, as well as its Order[4] dated 5 September 2000. The RTC's decision affirmed the Decision[5] dated 28 December 1999 of Branch 61 of the Metropolitan Trial Court (MeTC) of Makati City in Civil Case No. 52400 for Recovery of a Sum of Money.

The Facts

The appellate court narrated the facts as follows:

> Petitioners Gerong and [Editha] Broqueza (defendants below) are employees of Hongkong and Shanghai Banking Corporation (HSBC). They are also members of respondent Hongkong Shanghai Banking Corporation, Ltd. Staff Retirement Plan (HSBCL-SRP, plaintiff below). The HSBCL-SRP is a retirement plan established by HSBC through its Board of Trustees for the benefit of the employees.
>
> On October 1, 1990, petitioner [Editha] Broqueza obtained a car loan in the amount of Php175,000.00. On December 12, 1991, she again applied and was granted an appliance loan in the amount of Php24,000.00. On the other hand, petitioner Gerong applied and was granted an emergency loan in the amount of Php35,780.00 on June 2, 1993. These loans are paid through automatic salary deduction.
>
> Meanwhile [in 1993], a labor dispute arose between HSBC and its employees. Majority of HSBC's employees were terminated, among whom are petitioners Editha Broqueza and Fe Gerong. The employees then filed an illegal dismissal case before the National Labor Relations Commission (NLRC) against HSBC. The legality or illegality of such termination is now pending before this appellate Court in CA G.R. CV No. 56797, entitled *Hongkong Shanghai Banking Corp. Employees Union, et al. vs. National Labor Relations Commission, et al.*
>
> Because of their dismissal, petitioners were not able to pay the monthly amortizations of their respective loans. Thus, respondent HSBCL-SRP considered the accounts of petitioners delinquent. Demands to pay the respective obligations were made upon petitioners, but they failed to pay.[6]

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[4] CA *rollo*, p. 29.

[5] *Rollo*, pp. 45-48. Penned by Judge Selma Palacio Alaras.

[6] *Id.* at 28-29.

HSBCL-SRP, acting through its Board of Trustees and represented by Alejandro L. Custodio, filed Civil Case No. 52400 against the spouses Broqueza on 31 July 1996. On 19 September 1996, HSBCL-SRP filed Civil Case No. 52911 against Gerong. Both suits were civil actions for recovery and collection of sums of money.

The Metropolitan Trial Court's Ruling

On 28 December 1999, the MeTC promulgated its Decision[7] in favor of HSBCL-SRP. The MeTC ruled that the nature of HSBCL-SRP's demands for payment is civil and has no connection to the ongoing labor dispute. Gerong and Editha Broqueza's termination from employment resulted in the loss of continued benefits under their retirement plans. Thus, the loans secured by their future retirement benefits to which they are no longer entitled are reduced to unsecured and pure civil obligations. As unsecured and pure obligations, the loans are immediately demandable.

The dispositive portion of the MeTC's decision reads:

> WHEREFORE, premises considered and in view of the foregoing, the Court finds that the plaintiff was able to prove by a preponderance of evidence the existence and immediate demandability of the defendants' loan obligations as judgment is hereby rendered in favor of the plaintiff and against the defendants in both cases, ordering the latter:
>
> 1. In Civil Case No. 52400, to pay the amount of Php116,740.00 at six percent interest per annum from the time of demand and in Civil Case No. 52911, to pay the amount of Php25,344.12 at six percent per annum from the time of the filing of these cases, until the amount is fully paid;
>
> 2. To pay the amount of Php20,000.00 each as reasonable attorney's fees;
>
> 3. Cost of suit.
>
> SO ORDERED.[8]

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[7] *Id.* at 45-48.

[8] *Id.* at 48.

Gerong and the spouses Broqueza filed a joint appeal of the MeTC's decision before the RTC. Gerong's case was docketed Civil Case No. 00-786, while the spouses Broqueza's case was docketed as Civil Case No. 00-787.

The Regional Trial Court's Ruling

The RTC initially denied the joint appeal because of the belated filing of Gerong and the spouses Broqueza's memorandum. The RTC later reconsidered the order of denial and resolved the issues in the interest of justice.

On 11 December 2000, the RTC affirmed the MeTC's decision *in toto*.[9]

The RTC ruled that Gerong and Editha Broqueza's termination from employment disqualified them from availing of benefits under their retirement plans. As a consequence, there is no longer any security for the loans. HSBCL-SRP has a legal right to demand immediate settlement of the unpaid balance because of Gerong and Editha Broqueza's continued default in payment and their failure to provide new security for their loans. Moreover, the absence of a period within which to pay the loan allows HSBCL-SRP to demand immediate payment. The loan obligations are considered pure obligations, the fulfillment of which are demandable at once.

Gerong and the spouses Broqueza then filed a Petition for Review under Rule 42 before the CA.

The Ruling of the Court of Appeals

On 30 March 2006, the CA rendered its Decision[10] which reversed the 11 December 2000 Decision of the RTC. The CA ruled that the HSBCL-SRP's complaints for recovery of sum of money against Gerong and the spouses Broqueza are premature as the loan obligations have not yet matured. Thus, no cause of action accrued in favor of HSBCL-SRP. The dispositive portion of the appellate court's Decision reads as follows:

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[9] *Id.* at 49-54.

[10] *Id.* at 27-41.

WHEREFORE, the assailed Decision of the RTC is REVERSED and SET ASIDE. A new one is hereby rendered DISMISSING the consolidated complaints for recovery of sum of money.

SO ORDERED.[11]

HSBCL-SRP filed a motion for reconsideration which the CA denied for lack of merit in its Resolution[12] promulgated on 19 June 2007.

On 6 August 2007, HSBCL-SRP filed a manifestation withdrawing the petition against Gerong because she already settled her obligations. In a Resolution[13] of this Court dated 10 September 2007, this Court treated the manifestation as a motion to withdraw the petition against Gerong, granted the motion, and considered the case against Gerong closed and terminated.

Issues

HSBCL-SRP enumerated the following grounds to support its Petition:

I. The Court of Appeals has decided a question of substance in a way not in accord with law and applicable decisions of this Honorable Court; and

II. The Court of Appeals has departed from the accepted and usual course of judicial proceedings in reversing the decision of the Regional Trial Court and the Metropolitan Trial Court.[14]

The Court's Ruling

The petition is meritorious. We agree with the rulings of the MeTC and the RTC.

The Promissory Notes uniformly provide:

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[11] *Id.* at 41.

[12] *Id.* at 43-44.

[13] *Id.* at 86.

[14] *Id.* at 14.

PROMISSORY NOTE

₱_____ Makati, M.M. ____ 19__

FOR VALUE RECEIVED, I/WE _____ jointly and severally promise to pay to THE HSBC RETIREMENT PLAN (hereinafter called the "PLAN") at its office in the Municipality of Makati, Metro Manila, on or before until fully paid the sum of PESOS ___ (P___) Philippine Currency without discount, with interest from date hereof at the rate of Six per cent (6%) per annum, payable monthly.

I/WE agree that the PLAN may, upon written notice, increase the interest rate stipulated in this note at any time depending on prevailing conditions.

I/WE hereby expressly consent to any extensions or renewals hereof for a portion or whole of the principal without notice to the other(s), and in such a case our liability shall remain joint and several.

In case collection is made by or through an attorney, I/WE jointly and severally agree to pay ten percent (10%) of the amount due on this note (but in no case less than ₱200.00) as and for attorney's fees in addition to expenses and costs of suit.

In case of judicial execution, I/WE hereby jointly and severally waive our rights under the provisions of Rule 39, Section 12 of the Rules of Court.[15]

In ruling for HSBCL-SRP, we apply the first paragraph of Article 1179 of the Civil Code:

Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is **demandable at once**.

x x x. (Emphasis supplied.)

We affirm the findings of the MeTC and the RTC that there is no date of payment indicated in the Promissory Notes. The RTC is correct in ruling that since the Promissory Notes do not contain a period, HSBCL-SRP has the right to demand immediate payment. Article 1179 of the Civil Code applies. The spouses Broqueza's obligation to pay HSBCL-SRP is a pure obligation.

[15] CA *rollo*, p. 59.

The fact that HSBCL-SRP was content with the prior monthly check-off from Editha Broqueza's salary is of no moment. Once Editha Broqueza defaulted in her monthly payment, HSBCL-SRP made a demand to enforce a pure obligation.

In their Answer, the spouses Broqueza admitted that prior to Editha Broqueza's dismissal from HSBC in December 1993, she "religiously paid the loan amortizations, which HSBC collected through payroll check-off."[16] A definite amount is paid to HSBCL-SRP on a specific date. Editha Broqueza authorized HSBCL-SRP to make deductions from her payroll until her loans are fully paid. Editha Broqueza, however, defaulted in her monthly loan payment due to her dismissal. Despite the spouses Broqueza's protestations, the payroll deduction is merely a convenient mode of payment and not the sole source of payment for the loans. HSBCL-SRP never agreed that the loans will be paid only through salary deductions. Neither did HSBCL-SRP agree that if Editha Broqueza ceases to be an employee of HSBC, her obligation to pay the loans will be suspended. HSBCL-SRP can immediately demand payment of the loans at anytime because the obligation to pay has no period. Moreover, the spouses Broqueza have already incurred in default in paying the monthly installments.

Finally, the enforcement of a loan agreement involves "debtor-creditor relations founded on contract and does not in any way concern employee relations. As such it should be enforced through a separate civil action in the regular courts and not before the Labor Arbiter."[17]

WHEREFORE, we *GRANT* the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 62685 promulgated on 30 March 2006 is *REVERSED* and *SET ASIDE*. The decision of Branch 139 of the Regional Trial Court of Makati City in Civil Case No. 00-787, as well as the decision of Branch 61 of the Metropolitan Trial Court of Makati City in Civil Case

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[16] CA *rollo*, p. 50.

[17] *NDC Guthrie Plantations, Inc. v. NLRC*, 414 Phil. 714, 726-727 (2001). See also *Nestlé Philippines, Inc. v. NLRC*, G.R. No. 85197, 18 March 1991, 195 SCRA 340.

No. 52400 against the spouses Bienvenido and Editha Broqueza, are *AFFIRMED*. Costs against respondents.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178697. November 17, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SONY PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; ASSESSMENT AND COLLECTION; GRANT OF AUTHORITY REQUIRED BEFORE ANY REVENUE OFFICER CAN CONDUCT AN EXAMINATION OR ASSESSMENT.— Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer. "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**– (A) Examination of Returns and Determination of Tax Due.— After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of**

tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer.**" x x x Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.

2. ID.; ID.; ID.; ID.; REVENUE OFFICER SO AUTHORIZED MUST NOT GO BEYOND THE AUTHORITY GIVEN; CASE AT BAR.— Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA. Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads: "3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A." On this point alone, the deficiency VAT assessment should have been disallowed.

3. ID.; ID.; TAX ON INCOME; ALLOWABLE DEDUCTIONS; ADVERTISING EXPENSE DULY COVERED BY A VAT INVOICE IS A LEGITIMATE BUSINESS EXPENSE; CASE AT BAR.— As aptly found by the CTA-First Division and later affirmed by the CTA-EB, Sony's deficiency VAT assessment stemmed from the CIR's disallowance of the input VAT credits that should have been realized from the advertising expense of the latter. It is evident under Section 110 of the 1997 Tax Code that an advertising expense duly covered by a

VAT invoice is a legitimate business expense. This is confirmed by no less than CIR's own witness, Revenue Officer Antonio Aluquin. There is also no denying that Sony incurred advertising expense. Aluquin testified that advertising companies issued invoices in the name of Sony and the latter paid for the same. Indubitably, Sony incurred and paid for advertising expense/ services. Where the money came from is another matter all together but will definitely not change said fact.

4. ID.; ID.; VALUE-ADDED TAX; THERE MUST BE A SALE, BARTER OR EXCHANGE OF GOODS OR PROPERTIES BEFORE ANY VAT MAY BE LEVIED.— Section 106 of the Tax Code explains when VAT may be imposed or exacted. Thus: "SEC. 106. **Value-added Tax on Sale of Goods or Properties. –** (A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor." Thus, there must be a sale, barter or exchange of goods or properties before any VAT may be levied.

5. ID.; ID.; ID.; ID.; THE SUBSIDY GIVEN BY SIS TO SONY WAS BUT A DOLE OUT BY SIS AND NOT IN PAYMENT FOR GOODS OR PROPERTIES SOLD, BARTERED OR EXCHANGED BY SONY; CASE AT BAR.— Insofar as the above-mentioned subsidy may be considered as income and, therefore, subject to income tax, the Court agrees. However, the Court does not agree that the same subsidy should be subject to the 10% VAT. To begin with, the said subsidy termed by the CIR as reimbursement was not even exclusively earmarked for Sony's advertising expense for it was but an assistance or aid in view of Sony's dire or adverse economic conditions, and was only "equivalent to the latter's (Sony's) advertising expenses." x x x Certainly, there was no such sale, barter or exchange in the subsidy given by SIS to Sony. It was but a dole out by SIS and not in payment for goods or properties sold, bartered or exchanged by Sony.

6. ID.; ID.; ID.; ID.; ID.; *CIR V. COURT OF APPEALS (CA)* (385 PHIL. 875) NOT APPLICABLE IN THE CASE AT BAR.— In the case of *CIR v. Court of Appeals (CA)* the Court had the occasion to rule that services rendered for a fee even on

reimbursement-on-cost basis only and without realizing profit are also subject to VAT. The case, however, is not applicable to the present case. In that case, COMASERCO rendered service to its affiliates and, in turn, the affiliates paid the former reimbursement-on-cost which means that it was paid the cost or expense that it incurred although without profit. This is not true in the present case. Sony did not render any service to SIS at all. The services rendered by the advertising companies, paid for by Sony using SIS dole-out, were for Sony and not SIS. SIS just gave assistance to Sony in the amount equivalent to the latter's advertising expense but never received any goods, properties or service from Sony.

7. ID.; ID.; EXPANDED WITHHOLDING TAX (EWT); TAX ON COMMISSION EXPENSE; THE APPLICABLE RULE IS REVENUE REGULATIONS NO. 6-85 IN CASE AT BAR.— Regarding the deficiency EWT assessment, more particularly Sony's commission expense, the CIR insists that said deficiency EWT assessment is subject to the ten percent (10%) rate instead of the five percent (5%) citing Revenue Regulation No. 2-98 dated April 17, 1998. The said revenue regulation provides that the 10% rate is applied when the recipient of the commission income is a natural person. According to the CIR, Sony's schedule of Selling, General and Administrative expenses shows the commission expense as "commission/dealer salesman incentive," emphasizing the word salesman. On the other hand, the application of the five percent (5%)" rate by the CTA-First Division is based on Section 1(g) of Revenue Regulations No. 6-85 which provides: "(g) Amounts paid to certain Brokers and Agents.– On gross payments to customs, insurance, real estate and commercial brokers and agents of professional entertainers – five per centum (5%). In denying the very same argument of the CIR in its motion for reconsideration, the CTA-First Division, held: x x x, commission expense is indeed subject to 10% withholding tax but payments made to broker is subject to 5% withholding tax pursuant to Section 1(g) of Revenue Regulations No. 6-85. While the commission expense in the schedule of Selling, General and Administrative expenses submitted by petitioner (SPI) to the BIR is captioned as "commission/dealer salesman incentive" the same does not justify the automatic imposition of flat 10% rate. As itemized by petitioner, such expense is composed of "Commission Expense" in the amount of ₱10,200.00 and 'Broker Dealer'

of ₱2,894,797.00. The Court agrees with the CTA-EB when it affirmed the CTA-First Division decision. Indeed, the applicable rule is Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, which was the applicable rule during the subject period of examination and assessment as specified in the LOA. Revenue Regulations No. 2-98, cited by the CIR, was only adopted in April 1998 and, therefore, cannot be applied in the present case. Besides, the withholding tax on brokers and agents was only increased to 10% much later or by the end of July 2001 under Revenue Regulations No. 6-2001. Until then, the rate was only 5%.

8. ID.; ID.; ASSESSMENT AND COLLECTION; LETTER OF AUTHORITY TO CONDUCT AN EXAMINATION OR ASSESSMENT; COVERAGE THEREOF MUST BE SPECIFIED; CIR'S DEFICIENCY EWT ASSESSMENT NOT VALID IN CASE AT BAR.— The Court also affirms the findings of both the CTA-First Division and the CTA-EB on the deficiency EWT assessment on the rental deposit. According to their findings, Sony incurred the subject rental deposit in the amount of ₱10,523,821.99 only from January to March 1998. As stated earlier, in the absence of the appropriate LOA specifying the coverage, the CIR's deficiency EWT assessment from January to March 1998, is not valid and must be disallowed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dimayuga Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to set aside the May 17, 2007 Decision and the July 5, 2007 Resolution of the Court of Tax Appeals – En Banc[1] *(CTA-EB)*, in C.T.A. EB No. 90, affirming the October 26, 2004 Decision of the CTA-

[1] Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

First Division[2] which, in turn, partially granted the petition for review of respondent Sony Philippines, Inc. *(Sony)*. The CTA-First Division decision cancelled the deficiency assessment issued by petitioner Commissioner of Internal Revenue *(CIR)* against Sony for Value Added Tax *(VAT)* but upheld the deficiency assessment for expanded withholding tax *(EWT)* in the amount of ₱1,035,879.70 and the penalties for late remittance of internal revenue taxes in the amount of ₱1,269, 593.90.[3]

THE FACTS:

On November 24, 1998, the CIR issued Letter of Authority No. 000019734 *(LOA 19734)* authorizing certain revenue officers to examine Sony's books of accounts and other accounting records regarding revenue taxes for **"the period 1997 and unverified prior years."** On December 6, 1999, a preliminary assessment for 1997 deficiency taxes and penalties was issued by the CIR which Sony protested. Thereafter, acting on the protest, the CIR issued final assessment notices, the formal letter of demand and the details of discrepancies.[4] Said details of the deficiency taxes and penalties for late remittance of internal revenue taxes are as follows:

DEFICIENCY VALUE -ADDED TAX (VAT)
(Assessment No. ST-VAT-97-0124-2000)

Basic Tax Due		₱7,958,700.00
Add: Penalties		
Interest up to 3-31-2000	₱ 3,157,314.41	
Compromise	25,000.00	3,182,314.41
Deficiency VAT Due		₱11,141,014.41

DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)

(Assessment No. ST-EWT-97-0125-2000)

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[2] Penned by Presiding Justice Ernesto D. Acosta with Associate Lovell R. Bautista, concurring.

[3] *Rollo*, pp. 9-10.

[4] *Id.* at 60-61.

Basic Tax Due		₱ 1,416,976.90
Add: Penalties		
Interest up to 3-31-2000	₱ 550,485.82	
Compromise	25,000.00	575,485.82
Deficiency EWT Due		₱ 1,992,462.72

DEFICIENCY OF VAT ON ROYALTY PAYMENTS

(Assessment No. ST-LR1-97-0126-2000)

Basic Tax Due		₱
Add: Penalties		
Surcharge	₱ 359,177.80	
Interest up to 3-31-2000	87,580.34	
Compromise	16,000.00	462,758.14
Penalties Due		₱ 462,758.14

LATE REMITTANCE OF FINAL WITHHOLDING TAX

(Assessment No. ST-LR2-97-0127-2000)

Basic Tax Due		₱
Add: Penalties		
Surcharge	₱1,729,690.71	
Interest up to 3-31-2000	508,783.07	
Compromise	50,000.00	2,288,473.78
Penalties Due		₱ 2,288,473.78

LATE REMITTANCE OF INCOME PAYMENTS

(Assessment No. ST-LR3-97-0128-2000)

Basic Tax Due		₱
Add: Penalties		
25 % Surcharge	₱ 8,865.34	

Interest up to 3-31-2000	58.29	
Compromise	2,000.00	10,923.60
Penalties Due		₱ 10,923.60
GRAND TOTAL		**₱ 15,895,632.65**[5]

Sony sought re-evaluation of the aforementioned assessment by filing a protest on February 2, 2000. Sony submitted relevant documents in support of its protest on the 16th of that same month.[6]

On October 24, 2000, within 30 days after the lapse of 180 days from submission of the said supporting documents to the CIR, Sony filed a petition for review before the CTA.[7]

After trial, the CTA-First Division disallowed the deficiency VAT assessment because the subsidized advertising expense paid by Sony which was duly covered by a VAT invoice resulted in an input VAT credit. As regards the EWT, the CTA-First Division maintained the deficiency EWT assessment on Sony's motor vehicles and on professional fees paid to general professional partnerships. It also assessed the amounts paid to sales agents as commissions with five percent (5%) EWT pursuant to Section 1(g) of Revenue Regulations No. 6-85. The CTA-First Division, however, disallowed the EWT assessment on rental expense since it found that the total rental deposit of ₱10,523,821.99 was incurred from January to March 1998 which was again beyond the coverage of LOA 19734. Except for the compromise penalties, the CTA-First Division also upheld the penalties for the late payment of VAT on royalties, for late remittance of final withholding tax on royalty as of December 1997 and for the late remittance of EWT by some of Sony's branches.[8] In sum, the CTA-First Division partly granted Sony's petition by cancelling the deficiency VAT assessment but upheld a modified

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[5] *Id.*

[6] *Id.* at 62.

[7] *Id.*

[8] *Id.* at 42.

deficiency EWT assessment as well as the penalties. Thus, the dispositive portion reads:

> WHEREFORE, the petition for review is hereby PARTIALLY GRANTED. Respondent is ORDERED to CANCEL and WITHDRAW the deficiency assessment for value-added tax for 1997 for lack of merit. However, the deficiency assessments for expanded withholding tax and penalties for late remittance of internal revenue taxes are UPHELD.
>
> Accordingly, petitioner is DIRECTED to PAY the respondent the deficiency expanded withholding tax in the amount of ₱1,035,879.70 and the following penalties for late remittance of internal revenue taxes in the sum of ₱1,269,593.90:

1. VAT on Royalty	₱	429,242.07
2. Withholding Tax on Royalty		831,428.20
3. EWT of Petitioner's Branches		8,923.63
Total	₱	1,269,593.90

> Plus 20% delinquency interest from January 17, 2000 until fully paid pursuant to Section 249(C)(3) of the 1997 Tax Code.
>
> SO ORDERED.[9]

The CIR sought a reconsideration of the above decision and submitted the following grounds in support thereof:

A. The Honorable Court committed reversible error in holding that petitioner is not liable for the deficiency VAT in the amount of ₱11,141,014.41;

B. The Honorable court committed reversible error in holding that the commission expense in the amount of P2,894,797.00 should be subjected to 5% withholding tax instead of the 10% tax rate;

C. The Honorable Court committed a reversible error in holding that the withholding tax assessment with respect to the 5% withholding tax on rental deposit in the amount of ₱10,523,821.99 should be cancelled; and

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[9] *Id.* at 83-84.

D. The Honorable Court committed reversible error in holding that the remittance of final withholding tax on royalties covering the period January to March 1998 was filed on time.[10]

On April 28, 2005, the CTA-First Division denied the motion for reconsideration. Unfazed, the CIR filed a petition for review with the CTA-EB raising identical issues:

1. Whether or not respondent (Sony) is liable for the deficiency VAT in the amount of ₱11,141,014.41;

2. Whether or not the commission expense in the amount of ₱2,894,797.00 should be subjected to 10% withholding tax instead of the 5% tax rate;

3. Whether or not the withholding assessment with respect to the 5% withholding tax on rental deposit in the amount of ₱10,523,821.99 is proper; and

4. Whether or not the remittance of final withholding tax on royalties covering the period January to March 1998 was filed outside of time.[11]

Finding no cogent reason to reverse the decision of the CTA-First Division, the CTA-EB dismissed CIR's petition on May 17, 2007. CIR's motion for reconsideration was denied by the CTA-EB on July 5, 2007.

The CIR is now before this Court via this petition for review relying on the very same grounds it raised before the CTA-First Division and the CTA-EB. The said grounds are reproduced below:

GROUNDS FOR THE ALLOWANCE OF THE PETITION

I

THE CTA *EN BANC* ERRED IN RULING THAT RESPONDENT IS NOT LIABLE FOR DEFICIENCY VAT IN THE AMOUNT OF PHP11,141,014.41.

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[10] *Id.* at 86.

[11] *Id.* at 43.

II

AS TO RESPONDENT'S DEFICIENCY EXPANDED WITHHOLDING TAX IN THE AMOUNT OF PHP1,992,462.72:

A. THE CTA *EN BANC* ERRED IN RULING THAT THE COMMISSION EXPENSE IN THE AMOUNT OF PHP2,894,797.00 SHOULD BE SUBJECTED TO A WITHHOLDING TAX OF 5% INSTEAD OF THE 10% TAX RATE.

B. THE CTA *EN BANC* ERRED IN RULING THAT THE ASSESSMENT WITH RESPECT TO THE 5% WITHHOLDING TAX ON RENTAL DEPOSIT IN THE AMOUNT OF PHP10,523,821.99 IS NOT PROPER.

III

THE CTA *EN BANC* ERRED IN RULING THAT THE FINAL WITHHOLDING TAX ON ROYALTIES COVERING THE PERIOD JANUARY TO MARCH 1998 WAS FILED ON TIME.[12]

Upon filing of Sony's comment, the Court ordered the CIR to file its reply thereto. The CIR subsequently filed a manifestation informing the Court that it would no longer file a reply. Thus, on December 3, 2008, the Court resolved to give due course to the petition and to decide the case on the basis of the pleadings filed.[13]

The Court finds no merit in the petition.

The CIR insists that LOA 19734, although it states "the period 1997 and unverified prior years," should be understood to mean the fiscal year ending in March 31, 1998.[14] The Court cannot agree.

Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables

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

[13] *Id.* at 253.

[14] *Id.* at 17-18.

said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[15] The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
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> (A)Examination of Returns and Determination of tax Due. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** *Provided, however*, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer.** x x x [Emphases supplied]

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the

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[15] National Internal Revenue Code;

> SEC. 13. **Authority of a Revenue Officer. –** Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, **examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (emphasis supplied)

CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.

Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:

> 3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.[16] [Emphasis supplied]

On this point alone, the deficiency VAT assessment should have been disallowed. Be that as it may, the CIR's argument, that Sony's advertising expense could not be considered as an input VAT credit because the same was eventually reimbursed by Sony International Singapore *(SIS)*, is also erroneous.

The CIR contends that since Sony's advertising expense was reimbursed by SIS, the former never incurred any advertising expense. As a result, Sony is not entitled to a tax credit. At most, the CIR continues, the said advertising expense should be for the account of SIS, and not Sony.[17]

The Court is not persuaded. As aptly found by the CTA-First Division and later affirmed by the CTA-EB, Sony's deficiency VAT assessment stemmed from the CIR's disallowance of the input VAT credits that should have been realized from the advertising expense of the latter.[18] It is evident under

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[16] Revenue Memorandum Order No. 43-90 dated September 20, 1990, amending Revenue Memorandum Order No. 37-90 prescribing revised guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, *rollo*, p. 46.

[17] *Id.* at 21.

[18] *Id.* at 64.

Section 110[19] of the 1997 Tax Code that an advertising expense duly covered by a VAT invoice is a legitimate business expense. This is confirmed by no less than CIR's own witness, Revenue Officer Antonio Aluquin.[20] There is also no denying that Sony incurred advertising expense. Aluquin testified that advertising companies issued invoices in the name of Sony and the latter paid for the same.[21] Indubitably, Sony incurred and paid for advertising expense/ services. Where the money came from is another matter all together but will definitely not change said fact.

The CIR further argues that Sony itself admitted that the reimbursement from SIS was income and, thus, taxable. In support of this, the CIR cited a portion of Sony's protest filed before it:

The fact that due to adverse economic conditions, Sony-Singapore has granted to our client a subsidy equivalent to the latter's advertising

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[19] National Internal Revenue Code;

> SEC. 110. **Tax Credits. –**
>
> A. Creditable Input Tax. –
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> **(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions shall be creditable against the output tax:
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> (a) Purchase or importation of goods:
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> xxx xxx xxx
>
> **(b) Purchase of services on which a value-added tax has been actually pa*id.***
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> xxx xxx xxx
>
> The term '**input tax**' means **the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on** importation of goods or local purchase of goods or **services**, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
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> xxx xxx xxx (emphasis supplied)

[20] *Rollo*, p. 66; TSN, February 27, 2003, pp. 33-34 and 36.

[21] *Id.* at 68; TSN, February 27, 2003, pp. 55-58.

expenses will not affect the validity of the input taxes from such expenses. Thus, at the most, this is an additional income of our client subject to income tax. We submit further that our client is not subject to VAT on the subsidy income as this was not derived from the sale of goods or services.[22]

Insofar as the above-mentioned subsidy may be considered as income and, therefore, subject to income tax, the Court agrees. However, the Court does not agree that the same subsidy should be subject to the 10% VAT. To begin with, the said subsidy termed by the CIR as reimbursement was not even exclusively earmarked for Sony's advertising expense for it was but an assistance or aid in view of Sony's dire or adverse economic conditions, and was only "equivalent to the latter's (Sony's) advertising expenses."

Section 106 of the Tax Code explains when VAT may be imposed or exacted. Thus:

SEC. 106. **Value-added Tax on Sale of Goods or Properties.** –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

Thus, there must be a sale, barter or exchange of goods or properties before any VAT may be levied. Certainly, there was no such sale, barter or exchange in the subsidy given by SIS to Sony. It was but a dole out by SIS and not in payment for goods or properties sold, bartered or exchanged by Sony.

In the case of *CIR v. Court of Appeals (CA)*,[23] the Court had the occasion to rule that services rendered for a fee even on reimbursement-on-cost basis only and without realizing profit are also subject to VAT. The case, however, is not applicable

[22] *Id.* at 22.

[23] *CIR v. CA*, 385 Phil. 875 (2000).

to the present case. In that case, COMASERCO rendered service to its affiliates and, in turn, the affiliates paid the former reimbursement-on-cost which means that it was paid the cost or expense that it incurred although without profit. This is not true in the present case. Sony did not render any service to SIS at all. The services rendered by the advertising companies, paid for by Sony using SIS dole-out, were for Sony and not SIS. SIS just gave assistance to Sony in the amount equivalent to the latter's advertising expense but never received any goods, properties or service from Sony.

Regarding the deficiency EWT assessment, more particularly Sony's commission expense, the CIR insists that said deficiency EWT assessment is subject to the ten percent (10%) rate instead of the five percent (5%) citing Revenue Regulation No. 2-98 dated April 17, 1998.[24] The said revenue regulation provides that the 10% rate is applied when the recipient of the commission income is a natural person. According to the CIR, Sony's schedule of Selling, General and Administrative expenses shows the commission expense as "commission/dealer salesman incentive," emphasizing the word salesman.

On the other hand, the application of the five percent (5%) rate by the CTA-First Division is based on Section 1(g) of Revenue Regulations No. 6-85 which provides:

> (g) Amounts paid to certain Brokers and Agents. – On gross payments to customs, insurance, real estate and commercial brokers and agents of professional entertainers – five per centum (5%).[25]

In denying the very same argument of the CIR in its motion for reconsideration, the CTA-First Division, held:

> x x x, commission expense is indeed subject to 10% withholding tax but payments made to broker is subject to 5% withholding tax pursuant to Section 1(g) of Revenue Regulations No. 6-85. While the commission expense in the schedule of Selling, General and Administrative expenses submitted by petitioner (SPI) to the BIR

[24] *Rollo*, p. 24.

[25] *Id.* at 75.

is captioned as "commission/dealer salesman incentive" the same does not justify the automatic imposition of flat 10% rate. As itemized by petitioner, such expense is composed of "Commission Expense" in the amount of ₱10,200.00 and 'Broker Dealer' of P2,894,797.00.[26]

The Court agrees with the CTA-EB when it affirmed the CTA-First Division decision. Indeed, the applicable rule is Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, which was the applicable rule during the subject period of examination and assessment as specified in the LOA. Revenue Regulations No. 2-98, cited by the CIR, was only adopted in April 1998 and, therefore, cannot be applied in the present case. Besides, the withholding tax on brokers and agents was only increased to 10% much later or by the end of July 2001 under Revenue Regulations No. 6-2001.[27] Until then, the rate was only 5%.

The Court also affirms the findings of both the CTA-First Division and the CTA-EB on the deficiency EWT assessment on the rental deposit. According to their findings, Sony incurred the subject rental deposit in the amount of ₱10,523,821.99 only from January to March 1998. As stated earlier, in the absence of the appropriate LOA specifying the coverage, the CIR's deficiency EWT assessment from January to March 1998, is not valid and must be disallowed.

Finally, the Court now proceeds to the third ground relied upon by the CIR.

The CIR initially assessed Sony to be liable for penalties for belated remittance of its FWT on royalties (i) as of December 1997; and (ii) for the period from January to March 1998. Again, the Court agrees with the CTA-First Division when it upheld the CIR with respect to the royalties for December 1997 but cancelled that from January to March 1998.

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[26] *Id.* at 88.

[27] *Id.* at 52.

The CIR insists that under Section 3[28] of Revenue Regulations No. 5-82 and Sections 2.57.4 and 2.58(A)(2)(a)[29] of Revenue Regulations No. 2-98, Sony should also be made liable for the FWT on royalties from January to March of 1998. At the same time, it downplays the relevance of the Manufacturing License Agreement (MLA) between Sony and Sony-Japan, particularly in the payment of royalties.

The above revenue regulations provide the manner of withholding remittance as well as the payment of final tax on royalty. Based on the same, Sony is required to deduct and withhold final taxes on royalty payments when the royalty is paid or is payable. After which, the corresponding return and remittance must be made within 10 days after the end of each month. The question now is when does the royalty become payable?

Under Article X(5) of the MLA between Sony and Sony-Japan, the following terms of royalty payments were agreed upon:

(5)Within two (2) months following each semi-annual period ending June 30 and December 31, the LICENSEE shall furnish to the LICENSOR a statement, certified by an officer of the LICENSEE, showing quantities of the MODELS sold, leased or otherwise disposed

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[28] Revenue Regulations No. 5-82

Section 3. Time of Withholding. – The obligations of the payor to deduct and withhold under these regulations arises at time income which subject to withholding under Section 1 hereof is payable or pa*id.*

[29] Revenue Regulations No. 2-98

Section 2.57.4. Time of Withholding. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first. The term "payable" refers to the date of the obligation become due, demandable or legally enforceable.

Section 2.58 Returns and Payment of Taxes Withheld at Source. –

(A) Monthly return and payment of taxes withheld at source.

xxx xxx xxx

(2) When to File –

of by the LICENSEE during such respective semi-annual period and amount of royalty due pursuant this ARTICLE X therefore, and the LICENSEE shall pay the royalty hereunder to the LICENSOR concurrently with the furnishing of the above statement.[30]

Withal, Sony was to pay Sony-Japan royalty within two (2) months after every semi-annual period which ends in June 30 and December 31. However, the CTA-First Division found that there was accrual of royalty by the end of December 1997 as well as by the end of June 1998. Given this, the FWTs should have been paid or remitted by Sony to the CIR on January 10, 1998 and July 10, 1998. Thus, it was correct for the CTA-First Division and the CTA-EB in ruling that the FWT for the royalty from January to March 1998 was seasonably filed. Although the royalty from January to March 1998 was well within the semi-annual period ending June 30, which meant that the royalty may be payable until August 1998 pursuant to the MLA, the FWT for said royalty had to be paid on or before July 10, 1998 or 10 days from its accrual at the end of June 1998. Thus, when Sony remitted the same on July 8, 1998, it was not yet late.

In view of the foregoing, the Court finds no reason to disturb the findings of the CTA-EB.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[30] *Rollo,* p. 81.

[*] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated April 14, 2010.

SECOND DIVISION

[G.R. No. 180045. November 17, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (NLRC), DIONISIO BANLASAN, ALFREDO T. TAFALLA, TELESFORO D. RUBIA, ROGELIO A. ALVAREZ, DOMINADOR A. ESCOBAL, and ROSAURO PANIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; TIMELINESS; FILING BY REGISTERED MAIL; DATE OF FILING; DETERMINED FROM DATE OF MAILING, AS SHOWN BY THE POST OFFICE STAMP ON THE ENVELOPE OR REGISTRY RECEIPT; CASE AT BAR.— Timeliness of an appeal is a factual issue. It requires a review or evaluation of the evidence which would show when the appeal was actually mailed to and received by the NLRC. In this case, to prove that it mailed the notice of appeal and appeal memorandum on October 27, 1997, instead of October 28, 1997, as shown by the stamped date on the envelope, petitioner presented Registry Receipt No. 34581 bearing the earlier date. Under Section 3, Rule 13 of the Rules of Court, where the filing of pleadings, appearances, motions, notices, orders, judgments, and all other papers with the court/tribunal is made by registered mail, the date of mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of filing. Thus, the date of filing is determinable from two sources: from the post office stamp on the envelope or from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings. If the date stamped on one is earlier than the other, the former may be accepted as the date of filing. This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented.

2. ID.; ID.; ID.; ID.; MUST BE PERFECTED WITHIN THE STATUTORY OR REGLEMENTARY PERIOD; FAILURE TO PERFECT THE APPEAL ON TIME RENDERS THE ASSAILED DECISION FINAL AND EXECUTORY; EXCEPTIONS; CASE AT BAR.— Indeed, the appeal must be perfected within the statutory or reglementary period. This is not only mandatory, but also jurisdictional. Failure to perfect the appeal on time renders the assailed decision final and executory and deprives the appellate court or body of the legal authority to alter the final judgment, much less entertain the appeal. However, this Court has, time and again, ruled that, in exceptional cases, a belated appeal may be given due course if greater injustice will be visited upon the party should the appeal be denied. The Court has allowed this extraordinary measure even at the expense of sacrificing order and efficiency if only to serve the greater principles of substantial justice and equity. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. We have consistently held that technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the working man. x x x In any case, even if the appeal was filed one day late, the same should have been entertained by the NLRC.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PETITIONER LIABLE AS AN INDIRECT EMPLOYER; CASE AT BAR.— The fact that there is no actual and direct employer-employee relationship between petitioner and respondents does not absolve the former from liability for the latter's monetary claims. When petitioner contracted DNL Security's services, petitioner became an indirect employer of respondents, pursuant to Article 107 of the Labor Code, which reads: ART. 107. *Indirect employer*. **%** The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

4. ID.; LABOR STANDARDS; WAGES; NON-PAYMENT BY CONTRACTOR; SOLIDARY LIABILITY OF EMPLOYER WITH HIS CONTRACTOR OR SUBCONTRACTOR; CASE AT BAR.— After DNL Security failed to pay

respondents the correct wages and other monetary benefits, petitioner, as principal, became jointly and severally liable, as provided in Articles 106 and 109 of the Labor Code, which state: ART. 106. *Contractor or subcontractor*. % Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code. In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him. x x x. x x x Art. 109. *Solidary liability*. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

5. ID.; ID.; ID.; ID.; ID.; RATIONALE.— This statutory scheme is designed to give the workers ample protection, consonant with labor and social justice provisions of the 1987 Constitution. This Court's pronouncement in *Rosewood Processing, Inc. v. NLRC* is noteworthy: The joint and several liability of the employer or principal was enacted to ensure compliance with the provisions of the Code, principally those on statutory minimum wage. The contractor or subcontractor is made liable by virtue of his or her status as a direct employer, and the principal as the indirect employer of the contractor's employees. This liability facilitates, if not guarantees, payment of the workers' compensation, thus, giving the workers ample protection as mandated by the 1987 Constitution. This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it had paid in accordance with the terms of the service contract between itself and the contractor.

6. ID.; ID.; ID.; ID.; ID.; LIABILITY CANNOT EXTEND TO PAYMENT OF SEPARATION PAY.— Petitioner's liability covers the payment of respondents' salary differential and 13th

month pay during the time they worked for petitioner. In addition, petitioner is solidarily liable with DNL Security for respondents' unpaid wages from February 1993 until April 20, 1993. While it is true that respondents continued working for petitioner after the expiration of their contract, based on the instruction of DNL Security, petitioner did not object to such assignment and allowed respondents to render service. Thus, petitioner impliedly approved the extension of respondents' services. Accordingly, petitioner is bound by the provisions of the Labor Code on indirect employment. Petitioner cannot be allowed to deny its obligation to respondents after it had benefited from their services. So long as the work, task, job, or project has been performed for petitioner's benefit or on its behalf, the liability accrues for such services. The principal is made liable to its indirect employees because, after all, it can protect itself from irresponsible contractors by withholding payment of such sums that are due the employees and by paying the employees directly, or by requiring a bond from the contractor or subcontractor for this purpose. Petitioner's liability, however, cannot extend to the payment of separation pay. An order to pay separation pay is invested with a punitive character, such that an indirect employer should not be made liable without a finding that it had conspired in the illegal dismissal of the employees.

7. ID.; ID.; ID.; ID.; ID.; ID.; PETITIONER MAY ASK FOR REIMBURSEMENT FROM ITS CO-DEBTOR.— It should be understood, though, that the solidary liability of petitioner does not preclude the application of Article 1217 of the Civil Code on the right of reimbursement from its co-debtor, *viz*.: Art. 1217. 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 the payment may claim from his co-debtors only 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. When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

8. POLITICAL LAW; PUBLIC CORPORATIONS; GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS); GSIS CHARTER NOT TO BE USED AS A SHIELD TO EVADE ITS LIABILITIES TO ITS EMPLOYEES AND INDIRECT EMPLOYEES.— Lastly, we do not agree with petitioner that the enforcement of the decision is impossible because its charter unequivocally exempts it from execution. As held in *Government Service Insurance System v. Regional Trial Court of Pasig City, Branch 71,* citing *Rubia v. GSIS*: The processual exemption of the GSIS funds and properties under Section 39 of the GSIS Charter, in our view, should be read consistently with its avowed principal purpose: to maintain actuarial solvency of the GSIS in the protection of assets which are to be used to finance the retirement, disability and life insurance benefits of its members. Clearly, the exemption should be limited to the purposes and objects covered. Any interpretation that would give it an expansive construction to exempt all GSIS assets from legal processes absolutely would be unwarranted. x x x. To be sure, petitioner's charter should not be used to evade its liabilities to its employees, even to its indirect employees, as mandated by the Labor Code.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Public Attorney's Office for private respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) dated September 7, 2006 and September 27, 2007, respectively, in CA-G.R. SP No. 50450.

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 35-47.

[2] *Id.* at 48-49.

The facts of the case are as follows:

Respondents Dionisio Banlasan, Alfredo T. Tafalla, Telesforo D. Rubia, Rogelio A. Alvarez, Dominador A. Escobal, and Rosauro Panis were employed as security guards by DNL Security Agency (DNL Security). By virtue of the service contract entered into by DNL Security and petitioner Government Service Insurance System on May 1, 1978, respondents were assigned to petitioner's Tacloban City office, each receiving a monthly income of ₱1,400.00. Sometime in July 1989, petitioner voluntarily increased respondents' monthly salary to ₱3,000.00.[3]

In February 1993, DNL Security informed respondents that its service contract with petitioner was terminated. This notwithstanding, DNL Security instructed respondents to continue reporting for work to petitioner. Respondents worked as instructed until April 20, 1993, but without receiving their wages; after which, they were terminated from employment.[4]

On June 15, 1995, respondents filed with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VIII, Tacloban City, a complaint against DNL Security and petitioner for illegal dismissal, separation pay, salary differential, 13th month pay, and payment of unpaid salary.

On September 30, 1997, Labor Arbiter (LA) Benjamin S. Guimoc rendered a decision[5] against DNL Security and petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in this manner[,] to wit:

1. Finding no illegal dismissal of complainants;

2. Ordering respondent DNL Security Agency only to pay complainants the amount of ₱176,130.00 representing separation pay; the amount of ₱42,666.40 representing wages of complainants from February 1993 to April 20, 1993;

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[3] *Id.* at 60.

[4] *Id.*

[5] *Id.* at 58-67.

3. Ordering as joint and solidary liability by the respondents DNL Security Agency and GSIS the amount of ₱48,385.87 representing salary differential[;] the amount of ₱55,564.92 as 13th month pay; all in the aggregate sum of THREE HUNDRED TWENTY-TWO THOUSAND SEVEN HUNDRED FORTY-SEVEN & 19/100 (₱322,747.19) to be paid by both or either of the said respondent within ten (10) days from receipt of this decision and to be deposited with the cashier of this office for proper disposition.

SO ORDERED.[6]

The LA found that respondents were not illegally terminated from employment because the employment of security guards is dependent on the service contract between the security agency and its client. However, considering that respondents had been out of work for a long period, and consonant with the principle of social justice, the LA awarded respondents with separation pay equivalent to one (1) month salary for every year of service, to be paid by DNL Security. Because DNL Security instructed respondents to continue working for petitioner from February 1993 to April 20, 1993, DNL Security was also made to pay respondents' wages for the period. The LA further granted respondents' claim of salary differential, as they were paid wages below the minimum wage, as well as 13th month pay. For these monetary awards, petitioner was made solidarily liable with DNL Security, as the indirect employer of respondents.[7]

DNL Security filed a motion for reconsideration, while petitioner appealed to the NLRC.[8]

In a resolution[9] dated December 9, 1997, the NLRC treated DNL Security's motion for reconsideration as an appeal, but dismissed the same, as it was not legally perfected. It likewise

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[6] *Id.* at 66-67.

[7] *Id.* at 62-67.

[8] *Id.* at 79.

[9] Penned by Presiding Commissioner Irenea Ceniza, with Commissioners Bernabe S. Batuhan and Amorito V. Cañete, concurring; *id.* at 77-81.

dismissed petitioner's appeal, having been filed beyond the reglementary period.

Undaunted, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On September 7, 2006, the CA rendered the assailed Decision[10] affirming the NLRC ruling. Petitioner's motion for reconsideration was denied by the CA on September 27, 2007.

Hence, the present petition raising the following errors:

The Court of Appeals committed a reversible error in finding that the public respondent NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the appeal of the petitioner GSIS, considering that:

1. The Court of Appeals disregarded the facts and circumstances evidencing the timeliness of the petitioner GSIS' appeal before the NLRC and sacrificed substantial justice in the altar of dubious technicalities; and

2. The Court of Appeals misapplied the law and mistakenly affirmed the public respondent NLRC's decision that the petitioner GSIS is jointly and severally liable with DNL Security Agency for payment of the unsubstantiated amounts of Salary Differentials and the 13th Month Pay to the private respondent security guards.[11]

Petitioner insists that its appeal before the NLRC was filed on time, having been filed through registered mail on October 27, 1997, as evidenced by Registry Receipt No. 34581 countersigned by the postmaster. It adds that, even assuming that the appeal was indeed filed one day late, the NLRC should not have strictly applied the Rules in order to effect substantial justice. Petitioner also claims that although the body of the LA decision made DNL Security solely liable for respondents' wages from February 1993 to April 20, 1993, and for their separation pay, the dispositive portion thereof made petitioner solidarily liable for said awards. Petitioner further questions the award of monetary benefits for

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[10] *Supra* note 1.

[11] *Rollo,* pp. 15-16.

lack of evidence to substantiate said claims. Lastly, petitioner argues that the enforcement of the decision is impossible, considering that petitioner's charter unequivocally exempts it from execution.[12]

We partly grant the petition.

The resolution of the petition before us involves the appreciation and determination of factual matters, mainly on the issue of whether petitioner's appeal was seasonably filed before the NLRC.

Timeliness of an appeal is a factual issue. It requires a review or evaluation of the evidence which would show when the appeal was actually mailed to and received by the NLRC.[13] In this case, to prove that it mailed the notice of appeal and appeal memorandum on October 27, 1997, instead of October 28, 1997, as shown by the stamped date on the envelope, petitioner presented Registry Receipt No. 34581 bearing the earlier date.

Under Section 3, Rule 13 of the Rules of Court, where the filing of pleadings, appearances, motions, notices, orders, judgments, and all other papers with the court/tribunal is made by registered mail, the date of mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of filing.[14]

Thus, the date of filing is determinable from two sources: from the post office stamp on the envelope or from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings. If the date stamped on one is earlier than the other, the former may be accepted as the date of filing. This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented.[15]

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[12] *Id.* at 16-30.

[13] *Mangahas v. Court of Appeals*, G.R. No. 173375, September 25, 2008, 566 SCRA 373, 389.

[14] *San Miguel Corporation v. NLRC*, 259 Phil. 765, 769 (1989).

[15] *Id.* at 769.

In any case, even if the appeal was filed one day late, the same should have been entertained by the NLRC. Indeed, the appeal must be perfected within the statutory or reglementary period. This is not only mandatory, but also jurisdictional. Failure to perfect the appeal on time renders the assailed decision final and executory and deprives the appellate court or body of the legal authority to alter the final judgment, much less entertain the appeal. However, this Court has, time and again, ruled that, in exceptional cases, a belated appeal may be given due course if greater injustice will be visited upon the party should the appeal be denied. The Court has allowed this extraordinary measure even at the expense of sacrificing order and efficiency if only to serve the greater principles of substantial justice and equity.[16]

Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. We have consistently held that technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the working man.[17]

The Court notes, however, that while the CA affirmed the dismissal by the NLRC of petitioner's appeal for being filed out of time, it nonetheless delved into the merits of the case. This notwithstanding, we do not entirely agree with the appellate court's conclusion affirming *in toto* the LA decision.

In this case, the LA's discussion of the issues appears to be in conflict with his final conclusion. This would have required a measure of clarification. But instead of looking into the errors allegedly committed by the LA, the NLRC dismissed the appeal on a mere technicality. The CA likewise failed to correct the apparent mistake in the LA decision. Thus, we are constrained to review the merits of the case.

We need not discuss DNL Security's responsibility as respondents' direct employer because DNL Security's failure

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[16] *ABS-CBN Broadcasting Corporation v. Nazareno*, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 221.

[17] *Id.* at 221-222.

to interpose an appeal from the LA decision has resulted in the finality of the LA decision. The only issue that we should resolve is the matter of petitioner's liability as indirect employer.

The fact that there is no actual and direct employer-employee relationship between petitioner and respondents does not absolve the former from liability for the latter's monetary claims. When petitioner contracted DNL Security's services, petitioner became an indirect employer of respondents, pursuant to Article 107 of the Labor Code, which reads:

> ART. 107. *Indirect employer.* – The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

After DNL Security failed to pay respondents the correct wages and other monetary benefits, petitioner, as principal, became jointly and severally liable, as provided in Articles 106 and 109 of the Labor Code, which state:

> ART. 106. *Contractor or subcontractor.* – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
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> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him. x x x.
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> xxx xxx xxx
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> ART. 109. *Solidary liability.* – The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

This statutory scheme is designed to give the workers ample protection, consonant with labor and social justice provisions of the 1987 Constitution.[18]

This Court's pronouncement in *Rosewood Processing, Inc. v. NLRC*[19] is noteworthy:

> The joint and several liability of the employer or principal was enacted to ensure compliance with the provisions of the Code, principally those on statutory minimum wage. The contractor or subcontractor is made liable by virtue of his or her status as a direct employer, and the principal as the indirect employer of the contractor's employees. This liability facilitates, if not guarantees, payment of the workers' compensation, thus, giving the workers ample protection as mandated by the 1987 Constitution. This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it had paid in accordance with the terms of the service contract between itself and the contractor.[20]

Petitioner's liability covers the payment of respondents' salary differential and 13th month pay during the time they worked for petitioner. In addition, petitioner is solidarily liable with DNL Security for respondents' unpaid wages from February 1993 until April 20, 1993. While it is true that respondents continued working for petitioner after the expiration of their contract, based on the instruction of DNL Security, petitioner did not object to such assignment and allowed respondents to render service. Thus, petitioner impliedly approved the extension of respondents' services. Accordingly, petitioner is bound by the provisions of the Labor Code on indirect employment. Petitioner cannot be allowed to deny its obligation to respondents after it had benefited from their services. So long as the work, task, job, or project has been performed for petitioner's benefit or on its behalf, the

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[18] *Manila Electric Company v. Benamira*, 501 Phil. 621, 644 (2005); *Mariveles Shipyard Corp. v. Court of Appeals*, 461 Phil. 249, 267 (2003).

[19] 352 Phil. 1013 (1998).

[20] *Id.* at 1033-1034. (Citations omitted.)

liability accrues for such services.[21] The principal is made liable to its indirect employees because, after all, it can protect itself from irresponsible contractors by withholding payment of such sums that are due the employees and by paying the employees directly, or by requiring a bond from the contractor or subcontractor for this purpose.[22]

Petitioner's liability, however, cannot extend to the payment of separation pay. An order to pay separation pay is invested with a punitive character, such that an indirect employer should not be made liable without a finding that it had conspired in the illegal dismissal of the employees.[23]

It should be understood, though, that the solidary liability of petitioner does not preclude the application of Article 1217 of the Civil Code on the right of reimbursement from its co-debtor, *viz*.:[24]

> Art. 1217. 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 the payment may claim from his co-debtors only 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.
>
> When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

Lastly, we do not agree with petitioner that the enforcement of the decision is impossible because its charter unequivocally exempts it from execution. As held in *Government Service Insurance System v. Regional Trial Court of Pasig City, Branch 71*,[25] citing *Rubia v. GSIS*: [26]

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[21] *New Golden City Builders & Dev't. Corp. v. CA*, 463 Phil. 821, 833 (2003); *id.* at 1034.

[22] *Rosewood Processing, Inc. v. NLRC, supra*, at 1034.

[23] *Id.* at 1035.

[24] *Manila Electric Company v. Benamira, supra* note 18, at 645.

[25] G.R. Nos. 175393 and 177731, December 18, 2009, 608 SCRA 552.

[26] 476 Phil. 623 (2004).

The processual exemption of the GSIS funds and properties under Section 39 of the GSIS Charter, in our view, should be read consistently with its avowed principal purpose: to maintain actuarial solvency of the GSIS in the protection of assets which are to be used to finance the retirement, disability and life insurance benefits of its members. Clearly, the exemption should be limited to the purposes and objects covered. Any interpretation that would give it an expansive construction to exempt all GSIS assets from legal processes absolutely would be unwarranted.

Furthermore, the declared policy of the State in Section 39 of the GSIS Charter granting GSIS an exemption from tax, lien, attachment, levy, execution, and other legal processes should be read together with the grant of power to the GSIS to invest its "excess funds" under Section 36 of the same Act. Under Section 36, the GSIS is granted the ancillary power to invest in business and other ventures for the benefit of the employees, by using its excess funds for investment purposes. In the exercise of such function and power, the GSIS is allowed to assume a character similar to a private corporation. Thus, it may sue and be sued, as also, explicitly granted by its charter x x x.[27]

To be sure, petitioner's charter should not be used to evade its liabilities to its employees, even to its indirect employees, as mandated by the Labor Code.

WHEREFORE, premises considered, the Court of Appeals Decision and Resolution dated September 7, 2006 and September 27, 2007, respectively, in CA-G.R. SP No. 50450, are *AFFIRMED* with *MODIFICATION*. Petitioner Government Service Insurance System is declared solidarily liable with DNL Security to *PAY* respondents their wage differentials, thirteenth month pay, and unpaid wages from February 1993 to April 20, 1993, but is *EXONERATED* from the payment of respondents' separation pay.

SO ORDERED.

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

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[27] *Government Service Insurance System v. Regional Trial Court of Pasig City, Branch 71, supra* note 25, at 583-584. (Citations omitted.)

SECOND DIVISION

[G.R. No. 180997. November 17, 2010]

SPOUSES MARIANO (a.k.a. QUAKY) and EMMA BOLAÑOS, *petitioners, vs.* **ROSCEF ZUÑIGA BERNARTE, CLARO ZUÑIGA, PERFECTO ZUÑIGA, and CEFERINA ZUÑIGA-GARCIA,** *respondents.*

SYLLABUS

1. CIVIL LAW; SUCCESSION; APPLICABILITY OF THE LAW IN FORCE AT THE TIME OF DEATH; CASE AT BAR.— Considering that Roman died on August 9, 1976, the provisions of the Civil Code on succession, then the law in force, should apply, particularly Articles 979 and 980, *viz.*— Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages. x x x. Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares. Thus, the RTC correctly ruled that Lot No. 1-P rightfully belongs to the 11 children of Roman, seven (7) from his first marriage with Flavia and four (4) from his second marriage with Ceferina, in equal shares. As there was no partition among Roman's children, the lot was owned by them in common.

2. ID.; ID.; SALE OF LOT OWNED IN COMMON; SALE OF ALIQUOT SHARES; RESTITUTION OF PROPERTY SOLD IN EXCESS OF SELLER'S ALIQUOT SHARE, CLEARLY WARRANTED IN CASE AT BAR.— And inasmuch as Flavia did not successfully repudiate her sale of her aliquot share to Cresencia, the transfer stands as valid and effective. Consequently, what Cresencia sold to petitioner spouses was her own share and Flavia's share in the property that she acquired by virtue of the notarized deed of sale, which is only 2/11 of Lot No. 1-P. Therefore, the restitution of the property in excess of that portion by petitioner spouses is clearly warranted.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF TRIAL COURT; ACCORDED THE HIGHEST DEGREE OF DEFERENCE AND RESPECT ON APPEAL;

EXCEPTIONS; CASE AT BAR.— Indeed, the findings of the trial court, with respect to the operative facts and the credibility of witnesses, especially when affirmed by the appellate court, are accorded the highest degree of deference and respect by this Court, except when: (1) the findings of a trial court are grounded entirely on speculations, surmises, or conjectures; (2) a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion in the appreciation of facts; (4) the findings of the court go beyond the issues of the case or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) there is misapprehension of facts; and (6) the findings of fact are conclusions without mention of the specific evidence on which they are based are premised on the absence of evidence, or are contradicted by evidence on record. Notably, none of these exceptions is attendant in this case.

APPEARANCES OF COUNSEL

Vicente G. Judar for petitioners.
Reena Lilma N. Nieva for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari*[1] seeks to reverse and set aside the Decision dated March 30, 2007[2] and the Resolution dated November 26, 2007[3] of the Court of Appeals (CA) in CA-G.R. CV No. 84452.

The antecedents—

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[1] *Rollo*, pp. 8-15.

[2] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring; *id.* at 16-27.

[3] *Id.* at 28.

Subject of the controversy is a 238-square-meter lot, designated as Lot No. 1-P, and situated in Poblacion, Rapu-Rapu, Albay. Petitioner-spouses Mariano and Emma Bolaños (petitioner-spouses) purchased it from Cresencia Zuñiga-Echague (Cresencia) on June 20, 2001. The sale was registered in the name of petitioner-spouses before the Municipal Assessor's Office in Rapu-Rapu, Albay.

On October 30, 2001, respondents Roscef Zuñiga Bernarte, Claro Zuñiga, Perfecto Zuñiga, and Ceferina Zuñiga-Garcia (Roscef, *et al*.) filed a complaint[4] for declaration of partial nullity of deeds of transfer and sale with prayer for preliminary injunction against petitioner-spouses, Flavia Zuñiga (Flavia), and Cresencia before the Regional Trial Court (RTC) of Legazpi City, docketed as Civil Case No. 10033.

The complaint, in essence, alleged that: Roscef, *et al*., and Flavia and Cresencia are legitimate half-blood brothers and sisters, all children of the deceased Roman Zuñiga, Sr. (Roman) from his second and first marriages, respectively; during his lifetime, Roman owned a residential land with improvements, identified as Lot No. 1-P per Tax Declaration No. 99-001-01704[5] for the year 2000; Roman had the lot declared for taxation purposes in the name of Flavia, Sisters and Brothers, per a Sworn Statement[6] he executed in 1973, and filed with the then Assessor's Office, which issued Tax Declaration No. 2975;[7] Roman died on August 9, 1976, and his heirs did not settle or partition the subject property; on June 20, 2001, Flavia, without authority from the co-owners of the lot, executed a notarized Deed of Absolute Sale[8] over it in favor of Cresencia; Cresencia, in turn, also without authority from the said co-owners, executed on the same day a notarized Deed of Absolute Sale[9] in favor of

[4] Records, pp. 1-7.

[5] *Id.* at 10.

[6] *Id.* at 8.

[7] *Id.* at 9.

[8] *Id.* at 11.

[9] *Id.* at 12.

petitioner-spouses; on the basis of these notarized deeds, Tax Declaration No. 99-001-01703[10] was issued to petitioner-spouses as sole declared owners of Lot No. 1-P.

In praying for preliminary injunction, Roscef, *et al*. further alleged that petitioner-spouses started demolishing their ancestral home on the subject property and initiated the construction of a new building thereon, despite pleas to desist from further destroying the ancestral home.

In her answer with cross-claim,[11] Flavia denied the genuineness and due execution of the Deed of Absolute Sale in favor of Cresencia, and alleged that the subsequent sale made by the latter was valid and effective only as to her aliquot share, but null and void as to the rest of the property. She also claimed that, during the confrontation before the *barangay*, she informed Mariano of these facts and even admonished him not to destroy the existing house on Lot No. 1-P, nor to make any constructions thereon. She said that, despite this notice, petitioner-spouses, on August 15, 2001, forcibly entered her house and demolished a large portion of it.

In her own answer,[12] Cresencia denied the material allegations of the complaint, and alleged that Flavia was the sole owner of Lot No. 1-P, thus making her a buyer and seller in good faith and for value. Cresencia also averred that Roscef, *et al.*, as children of Roman by his second wife, do not have any share in the subject property since Roman had already orally partitioned it during his lifetime.

For their part, petitioner-spouses alleged that the subject property was owned in common by Flavia, Cresencia, and their full-blood brothers and sisters only, and that, later on, Flavia acquired the entire lot. Flavia then sold it to Cresencia, who, in turn, sold it to petitioner-spouses. They asserted that they had acquired Lot No. 1-P in good faith and for value, without any knowledge

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[10] *Id.* at 13.

[11] *Id.* at 33-37.

[12] *Id.* at 43-45.

of the adverse claim of Roscef, *et al*. or that the property did not fully belong to Cresencia.[13]

During the pre-trial, the parties admitted that Roscef, *et al*., Flavia and Cresencia are legitimate half brothers and sisters and the identities of the parties and of the subject property.[14]

Trial on the merits ensued. Thereafter, the RTC rendered its decision dated December 1, 2004,[15] disposing as follows—

> WHEREFORE, Premises Considered, this Court renders judgment declaring that the property interest acquired by the spouses Mariano and Emma Bolaños over Lot No. 1-P – a 238-square-meter lot situated [o]n Salazar Street, Poblacion Rapu-Rapu, Albay – is limited only to the ideal shares belonging to Flavia A. Zuñiga and Cresencia Zuñiga-Echague constitutive of an ideal share equivalent to 2/11 portion of such lot, and hereby partially nullifying the two deeds of absolute sale both dated 20 June 2001 over Lot No. 1-P exceeding the ideal share of 1/11 for each one of the sellers Flavia A. Zuñiga and Cresencia Zuñiga-Echague. The defendants are hereby ordered to pay the plaintiffs the amounts of: a) 15,000 pesos as attorney's fees; and b) 10,000 pesos as litigation expenses. The defendants shall pay the costs of suit.
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> SO ORDERED.[16]

Aggrieved, petitioner-spouses interposed an appeal before the CA, ascribing error to the RTC in holding that the property was the capital of Roman and in declaring that the property interest acquired by them was limited only to the ideal shares of Flavia.

The CA denied the appeal, and affirmed *in toto* the RTC judgment. Hence, this petition anchored on the sole question of law of whether or not the CA wrongly applied the law on

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[13] Answer with Affirmative Defense and Counter Claim; *id.* at 47-49.

[14] Pre-Trial Order; *id.* at 81-83.

[15] *Id.* at 147-149.

[16] *Id.* at 149.

co-ownership, specifically Article 484,[17] relative to Article 980[18] of the Civil Code.

Petitioner-spouses argue that the CA gravely erred when it concluded that Lot No. 1-P is owned in common by the children from the first and second marriages of Roman. They posit that the brothers and sisters mentioned in Tax Declaration No. 2975 for December 14, 1948-1949 refer only to Roman's children from his first marriage, when the property was bequeathed to them by their father, then still a widower, and prior to the celebration of his marriage to Ceferina on October 18, 1954. They claim that Roman did so probably because the property belonged to the paraphernal property of his deceased first spouse Flavia. According to them, there was no credible evidence, not even a single document, to prove that the property originally belonged to Roman, but the RTC and the CA gave credit to Ceferina's testimony that she was told by her father, while at a tender age, that the property belonged to them. They contend, to the contrary, that the testimony of Josefina, a child from the first marriage, should be the one given credence due to her unbiased assertion that the property was purchased from the paraphernal assets of their mother Flavia, such that the lot had never been registered in the name of Roman because he had no reason to claim it as his own.

We disagree. The assertions of petitioner-spouses cannot stand on the face of the evidence, both documentary and testimonial, presented before the RTC.

More specifically, petitioner-spouses' contention, *i.e.*, that the subject property really belonged to Roman's first spouse Flavia as her paraphernal property, cannot be sustained. This

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[17] Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

In default of contracts, or of special provisions, co-ownership shall be governed by the provisions of this Title.

[18] Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

position was anchored from the testimony of Josefina[19] that the lot was actually bought by her maternal grandfather and given to her mother Flavia. Josefina's declarations before the RTC do not deserve merit and weight, particularly in light of her statement that she was told so by her elders way back in 1923, when at that time she was only around three (3) years of age.[20] Besides, such a pronouncement was not supported by any proof, save for the lame excuse that the deed of sale showing the said transaction was allegedly lost and destroyed by a typhoon at a time when she was already married, claiming that she was then the custodian of the supposed document. Evidence, to be worthy of credit, must not only proceed from the mouth of a credible witness but must be credible in itself.[21] In other words, it must be natural, reasonable, and probable to warrant belief. The standard as to the truth of human testimony is its conformity to human knowledge, observation, and experience; the courts cannot heed otherwise.[22] Regretfully, petitioner-spouses' allegations do not measure up to the yardstick of verity.

The findings of the RTC, as concurred by the CA, are enlightening —

> The facts of the case that appear of record to be without dispute follow, to wit: Roman Zuñiga, Sr. during his lifetime married twice. His first wife was Flavia while Ceferina became his second wife. Flavia died sometime in the year 1944 or 1945. Roman Sr. and Flavia begot seven children, namely: Josefina, Flavia, Woodrow, Pablo, Manuel, Roman, Jr. and Cresencia. On 18 October 1954, Roman Zuñiga, Sr. married Ceferina Bendaña (Exhibits "F", "6"). Roman, Sr. and Ceferina had four children, and they were the plaintiffs Roscef, Claro, Perfecto and Ceferina. Roman Zuñiga, Sr. died on 9 August 1976. It appears that his second wife Ceferina Bendaña died ahead of him. His eleven children by his first and by his second

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[19] TSN, January 12, 2004, pp. 3-17.

[20] *Id.* at 6-7.

[21] *Boncalon v. Ombudsman (Visayas)*, G.R. No. 171812, December 24, 2008, 575 SCRA 449, 460.

[22] *Safeguard Security Agency, Inc. v. Tangco*, G.R. No. 165732, December 14, 2006, 511 SCRA 67, 84.

marriage survived him. In the face of the sworn statement he executed in the year 1973 he declared the lot in question (now Lot No. 1-P) then embraced by Tax Declaration No. 2975 as among the several properties that belonged to him (Exhibits "C", "3", in relation to Exhibits "A", "1"). Such lot under such tax declaration was declared for taxation purposes for the first time on 14 December 1948 in the name of Flavia A. Zuñiga, brothers and sisters (Exhibits "A", "1"). Flavia A. Zuñiga sold such 238-square-meter lot situated in Salazar St., Poblacion, Rapu-Rapu, Albay to her sister Cresencia Zuñiga-Echague on 20 June 2001 (Exhibits "D", "2"). On the same day Cresencia Zuñiga-Echague sold the same lot in favor of the spouses Mariano and Emma Bolaños (Exhibit "E").

Now, Roman Zuñiga, Sr.'s first wife Flavia passed away in the year 1944 or 1945. On 18 October 1954, he married his second wife Ceferina. Lot No. 1-P was declared for tax purposes for the first time on 14 December 1948 in the name of Flavia Zuñiga's sisters and brothers. The defendant Flavia A. Zuñiga admitted that her parents always declared the properties they acquired in her name – Flavia A. Zuñiga[,] sisters and brothers – since she was a 7-year-old lass. She never acquired the properties on her own – including Lot No. 1-P. She would always recognize her father Roman Zuñiga, Sr. as the actual owner of such lot when he was alive.

The reckoning date for the acquisition of Lot No. 1-P should be the date when it was declared for tax purposes in the name of the defendant Flavia A. Zuñiga, sisters and brothers – which is 14 December 1948 – notwithstanding the testimonies rendered that such lot was acquired while Roman Zuñiga, Sr. was married to Flavia – and even prior to such marriage. Such testimonies that are obviously easy to fabricate have no documentary evidence seen of record to sustain them. This Court finds Tax Declaration No. 2975 (Exhibit[s] "A", "1") that bec[a]me effective in the year 1949 as the credible ancient documentary evidence that speaks of the true date Roman Zuñiga, Sr. acquired Lot No. 1-P. As earlier noted, his first wife died in the year 1944 or 1945 while he married his second wife on 18 October 1954. Obviously, Roman Zuñiga, Sr., while still a widower in the year 1948, acquired Lot No. 1-P. Clearly such lot was his capital property.

Roman Zuñiga, Sr. having passed away on 9 August 1976, Lot No. 1-P now forms part of his estate. Except for Lot No. 1-P, the record has not shown any other property left by Roman Zuñiga, Sr.

at the time of his death. In the absence of whatever evidence that he executed a will his legitimate children by his first and second marriages inherit such lot in equal share[s] as intestate heirs (Article 980, The Civil Code). It follows that Lot No. 1-P has to be divided among them into eleven equal shares.

Until such time that Lot No. 1-P has been partitioned among Roman Zuñiga, Sr.'s eleven legitimate children, as co-owners being co-heirs their shares remain ideal (Article 1078, The Civil Code). Not one of the eleven children can claim as his or hers a specifically identified portion of Lot No. 1-P.

This Court finds Flavia Zuñiga's verbal claim that she never sold Lot No. 1-P to her sister Cresencia Zuñiga-Echague to be without merit. Not a shred of evidence appears of record showing that the signature appearing in the face of the deed of absolute sale was not Flavia A. Zuñiga's (Exhibits "D", "2"). At any rate, this Court holds that the written deed of absolute sale dated 20 June 2001 that Flavia A. Zuñiga signed is more credible evidence than her self-serving, uncorroborated and easy to concoct testimony that she never sold such lot to her sister Cresencia Zuñiga-Echague.

However, the above deed of absolute sale that Flavia A. Zuñiga executed was valid and effective only to the extent of her ideal share in Lot No. 1-P. The validity of the other deed of absolute sale Cresencia Zuñiga-Echague executed in favor of the spouses Mariano and Emma Bolaños is limited to her ideal share and the other ideal share she acquired from Flavia A. Zuñiga. In effect[,] the spouses Mariano and Emma Bolaños acquired the ideal shares of the sisters Flavia A. Zuñiga and Cresencia Zuñiga-Echague.

The claim by the spouses Mariano and Emma Bolaños that they were purchasers in good faith has little relevance. Lot No. 1-P appears as [an] unregistered lot, and thus they merely step into the shoes of the seller. They cannot acquire [a] property interest greater tha[n] Cresencia Zuñiga- Echague's.

Anyway, the spouses Mariano and Emma Bolaños acquired Lot No. 1-P from Cresencia Zuñiga-Echague on the very same day that Flavia A. Zuñiga sold it to Cresencia Zuñiga-Echague. The tax declaration over Lot No. 1-P at the time the spouses Mariano and Emma Bolaños acquired such lot speaks that its owners were Flavia A. Zuñiga, sisters and brothers (Exhibit "G"). Awareness by the spouses Mariano and Emma Bolaños of such tax declaration while

they were buying Lot No. 1-P, they knew that Flavia A. Zuñiga was not the exclusive owner of Lot No. 1-P at the time they purchased it.[23]

Considering that Roman died on August 9, 1976, the provisions of the Civil Code on succession, then the law in force, should apply, particularly Articles 979 and 980, *viz.*—

Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages. x x x.

Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Thus, the RTC correctly ruled that Lot No. 1-P rightfully belongs to the 11 children of Roman, seven (7) from his first marriage with Flavia and four (4) from his second marriage with Ceferina, in equal shares. As there was no partition among Roman's children, the lot was owned by them in common. And inasmuch as Flavia did not successfully repudiate her sale of her aliquot share to Cresencia, the transfer stands as valid and effective. Consequently, what Cresencia sold to petitioner spouses was her own share and Flavia's share in the property that she acquired by virtue of the notarized deed of sale, which is only 2/11 of Lot No. 1-P. Therefore, the restitution of the property in excess of that portion by petitioner spouses is clearly warranted.

Indeed, the findings of the trial court, with respect to the operative facts and the credibility of witnesses, especially when affirmed by the appellate court, are accorded the highest degree of deference and respect by this Court, except when: (1) the findings of a trial court are grounded entirely on speculations, surmises, or conjectures; (2) a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion in the appreciation of facts; (4) the findings of the court go beyond the issues of the case or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) there is

[23] *Rollo,* pp. 24-25.

misapprehension of facts; and (6) the findings of fact are conclusions without mention of the specific evidence on which they are based are premised on the absence of evidence, or are contradicted by evidence on record.[24] Notably, none of these exceptions is attendant in this case.

WHEREFORE, the petition is *DENIED.* Accordingly, the Decision dated March 30, 2007 and the Resolution dated November 26, 2007 of the Court of Appeals in C.A. G.R. CV No. 84452 are *AFFIRMED.* Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181643. November 17, 2010]

MICHELLE I. PINEDA, *petitioner, vs.* **COURT OF APPEALS (FORMER NINTH DIVISION) AND THE DEPARTMENT OF EDUCATION, represented by Assistant Secretary CAMILO MIGUEL M. MONTESA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REPRESENTATIVES AS PARTIES; IN THE CASE AT BAR, RESPONDENTS (IN THE PETITION FOR *CERTIORARI* BEFORE THE RTC) USEC. GASCON,

[24] *People v. Estrada,* G.R. No. 178318, January 15, 2010, 610 SCRA 222, 231; *Benguet Corporation v. Cabildo,* G.R. No. 151402, August 22, 2008, 563 SCRA 25, 35-36.

DR. QUIÑONES AND MS. CAMILO WERE THE REPRESENTATIVES OF THE DEPED, WHICH WAS THE PROPER PARTY.— In her petition for *certiorari* before the RTC, Pineda impleaded Usec. Gascon, Dr. Quiñones and Ms. Camilo in their official capacities as Undersecretary of DepEd, Division Superintendent and Principal of Lakandula High School, respectively. Although the petition mentioned that Usec. Gascon was merely a nominal party, it stated therein that Dr. Quiñones and Ms. Camilo were being sued for "having been tasked to immediately carry out" his order of February 11, 2005. The Court is of the view that DepEd was the proper party and Usec. Gascon, Dr. Quiñones and Ms. Camilo were just its representatives. Thus, they were sued in their official capacities.

2. ID.; ID.; ID.; REAL PARTY-IN-INTEREST; DEPED IS THE REAL PARTY IN INTEREST FOR IT WILL SURELY BE AFFECTED, FAVORABLY OR UNFAVORABLY, BY THE FINAL RESOLUTION OF THE CASE BEFORE THE RTC; CASE AT BAR.— A review of Usec. Gascon's order discloses that the cancellation of Pineda's August-MOA was pursuant to DepEd's existing guidelines on the turn over of school canteens to teachers' cooperatives, laid out in Department Order No. 95, series of 1998. He was simply applying a DepEd policy when he ordered the August-MOA cancelled. So, what was actually being assailed by Pineda in her petition before the RTC was the implementation of DepEd's existing guidelines with the nullification of the August-MOA entered into by Dr. Blas, then principal of LHS. As Asec. Montesa merely took over the functions of Usec. Gascon, he is certainly authorized to institute the petition before the CA in order to advance and pursue the policies of his office – DepEd. Applying Rule 3, Section 2 of the Revised Rules of Court, DepEd is the real party in interest for it will surely be affected, favorably or unfavorably, by the final resolution of the case before the RTC. Thus, it would be absurd not to recognize the legal standing of Asec. Montesa, as representative of DepEd, but consider Dr. Quiñones and Ms. Camilo as the proper parties when they were merely tasked to implement a directive emanating from a superior official (Asec. Montesa) of the DepEd.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* FILING OF A MOTION FOR RECONSIDERATION IS

GENERALLY A CONDITION *SINE QUA NON* BEFORE A PETITION FOR *CERTIORARI* MAY LIE.— The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.

4. ID.; ID.; ID.; ID.; EXCEPTIONS.— There are, however, recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration as cited in the case of *Domdom v. Sandiganbayan.*

5. ID.; ID.; ID.; ID.; ID.; OPERATION OF THE CANTEEN OF A PUBLIC SECONDARY SCHOOL IS OF PUBLIC INTEREST FOR IT AFFECTS THE WELFARE OF THE STUDENTS; CASE AT BAR.— As previously discussed, the present case concerns the implementation or application of a DepEd policy which had been enjoined by the RTC. Certainly, there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the government. Moreover, the subject matter of the case involves the operation of the canteen of a public secondary school. This is of public interest for it affects the welfare of the students, thus, justifying the relaxation of the settled rule.

6. ID.; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; NO NEW ISSUE IN A CASE CAN BE RAISED IN A PLEADING WHICH BY DUE DILIGENCE COULD HAVE BEEN RAISED IN PREVIOUS PLEADINGS; CASE AT BAR. — Still on the second ground, Pineda points out that the March 14, 2005 Order of the RTC was received by the DepEd on March 16, 2005 and the latter filed its petition before the CA on June 28, 2005, which was beyond the sixty (60)-day reglementary period. Going over DepEd's petition before the CA, it appears that DepEd reckoned the 60-day period from June 28, 2005, the date of its receipt of the June 7, 2005 Order of the RTC. Pineda's Comment and Memorandum, however, did not raise this procedural lapse as an issue. Instead, Pineda put forth her own arguments in support of the two RTC orders. The rule in pleadings and practice is that that no new issue in a case can be raised in a pleading which by due diligence

could have been raised in previous pleadings. Thus, it is too late in the day for Pineda to question the procedural lapse.

7. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE THEREOF; ITS SOLE OBJECTIVE IS TO PRESERVE THE *STATUS QUO* BEFORE THE ACTUAL CONTROVERSY, NOT TO ALTER SUCH STATUS; CASE AT BAR.— At any rate, the Court finds no cogent reason for the reversal and setting aside by the CA of the writ of preliminary mandatory injunction issued by the RTC. The very writ of preliminary injunction set aside by the CA could no longer lie for the acts sought to be enjoined had already been accomplished or consummated. The DepEd already prohibited Pineda from operating the school canteen. As correctly ruled by the CA in its questioned decision, since Pineda had ceased the operation of the school canteen since 2005, the RTC's preliminary writ should be set aside as there was nothing more to enjoin. The Court agrees with the CA when it explained: "A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. Its sole objective is to preserve the *status quo* until the merits of the case can be heard fully. *Status quo* is defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case. Indubitably, the trial court must not make use of its injunctive relief to alter such status. In the case at bench, the Decision of Undersecretary Gascon dated February 11, 2005, ordering Pineda to cease and desist from operating and managing the school canteen and to revert the management thereof to the Home Economics Department and to the Principal, has already been partially implemented.

8. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; COMMITTED WHEN TRIAL COURT DID NOT MAINTAIN THE *STATUS QUO ANTE LITEM*; CASE AT BAR.— Finally, while the grant or denial of a preliminary injunction is discretionary on the part of the trial court, grave abuse of discretion is committed when it does not maintain the *status quo* which is the last actual, peaceable and uncontested status which preceded the actual controversy. If there is such a commission, it is correctible

through a writ of *certiorari*. In this case, the *status quo ante litem* or the state of affairs existing at the time of the filing of the case was that Pineda was already prohibited from operating the school canteen. For said reason, the trial court cannot make use of its injunctive power to change said status.

APPEARANCES OF COUNSEL

Maria Rosario Uy Galit for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* under Rule 65 filed by petitioner Michelle I. Pineda *(Pineda)* seeking to annul and set aside the June 15, 2007 Decision of the Court of Appeals[1] *(CA)*, which reversed the March 14, 2005 Order of the Regional Trial Court, Branch 153, Pasig City *(RTC)* directing the issuance of a Writ of Preliminary Mandatory Injunction enjoining respondent Department of Education *(DepEd)* from enforcing its decision to cancel a 5-year lease of the school canteen.

It appears from the records that on May 14, 2004, Pineda entered into a Memorandum of Agreement *(May-MOA)*[2] with Lakandula High School *(LHS)* represented by its principal, Dr. Alice B. Blas *(Dr. Blas)*, for a five-year lease of the school canteen with a monthly rental of ₱20,000.00 and an additional ₱4,000.00 monthly for the school's feeding program as well as medicines for the school clinic. Thereafter, Pineda renovated the canteen and equipped it with new utensils, tables, chairs, and electric fans.[3]

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[1] *Rollo*, pp. 55-71. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Enrico A. Lanzanas, concurring.

[2] *Id.* at 125.

[3] *Id.* at 56.

On August 5, 2004, the faculty and personnel of LHS sent a letter to the Division School Superintendent, Dr. Ma. Luisa Quiñones *(Dr. Quiñones)*, questioning the validity of the May-MOA.[4] Dr. Blas sent a letter-reply on September 17, 2004 and an exchange of correspondence followed.[5] Meanwhile, on August 14, 2004, Pineda and Dr. Blas executed another MOA *(August-MOA)*[6] superseding the May-MOA. This time, the August-MOA followed the standard form under Department Order No. 95, Series of 1998[7] or the "Revised Implementing Guidelines for the Turnover of School Canteens to Teachers Cooperatives."

In this regard, on October 20, 2004, Assistant Schools Division Superintendent Isabelita M. Santos *(Ms. Santos)* and Administrative Officer Vicente N. Macarubbo *(Mr. Macarubbo*) wrote a letter to Dr. Quiñones relaying their observations on the controversy and recommending that their findings "be submitted to the DepEd - Central Office for its final word on the matter."[8] Ms. Santos and Mr. Macarubbo were of the view that Dr. Blas did not violate any rule in executing the August-MOA. They even found the lease to Pineda beneficial to the school. Thus, Dr. Quiñones wrote the DepEd seeking its decision on the matter.

On February 11, 2005, respondent DepEd, through Undersecretary Jose Luis Martin C. Gascon *(Usec. Gascon)*, declared the August-MOA "*null and void ab initio*" and ordered it "cancelled." Pineda was also ordered to "cease and desist" from further managing and operating the canteen. DepEd made clear that the management and operation of the canteen should revert to the Home Economics Department of the School.[9] This prompted Pineda to file a petition for *certiorari* with prayer

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[4] *Id.* at 136.

[5] Petition, *id.* at 10.

[6] *Id.* at 137.

[7] *Id.* at 127.

[8] *Id.* at 143.

[9] *Id.* at 145.

for temporary restraining order *(TRO)* and/or writ of preliminary injunction before the RTC.

On March 14, 2005, the RTC ordered the issuance of a Writ of Preliminary Mandatory Injunction enjoining the enforcement of Usec. Gascon's decision.[10] DepEd, represented by Usec. Gascon, Dr. Quiñones and Ms. Olympiada Camilo *(Ms. Camilo)*, who succeeded Dr. Blas as School Principal, sought the dismissal of Pineda's petition before the RTC on the ground that the latter failed to state a cause of action. On June 7, 2005, the trial court denied its motion.[11] For said reason, DepEd, this time represented by Assistant Secretary Camilo Miguel M. Montesa *(Asec. Montesa)*, filed a petition for *certiorari* before the CA seeking to set aside the March 14, 2005 and June 7, 2005 orders of the RTC.

The CA affirmed the June 7, 2005 order of the RTC denying DepEd's motion to dismiss but reversed its March 14, 2005 order granting the issuance of the Writ of Preliminary Mandatory Injunction. According to the CA, DepEd's order cancelling the August-MOA had already been partially implemented as Pineda herself recognized such fact in her amended petition before the RTC. In effect, this was the status quo. In addition, the CA held that Pineda appeared to have no clear or unmistakable right to be protected since the MOA that granted her the right to operate the school canteen was, in fact, invalidated by the DepEd for not being sanctioned by its existing rules and regulations. Finally, the CA also held that there was no pressing necessity to avoid injurious consequences which would warrant the issuance of the injunctive writ as the purported damage to Pineda, if she would not able to operate the canteen, was readily quantifiable.[12]

Hence, Pineda filed this petition for *certiorari* relying on the following

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[10] *Id.* at 187.

[11] *Id.* at 191.

[12] *Id.* at 65-67.

GROUNDS:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN INSTEAD OF DISMISSING THE PETITION FILED BY RESPONDENT DEPARTMENT OF EDUCATION THROUGH ASSISTANT SECRETARY CAMILO MIGUEL M. MONTESA, IT GAVE DUE COURSE TO IT, NOTWITHSTANDING THE GLARING FACT THAT IT WAS NOT A PARTY AT ALL IN SCA NO. 2797, HENCE, WITH NO *LOCUS STANDI*.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS OUTRIGHT THE PETITION SINCE NO MOTION FOR RECONSIDERATION WAS FILED FROM THE ORDERS DATED MARCH 14, 2005, GRANTING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER AND THE ORDER DATED JUNE 7, 2005, DENYING RESPONDENTS' (USEC JOSE LUIS MARTIN C. GASCON, SUPT. MA. LUISA QUINONES AND OLYMPIADA CAMILO) MOTION TO DISMISS, IN MANIFEST VIOLATION OF SECTION 4, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.

III

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DISSOLVED THE WRIT OF INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT BRANCH 153, PASIG CITY, IN SCA NO. 2797, THEREBY UNJUSTIFIABLY INTERFERING WITH THE LOWER COURT'S DISCRETION IN ISSUING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER WHO HAS A CLEAR AND UNMISTAKABLE LEGAL RIGHT TO BE AFFORDED THIS REMEDY AND CONSIDERING THAT RESPONDENTS DID NOT FILE A MOTION TO DISSOLVE

BOND WITH THE TRIAL COURT OR AT LEAST FILED AFFIDAVITS IN SUPPORT OF THEIR OPPOSITION.[13]

On November 18, 2009, after the parties had filed their respective pleadings, the Court gave due course to the petition and ordered the parties to submit their respective memoranda.[14]

On the first ground, Pineda argues that the CA gravely abused its discretion in entertaining the petition for *certiorari* of DepEd considering that Asec. Montesa was not the proper party to file the petition. She adds that, even assuming that DepEd had the *locus standi* to file said petition before the CA, Asec. Montesa was not duly authorized to do so.

The Court cannot accommodate the view of Pineda.

In her petition for *certiorari* before the RTC, Pineda impleaded Usec. Gascon, Dr. Quiñones and Ms. Camilo in their official capacities as Undersecretary of DepEd, Division Superintendent and Principal of Lakandula High School, respectively. Although the petition mentioned that Usec. Gascon was merely a nominal party, it stated therein that Dr. Quiñones and Ms. Camilo were being sued for "having been tasked to immediately carry out" his order of February 11, 2005. The Court is of the view that DepEd was the proper party and Usec. Gascon, Dr. Quiñones and Ms. Camilo were just its representatives. Thus, they were sued in their official capacities.

A review of Usec. Gascon's order discloses that the cancellation of Pineda's August-MOA was pursuant to DepEd's existing guidelines on the turn over of school canteens to teachers' cooperatives, laid out in Department Order No. 95, series of 1998. He was simply applying a DepEd policy when he ordered the August-MOA cancelled. So, what was actually being assailed by Pineda in her petition before the RTC was the implementation of DepEd's existing guidelines with the nullification of the August-

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[13] *Id.* at 28-30.

[14] *Id.* at 534.

MOA entered into by Dr. Blas, then principal of LHS.[15] As Asec. Montesa merely took over the functions of Usec. Gascon, he is certainly authorized to institute the petition before the CA in order to advance and pursue the policies of his office – DepEd. Applying Rule 3, Section 2 of the Revised Rules of Court, DepEd is the real party in interest for it will surely be affected, favorably or unfavorably, by the final resolution of the case before the RTC.

Thus, it would be absurd not to recognize the legal standing of Asec. Montesa, as representative of DepEd, but consider Dr. Quiñones and Ms. Camilo as the proper parties when they were merely tasked to implement a directive emanating from a superior official (Asec. Montesa) of the DepEd.

On the second ground, Pineda questions DepEd's failure to move for reconsideration before going to the CA on *certiorari*.

The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.[16] There are, however, recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*,[17] it was written:

The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo*

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[15] Republic Act No. 6655: "Sec. 7. Nationalization of Public Secondary Schools. – To effectively implement the system, the establishment, renaming, conversion, integration, separation, administration, supervision and control of all public secondary schools and public secondary school teachers and other personnel, including the payment of their salaries, allowances and other fringe benefits as well as those already provided by local governments are hereby vested in the Department of Education, Culture and Sports (now the Department of Education)."

[16] *Domdom v. Sandiganbayan*, G.R. Nos. 182382-83, February 24, 2010.

[17] *Id*.

had no jurisdiction; where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is involved.[18] (underscoring supplied)

As previously discussed, the present case concerns the implementation or application of a DepEd policy which had been enjoined by the RTC. Certainly, there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the government. Moreover, the subject matter of the case involves the operation of the canteen of a public secondary school. This is of public interest for it affects the welfare of the students, thus, justifying the relaxation of the settled rule.

Still on the second ground, Pineda points out that the March 14, 2005 Order of the RTC was received by the DepEd on March 16, 2005 and the latter filed its petition before the CA on June 28, 2005, which was beyond the sixty (60)-day reglementary period. Going over DepEd's petition before the CA, it appears that DepEd reckoned the 60-day period from June 28, 2005, the date of its receipt of the June 7, 2005 Order of the RTC. Pineda's Comment and Memorandum, however, did not raise this procedural lapse as an issue. Instead, Pineda put forth her own arguments in support of the two RTC orders.

The rule in pleadings and practice is that that no new issue in a case can be raised in a pleading which by due diligence

[18] *Id.*

could have been raised in previous pleadings.[19] Thus, it is too late in the day for Pineda to question the procedural lapse.

At any rate, the Court finds no cogent reason for the reversal and setting aside by the CA of the writ of preliminary mandatory injunction issued by the RTC. The very writ of preliminary injunction set aside by the CA could no longer lie for the acts sought to be enjoined had already been accomplished or consummated.[20] The DepEd already prohibited Pineda from operating the school canteen. As correctly ruled by the CA in its questioned decision, since Pineda had ceased the operation of the school canteen since 2005, the RTC's preliminary writ should be set aside as there was nothing more to enjoin. The Court agrees with the CA when it explained:

> A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. Its sole objective is to preserve the *status quo* until the merits of the case can be heard fully.
>
> Status quo is defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case. Indubitably, the trial court must not make use of its injunctive relief to alter such status.
>
> In the case at bench, the Decision of Undersecretary Gascon dated February 11, 2005, ordering Pineda to cease and desist from operating and managing the school canteen and to revert the management thereof to the Home Economics Department and to the Principal, has already been partially implemented. This is evident from the allegations of Pineda in her amended petition, to wit:
>
> > "Earlier, in the dawn of same date, 22 February 2004 (should be 2005), the guards of Lakandula High School, taking strict orders from respondents Mrs. Camilo and Dr. Quiñones who immediately executed the assailed illegal decision from the

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[19] *Toshiba Information Equipment (Phils.), Inc. v. CIR*, G.R. No. 157594, March 9, 2010; citing *Director of Lands v. CA*, 363 Phil. 117, 128 (1999).

[20] *Caneland Sugar Corporation v. Alon*, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 33.

> respondent undersecretary, prevented the canteen workers from entering the school and the delivery of softdrinks such as Pop Cola to the petitioner. On the same date, more canteens sprouted, in addition to those found in the H.E. and dressmaking rooms, operated by the teachers, under the guise that they were doing service to the students in the meantime that the canteen was closed. x x x."[21]

Finally, while the grant or denial of a preliminary injunction is discretionary on the part of the trial court, grave abuse of discretion is committed when it does not maintain the *status quo* which is the last actual, peaceable and uncontested status which preceded the actual controversy. If there is such a commission, it is correctible through a writ of *certiorari*.[22] In this case, the *status quo ante litem* or the state of affairs existing at the time of the filing of the case was that Pineda was already prohibited from operating the school canteen. For said reason, the trial court cannot make use of its injunctive power to change said status.[23]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[21] *Rollo,* p. 65.

[22] *Overseas Workers Welfare Administration v. Chavez,* G.R. No. 169802, June 8, 2007, 524 SCRA 451, 471-472.

[23] *Id.*

FIRST DIVISION

[G.R. No. 182431. November 17, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ESTHER ANSON RIVERA, ANTONIO G. ANSON and CESAR G. ANSON,** *respondents.*

SYLLABUS

1.LABOR AND SOCIAL LEGISLATION; LAND REFORM UNDER P.D. NO. 27; JUST COMPENSATION; SHOULD BE BASED PRINCIPALLY ON REPUBLIC ACT NO. 6657, WITH P.D. NO. 27 AND E.O. NO. 228 HAVING SUPPLETORY EFFECT.— At the outset, the Court notes that the parcels of land subject matter of this case were acquired under Presidential Decree No. 27, but the complaint for just compensation was filed in the RTC on 1 December 1994 after Republic Act No. 6657 already took into effect. Thus, our pronouncement in *LBP v. Soriano* finds application. We quote: x x x [I]f just compensation is not settled prior to the passage of Republic Act No. 6657, it should be computed in accordance with the said law, although the property was acquired under Presidential Decree No. 27. The fixing of just compensation should therefore be based on the parameters set out in Republic Act No. 6657, with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect. In the instant case, while the subject lands were acquired under Presidential Decree No. 27, the complaint for just compensation was only lodged before the court on 23 November 2000 or long after the passage of Republic Act No. 6657 in 1998. **Therefore, Section 17 of Republic Act No. 6657 should be the principal basis of the computation for just compensation.**

2. ID.; ID.; ID.; ID.; PARTIES ARE NOT PRECLUDED FROM ASKING FOR ANY ADDITIONAL AMOUNT AS MAY BE WARRANTED BY THE NEW FORMULA; CASE AT BAR.— In the case before Us, the just compensation was computed based on Executive Order No. 228, which computation the parties do not contest. Consequently, we reiterate our rule in *LBP v. Soriano* that "while we uphold the amount derived from the old formula, since the application of the new formula

is a matter of law and thus, should be made applicable, the parties are not precluded from asking for any additional amount as may be warranted by the new formula."

3. ID.; ID.; ID.; JUST COMPENSATION; INTEREST WHEN PAID; RATE OF INTEREST PEGGED AT 12%.— In *Republic v. Court of Appeals,* we affirmed the award of 12% interest on just compensation due to the landowner. x x x We similarly 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. Imperial, Philippine Ports Authority v. Rosales-Bondoc, Nepomuceno v. City of Surigao,* and *Curata v. Philippine Ports Authority*. Conformably with the foregoing resolution, this Court rules that a 12% interest per annum on just compensation, due to the respondents, from the finality of this decision until its satisfaction, is proper.

4. REMEDIAL LAW; COSTS OF SUIT; NOT ALLOWED AGAINST REPUBLIC; NO COST OF SUIT ALLOWED AGAINST LAND BANK OF THE PHILIPPINES PERFORMING GOVERNMENTAL FUNCTION IN AGRARIAN REFORM PROCEEDING.— The relevant provision of the Rules of Court states: "Rule 142 Costs Section 1. *Costs ordinarily follow results of suit.*% **Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course** but the court shall have power, for special reasons adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. **No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law**." In *Heirs of Vidad v. Land Bank of the Philippines*, this Court extensively discussed the role of LBP in the implementation of the agrarian reform program. **"LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program.** x x x It is clear from the above discussions that

since LBP is performing a governmental function in agrarian reform proceeding, it is exempt from the payment of costs of suit as provided under Rule 142, Section 1 of the Rules of Court.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Fe Rosario Pejo-Buelva for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by Petitioner Land Bank of the Philippines (LBP) assailing the Decision[1] of the Court of Appeals dated 9 October 2007 in CA G.R. SP No. 87463, ordering the payment by LBP of just compensation and interest in favor of respondents Esther Anson Rivera, Antonio G. Anson and Cesar G. Anson, and at the same time directed LBP to pay the costs of suit. Likewise assailed is the Resolution[2] of the Court of Appeals dated 18 March 2008 denying the Motion for Reconsideration of LBP.[3]

The respondents are the co-owners of a parcel of agricultural land embraced by Original Certificate of Title No. P-082, and later transferred in their names under Transfer Certificate of Title No. T-95690 that was placed under the coverage of Operation Land Transfer pursuant to Presidential Decree No. 27 in 1972. Only 18.8704 hectares of the total area of 20.5254 hectares were subject of the coverage.

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe, concurring. *Rollo*, pp. 50-62.

[2] *Id.* at 82-83.

[3] *Id.* at 7.

After the Department of Agrarian Reform (DAR) directed payment, LBP approved the payment of ₱265,494.20, exclusive of the advance payments made in the form of lease rental amounting to ₱75,415.88 but inclusive of 6% increment of ₱191,876.99 pursuant to DAR Administrative Order No. 13, series of 1994.[4]

On 1 December 1994, the respondents instituted Civil Case No. 94-03 for determination and payment of just compensation before the Regional Trial Court (RTC), Branch 3 of Legaspi City,[5] claiming that the landholding involved was irrigated with two cropping seasons a year with an average gross production per season of 100 *cavans* of 50 kilos/hectare, equivalent of 200 *cavans*/year/hectare; and that the fair market value of the property was not less than ₱130,000.00/hectare, or ₱2,668,302.00 for the entire landholding of 20.5254 hectares.

LBP filed its answer,[6] stating that rice and corn lands placed under the coverage of Presidential Decree No. 27[7] were governed and valued in accordance with the provisions of Executive Order No. 228[8] as implemented by DAR Administrative Order No. 2, Series of 1987 and other statutes and administrative issuances; that the administrative valuation of lands covered by Presidential Decree No. 27 and Executive Order No. 228 rested solely in DAR and LBP was the only financing arm; that the funds that LBP would use to pay compensation were public funds to be disbursed only in accordance with existing laws and regulations; that the supporting documents were not yet received by LBP;

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[4] Memorandum of the Petitioner.

[5] *Rollo,* p. 139.

[6] *Id.* at 146.

[7] Entitled, "*Decreeing The Emancipation Of Tenants From The Bondage Of The Soil Transferring To Them The Ownership Of The Land They Till And Providing The Instruments And Mechanism Therefor.*"

[8] Declaring full land ownership to qualified farmer beneficiaries covered by Presidential Decree No. 27. Determining the value of remaining unvalued rice and corn lands subject to Presidential Decree No. 27 and providing for the manner of payment by the farmer beneficiary and modes of compensation to the landowners.

and that the constitutionality of Presidential Decree No. 27 and Executive Order No. 228 was already settled.

On 6 October 2004, the RTC rendered its decision, holding:

> ACCORDINGLY, the just compensation of the land partly covered by TCT No. T-95690 is fixed at Php1,297,710.63. Land Bank of the Philippines is hereby ordered to pay Esther Anson, Cesar Anson and Antonio Anson the aforesaid value of the land, plus interest of 12% per annum or Php194.36 per day effective October 7, 2004, until the value is fully paid, in cash or in bond or in any other mode of payment at the option of the landowners in accordance with Sec. 18, RA 6657.[9]

LBP filed a Motion for Reconsideration[10] which the RTC denied in its Order dated 29 October 2004.[11]

LBP next filed a petition for Review to the Court of Appeals docketed as CA G.R. SP No. 87463. The Court of Appeals rendered a decision dated 9 October 2007, the *fallo* of which reads:[12]

> WHEREFORE, the DECISION DATED OCTOBER 6, 2004 is MODIFIED, ordering petitioner LAND BANK OF THE PHILIPPINES to pay to the respondents just compensation (inclusive of interests as of October 6, 2004) in the amount of ₱823,957.23, plus interest of 12% per annum on the amount of ₱515,777.57, or ₱61,893.30 per annum, beginning October 7, 2004 until the just compensation is fully paid in accordance with this decision.

In arriving at its computation, the Court of Appeals explained:

> In computing the just compensation of the property, pursuant to Executive Order No. 228, Sec. 2 thereof, the formula is –
>
> LV = AGP x 2.5 x GSP x A
>
> (LV is Land Valuation; AGP is Average Gross Production; GSP is Government Support Price and A is the Area of the Land)

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[9] *Id.* at 122.

[10] *Id.* at 124.

[11] *Id.* at 123.

[12] *Id.* at 10-20.

WHERE: AGP = 99.36 cavans per hectare
GSP = Php 35.00 per cavan
A = 18.8704 hectares

COMPUTATION:

LV = (99.36 x2.5 x 35.00) 18.8704
LV = 8,694 x 18.8704
LV = Php 164,059.26

With increment of 6% interest per annum compounded annually beginning October 21, 1972 until October 21, 1994 and immediately after said date with 12% interest per annum until the value is fully paid in accordance with extant jurisprudence, computed as follows:

To be compounded annually at 6% per annum from October 21, 1972 up to October 24, 1994. The formula is –

CA = P(1+R)n

(CA is Compounded Amount; P is Principal; R is Rate; and N is the number of years)

WHERE: P = Php 164,059.26
R = 6% per annum
N = 22 years

COMPUTATION:

CA = 164,059.26 x (1+06) 22
CA = 164,059.26 x (1.06) 22
CA = 164,059.26 x 3.60353741
CA = Php 591,193.68

Plus simple interest of 12% per annum from October 22, 1994 up to October 21, 2003, the formula of which is:

I = P x R x T

(I is the Interest; P is the Principal; R is the Rate and T is the time)

WHERE: P = Php591,193.68
R = 12% per annum
T = 9 years

COMPUTATION:

I = 591,193.68 x 12 x 9
I = 70,943.24 x 9
I = Php638,489.18

(Plus interest of 12% per annum from October 22, 2003 up to October 6, 2004 or a period of 350 days)

COMPUTATION:

$$I = \frac{(591,193.68 \times .12) \times 350}{350}$$

I = 194.3605 x 350
I = Php68,027.77

Total Interest Php 706,516.95

RECAPITULATION:

Compounded Amount	Php	591,193.68
Total Interest		706,516.95
TOTAL AMOUNT	Php	1,297,710.63

The Court of Appeals pointed out that:

Pursuant to AO 13, considering that the landholding involved herein was tenanted prior to October 21, 1972, the rate of 6% per annum is imposed, compounded annually from October 21, 1972 until October 21, 1994, the date of the effectivity of AO 13. Beyond October 21, 1994, only the simple rate of 6% per annum interest is imposable until October 6, 2004 (the date of the rendition of the decision of the RTC) on the total value (that is, ₱164,059.26 plus the compounded increments up to October 21, 1994) but minus the lease rentals of ₱75,415.88. Only the simple rate of 6% is applicable up to then because the obligation to pay was not founded on a written agreement that stipulated a different rate of interest. From October 7, 2004 until the full payment, the simple interest rate is raised to

12% per annum. The reason is that the amount thus determined had by then acquired the character of a forbearance in money.[13]

LBP disagreed with the imposition of 12% interest and its liability to pay the costs of suit. It filed a Motion for Reconsideration which was denied in the Court of Appeals' Resolution dated 18 March 2008.

The Court of Appeals held:

We DENY the petitioner's motion for partial reconsideration for the following reasons, to wit:

1. Anent the first ground, the decision of October 9, 2007 has explained in detail why the obligation of the petitioner should be charged 12% interest. Considering that the motion fails to persuasively show that a modification of the decision thereon would be justified, we reject such ground for lack of merit.

2. Regarding costs of suit, they are allowed to the prevailing party as a matter of course, unless there be special reasons for the court to decree otherwise (Sec. 1, Rule 43, Rules of Court). In appeals, the Court has the power to render judgment for costs as justice may require (Sec. 2, Rule 142, Rules of Court).

In view of the foregoing, the award of costs to the respondents was warranted under the circumstances.[14]

Before this Court, LBP raises the same issues for resolution:

I. Is it valid or lawful to award 12% rate of interest per annum in favor of respondents notwithstanding the 6% rate of interest per annum compounded annually prescribed under DAR A.O. No. 13, series of 1994, DAR A.O. No. 02, series of 2004, and DAR A.O. No. 06, series of 2008, "xxx from November 1994 up to the time of actual payment?

II. Is it valid or lawful to adjudge petitioner LBP, which is performing a governmental function, liable for costs of suit?[15]

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[13] *Id.* at 56-57.

[14] *Id.* at 62.

[15] *Id.* at 6.

At the outset, the Court notes that the parcels of land subject matter of this case were acquired under Presidential Decree No. 27, but the complaint for just compensation was filed in the RTC on 1 December 1994 after Republic Act No. 6657 already took into effect.[16] Thus, our pronouncement in *LBP v. Soriano*[17] finds application. We quote*:*

x x x [I]f just compensation is not settled prior to the passage of Republic Act No. 6657, it should be computed in accordance with the said law, although the property was acquired under Presidential Decree No. 27. The fixing of just compensation should therefore be based on the parameters set out in Republic Act No. 6657, with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect.

In the instant case, while the subject lands were acquired under Presidential Decree No. 27, the complaint for just compensation was only lodged before the court on 23 November 2000 or long after the passage of Republic Act No. 6657 in 1998. **Therefore, Section 17 of Republic Act No. 6657 should be the principal basis of the computation for just compensation.** As a matter of fact, the factors enumerated therein had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657. The formula outlines in DAR Administrative Order No. 5, series of 1998 should be applied in computing just compensation, thus:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales

MV = Market

Value per Tax Declaration

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[16] Comprehensive Agrarian Reform Law (CARL), which took effect on 15 June 1988.

[17] G.R. Nos. 180772 and 180776, 6 May 2010; see also *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, 20 January 2009, 576 SCRA 680; *Land Bank of the Philippines v. Heirs of Asuncion Añonuevo Vda. De Santos*, G.R. No. 179862, 3 September 2009, 598 SCRA 115.

In the case before Us, the just compensation was computed based on Executive Order No. 228, which computation the parties do not contest. Consequently, we reiterate our rule in *LBP v. Soriano* that "while we uphold the amount derived from the old formula, since the application of the new formula is a matter of law and thus, should be made applicable, the parties are not precluded from asking for any additional amount as may be warranted by the new formula."[18]

That settled, we now proceed to resolve the issue of the propriety of the imposition of 12% interest on just compensation awarded to the respondents. The Court of Appeals imposed interest of 12% per annum on the amount of ₱515,777.57 beginning 7 October 2004, until full payment.

We agree with the Court of Appeals.

In *Republic v. Court of Appeals*,[19] we affirmed the award of 12% interest on just compensation due to the landowner. The court decreed:

> 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, if 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 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.**

The Bulacan trial court, in its 1979 decision, was correct in imposing interest on the zonal value of the property to be computed

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[18] *Land Bank of the Philippines v. Soriano, id.*

[19] 433 Phil. 106 (2002).

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.[20]

We similarly upheld *Republic's* 12% per annum interest rate on the unpaid expropriation compensation in the following cases: *Reyes v. National Housing Authority*,[21] *Land Bank of the Philippines v. Wycoco*,[22] *Republic v. Court of Appeals*,[23] *Land Bank of the Philippines v. Imperial*,[24] *Philippine Ports Authority v. Rosales-Bondoc*,[25] *Nepomuceno v. City of Surigao*,[26] and *Curata v. Philippine Ports Authority*.[27]

Conformably with the foregoing resolution, this Court rules that a 12% interest per annum on just compensation, due to the respondents, from the finality of this decision until its satisfaction, is proper.[28]

We now proceed to the issue of whether or not the Court of Appeals correctly adjudged LBP liable to pay the cost of suit.

According to LBP, it performs a governmental function when it disburses the Agrarian Reform Fund to satisfy awards of just compensation. Hence, it cannot be made to pay costs in eminent domain proceedings.

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[20] *Id.* at 122-123.

[21] 443 Phil. 603 (2003).

[22] 464 Phil. 83 (2004).

[23] 494 Phil. 494 (2005).

[24] G.R. No. 157753, 12 February 2007, 515 SCRA 449.

[25] G.R. No. 173392, 24 August 2007, 531 SCRA 198.

[26] G.R. No. 146091, 28 July 2008, 560 SCRA 41.

[27] G.R. No. 154211-12, 22 June 2009, 590 SCRA 214.

[28] *National Housing Authority v. Heirs of Guivelondo*, G.R. No. 166518, 16 June 2009, 589 SCRA 213, 222 citing *Republic v. Court of Appeals, supra* note 19.

LBP cites *Sps. Badillo v. Hon. Tayag*,[29] to further bolster its claim that it is exempt from the payment of costs of suit. The Court in that case made the following pronouncement:

> On the other hand, the NHA contends that it is exempt from paying all kinds of fees and charges, because it performs governmental functions. It cites *Public Estates Authority v. Yujuico*, which holds that the Public Estates Authority (PEA), a government-owned and controlled corporation, is exempt from paying docket fees whenever it files a suit in relation to its governmental functions.
>
> We agree. *People's Homesite and Housing Corporation v. Court of Industrial Relations* declares that the provision of mass housing is a governmental function:
>
> Coming now to the case at bar, We note that since 1941 when the National Housing Commission (predecessor of PHHC, which is now known as the National Housing Authority [NHA] was created, the Philippine government has pursued a mass housing and resettlement program to meet the needs of Filipinos for decent housing. The agency tasked with implementing such governmental program was the PHHC.
>
> These can be gleaned from the provisions of Commonwealth Act 648, the charter of said agency.
>
> We rule that the PHHC is a governmental institution performing governmental functions.
>
> This is not the first time We are ruling on the proper characterization of housing as an activity of the government. In the 1985 case of *National Housing Corporation v. Juco and the NLRC* (No. L-64313, January 17, 1985, 134 SCRA 172), We ruled that housing is a governmental function.
>
> While it has not always been easy to distinguish governmental from proprietary functions, the Court's declaration in the Decision quoted above is not without basis. Indeed, the characterization of governmental functions has veered away from the traditional constituent-ministrant classification that has become unrealistic, if not obsolete. Justice Isagani A. Cruz avers: "[I]t is now obligatory upon the State itself to promote social justice, to provide adequate social services to promote a rising standard of living, to afford

[29] 448 Phil. 606 (2003).

protection to labor to formulate and implement urban and agrarian reform programs, and to adopt other measures intended to ensure the dignity, welfare and security of its citizens.....These functions, while traditionally regarded as merely ministrant and optional, have been made compulsory by the Constitution."[30]

We agree with the LBP. The relevant provision of the Rules of Court states:

Rule 142
Costs

Section 1. *Costs ordinarily follow results of suit.* – **Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course** but the court shall have power, for special reasons adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. **No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.**

In *Heirs of Vidad v. Land Bank of the Philippines*,[31] this Court extensively discussed the role of LBP in the implementation of the agrarian reform program.

LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree with the DAR and the land owner 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.

xxx xxx xxx

To the contrary, the Court had already recognized in *Sharp International Marketing v. Court of Appeals* that the LBP plays a significant role under the CARL and in the implementation of the CARP, thus:

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[30] *Id.* at 617-618.

[31] G.R. No. 166461, 30 April 2010.

As may be gleaned very clearly from EO 229, the LBP is an **essential part** of the government sector with regard to the payment of compensation to the landowner. It is, after all, the instrumentality that is charged with the disbursement of public funds for purposes of agrarian reform. It is therefore part, an indispensable cog, in the governmental machinery that fixes and determines the amount compensable to the landowner. Were LBP to be excluded from that intricate, if not sensitive, function of establishing the compensable amount, there would be no amount "to be established by the government" as required in Sec. 6, EO 229. This is precisely why the law requires the [Deed of Absolute Sale (DAS)], even if already approved and signed by the DAR Secretary, to be **transmitted still to the LBP for its review, evaluation and approval**.

It needs no exceptional intelligence to understand the implications of this transmittal. It simply means that if LBP agrees on the amount stated in the DAS, after its review and evaluation, it becomes its duty to sign the deed. But not until then. For, it is only in that event that the amount to be compensated shall have been "established" according to law. Inversely, if the LBP, after review and evaluation, refuses to sign, it is because as a party to the contract it does not give its consent thereto. This **necessarily implies the exercise of judgment on the part of LBP, which is not supposed to be a mere rubber stamp in the exercise.** Obviously, were it not so, LBP could not have been made a distinct member of [Presidential Agrarian Reform Council (PARC)], the super body responsible for the successful implementation of the CARP. Neither would it have been given the power to review and evaluate the DAS already signed by the DAR Secretary. If the function of the LBP in this regard is merely to sign the DAS without the concomitant power of review and evaluation, its duty to "review/evaluate" mandated in Adm. Order No. 5 would have been a mere surplus age, meaningless, and a useless ceremony.

xxx xxx xxx

Even more explicit is R.A. 6657 with respect to the indispensable role of LBP in the determination of the amount to be compensated to the landowner. Under Sec. 18 thereof, "the LBP shall compensate the landowner in **such amount as may be agreed upon by the landowner and the DAR and LBP**, in accordance with the criteria provided in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land."

xxx xxx xxx

It must be observed that once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the **indispensable role of Land Bank** begins.

xxx xxx xxx

It is evident from the afore-quoted jurisprudence that the role of LBP in the CARP is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the Court of Appeals or to this Court, if appropriate.[32]

It is clear from the above discussions that since LBP is performing a governmental function in agrarian reform proceeding, it is exempt from the payment of costs of suit as provided under Rule 142, Section 1 of the Rules of Court.

WHEREFORE, premises considered, the petition is *GRANTED*. The decision of the Court of Appeals in CA G.R. SP No. 87463 dated 9 October 2007 is *AFFIRMED* with the *MODIFICATION* that LBP is hereby held exempted from the payment of costs of suit. In all other respects, the Decision of the Court of Appeals is *AFFIRMED*. No costs.

SO ORDERED.

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

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[32] *Id.*

[*] Per Special Order No. 913, Associate Justice Diosdado M. Peralta is designated as additional member in place of Associate Justice Mariano C. Del Castillo who is on official leave.

SECOND DIVISION

[G.R. No. 185839. November 17, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARSENIO CABANILLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; CONVICTION; GUIDING PRINCIPLES.— A rape charge is a serious matter with pernicious consequences both for the accused and the complainant, so that utmost care must be taken in the review of a decision involving conviction of rape. Thus, the Court has consistently adhered to the following guiding principles, to wit: (1) an accusation for rape can be made with facility, while the accusation is difficult to prove, it is even more difficult for the accused, albeit innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme care; and (3) the evidence for the prosecution must succeed or fail on its own merits, and cannot be allowed to derive strength from the weakness of the evidence for the defense. Corollary to the above principle is the rule that the credibility of the victim is always the single most important issue in the prosecution of a rape case.

2. ID.; ID.; ELEMENTS; PRESENT IN CASE AT BAR.— The gravamen of the crime of rape is carnal knowledge of a woman against her will or without her consent. Both carnal knowledge and the use of force and intimidation, indicating absence of consent, were convincingly established in this case. The fact that Cabanilla hit her left jaw when she resisted sufficiently indicated force. Intimidation was exerted on her when he squeezed her neck while threatening her with death should she refuse to submit herself to his beastly desires. By intimidation, a man keeps a woman in a state of fear and humiliation.

3. ID.; ID.; SWEETHEART DEFENSE; NOT PRESENT IN CASE AT BAR.— The sweetheart defense is a much-abused defense that rashly derides the intelligence of the Court. Being an affirmative defense, the invocation of a love affair must be

supported by convincing proof. In this case, apart from his self-serving assertions, Cabanilla offered no sufficient and convincing evidence to substantiate his claim that they were lovers. x x x [I]f his defense were true – that AAA willingly submitted to his embraces and voluntarily copulated with him – the Court finds it difficult to understand why she, without much ado, rushed to her husband telling him as well as Cabanilla's parents of the disgusting treatment she received from Cabanilla; reported the ugly incident to the *barangay* officials and the local police; submitted herself to physical examination at the hospital and endured the humiliation of having someone examine her private parts; immediately filed a complaint for rape against Cabanilla; and then allowed herself to be subjected to the rigors, trouble, inconvenience, ridicule, and scandal of a public trial. Such conduct is diametrically inconsistent with the sweetheart defense of Cabanilla. The most natural reaction of a woman, much more a married one, who voluntarily submitted herself to an intimate relationship with a man, would have been to conceal it as this would bring disgrace, dishonor and shame to her family. Her swift revelation of the outrage committed against her person bares her firm resolve to immediately vindicate her lost honor and pride and to have the sex molester punished. x x x [G]ranting that they were lovers, this fact alone could not have ruled out rape as it did not necessarily mean there was consent. A love affair does not justify rape for a man does not have an unbridled license to subject his beloved to his carnal desires against her will. Cabanilla's sweetheart defense indeed suffers from lack of convincing and credible corroboration and fails to destroy the truthfulness and credibility of AAA's testimony. Such theory is a worn out defense. It is akin to a wolf dressed in sheep's clothing but when shorn of its accoutrements reveals nothing but plain lust. Taken in this light, such defense is merely a desperate attempt to extricate himself from the bind brought about by his insatiable desires.

4. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES, SUSTAINED.— [T]he Court sustains the CA in awarding the amount of ₱50,000.00 as civil indemnity to the victim. Civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Likewise, the Court finds the award

of moral damages in the amount of ₱50,000.00 proper. Moral damages in rape cases should be awarded without need of showing that the victim sustained mental, physical, and psychological trauma. These are too obvious. To still require their recital at the trial would only prolong their agony.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF THE WITNESSES; AN ISSUE WHICH HAS BEEN SETTLED AS A QUESTION IS BEST ADDRESSED TO THE PROVINCE OF THE TRIAL COURT BECAUSE OF ITS UNIQUE POSITION OF HAVING OBSERVED THE WITNESSES' DEPORTMENT ON THE STAND WHILE TESTIFYING.— The issue of credibility of the witnesses has, time and again, been settled by this Court as a question best addressed to the province of the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying. The reviewing court is generally bound by the trial court's findings and conclusions, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have affected the outcome of the case. The rule finds an even more stringent application where said findings are sustained by the CA.

6. ID.; ID.; ID.; ID.; TESTIMONIES OF CLOSE RELATIVES AND FRIENDS ARE NECESSARILY SUSPECT AND CANNOT PREVAIL OVER THE UNEQUIVOCAL DECLARATION OF A COMPLAINING WITNESS; CASE AT BAR.— It is well settled that testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of a complaining witness. Herminia suspected that her brother and her aunt, AAA, were having an affair because she saw the two walking in the fields with their arms around each other and, at one instance, he kissed her. That Herminia merely ignored what she saw and did not stop the two from continuing with their immoral and illicit affair is simply inconsistent with human nature. Her choice to keep quiet and not to confront either of them about her suspicions only rendered her testimony unreliable.

7. ID.; ID.; ID.; ID.; FAILURE TO ASCRIBE ILL MOTIVE ON THE VICTIM STRENGTHENS HER CREDIBILITY AND THE VALIDITY OF THE CHARGE.— Cabanilla failed to

ascribe, much less prove, any ill motive on the part of AAA that could have compelled her to falsely accuse him of committing the crime. Where there is no evidence to show any dubious reason or improper motive why a prosecution witness would falsely testify against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit. Such failure strengthens her credibility and the validity of the charge.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the October 11, 2007 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR No. 01430, which affirmed with modification[2] the August 17, 2000 Decision[3] of the Regional Trial Court of Narvacan, Ilocos Sur, Branch 72 *(RTC),* in Criminal Case No. 463-N, finding the accused guilty beyond reasonable doubt of the crime of Rape committed against AAA.[4]

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[1] CA *rollo*, p. 209. Penned by Associate Justice Lucas P. Bersamin (now Associate Member of this Court) with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe, concurring.

[2] The Court of Appeals ordered accused to also pay the victim indemnity *ex delicto* of ₱50,000.00 and moral damages of ₱50,000.00.

[3] Penned by Judge Arturo B. Buenavista; records, pp. 360-386.

[4] Per this Court's resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

Accused Arsenio Cabanilla *(Cabanilla)* was charged with the crime of Rape in an Information[5] dated June 20, 1979 which alleges as follows:

> That on or about the 6th day of March, 1979, in the Municipality of Narvacan, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Arsenio Cabanilla, did then and there willfully, unlawfully and feloniously have carnal knowledge of one, AAA, by means of force and violence and against the latter's will and consent.
>
> Contrary to law.

Version of the Prosecution

The prosecution presented private complainant AAA,[6] Dr. Virgilio Bañez *(Dr. Bañez)*,[7] Barangay Captain Florentino Sagun *(BC Sagun)*,[8] Patrolman Rolando Callejo *(Pat. Callejo)*,[9] and BBB, the victim's husband.[10]

As culled from their testimonies, it appears that on March 6, 1979, AAA went to Manueva, Santa, Ilocos Sur, to talk to her father, to dig camote fruits and to see the remains of a dead cousin. She arrived in Santa at 2:00 o'clock in the afternoon. Three hours later, she left and proceeded to go home. She reached Barangay San Jose, Narvacan, at 7:00 o'clock in the evening and saw Cabanilla standing between Cool Center and Jessie's Refreshment Parlor. She asked him if they could go home together as she felt safe with him being the nephew of her husband. Cabanilla agreed. They headed east and stopped near a store hoping to get a tricycle. As they could not get a ride after waiting for a long time, Cabanilla proposed that they walk and she agreed.

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[5] Records, p. 41.

[6] TSN, August 3, 1979, pp. 1-11; TSN, October 17, 1979, pp. 1-41; and TSN, October 9, 1980, pp. 1-2.

[7] TSN, October 9, 1980, pp. 2-7.

[8] TSN, December 3, 1980, pp. 3-12.

[9] TSN, January 20, 1981, pp. 2-7.

[10] TSN, May 12, 1981, pp. 2-17; and TSN, July 29, 1981, pp. 6-13.

While they were walking through the rice fields, Cabanilla suddenly placed his arm around AAA's shoulder. She shook his arm away and said, "Why son, what is happening to you?" He then embraced her. Afraid that she was about to be molested, she told him, "Why my son, what are you doing to me[?] [Y]ou should be ashamed, I am even your mother[.]" But he replied, "Do not talk." He persisted but she resisted his advances. To overcome her resistance, he punched her left jaw twice. The blows were so hard that one of her earrings flew away. When he loosened his grip on her, she managed to free herself from his grasp and ran away only to stumble and fall. When he caught up with her, he squeezed her neck and told her, "If you don't like, I will kill you." She continued to struggle but he just forced himself to be on top of her.

Eventually, AAA lost her strength in fighting him. Cabanilla then removed her panties and forced open her legs. He thrust his penis inside her vagina and made push-and-pull movements. After satisfying his lust, he stood up, pulled up his briefs and pants and then told her to stand up so they could go home together. He threatened to shoot her and her husband and burn their house if she would tell anyone. AAA assured him that she would not report the incident because she was afraid of him. She believed that he could make good his threats because she knew that he owned a gun.

When she was about forty meters away from her house, they separated ways. She then ran towards her house and called her husband, BBB, who was then unloading Virginia tobacco leaves. BBB met her and asked her why she was crying. She answered, "That nephew of yours is an animal." Then they went to their yard and she called the parents of Cabanilla. When his parents arrived, she told them about her ordeal in the hands of their son. Thereafter, she and her husband went to the house of Barangay Councilman Esteban Calderon *(Calderon)* to report the incident. Her husband then proceeded to the house of BC Sagun and reported to him what Cabanilla did to his wife.

BBB, his nephew, Calderon, and BC Sagun accompanied AAA to the Jacob-Laya Hospital for her medical examination.

Dr. Bañez examined her vagina and found moving sperm in her vaginal canal. He also noted a contusion on her left jaw and superficial scratches on the outer portion of her neck. He gave her medications for the contusion and abrasions and administered tranquilizer because she appeared to be agitated.

From the hospital, the group went to the Integrated National Police of Narvacan to report the rape incident. Since AAA could not narrate the incident clearly and in an orderly manner because of her then state of mind, she was advised to give her statement the following day. The group returned the next day and her statements and that of BC Sagun were taken. The report on the rape incident was reflected in the police blotter as Entry No. 145, page 43, dated March 6, 1979.

Eventually, AAA was confined at the Lorma Hospital Medical Center in San Fernando, La Union for almost a month, beginning March 8, 1979 due to the wound inside her mouth which was inflicted when Cabanilla hit her left jaw. She paid ₱3,215.65 for hospital expenses.

Version of the Defense

Cabanilla claimed that the sexual intercourse between him and AAA on March 6, 1979 was consensual as they were, in fact, lovers. He denied having forced himself on her, the wife of his father's cousin, and bared that they became lovers two weeks before the filing of the complaint against him. Being neighbors, they often visited each other's house and their familiarity explained the mutual attraction that developed between them. She seduced him for several months until she became her girlfriend in January 1979. Their relationship progressed to a more intimate level when one afternoon, he went to her house while her husband was away. After some intimate moments, they made love to each other.

Accused further related that he knew AAA would be coming from Santa, Ilocos Sur on March 6, 1979 because they had previously agreed to meet at Jessie's Refreshment Parlor that night so they could go home together. As agreed upon, she arrived and they headed home to Barangay Rivadavia. While

they were walking together, she placed her arm around his waist and he put his around her shoulder. They passed by the South Central School and several houses, including that of Gregorio Bilag, who saw them with their arms around each other. They stopped walking when they passed by a stack of hay. He pushed her down and they affectionately excited each other. After being aroused, he removed her red panties and they had carnal knowledge of each other. On their way home, she pleaded with him not to tell anybody what happened, or else her husband would maltreat her.

AAA broke away from him when they were only a few meters from her house. She proceeded to their house while he hid behind tobacco plants. From there, he saw BBB punch and kick her until she fell on the ground. BBB repeatedly hit her jaw. The beating lasted for ten minutes. He was about 12 meters away from them. He became frightened when he heard AAA shout that he had raped her.

His father, Maximiano Cabanilla, arrived after she called for him, but his father kept his distance from the couple when he learned that she was being beaten by her husband. Cabanilla immediately left upon hearing that a complaint would be filed against him the next day. The following morning, policemen came to his house looking for him. He hid himself for two nights. He surrendered to the Chief of Police of Narvacan, Ilocos Sur, when a formal complaint was filed against him.

Accused Cabanilla insisted that their sexual congress on March 6, 1979 was voluntary. He denied punching and threatening her into submitting to his carnal desires. He claimed that they had already six or seven sexual encounters prior to March 6, 1979, but admitted that there were no tokens of love or love letters from her to prove their relationship.[11] The case of rape was filed against him only because BBB pressured her to file it.

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[11] TSN, February 18, 1986, pp. 2-29; TSN, June 10, 1996, pp. 7-17; and TSN, August 8, 1996, pp. 2-26.

To corroborate the sweetheart theory espoused by the accused, the defense placed on the witness stand Gregorio Bilag *(Bilag)*, Gerry Velasco *(Velasco)* and Herminia Cabebe *(Herminia)*.

Bilag narrated that on March 6, 1979, between 6:00 o'clock and 7:00 o'clock in the evening, he was in his house in San Jose, Narvacan, Ilocos Sur, with his wife, Concepcion Cabanilla, and their children, when accused Cabanilla and AAA passed by. The two appeared to be happy as they were touching each other. He then tailed the two to find out their secret so he would know what to tell their respective families. He saw the two stop in the middle of the fields and copulated with each other. Thereafter, they went on their way walking side by side and laughing. It was actually the second time that he witnessed them making love to each other although he could no longer remember the date of the first time. He did not tell her husband or Cabanilla's relatives of what he knew about them.

Bilag further recalled that he gave a written statement before a police investigator of Narvacan during the investigation of the incident. He explained that he did not mention in his sworn statement that he saw Cabanilla and AAA make love on March 6, 1979 because he did not understand English. He claimed that he did not know the contents of his written statement when he affixed his signature thereon as they were not translated to him in the Ilocano dialect. Initially, he was included in the list of prosecution witnesses because AAA and BBB requested him to testify, but he told them that he would only tell the truth. Patrolman Balallo and AAA went to his house and asked him to give a statement that she was then with Cabanilla. He was surprised after being informed by the two that Cabanilla had sexually abused her because he knew what really happened between them on March 6, 1979.[12]

Velasco testified that at around 4:00 o'clock in the afternoon of March 6, 1979, he, Kennedy Cabotaje and Cabanilla, a classmate, were at Jessie's Refreshment Parlor. After a while, AAA arrived. She and Cabanilla had a friendly chat for about

[12] TSN, May 11, 1982, pp. 2-14; and TSN, July 6, 1982, pp. 2-16.

a minute and then they left. They proceeded towards the east, walking side by side.[13]

Herminia, sister of Arsenio Cabanilla, informed the trial court that on March 6, 1979 between 6:00 o'clock and 7:00 o'clock in the evening, she saw AAA arrive at her house in Barangay Rivadavia. Then, she overheard BBB confront her, "Why did you arrive only now, prostitute? You must be going somewhere and doing something, prostitute, and you are having sex with others." AAA answered, *"Okinnam, loko."* At that very moment, BBB slapped her on the cheeks several times until she fell to the ground. Even before that day, Herminia would see the couple quarreling and shouting at each other because he was jealous of somebody. She already suspected that Cabanilla and AAA were having an affair. She saw the two walking together in the fields, with her arms around his waist and his around her shoulder. Once she spotted Cabanilla kissing her.[14]

On August 17, 2000, the RTC rendered a decision[15] declaring that the prosecution was able to establish with certainty that Cabanilla indeed sexually assaulted AAA on March 6, 1979. It rejected his sweetheart theory stating that it "was not clearly established."[16] The trial court was of the view that AAA's testimony met the test of credibility and that she had no motive to testify falsely against Cabanilla. The decretal portion of the RTC decision reads:

> WHEREFORE, PREMISES CONSIDERED, the Court finds the accused GUILTY BEYOND REASONABLE DOUBT and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA.*
>
> The accused is also ordered to pay AAA ₱3,215.00 spent for hospitalization.
>
> The accused shall also pay the costs.

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[13] TSN, August 14, 1996, pp. 3-10.

[14] TSN, March 13, 1997, pp. 2-22.

[15] *Supra* note 3.

[16] Records, p. 384.

SO ORDERED.[17]

The records of the case were originally transmitted to this Court on appeal. On September 27, 2004, a Resolution, pursuant to *People v. Efren Mateo*,[18] was issued transferring this case to the CA for appropriate action and disposition.

On October 11, 2007, the CA sustained the findings of the RTC that the sexual intercourse between Cabanilla and AAA was not consensual. The appellate court, however, modified the RTC decision with respect to the award of damages. Thus, the dispositive portion of the CA decision reads:

> WHEREFORE, the DECISION DATED AUGUST 17, 2000 is AFFIRMED, subject to the MODIFICATION that the accused is ordered to pay AAA the amount of ₱50,000.00 as indemnity *ex delicto* and ₱50,000.00 as moral damages.
>
> Costs of suit to be paid by the accused.
>
> SO ORDERED.[19]

Undaunted, Cabanilla filed a Notice of Appeal[20] dated November 5, 2007 which was given due course by the appellate court in its June 13, 2008 Minute Resolution.[21]

On February 18, 2009, the Court issued a resolution requiring the parties to submit their respective supplemental briefs. Both the Office of the Solicitor General *(OSG)* and the accused manifested that they would just adopt their respective briefs filed before the CA as their supplemental briefs.

The Issue

The issues boil down to whether or not the sweetheart defense is credible so as to overcome the prosecution's evidence that the intercourse was not consensual.

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[17] *Id.* at 386.

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

[19] CA *rollo*, pp. 226-227.

[20] *Rollo*, p. 236.

[21] Records, p. 240.

Accused Cabanilla faults the trial court for relying heavily on the testimony of AAA that she was forced to have sexual intercourse with him, and for its refusal to give credence to his sweetheart theory. He admits having carnal knowledge with her, but he vehemently insists that the sexual congress on the night of March 6, 1979 was, though illicit, consensual as they were sweethearts. He asserts that his defense was amply corroborated by Bilag whose testimony clearly militates against her complaint that she was sexually abused by him. Even assuming that his defense is weak, he argues that said fact alone cannot sustain a verdict of conviction. The prosecution must rest on the strength of its own evidence and is not relieved of the onus of proving his guilt beyond reasonable doubt.

On the other hand, the OSG insists on the correctness of his conviction on the basis of the totality of the prosecution's evidence centered on the credible testimony of AAA. Not a scintilla of credible evidence was adduced by Cabanilla to prove his sweetheart defense.

THE COURT'S RULING

After an assiduous assessment of the records, the Court holds that Cabanilla indeed committed rape against AAA. There is no cogent reason to reverse the findings and conclusion of the RTC, as affirmed by the CA.

A rape charge is a serious matter with pernicious consequences both for the accused and the complainant, so that utmost care must be taken in the review of a decision involving conviction of rape.[22] Thus, the Court has consistently adhered to the following guiding principles, to wit: (1) an accusation for rape can be made with facility, while the accusation is difficult to prove, it is even more difficult for the accused, albeit innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme care; and (3) the evidence for the prosecution must succeed or fail on its

[22] *People v. Armando San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 424.

own merits, and cannot be allowed to derive strength from the weakness of the evidence for the defense.[23] Corollary to the above principle is the rule that the credibility of the victim is always the single most important issue in the prosecution of a rape case.[24]

The issue of credibility of the witnesses has, time and again, been settled by this Court as a question best addressed to the province of the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying. The reviewing court is generally bound by the trial court's findings and conclusions, particularly when no significant facts and circumstances were shown to have been overlooked or disregarded which when considered would have affected the outcome of the case.[25] The rule finds an even more stringent application where said findings are sustained by the CA.[26]

The Court agrees with the RTC that Cabanilla had employed force and intimidation in order to consummate his libidinous desire. Excerpts from her testimony are reproduced below:

Atty. Porfirio Rapanut
(On Direct Examination)

Q: While you were on your way home with Arsenio Cabanilla, what happened then after that?

A: While we were on the ricefield of San Jose, Narvacan, Ilocos Sur, Arsenio Cabanilla placed his arms around my shoulder.

Q: And what did you do when Arsenio Cabanilla placed his arm on your shoulder?

Court (Interrupting):
Q: Where is the accused?
Atty. Casabar

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[23] *People v. Bidoc,* G.R. No. 169430, October 21, 2006, 506 SCRA 481.

[24] *People v. Ceballos, Jr.,* G.R. No. 169642, September 14, 2007, 533 SCRA 493.

[25] *People v. Glabo,* 423 Phil. 45, 49-50 (2001).

[26] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

A: He is there, your Honor.
Witness
A: I shook away his arm and said, "Why, son, what is happening to you?

Q: And after you said to him those words, what did he do or say if any?
A: He immediately embraced me, sir.

Q: And what did you do when he embraced you?
A: Because I did not want something to be done against me I begged him that he will not do anything bad against me.

Q: What did you say when, will you kindly quote the exact words which you said to him at that time?
A: "Why my son, what are you doing to me, you should be ashamed, I am even your mother."

Q: And what did he do after you have said those words to him?
A: He said, "Do not talk."

Q: Then what transpired after that?
A: He did not heed to my begging that he will not do anything bad against me and since I did not want something to be done against me I struggled against him.

Q: And what happened while you were struggling?
A: During our struggle, he boxed me twice on my left jaw.

Q: Will you kindly indicate on your person what part of your jaw did he box?
A: Here, sir (the witness pointing to her left jaw), and that even my earring was lost when he was boxing my jaw.

Q: After Arsenio Cabanilla had boxed twice on your left jaw as you have just indicated, what happened to you?
A: During our struggle, sir, when he loosened his hold on my (sic), I shook him away and took the chance to run.

Q: Were you able to run away?
A: Yes, sir. I was able to run but after a short while I stumbled.

Q: And when you stumbled, what happened?
A: At that time when I stumbled, he was able to immediately squeeze my neck.

Q: While he was squeezing your neck, what did he do?

A: He said, "If you don't like, I will kill you."

Q: What did you do when he said those words to you?
A: I continued struggling against him since I did not want that something bad be done to me.

Q: And were you able to get away from him while struggling?
A: No sir, because he went on top of me.

Q: What was your position when you said …. when Arsenio Cabanilla was on top of you?
A: I was lying down, sir.

Q: And what happened while you were lying down?
A: Since I did not want something bad to be done against me, I continued struggling but then I lost my strength he forced open my legs.

Q: After the accused had forced open your legs, what happened next?
A: After he had placed his body on top of me and then ….. and I then lost my strength, he brought down my panty.

Q: Was the accused able to bring down your panty?
A: Yes, sir, he was able to bring down my panty.

Q: After that what happened?
A: He inserted his penis inside my vagina.

Q: Was he able to insert his penis to your vagina?
A: Yes, sir.

Q: What did he do then after that?
A: When Arsenio Cabanilla had inserted his penis inside my vagina, he then made a push and pull motion successively.

xxx xxx xxx.

The transcripts reveal that AAA's testimony bears the hallmarks of truth. She described in detail the hideous experience she had suffered at the hands of Cabanilla on that fateful night of March 6, 1979, in a spontaneous and credible manner, devoid of any hint of falsity or fabrication. She candidly recounted how Cabanilla punched her left jaw twice, squeezed her neck and threatened to kill her when she continued to resist his advances, pulled down her panties, and forcibly inserted his penis into her

vagina only after fatigue had weakened her tenacity to resist the sexual assault. She remained steadfast throughout her testimony despite being subjected to intense and grueling cross-examination. She was not shown to possess the shrewdness and callousness to concoct a story of rape. Her straightforward narration of what transpired coupled with her unwavering and categorical identification of Cabanilla as her defiler, sealed the case for the prosecution.

AAA's testimony is buttressed by the medico-legal findings of Dr. Bañez, who examined her on March 6, 1979 at 8:45 o'clock in the evening or about more than an hour after the incident. The presence of motile sperm cells in her violated organ indicated recent sexual intercourse. Her contusion on the left mandible and abrasions on her neck were ample manifestations of her struggle that clearly fortified her charge of rape more than words and anger could prove. The shock and horror she experienced caused her to be nervous that Dr. Bañez had to give her a tranquilizer to calm her down.

The gravamen of the crime of rape is carnal knowledge of a woman against her will or without her consent.[27] Both carnal knowledge and the use of force and intimidation, indicating absence of consent, were convincingly established in this case. The fact that Cabanilla hit her left jaw when she resisted sufficiently indicated force. Intimidation was exerted on her when he squeezed her neck while threatening her with death should she refuse to submit herself to his beastly desires. By intimidation, a man keeps a woman in a state of fear and humiliation.

Cabanilla insists on his sweetheart defense arguing that the sexual intercourse on the night of March 6, 1979 could not have amounted to rape because she agreed to it. This sweetheart defense deserves consideration if only to expose its falsity.

The sweetheart defense is a much-abused defense that rashly derides the intelligence of the Court. Being an affirmative defense, the invocation of a love affair must be supported by convincing

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[27] *People v. Docena,* 379 Phil. 903, 913, (2000).

proof.[28] In this case, apart from his self-serving assertions, Cabanilla offered no sufficient and convincing evidence to substantiate his claim that they were lovers.[29]

To prop up his defense of an illicit affair, Cabanilla relied on the testimonies of Velasco, Bilag and Herminia.

The Court finds the story of his witnesses not worthy of credence.

First, the fact alone that two people were seen conversing and walking side by side cannot give rise to the inference that they were lovers. Intimacies such as loving caresses, cuddling, tender smiles, sweet murmurs or any other affectionate gesture that one bestows upon his or her lover would have indicated the existence of a relationship. Cabanilla's witness, Velasco, however, did not even testify on any intimacy but only on the normal acts of two people "talking nicely"[30] and walking together.

Second, no romantic relationship can be deduced from the fact that the two opted to walk from Barangay San Jose to Barangay Rivadavia, where both resided. As explained by AAA, they couldn't get a ride home and so she agreed to walk home with him.[31] Neither was there anything unusual, much less romantic, when she asked him to accompany her as they knew each other, Cabanilla being a nephew of her husband and their neighbor.[32] The Court finds it easier to believe that they walked home together because she trusted Cabanilla as a relative who would protect her from the dangers of the road at nighttime and not for any intimate reason.

Third, the improbability of Bilag's testimony betrayed the contrived nature of his story. He claimed that the reason why he did not divulge to the police investigator that he saw the two

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[28] *People v. Ramon Arivan y Formillo*, G.R. No. 176065, April 22, 2008, 552 SCRA 448, 466.

[29] *People v. Alex Manallo*, 448 Phil. 149, 165 (2003) .

[30] TSN, August 14, 1996, p. 8.

[31] TSN, August 3, 1979, pp. 9-10.

[32] *Id.* at 8.

making love to each other was that he could not understand the English language.[33] The explanation is flimsy. His lack of knowledge of English is not an excuse for he could have easily relayed such important piece of information in Ilocano. Further, the Court notes that in his statement given on March 9, 1979 before Sgt. Bartolome B. Agatep, there is a declaration stating that: "QUESTIONS AND ANSWERS WERE PROPOUNDED IN ILOCANO DIALECT BOTH DECLARANT AND INVESTIGATOR COULD FULLY UNDERSTAND EACH OTHER AND TRANSLATED BY THE SAME INVESTIGATOR IN ENGLISH LANGUAGE."[34] There was also no showing that he was prevented by anybody from disclosing the alleged consensual act to said police investigator.

The Court considers it strange that Bilag maintained his silence and did not tell anyone for many years about what he claimed to have known all along. A timely revelation could have cleared the doubt for all persons concerned. Instead, he waited until he was called to the witness stand on May 11, 1982 and July 6, 1982 to reveal this fact rendering his testimony highly suspect.

In the light of the foregoing observations, the Court is inclined to believe that Bilag's knowledge of the incident is but limited to what he had declared in his statement dated March 9, 1979, to wit: that he was inside his house in Brgy. San Jose on March 6, 1979 at about 7:00 o'clock in the evening when AAA and her companion passed by; that he did not notice whether her companion was a man or a woman; that he was merely informed by AAA that she was with Cabanilla; and that Patrolman Balalio and AAA told him that Cabanilla had sexually abused her and that they asked him to testify that she was with him on the date and time in question.

Fourth, the corroborative testimony of his sister, Herminia, that he and AAA were sweethearts cannot be given any credence precisely because they are siblings. It is well settled that testimonies of close relatives and friends are necessarily suspect and cannot

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[33] TSN, July 6, 1982, p. 3.

[34] Records, p. 3.

prevail over the unequivocal declaration of a complaining witness.[35] Herminia suspected that her brother and her aunt, AAA, were having an affair because she saw the two walking in the fields with their arms around each other and, at one instance, he kissed her. That Herminia merely ignored what she saw and did not stop the two from continuing with their immoral and illicit affair is simply inconsistent with human nature. Her choice to keep quiet and not to confront either of them about her suspicions only rendered her testimony unreliable.

Fifth, if his defense were true – that AAA willingly submitted to his embraces and voluntarily copulated with him – the Court finds it difficult to understand why she, without much ado, rushed to her husband telling him as well as Cabanilla's parents of the disgusting treatment she received from Cabanilla; reported the ugly incident to the *barangay* officials and the local police; submitted herself to physical examination at the hospital and endured the humiliation of having someone examine her private parts; immediately filed a complaint for rape against Cabanilla; and then allowed herself to be subjected to the rigors, trouble, inconvenience, ridicule, and scandal of a public trial. Such conduct is diametrically inconsistent with the sweetheart defense of Cabanilla. The most natural reaction of a woman, much more a married one, who voluntarily submitted herself to an intimate relationship with a man, would have been to conceal it as this would bring disgrace, dishonor and shame to her family. Her swift revelation of the outrage committed against her person bares her firm resolve to immediately vindicate her lost honor and pride and to have the sex molester punished.

Sixth, Cabanilla failed to ascribe, much less prove, any ill motive on the part of AAA that could have compelled her to falsely accuse him of committing the crime. Where there is no evidence to show any dubious reason or improper motive why a prosecution witness would falsely testify against an accused or falsely implicate him in a heinous crime, the testimony is

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[35] *People v. Opeliña*, 458 Phil. 1001, 1014 (2003).

worthy of full faith and credit.[36] Such failure strengthens her credibility and the validity of the charge.

Seventh, granting that they were lovers, this fact alone could not have ruled out rape as it did not necessarily mean there was consent. A love affair does not justify rape[37] for a man does not have an unbridled license to subject his beloved to his carnal desires against her will.[38]

Cabanilla's sweetheart defense indeed suffers from lack of convincing and credible corroboration and fails to destroy the truthfulness and credibility of AAA's testimony. Such theory is a worn out defense. It is akin to a wolf dressed in sheep's clothing but when shorn of its accoutrements reveals nothing but plain lust. Taken in this light, such defense is merely a desperate attempt to extricate himself from the bind brought about by his insatiable desires.

Accordingly, the Court sustains the CA in awarding the amount of ₱50,000.00 as civil indemnity to the victim. Civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[39] Likewise, the Court finds the award of moral damages in the amount of ₱50,000.00 proper. Moral damages in rape cases should be awarded without need of showing that the victim sustained mental, physical, and psychological trauma. These are too obvious. To still require their recital at the trial would only prolong their agony.

WHEREFORE, the October 11, 2007 Decision of the Court of Appeals in CA-G.R. CR No. 01430 is *AFFIRMED*.

SO ORDERED.

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

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[36] *People vs. Ferrer*, 356 Phil. 497, 508 (1998).

[37] *People vs. Jimenez*, 362 Phil. 222, 234 (1999).

[38] *People vs. Lozano*, 357 Phil. 397, 407 (1998).

[39] *People v. Callos*, 424 Phil. 506, 516 (2002).

SECOND DIVISION

[G.R. No. 186560. November 17, 2010]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **FERNANDO P. DE LEON,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; RULES OF PROCEDURE ARE MERE TOOLS DESIGNED TO FACILITATE THE ATTAINMENT OF JUSTICE.—** The CA itself acknowledged that it would not indulge in technicalities to resolve the case, but focus instead on the substantive issues rather than on procedural questions. Furthermore, courts have the discretion to relax the rules of procedure in order to protect substantive rights and prevent manifest injustice to a party. The Court has allowed numerous meritorious cases to proceed despite inherent procedural defects and lapses. Rules of procedure are mere tools designed to facilitate the attainment of justice. Strict and rigid application of rules which would result in technicalities that tend to frustrate rather than to promote substantial justice must always be avoided.

2. **LABOR AND SOCIAL LEGISLATION; RETIREMENT LAWS; LIBERALLY CONSTRUED IN FAVOR OF THE RETIREE; RATIONALE.—** The inflexible rule in our jurisdiction is that social legislation must be liberally construed in favor of the beneficiaries. Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced. Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.

3. **ID.; ID.; ELIGIBILITY FOR RETIREMENT BENEFITS UNDER P.D. NO. 1146; REQUISITES; FULLY SATISFIED**

IN CASE AT BAR.— Respondent's disqualification from receiving retirement benefits under R.A. No. 910 *does not mean that he is disqualified from receiving any retirement benefit under any other existing retirement law*. The CA, however, incorrectly held that respondent was covered by R.A. No. 8291. R.A. No. 8291 became a law after respondent retired from government service. Hence, petitioner and even respondent agree that it does not apply to respondent, because the law took effect after respondent's retirement. Prior to the effectivity of R.A. No. 8291, retiring government employees who were not entitled to the benefits under R.A. No. 910 had the option to retire under either of two laws: Commonwealth Act No. 186, as amended by R.A. No. 660, or P.D. No. 1146. In his Comment, respondent implicitly indicated his preference to retire under P.D. No. 1146, since this law provides for higher benefits, and because the same was the latest law at the time of his retirement in 1992. Under P.D. No. 1146, to be eligible for retirement benefits, one must satisfy the following requisites: Section 11. Conditions for Old-Age Pension. (a) Old-age pension shall be paid to a member who: (1) has at least fifteen years of service;(2) is at least sixty years of age; and (3) is separated from the service. Respondent had complied with these requirements at the time of his retirement. GSIS does not dispute this. Accordingly, respondent is entitled to receive the benefits provided under Section 12 of the same law, to wit: Section 12. Old-Age Pension. (a) A member entitled to old-age pension shall receive the basic monthly pension for life but in no case for a period less than five years: Provided, That, the member shall have the option to convert the basic monthly pensions for the first five years into a lump sum as defined in this Act: Provided, further, That, in case the pensioner dies before the expiration of the five-year period, his primary beneficiaries shall be entitled to the balance of the amount still due to him. In default of primary beneficiaries, the amount shall be paid to his legal heirs. To grant respondent these benefits does not equate to double retirement, as GSIS mistakenly claims. Since respondent has been declared ineligible to retire under R.A. No. 910, GSIS should simply apply the proper retirement law to respondent's claim, in substitution of R.A. No. 910. In this way, GSIS would be faithful to its mandate to administer retirement laws in the spirit in which they have been enacted, *i.e.*, to provide retirees the wherewithal

to live a life of relative comfort and security after years of service to the government. Respondent will not receive — and GSIS is under no obligation to give him — more than what is due him under the proper retirement law. It must be emphasized that P.D. No. 1146 specifically mandates that a retiree is entitled to monthly pension *for life*. As this Court previously held: Considering the mandatory salary deductions from the government employee, the government pensions do not constitute mere gratuity but form part of compensation. In a pension plan where employee participation is mandatory, the prevailing view is that employees have contractual or vested rights in the pension where the pension is part of the terms of employment. The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. Retirement benefits to government employees reward them for giving the best years of their lives in the service of their country. Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard. It must also be underscored that GSIS itself allowed respondent to retire under R.A. No. 910, following jurisprudence laid down by this Court. One could hardly fault respondent, though a seasoned lawyer, for relying on petitioner's interpretation of the pertinent retirement laws, considering that the latter is tasked to administer the government's retirement system. He had the right to assume that GSIS personnel knew what they were doing. Since the change in circumstances was through no fault of respondent, he cannot be prejudiced by the same. His right to receive monthly pension from the government cannot be jeopardized by a new interpretation of the law.

4. ID.; ID.; RETIREMENT BENEFITS; NATURE THEREOF, CONSTRUED.— Retirement benefits are a form of reward for an employee's loyalty and service to the employer, and

are intended to help the employee enjoy the remaining years of his life, lessening the burden of having to worry about his financial support or upkeep. A pension partakes of the nature of "retained wages" of the retiree for a dual purpose: to entice competent people to enter the government service; and to permit them to retire from the service with relative security, not only for those who have retained their vigor, but more so for those who have been incapacitated by illness or accident.

5. ID.; ID.; R.A. NO. 8291; PROHIBITION AGAINST CONVERSION IN RETIREMENT MODE, EXPLAINED; APPLICATION IN CASE AT BAR.— As to GSIS' contention that what respondent seeks is conversion of his retirement mode, which is prohibited under R.A. No. 8291, the Court agrees with the CA that this is not a case of conversion within the contemplation of the law. The conversion under the law is one that is voluntary, a choice to be made by the retiree. Here, respondent had no choice but to look for another law under which to claim his pension benefits because the DBM had decided not to release the funds needed to continue payment of his monthly pension. Respondent himself admitted that, if the DBM had not suspended the payment of his pension, he would not have sought any other law under which to receive his benefits. The necessity to "convert" was not a voluntary choice of respondent but a circumstance forced upon him by the government itself.

6. ID.; ID.; R.A. NO. 10071 (THE PROSECUTION SERVICE ACT OF 2010); RETROACTIVE APPLICATION THEREOF, SUSTAINED.— While this case was pending, the Congress enacted Republic Act No. 10071, the *Prosecution Service Act of 2010*. On April 8, 2010, it lapsed into law without the signature of the President, pursuant to Article VI, Section 27(1) of the Constitution. Section 24 of R.A. No. 10071 provides: **Section 24.** *Retroactivity*.— The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act. By virtue of this express provision, respondent is covered by R.A. No. 10071. In addition, he is now entitled to avail of the benefits provided by Section 23, that "all pension benefits of retired prosecutors of the National Prosecution Service shall be automatically increased whenever there is an increase in the salary and allowance of the same position from which he retired."

Respondent, as former Chief State Prosecutor, albeit the position has been renamed "Prosecutor General," should enjoy the same retirement benefits as the Presiding Justice of the CA, pursuant to Section 14 of R.A. No. 10071, to wit: **Section 14**. *Qualifications, Rank and Appointment of the Prosecutor General.*— The Prosecutor General shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments, and other privileges, shall be subject to the same inhibitions and disqualifications, and *shall enjoy the same retirement and other benefits as those of the Presiding Justice of the Court of Appeals* and shall be appointed by the President. Furthermore, respondent should also benefit from the application of Section 16 of the law, which states: **Section 16.** *Qualifications, Ranks, and Appointments of Prosecutors, and other Prosecution Officers.* – x x x. Any increase after the approval of this Act in the salaries, allowances or retirement benefits or any upgrading of the grades or levels thereof of any or all of the Justices or Judges referred to herein to whom said emoluments are assimilated shall apply to the corresponding prosecutors. Lastly, and most importantly, by explicit fiat of R.A. No. 10071, members of the National Prosecution Service have been granted the retirement benefits under R.A. No. 910, to wit: **Section 25.** *Applicability.* - All benefits heretofore extended under Republic Act No. 910, as amended, and all other benefits that may be extended by the way of amendment thereto shall likewise be given to the prosecutors covered by this Act. Hence, from the time of the effectivity of R.A. No. 10071, respondent should be entitled to receive retirement benefits granted under R.A. No. 910. Consequently, GSIS should compute respondent's retirement benefits from the time the same were withheld until April 7, 2010 in accordance with P.D. No. 1146; and his retirement benefits from April 8, 2010 onwards in accordance with R.A. No. 910.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Soller & Omila Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner Government Service Insurance System (GSIS) seeks the nullification of the Decision[1] dated October 28, 2008 and the Resolution[2] dated February 18, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 101811.

Respondent Fernando P. de Leon retired as Chief State Prosecutor of the Department of Justice (DOJ) in 1992, after 44 years of service to the government. He applied for retirement under Republic Act (R.A.) No. 910, invoking R.A. No. 3783, as amended by R.A. No. 4140, which provides that chief state prosecutors hold the same rank as judges. The application was approved by GSIS. Thereafter, and for more than nine years, respondent continuously received his retirement benefits, until 2001, when he failed to receive his monthly pension.[3]

Respondent learned that GSIS cancelled the payment of his pension because the Department of Budget and Management (DBM) informed GSIS that respondent was not qualified to retire under R.A. No. 910; that the law was meant to apply only to justices and judges; and that having the same rank and qualification as a judge did not entitle respondent to the retirement benefits provided thereunder. Thus, GSIS stopped the payment of respondent's monthly pension.[4]

Respondent wrote GSIS several letters but he received no response until November 9, 2007, when respondent received the following letter from GSIS:

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a member of this Court) and Sesinando E. Villon, concurring; *rollo*, pp. 29-38.

[2] *Id.* at 40-47.

[3] *Id.* at 30.

[4] *Id.*

Dear Atty. De Leon:

This is in response to your request for resumption of pension benefit.

It appears that you retired under Republic Act No. 910 in 1992 from your position as Chief State Prosecutor in the Department of Justice. From 1992 to 2001, you were receiving pension benefits under the said law. Beginning the year 2002, the Department of Budget and Management through then Secretary Emilia T. Boncodin already refused to release the funds for your pension benefit on the ground that Chief State Prosecutors are not covered by R.A. 910. This conclusion was later on affirmed by Secretary Rolando G. Andaya, Jr. in a letter dated 6 June 2006.

In view of these, you now seek to secure benefits under Republic Act No. 660 or any other applicable GSIS law.

We regret, however, that we cannot accede to your request because you have chosen to retire and in fact have already retired under a different law, Republic Act No. 910, more than fifteen (15) years ago. There is nothing in the GSIS law which sanctions double retirement unless the retiree is first re-employed and qualifies once again to retire under GSIS law. In fact, Section 55 of Republic Act No. 8291 provides for exclusivity of benefits which means that a retiree may choose only one retirement scheme available to him to the exclusion of all others.

Nonetheless, we believe that the peculiarities of your case is a matter that may be jointly addressed or threshed out by your agency, the Department of Justice, and the Department of Budget and Management.

Very truly yours,
(signed)
CECIL L. FELEO
Senior Vice President
Social Insurance Group[5]

Respondent then filed a petition for *mandamus* before the CA, praying that petitioner be compelled to continue paying his monthly pension and to pay his unpaid monthly benefits from

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

2001. He also asked that GSIS and the DBM be ordered to pay him damages.[6]

In the assailed October 28, 2008 Decision, the CA resolved to grant the petition, to wit:

> WHEREFORE, the petition is **GRANTED**. The GSIS is hereby ordered to pay without delay petitioner Atty. Fernando de Leon, his monthly adjusted pension in accordance with other applicable law not under RA 910. It is also ordered to pay the back pensions which should also be adjusted to conform to the applicable law from the time his pension was withheld.
>
> SO ORDERED.[7]

The CA found that GSIS allowed respondent to retire under R.A. No. 910, following precedents which allowed non-judges to retire under the said law. The CA said that it was not respondent's fault that he was allowed to avail of the benefits under R.A. No. 910; and that, even if his retirement under that law was erroneous, respondent was, nonetheless, entitled to a monthly pension under the GSIS Act. The CA held that this was not a case of double retirement, but merely a continuation of the payment of respondent's pension benefit to which he was clearly entitled. Since the error in the award of retirement benefits under R.A. 910 was not attributable to respondent, it was incumbent upon GSIS to continue defraying his pension in accordance with the appropriate law which might apply to him. It was unjust for GSIS to entirely stop the payment of respondent's monthly pension without providing any alternative sustenance to him.[8]

The CA further held that, under R.A. No. 660, R.A. No. 8291, and Presidential Decree (P.D.) No. 1146, respondent is entitled to a monthly pension for life. He cannot be penalized for the error committed by GSIS itself. Thus, although respondent may not be qualified to receive the retirement benefits under

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[6] *Id.* at 32.

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

[8] *Id.* at 35.

R.A. No. 910, he is still entitled to a monthly pension under R.A. No. 660, P.D. No. 1146, and R.A. No. 8291.[9]

Petitioner GSIS is now before this Court, assailing the Decision of the CA and the Resolution denying its motion for reconsideration.

GSIS admits that respondent received monthly pensions from August 1997 until December 2001. Thereafter, the DBM refused to remit the funds for respondent's pension on the ground that he was not entitled to retire under R.A. No. 910 and should have retired under another law, without however specifying which law it was.[10] It appears that the DBM discontinued the payment of respondent's pension on the basis of the memorandum of the Chief Presidential Legal Counsel that Chief Prosecutors of the DOJ are not entitled to the retirement package under R.A. No. 910.

Because of the discontinuance of his pension, respondent sought to convert his retirement under R.A. No. 910 to one under another law administered by GSIS.[11] However, this conversion was not allowed because, as GSIS avers, R.A. No. 8291 provides that conversion of one's retirement mode on whatever ground and for whatever reason is not allowed beyond one year from the date of retirement.

GSIS assails the CA's Decision for not specifying under which law respondent's retirement benefits should be paid, thus making it legally impossible for GSIS to comply with the directive.[12] It then raises several arguments that challenge the validity of the appellate court's decision.

GSIS argues, first, that the CA erred in issuing a writ of *mandamus* despite the absence of any specific and clear right on the part of respondent, since he could not even specify the

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[9] *Id.* at 37.

[10] *Id.* at 15.

[11] *Id.*

[12] *Id.* at 12.

benefits to which he is entitled and the law under which he is making the claim.[13]

Second, GSIS alleges that it had refunded respondent's premium payments because he opted to retire under R.A. No. 910, which it does not administer. Thus, GSIS posits that the nexus between itself and respondent had been severed and, therefore, the latter cannot claim benefits from GSIS anymore.[14]

Third, GSIS contends that the CA erred in concluding that respondent would not be unjustly enriched by the continuation of his monthly pension because he had already benefited from having erroneously retired under R.A. No. 910. GSIS points out that it had refunded respondent's premium contributions. When the Chief Presidential Legal Counsel concluded that respondent was not entitled to retire under R.A. No. 910, it was implicit recognition that respondent was actually not entitled to the ₱1.2 million lump sum payment he received, which he never refunded.[15]

Fourth, GSIS points out that the CA erred in concluding that respondent was not seeking conversion from one retirement mode to another. It reiterates that R.A. No. 8291 expressly prohibits conversion beyond one year from retirement. To compel GSIS to release respondent's retirement benefits despite the fact that he is disqualified to receive retirement benefits violates R.A. No. 8291, and would subject its officials to possible charges under R.A. No. 3019, the Anti-Graft and Corrupt Practices Act.

Fifth, GSIS contends that respondent is not entitled to the retirement benefits under R.A. No. 8291 because, when he retired in 1992, the law had not yet been enacted. The retirement laws administered by GSIS at that time were R.A. No. 660, R.A. No. 1616, and P.D. No. 1146.

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[13] *Id.* at 17.

[14] *Id.* at 19.

[15] *Id.* at 21.

Lastly, GSIS argues that the writ of *mandamus* issued by the CA is not proper because it compels petitioner to perform an act that is contrary to law.

Respondent traverses these allegations, and insists that he has a clear legal right to receive retirement benefits under either R.A. No. 660 or P.D. No. 1146.[16] He claims that he has met all the conditions for entitlement to the benefits under either of the two laws.[17] Respondent contends that the return of his contributions does not bar him from pursuing his claims because GSIS can require him to refund the premium contributions, or even deduct the amount returned to him from the retirement benefits he will receive.[18] He also argues that resumption of his monthly pension will not constitute unjust enrichment because he is entitled to the same as a matter of right for the rest of his natural life.[19]

Respondent accepts that, contrary to the pronouncement of the CA, he is not covered by R.A. No. 8291. He, therefore, asks this Court to modify the CA Decision, such that instead of Section 13 of R.A. No. 8291, it should be Section 12 of P.D. No. 1146 or Section 11 of R.A. No. 660 to be used as the basis of his right to receive, and the adjustment of, his monthly pension.

Furthermore, respondent argues that allowing him to retire under another law does not constitute "conversion" as contemplated in the GSIS law. He avers that his application for retirement under R.A. No. 910 was duly approved by GSIS, endorsed by the DOJ, and implemented by the DBM *for almost a decade*. Thus, he should not be made to suffer any adverse consequences owing to the change in the interpretation of the provisions of R.A. No. 910. Moreover, he could not have applied for conversion of his chosen retirement mode to one under a different law within one year from approval of his retirement application, because of his firm belief that his retirement under R.A. No. 910 was proper – a belief amply supported by its

[16] *Id.* at 78.

[17] *Id*.

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

[19] *Id*. at 84.

approval by GSIS, the favorable endorsement of the DOJ, and its implementation by the DBM.[20]

The petition is without merit.

Initially, we resolve the procedural issue.

GSIS contends that respondent's petition for *mandamus* filed before the CA was procedurally improper because respondent could not show a clear legal right to the relief sought.

The Court disagrees with petitioner. The CA itself acknowledged that it would not indulge in technicalities to resolve the case, but focus instead on the substantive issues rather than on procedural questions.[21] Furthermore, courts have the discretion to relax the rules of procedure in order to protect substantive rights and prevent manifest injustice to a party.

The Court has allowed numerous meritorious cases to proceed despite inherent procedural defects and lapses. Rules of procedure are mere tools designed to facilitate the attainment of justice. Strict and rigid application of rules which would result in technicalities that tend to frustrate rather than to promote substantial justice must always be avoided.[22]

Besides, as will be discussed hereunder, contrary to petitioner's posture, respondent has a clear legal right to the relief prayed for. Thus, the CA acted correctly when it gave due course to respondent's petition for *mandamus*.

This case involves a former government official who, after honorably serving office for 44 years, was comfortably enjoying his retirement in the relative security of a regular monthly pension, but found himself abruptly denied the benefit and left without means of sustenance. This is a situation that obviously cries out for the proper application of retirement laws, which are in the class of social legislation.

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

[21] *Id.* at 33.

[22] *Vallejo v. Court of Appeals*, 471 Phil. 670, 684 (2004). (Citations omitted.)

The inflexible rule in our jurisdiction is that social legislation must be liberally construed in favor of the beneficiaries.[23] Retirement laws, in particular, are liberally construed in favor of the retiree[24] because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced.[25] Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.[26]

In this case, as adverted to above, respondent was able to establish that he has a clear legal right to the reinstatement of his retirement benefits.

In stopping the payment of respondent's monthly pension, GSIS relied on the memorandum of the DBM, which, in turn, was based on the Chief Presidential Legal Counsel's opinion that respondent, not being a judge, was not entitled to retire under R.A. No. 910. And because respondent had been mistakenly allowed to receive retirement benefits under R.A. No. 910, GSIS erroneously concluded that respondent was not entitled to any retirement benefits at all, not even under any other extant retirement law. This is flawed logic.

Respondent's disqualification from receiving retirement benefits under R.A. No. 910 *does not mean that he is disqualified from receiving any retirement benefit under any other existing retirement law*.

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[23] See *Buena Obra v. Social Security System*, 449 Phil. 200 (2003).

[24] *Profeta v. Drilon*, G.R. No. 104139, December 22, 1992, 216 SCRA 777.

[25] *Department of Budget and Management v. Manila's Finest Retirees Association, Inc.*, G.R. No. 169466, May 9, 2007, 523 SCRA 90, 104, citing *Request of Clerk of Court Tessie L. Gatmaitan*, 372 Phil. 1, 7-8 (1999).

[26] *Re: Monthly Pension of Judges and Justices*, A.M. No. 90-9-019-SC, October 4, 1990, 190 SCRA 315, 320.

The CA, however, incorrectly held that respondent was covered by R.A. No. 8291. R.A. No. 8291 became a law after respondent retired from government service. Hence, petitioner and even respondent agree that it does not apply to respondent, because the law took effect after respondent's retirement.

Prior to the effectivity of R.A. No. 8291, retiring government employees who were not entitled to the benefits under R.A. No. 910 had the option to retire under either of two laws: Commonwealth Act No. 186, as amended by R.A. No. 660, or P.D. No. 1146.

In his Comment, respondent implicitly indicated his preference to retire under P.D. No. 1146, since this law provides for higher benefits, and because the same was the latest law at the time of his retirement in 1992.[27]

Under P.D. No. 1146, to be eligible for retirement benefits, one must satisfy the following requisites:

> Section 11. Conditions for Old-Age Pension.
>
> (a) Old-age pension shall be paid to a member who:
>
> (1) has at least fifteen years of service;
>
> (2) is at least sixty years of age; and
>
> (3) is separated from the service.

Respondent had complied with these requirements at the time of his retirement. GSIS does not dispute this. Accordingly, respondent is entitled to receive the benefits provided under Section 12 of the same law, to wit:

> Section 12. Old-Age Pension.
>
> (a) A member entitled to old-age pension shall receive the basic monthly pension for life but in no case for a period less than five years: Provided, That, the member shall have the option to convert the basic monthly pensions for the first five years into a lump sum as defined in this Act: Provided, further, That, in case the pensioner

[27] *Rollo*, p. 79.

dies before the expiration of the five-year period, his primary beneficiaries shall be entitled to the balance of the amount still due to him. In default of primary beneficiaries, the amount shall be paid to his legal heirs.

To grant respondent these benefits does not equate to double retirement, as GSIS mistakenly claims. Since respondent has been declared ineligible to retire under R.A. No. 910, GSIS should simply apply the proper retirement law to respondent's claim, in substitution of R.A. No. 910. In this way, GSIS would be faithful to its mandate to administer retirement laws in the spirit in which they have been enacted, *i.e.*, to provide retirees the wherewithal to live a life of relative comfort and security after years of service to the government. Respondent will not receive — and GSIS is under no obligation to give him — more than what is due him under the proper retirement law.

It must be emphasized that P.D. No. 1146 specifically mandates that a retiree is entitled to monthly pension *for life*. As this Court previously held:

> Considering the mandatory salary deductions from the government employee, the government pensions do not constitute mere gratuity but form part of compensation.
>
> In a pension plan where employee participation is mandatory, the prevailing view is that employees have contractual or vested rights in the pension where the pension is part of the terms of employment. The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. Retirement benefits to government employees reward them for giving the best years of their lives in the service of their country.
>
> Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. No law can deprive such person of his pension rights

without due process of law, that is, without notice and opportunity to be heard.[28]

It must also be underscored that GSIS itself allowed respondent to retire under R.A. No. 910, following jurisprudence laid down by this Court.

One could hardly fault respondent, though a seasoned lawyer, for relying on petitioner's interpretation of the pertinent retirement laws, considering that the latter is tasked to administer the government's retirement system. He had the right to assume that GSIS personnel knew what they were doing.

Since the change in circumstances was through no fault of respondent, he cannot be prejudiced by the same. His right to receive monthly pension from the government cannot be jeopardized by a new interpretation of the law.

GSIS' argument that respondent has already been enormously benefited under R.A. No. 910 misses the point.

Retirement benefits are a form of reward for an employee's loyalty and service to the employer, and are intended to help the employee enjoy the remaining years of his life, lessening the burden of having to worry about his financial support or upkeep. A pension partakes of the nature of "retained wages" of the retiree for a dual purpose: to entice competent people to enter the government service; and to permit them to retire from the service with relative security, not only for those who have retained their vigor, but more so for those who have been incapacitated by illness or accident.[29]

Surely, giving respondent what is due him under the law is not unjust enrichment.

As to GSIS' contention that what respondent seeks is conversion of his retirement mode, which is prohibited under R.A. No. 8291, the Court agrees with the CA that this is not a case of conversion

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[28] *GSIS, Cebu City Branch v. Montesclaros*, 478 Phil. 573, 583-584 (2004). (Citations omitted.)

[29] *Conte v. Palma*, 332 Phil. 20, 34-35 (1996). (Citations omitted.)

within the contemplation of the law. The conversion under the law is one that is voluntary, a choice to be made by the retiree. Here, respondent had no choice but to look for another law under which to claim his pension benefits because the DBM had decided not to release the funds needed to continue payment of his monthly pension.

Respondent himself admitted that, if the DBM had not suspended the payment of his pension, he would not have sought any other law under which to receive his benefits. The necessity to "convert" was not a voluntary choice of respondent but a circumstance forced upon him by the government itself.

Finally, GSIS would like this Court to believe that because it has returned respondent's premium contributions, it is now legally impossible for it to comply with the CA's directive.

Given the fact that respondent is ineligible to retire under R.A. No. 910, the refund by GSIS of respondent's premium payments was erroneous. Hence, GSIS can demand the return of the erroneous payment or it may opt to deduct the amount earlier received by respondent from the benefits which he will receive in the future. Considering its expertise on the matter, GSIS can device a scheme that will facilitate either the reimbursement or the deduction in the most cost-efficient and beneficial manner.

The foregoing disquisition draws even greater force from subsequent developments. While this case was pending, the Congress enacted Republic Act No. 10071,[30] the *Prosecution Service Act of 2010*. On April 8, 2010, it lapsed into law without the signature of the President,[31] pursuant to Article VI, Section 27(1) of the Constitution.[32]

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[30] An Act Strengthening and Rationalizing the National Prosecution Service.

[31] <www.senate.gov.ph/announcement.pdf> (visited on October 19, 2010).

[32] Section 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds

Section 24 of R.A. No. 10071 provides:

Section 24. *Retroactivity.*— The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act.

By virtue of this express provision, respondent is covered by R.A. No. 10071. In addition, he is now entitled to avail of the benefits provided by Section 23, that "all pension benefits of retired prosecutors of the National Prosecution Service shall be automatically increased whenever there is an increase in the salary and allowance of the same position from which he retired."

Respondent, as former Chief State Prosecutor, albeit the position has been renamed "Prosecutor General,"[33] should enjoy the same retirement benefits as the Presiding Justice of the CA, pursuant to Section 14 of R.A. No. 10071, to wit:

Section 14. *Qualifications, Rank and Appointment of the Prosecutor General.* — The Prosecutor General shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments, and other privileges, shall be subject to the same inhibitions and disqualifications, and *shall enjoy the same retirement and other benefits as those of the Presiding Justice of the Court of Appeals* and shall be appointed by the President.[34]

Furthermore, respondent should also benefit from the application of Section 16 of the law, which states:

Section 16. *Qualifications, Ranks, and Appointments of Prosecutors, and other Prosecution Officers.* – x x x.

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of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by *yeas* or *nays*, and the names of the Members voting for or against shall be entered in its Journal. *The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof, otherwise, it shall become a law as if he had signed it*. (Emphasis supplied.)

[33] R.A. No. 10071, Sec. 17.

[34] Emphasis supplied.

Any increase after the approval of this Act in the salaries, allowances or retirement benefits or any upgrading of the grades or levels thereof of any or all of the Justices or Judges referred to herein to whom said emoluments are assimilated shall apply to the corresponding prosecutors.

Lastly, and most importantly, by explicit fiat of R.A. No. 10071, members of the National Prosecution Service have been granted the retirement benefits under R.A. No. 910, to wit:

Section 25. *Applicability*. - All benefits heretofore extended under Republic Act No. 910, as amended, and all other benefits that may be extended by the way of amendment thereto shall likewise be given to the prosecutors covered by this Act.

Hence, from the time of the effectivity of R.A. No. 10071, respondent should be entitled to receive retirement benefits granted under R.A. No. 910.

Consequently, GSIS should compute respondent's retirement benefits from the time the same were withheld until April 7, 2010 in accordance with P.D. No. 1146; and his retirement benefits from April 8, 2010 onwards in accordance with R.A. No. 910.

A final note. The Court is dismayed at the cavalier manner in which GSIS handled respondent's claims, keeping respondent in the dark as to the real status of his retirement benefits for so long. That the agency tasked with administering the benefits of retired government employees could so unreasonably treat one of its beneficiaries, one who faithfully served our people for over 40 years, is appalling. It is well to remind GSIS of its mandate to promote the efficiency and welfare of the employees of our government, and to perform its tasks not only with competence and proficiency but with genuine compassion and concern.

WHEREFORE, the foregoing premises considered, the Decision dated October 28, 2008 and the Resolution dated February 18, 2009 of the Court of Appeals in CA-G.R. SP No. 101811 are hereby *AFFIRMED WITH MODIFICATION*. Government Service Insurance System is *ORDERED* to (1)

pay respondent's retirement benefits in accordance with P.D. No. 1146, subject to deductions, if any, computed from the time the same were withheld until April 7, 2010; and (2) pay respondent's retirement benefits in accordance with R.A. No. 910, computed from April 8, 2010 onwards.

In order that respondent may not be further deprived of his monthly pension benefits, this Decision is *IMMEDIATELY EXECUTORY.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186605. November 17, 2010]

CENTRAL AZUCARERA DE BAIS EMPLOYEES UNION-NFL [CABEU-NFL], represented by its President, PABLITO SAGURAN, *petitioner, vs.* **CENTRAL AZUCARERA DE BAIS, INC. [CAB], represented by its President, ANTONIO STEVEN L. CHAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; SERVICE OF PLEADINGS, EXPLAINED; SUBSTANTIAL COMPLIANCE, ALLOWED.— On the matter of service, Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly provides that in a petition filed originally in the CA, the petitioner is required to serve a copy of the

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated January 11, 2010.

petition on the adverse party before its filing. If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13. With respect to the alleged failure of CAB to indicate the address of CABEU-NFL in the CA petition, it appears that CABEU-NFL is misleading the Court. A perusal of the petition filed before the CA reveals that CAB indeed indicated both the name and address of CABEU-NFL. Moreover, the indication in said petition by CAB that CABEU-NFL could be served with court processes through its counsel was substantial compliance with the Rules.

2. ID.; ID.; ID.; FORUM SHOPPING; DEFINED; ELEMENTS. — By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, hoping that one or the other tribunal would favorably dispose of the matter. The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

3. ID.; ID.; ID.; JUDICIAL NOTICE; JUDICIAL NOTICE OF MATTERS WHICH OUGHT TO BE KNOWN TO JUDGES BECAUSE OF THEIR JUDICIAL FUNCTIONS IS ONLY DISCRETIONARY UPON THE COURT.— The CA, citing the ruling in *T'boli Agro-Industrial Development, Inc. v. Solilapsi* as authority, points out that: This Court cannot take judicial notice of what CA-G.R. No. 03132 and CA-G.R. No. 03017 involve because: "As a general rule, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of other cases even when such cases have been tried or are pending in the same court and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. Courts may be required to take judicial notice of the decisions of the appellate courts but not of the decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which

ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory."

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE; CONCEPT, DEFINED; NOT PRESENT IN CASE AT BAR. — The concept of unfair labor practice is provided in Article 247 of the Labor Code which states: Article 247. Concept of Unfair Labor Practice and Procedure for Prosecution thereof. — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. x x x The Labor Code, likewise, enumerates the acts constituting unfair labor practices of the employer, thus: Article 248. Unfair Labor Practices of Employers.—It shall be unlawful for an employer to commit any of the following unfair labor practice: x x x (g) To violate the duty to bargain collectively as prescribed by this Code. For a charge of unfair labor practice to prosper, it must be shown that CAB was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social humiliation, wounded feelings or grave anxiety resulted x x x" in suspending negotiations with CABEU-NFL. Notably, CAB believed that CABEU-NFL was no longer the representative of the workers. It just wanted to foster industrial peace by bowing to the wishes of the overwhelming majority of its rank and file workers and by negotiating and concluding in good faith a CBA with CABELA. Such actions of CAB are nowhere tantamount to anti-unionism, the evil sought to be punished in cases of unfair labor practices. Furthermore, basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. By imputing bad faith to the actuations of CAB, CABEU-NFL has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Apparently, CABEU-NFL refers only to the circumstances mentioned in the letter-response, namely, the execution of the supposed CBA between CAB and CABELA and the request to suspend the negotiations, to conclude that bad faith attended CAB's actions. The Court

is of the view that CABEU-NFL, in simply relying on the said letter-response, failed to substantiate its claim of unfair labor practice to rebut the presumption of good faith.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioner.
Ermitaño Manzano Reodica and Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Central Azucarera De Bais Employees Union-National Federation of Labor *(CABEU-NFL)* seeking to reverse and set aside: (1) the September 26, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 03238, which *reversed* the July 18, 2007 Decision[2] and September 28, 2007 Resolution[3] of the National Labor Relations Commission *(NLRC)* and *reinstated* the July 13, 2006 Decision[4] of the Labor Arbiter *(LA)*; and (2) its January 21, 2009 Resolution[5] denying the Motion for Reconsideration of CABEU-NFL.

THE FACTS

Respondent Central Azucarera De Bais, Inc. *(CAB)* is a corporation duly organized and existing under the laws of the Philippines. It is represented by its President, Antonio Steven L. Chan *(Chan)*, in this proceeding.

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[1] *Rollo*, pp. 435-460. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justice Francisco P. Acosta and Associate Justice Edgardo L. Delos Santos, concurring.

[2] *Id.* at 102-110.

[3] *Id.* at 112-117.

[4] *Id.* at 172-182.

[5] *Id.* at 514.

CABEU-NFL is a duly registered labor union and a certified bargaining agent of the CAB rank-and-file employees, represented by its President, Pablito Saguran *(Saguran)*.

On January 19, 2004, CABEU-NFL sent CAB a proposed *Collective Bargaining Agreement (CBA)*[6] seeking increases in the daily wage and vacation and sick leave benefits of the monthly employees and the grant of leave benefits and 13th month pay to seasonal workers.

On March 27, 2004, CAB responded with a counter-proposal[7] to the effect that the production bonus incentive and special production bonus and incentives be maintained. In addition, respondent CAB agreed to execute a pro-rated increase of wages every time the government would mandate an increase in the minimum wage. CAB, however, did not agree to grant additional and separate Christmas bonuses.

On May 21, 2004, CAB received an *Amended Union Proposal*[8] sent by CABEU-NFL reducing its previous demand regarding wages and bonuses. CAB, however, maintained its position on the matter. Thus, the collective bargaining negotiations resulted in a deadlock.

On account of the impasse, "CABEU-NFL filed a Notice of Strike with the National Conciliation and Mediation Board *(NCMB)*. The NCMB then assumed conciliatory-mediation jurisdiction and summoned the parties to conciliation conferences."[9]

In its June 2, 2005 Letter sent to CAB[10] *(letter-request)*, CABEU-NFL requested copies of CAB's annual financial statements from 2001 to 2004 and asked for the resumption of conciliation meetings.

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[6] *Id.* at 133-145.

[7] *Id.* at 436.

[8] *Id.* at 212.

[9] *Id.* at 437.

[10] *Id.* at 155.

CAB replied through its June 14, 2005 Letter[11] *(letter-response)* to NCMB Regional Director of Dumaguete City Isidro Cepeda, which reads:

> At the outset, it observed that the letter signed by Mr. Pablito Saguran who is no longer an employee of the Central for he was one of those lawfully terminated due to an authorized cause x x x.
>
> More importantly, the declared purpose of the requested conciliation meeting has already been rendered moot and academic because: (1) the Union which Mr. Saguran purportedly represents has already lost its majority status by reason of the disauthorization and withdrawal of support thereto by more than 90% of the rank and file employees in the bargaining unit of Central sometime in January, 2005, and (2) the workers themselves, acting as principal, after disauthorizing the previous agent CABEU-NFL have organized themselves into a new Union known as Central Azucarera de Bais Employees Labor Association (CABELA) and after obtaining their registration certificate and making due representation that it is a duly organized union representing almost all the rank and file workers in the Central, had concluded a new collective bargaining agreement with the Central on April 21, 2005 in Dumaguete City. The aforesaid CBA had been duly ratified by the rank and file workers constituting 91% of the collective bargaining unit x x x.
>
> Clearly, therefore, the request for further conciliation conference will serve no lawful and practical purpose. In view of the foregoing, and for the sake of continued industrial peace prevailing in the Central, we beseech the Honorable Office to disregard the aforesaid request.

It appears that the NCMB failed to act on the letter-response of CAB. Neither did it convene CAB and CABEU-NFL to continue the negotiations between them.

Reacting from the letter-response of CAB, CABEU-NFL filed a Complaint for Unfair Labor Practice[12] for the former's refusal to bargain with it.

On July 13, 2006, the LA dismissed the complaint.[13] Pertinent portions of the LA decision read:

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[11] *Id.* at 156-157.

[12] *Id.* at 119-132.

[13] *Id.* at 193-203.

The procedure in the discharge of the duty to bargain collectively is provided for in Article 250 of the Labor Code: (1) the party who desires to negotiate an agreement shall serve a written notice upon the other party with a statement of proposals; (2) the other party shall make a reply thereto not later than ten (10) days from receipt of notice; (3) if the dispute is unsettled resulting in a deadlock, the NCMB shall intervene upon the request or at its own initiative and call the parties to conciliation Meeting x x x (4) if the NCMB fails to effect an agreement, the Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator; (5) the parties may also go on strike or declare a lockout as the case may be after complying with legal requirements. Subject, of course, to the plenary power of the Secretary of Labor and Employment to assume jurisdiction over the dispute or to certify the same to the NLRC for compulsory arbitration.

In the case at bar, the record shows that respondent CAB replied to the complainant Union's CBA proposals with its own set of counterproposals x x x. Likewise, respondent CAB responded to the Union's subsequent counterproposals x x x. Record further shows that respondent CAB participated in a series of CBA negotiations conducted by the parties at the plant level as well as in the conciliation/mediation proceedings conducted by the NCMB. Unfortunately, both exercises resulted in a deadlock.

At this juncture it cannot be said, therefore, that respondent CAB refused to negotiate or that it violated its duty to bargain collectively in light of its active participation in the past CBA negotiations at the plant level as well as in the NCMB. x x x

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We do not agree that respondent CAB committed an unfair labor practice act in questioning the capacity of Mr. Pablito Saguran to represent complainant union in the CBA negotiations because Mr. Pablito Saguran was no longer an employee of respondent CAB at that time having been separated from employment on the ground of redundancy and having received the corresponding separation benefits. x x x.

So also, we do not find respondent CAB guilty of unfair labor practice by its act of writing the NCMB Director in a letter dated June 24, 2005, stating its legal position on complainant's request for further conciliation to the effect that since almost [all] of the rank and file employees, the principals in a principal-agent relationship,

have withdrawn their support to the complainant union and that in fact they have already organized themselves into a DOLE-registered labor union known as CABELA, any further conciliation will serve no lawful and practical purpose. x x x.

At this juncture, it was incumbent upon the NCMB to make a ruling on the request of the complainant union as well as upon the corresponding comment of respondent CAB. If the NCMB chose not to pursue further negotiation between the parties, respondent CAB should not be faulted therefor. x x x.

Under the facts obtaining, when the conciliation/mediation by the NCMB has not been officially concluded, we find the instant complaint for unfair labor practice not only without merit but also premature.

WHEREFORE, foregoing considered, the case is hereby DISMISSED for lack of merit.

SO ORDERED.

On appeal, the NLRC in its July 18, 2007 Decision[14] *reversed* the LA's decision and found CAB guilty of unfair labor practice. The NLRC explained:

The issue to be resolved is whether or not respondent company committed an unfair labor practice for violation of its duty to bargain collectively in good faith.

xxx xxx xxx

The important event to discuss in the instant case is respondent's act of concluding a CBA with CABELA. As gleaned from respondent's letter to NCMB dated June 14, 2005, it concluded a CBA with CABELA because they opined that complainant lost its majority status in January 2005 when 90% of the rank-and-file employees disauthorized and withdrew their support to complainant. These rank-and-file employees who withdrew their support, organized and formed CABELA. In fine, respondent believed that CABELA enjoyed the majority status of CABELA since it was supported by 90% of all employees in the bargaining unit.

In resolving the issue of whether respondent's act of concluding a CBA with CABELA is warranted under the circumstances is to

[14] *Id.* at 102-110.

examine the validity of such act. The mechanics of collective bargaining are set in motion only when the following jurisdictional preconditions are present, namely: 1) possession of the status of majority representation of the employees' representative in accordance with any of the means of selection and designation provided for by the Labor Code, 2) proof of majority representation, and 3) a demand to bargain under Article 250, par. (a) of the Labor Code x x x.

In the instant case, it is undeniable that complainant is the certified collective bargaining agent of the regular workers and seasonal employees of respondent. Its status as such was determined in a certification election conducted by the Department of Labor and Employment (DOLE). As such, there was no reason for respondent to deal and negotiate with CABELA since the latter does not have such status of majority representation. x x x.

x x x. Based on this premise, respondent violated its duty to bargain with complainant when during the pendency of the conciliation proceedings before the NCMB it concluded a CBA with another union as a consequence, it refused to resume negotiation with complainant upon the latter's demand.

With respect to respondent's observation that the request for conciliation meeting was signed by one who is not eligible and authorized to represent any union with the company since he is no longer an employee, suffice it to state that at the time the request was made, such employee has questioned the validity of his dismissal with then NLRC. x x x.

Respondent's failure to act on the request of the complainant to resume negotiation for no valid reason constitutes unfair labor practice. Consequently, the proposed CBA as amended should be imposed to respondent.

WHEREFORE, premises considered, the appealed Decision is REVERSED and SET ASIDE. Another one is entered declaring that respondent Central Azucarera de Bais is guilty of unfair labor practice. As such, the proposed CBA of complainant, as amended is imposed to respondent Central Azucarera de Bais.

SO ORDERED.

CAB moved for a reconsideration but the motion was denied by the NLRC in its resolution dated September 28, 2007.[15]

Unsatisfied, CAB elevated the matter to the CA by way of a petition for *certiorari* under Rule 65 alleging grave abuse of discretion on the part of the NLRC in reversing the LA decision and issuing the questioned resolution.

On September 26, 2008, the CA found CAB's petition meritorious and reversed the NLRC decision and resolution. The CA pointed out:

xxx xxx xxx

First. This Court has acquired jurisdiction over the person of private respondent CABEU-NFL. Through its counsel of record, CABEU-NFL already filed its extensive comment on the instant petition. Hence, it is now useless to contend that it was denied notice of the same and the opportunity to be heard on it. x x x.

xxx xxx xxx

Second. Petitioner CAB was not shown to have violated the rule requiring parties to certify in their initiatory pleadings against forum shopping. Private respondent CABEU-NFL alleges in its comment that the two cases are pending before this Court: CA-G.R. No. 03132 and CA-G.R. No. 03017 involving the same parties as in the case at bar. Unfortunately, CABEU-NFL did not explain how the issues in those pending cases are related to or similar to those involved in this proceeding. x x x.

xxx xxx xxx

Third. xxx xxx xxx

In the case at bar, private respondent CABEU-NFL failed in its burden of proof to present substantial evidence to support the allegation of unfair labor practice. The assailed *Decision* and *Resolution* of public respondent referred merely to two (2) circumstances which allegedly support the conclusion that the presumption of good faith had been rebutted and that bad faith was extant in petitioner's actions. To recall, these circumstances are: (a) the execution of a supposed collective bargaining agreement with another labor union, CABELA; and (b) CAB's sending of the letter

[15] *Id.* at 112-117.

dated June 14, 2005 to NCMB seeking to call off the collective bargaining negotiations. These, however, are not enough to ascribe the very serious offense of unfair labor practice upon petitioner. xxx.

xxx xxx xxx

x x x petitioner CAB was not scuttling the ongoing negotiations towards a new collective bargaining agreement. It was simply propounding a position to the NCMB for the latter to rule on. That the negotiations did not push through was not the result of CAB management's intransigence because there was none – at least so far as the case record confirms. There is nothing that establishes petitioner's predetermined resolve not to budge from an initial position – perhaps stubbornness of some ambiguous sort but not the absence of good faith to pursue collective bargaining. xxx.

xxx xxx xxx

WHEREFORE, the instant petition is **GRANTED**. The assailed *Decision* dated July 18, 2007 and *Resolution* dated September 28, 2007 of public respondent National Labor Relations Commission in NLRC Case No. V-000002-07 are **REVERSED** and **SET ASIDE.** The *Decision* dated July 13, 2006 in NLRC RAB VII Case No. 07-0104-2005-D entitled 'Central Azucarera de Bais Employees Union-NFL (CABEU-NFL), represented by Pablito Saguran, complainant, versus, (CAB) and/or Steen Chan as Owner and Roberto de la Rosa as Manager, respondent of Labor Arbiter Fructuoso T. Villarin IV is **REINSTATED** and **AFFIRMED *IN TOTO*.** Costs of suit *de oficio*.

SO ORDERED.

CABEU-NFL moved for a reconsideration but its motion was denied by the CA in its Resolution dated January 21, 2009.[16]

Hence this petition.

In its Memorandum,[17] CABEU-NFL raised the following:

ISSUES

I) WHETHER OF (sic) NOT THE COURT OF APPEALS VIOLATED THE CONSTITUTIONAL RIGHTS OF PETITIONER

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[16] *Id.* at 514.

[17] *Id.* at 621-670.

WHEN THE HONORABLE COURT OF APPEALS REVERSED THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHICH HELD RESPONDENT GUILTY OF UNFAIR LABOR PRACTICE.[18]

II) WHETHER OR NOT THE COURT OF APPEALS VIOLATED THE CONSTITUTIONAL RIGHTS OF THE PETITIONER WHEN IT GAVE DUE COURSE TO RESPONDENT'S PETITION FOR *CERTIORARI* WITHOUT COMPLYING WITH THE JURISDICTIONAL REQUIREMENTS UNDER RULE 65, SECTION 1 AND SUPREME COURT CIRCULAR NO. 04-94, ON CERTIFICATION ON NON-FORUM SHOPPING.[19]

In sum, the petition raises three (3) issues for the Court's consideration which are whether or not the CA erred: (1) in giving due course to the petition for *certiorari* despite service of the copy of the petition to CABEU-NFL's counsel and not to itself ; (2) in giving due course to the petition for *certiorari* despite the failure of CAB to indicate the address of CABEU-NFL in the petition; and (3) in absolving CAB of unfair labor practice.

CABEU-NFL insists that the CA erred in giving due course to the petition for *certiorari* because respondent CAB served a copy of its CA petition to CABEU-NFL's counsel and not to CABEU-NFL itself. CABEU-NFL, likewise, harps on the failure of CAB to indicate CABEU-NFL's full address in the said petition as required in petitions for *certiorari*, citing Section 1, Rule 65[20] in relation to Section 3, Rule 46.[21]

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[18] *Id.* at 639.

[19] *Id.* at 659.

[20] Section 1. *Petition for certiorari.*

xxx xxx xxx

The petition shall be accompanied by a certified true copy of the judgment, order, resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[21] Section 3. *Contents and filing of petition; effect of non-compliance with requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents. xxx

xxx xxx xxx

Ultimately, CABEU-NFL aggressively asserts that CAB is guilty of unfair labor practice on the ground of its refusal to bargain collectively. CABEU-NFL claims to be the duly certified bargaining agent of the CAB rank-and-file employees such that it requested to bargain through a letter-request which was subsequently turned down by CAB in its letter-response. Anchored on the admission in the CAB letter-response of a supposed CBA with CABELA, CABEU-NFL charges that such act constitutes a violation of CAB's duty to bargain collectively under Article 253 of the Labor Code[22] and consequently an act of unfair labor practice prohibited under Article 248 (g) of the Labor Code.[23] CABEU-NFL also submits that CAB violated the prohibition against forum shopping when it filed its petition in the CA. CABEU-NFL claims that the failure of CAB's counsel to disclose to the CA the pendency of *CA-G.R. SP No. 033132* and *CA-G.R. SP No. 03017* constituted forum shopping, a sufficient ground to dismiss the said petition.

In its Memorandum,[24] CAB claims that service of the copy of the petition for *certiorari* to CABEU-NFL's counsel was sufficient. It vehemently denies its alleged failure to indicate CABEU-NFL's name and address in its petition. CAB also stresses that *CA-G.R. SP No. 033132* and *CA-G.R. SP No. 03017* "were

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It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent x x x.

[22] Art. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* – When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

[23] ART. 248. *Unfair labor practices of employers*.—It shall be unlawful for an employer to commit any of the following unfair labor practice:

xxx xxx xxx

(g) To violate the duty to bargain collectively as prescribed by this Code.

[24] *Rollo*, pp. 584-619.

initiated exclusively by members of CABEU and by CABEU itself, respectively, and not by CAB."[25] CAB further argues that there was no identity of issues or causes of action between the two abovementioned cases and this case.

On the issue of unfair labor practice, CAB counters that in view of the disassociation of more than 90% of rank-and-file workers from CABEU-NFL, it was constrained to negotiate and conclude in good faith a new CBA with CABELA, the newly established union by workers who disassociated from CABEU-NFL. CAB emphasizes that it declined further negotiations with CABEU-NFL in good faith because to continue with it would serve no practical purpose. Considering that the NCMB has yet to resolve CAB's query in its letter-response, CAB was left without any choice but accede to the demands of CABELA. In concluding a CBA with CABELA, CAB claims that it acted in the best interest of the rank-and-file workers which belied bad faith.

THE COURT'S RULING

The petition lacks merit.

On the technical issues, CABEU-NFL's insistence that service of the copy of the CA petition should have been made to it, rather than to its counsel, is unavailing.

On the matter of service, Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly provides that in a petition filed originally in the CA, the petitioner is required to serve a copy of the petition on the adverse party before its filing. If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13.[26]

With respect to the alleged failure of CAB to indicate the address of CABEU-NFL in the CA petition, it appears that

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[25] *Id.* at 615.

[26] *Go v. Court of Appeals*, G.R. 163745, August 24, 2007, 531 SCRA 158, 165-166, citing *New Ever Marketing, Inc. v. Court of Appeals*, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 294.

CABEU-NFL is misleading the Court. A perusal of the petition[27] filed before the CA reveals that CAB indeed indicated both the name[28] and address[29] of CABEU-NFL. Moreover, the indication in said petition by CAB that CABEU-NFL could be served with court processes through its counsel was substantial compliance with the Rules.[30]

The Court, likewise, cannot sustain CABEU-NFL's contention on forum shopping against CAB.

By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, hoping that one or the other tribunal would favorably dispose of the matter. The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[31]

In the case at bench, CABEU-NFL merely raised the fact of the pendency of *CA-G.R. SP No. 033132* and *CA-G.R. SP No. 03017* in its comment on the petition for *certiorari*[32] filed before the CA without demonstrating any similarity in the causes of action between the said cases and the present case. The CA, citing the ruling in *T'boli Agro-Industrial Development, Inc. v. Solilapsi*[33] as authority, points out that:

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[27] *Rollo,* pp. 65-100.

[28] *Id.* at 68.

[29] *Id*.

[30] *OSM Shipping Philippines, Inc. v. National Labor Relations Commission,* 446 Phil. 793, 803, (2003).

[31] *Chavez v. Court of Appeals,* G.R. No. 174356, January 20, 2010, 610 SCRA 399, 403, citing *Cruz v. Caraos*, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 522 and *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 6.

[32] *Rollo,* pp. 348-364.

[33] 442 Phil. 499, 513 (2002).

This Court cannot take judicial notice of what CA-G.R. No. 03132 and CA-G.R. No. 03017 involve because:

> "As a general rule, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of other cases even when such cases have been tried or are pending in the same court and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. Courts may be required to take judicial notice of the decisions of the appellate courts but not of the decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory."

In the absence of evidence to show that the issues involved in these cases are the same, this Court cannot give credence to private respondent's claim of forum shopping.

The Court now proceeds to determine whether or not respondent CAB was guilty of acts constituting unfair labor practice by refusing to bargain collectively.

The Court rules in the negative.

CAB is being accused of violating its duty to bargain collectively supposedly because of its act in concluding a CBA with CABELA, another union in the bargaining unit, and its failure to resume negotiations with CABEU-NFL.

The concept of unfair labor practice is provided in Article 247 of the Labor Code which states:

> Article 247. Concept of Unfair Labor Practice and Procedure for Prosecution thereof.— Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

xxx xxx xxx

The Labor Code, likewise, enumerates the acts constituting unfair labor practices of the employer, thus:

> Article 248. Unfair Labor Practices of Employers.—It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> xxx xxx xxx
>
> (g) To violate the duty to bargain collectively as prescribed by this Code.

For a charge of unfair labor practice to prosper, it must be shown that CAB was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social humiliation, wounded feelings or grave anxiety resulted x x x" in suspending negotiations with CABEU-NFL. Notably, CAB believed that CABEU-NFL was no longer the representative of the workers.[34] It just wanted to foster industrial peace by bowing to the wishes of the overwhelming majority of its rank and file workers and by negotiating and concluding in good faith a CBA with CABELA.[35] Such actions of CAB are nowhere tantamount to anti-unionism, the evil sought to be punished in cases of unfair labor practices.

Furthermore, basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. By imputing bad faith to the actuations of CAB, CABEU-NFL has the burden of proof to present substantial evidence to support

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[34] *Tunay Na Pagkakaisa Ng Manggagawa Sa Asiabrewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010, citing *Union of Filipro Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestlé Philippines, Incorporated,* G.R. Nos. 158930-31 & 158944-45, March 3, 2008, 547 SCRA 323, 335, citing *San Miguel Corporation v. Del Rosario,* G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 619.

[35] *Rollo,* p. 600.

the allegation of unfair labor practice.[36] Apparently, CABEU-NFL refers only to the circumstances mentioned in the letter-response, namely, the execution of the supposed CBA between CAB and CABELA and the request to suspend the negotiations, to conclude that bad faith attended CAB's actions. The Court is of the view that CABEU-NFL, in simply relying on the said letter-response, failed to substantiate its claim of unfair labor practice to rebut the presumption of good faith.

Moreover, as correctly determined by the LA, the filing of the complaint for unfair labor practice was premature inasmuch as the issue of collective bargaining is *still pending* before the NCMB.

In the resolution of labor cases, this Court has always been guided by the State policy enshrined in the Constitution that the rights of workers and the promotion of their welfare shall be protected. The Court is, likewise, guided by the goal of attaining industrial peace by the proper application of the law. Thus, it cannot favor one party, be it labor or management, in arriving at a just solution to a controversy if the party has no valid support to its claims. It is not within this Court's power to rule beyond the ambit of the law.[37]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[36] *Union of Filipro Employees-Drug, Food And Allied Industries Unions-Kilusang Mayo Uno (UFE-DFA-KMU) v. Nestlé Philippines, Incorporated*, G.R. Nos. 158930-31, August 22, 2006, 499 SCRA 521, 548-549, citing *Chua v. Court of Appeals*, 312 Phil. 405, 411 (1995).

[37] *Samahang Manggagawa Sa Top Form Manufacturing United Workers of The Philippines (SMTFM-UWP) v. National Labor Relations Commission,* G.R. No. 113856, 356 Phil. 480, 497, (1998).

SECOND DIVISION

[G.R. No. 187023. November 17, 2010]

EVANGELINE D. IMANI,* *petitioner, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; REMEDY AGAINST WRONGFUL EXECUTION; *TERCERIA* OR A SEPARATE ACTION FOR ANNULMENT OF WRIT OF EXECUTION UNDER SEC. 16 RULE 39, AVAILABLE TO THIRD PARTY CLAIMANT OR A STRANGER TO THE FORECLOSURE SUIT.— The applicability of Section 16 of Rule 39 of the Rules of Court, is explained in *Ong v. Tating*, thus: When the sheriff thus seizes property of a third person in which the judgment debtor holds no right or interest, and so incurs in error, the supervisory power of the Court which has authorized execution may be invoked by the third person. Upon due application by the third person, and after summary hearing, the Court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What the Court can do in these instances however is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The Court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat the matter only in so far as may be necessary to decide if the Sheriff has acted correctly or not. x x x. Upon the other hand, if the claim of impropriety on the part of the sheriff in the execution proceedings is made by a party to the action, not a stranger thereto, any relief therefrom may only be applied with, and obtained from, only the executing court; and this is true even if a new party has been impleaded in the suit.

* Also referred to as Evangelina D. Imani in the records.

2. ID.; ID.; ID.; ID.; ID.; JUDGMENT CREDITOR'S SPOUSE QUESTIONING EXECUTION OF CONJUGAL PROPERTY, NOT DEEMED A "STRANGER" TO FORECLOSURE CASE; RELIEF MAY BE OBTAINED ONLY FROM THE EXECUTING COURT.— The remedy of *terceria* or a separate action under Section 16, Rule 39 is no longer available to Sina Imani because he is not deemed a *stranger* to the case filed against petitioner: [T]he husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife. Thus, it would have been inappropriate for him to institute a separate case for annulment of writ of execution. x x x The filing of the motion by petitioner to annul the execution, the auction sale, and the certificate of sale was, therefore, a proper remedy.

3. CIVIL LAW; MARRIAGE; PROPERTY RELATIONS; PRESUMPTION THAT ALL PROPERTY OF THE MARRIAGE IS CONJUGAL, WHEN PRESENT; SUSTAINED.— Indeed, all property of the marriage is presumed to be conjugal. However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of the conjugal partnership. Thus, the time when the property was acquired is material. *Francisco v. CA* is instructive, *viz*.: Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition *during* the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired.

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; BASIC RULES ON AFFIDAVITS AND PHOTOCOPIES OF CHECKS; EXPLAINED.— The basic rule of evidence is that unless the affiants themselves are placed on the witness stand

to testify on their affidavits, such affidavits must be rejected for being hearsay. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination. In the same vein, the photocopies of the checks cannot be given any probative value. In *Concepcion v. Atty. Fandiño, Jr.* and *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*, we held that a photocopy of a document has no probative value and is inadmissible in evidence.

5. CIVIL LAW; PROPERTY; LAND REGISTRATION; REGISTRATION DOES NOT CONFER TITLE BUT MERELY CONFIRMS ONE ALREADY EXISTING.— The fact that the land was registered in the name of *Evangelina Dazo-Imani married to Sina Imani* is no proof that the property was acquired during the spouses' coverture. Acquisition of title and registration thereof are two different acts. It is well settled that registration does not confer title but merely confirms one already existing.

6. REMEDIAL LAW; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL IS BARRED BY ESTOPPEL.— It is well settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.

APPEARANCES OF COUNSEL

De Castro & Cagampang Law Offices for petitioner.

Perez Calima Suratos Maynigo & Roque Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

On appeal is the July 3, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93061, setting aside the November 22, 2005 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 64, as well as its subsequent Resolution dated March 3, 2009,[3] denying petitioner's motion for reconsideration.

On August 28, 1981, Evangeline D. Imani (petitioner) signed a *Continuing Suretyship Agreement* in favor of respondent Metropolitan Bank & Trust Company (Metrobank), with Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Cynthia C. Dazo, Doroteo Fundales, Jr., and Nicolas Ponce as her co-sureties. As sureties, they bound themselves to pay Metrobank whatever indebtedness C.P. Dazo Tannery, Inc. (CPDTI) incurs, but not exceeding Six Million Pesos (₱6,000,000.00).

Later, CPDTI obtained loans of ₱100,000.00 and ₱63,825.45, respectively. The loans were evidenced by promissory notes signed by Cesar and Nieves Dazo. CPDTI defaulted in the payment of its loans. Metrobank made several demands for payment upon CPDTI, but to no avail. This prompted Metrobank to file a collection suit against CPDTI and its sureties, including herein petitioner. The case was docketed as Civil Case No. 15717.

After due proceedings, the RTC rendered a decision[4] in favor of Metrobank. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Court renders a judgment in favor of [Metrobank] ordering defendants, C.P. Dazo Tannery, Inc., Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Evangelina D. Imani, Cynthia C. Dazo, Doroteo Fundales, Jr., and

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Edgardo F. Sundiam and Sixto C. Marella, Jr., concurring; *rollo*, pp. 37-53.

[2] CA *rollo*, pp. 45-47.

[3] *Rollo*, pp. 73-74.

[4] *CA rollo*, pp. 48-51.

Nicolas Ponce to pay [respondent] Metropolitan Bank and Trust Company:

1. Under the First Cause of Action, the sum of ₱175,451.48 plus the stipulated interest, penalty charges and bank charges from March 1, 1984 and until the whole amount is fully paid;

2. Under the Second Cause of Action, the sum of ₱92,158.85 plus the stipulated interest, penalty charges and bank charges from February 24, 1985, and until the whole amount is fully paid;

3. The sum equivalent to ten percent (10%) of the total amount due under the First and Second Cause of Action; and

4. Ordering the defendants to pay the costs of suit and expenses of litigation.

O ORDERED.[5]

Therein defendants appealed to the CA. On September 29, 1997, the CA issued a Resolution dismissing the appeal.[6] Consequently, on October 22, 1997, the CA issued an Entry of Judgment.[7]

Metrobank then filed with the RTC a motion for execution,[8] which was granted on December 7, 1999.[9] A writ of execution[10] was issued against CPDTI and its co-defendants. The sheriff levied on a property covered by Transfer Certificate of Title (TCT) No. T-27957 P(M) and registered in the name of petitioner. A public auction was conducted and the property was awarded to Metrobank, as the highest bidder.

Metrobank undertook to consolidate the title covering the subject property in its name, and filed a *Manifestation and Motion*,[11] praying that spouses Sina and Evangeline Imani be

[5] *Id.* at 51.

[6] *Id.* at 54.

[7] *Id.* at 55.

[8] *Id.* at 56-58.

[9] *Id.* at 59.

[10] *Id.* at 60-61.

[11] *Id.* at 64-67.

directed to surrender the owner's copy of TCT No. T-27957 P(M) for cancellation. Petitioner opposed the motion and filed her *Comment with Urgent Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale Over TCT No. T-27957 P(M)*.[12] She argued that the subject property belongs to the conjugal partnership; as such, it cannot be held answerable for the liabilities incurred by CPDTI to Metrobank. Neither can it be subject of levy on execution or public auction. Hence, petitioner prayed for the nullification of the levy on execution and the auction sale, as well as the certificate of sale in favor of Metrobank.

On June 20, 2005, the RTC issued an Order[13] denying Metrobank's motion, explaining that:

> [Petitioner] Evangelina D. Imani incurred the obligation to [Metrobank] by the mere fact that she executed the Continuing Suretyship Agreement in favor of [Metrobank]. The loan proceeds were not intended for [petitioner] Evangelina D. Imani. It cannot therefore be presumed that the loan proceeds had redounded to the benefit of her family. It is also worth stressing that the records of this case is bereft of any showing that at the time of the signing of the Suretyship Agreement and even at the time of execution and sale at public auction of the subject property, [petitioner] Evangelina D. Imani has the authority to dispose of or encumber their conjugal partnership properties. Neither was she conferred the power of administration over the said properties. Hence, when she executed the Suretyship Agreement, she had placed the Conjugal Partnership in danger of being dissipated. The law could have not allowed this in keeping with the mandate of protecting and safeguarding the conjugal partnership. This is also the reason why the husband or the wife cannot dispose of the conjugal partnership properties even onerously, if without the consent of the other, or gratuitously, as by way of donation.[14]

The RTC decreed that:

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[12] *Id.* at 68-70.

[13] *Id.* at 80-85.

[14] *Id.* at 84.

WHEREFORE, in view of the foregoing, [Metrobank's] motion for issuance of an Order directing Spouses Sina Imani and Evangeline Dazo-Imani to surrender the owner's copy of TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation, is DENIED.

On the other hand, [petitioner's] Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is GRANTED.

The Levy on Execution and the Sale by Public Auction of the property covered by TCT No. T-27957 P(M) are nullified and the Certificate of Sale over the same property is hereby Cancelled.

SO ORDERED.[15]

Metrobank filed a motion for reconsideration. Petitioner opposed the motion, asserting that the property belongs to the conjugal partnership.[16] Attached to her opposition were an Affidavit[17]executed by Crisanto Origen, the former owner of the property, attesting that spouses Sina and Evangeline Imani were the vendees of the subject property; and the photocopies of the checks[18] allegedly issued by Sina Imani as payment for the subject property.

However, despite petitioner's opposition, the RTC issued an Order dated August 15, 2005, setting aside its June 20, 2005 Order. Thus:

WHEREFORE, premises considered, the Motion for Reconsideration is GRANTED. The Order dated June 20, 2005 is set aside. Evangelina Dazo-Imani is hereby ordered to surrender TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation.

The effectivity of the Levy on Execution, the Auction Sale and the Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is reinstated.

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[15] *Id.* at 84-85.

[16] *Id.* at 104-105.

[17] *Id.* at 106.

[18] *Id.* at 107.

SO ORDERED.[19]

But on petitioner's motion for reconsideration, the RTC issued an Order dated November 22, 2005,[20] reinstating its June 20, 2005 Order. In so ruling, the RTC relied on the affidavit of Crisanto Origen, and declared the property levied upon as conjugal, which cannot be held answerable for petitioner's personal liability.

Metrobank assailed the November 22, 2005 Order via a petition for *certiorari* in the CA, ascribing grave abuse of discretion on the part of the RTC for annulling the levy on execution and the auction sale, and for cancelling the certificate of sale.

On July 3, 2008, the CA rendered the now challenged Decision reversing the RTC, the dispositive portion of which reads:

> WHEREFORE, the instant petition is hereby **GRANTED**. **ACCORDINGLY**, the Order dated November 22, 2005 of the Regional Trial Court of Makati City, Branch 64, is hereby **REVERSED** and new one is entered declaring the Levy on Execution, Sale by Public Auction of the property covered by Transfer Certificate of Title T-27957 [P](M) and the Certificate of Sale over said property as valid and legal.
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> SO ORDERED.[21]

Petitioner filed a motion for reconsideration, but the CA denied it on March 3, 2009.[22]

Hence, this recourse by petitioner, arguing that:

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THE HONORABLE COURT OF APPEALS ERRS (sic) IN REVERSING THE FINDING OF FACT OF THE TRIAL COURT THAT THE PROPERTY IS CONJUGAL IN NATURE BASED ON MERE SPECULATIONS AND CONJECTURES.[23]

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[19] *Id.* at 117.

[20] *Id.* at 45-47.

[21] *Supra* note 1, at 53.

[22] *Supra* note 3.

[23] *Rollo*, p. 30.

II

THE UNSUPPORTED TEMPORARY RULING THAT THE PROPERTY IS NOT CONJUGAL AND THE SUGGESTION TO VINDICATE THE RIGHTS OF SINA IMANI AND THE CONJUGAL PARTNERSHIP IN A SEPARATE ACTION UNDER SEC. 16, RULE 39 ENCOURAGE MULTIPLICITY OF SUITS AND VIOLATE THE POLICY OF THE RULES FOR EXPEDIENT AND INEXPENSIVE DISPOSITION OF ACTIONS.

III

THE PROPERTY IN QUESTION, B[EI]NG A ROAD RIGHT OF WAY, IS NOT SUBJECT TO EXECUTION UNDER SEC. 50, 2ND PARAGRAPH, OF PD [NO.] 1529.[24]

First, the procedural issue on the propriety of the course of action taken by petitioner in the RTC in vindication of her claim over the subject property.

Petitioner takes exception to the CA ruling that she committed a procedural gaffe in seeking the annulment of the writ of execution, the auction sale, and the certificate of sale. The issue on the conjugal nature of the property, she insists, can be adjudicated by the executing court; thus, the RTC correctly gave due course to her motion. She asserts that it was error for the CA to propose the filing of a separate case to vindicate her claim.

We agree with petitioner.

The CA explained the *faux pas* committed by petitioner in this wise:

> Under [Section 16, Rule 39], a third-party claimant or a stranger to the foreclosure suit, can opt to file a remedy known as ***terceria*** against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor. By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent **"separate action,"** the object of which is the recovery of ownership or possession of the property seized

[24] *Id.* at 32.

by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other. Availment of the *terceria* is not a condition *sine qua non* to the institution of a "separate action."

It is worthy of note that Sina Imani should have availed of the remedy of "*terceria*" authorized under Section 16 of Rule 39 which is the proper remedy considering that he is not a party to the case against [petitioner]. Instead, the trial court allowed [petitioner] to file an urgent motion to cancel and nullify the levy of execution the auction sale and certificate of sale over TCT No. T27957 [P](M). [Petitioner] then argue[s] that it is the ministerial duty of the levying officer to release the property the moment a third-party claim is filed.

It is true that once a third-party files an affidavit of his title or right to the possession of the property levied upon, the sheriff is bound to release the property of the third-party claimant unless the judgment creditor files a bond approved by the court. Admittedly, [petitioner's] motion was already pending in court at the time that they filed the Affidavit of Crisanto Origen, the former owner, dated July 27, 2005.

In the instant case, the one who availed of the remedy of *terceria* is the [petitioner], the party to the main case and not the third party contemplated by Section 16, Rule 39 of the Rules of Court.

Moreover, the one who made the affidavit is not the third-party referred to in said Rule but Crisanto Origen who was the former owner of the land in question.[25]

Apparently, the CA lost sight of our ruling in *Ong v. Tating*,[26] elucidating on the applicability of Section 16 of Rule 39 of the Rules of Court, thus:

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[25] *Id.* at 50-51.

[26] 233 Phil. 261 (1987).

When the sheriff thus seizes property of a third person in which the judgment debtor holds no right or interest, and so incurs in error, the supervisory power of the Court which has authorized execution may be invoked by the third person. Upon due application by the third person, and after summary hearing, the Court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What the Court can do in these instances however is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The Court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat the matter only in so far as may be necessary to decide if the Sheriff has acted correctly or not. x x x.

xxx xxx xxx

Upon the other hand, if the claim of impropriety on the part of the sheriff in the execution proceedings is made by a party to the action, not a stranger thereto, any relief therefrom may only be applied with, and obtained from, only the executing court; and this is true even if a new party has been impleaded in the suit.[27]

The filing of the motion by petitioner to annul the execution, the auction sale, and the certificate of sale was, therefore, a proper remedy. As further held by this Court:

Certain it is that the Trial Court has plenary jurisdiction over the proceedings for the enforcement of its judgments. It has undeniable competence to act on motions for execution (whether execution be a matter of right or discretionary upon the Court), issue and quash writs, **determine if property is exempt from execution**, or fix the value of property claimed by third persons so that a bond equal to such value may be posted by a judgment creditor to indemnify the sheriff against liability for damages, resolve questions involving redemption, examine the judgment debtor and his debtors, and otherwise perform such other acts as may be necessary or incidental to the carrying out of its decisions. It may and should exercise

[27] *Id.* at 274-277. (Emphasis supplied.)

control and supervision over the sheriff and other court officers and employees taking part in the execution proceedings, and correct them in the event that they should err in the discharge of their functions.[28]

Contrary to the CA's advice, the remedy of *terceria* or a separate action under Section 16, Rule 39 is no longer available to Sina Imani because he is not deemed a *stranger* to the case filed against petitioner:

> [T]he husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife.[29]

Thus, it would have been inappropriate for him to institute a separate case for annulment of writ of execution.

In *Spouses Ching v. Court of Appeals*,[30] we explained:

> Is a spouse, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?" In *Mariano v. Court of Appeals*, we answered this question in the negative. In that case, the CFI of Caloocan City declared the wife to be the judgment obligor and, consequently, a writ of execution was issued against her. Thereupon, the sheriff proceeded to levy upon the conjugal properties of the wife and her husband. The wife initially filed a petition for *certiorari* with the Court of Appeals praying for the annulment of the writ of execution. However, the petition was adjudged to be without merit and was accordingly dismissed. The husband then filed a complaint with the CFI of Quezon City for the annulment of the writ of execution, alleging therein that the conjugal properties cannot be made to answer for obligations exclusively contracted by the wife. The executing party moved to dismiss the annulment case, but the motion was denied. On appeal, the Court of Appeals, in *Mariano*, ruled that the CFI of Quezon City, in continuing to hear the annulment case, had not interfered with the executing court. We reversed the Court of Appeals' ruling and held that there was interference by the CFI of Quezon City with the execution of the CFI of Caloocan City.

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[28] *Id.* at 273. (Emphasis supplied.)

[29] *Mariano v. Court of Appeals*, 255 Phil. 766, 773 (1989).

[30] 446 Phil. 121, 131-132 (2003). (Citations omitted.)

We ruled that the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife, which would allow the filing of a separate and independent action.

The facts of the *Mariano* case are similar to this case. Clearly, it was inappropriate for petitioners to institute a separate case for annulment when they could have easily questioned the execution of their conjugal property in the collection case. We note in fact that the trial court in the *Rizal* annulment case specifically informed petitioners that Encarnacion Ching's rights could be ventilated in the *Manila* collection case by the mere expedient of intervening therein. Apparently, petitioners ignored the trial court's advice, as Encarnacion Ching did not intervene therein and petitioners instituted another annulment case after their conjugal property was levied upon and sold on execution.

There have been instances where we ruled that a spouse may file a separate case against a wrongful execution. However, in those cases, we allowed the institution of a separate and independent action because what were executed upon were the paraphernal or exclusive property of a spouse who was not a party to the case. In those instances, said spouse can truly be deemed a "stranger." In the present case, the levy and sale on execution was made upon the conjugal property.

Ineluctably, the RTC cannot be considered whimsical for ruling on petitioner's motion. The CA, therefore, erred for declaring otherwise.

Now, on the merits of the case.

Petitioner asserts that the subject property belongs to the conjugal partnership. As such, it cannot be made to answer for her obligation with Metrobank. She faults the CA for sustaining the writ of execution, the public auction, and the certificate of sale.

We sustain the CA ruling on this point.

Indeed, all property of the marriage is presumed to be conjugal. However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of

the conjugal partnership.[31] Thus, the time when the property was acquired is material.[32]

Francisco v. CA[33] is instructive, *viz.*:

> Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition *during* the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired.[34]

To support her assertion that the property belongs to the conjugal partnership, petitioner submitted the Affidavit[35] of Crisanto Origen, attesting that petitioner and her husband were the vendees of the subject property, and the photocopies of the checks[36] allegedly issued by Sina Imani as payment for the subject property.

Unfortunately for petitioner, the said Affidavit can hardly be considered sufficient evidence to prove her claim that the property is conjugal. As correctly pointed out by Metrobank, the said Affidavit has no evidentiary weight because Crisanto Origen was not presented in the RTC to affirm the veracity of his Affidavit:

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[31] *Pintiano-Anno v. Anno*, G.R. No. 163743, January 27, 2006, 480 SCRA 419, 423-424.

[32] See *De Leon v. De Leon*, G.R. No. 185063, July 23, 2009, 593 SCRA 768, 779.

[33] 359 Phil. 519 (1998).

[34] *Id.* at 526. (Citations omitted.)

[35] *Supra* note 17.

[36] *Supra* note 18.

The basic rule of evidence is that unless the affiants themselves are placed on the witness stand to testify on their affidavits, such affidavits must be rejected for being hearsay. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination. [37]

In the same vein, the photocopies of the checks cannot be given any probative value. In *Concepcion v. Atty. Fandiño, Jr.*[38] and *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*,[39] we held that a photocopy of a document has no probative value and is inadmissible in evidence. Thus, the CA was correct in disregarding the said pieces of evidence.

Similarly, the certificate of title could not support petitioner's assertion. As aptly ruled by the CA, the fact that the land was registered in the name of *Evangelina Dazo-Imani married to Sina Imani* is no proof that the property was acquired during the spouses' coverture. Acquisition of title and registration thereof are two different acts. It is well settled that registration does not confer title but merely confirms one already existing.[40]

Indubitably, petitioner utterly failed to substantiate her claim that the property belongs to the conjugal partnership. Thus, it cannot be rightfully said that the CA reversed the RTC ruling without valid basis.

As a last ditch effort, petitioner asserts that the property is a road right of way; thus, it cannot be subject of a writ of execution.

The argument must be rejected because it was raised for the first time in this petition. In the trial court and the CA, petitioner's arguments zeroed in on the alleged conjugal nature of the property. It is well settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred

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[37] *Alba v. Court of Appeals*, 503 Phil. 451, 463 (2005).

[38] 389 Phil. 474 (2000).

[39] 265 SCRA 733, 757 (1996).

[40] *Francisco v. CA, supra* note 35, at 529.

by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.[41]

WHEREFORE, the petition is *DENIED*. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 93061 sustaining the validity of the writ of execution, the auction sale, and the certificate of sale are *AFFIRMED*.

SO ORDERED.

Carpio (Chairpeson), Peralta, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 187824. November 17, 2010]

FILINVEST DEVELOPMENT CORPORATION, *petitioner, vs.* **GOLDEN HAVEN MEMORIAL PARK, INC.,** *respondent.*

[G.R. No. 188265. November 17, 2010]

GOLDEN HAVEN MEMORIAL PARK, INC., *petitioner, vs.* **FILINVEST DEVELOPMENT CORPORATION,** *respondent.*

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[41] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

SYLLABUS

1. **CIVIL LAW; PROPERTY; BUYER IN GOOD FAITH; AS A RULE, TO PROVE GOOD FAITH THE BUYER OF REGISTERED LAND NEEDS ONLY SHOW THAT HE RELIED ON THE TITLE THAT COVERS THE PROPERTY; EXCEPTION.—** To prove good faith, the rule is that the buyer of registered land needs only show that he relied on the title that covers the property. But this is true only when, at the time of the sale, the buyer was unaware of any adverse claim to the property. Otherwise, the law requires the buyer to exercise a higher degree of diligence before proceeding with his purchase. He must examine not only the certificate of title, but also the seller's right and capacity to transfer any interest in the property. In such a situation, the buyer must show that he exercised reasonable precaution by inquiring beyond the four corners of the title. Failing in these, he may be deemed a buyer in bad faith.

2. **ID.; ID.; LAND REGISTRATION; ANNOTATION OF ADVERSE CLAIM; PURPOSE.—** The annotation of an adverse claim is intended to protect the claimant's interest in the property. The notice is a warning to third parties dealing with the property that someone claims an interest in it or asserts a better right than the registered owner. Such notice constitutes, by operation of law, notice to the whole world. Here, although the notice of adverse claim pertained to only one lot and Filinvest wanted to acquire interest in some other lots under the same title, the notice served as warning to it that one of the owners was engaged in double selling.

3. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; CANNOT BE AWARDED UNLESS THE CLAIMANT FIRST ESTABLISHES A CLEAR RIGHT TO MORAL DAMAGES. —** As to the award of exemplary damages, the Court sustains the CA ruling. This species of damages is allowed only in addition to moral damages such that exemplary damages cannot be awarded unless the claimant first establishes a clear right to moral damages. Here, since GHM failed to prove that it is entitled to moral damages, the RTC's award of exemplary damages had no basis.

4. **ID.; ID.; ATTORNEY'S FEES; WHEN GRANT THEREOF IS PROPER.—** [T]he grant of attorney's fees is proper. As the

RTC noted, this case has been pending since 1991, or for 19 years now. GHM was forced to litigate and incur expenses in order to protect its rights and interests.

APPEARANCES OF COUNSEL

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D E C I S I O N

ABAD, *J.*:

These cases are about which of two real estate developers, both buyers of the same lands, acted in good faith and has a better title to the same.

The Facts and the Case

Petronila Yap (Yap), Victoriano and Policarpio Vivar (the Vivars), Benjamin Cruz (Cruz), Juan Aquino (Aquino), Gideon Corpuz (Corpuz), and Francisco Sobremesana (Sobremesana), and some other relatives inherited a parcel of land in Las Piñas City covered by Transfer Certificate of Title (TCT) 67462 RT-1. Subsequently, the heirs had the land divided into 13 lots and, in a judicial partition, the court distributed four of the lots as follows: a) Lots 1 and 12 to Aquino; b) Lot 2 to Corpuz and Sobremesana; and (c) Lot 6 to Yap, Cruz, and the Vivars. The other lots were distributed to the other heirs.

On March 6, 1989 Yap, acting for herself and for Cruz and the Vivars, executed an agreement to sell Lot 6 in favor of Golden Haven Memorial Park, Inc. (GHM), payable in three installments. On July 31, 1989 another heir, Aquino, acting for himself and for Corpuz and Sobremesana, also executed an agreement to sell Lots 1, 2, and 12 in favor of GHM, payable in the same manner. In both instances, GHM paid the first installment upon execution of the contract.

On August 4, 1989 GHM caused to be annotated a Notice of Adverse Claim on TCT 67462 RT-1. On September 20, 1989 the sellers of the four lots wrote GHM that they were still working on the titling of the lots in their names and wanted to know if GHM was still interested in proceeding with their agreements. GHM replied in the affirmative on September 21, 1989 and said that it was just waiting for the sellers' titles so it can pay the second installments.

Sometime in August of 1989, Filinvest Development Corporation (Filinvest) applied for the transfer in its name of the titles over Lots 2, 4, and 5 but the Las Piñas Register of Deeds declined its application. Upon inquiry, Filinvest learned that Lot 8, a lot belonging to some other heir or heirs and covered by the same mother title, had been sold to Household Development Corporation (HDC), a sister company of GHM, and HDC held the owner's duplicate copy of that title. Filinvest immediately filed against HDC a petition for the surrender and cancellation of the co-owners' duplicate copy of TCT 67462 RT-1. Filinvest alleged that it bought Lots 1, 2, 6, and 12 of the property from their respective owners as evidenced by three deeds of absolute sale in its favor dated September 10, November 18, and December 29, 1989 and that Filinvest was entitled to the registrations of such sales.

On January 14, 1991 GHM filed against the sellers and Filinvest a complaint for the annulment of the deeds of sale issued in the latter's favor before the Regional Trial Court (RTC) of Las Piñas City in Civil Case 91-098. On March 16, 2006 the RTC rendered a decision after trial, declaring the contracts to sell executed by some of the heirs in GHM's favor valid and enforceable and the sale in favor of Filinvest null and void. Only Filinvest appealed among the defendants.

On November 25, 2008 the Court of Appeals (CA) affirmed the RTC decision with respect to the validity of the contract to sell Lot 6 in GHM's favor. But the CA declared the contracts to sell Lots 1, 2, and 12 in GHM's favor void and the sale of the same lots in favor of Filinvest valid.

Both parties filed their petitions for review before this Court, Filinvest in G.R. 187824, and GHM in G.R. 188265.

The Issue Presented

The issue presented in these cases is whether or not the contracts to sell that the sellers executed in GHM's favor covering the same lots sold to Filinvest are valid and enforceable.

The Court's Ruling

To prove good faith, the rule is that the buyer of registered land needs only show that he relied on the title that covers the property. But this is true only when, at the time of the sale, the buyer was unaware of any adverse claim to the property.[1] Otherwise, the law requires the buyer to exercise a higher degree of diligence before proceeding with his purchase. He must examine not only the certificate of title, but also the seller's right and capacity to transfer any interest in the property.[2] In such a situation, the buyer must show that he exercised reasonable precaution by inquiring beyond the four corners of the title.[3] Failing in these, he may be deemed a buyer in bad faith.[4]

Here, Filinvest was on notice that GHM had caused to be annotated on TCT 67462 RT-1, the mother title, as early as August 4, 1989 a notice of adverse claim covering Lot 6. This notwithstanding, Filinvest still proceeded to buy Lots 1, 2, 6, and 12 on September 10, November 18, and December 29, 1989.

Filinvest of course contends that, although the title carried a notice of adverse claim, that notice was only with respect to seller Yap's interest in Lot 6 and it did not affect Lots 1, 2, 12, and the remaining interests in Lot 6. The Court disagrees.

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[1] *Bautista v. Silva*, G.R. No. 157434, September 19, 2006, 502 SCRA 334, 347.

[2] *Orquiola v. Court of Appeals*, 435 Phil. 323, 331 (2002).

[3] *Instrade, Inc. v. Court of Appeals*, 395 Phil. 791, 802 (2000).

[4] *Sps. Castro v. Miat*, 445 Phil. 282, 298 (2003).

The annotation of an adverse claim is intended to protect the claimant's interest in the property. The notice is a warning to third parties dealing with the property that someone claims an interest in it or asserts a better right than the registered owner.[5] Such notice constitutes, by operation of law, notice to the whole world.[6] Here, although the notice of adverse claim pertained to only one lot and Filinvest wanted to acquire interest in some other lots under the same title, the notice served as warning to it that one of the owners was engaged in double selling.

What is more, upon inquiry with the Register of Deeds of Las Piñas, Filinvest also learned that the heirs of Andres Aldana sold Lot 8 to HDC and turned over the co-owner's duplicate copy of TCT 67462 RT-1 to that company which had since then kept the title. Filinvest (referred to below as FDC) admits this fact in its petition,[7] thus:

Sometime in August 1989, FDC applied with the Register of Deeds of Las Piñas for the transfer and registration of Lots 2, 4, and 5 in its name and surrendered the co-owners duplicate copy of TCT No. (67462) RT-1 given to it by the Vivar family, but the Register of Deeds of Las Piñas City refused to do the transfer of title in the name of FDC and instead demanded from FDC to surrender as well the other co-owner's duplicate copy of TCT No. (67462) RT-1 which was issued to the heirs of Andres Aldana. Upon further inquiry, FDC came to know that the heirs of Andres Aldana sold Lot 8 and delivered their co-owner's duplicate copy of TCT No. (67462) RT-1 to Household Development Corporation, a sister company of respondent GHMPI. FDC made representations to Household Development Corporation for the surrender of said co-owner's duplicate copy of TCT No. (67462) RT-1 to the Register of Deeds of Las Piñas City, but Household Development Corporation refused to do so.

Filinvest's knowledge that GHM, a competitor, had bought Lot 6 in which Filinvest was interested, that GHM had annotated

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[5] *Sajonas v. Court of Appeals*, 327 Phil. 689, 701-702 (1996).

[6] *Balatbat v. Court of Appeals*, 329 Phil. 858, 872-873 (1996).

[7] *Rollo* (G.R. 187824), pp. 22-23.

an adverse claim to that Lot 6, and that GHM had physical possession of the title, should have put Filinvest on its toes regarding the prospects it faced if it bought the other lots covered by the title in question. Filinvest should have investigated the true status of Lots 1, 2, 6, and 12 by asking GHM the size and shape of its interest in the lands covered by the same title, especially since both companies were engaged in the business of developing lands. One who has knowledge of facts which should have put him upon such inquiry and investigation cannot claim that he has acquired title to the property in good faith as against the true owner of the land or of an interest in it.[8]

The Court upholds the validity of the contracts between GHM and its sellers. As the trial court aptly observed, GHM entered into valid contracts with its sellers but the latter simply and knowingly refused without just cause to honor their obligations. The sellers apparently had a sudden change of heart when they found out that Filinvest was willing to pay more.

As to the award of exemplary damages, the Court sustains the CA ruling. This species of damages is allowed only in addition to moral damages such that exemplary damages cannot be awarded unless the claimant first establishes a clear right to moral damages.[9] Here, since GHM failed to prove that it is entitled to moral damages, the RTC's award of exemplary damages had no basis. But the grant of attorney's fees is proper. As the RTC noted, this case has been pending since 1991, or for 19 years now. GHM was forced to litigate and incur expenses in order to protect its rights and interests.

WHEREFORE, the Court *GRANTS* the petition in G.R. No. 188265 and *DISMISSES* the petition in G.R. 187824. The Court likewise *REVERSES and SETS ASIDE* the decision of the Court of Appeals dated November 25, 2008 in CA-G.R. No. CV 89448, and *REINSTATES* the decision of the Regional Trial Court in Civil Case 91-098 dated March 16, 2006 with

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[8] *Balatbat v. Court of Appeals*, *supra* note 6, at 874.

[9] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 396-397, citing *Mahinay v. Velasquez, Jr.*, 464 Phil. 146, 150 (2004).

the *MODIFICATION* that the award of exemplary damages is *DELETED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 187872. November 17, 2010]

STRATEGIC ALLIANCE DEVELOPMENT CORPORATION, *petitioner, vs.* **STAR INFRASTRUCTURE DEVELOPMENT CORPORATION, ET AL.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; INTRA-CORPORATE DISPUTE; DEFINED AND CONSTRUED. — An intra-corporate dispute is understood as a suit arising from intra-corporate relations or between or among stockholders or between any or all of them and the corporation. Applying what has come to be known as the relationship test, it has been held that the types of actions embraced by the foregoing definition include the following suits: (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 insofar as its franchise, permit or license to operate is concerned; and, (d) among the stockholders, partners or associates themselves. As the definition is broad enough to cover all kinds of controversies between stockholders and corporations, the traditional interpretation was to the effect that the

relationship test brooked no distinction, qualification or any exemption whatsoever. However, the unqualified application of the relationship test has been modified on the ground that the same effectively divests regular courts of jurisdiction over cases for the sole reason that the suit is between the corporation and/or its corporators. It was held that 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. Under the nature of the controversy test, the dispute must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation. The combined application of the relationship test and the nature of the controversy test has, consequently, become the norm in determining whether a case is an intra-corporate controversy or is purely civil in character.

2. ID.; ID.; ID.; REPUBLIC ACT NO. 8799 (THE SECURITIES REGULATION CODE); PROVIDES FOR THE TRANSFER OF JURISDICTION OVER ALL CASES ENUMERATED UNDER SECTION 5 OF PRESIDENTIAL DECREE NO. 902-A FROM THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO THE REGIONAL TRIAL COURTS (RTCS) DESIGNATED BY THIS COURT AS SPECIAL COMMERCIAL COURTS (SCCS).— In addition to being conferred by law, it bears emphasizing that the jurisdiction of a court or tribunal over the case is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims asserted therein. Moreover, pursuant to Section 5.2 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, the jurisdiction of the SEC over all cases enumerated under Section 5 of Presidential Decree No. 902-A has been transferred to RTCs designated by this Court as pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000. Thus, Section 1(a), Rule 1 of the *Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules)* provides as follows: "SECTION 1. (a) *Cases covered.* — These Rules shall govern the procedure to be observed in civil cases involving the following: (1) *Devices or schemes employed by, or any*

act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association; (2) *Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;* (3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations; (4) Derivative suits; and (5) Inspection of corporate books."

3. **ID.; ID.; ID.; SPECIAL COMMERCIAL COURTS (SCCS); JURISDICTION; THE DESIGNATION OF THE SCCS AS SUCH HAS NOT IN ANY WAY LIMITED THEIR JURISDICTION TO HEAR AND DECIDE CASES OF ALL NATURE, WHETHER CIVIL, CRIMINAL OR SPECIAL PROCEEDINGS.—** [U]nlike the SEC which is a tribunal of limited jurisdiction, Special Commercial Courts (SCCs) like the RTC are still competent to tackle civil law issues incidental to intra-corporate disputes filed before them. In *G.D. Express Worldwide N.V. vs. Court of Appeals*, this Court ruled as follows: It should be noted that the SCCs are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799 directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter. The designation of certain RTC branches to handle specific cases is nothing new. For instance, pursuant to the provisions of R.A. No. 6657 or the Comprehensive Agrarian Reform Law, the Supreme Court has assigned certain RTC branches to hear and decide cases under Sections 56 and 57 of R.A. No. 6657. The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in

any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

4. REMEDIAL LAW; RULES OF COURT; RULES OF PROCEDURE OUGHT NOT TO BE APPLIED IN A VERY RIGID, TECHNICAL SENSE, FOR THEY HAVE BEEN ADOPTED TO HELP SECURE SUBSTANTIAL JUSTICE; SUSTAINED.— The rule is settled that 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. Considering that litigation is not a game of technicalities courts have been exhorted, time and again, to afford every litigant the amplest opportunity for the proper and just determination of his case free from the constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that courts are empowered to suspend its rules, when the rigid application thereof tends to frustrate rather than promote the ends of justice. No less than Section 3, Rule 1 of the *Interim Rules* provides that the provisions thereof are to "be liberally construed in order to promote their objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding."

5. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; CONSTRUED; ELEMENTS.— A provisional remedy which has, for its object, the preservation of the ***status quo***, preliminary injunction may be resorted to by a party in order to preserve and protect certain rights and interests during the pendency of an action. By both law and jurisprudence, said provisional writ may be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage.

APPEARANCES OF COUNSEL

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Aspiras & Aspiras Law Offices for Star Infrastructure Development Corp.

Fortun Narvasa & Salazar Law Offices for Robert Wong.
Tabalingcos & Associates for B.S. Tabalingcos and R. Caraos.
Castillo Laman Tan Pantaleon & San Jose Law Offices for A.Z. Yujuico & B.C. Sumbilla.
Tan & Concepcion for Cypress Tree Capital Investments, Inc. & C. Laureta.

D E C I S I O N

PEREZ, *J.*:

The classification of causes of action as intra-corporate disputes is at the heart of this petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, assailing the 22 December 2008 Decision rendered by the Ninth Division of the Court of Appeals (CA) in CA-G.R. No. 96945[1] as well as the 30 April 2009 resolution which denied the motion for reconsideration of the same decision.[2]

The Facts

Petitioner Strategic Alliance Development Corporation (STRADEC) is a domestic corporation primarily engaged in the business of a development company in all the elements and details thereof, with principal place of business at Poblacion Sur, Bayambang, Pangasinan.[3] Along with five individuals[4] and three other corporations,[5] STRADEC incorporated respondent Star Infrastructure Development Corporation (SIDC) on 28 October 1997, for the purpose of engaging in the general construction business. As such incorporator, STRADEC fully paid and owned 2,449,998 shares or 49% of the 5,000,000

[1] *Rollo*, pp. 64-88.

[2] *Id.* at 90-92.

[3] *Id.* at 11, 164-172.

[4] Cezar T. Quiambao, Melvin B. Nazareno, Jaime H. Pajara, Robert L. Wong and Leopoldo P. Campos.

[5] JH Pajara Construction Corporation, William Uy Construction Corporation, Betonval Ready Concrete Incorporated.

shares of stock into which SIDC's authorized capital stock of ₱5,000,000.00 were divided.[6] Pursuant to an amendment of its Articles of Incorporation on 5 June 1998, SIDC transferred its principal place of business from Pasig City to Poblacion Sur, Bayambang, Pangasinan[7] and, later, to Lipa, Batangas.[8]

On 8 October 2004, respondents Aderito Z. Yujuico and Bonifacio C. Sumbilla, in their respective capacities as then President and Treasurer of STRADEC, executed a Promissory Note for and in consideration of a loan in the sum of ₱10,000,000.00 ostensibly extended in favor of said corporation by respondent Robert L. Wong, one of the incorporators of SIDC.[9] As security for the payment of the principal as well as the stipulated interests thereon, a pledge constituted over STRADEC's entire shareholdings in SIDC was executed by respondent Yujuico on 1 April 2005.[10] In view of STRADEC's repeated default on its obligations,[11] however, the shares thus pledged were sold by way of the 26 April 2005 notarial sale conducted in Makati City by respondent Raymond M. Caraos. Having tendered the sole bid of ₱11,800,000.00,[12] respondent Wong was issued the corresponding certificates of stocks by respondent Bede S. Tabalingcos, SIDC's Corporate Secretary for the years 2004 and 2005, after the transfer was recorded in the corporation's stock and transfer book.[13]

On 17 July 2006, Cezar T. Quiambao, in his capacity as President and Chairman of the Board of Directors of STRADEC, commenced the instant suit with the filing of the petition which was docketed as Civil Case No. 7956 before Branch 2 of the

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[6] *Rollo*, pp. 182-194.

[7] *Id.* at 180.

[8] *Id.* at 332.

[9] *Id.* at 401-402.

[10] *Id.* at 429-430.

[11] *Id.* at 403-407.

[12] *Id.* at 409-410.

[13] *Id.* at 325.

Regional Trial Court (RTC) of Batangas City, sitting as a Special Commercial Court (SCC).[14] In its 31 July 2006 amended petition, STRADEC alleged, among other matters, that respondents Yujuico and Sumbilla were not authorized to enter into any loan agreement with respondent Wong, much less pledge its SIDC shareholdings as security therefor; that it did not receive the proceeds of the supposed loan and immediately apprised SIDC of the irregularity of the transaction upon discovering the same; that it was only able to ascertain the details of the transaction and transfer of the subject shares from a narration thereof in a Certification dated 3 September 2005 issued by respondent Tabalingcos; and, that respondent Wong subsequently sold the shares to respondent Cypress Tree Capital Investment, Inc. (CTCII), a corporation he formed with members of his own family on 5 July 2005.[15]

STRADEC further averred that it already caused the National Bureau of Investigation (NBI) to conduct an investigation of the unlawful transfer of its shares; that it was altogether eased out during the 30 July 2005 SIDC annual stockholders' meeting where respondent Wong was acknowledged as the holder of the subject shares and the further transfer of the corporation's principal place of business to Lipa, Batangas was approved; and, that despite being left out in the notice sent by respondent Cynthia Laureta, SIDC's new Corporate Secretary, it fielded a proxy to the 20 July 2006 SIDC stockholders' special meeting where the increase of the corporation's authorized capital stock to ₱850,000,000.00 was discussed together with the decrease of the number of its directors from nine to five. In addition to a temporary restraining order and/or writ of preliminary injunction to enjoin, among other matters, CTCII's exercise of proprietary rights over the subject shares, SIDC's implementation of the resolutions passed during the 20 July 2006 stockholders' meeting and any action thereon by respondent Securities and Exchange Commission (SEC), STRADEC prayed for the grant of the following reliefs: (a) the nullification of the loan and pledge

[14] *Id.* at 283-317.

[15] *Id.* at 318-356.

respondents Yujuico and Sumbilla contracted with respondent Wong; (b) the avoidance of the notarial sale conducted by respondent Caraos; (c) the cancellation of the transfer of its shares in SIDC's books; (d) the invalidation of the 30 July 2005 and 20 July 2006 SIDC stockholders' meetings; and, (e) the grant of its claims for attorney's fees and the costs.[16]

On 30 August 2006, the RTC issued a resolution denying STRADEC's application for writ of preliminary injunction on the ground that the grant thereof would effectively dispose of the main action without trial; and, that the right to the relief sought was, as yet, uncertain in view of the pendency of cases before the courts of Pasig and Urdaneta City involving, among other issues, the ownership of STRADEC's shares and the legitimacy of its two opposing sets of directors.[17] Anent STRADEC's amended petition as aforesaid, the RTC issued the following order on the same date:

> The Amended Petition dated July 31, 2006 presents four (4) main causes of action.
>
> The Court holds that as for the first and second causes of action, to wit: *First – declaration of nullity of the supposed loan extended by respondent Wong to STRADEC and the Deed of Pledge covering STRADEC's entire shareholding in SIDC; Second – declaration of nullity of the 26 April 2005 auction sale of STRADEC's entire shareholdings in SIDC in Makati City*, this Court is the wrong venue; The Rules of Court provides that all other actions (other than real) may be commenced and tried where the plaintiff or any of the principal plaintiffs resides; or where the defendant or any of the principal defendants resides, at the election of the plaintiff. By the foregoing, STRADEC should file the case, under the first cause of action, either in Bayambang, Pangasinan, its principal place of business as stated in the Articles of Incorporation or in any of the residences of Yujuico, Sumbilla or Wong. The same holds true with respect to the second cause of action. The matter is between STRADEC and its alleged erring officers over the alleged irregular auction sale of STRADEC's shareholdings in SIDC, hence, venue should be at the residences of the parties, as plaintiff may elect, as discussed above.

[16] *Id.* at 330-356.

[17] *Id.* at 157-159.

Although this Court is not the correct venue, the Court will not dismiss the case but however will not act thereon.

As for the third and fourth causes of action which are *the cancellation of registration of fraudulent transfers involving STRADEC's shareholding in SIDC* and *the declaration of invalidity of the 30 July 2005 annual stockholders meeting and 20 July 2006 special stockholder's meeting of SIDC*, the Court resolves to hold in abeyance any action thereon until after the Supreme Court shall have rendered a ruling as to who between the conflicting two (2) sets of Board of Directors of STRADEC should be recognized as legitimate, because it is only then that this Court could make a determination on the issue raised by the respondents on the authority of Mr. Quiambao to represent STRADEC in this suit.

SO ORDERED.[18]

Dissatisfied with the foregoing order, STRADEC, through its counsel of record, interposed an oral motion for reconsideration on the ground that the solidary liability the individual respondents and SIDC incurred for the tortious transfer of the subject shares justified the laying of venue at the latter's principal place of business in Batangas; that the pledge executed by respondent Yujuico violated the 18 October 2004 temporary restraining order issued by Branch 48 of the RTC of Urdaneta City in Civil Case No. U-14 (SCC-2874), the intra-corporate dispute earlier filed to determine STRADEC's legitimate Directors and Officers; and, that pursuant to the 25 November 2004 order issued in the same case, a writ of preliminary injunction had been issued enjoining respondent Yujuico and his cohorts from acting as STRADEC's Officers and committing acts inimical to its interests.[19] The motion was, however, denied for lack of merit in the second 30 August 2006 order issued by the RTC upon the finding that the theory of solidary liability foisted by STRADEC had no basis in its pleadings and that the injunctive writ issued in Civil Case No. U-14 (SCC-2874) was not determinative of the issue of ownership of its shares.[20]

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[18] *Id.* at 160-161.

[19] *Id.* at 670-680.

[20] *Id.* at 162-163.

Aggrieved, STRADEC filed the petition for *certiorari* docketed before the CA as CA-G.R. SP No. 96945, on the ground that the RTC acted without or in excess of jurisdiction or with grave abuse of discretion in finding that venue was improperly laid, in holding in abeyance further proceedings in the case and in denying its application for a writ of preliminary injunction.[21] In receipt of respondents' separate comments[22] to the petition and the memoranda subsequently filed by the parties,[23] the Ninth Division of the CA rendered the herein assailed 22 December 2008 decision,[24] discounting the grave abuse of discretion STRADEC imputed against the RTC upon the following findings and conclusions, to wit:

1. STRADEC's first and second causes of action for nullification of the pledge constituted over its shares and the subsequent notarial sale thereof are purely civil in nature and were, therefore, erroneously joined with its third and fourth causes of action for invalidation of the registration of the transfer in SIDC's books as well as its annual and special stockholders' meetings;

2. Aside from correctly applying the rule on venue in personal actions for STRADEC's first and second causes of action, the RTC cannot be faulted for not ordering the dismissal of the same since misjoinder of causes of action does not involve a question of jurisdiction and the discretionary authority to order separation of the misjoined causes of action necessarily includes the authority to stay proceedings with respect thereto;

3. Further proceedings with respect to the third and fourth causes of action were also correctly held in abeyance by the RTC in view of the pendency of cases in other courts involving, among other issues, the ownership of STRADEC's shares, its legitimate Directors and Corporate Officers and the authority of Cezar T. Quiambao to act for and its behalf; and

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[21] *Id.* at 93-156.

[22] *Id.* at 371-395; 434-481.

[23] *Id.* at 756-890.

[24] *Id.* at 64-88.

4. The pendency of said cases discounts the existence of a clear and unmistakable right on the part of STRADEC as would justify the grant of its application to an injunctive writ which would, at any rate, effectively dispose of the main case without trial.[25]

STRADEC's motion for reconsideration[26] of the foregoing decision was denied in the 30 April 2009 resolution issued in the case,[27] hence, this petition.

The Issues

STRADEC urges the reversal and setting aside of the assailed CA decision and resolution on the following grounds:

THE COURT OF APPEALS HAS NOT ONLY DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT, BUT HAS ALSO SO FAR SANCTIONED THE LOWER COURT'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS HONORABLE COURT'S POWER OF SUPERVISION, IN THAT –

A. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CHARACTERIZING THE FIRST AND SECOND CAUSES OF ACTION IN CIVIL CASE NO. 7956 AS INTRA-CORPORATE AND PLACE ITS VENUE AND JURISDICTION IN RTC BATANGAS CITY.

B. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT ASCRIBING GRAVE ABUSE OF DISCRETION TO RTC BATANGAS CITY'S REFUSAL TO APPLY THE RULES OF COURT AFTER RULING THAT IT WAS NOT THE PROPER

[25] *Id.* at 75-86.

[26] *Id.* at 891-917.

[27] *Id.* at 90-92.

VENUE FOR THE FIRST AND SECOND CAUSES OF ACTION IN CIVIL CASE NO. 7956.

C. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT ASCRIBING GRAVE ABUSE OF DISCRETION TO RTC BATANGAS CITY'S RULING TO HOLD IN ABEYANCE FURTHER PROCEEDINGS WITH RESPECT TO THE THIRD AND FOURTH CAUSES OF ACTION IN CIVIL CASE NO. 7956 BY REASON OF AN UNRELATED PENDING ACTION.

D. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT ASCRIBING GRAVE ABUSE TO RTC BATANGAS CITY'S DENIAL OF PETITIONER'S APPLICATION FOR A WRIT OF PRELIMINARY INJUNCTION DESPITE A SHOWING OF A CLEAR AND POSITIVE RIGHT AND A CONTINUING VIOLATION BY THE RESPONDENTS THEREOF.[28]

The Court's Ruling

We find merit in the petition.

An intra-corporate dispute is understood as a suit arising from intra-corporate relations[29] or between or among stockholders or between any or all of them and the corporation.[30] Applying what has come to be known as the relationship test, it has been held that the types of actions embraced by the foregoing definition include the following suits: (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 insofar as its franchise, permit or license to operate is concerned; and, (d) among the stockholders, partners or associates themselves.[31] As the definition is broad enough to

[28] *Id.* at 26-27.

[29] *Pilipinas Bank v. Court of Appeals,* 383 Phil.18, 27 (2000).

[30] *Sps. Abejo v. Judge Dela Cruz,* 233 Phil. 668, 681 (1987).

[31] *Union Glass & Container Corp., et al. v. SEC, et al.*, 211 Phil. 222, 230-231 (1983).

cover all kinds of controversies between stockholders and corporations, the traditional interpretation was to the effect that the relationship test brooked no distinction, qualification or any exemption whatsoever.[32]

However, the unqualified application of the relationship test has been modified on the ground that the same effectively divests regular courts of jurisdiction over cases for the sole reason that the suit is between the corporation and/or its corporators. It was held that 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.[33] Under the nature of the controversy test, the dispute must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation.[34] The combined application of the relationship test and the nature of the controversy test has, consequently, become the norm in determining whether a case is an intra-corporate controversy or is purely civil in character.

In the case at bench, STRADEC's first and second causes of action seek the nullification of the loan and pledge over its SIDC shareholding contracted by respondents Yujuico, Sumbilla and Wong as well as the avoidance of the notarial sale of said shares conducted by respondent Caraos. STRADEC's 31 July 2006 amended petition significantly set forth the following allegations common to its main causes of action, to wit:

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[32] *Fabia v. Court of Appeals*, 437 Phil. 389, 398 (2002).

[33] *Viray v. Court of Appeals*, G.R. No. 92481, 9 November 1990, 191 SCRA 308, 323.

[34] *Reyes v. Regional Trial Court of Makati, Branch 142*, G.R. No. 165744, 11 August 2008, 561 SCRA 593, 611.

"4. Sometime in June 2005, STRADEC's President and Chairman of the Board of Directors, Cezar T. Quiambao, received information that STRADEC had been divested of its shareholdings in SIDC.

Apparently, all of STRADEC's 49% shareholdings in SIDC were transferred and placed in the name of respondent Wong, another incorporator of SIDC, upon the instance of respondents Yujuico and Sumbilla, former officers of STRADEC.

5. However, respondents Yujuico and Sumbilla, despite being former officers of STRADEC, never possessed authority to transact any business in behalf of STRADEC involving any of its corporate assets and investments, including STRADEC's shareholdings in SIDC.

6. Upon learning of this highly irregular development, STRADEC immediately called the attention of SIDC's Board of Directors and officers and requested official confirmation of the recording of any such sale in the books of SIDC cautioning that STRADEC had not authorized the sale or transfer of its shares in SIDC.

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7. To date, however, STRADEC has not received any response from SIDC's Board of Directors and officers.

8. Instead, STRADEC was able to secure from a secondary source a copy of the *Certification* dated 23 September 2005 issued by respondent Tabalingcos, SIDC's Corporate Secretary, narrating how all of STRADEC's shareholdings in SIDC, among others, were acquired by respondent Wong by reason of respondents Yujuico and Sumbilla's unauthorized acts.

The same *Certification* states that the shareholdings were in turn transferred by respondent Wong to respondent CTCII, which as STRADEC would later learn was a newly-formed corporation of respondent Wong's family;

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11. STRADEC was able to get hold of a document entitled Deed of Pledge dated 08 October 2004 purportedly signed by respondents Yujuico and Sumbilla in behalf of STRADEC as pledgor, and by respondent Wong as pledgee.

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12. The *Deed of Pledge* made it appear, among others, that for and in partial consideration of a loan from respondent Wong in the principal amount of only TEN MILLION PESOS (₱10,000,000.00), STRADEC pledged its 2,449,998 shares of stocks in SIDC worth TWO HUNDRED FORTY-FOUR MILLION, NINE HUNDRED NINETY-NINE THOUSAND EIGHT HUNDRED PESOS (₱244,999,800.00).

13. STRADEC, however, had never authorized respondents Yuhuico and Sumbilla to enter into any loan agreement with respondent Wong, much less pledge its shareholdings in SIDC.

14. Neither has STRADEC at any time received any amount of loan personally from Mr. Wong.

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15. Moreover, a subsequent examination of the Notarial Records of respondent Caraos for the year 2004 with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court of Makati City revealed that the Deed of Pledge is not one of the documents notarized by Atty. Caraos during the period of September 2003 to December 2004.

16. STRADEC was also able to get hold of a *Certificate of Sale* issued by respondent Caraos on 26 April 2005 stating that an auction sale was held on 26 April 2005 wherein all of STRADEC's 2,449,998 shares of stock in SIDC, among others, were sold to respondent Wong to satisfy STRADEC's alleged outstanding obligation in the amount of ELEVEN MILLION EIGHT HUNDRED THOUSAND PESOS (₱11,800,000.00);

From the *Certificate of Sale*, it appears that respondent Caraos proceeded with the auction sale without any notice to STRADEC as the supposed pledgor, and despite the fact that that (sic) respondent Wong, the supposed pledgee, was the only bidder.

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17. Incidentally, respondent CARAOS and SIDC's Corporate Secretary, Atty. Tabalingcos, are partners of the same law firm;

18. STRADEC has good reasons to believe that while it immediately informed the officers of SIDC of the irregularities attending the divestment of its shareholdings in said respondent corporation, its Corporate Secretary, respondent Tabalingcos,

apparently went on to register the transfers in the corporation's stock and transfer book, as evidenced by SIDC's *General Information Sheet* for 2005, wherein it was annotated that 'the shares of STRADEC or Strategic Alliance Development Corp. has been acquired by Mr. Wong in view of the Notarial Sale conducted on April 26, 2005.

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19. Worse, it would appear now that respondent Wong had likewise unlawfully transferred STRADEC's 49% shareholdings in SIDC to his newly formed Corporation, respondent CTCII.

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Applying the relationship test, we find that STRADEC's first and second causes of action qualify as intra-corporate disputes since said corporation and respondent Wong are incorporators and/or stockholders of SIDC. Having acquired STRADEC's shares thru the impugned notarial sale conducted by respondent Caraos, respondent Wong appears to have further transferred said shares in favor of CTCII, a corporation he allegedly formed with members of his own family. By reason of said transfer, CTCII became a stockholder of SIDC and was, in fact, alleged to have been recognized as such by the latter and its corporate officers. To our mind, these relationships were erroneously disregarded by the RTC when it ruled that venue was improperly laid for STRADEC's first and second causes of action which, applying Section 2, Rule 4 of the *1997 Rules of Civil Procedure*,[36] should have been filed either at the place where it maintained its principal place of business or where respondents Yujuico, Sumbilla and Wong resided.

Considering that they fundamentally relate to STRADEC's status as a stockholder and the alleged fraudulent divestment of its stockholding in SIDC, the same causes of action also qualify as intra-corporate disputes under the nature of the

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[35] *Rollo*, pp. 323-329.

[36] Sec. 2. *Venue of personal actions.* – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

controversy test. As part of the fraud which attended the transfer of its shares, STRADEC distinctly averred, among other matters, that respondents Yujuico and Sumbilla had no authority to contract a loan with respondent Wong; that the pledge executed by respondent Yujuico was simulated since it did not receive the proceeds of the loan for which its shares in SIDC were set up as security; that irregularities attended the notarial sale conducted by respondent Caraos who sold said shares to respondent Wong; that the latter unlawfully transferred the same shares in favor of CTCII; and, that SIDC and its officers recognized and validated said transfers despite being alerted about their defects. Ultimately, the foregoing circumstances were alleged to have combined to rid STRADEC of its shares in SIDC and its right as a stockholder to participate in the latter's corporate affairs.

In addition to being conferred by law,[37] it bears emphasizing that the jurisdiction of a court or tribunal over the case is determined by the allegations in the complaint[38] and the character of the relief sought,[39] irrespective of whether or not the plaintiff is entitled to recover all or some of the claims asserted therein.[40] Moreover, pursuant to Section 5.2 of Republic Act No. 8799,[41] otherwise known as the Securities Regulation Code, the jurisdiction of the SEC over all cases enumerated under

[37] *Deltaventures Resources, Inc. v. Cabato*, 384 Phil. 252, 259-260 (2000).

[38] *Gochan v. Young*, 406 Phil. 663, 679 (2001).

[39] *Sunny Motor Sales, Inc. v. Court of Appeals, et al.*, 415 Phil. 515, 520 (2001).

[40] *Intestate Estate of Alexander T. Ty v. Court of Appeals*, 408 Phil. 792, 798 (2001).

[41] 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.

Section 5 of Presidential Decree No. 902-A has been transferred to RTCs designated by this Court as SCCs[42] pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000. Thus, Section 1(a), Rule 1 of the *Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules)* provides as follows:

"SECTION 1. (a) *Cases covered.* — These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) *Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association*;

(2) *Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively*;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books." (Italics supplied)

In upholding the RTC's pronouncement that venue was improperly laid, the CA ruled that STRADEC's first and second causes of action were not intra-corporate disputes because the issues pertaining thereto were civil in nature. In support of the foregoing conclusion, the CA cited *Speed Distributing Corporation vs. Court of Appeals*[43] where this Court essentially ruled out the existence of an intra-corporate dispute from an action instituted by the wife for the nullification of the transfer of a property between corporations of which her deceased husband

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[42] *Atwel v. Concepcion Progressive Association, Inc.*, G.R. No. 169370, 14 April 2008, 551 SCRA 272, 279-280.

[43] G.R. No. 149351, 469 Phil. 739 (2004).

was a stockholder. The CA also relied on this Court's pronouncement in *Nautica Canning Corporation vs. Yumul*[44] to the effect, among others, that an action to determine the validity of the transfer of shares from one stockholder to another is civil in nature and is, therefore, cognizable by regular courts and not the SEC.[45] In addition to the fact that the first case involved a civil action instituted against corporations by one who was not a stockholder thereof, however, STRADEC correctly points out that, unlike the second case, the limited jurisdiction of the SEC is not in issue in the case at bench.

Even prescinding from the different factual and legal milieus of said cases, the CA also failed to take into consideration the fact that, unlike the SEC which is a tribunal of limited jurisdiction,[46] SCCs like the RTC are still competent to tackle civil law issues incidental to intra-corporate disputes filed before them. In *G.D. Express Worldwide N.V. vs. Court of Appeals*,[47] this Court ruled as follows:

> It should be noted that the SCCs are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799 directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter.
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> The designation of certain RTC branches to handle specific cases is nothing new. For instance, pursuant to the provisions of R.A. No. 6657 or the Comprehensive Agrarian Reform Law, the Supreme Court has assigned certain RTC branches to hear and decide cases under Sections 56 and 57 of R.A. No. 6657.
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> The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting

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[44] G.R. No. 164588, 19 October 2005, 473 SCRA 415.

[45] *Rollo*, pp. 77-79.

[46] *Yap Sumndad v. Harrigan*, 430 Phil. 612, 624 (2002).

[47] G.R. No. 136978, 8 May 2009, 587 SCRA 333.

as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

Viewed in the foregoing light and the intra-corporate nature of STRADEC's first and second causes of action, the CA clearly erred in upholding the RTC's finding that venue therefor was improperly laid. Given that the question of venue is decidedly not jurisdictional and may, in fact, be waived,[48] said error was further compounded when the RTC handed down its first 30 August 2006 order even before respondents were able to file pleadings squarely raising objections to the venue for said causes of action.[49] Pursuant to Section 5, Rule 1 of the *Interim Rules*,[50] at any rate, it cannot be gainsaid that STRADEC correctly commenced its petition before the RTC exercising jurisdiction over SIDC's principal place of business which was alleged to have been transferred from Bayambang, Pangasinan to Lipa, Batangas.[51] It matters little that STRADEC, as pointed out by respondents, also questions the validity of the 30 July 2005 SIDC stockholders' annual meeting where the aforesaid change in the address of its principal place of business was allegedly approved. Said matter should be properly threshed out in the proceedings before the RTC alongside such issues as the validity of the transfers of STRADEC's shares to respondents Wong and CTCII, the propriety of the recording of said transfers in SIDC's books, STRADEC's status as a stockholder of SIDC, the legality of the 20 July 2006 SIDC stockholders' special meeting or, for that matter, Cezar T. Quiambao's authority to represent STRADEC in the case at bench.

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[48] *Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Paranaque City*, 398 Phil. 626, 632 (2000).

[49] *Rollo*, pp. 1000; 1029; 1085.

[50] SECTION 5. *Venue.* — All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located.

[51] *Rollo*, p. 332.

The rule is settled that rules of procedure ought not to be applied in a very rigid, technical sense,[52] for they have been adopted to help secure – not override – substantial justice.[53] Considering that litigation is not a game of technicalities[54] courts have been exhorted, time and again, to afford every litigant the amplest opportunity for the proper and just determination of his case free from the constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that courts are empowered to suspend its rules, when the rigid application thereof tends to frustrate rather than promote the ends of justice.[55] No less than Section 3, Rule 1 of the *Interim Rules* provides that the provisions thereof are to "be liberally construed in order to promote their objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding."

The CA also erred in upholding the RTC's suspension of proceedings for STRADEC's third and fourth causes of action assailing the registration of the transfers of its shares as well as the 30 July 2005 annual meeting and 20 July 2006 special meeting of SIDC's stockholders, in view of the pendency of actions in other courts involving ownership of the shares into which STRADEC's own capital stock has been divided and its legitimate directors and officers. On the principle that a corporation is a legal entity with a personality separate and distinct from its individual stockholders or members and from that of its officers who manage and run its affairs,[56] we find that said other actions have little or no bearing to the issues set forth in STRADEC's amended petition which, at bottom, involve the transfer of its own shareholding in SIDC and its status and rights as such stockholder. The record also shows that the impugned loan transaction was contracted by respondents Yujuico and Sumbilla

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[52] *Ramiscal, Jr. v. Hon. Sandiganbayan*, 487 Phil. 384, 400 (2004).

[53] *Remulla v. Manlongat*, 484 Phil. 832, 841 (2004).

[54] *Fulgencio v. National Labor Relations Commission*, 868 Phil. 881 (2003).

[55] *Thermphil, Inc. v. Court of Appeals*, 421 Phil. 589, 595-596 (2001).

[56] *PNB v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894 (2002).

on 8 October 2004 or before the 10 December 2004 election of STRADEC's Board of Directors conducted pursuant to the 25 November 2004 order issued in Civil Case No. U-14 (SCC-2874). Thus, even the restoration of *status quo ante* in said case pursuant to this Court's 29 January 2007 decision in G.R. No. 168639, entitled *Alderito Yujuico, et al. vs. Cezar T. Quiambao, et al.*[57] is no hindrance to the determination of the issues of want of authority and consideration for the transfer of STRADEC's shares.

Considering that the determination of the factual and legal issues presented in the case can proceed independent of those being litigated in the other cases filed against each other by the members of STRADEC's Board of Directors, we find that the CA finally erred in denying STRADEC's application of a writ of preliminary injunction to restrain (a) CTCII from further exercising proprietary rights over the subject shares; (b) SIDC and its officers from recognizing the transfer or further transfers of the same; (c) the implementation of the resolutions passed during the 20 July 2006 SIDC stockholders' special meeting; and (d) the SEC from acting on any report submitted in respect thereto. A provisional remedy which has, for its object, the preservation of the ***status quo***,[58] preliminary injunction may be resorted to by a party in order to preserve and protect certain rights and interests during the pendency of an action.[59] By both law and jurisprudence, said provisional writ may be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage.[60]

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[57] *Rollo*, pp. 1046-1065.

[58] *Ocampo v. Sison Vda. De Fernandez*, G.R. No. 164529, 19 June 2007, 525 SCRA 79, 94.

[59] *Buyco v. Baraquia*, G.R. No. 177486, 21 December 2009, 608 SCRA 699, 704.

[60] *Samahan ng Masang Pilipino sa Makati, Inc. (SMPMI) v. Bases Conversion Development Authority (BCDA)*, G.R. No. 142255, 26 January 2007, 513 SCRA 88, 98.

As the owner, STRADEC is undoubtedly possessed of clear and unmistakable rights over the subject SIDC shares which respondent Yujuico pledged in favor of respondent Wong. Unless collectively restrained, the aforesaid acts will completely divest STRADEC of its shares and unfairly deprive it of participation in SIDC's corporate affairs pending the determination of the validity of the impugned transfers. Given that the parties have already submitted their arguments for and against the writ of preliminary injunction sought, STRADEC is, however, required to put up an injunction bond pursuant to Section 1, Rule 10 of the *Interim Rules*.[61] Conditioned to answer for damages respondents may sustain as a consequence of the issuance of the writ,[62] the amount of the bond is fixed at ₱10,000,000.00 which is equivalent to the supposed loan for which STRADEC's shares were pledged by respondent Yujuico.

WHEREFORE, premises considered, the petition is *GRANTED* and the assailed decision and resolution are, accordingly, *REVERSED* and *SET ASIDE*. In lieu thereof, another is entered *ORDERING* the resumption of proceedings in Civil Case No. 7956 without further delay. Subject to the posting of the requisite bond in the sum of ₱10,000,000.00, STRADEC's application for a writ of preliminary injunction is likewise *GRANTED*.

SO ORDERED.

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

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[61] SECTION 1. *Provisional remedies.* — A party may apply for any of the provisional remedies provided in the Rules of Court as may be available for the purposes. However, no temporary restraining order or status quo order shall be issued save in exceptional cases and only after hearing the parties and the posting of a bond.

[62] *Limitless Potentials, Inc. v. Court of Appeals,* G. R. No. 164459, 24 April 2007, 522 SCRA 70, 83.

[*] Additional member in lieu of Associate Justice Mariano C. del Castillo per Special Order No. 913 dated 2 November 2010.

FIRST DIVISION

[G.R. No. 190462. November 17, 2010]

STEEL CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **EQUITABLE PCI BANK, INC., (now known as BDO UNIBANK, INC.),** *respondent.*

[G.R. No. 190538. November 17, 2010]

DEG-DEUTSCHE INVESTITIONS-UND ENTWICKLUNGSGESELLSCHAFT MBH, *petitioner, vs.* **EQUITABLE PCI BANK, INC., (now known as BDO UNIBANK, INC.) and STEEL CORPORATION OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION OF ACTIONS; EXPRESSLY AUTHORIZED BY THE RULES.— Consolidation of actions is expressly authorized under Sec. 1, Rule 31 of the Rules of Court: Section 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Likewise, Rule 3, Sec. 3 of the 2002 Internal Rules of the CA adopts the same rule: Sec. 3. *Consolidation of Cases*. – When related cases are assigned to different Justices, they may be consolidated and assigned to one Justice. (a) At the instance of a party with notice to the other party; or at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties, consolidation may be allowed when the cases involve the same parties and/or related questions of fact and/or law. (b) Consolidated cases shall pertain to the Justice – (1) To whom the case with the lowest docket number is assigned, if they are of the same kind; (2) To whom the criminal case with

the lowest number is assigned, if two or more of the cases are criminal and the others are civil or special; (3) To whom the criminal case is assigned and the other are civil or special; and (4) To whom the civil case is assigned, or to whom the civil case with the lowest docket number is assigned, if the cases involved are civil and special. (c) Notice of the consolidation and replacement shall be given to the Raffle Staff and the Judicial Records Division.

2. **ID.; ID.; ID.; WHEN PROPER; CASE AT BAR.—** It is a time-honored principle that when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved. In other words, consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together. x x x In the instant case, all four (4) cases involve identical parties, subject matter, and issues. In fact, all four (4) arose from the same decision rendered by the Rehabilitation Court. As such, it became imperative upon the CA to consolidate the cases. Even though consolidation of actions is addressed to the sound discretion of the court and normally, its action in consolidating will not be disturbed in the absence of manifest abuse of discretion, in this instance, we find that the CA gravely erred in failing to order the consolidation of the cases. By refusing to consolidate the cases, the CA, in effect, dispensed a form of piecemeal judgment that has veritably resulted in the multiplicity of suits. Such action is not regarded with favor, because consolidation should always be ordered whenever it is possible.

3. **ID.; ID.; ID.; PURPOSE.—** The purpose of this rule is to avoid multiplicity of suits, guard against oppression and abuse, prevent delays, clear congested dockets, and simplify the work of the trial court. In short, consolidation aims to attain justice with the least expense and vexation to the parties-litigants. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Further, it results in the avoidance of the possibility of

conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.

4. ID.; ID.; APPEALS; ASSIGNMENT OF ERRORS; ESSENTIAL TO APPELLATE REVIEW AND ONLY THOSE ASSIGNED WILL BE CONSIDERED; EXCEPTIONS.— Essentially, the general rule provides that an assignment of error is essential to appellate review and only those assigned will be considered, save for the following exceptions: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but closely related to an error assigned; and (6) matters not assigned as errors on appeal but which the determination of a question properly assigned is dependent.

5. ID.; ID.; ID.; ISSUES NOT RAISED IN THE PLEADINGS ARE DEEMED WAIVED OR ABANDONED; SUSTAINED. — In *Abedes v. Court of Appeals*, this Court emphasized the difference of appeals in criminal cases and in civil cases by saying, "**Issues not raised in the pleadings**, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, **are deemed waived or abandoned**." Essentially, to warrant consideration on appeal, there must be discussion of the error assigned, else, the error will be deemed abandoned or waived. This Court even went further in *Development Bank of the Philippines v. Teston,* in which it held that it is improper to enter an order which exceeds the scope of the relief sought by the pleadings, to wit: The Court of Appeals erred in ordering DBP to return to respondent "the ₱1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board,* this Court held: "x x x **It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in**

accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secundum allegata et probate*." Due process considerations justify this requirement. **It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opportunity to be heard with respect to the proposed relief.** The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner in G.R. No. 190538.

Balgos Gumaru & Jalandoni for SCP.

Bello Gozon Elma Parel Asuncion & Lucila for BDO.

The Law Office of JE Froilan M. Clerigo for Consolidated Industrial Gases, Inc.

Angara Abello Concepcion Regala & Cruz for Deutsche Bank AG.

D E C I S I O N

VELASCO, JR., *J.*:

Before us are two Petitions for Review on *Certiorari* under Rule 45, docketed as **G.R. Nos. 190462** and **190538**, assailing the July 3, 2008 Decision[1] and December 3, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 101881, entitled *Equitable PCI Bank, Inc. (now known as Banco de Oro-EPCI, Inc.) v. Steel Corporation of the Philippines*. The CA set aside the Decision[3] dated December 3, 2007 of the

[1] *Rollo* (G.R. No. 190538), pp. 49-82. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Isaias P. Dicdican and Ramon R. Garcia.

[2] *Id.* at 84-99.

[3] *Id.* at 111-139.

Regional Trial Court (RTC) acting as a Rehabilitation Court, and, in effect, the CA (1) set aside the Rehabilitation Court's Decision approving the Rehabilitation Plan; and (2) terminated the corporate rehabilitation of Steel Corporation of the Philippines (SCP).

We consolidated **G.R. No. 190462** with **G.R. No. 190538** as they involve identical parties, arose from the same facts, and assail the same CA Decision dated July 3, 2008.[4]

The Facts

SCP is a domestic corporation incorporated and registered with the Securities and Exchange Commission on October 3, 1994. It is engaged in the manufacturing and distribution of cold-rolled and galvanized steel sheets and coils.

During its operations, SCP encountered and suffered from financial difficulties and temporary illiquidity, aggravated by the 1997 Asian Financial Crisis. And shortage in working capital and reduced operating capacity compounded its problem. As a result, SCP was unable to service its principal payments for its liabilities.

In its Interim Financial Statement as of December 31, 2005, SCP's total assets amounted to PhP 10,996,551,123, while its liabilities amounted to PhP 8,365,079,864.

Accordingly, on September 11, 2006, Equitable PCI Bank, Inc., now known as Banco de Oro-EPCI, Inc. (BDO-EPCIB), which accounted for 27.45% of the total liabilities of SCP, filed a creditor-initiated petition—to place the SCP under corporate rehabilitation pursuant to the provisions of Section 1, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation—entitled *In the Matter of the Petition to have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan*. BDO-EPCIB included its proposed rehabilitation plan in the said petition.

[4] *Id.* at 410.

Finding the petition to be sufficient in form and substance, the Rehabilitation Court issued an Order dated September 12, 2006, directing, among others, the stay of enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against SCP, its guarantors, and sureties not solidarily liable with it. The Rehabilitation Court likewise appointed Atty. Santiago T. Gabionza, Jr. as the Rehabilitation Receiver for SCP.

SCP did not oppose the petition but instead filed its own counter rehabilitation plan and submitted it for the consideration of the Rehabilitation Court. Other creditors filed their respective comments on the petition.

On November 23, 2006, the Rehabilitation Court issued an Order, giving due course to the petition and directing Atty. Gabionza to evaluate the rehabilitation plan proposed by BDO-EPCIB and the proposals of the other participating creditors, and to submit his recommendations. The Rehabilitation Court also directed Atty. Gabionza to consider SCP's counter rehabilitation plan in drafting his recommended rehabilitation plan.

In a Compliance dated March 6, 2007, Atty. Gabionza submitted his recommended rehabilitation plan. The said plan contained the salient features of the rehabilitation plans separately submitted by SCP and BDO-EPCIB, as well as his own comments. The plan was summarized by the Rehabilitation Court as follows:

> Thus, after considering the comments of the other participating creditors and evaluating the proposals of SCP and the petitioner, Atty. Gabionza recommended the following terms and conditions for rehabilitation plan, to wit:
>
> 1. Fresh equity infusion of ₱3.5 Billion, out of which ₱3 Billion shall be used for debt reduction, and the balance of ₱500 Million as additional working capital.
>
> 2. The ₱3 Billion allocated for debt repayment shall first service the secured credits and excess thereafter will be applied to clean creditors and suppliers.

3. The remaining short term and long term debt balances after debt reduction will be restructured over a period of 12 years inclusive of a 2 year grace period on principal payments. There shall be 20 equal semi-annual payments of principal to commence at the end of the grace period.

4. Interest rates for the restructure debt shall be 8% per annum fixed for the duration of the loan and shall be payable quarterly in arrears. No grace period on interest payments.

5. To protect existing clean creditors, SCP may not secure additional secured credits which will utilize the excess assets values after the ₱3.0 Billion debt reduction.

6. Any excess cash after the annual (normal) CAPEX and debt service requirements shall be distributed as follows: 70% debt repayment and 30% to be retained by the Company.

7. All existing suppliers credits (subject to final validation) shall have 2 options:

    a. To be paid quarterly over a period of 5 years without interest, or

    b. To continuously supply the company on the pay-re-avail (Deliver same amount paid) basis.

8. All loans, supplier's credit and other SCP liabilities are subject to final verification once the recommended rehabilitation plan is approved.

The rehabilitation plan recommended by Atty. Gabionza has three (3) phases in the implementation of the proposed ₱3.5 Billion fresh equity infusion, thus:

Phase 1

SCP's articles of incorporation and by laws shall be amended to accommodate the additional equity of ₱3.5 Billion. The present stockholders of SCP shall be given sixty (60) days from approval of the plan to keep their stockholdings SCP by raising/sourcing the ₱3.5 Billion fresh equity required.

Phase 2

In the event the present stockholders fail to raise the ₱3.5 Billion fresh equity needed to keep their stockholdings and save their company, Atty. Gabionza shall offer to acceptable investors,

through negotiated sale or bidding, 67% of SCP for the ₱3.5 Billion fresh equity required.

Phase 3

Should Phase 1 and 2 fail, there shall be a debt to equity conversion in the required amount of ₱3.5 Billion.[5]

Although not required by the rules, several consultative meetings were thereafter conducted by the Rehabilitation Court between and among the parties to discuss a viable rehabilitation plan for SCP that is acceptable to all.

In compliance with the directives of the Rehabilitation Court to consider all the inputs and observations made by the parties during the consultative meetings and to make the necessary modification in his recommendations on the submitted rehabilitation plans, Atty. Gabionza submitted a Modified Rehabilitation Plan as incorporated in his compliance dated June 27, 2007. The modifications made were:

Phase 1 of the Recommended Rehabilitation Plan is retained under the Modified Rehabilitation Plan. Phase 2, however, is amended to the effect that in the event the present stockholders fail to raise the ₱3.5 Billion fresh equity needed to keep their stockholdings and save their company, the same existing stockholders of SCP shall be afforded a period of 60 days from the expiration of the period provided in Phase 1 to offer for sale to an acceptable investor at least 67% stockholdings in SCP for an amount not less than ₱3.5 Billion.

Under Phase 3 thereof, there shall be a debt to equity conversion in the required amount of ₱3.5 Billion should Phase 1 and 2 fail. The adjusted book value of SCP under its 2005 Audited Financial Statements is pegged at ₱1.129 Billion. Accordingly, ₱1.1.29 Billion of the existing debt will initially be converted into common shares achieving an ownership structure where both existing stockholders and the bank creditors will equally own SCP at 50% each. The balance of ₱2.371 Billion will then be converted into non-interest bearing convertible notes.[6]

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[5] *Id.* at 115-116.

[6] *Id.* at 117.

On June 21, 2007, BDO-EPCIB, joined by creditors DEG, Planters Development Bank, China Banking Corporation, Asiatrust Development Bank and GE Money Bank, Inc., altogether holding more than 50% of SCP's total liabilities, filed their Joint Manifestation and Motion declaring their conformity with and support to Atty. Gabionza's Recommended Rehabilitation Plan.

On July 30, 2007, SCP submitted its 2006 Audited Financial Statements in a Compliance with Motion. Atty. Gabionza was ordered by the Rehabilitation Court to study the financial statements and to submit a report on their effects on the Modified Rehabilitation Plan.

The parties then submitted their respective comments on the Modified Rehabilitation Plan and Atty. Gabionza's report on the effects of the 2006 Audited Financial Statements. Likewise, SCP submitted its Updated Counter Rehabilitation Plan, attached to its *Ad Abundante Cautelam* Motion to Admit Debtor SCP's Updated Counter Rehabilitation Plan, which was subsequently admitted by the Rehabilitation Court.

On December 3, 2007, the RTC promulgated a Decision approving the Modified Rehabilitation Plan. The dispositive portion reads:

> WHEREFORE, premises considered, the present petition is given due course. The parties are mandated to comply strictly with the provisions of the approved rehabilitation plan.
>
> The Rehabilitation Receiver is hereby directed to provide this Court with periodic reports on the implementation of the approved Rehabilitation Plan.
>
> The provisions of the approved Rehabilitation Plan shall be binding on all persons and parties affected by it, whether or not such persons or parties have participated in the present proceedings.
>
> The concerned parties are further directed to submit to this Court their respective nominees for the Management Committee not later than 60 days before the expiration of the period for the application of Phases 1 and 2 of the foregoing rehabilitation plan. In case no nominee is submitted by any party, this Court shall directly designate the corresponding members thereof.

SO ORDERED.[7]

Therefrom, several creditors went to the CA via separate Petitions for Review on Certiorari, to wit: (1) SCP's petition dated January 9, 2008, docketed as CA-G.R. SP No. 101732 and entitled *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*; (2) DEG's petition dated January 6, 2008, docketed as CA-G.R. SP No. 101880 and entitled *DEG – Deutsche Investitions-und Entwicklungsgesselschaft mbH v. Steel Corporation of the Philippines*; (3) BDO-EPCIB's petition dated January 8, 2008, docketed as CA-G.R. SP No. 101881 and entitled *Equitable PCI Bank, Inc. v. Steel Corporation of the Philippines*; and (4) Investments 2234 Philippines Fund I, Inc.'s (IPFI's) petition dated January 10, 2008, docketed as CA-G.R. SP No. 101913 and entitled *Investments 2234 Philippines Fund I (SPV-AMC), Inc. v. Equitable PCI Bank, Inc.*

The petitions of SCP and IPFI were eventually consolidated under CA-G.R. SP No. 101732. However, the CA denied BDO-EPCIB's motion to consolidate with CA-G.R. SP No. 101732.[8] As to CA-G.R. SP No. 101881, the Court takes judicial notice of the fact that it has also been consolidated with CA-G.R. SP No. 101732 in a Resolution issued by the CA dated March 22, 2010.

On July 3, 2008, the CA issued the assailed decision in CA-G.R. SP No. 101881, ordering the termination of the rehabilitation proceedings. The dispositive portion reads:

> WHEREFORE**,** premises considered, the Decision dated December 3, 2007 of the RTC, Branch II, Batangas City, in SP No. 06-7993 is hereby **SET ASIDE**, and another one is hereby entered declaring the rehabilitation proceedings **TERMINATED**, pursuant to *Section 27, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation*.
>
> SO ORDERED.[9]

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[7] *Id.* at 139.

[8] *Id.* at 1079, Resolution dated May 8, 2008.

[9] *Id.* at 82.

SCP then filed a Supplemental Petition for Review dated July 21, 2008 in CA-G.R. SP No. 101732, praying, among others, for the approval of its Revised Updated Counter Rehabilitation Plan.

From the July 3, 2008 CA Decision, DEG, SCP, Landmark Glory Limited, and Liquigaz Philippines Corporation interposed separate motions for reconsideration. However, on December 3, 2009, the CA denied all motions for reconsiderations.

Hence, these separate recourses are before us.

The Issues

In **G.R. No. 190462**, SCP raised the following arguments in support of its amended petition:

I.

The [CA] erred – when it did, it denied the petitioner its rights to both procedural and substantive due process – when –

(a) It did not follow its own internal rules of procedure and thereafter justified its error on the bases of misleading and false statements;

(b) It granted a relief which none of the parties sought for, nor were heard, nor given the opportunity to be heard, thereon, and

(c) It substituted its judgment for that of the rehabilitation court, usurping in the process the exclusive authority reposed in the said court.

II.

The [CA] erred – and when it did, it acted in a manner at war with orderly procedure – when it declared the termination of the proceedings without passing upon nor giving the petitioner a chance to be heard on the updated alternative rehabilitation plan submitted by it.

III.

The [CA] erred – and when it did, it failed to perform its duties and obligations as a court – when it found, and thereafter declared termination of the rehabilitation proceedings because the case had

become litigious and did not try to allow the parties to adjust their differences so that rehabilitation of the petitioner could go on.[10]

In **G.R. No. 190538**, DEG submits as follows:

I.

The [CA] had no jurisdiction or authority to terminate the rehabilitation proceedings.

II.

Assuming, *arguendo*, that the [CA] had the authority to terminate the rehabilitation proceedings, such termination was premature.[11]

The issues raised before the Court can be summarized into two:

(1) Whether or not the CA erred in refusing to consolidate the cases pending before it; and

(2) Whether or not the CA erred in granting a relief that was not prayed for by the parties, *i.e.*, the termination of the rehabilitation proceedings.

Consolidation of Cases Is Proper

Petitioner SCP argues that the CA deviated from its own Internal Rules when it failed to consolidate the four (4) appeals arising from the same decision of the rehabilitation court. In fact, it points out to the fact that CA-G.R. SP No. 101913 had already been consolidated with its own appeal in CA-G.R. SP No. 101732. However, SCP says that the failure by the CA to consolidate the remaining two appeals, namely CA-G.R. SP Nos. 101880 and 101881, with its own appeal indicates not only a deviation from the rules but also a disobedience to their plain language and obvious intent.

On the other hand, BDO-EPCIB refutes SCP's arguments by saying that the consolidation of cases is only discretionary, not mandatory, upon the court.

[10] *Id.* at 30.

[11] *Id.*

The Court agrees with SCP.

Consolidation of actions is expressly authorized under Sec. 1, Rule 31 of the Rules of Court:

> Section 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Likewise, Rule 3, Sec. 3 of the 2002 Internal Rules of the CA[12] adopts the same rule:

> Sec. 3. *Consolidation of Cases*. – When related cases are assigned to different Justices, they may be consolidated and assigned to one Justice.
>
> (a) At the instance of a party with notice to the other party; or at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties, consolidation may be allowed when the cases involve the same parties and/or related questions of fact and/or law.
>
> (b) Consolidated cases shall pertain to the Justice –
>
> (1) To whom the case with the lowest docket number is assigned, if they are of the same kind;
>
> (2) To whom the criminal case with the lowest number is assigned, if two or more of the cases are criminal and the others are civil or special;
>
> (3) To whom the criminal case is assigned and the other are civil or special; and
>
> (4) To whom the civil case is assigned, or to whom the civil case with the lowest docket number is assigned, if the cases involved are civil and special.
>
> (c) Notice of the consolidation and replacement shall be given to the Raffle Staff and the Judicial Records Division.

[12] A.M. No. 02-6-13-CA, August 22, 2002.

It is a time-honored principle that when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved.[13] In other words, consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together.[14]

The purpose of this rule is to avoid multiplicity of suits, guard against oppression and abuse, prevent delays, clear congested dockets, and simplify the work of the trial court. In short, consolidation aims to attain justice with the least expense and vexation to the parties-litigants.[15] It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Further, it results in the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.[16]

In the instant case, all four (4) cases involve identical parties, subject matter, and issues. In fact, all four (4) arose from the same decision rendered by the Rehabilitation Court. As such, it became imperative upon the CA to consolidate the cases. Even though consolidation of actions is addressed to the sound discretion of the court and normally, its action in consolidating will not be disturbed in the absence of manifest abuse of discretion,[17] in this instance, we find that the CA gravely erred in failing to order the consolidation of the cases.

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[13] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001, 354 SCRA 100, 111.

[14] 1A C.J.S. Actions § 259.

[15] *Canos v. Peralta*, No. L-38352, August 19, 1982, 115 SCRA 843, 846.

[16] *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*, G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618, 633.

[17] *Canos v. Peralta*, *supra* note 15, at 847.

By refusing to consolidate the cases, the CA, in effect, dispensed a form of piecemeal judgment that has veritably resulted in the multiplicity of suits. Such action is not regarded with favor, because consolidation should always be ordered whenever it is possible.

Relief Is Limited Only to Issues Raised

SCP further contends that the CA denied it its right to procedural and substantive due process, because it granted a relief entirely different from those sought for by the parties and on which they were neither heard nor given the opportunity to be heard.

Respondent BDO-EPCIB, on the other hand, maintains that the CA has the power to grant such other appropriate relief as may be consistent with the allegations and proofs when a prayer for general relief is added to the demand of specific relief.[18]

SCP's contention deserves merit.

Sec. 8, Rule 51 of the 1997 Rules of Civil Procedure expressly provides:

> SEC. 8. *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.

Essentially, the general rule provides that an assignment of error is essential to appellate review and only those assigned will be considered,[19] save for the following exceptions: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision

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[18] *Rollo* (G.R. No. 190538), p. 1084.

[19] *Republic Telecommunications Holdings, Inc. v. Santiago*, G.R. No. 140338, August 7, 2007, 529 SCRA 232, 241.

and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but closely related to an error assigned; and (6) matters not assigned as errors on appeal but which the determination of a question properly assigned is dependent.[20] None of these exceptions exists in this case.

Notably, the prayer portion of the BDO-EPCIB petition in CA-G.R. SP No. 101881 only sought for the following reliefs:

> WHEREFORE, it is respectfully prayed of the Honorable Court that the Decision dated 03 December 2007 of the Court *a quo*, or the approved Rehabilitation Plan, be MODIFIED accordingly, thus:
>
> 1. Under its Phase 1, the articles of incorporation and by laws of SCP be accordingly amended to accommodate the additional equity of Php3.0 Billion.
>
> 2. Under Phase 2, the present stockholders and/or the Rehabilitation Receiver shall offer for sale to acceptable investors SCP's stocks, through negotiated sale or bidding for an amount not less than Php3.0 Billion, which is equivalent to approximately 64% of SCP; and
>
> 3. Under Phase 3, there shall be an immediate conversion of debt to common shares in the required amount of Php3.0 Billion, which is equivalent to approximately 64% of SCP, pursuant to the terms and conditions of the Recommended Rehabilitation Plan.
>
> Other reliefs, just and equitable under the premises, are likewise prayed for.[21]

It is very plain in the language of the prayers of BDO-EPCIB that it only requested the CA to **modify** the existing rehabilitation

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[20] *Vidad, Sr. v. Tayamen*, G.R. No. 160554, August 24, 2007, 531 SCRA 147, 153-154.

[21] *Rollo* (G.R. No. 190538), pp. 178-179.

plan. It never sought the termination of the rehabilitation proceedings. Thus, given the factual backdrop of the case, it was inappropriate for the CA, *motu proprio*, to terminate the proceedings. The appellate court should have proceeded to resolve BDO-EPCIB's appeal on its merits instead of terminating the proceedings, a result that has no ground in its pleadings in the CA.

In *Abedes v. Court of Appeals*, this Court emphasized the difference of appeals in criminal cases and in civil cases by saying, "**Issues not raised in the pleadings**, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, **are deemed waived or abandoned**."[22] Essentially, to warrant consideration on appeal, there must be discussion of the error assigned, else, the error will be deemed abandoned or waived.[23]

This Court even went further in *Development Bank of the Philippines v. Teston*, in which it held that it is improper to enter an order which exceeds the scope of the relief sought by the pleadings, to wit:

> The Court of Appeals erred in ordering DBP to return to respondent "the ₱1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, this Court held:
>
> "x x x **It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secundum allegata et probate.***" (Italics in original.)
>
> Due process considerations justify this requirement. **It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the**

[22] G.R. No. 174373, October 15, 2007, 536 SCRA 268, 288. See also *MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, October 17, 2007, 536 SCRA 408, 464.

[23] *Norton v. Sam's Club*, 145 F.3d 114, 40 Fed. R. Serv. 3d 1185 (2d Cir. 1998).

opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[24] (Emphasis supplied.)

Thus, this Court cannot sustain the ruling of the CA insofar as it granted a relief not prayed for by the BDO-EPCIB.

WHEREFORE, the petition in *G.R. No. 190462* is *PARTIALLY GRANTED* and the petition in *G.R. No. 190538* is *GRANTED*. The July 3, 2008 Decision and December 3, 2009 Resolution of the CA in CA-G.R. SP No. 101881 are *REVERSED* and *SET ASIDE*.

Further, the Court hereby *REMANDS* these cases to the CA for consolidation with CA-G.R. SP No. 101732. Likewise, CA-G.R. SP No. 101880 is also ordered to be consolidated with CA-G.R. SP No. 101732.

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.,* concur.

[24] G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

[*] Additional member per Special Order No. 913 dated November 2, 2010.

THIRD DIVISION

[G.R. No. 190754. November 17, 2010]

SAN PEDRO CINEPLEX PROPERTIES, INC., *petitioner, vs.* **HEIRS OF MANUEL HUMADA ENAÑO, represented by VIRGILIO A. BOTE,** *respondents*.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; JUDGMENT BY DEFAULT; THE POLICY OF THE LAW IS TO HAVE EVERY LITIGANT'S CASE TRIED ON THE MERITS AS MUCH AS POSSIBLE, HENCE, JUDGMENTS BY DEFAULT ARE FROWNED UPON; APPLICATION.— Petitioner correctly points out that the rule is that a defendant's answer should be admitted where it is filed *before* a declaration of default and *no prejudice* is caused to the plaintiff. Indeed, where the answer is filed beyond the reglementary period but *before* the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted. In the case at bar, it is inconsequential that the trial court declared petitioner in default on the same day that petitioner filed its Answer. As reflected above, the trial court slept on petitioner's Motion to Dismiss for almost a year, just as it also slept on respondents' Motion to Declare petitioner in Default. It was only when petitioner filed a Motion to Withdraw Motion to Dismiss and to Admit Answer that it denied the Motion to Dismiss, and acted on/granted respondents' Motion to Declare petitioner in Default. This is procedurally unsound. The policy of the law is to have every litigant's case tried on the merits as much as possible. Hence, judgments by default are frowned upon. A case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. The parties are thus given the chance to be heard fully and the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts.

APPEARANCES OF COUNSEL

Balgos & Gumaru & Jalandoni for petitioner.
Gaddi-Pestejo & Alogoc Law Offices for respondents.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For consideration is petitioner's Motion for Reconsideration of the Court's Resolution of February 15, 2010 denying outright its petition for review on *certiorari* for failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution.

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

Respondents filed on August 17, 2006 a complaint for quieting of title with damages against petitioner before the Regional Trial Court (RTC) of San Pedro, Laguna, which complaint was raffled to Branch 93 thereof.

On October 20, 2006, petitioner filed a Motion to Dismiss[1] on the ground that the RTC did not validly acquire jurisdiction over it due to improper service of summons. It argued that, among other things, there was no observance of the rule that service of summons on a defendant-corporation must be made upon its president, general manager, corporate secretary, treasurer or in-house counsel.

Respondents contended, however, that the Officer's Return showed that the summons addressed to petitioner was served upon and received by Jay Orpiada (Orpiada), its manager. They thus moved to declare petitioner in default for failure to file an Answer within the reglementary period.[2]

Close to 11 months after petitioner filed a Motion to Dismiss or on September 10, 2007, it filed a Motion to Withdraw [its

[1] *Rollo,* pp. 62-67.

[2] *Id.* at 28-29.

still unresolved] Motion to Dismiss and to Admit Answer. On even date, the trial court denied petitioner's motion to dismiss and, acting on the motion of respondents which they had filed after petitioner's filing of the Motion to Dismiss, declared petitioner in default.

Petitioner challenged the trial court's order of default via *certiorari*, prohibition and *mandamus* before the Court of Appeals.

By Decision of August 12, 2009,[3] the appellate court dismissed the petition, holding that, among other things, the trial court properly acquired jurisdiction over petitioner via manager Orpiada; any flaw in the service of summons was cured by petitioner's voluntary submission to the trial court's jurisdiction when it filed the Motion to Withdraw Motion to Dismiss and to Admit Answer; and the trial court unerringly declared petitioner in default for failure to file an Answer within the reglementary period.

Its Motion for Reconsideration having been denied by Resolution dated December 17, 2009,[4] petitioner sought relief from this Court via petition for review on *certiorari*.[5]

As reflected earlier, the Court denied outright the petition by Resolution of February 15, 2010.[6]

In the present Motion for Reconsideration,[7] petitioner avers that, among other things, service of summons upon Orpiada violated the rules and cannot bind it; the trial court should have been more liberal considering that it took more than 10 months to resolve petitioner's Motion to Dismiss; and on the merits, it would have been able to establish its ownership of the property subject of the case.

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[3] *Id.* at 27-36; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Magdangal M. De Leon and Sixto C. Marella , Jr.

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

[5] *Id.* at 3-25.

[6] *Id.* at 42.

[7] *Id.* at 44-61.

In its Comment[8] on the Motion for Reconsideration filed in compliance with this Court's Resolution[9] of August 18, 2010, respondents maintain that Orpiada is the Manager of petitioner corporation within the contemplation of Rule 14, Section 11 of the Rules of Court upon whom service of summons can be made, as in fact Orpiada had previously received, on behalf of petitioner, a document from the RTC of San Pedro, Laguna; and no Answer of petitioner had actually been filed since the trial court had denied its Urgent Motion to Withdraw Motion to Dismiss and to Admit Answer.

Replying [With Motion to Cite Respondents and their Counsel in Direct Contempt of Court],[10] petitioner maintains that the service of summons upon Orpiada was patently defective, but more importantly, argues that respondents should be cited in contempt for submitting a forged Certification[11] dated May 4, 2010 allegedly signed by Acting Deputy Register of Deeds Marites C. Tamayo of the Land Registration Authority of Calamba, Laguna stating that the original copies of petitioner's TCT Nos. T-309608, 309609 and 309610 could not be located, which certification was disowned by Atty. Tamayo herself in her letter-reply[12] of June 7, 2010.

After a considered hard look at the case, the Court finds petitioner's Motion for Reconsideration impressed with merit.

In view of petitioner's prayer for the remand of the case to the trial court which amounts to submission to the trial court's jurisdiction, the Court finds it unnecessary to dwell on the issue of service of summons.

What is crucial is the trial court's assailed declaration of default.

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[8] *Id.* at 185-199.

[9] *Id.* at 184.

[10] *Id.* at 201-214.

[11] *Id.* at 219.

[12] *Id.* at 220-221.

Petitioner correctly points out that the rule is that a defendant's answer should be admitted where it is filed *before* a declaration of default and *no prejudice* is caused to the plaintiff. Indeed, where the answer is filed beyond the reglementary period but *before* the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted.[13]

In the case at bar, it is inconsequential that the trial court declared petitioner in default on the same day that petitioner filed its Answer. As reflected above, the trial court slept on petitioner's Motion to Dismiss for almost a year, just as it also slept on respondents' Motion to Declare petitioner in Default. It was only when petitioner filed a Motion to Withdraw Motion to Dismiss and to Admit Answer that it denied the Motion to Dismiss, and acted on/granted respondents' Motion to Declare petitioner in Default. This is procedurally unsound.

> The policy of the law is to have every litigant's case tried on the merits as much as possible. Hence, judgments by default are frowned upon. A case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. The parties are thus given the chance to be heard fully and the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts.[14]

WHEREFORE, petitioner's Motion for Reconsideration is *GRANTED*. The Court's Resolution of February 15, 2010 is set aside and the case is remanded to the court of origin, the Regional Trial Court of San Pedro, Laguna, Branch 93, which is directed to admit petitioner's Answer and to thereafter take appropriate action with dispatch on the case.

SO ORDERED.

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

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[13] *Sablas v. Sablas*, G.R. No. 144568, July 3, 2007, 526 SCRA 292, 298.

[14] *Id.* at 299.

FIRST DIVISION

[G.R. No. 192581. November 17, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DENNIS D. MANULIT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF DEFENSE; ELEMENTS.— The essential elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. The person who invokes self-defense has the burden of proof of proving all the elements. More importantly, "to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack." Although all of the three elements must concur, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. In other words, "[t]here can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; DEFINED; NOT PRESENT IN CASE AT BAR.— Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life." In the instant case, accused-appellant failed to prove the existence of unlawful aggression. He wants this Court to believe that the victim was the aggressor, not him. In his testimony, he stated that while he and his cousin were drinking at the ground floor of his house, the victim

suddenly barged in and poked a gun at him. They grappled for the gun and when he was able to obtain possession of it, the victim opened a fan-knife. This resulted in his act of shooting down the victim.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREOF IS A MATTER BEST UNDERTAKEN BY THE TRIAL COURT; RATIONALE; APPLICATION IN CASE AT BAR.— After a careful perusal of the records of this case, this Court finds no plausible reason to question the trial court's assessment of the credibility of the witnesses. It is well-entrenched in our jurisprudence "that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination." This rule is even more binding and conclusive when the trial court's assessment is affirmed by the appellate court. x x x [T]he trial court is correct in finding no ill motive on the part of any of the prosecution witnesses. The presumption is that their testimonies were not moved by any ill will and was untainted by bias, and, thus, entitled to full faith and credit.

4. ID.; ID.; FLIGHT OF THE ACCUSED; EVINCES CONSCIOUSNESS OF GUILT AND A SILENT ADMISSION OF CULPABILITY.— [T]he fact that accused-appellant fled and was only arrested five years later belies his claim of innocence. In *People v. Deduyo*, this Court said that flight by the accused clearly evinces "consciousness of guilt and a silent admission of culpability. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion."

5. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS.— Paragraph 16 of Art. 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to

defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."

6. ID.; MURDER; ELEMENTS; PRESENT IN CASE AT BAR. — [A]ll the elements of the crime of murder, as defined in par. 1, Art. 248 of the RPC, were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide. Verily, in criminal cases such as this one, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction. We find that the prosecution has discharged its burden of proving the guilt of accused-appellant for the crime of murder with moral certainty.

7. ID.; CIVIL LIABILITY; AWARD OF DAMAGES; SUSTAINED. — With respect to the award of damages, in line with our ruling in *People v. Satonero*, when the imposable penalty is death but cannot be imposed because of Republic Act No. 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, and, instead, the penalty imposed is *reclusion perpetua*, the following amounts are to be imposed: PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 30,000 as exemplary damages. And interest at the rate of six percent (6%) should likewise be added.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the November 26, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03776[1] entitled *People of the Philippines v. Dennis D. Manulit*, which affirmed the January 28, 2009 Decision[2] in Criminal Case No. 03-219494 of the Regional Trial Court (RTC), Branch 27 in Pasay City.

Accused-appellant Dennis D. Manulit stands convicted of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code (RPC). He was sentenced to suffer the penalty of *reclusion perpetua*.

The Facts

The charge against accused-appellant stemmed from the following Information:

> That on or about July 6, 2003, in the City of Manila, Philippines, the said accused, armed with a firearm, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one Reynaldo Juguilon *y* Mansueto, by shooting the latter several times and hitting him on the different parts of the body, thereby inflicting upon the latter multiple gunshot wounds which were the direct and immediate cause of his death thereafter.
>
> Contrary to law.[3]

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Marlene Gonzales-Sison and Vicente S.E. Veloso.

[2] CA *rollo*, pp. 51-55. Penned by Judge Teresa P. Soriaso.

[3] Records, p. 1.

On November 10, 2008, accused-appellant was arraigned, and he pleaded "not guilty" to the offense charged.[4] After pre-trial, trial on the merits ensued.

During trial, the prosecution presented as its witnesses Lydia Juguilon, Ralphy Villadolid *y* Laguerta, Eduardo Juguilon, and Dr. Romeo T. Salen. On the other hand, the defense presented accused-appellant; his cousin, Marvin Manulit; Maria Fontillar-Liwanag; and Arlene Manulit-Intal as its witnesses.

The facts culled from the records are as follows:

On July 6, 2003, at around 9:00 p.m., Anabel Bautista and her live-in partner, Reynaldo Juguilon, were walking along Dagupan Extension, Tondo, Manila on their way home when they passed by accused-appellant Manulit, who was sitting in front of his house across the *barangay* hall. Upon seeing them, Manulit stood up and successively shot Reynaldo at the back, resulting in the latter's death. He then tucked the gun in his waist, raised his hands, and shouted, "*O, wala akong ginawang kasalanan at wala kayong nakita*." (I did not do anything wrong, and you saw nothing.) And he ran towards the direction of the basketball court adjoining the *barangay* hall.

Lydia Juguilon, Manulit's aunt and the victim's sister-in-law, saw what happened but kept quiet about it until, bothered by her conscience, she decided to issue a statement before the prosecutor of Manila.[5] She said that, on the date and time of the incident, she went out of her house to buy some snacks in a nearby store. She saw Manulit in front of his house, while Reynaldo was walking two arms length ahead of Anabel towards the direction of their house. The place was well lighted.[6] Suddenly, she heard a gunshot, and when she turned her head to where the sound came from, she saw Manulit firing successive shots at Reynaldo's back until Reynaldo fell to the ground.[7] She was

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[4] *Id.* at 56.

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

[6] TSN, November 17, 2008, p. 20.

[7] *Id.* at 14-16.

then three to four meters away from Reynaldo.[8] Afterwards, Manulit shouted, "*Wala kayong nakita, wala akong ginawa kay Boyet*,"[9] and tucked the gun back to his waist.[10] She further stated that Reynaldo is the brother of her husband, while Manulit is her nephew being the son of her elder brother.[11] She explained that during the wake, she kept quiet about the incident; and she went to Tarlac afterwards to keep her silence, but her conscience kept bothering her.[12]

Ralphy Villadolid, another witness, corroborated Lydia's testimony.[13] Ralphy was walking along Dagupan Extension, Tondo, Manila when he saw the victim, Reynaldo, on his way home. Ralphy was near the *barangay* hall when he saw Manulit seated at the ground floor of his house. Manulit suddenly stood up and followed Reynaldo, after which Manulit pulled out a gun and shot Reynaldo several times, causing him to fall to the ground. Thereafter, Manulit immediately fled while shouting, "*O, wala akong ginawang kasalanan, ha. Wala kayong nakita*." Frightened, Ralphy sought cover behind a parked motorcycle and came out only when Manulit was gone. He immediately prepared an affidavit regarding the incident, but only submitted it to the authorities a week after the incident.

Reynaldo's father, Eduardo Juguilon, testified as to the funeral and other miscellaneous expenses he incurred due to the death of his son.[14]

Dr. Romeo T. Salen, Medico-Legal Officer of the Manila Police District Crime Laboratory, testified that he conducted the autopsy on the cadaver of Reynaldo.[15] Upon inspection,

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[8] *Id.* at 32.

[9] "You did not see anything. I did not do anything to Boyet."

[10] TSN, November 17, 2008, p. 17.

[11] *Id.* at 31.

[12] *Id.* at 19-20.

[13] TSN, November 24, 2008, pp. 1-27.

[14] TSN, November 18, 2009, pp. 2-19.

[15] TSN, November 25, 2008, pp. 3-4.

Dr. Salen found that Reynaldo sustained four (4) gunshot wounds––two (2) at the back and two (2) at his right hand.[16] The gunshot wounds on the back exited at the neck and armpit and both were enough to cause the death of the victim.[17] The trial court presented his testimony, thus:

1. Gunshot wound, thru and thru, point of entry, left scapular region, measuring 0.5 by 0.4 cm, 12 cm from the posterior midline with an abraded collar, measuring 0.4 cm inferiorly directed anteriorwards, upwards and medialwards, fracturing the 4th left thoracic ribs, lacerating the lower lobe of the left lung, the larynx, trachea, making a point of exit at the neck, measuring 1.2 [by] 0.8 cm.
2. Gunshot wound thru and thru, point of entry, right scapular region, measuring 0.5 by 0.4 cm, 13 cm from the posterior midline with an abraded collar, measuring 0.2 cm, superiorly directed anteriorwards, downwards, and medialwards, fracturing the scapula and 4th right thoracic ribs, lacerating the upper and lower lobes of the right lung, making a point of exit at the left postaxillary region, measuring 1 by 0.6 cm, 18 cm from the posterior midline.
3. Gunshot wound thru and thru, point of entry, middle third of the right arm, measuring 0.5 by 0.4 cm, along its anterior midline, directed posteriorwards, downwards, and lateralwards, lacerating the soft tissues and muscle, making [a] point of exit at the distal 3rd of the right arm, measuring 1 by 0.6 cm, from its anterior midline.
4. Gunshot wound thru and thru, point of entry, distal 3rd of the left forearm, measuring 0.5 by 0.4 cm, 3 cm from its posterior midline, directed anteriorwards, upwards, lacerating the soft tissues and muscle, making a point of exit at the proximal 3rd left of the left arm, measuring 1 by 0.8 cm, from its posterior midline.[18]

In his defense, Manulit offered a story of self-defense. He testified that on July 6, 2006, at about 9:00 p.m., he asked his

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

[17] *Id.* at 9-10.

[18] CA *rollo*, p. 52.

cousin, Marvin Manulit, to have a drink with him. While they were drinking, Reynaldo barged in holding a gun with both his hands.[19] He appeared not to be his normal self with reddish eyes, as if high on drugs.[20] Reynaldo poked the gun at Manulit and said, "*Ano*, Dennis."[21] Manulit stood up and countered, "*Anong ano*?"[22] They then grappled for the possession of the gun until they reached the alley near the *barangay* hall where Manulit got hold of the gun.[23] Suddenly, Reynaldo opened a fan-knife.[24] This caused Manulit to shoot Reynaldo several times, causing him to turn around.[25] He dropped the gun and went straight to the house of his parents and told them what happened.[26] His cousin, Marvin Manulit, corroborated his testimony.[27]

The other defense witness, Maria Fontillar-Liwanag, testified that the victim had been involved in several mischiefs but that she had no personal knowledge of the incident.[28] On the other hand, Arlene Manulit-Intal, sister of Manulit, testified that her brother was inside the house drinking liquor with Marvin Manulit. When she heard a gun fired, she hid and saw nothing. She later learned from others that Reynaldo was shot dead.[29]

Ruling of the Trial Court

After trial, the RTC convicted Manulit. The dispositive portion of its January 28, 2009 Decision reads:

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[19] TSN, December 2, 2008, pp. 6-8.

[20] *Id.* at 10.

[21] *Id.* at 9. Rough translation of "*Ano*, Dennis.": "What's with you, Dennis?" (as if challenging someone to a fight).

[22] *Id.* at 11. Rough translation of "*Anong ano*?": "What is what?" It is similar to "What do you want?"

[23] *Id.* at 11-12.

[24] *Id.* at 13.

[25] *Id.* at 14.

[26] *Id.* at 15-16.

[27] TSN, December 3, 2008, pp. 3-34.

[28] TSN, December 9, 2008, pp. 5-18.

[29] *Id.* at 20-29.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused **Dennis Manulit *y* Diwa, Guilty** beyond reasonable doubt of the crime of murder, treachery being attendant to qualify the killing, and hereby sentences him to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of the victim the sum of ₱50,000.00, to pay them the additional sum of ₱50,000.00 as moral damages and ₱29,000.00 as actual damages and to pay the costs.

SO ORDERED.[30]

Ruling of the Appellate Court

On November 26, 2009, the CA affirmed the judgment of the lower court. It held that accused-appellant failed to prove the presence of unlawful aggression, which is one of the key elements of self-defense. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, finding no error committed by the trial court in arriving at the assailed decision, the same is hereby **AFFIRMED** and the appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.[31]

The Issues

Manulit contends in his *Brief* that:

I

THE TRIAL COURT ERRED IN REJECTING THE ACCUSED-APPELLANT'S SELF-DEFENSE;

II

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AGAINST THE ACCUSED-APPELLANT;

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[30] CA *rollo*, p. 55.

[31] *Rollo*, p. 15.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.[32]

The Court's Ruling

The appeal has no merit.

Unlawful aggression is absent

In his *Brief*, accused-appellant argues that the trial court failed to appreciate the facts properly as he only acted in self-defense. He contends that unlawful aggression was present when the victim barged into his house for no apparent reason and started to point a gun at him.

We do not agree.

The essential elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[33] The person who invokes self-defense has the burden of proof of proving all the elements.[34] More importantly, "to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack."[35]

Although all of the three elements must concur, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. In other

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[32] CA *rollo*, p. 67.

[33] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 657; *People v. Plazo*, G.R. No. 120547, January 29, 2001, 350 SCRA 433, 442-443.

[34] *People v. Almazan*, G.R. Nos. 138943-44, September 17, 2001, 365 SCRA 373, 382.

[35] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 477.

words, "[t]here can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."[36]

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[37] In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.[38] It "presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action."[39] It is present "only when the one attacked faces real and immediate threat to one's life."[40]

In the instant case, accused-appellant failed to prove the existence of unlawful aggression. He wants this Court to believe that the victim was the aggressor, not him. In his testimony, he stated that while he and his cousin were drinking at the ground floor of his house, the victim suddenly barged in and poked a gun at him. They grappled for the gun and when he was able to obtain possession of it, the victim opened a fan-knife. This resulted in his act of shooting down the victim.

The Court is not convinced. After a careful perusal of the records of this case, this Court finds no plausible reason to question the trial court's assessment of the credibility of the witnesses. It is well-entrenched in our jurisprudence "that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination."[41]

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[36] *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[37] *People v. Basadre*, G.R. No. 131851, February 22, 2001, 352 SCRA 573, 583.

[38] *People v. Catbagan*, *supra* note 36, at 557.

[39] *People v. Escarlos*, *supra* note 35, at 478.

[40] *Id*.

[41] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47, 60. See also *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.

This rule is even more binding and conclusive when the trial court's assessment is affirmed by the appellate court.[42]

In finding accused-appellant guilty, the trial court found the testimonies of the prosecution witnesses credible, while it found the testimony of accused-appellant very self-serving, *viz*:

> The testimonies of the above-mentioned prosecution witnesses were given at the earliest possible opportunity. They testified unflinchingly thereon. There was no material discrepancy between their written statement/affidavit and the testimonies they gave in open court. It was not shown that they had ill motive that drove them to make false accusations against the accused. In the case of Lydia Juguilon, she is closely related to both the accused and the victim. Accused is her nephew being the son of her elder brother while the victim was her brother in law being the younger brother of her husband. There is no showing of any reason for her to testify for one against the other. Thus, the Court gives testimonies of the said witnesses full faith and credit. In contrast, accused did not bother to give his version of what happened to the investigating authorities. Right after the shooting incident, he fled and went into hiding. He was arrested some five (5) years later by virtue of the warrant of arrest issued by this Court. Moreover, accused's claim for self-defense was belied by the number and location of the gunshot wounds sustained by the victim.[43] x x x

Clearly, the trial court is correct in finding no ill motive on the part of any of the prosecution witnesses. The presumption is that their testimonies were not moved by any ill will and was untainted by bias, and, thus, entitled to full faith and credit.[44]

Moreover, the fact that accused-appellant fled and was only arrested five years later belies his claim of innocence. In *People v. Deduyo*, this Court said that flight by the accused clearly evinces "consciousness of guilt and a silent admission of culpability.

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[42] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230.

[43] CA *rollo*, p. 54.

[44] *People v. Quilang*, G.R. Nos. 123265-66, August 12, 1999, 312 SCRA 314, 328.

Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion."[45]

Therefore, since no unlawful aggression was present, accused-appellant cannot successfully invoke self-defense.

Treachery is evident

In addition, accused-appellant argues that treachery should not have been appreciated by the trial court considering that the victim was armed with a gun at the time of the incident. And even after accused-appellant obtained possession of the gun, the victim had a fan-knife.

We disagree.

Paragraph 16 of Art. 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[46] The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."[47]

In the case at bar, the victim was only walking along the street when accused-appellant suddenly shot him at the back several times. He had no opportunity to defend himself, because he had no inkling that an attack was forthcoming. It likewise appears that the means was deliberately planned. What is decisive

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[45] G.R. No. 138456, October 23, 2003, 414 SCRA 146, 162.

[46] *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 238.

[47] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.

is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[48] Evidently, treachery attended the killing.

Noteworthy also is the fact that accused-appellant harbored a deep-seated grudge against the victim, since the victim filed a case against accused-appellant before the Office of the City Prosecutor.

In conclusion, all the elements of the crime of murder, as defined in par. 1, Art. 248 of the RPC, were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[49]

Verily, in criminal cases such as this one, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[50] We find that the prosecution has discharged its burden of proving the guilt of accused-appellant for the crime of murder with moral certainty.

With respect to the award of damages, in line with our ruling in *People v. Satonero*,[51] when the imposable penalty is death but cannot be imposed because of Republic Act No. 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, and, instead, the penalty imposed is *reclusion perpetua*, the following amounts are to be imposed: PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 30,000 as exemplary damages. And interest at the rate of six percent (6%) should likewise be added.[52]

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[48] *People v. Honor*, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 558.

[49] *People v. Sameniano,* G.R. No. 183703, January 20, 2009, 576 SCRA 840, 850.

[50] RULES OF COURT, Rule 133, Sec. 2.

[51] G.R. No. 186233, October 2, 2009, 602 SCRA 769.

[52] See *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742-743.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03776 finding accused-appellant Dennis Manulit guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. In addition to the sum of PhP 29,000 as actual damages awarded to the heirs of the victim, we increase the awards of civil indemnity to PhP 75,000 and moral damages to PhP 75,000. Accused-appellant is likewise sentenced to pay the victim's heirs the amount of PhP 30,000 as exemplary damages, with interest at the rate of six percent (6%) from the finality of this Decision until fully paid.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192818. November 17, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PRINCE FRANCISCO *y* ZAFE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO CAPITAL OFFENSE; INDISPENSABLE REQUIREMENT OF SEARCHING INQUIRY; ELUCIDATED. — Section 3, Rule 116 of the Revised Rules of Criminal Procedure pertinently provides: Section 3. *Plea of guilty to capital offense; reception of evidence*.—When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension

[*] Additional member per Special Order No. 913 dated November 2, 2010.

of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf. The indispensable requirement of searching inquiry was elucidated in *People v. Mangila*: To breathe life into this rule, we made it mandatory for trial courts to do the following: (1) **conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea;** (2) require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and (3) inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he so desires. Moreover, the trial court must be satisfied that: the accused has not been coerced or placed under a state of duress either by actual threats or physical harm coming from malevolent or avenging quarters, and this it can do either by eliciting from the accused himself the manner in which he has been brought into the custody of the law and whether he had the assistance of competent counsel during the custodial and preliminary investigations or by ascertaining from him the conditions of his detention and interrogation during the investigation. It is also imperative that "a series of questions directed at defense counsel on whether or not counsel has conferred with the accused and has completely explained to him the meaning of a plea of guilt are well-taken steps along those lines." In *People v. Bello,* the Court explained that: "A 'searching inquiry,' under the Rules, means more than informing cursorily the accused that he faces a jail term but so also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony." Lastly, it has been mandated that the accused or his or her counsel be furnished with a copy of the complaint and the list of witnesses against the accused.

2. ID.; ID.; ID.; ID.; PURPOSE.— It has to be made clear that the purpose of the searching inquiry is "not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea."

3. ID.; ID.; ID.; ID.; THE UNAVAILABILITY OF THE TRANSCRIPT OF STENOGRAPHIC NOTES DOES NOT NECESSARILY CONNOTE THAT NO SEARCHING

INQUIRY WAS MADE BY THE TRIAL COURT; RATIONALE.— In the instant case, the records do not include any transcript of stenographic notes pertaining to the searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilty made by appellant on March 4, 2003 during the pre-trial. The March 4, 2003 Order of the RTC unequivocally demonstrates that the trial court conducted a searching inquiry ascertaining the voluntariness and full comprehension of appellant. The unavailability of the transcript of stenographic notes does not necessarily connote that no searching inquiry was made by the trial court. The trial court is entitled to the presumption of regularity of performance of duty under Sec. 2(m), Rule 131 of the Revised Rules of Criminal Procedure, absent any factual or legal basis to disregard this presumption. Lastly, the March 4, 2003 Order should have been challenged within the reglementary period to prevent its finality, if the contents were false or inaccurate, which appellant failed to do. The Order became final, which buttresses the validity of the directive.

4. ID.; ID.; ID.; PRESENTATION BY THE ACCUSED OF EVIDENCE IN HIS BEHALF IS NOT MANDATORY BUT INSTEAD HE IS ONLY ACCORDED AN OPPORTUNITY TO DO SO; WAIVED IN CASE AT BAR.— The defense chose not to present any witnesses which amounts to a waiver to present evidence. This was not objected to by appellant. Thus, there was an implied acquiescence on the part of appellant not to present himself or other witnesses even though he was entitled to present evidence to prove, *inter alia*, mitigating circumstances under Sec. 3 of Rule 116. Appellant is, consequently, estopped from questioning the rendition of the trial court's disposition of the case without the presentation of any evidence by the defense, unless there are exceptional reasons justifying the additional reception of evidence for the defense. Appellant has not shown any cogent justification to set aside the defense's waiver of right to present evidence. Moreover, the records show that appellant filed neither comment nor objection to the prosecution's Formal Offer of Exhibits. We also take note that under Sec. 3, Rule 116, **the accused *may* present evidence in his behalf**—it is, therefore, not mandatory for the defense to present evidence but is only accorded an opportunity to do so, which, in the instant case, was waived by the defense. Besides,

we further note that in the proceedings before the trial court, the defense neither assailed the non-presentation of its witnesses nor asserted its right to adduce evidence. Thus, issues raised for the first time on appeal are barred by estoppel—arguments not raised in the original proceedings cannot be considered on review.

5. CRIMINAL LAW; MURDER; CONVICTION OF APPELLANT WAS NOT MADE SOLELY ON HIS GUILTY PLEA BUT ON THE EVIDENCE ADDUCED BY THE PROSECUTION PROVING HIM GUILTY BEYOND REASONABLE DOUBT.— [T]he conviction of appellant was not made solely on his guilty plea—improvident or not—but on the evidence adduced by the prosecution proving beyond reasonable doubt appellant's culpability and liability for murder. Consequently, even if his plea of guilt during the pre-trial on March 4, 2003 be viewed as improvident, still appellant's conviction for murder stands as duly proved by the prosecution. Thus, the Court emphatically ruled in *People v. Baun*: Where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the **manner in which the plea of guilty is made** (improvidently or not) **loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged**. This is so, as the rule now stands, "even in cases in which the accused pleads guilty to a capital offense, the prosecution is still required to present evidence to prove his guilt and the precise degree of his culpability." In other words, notwithstanding the plea of guilt, evidence must be adduced to determine the precise participation of the accused in the perpetuation of the capital offense—whether as principal, accomplice, or accessory—as well as the presence or absence of modifying circumstances. And "the accused may also present evidence in his behalf" either to rebut the prosecution's evidence or to show the presence of mitigating circumstances.

6. ID.; MURDER; ELEMENTS.— To be liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and (4) the killing is neither parricide nor infanticide.

7. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS; PRESENT IN CASE AT BAR.— In a catena of cases, treachery is found obtaining "when the offender commits the crime employing means, methods or forms in its execution which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make." Settled jurisprudence prescribes two (2) essential elements in order to support the finding of *alevosia* as an aggravating circumstance: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate and conscious choice of means, methods or manner of execution.

8. ID.; ID.; QUALIFYING CIRCUMSTANCE LIKE TREACHERY CHANGES THE NATURE OF THE CRIME; PENALTY. — As a matter of course, "a qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense." The CA is correct in imposing the penalty of *reclusion perpetua* in view of the plea of guilt.

9. ID.; CIVIL LIABILITY; DAMAGES; PROPER AWARD THEREOF.— Anent the proper damages, we find proper the grant by the RTC of PhP 131,313.50 as actual damages as duly proved during trial. Consistent with prevailing jurisprudence, we find it proper to increase the award of civil indemnity and moral damages to PhP 75,000 each. We likewise increase the award of exemplary damages to PhP 30,000 in line with recent jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated March 29, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03041, which affirmed with modification the Judgment[2] dated October 5, 2007 in Criminal Case No. 3007 of the Regional Trial Court (RTC), Branch 43 in Virac, Catanduanes. The RTC found accused-appellant Prince Francisco *y* Zafe guilty beyond reasonable doubt of the crime of Murder.

The Facts

In an Information[3] filed on January 23, 2002, appellant was indicted for murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

> That on or about the 24th day of October 2001 at around 8:50 o'clock in the evening, in barangay San Juan, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the above-named accused, with evident premeditation, treachery and deliberate intent to take the life of Ramil Tablate did then and there, willfully, unlawfully, feloniously and criminally, attack, assault and stab the latter, with the use of a bladed instrument (kitchen knife) wounding mortally his chest, abdomen and different parts of his body which wounds were necessarily mortal causing the direct and immediate death of said Ramil Tablate, to the damage and prejudice of his surviving heirs.

During arraignment, appellant pleaded not guilty to the crime charged. However, during the pre-trial on March 4, 2003, he withdrew his former plea. Consequently, on the same hearing, he was re-arraigned and he pleaded guilty[4] to the crime charged.

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[1] *Rollo*, pp. 2-20. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Remedios Salazar-Fernando and Francisco P. Acosta.

[2] Records, pp. 244-249. Penned by Judge Lelu P. Contreras.

[3] *Id.* at 33.

[4] *Id.* at 80.

Through the March 4, 2003 Order from the pre-trial proceeding, it was shown that the RTC conducted searching questions to determine that appellant voluntarily entered his guilty plea and that he understood its consequences. The RTC further ordered the setting of the case for the prosecution to adduce evidence proving the guilt of appellant beyond reasonable doubt and to determine the degree of his culpability. The March 4, 2003 RTC Order states:

> When this case was called for pre-trial this morning, the accused thru counsel manifested his desire to withdraw his former plea and to enter a plea of guilty to the offense charged. Thereafter, the accused was rearraigned and he entered a plea of guilty to the offense charged. He agreed to pay the amount of ₱131,313.50 as actual damages and another ₱50,000.00 for the life of Ramil Tablate.
>
> **The Court proceeded to ask the accused searching questions to determine the voluntariness of his plea and as to whether he understood the consequences of the same. Satisfied that the accused willingly and voluntarily pleaded guilty with full knowledge of the consequence of the same and, in addition that he was given proper [advice] by his counsel prior to entering said plea**, the Court sets the hearing of this case to April 22, 2003 at 8:30 a.m. to determine the degree of culpability of the accused as required under the Rules in cases of capital offenses.
>
> Let a subpoena *duces tecum* be issued to Dr. Elmer Tatad and Dr. Lalaine A. Bernardo, all of IPHO, Virac, Catanduanes, to testify and bring with them the medical record of Ramil Tablate on the said date of hearing. As requested by the prosecution.
>
> SO ORDERED.[5] (Emphasis supplied.)

In its November 12, 2003 Order,[6] the RTC stated that during the hearing conducted on the same date, the defense admitted the fact of death of Ramil Tablate due to stab wounds and that it was appellant who stabbed Ramil.

To prove appellant's guilt beyond reasonable doubt, the prosecution presented the testimonies of Dr. Lilian Olfindo,

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[5] *Id.* at 82-83.

[6] *Id.* at 121.

Joseph Romero, Christopher Tablate, and Napoleon Mandac, and established the following facts:

On October 24, 2001, at around 8:50 p.m., Joseph, Christopher, and Napoleon were at the wake of one Sulpicio Go in San Juan, Virac, Catanduanes. While they were watching a game of *pai-cue*, the victim, Ramil, was sitting nearby on a parked motorcycle talking to someone. Appellant then appeared from behind and started stabbing Ramil using a knife. Ramil pleaded with appellant to stop, saying: "*Tama na PRINCE magadan na ako*." ("That is enough PRINCE, I will die.") When Christopher heard the commotion and saw his brother Ramil being assaulted, he went to Ramil and told appellant: "*Tama na PRINCE magadan na ang tugang ko*." ("That is enough PRINCE, my brother will die.") Efren Francisco, father of appellant, told appellant to stop the assault and embraced Ramil, but appellant relentlessly continued stabbing Ramil. Fearing for his brother's life, Christopher grabbed a plastic chair and hit the back of appellant, who got more enraged and turned upon Christopher, stabbing him five times in the arm.[7] Christopher ran away with appellant chasing him until he was able to ride a tricycle which rushed him to the hospital. In the emergency room, Christopher was given medical attention and was stunned to eventually see the lifeless body of Ramil on a stretcher.[8]

Dr. Olfindo made the post-mortem examination on the victim.[9] The result showed that Ramil suffered a total of 16 wounds in various parts of the body, 13 of which were stab wounds.[10] Ramil died of cardiac arrest secondary to cardiac tamponade, secondary to multiple stab wounds in the chest and abdomen.[11]

The prosecution rested its case and made its formal offer of exhibits without any objection from the defense.

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[7] TSN, August 6, 2007, pp. 7-11.

[8] *Id.* at 11-12.

[9] TSN, February 3, 2005, pp. 3-4.

[10] *Id.* at 4-15.

[11] *Id.* at 13.

After admitting the death of Ramil resulting from appellant's assault, the defense, however, did not present any witnesses, but simply argued that the offense of appellant is only homicide and not murder. Contending that no treachery attended the assault, the defense asserted that appellant did not attack Ramil from behind.

The Ruling of the RTC

The trial court rendered its decision on October 5, 2007, convicting appellant of the crime of Murder, the dispositive portion reading:

> WHEREFORE, this Court, after determining the degree of culpability of PRINCE, who pleaded guilty to the crime of Murder, hereby, sentences Prince Francisco to suffer a penalty of *reclusion perpetua* and to indemnify the family of the victim the amount of ONE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED THIRTEEN AND 50/100 (Php131,313.50) PESOS as actual damages and FIFTY THOUSAND (₱50,000.00) PESOS for taking the life of Ramil Tablate, as previously agreed upon.
>
> SO ORDERED.[12]

The RTC found the evidence presented by the prosecution sufficient to prove beyond reasonable doubt that appellant committed the crime charged qualified by treachery. But it opined that appellant acted upon an impulse so powerful as naturally to have produced passion or obfuscation, considering an altercation appellant had with Ramil earlier at a billiard hall.[13]

Unperturbed, appellant appealed to the CA, raising the lone issue of whether the RTC erred in convicting him of murder.

The Ruling of the CA

In its Decision dated March 29, 2010, the appellate court affirmed with modification the ruling of the RTC. The *fallo* reads:

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[12] Records, p. 249.

[13] *Id.* at 248.

Wherefore, the *Decision* dated 5 October 2007 of the Regional Trial Court, Fifth Judicial Region, Virac, Catanduanes, Branch 43, in Criminal Case No. 3007, is hereby AFFIRMED WITH MODIFICATIONS in that appellant PRINCE FRANCISCO *y* ZAFE is ORDERED to pay the heirs of Ramil Tablate the additional sums of ₱50,000.00 and P25,000.00 as moral and exemplary damages, respectively.

SO ORDERED.[14]

The appellate court likewise found appellant guilty beyond reasonable doubt of the crime of Murder. It held that, while there were no transcripts of stenographic notes in the records pertaining to the searching inquiry conducted by the RTC on March 4, 2003, still the prosecution was able to establish the culpability of appellant by means of evidence independent of his admission of guilt. The prosecution witnesses testified in detail how the stabbing incident transpired that caused the death of Ramil.

The CA found the killing of Ramil qualified by *alevosia* or treachery based on the prosecution witnesses' testimony that Ramil was stabbed from behind by appellant, without any provocation from Ramil nor affording Ramil any opportunity to defend himself.

The appellate court did not consider passion and obfuscation to mitigate appellant's culpability. The CA pointed out that Christopher's testimony on the altercation between appellant and Ramil in the billiard hall was hearsay, for Christopher had no personal knowledge of the supposed altercation since he only learned about it from another person.

Anent damages, the appellate court awarded to the heirs of the victim moral damages of PhP 50,000 and exemplary damages of PhP 25,000.

Thus, we have this appeal.

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[14] *Rollo*, p. 19.

The Issues

Both appellant and the Office of the Solicitor-General (OSG), representing the People of the Philippines, opted not to file any supplemental brief, since neither new issues were raised nor supervening events transpired. Considering that both appellant and the OSG did not file a supplemental brief, the sole issue for our consideration, therefore, is the same one appellant raised before the CA—whether the RTC erred, and consequently the CA for its affirmance of the former, in convicting appellant of the crime of murder.

The Court's Ruling

The appeal has no merit.

Conviction based on evidence of prosecution and not on plea of guilt by appellant

First, appellant assails the March 4, 2003 Order of the trial court as being precipitate considering that the trial judge failed to ascertain the voluntariness of his plea of guilt when he did not fully understand its consequences and significance, for the records show neither proof nor a transcript of the proceedings on March 4, 2003 that appellant indeed voluntarily made a guilty plea and that he fully understood its import.

We are not persuaded.

Section 3, Rule 116 of the Revised Rules of Criminal Procedure pertinently provides:

> Section 3. *Plea of guilty to capital offense; reception of evidence*.—When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

The indispensable requirement of searching inquiry was elucidated in *People v. Mangila*:

To breathe life into this rule, we made it mandatory for trial courts to do the following:

(1) **conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea**;

(2) require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and

(3) inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he so desires.[15] (Emphasis supplied.)

Moreover, the trial court must be satisfied that:

the accused has not been coerced or placed under a state of duress either by actual threats or physical harm coming from malevolent or avenging quarters, and this it can do either by eliciting from the accused himself the manner in which he has been brought into the custody of the law and whether he had the assistance of competent counsel during the custodial and preliminary investigations or by ascertaining from him the conditions of his detention and interrogation during the investigation.[16]

It is also imperative that "a series of questions directed at defense counsel on whether or not counsel has conferred with the accused and has completely explained to him the meaning of a plea of guilt are well-taken steps along those lines."[17]

In *People v. Bello*, the Court explained that: "A 'searching inquiry,' under the Rules, means more than informing cursorily the accused that he faces a jail term but so also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony."[18]

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[15] G.R. Nos. 130203-04, February 15, 2000, 325 SCRA 586, 593.

[16] *People v. Estomaca*, G.R. Nos. 117485-86, April 22, 1996, 256 SCRA 421, 437; citing *People v. Petalcorin*, G.R. No. 65376, December 29, 1989, 180 SCRA 685; *People v. Parba*, G.R. No. 63409, May 30, 1986, 142 SCRA 158; *People v. Badilla*, G.R. No. 69317, September 11, 1985, 138 SCRA 513.

[17] *People v. Estomaca*, *id.*

[18] G.R. Nos. 130411-14, October 13, 1999, 316 SCRA 804, 813.

Lastly, it has been mandated that the accused or his or her counsel be furnished with a copy of the complaint and the list of witnesses against the accused.

It has to be made clear that the purpose of the searching inquiry is "not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea."[19]

We reproduce the March 4, 2003 RTC Order:

> When this case was called for pre-trial this morning, the accused thru counsel, manifested his desire to withdraw his former plea and to enter a plea of guilty to the offense charged. Thereafter, the accused was rearraigned and he entered a plea of guilty to the offense charged. He agreed to pay the amount of ₱131,313.50 as actual damages and another ₱50,000.00 for the life of Ramil Tablate.
>
> **The Court then proceeded to ask the accused searching questions to determine the voluntariness of his plea and as to whether he understood the consequences of the same. Satisfied that the accused willingly and voluntarily pleaded guilty with full knowledge of the consequence of the same and, in addition that he was given proper [advice] by his counsel prior to entering said plea, the Court sets the hearing of this case to April 22, 2003 at 8:30 a.m. to determine the degree of culpability of the accused as required under the Rules in cases of capital offenses**.
>
> Let a subpoena *duces tecum* be issued to Dr. Elmer Tatad and Dr. Lalaine A. Bernardo, all of IPHO, Virac, Catanduanes, to testify and bring with them the medical record of Ramil Tablate on the said date of hearing, as requested by the prosecution.
>
> SO ORDERED.[20] (Emphasis supplied.)

In the instant case, the records do not include any transcript of stenographic notes pertaining to the searching inquiry into the voluntariness and full comprehension of the consequences

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[19] *People v. Sevilleno*, G.R. No. 129058, March 29, 1999, 305 SCRA 519, 528.

[20] Records, pp. 82-83.

of the plea of guilty made by appellant on March 4, 2003 during the pre-trial. The March 4, 2003 Order of the RTC unequivocally demonstrates that the trial court conducted a searching inquiry ascertaining the voluntariness and full comprehension of appellant. The unavailability of the transcript of stenographic notes does not necessarily connote that no searching inquiry was made by the trial court. The trial court is entitled to the presumption of regularity of performance of duty under Sec. 2(m),[21] Rule 131 of the Revised Rules of Criminal Procedure, absent any factual or legal basis to disregard this presumption.[22]

Lastly, the March 4, 2003 Order should have been challenged within the reglementary period to prevent its finality, if the contents were false or inaccurate, which appellant failed to do. The Order became final, which buttresses the validity of the directive.

Even assuming *arguendo* that there was no searching inquiry made, still the ascribed error will not grant relief to appellant for belatedly raising the issue for the first time on appeal.[23] And most importantly, the conviction of appellant was not made solely on his guilty plea—improvident or not—but on the evidence adduced by the prosecution proving beyond reasonable doubt appellant's culpability and liability for murder. Consequently, even if his plea of guilt during the pre-trial on March 4, 2003 be viewed as improvident, still appellant's conviction for murder stands as duly proved by the prosecution. Thus, the Court emphatically ruled in *People v. Baun*:

> Where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the **manner in which the plea of guilty is made** (improvidently or not) **loses legal significance, for the simple reason that the conviction is**

[21] (m) That official duty has been regularly performed.

[22] *Suplico v. National Economic and Development Authority*, G.R. No. 178830, July 14, 2008, 558 SCRA 329, 331, 354.

[23] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274; citing *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

based on the evidence proving the commission by the accused of the offense charged.[24] (Emphasis supplied.)

This is so, as the rule now stands, "even in cases in which the accused pleads guilty to a capital offense, the prosecution is still required to present evidence to prove his guilt and the precise degree of his culpability."[25] In other words, notwithstanding the plea of guilt, evidence must be adduced to determine the precise participation of the accused in the perpetuation of the capital offense—whether as principal, accomplice, or accessory—as well as the presence or absence of modifying circumstances. And "the accused may also present evidence in his behalf"[26] either to rebut the prosecution's evidence or to show the presence of mitigating circumstances.

Appellant waived his right to present evidence

Second, appellant maintains that he was not given opportunity to present evidence and that the case was submitted for decision immediately after the prosecution filed its offer of evidence.

We do not agree.

The Minutes of the hearing conducted on August 7, 2007 shows otherwise:

> Defense has no more witness to present. Prosecution is given 15 days to file formal offer of exhibits. 15 days for the defense for comments/objections. Case submitted for decision.[27]

The defense chose not to present any witnesses which amounts to a waiver to present evidence. This was not objected to by appellant. Thus, there was an implied acquiescence on the part of appellant not to present himself or other witnesses even though he was entitled to present evidence to prove, *inter alia*, mitigating

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[24] G.R. No. 167503, August 20, 2008, 562 SCRA 584, 597.

[25] *People v. Ignacio*, G.R. No. 134568, February 10, 2000, 325 SCRA 375, 380-381.

[26] RULES OF COURT, Rule 116, Sec. 3.

[27] Records, p. 225.

circumstances under Sec. 3 of Rule 116. Appellant is, consequently, estopped from questioning the rendition of the trial court's disposition of the case without the presentation of any evidence by the defense, unless there are exceptional reasons justifying the additional reception of evidence for the defense. Appellant has not shown any cogent justification to set aside the defense's waiver of right to present evidence. Moreover, the records show that appellant filed neither comment nor objection to the prosecution's Formal Offer of Exhibits. We also take note that under Sec. 3, Rule 116, **the accused *may* present evidence in his behalf**—it is, therefore, not mandatory for the defense to present evidence but is only accorded an opportunity to do so, which, in the instant case, was waived by the defense.

Besides, we further note that in the proceedings before the trial court, the defense neither assailed the non-presentation of its witnesses nor asserted its right to adduce evidence. Thus, issues raised for the first time on appeal are barred by estoppel—arguments not raised in the original proceedings cannot be considered on review.[28]

Treachery proved in qualifying the killing

Third, appellant argues, assuming his valid plea of guilt, that the trial court gravely erred in convicting him of murder by appreciating the presence of treachery. According to him, there were certain flaws in the testimonies of the prosecution witnesses that cast doubt as to the existence of treachery in order to deprive Ramil of the chance to defend himself since it was uncertain on how appellant's attack on Ramil commenced.

The argument is bereft of merit.

Art. 248 of the RPC provides in part that:

> Art. 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 temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

[28] See *People v. Lazaro, Jr.*, *supra* note 23.

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.

To be liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and (4) the killing is neither parricide nor infanticide.[29]

The prosecution competently proved the guilt of appellant and his precise degree of culpability. *First*, it was established that Ramil was killed. *Second*, appellant was the one who stabbed Ramil resulting in the latter's death. *Third*, the killing was attended by treachery. And *fourth*, the killing is neither parricide nor infanticide. Aside from the testimonies of Joseph, Christopher, and Napoleon, who positively identified appellant as the one who stabbed Ramil, Dr. Olfindo corroborates the testimonies of the other prosecution witnesses that the death of Ramil was caused by the stab wounds he suffered.

The prosecution presented the Certificate of Death of Ramil G. Tablate,[30] signed by Dr. Lilian L. Olfindo, Municipal Health Officer of Virac, Catanduanes, and the Post-Mortem Examination Report,[31] which states that Ramil Tablate died of Cardiac Arrest Secondary to Cardiac Tamponade, Secondary to Multiple Stab Wounds on the Chest and Abdomen.[32]

The third element of the crime of murder is being questioned by appellant who argues that treachery was not present. One

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[29] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 305.

[30] Exhibit "A", records, p. 2.

[31] Exhibits "B" & "B-1", *id.* at 4-5.

[32] Exhibit "A-1", *id.* at 2. Dr. Olfindo explained that "cardiac arrest secondary to cardiac tamponade is a condition wherein the heart ceases to beat because of the presence of the fluid into the cardiac sac causing the heart to bleed profusely. The cardiac sac closes the heart filled with fluid, that portion specifically that sac filled with blood and it causes the heart to stop that is the cardiac tamponade." TSN, February 5, 2005, p. 13.

with the courts *a quo*, we see no doubt that **appellant committed murder qualified with *treachery***. Joseph Romero testified:

THE COURT

Q. What was the position of Ramil when he was stabbed?
A. He was sitting on the motorcycle, your Honor.

Q. And from where did the accused come from when he approached Ramil Tablate?
A. From San Pablo, your Honor.

Q. **Immediately prior to the incident when the accused stabbed the victim where did the accused come, did he come from the front or did the accused approach him from the back?**
A. **At the back, your Honor.**

Q. **In other words, Ramil did not notice that the accused was approaching him in order to stab him?**
A. **Yes, your Honor.**

xxx xxx xxx

Q. If that is now the kind of statement which you relayed to the court, how were you able to tell the court that the accused approached Ramil from behind?
A. There were some vacant spaces wherein my view was not obstructed.

xxx xxx xxx

Q. When the accused [sic] was stabbed, what did the accused do?
A. He ran away going to the police station, your Honor.

Q. What about the victim?
A. He was brought to the hospital, your Honor.

Q. At the time when the victim was stabbed, did he fight back?
A. No, your Honor.[33]

On cross-examination, Joseph[34] further testified:

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[33] TSN, November 24, 2005, pp. 4-8.

[34] *Cf. Id.* at 2-3, 8. The testimony of Joseph also pertinently shows the following:

THE COURT

Q. So what was the position of the accused in stabbing Christopher, the brother of Ramil?
A. Christopher was stabbed behind by Prince.

Q. How about Ramil, because it was Ramil who died and Christopher is alive. **So how about Ramil, what was the position of the accused in stabbing Ramil?**
A. **Ramil was stabbed from behind by the accused your Honor.**[35] (Emphasis supplied.)

Christopher Tablate, brother of Ramil, corroborated Joseph's testimony, as follows:

COURT

Just one or two questions from the Court.

Q. On October 24, 2001, at around 8:50 o'clock in the evening, where were you?
A. I am at the wake of the dead person.

Q. At whose wake are you attending?
A. Sulpicio Go.

Q. Where is that location of such wake?
A. San Juan, Virac, Catanduanes, ma'am.

Q. While you were attending the wake of [Sulpicio] Go at San Juan, Virac, Catanduanes, do you recall of any unusual incident that happened?
A. Yes, ma'am.

Q. What was that unusual incident all about?
A. I have seen that somebody was stabbed.

Q. Who was that person stabbed?
A. Ramil Tablate, ma'am.

Q. If you know, who stabbed Ramil Tablate?
A. Prince Francisco, ma'am.

THE COURT

Q. Were you present at the place of incident?
A. Yes, your Honor.

xxx xxx xxx

Q. If the accused is in court today, can you point to him?

A. Yes, ma'am, (At this juncture, witness is pointing to the accused Prince Francisco)

[35] TSN, July 17, 2006, p. 9.

Q. You said that you saw Prince Francisco stab your brother and you came to rescue your brother by getting hold of the plastic chair and hitting Prince at his back. My question is, what was the position of your brother when you hit Prince at his back?

A. My brother was sitting on a motorcycle when he was stabbed by Prince several times and Prince came from the dark place and he suddenly stabbed Ramil.[36]

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[36] TSN, August 6, 2007, p. 13.

[37] *Cf. Id.* at 4-14. The testimony of Christopher also pertinently shows the following:

PROS. TANON

Q. Mr. Christopher Tablate the subject matter of this case is about an incident that happened on October 24, 2001 in the hours between 8:00 to 9:00 in the evening in Barangay San Juan, Virac, Catanduanes, regarding the fatal stabbing for several time[s] of the accused, Prince Francisco that led to the death of your brother, Ramil Tablate and so this case was docketed as Crim. Case No. 3007. Because of such incident[,] you were also inflicted of five (5) stand [sic] wounds as such there was a case for homicide against Prince Francisco docketed as Crim. Case No. 3034. These two cases were upon arraignment by the accused Prince Francisco, pleaded guilty for Frustrated Homicide and for murder, are you aware of that?
A. Yes, ma'am.

Q. Because of these two incidents that led to the filing of these two cases, were you investigated by the police?
A. Yes, ma'am.

xxx xxx xxx

PROS. TANON

Q. Mr. Witness, you said you had seen the accused Prince Francisco with the use of bladed weapon stabbed to death your brother, what was the length of the knife?
A. Eight (8) inches.

Q. Including the handle?
A. Yes, ma'am.

Q. Showing to you this knife marked as our Exhibit D, is that the on[e] you are referring to?
A. Yes, ma'am.

Q. When you were asked during the investigation, "When and where did this incident happened?" Your answer was, "Last October 24, 2001 in between the hours of 8:00 to 9:00 in the evening in Barangay San Juan, Virac, Catanduanes

particularly in front of the house of the late Ompi Go." Is that correct, is that what you answered?

A. Yes, ma'am.

Q. And the follow up question was, "How did it happen?," and you answered, "While I was viewing a pai-cue game at the wake of the late Ompy Go in San Juan, Virac, my brother Ramil Tablate who was sitting on a motorcycle at the back, talking to someone when suddenly Prince Francisco arrive[d] coming from the dark, carrying a bladed weapon, stainless with yellow handle and without any apparent reason stab my brother for several times[,] hitting the body." Is that correct?
A. Yes, ma'am.

Q. Did you really see your brother stabbed by Prince Francisco?
A. Yes, ma'am.

Q. What was your distance to your brother who was sitting on the motorcycle?
A. Around six (6) to seven (7) meters.

Q. And you further answered, "Then I heard my brother Ramil talking in Bicol dialect to wit: "*Tama na Prince magadan na ako*." Is that correct?
A. Yes, ma'am.

Q. Then you answered more, "I pacified Prince by telling him in Bicol dialect to wit: *Tama na Prince magadan na ang tugang ko*." Is that correct?
A. Yes, ma'am.

Q. When you bade Prince by saying, "*Tama na Prince ta magadan an ang tugang ko*," did Prince Francisco stop?
A. No, ma'am, he did not stop stabbing my brother.

Q. So you said something that Prince did not stop stabbing your brother and you took a plastic chair and struck Prince with it, is that correct?
A. Yes, ma'am.

Q. Did you hit Prince?
A. Yes, ma'am.

Q. What part of the body of Prince was hit with the plastic chair?
A. On his back.

Q. When you struck Prince with a plastic chair and you further said that your purpose was to stop him from stabbing your brother but instead Prince turned to you and stabbed you while his father Efren was beside him, meaning Prince, is that correct?
A. Yes, ma'am.

Q. How many times did Prince hit you when she (sic) stabbed you?
A. Five (5) times.

Q. Because you were injured five (5) times by Prince, were you referred to a doctor, were you treated by a doctor?

On cross-examination, Christopher[37] reiterated how his brother was treacherously murdered by appellant, thus:

COURT

Q. Why did you not inform your brother about the fact that you saw Prince Francisco pass you by carrying a knife

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A. Yes, ma'am.

There is here a medico legal certificate on record. We move that this be marked as our Exhibit G, the medical certificate of Christopher Tablate.

xxx xxx xxx

COURT

Just one or two questions from the Court.

Q. You said that you saw Prince Francisco stab your brother and you came to rescue your brother by getting hold of the plastic chair and hitting Prince at his back. My question is, what was the position of your brother when you hit Prince at his back?

A. My brother was sitting on a motorcycle when he was stabbed by Prince several times and Prince came from the dark place and he suddenly stabbed Ramil.

Q. The question is, when you approached your brother in fact you got a plastic chair and hit Prince, was your brother still on top of the motorcycle?

A. Yes, Your Honor.

Q. He did not fall to the ground?

A. After the stabbing, the motorcycle fell down together with my brother.

COURT

Q. You mean to say when your brother fell down with the motorcycle the motorcycle was on top of your brother?

INTERPRETER

The witness demonstrating that his brother was in sitting position when the motorcycle fell down.

Q. At what instance did you see Prince stab your brother the first time because I was looking at the result of the *post mortem* and the wound was all over. Which portion of the body was first stabbed by Prince when you saw him first?

A. At the front portion.

Q. When you approached your brother, which part of his body was being stabbed by Prince?

A. I could not recall anymore because he stabbed my brother in succession. He did not stop. He stabbed continuously.

knowing that there was an incident at the billiard hall? Can you please explain the sequence of the incident from the time you saw Prince Francisco up to the time you saw you [sic] your brother being stabbed by him?

A. When Prince Francisco passed by going to the dark portion, he suddenly attacked my brother and continuously stabbed my brother.

COURT

Q. When Prince Francisco passed by you and you saw him carrying a weapon, did you follow his move with your eyes until he went to the dark place and turned around and stabbed your brother?

A. Yes, ma'am.

COURT

Continue.

ATTY. SAMONTE

Q. You saw Prince Francisco coming from the dark?

A. Yes, sir.

Q. You saw Prince Francisco from the dark going to your brother?

A. Yes, sir.[38]

Moreover, prosecution witness Napoleon corroborated the testimonies of Joseph and Christopher that appellant was the assailant of Ramil by testifying that, at first, he thought Ramil and appellant were simply engaged in a fistfight, but later on, he saw appellant holding a knife and stabbing Ramil who was lying on the ground.[39]

The witnesses of the prosecution positively testified that appellant came from behind Ramil and started stabbing Ramil at the back with a stainless knife. Appellant continued the relentless stabbing of the unarmed Ramil, who was unable to defend himself or repel the attack of appellant. Thus, the presence of treachery as aptly found by the courts *a quo*.

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[38] TSN, August 7, 2007, pp. 17-18.

[39] *Id.* at 25-29.

In a catena of cases, treachery is found obtaining "when the offender commits the crime employing means, methods or forms in its execution which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make."[40]

Settled jurisprudence prescribes two (2) essential elements in order to support the finding of *alevosia* as an aggravating circumstance:

> (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate and conscious choice of means, methods or manner of execution.[41]

In this factual setting, the selection of the knife as the weapon to kill Ramil was arrived at so as not to create any noise that can alert the victim. Appellant planned to attack Ramil when Ramil's back is turned from appellant to preclude any window for self-defense or retaliation on the part of Ramil. The attack was swift and unexpected. Appellant rained numerous stabbing blows on the body of Ramil to ensure the success of his assault. Ramil was unarmed at the time of the attack depriving him of any opportunity to defend himself. Indeed, there was a deliberate, premeditated choice of the means, method, or manner of executing the crime that would shield appellant from any counterattack from Ramil. Ergo, the two elements of treachery were unquestionably met.

While appellant may claim that the attack is frontal and Ramil had the opportunity to defend himself, the Court explained in *People v. Segobre* that "treachery exists even if the attack is frontal if it is sudden and unexpected, giving the victim no

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[40] *People v. Mondigo*, G.R. No. 167954, January 31, 2008, 543 SCRA 384, 391. See also *People v. Ranin, Jr.*, *supra* note 29, at 309; *People v. Dela Cruz*, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 722; *People v. Bohol*, G.R. No. 178198, December 10, 2008, 573 SCRA 557, 567; *People v. Cuasay*, G.R. No. 180512, October 17, 2008, 569 SCRA 870, 878.

[41] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008, 550 SCRA 480, 498.

opportunity to repel it or defend himself, for what is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or to retaliate."[42] This is the unfortunate case of Ramil who was unable to repel the attack except only to plead for his life. As the CA aptly pointed out, even if Ramil was attacked frontally—which is definitely not the case—he was bereft of any opportunity to defend himself due to the swiftness and suddenness of the attack.

Consequently, we cannot agree with appellant that he only committed homicide on account of the absence of treachery. As a matter of course, "a qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense."[43] The CA is correct in imposing the penalty of *reclusion perpetua* in view of the plea of guilt.

Anent the proper damages, we find proper the grant by the RTC of PhP 131,313.50 as actual damages as duly proved during trial. Consistent with prevailing jurisprudence,[44] we find it proper to increase the award of civil indemnity and moral damages to PhP 75,000 each. We likewise increase the award of exemplary damages to PhP 30,000 in line with recent jurisprudence.[45]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03041 finding accused-appellant Prince Francisco *y* Zafe guilty beyond reasonable doubt of the crime of Murder is *AFFIRMED* with *MODIFICATION* in that he is ordered to pay the heirs of the victim, Ramil Tablate, the amounts of PhP 131,313.50 as actual damages, PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 30,000 as exemplary damages.

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[42] G.R. No. 169877, February 14, 2008, 545 SCRA 341, 348-349.

[43] *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 737.

[44] *People v. Serenas*, G.R. No. 188124, June 29, 2010; *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 782.

[45] *People v. Serenas, id.*; *People v. Mortera*, G.R. No. 188104, April 23, 2010; *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.,* concur.

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[*] Additional member per Special Order No. 913 dated November 2, 2010.

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Right to collect tax deficiency — Two requisites that must concur before the period to enforce collection may be suspended: (1) that the taxpayer requests for reinvestigation, and (2) that Commissioner of Internal Revenue grants such request. (Commissioner of Internal Revenue *vs*. Hambrecht & Quist Phils. Inc., G.R. No. 169225, Nov. 17, 2010) p. 446

CERTIORARI

Petition for — An extraordinary remedy for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. (Imperial *vs*. Joson, G.R. No. 160067, Nov. 17, 2010) p. 351

— Appellate court has no jurisdiction to entertain a petition assailing a final and executory resolution. (Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010) p. 213

— Error of judgment cannot be raised in a petition for certiorari. (Imperial *vs*. Joson, G.R. No. 160067, Nov. 17, 2010) p. 351

— Filing of a motion for reconsideration is a condition sine qua non; exceptions. (Pineda *vs*. CA, G.R. No. 181643, Nov. 17, 2010) p. 562

— It is the inadequacy, not the mere absence, of all other legal remedies and the danger of failure of justice without the writ that must usually determine the propriety of a petition for certiorari. (Land Bank of the Phils. *vs*. Sps. Umandap, G.R. No. 166298, Nov. 17, 2010) p. 396

— Petitioner's non-appearance at the arraignment in his criminal case will not divest him of his standing to maintain his petition for certiorari; reason. (Ivler *vs*. Judge Modesto-San Pedro, G.R. No. 172716, Nov. 17, 2010) p. 478

— Proper remedy to question the orders of the Bureau of Legal Affairs of the Intellectual Property Office. (Phil. Pharmawealth, Inc. *vs*. Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

— The sixty (60) day period for filing the petition is inextendible. (Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010) p. 213

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*. Saddi, A.M. No. P-10-2818, Nov. 15, 2010) p. 26

Gross dishonesty, grave misconduct and gross neglect of duty — Penalty in lieu of dismissal where erring court employee was already dropped from the rolls. (OCAD *vs*. Saddi, A.M. No. P-10-2818, Nov. 15, 2010) p. 26

COLLECTIVE BARGAINING AGREEMENT

Nature — It is not merely contractual in nature but it is imbued with public interest, thus, it must be construed liberally and must yield to the common good. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, Nov. 15, 2010) p. 255

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Special Agrarian Courts — Have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under R.A. No. 6657; nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of an administrative action. (Land Bank of the Phils. *vs*. Sps. Umandap, G.R. No. 166298, Nov. 17, 2010) p. 396

COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)

Buy-bust operation — Due regard to Constitutional and legal safeguards must be undertaken. (People *vs*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

Chain of custody rule — As a method of authenticating evidence, the rule requires that the admission or presentation of an exhibit, such as the seized prohibited drugs, be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims to be. (People *vs*. Tan, G.R. No. 191069, Nov. 15, 2010) p. 262

— Must be strictly complied with. (People *vs*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

— No reasonable guaranty as to the integrity and evidentiary value of the confiscated illegal drug where testimonies of the prosecution witnesses are inconsistent. *(Id.)*

— Non-compliance with the rule will not render the accused's arrest illegal or make the items seized inadmissible. (People *vs*. Tan, G.R. No. 191069, Nov. 15, 2010) p. 262

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*. Tan, G.R. No. 191069, Nov. 15, 2010) p. 262

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*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

CONSPIRACY

Existence of — The act of one is the act of all the conspirators. (People *vs*. Ebet, G.R. No. 181635, Nov. 15, 2010) p. 181

CORPORATIONS

Board of directors — Power to sue and be sued in any court is lodged with the Board while physical acts, like the signing of documents, can be performed by natural persons duly authorized for the purpose by the corporate by-laws or by a specific act of the Board of Directors. (Cebu Bionic Builders Supply, Inc. *vs*. DBP, G.R. No. 154366, Nov. 17, 2010) p. 292

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. (SolidBank Corp. *vs*. Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

Intra-corporate controversy — Understood as a suit arising from intra-corporate relations or between or among stockholders or between any or all of them and the

corporation. (Strategic Alliance Dev't.Corp. *vs*. Star Infrastructure Dev't. Corp., G.R. No. 187872, Nov. 17, 2010) p. 669

COSTS

Costs of suit — No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law. (Land Bank of the Phils. *vs*. Rivera, G.R. No. 182431, Nov. 17, 2010) p. 575

COURT OF TAX APPEALS

Appellate jurisdiction — Exclusive to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. (Commissioner of Internal Revenue *vs*. Hambrecht & Quist Phils. Inc., G.R. No. 169225, Nov. 17, 2010) p. 446

— Includes issue of prescription of the Bureau of Internal Revenue's right to collect taxes. *(Id.)*

COURT PERSONNEL

Conduct of — Any conduct exhibited tending to diminish the faith of the people in the judiciary will not be condoned. (Yaeso *vs*. Legal Researcher/Officer-in-Charge Enolfe, A.M. No. P-08-2584, Nov. 15, 2010) p. 8

— Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions. (Basilio *vs*. Dionio, A.M. No. P-09-2700, Nov. 15, 2010) p. 17

— The conduct and behavior of every official and employee of an agency involved in the administration of justice, from the Presiding Judge to the most junior clerk, should

be circumscribed with the heavy burden of responsibility. (Yaeso *vs*. Legal Researcher/Officer-in-Charge Enolfe, A.M. No. P-08-2584, Nov. 15, 2010) p. 8

Court stenographer — Bringing stenographic notes to be transcribed at home is a violation of the law. (Basilio *vs*. Dionio, A.M. No. P-09-2700, Nov. 15, 2010) p. 17

— Rule on payment for request of copies of the Transcript of Stenographic Notes (TSN). *(Id.)*

COURTS

Hierarchy of courts — The determination of which court would be "in a better position to serve the interests of justice" also entails the consideration of the following factors: (a) The nature of the controversy; (b) the comparative accessibility of the court to the parties; and (c) other similar factors. (Imperial *vs*. Joson, G.R. No. 160067, Nov. 17, 2010) p. 351

DAMAGES

Compensation for loss of earning capacity — Formula to determine net earning capacity is Net earning capacity = Life expectancy x (Gross annual income – reasonable and necessary living expenses). (Tamayo *vs*. Señora, G.R. No. 176946, Nov. 15, 2010) p. 120

— The amount recoverable is not the loss of the victim's entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received. *(Id.)*

DEFAULT

Default order — Issuance thereof should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court. (Imperial *vs*. Joson, G.R. No. 160067, Nov. 17, 2010) p. 351

DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)

Secretary of Labor — May resolve all issues involved in a controversy including the award of wage increases and benefits. (Cirtek Employees Labor Union-Federation of Free Workers *vs.* Cirtek Electronics, Inc., G.R. No. 190515, Nov. 15, 2010) p. 255

— The filing and submission of the Memorandum of Agreement will neither divest the Secretary of his/her jurisdiction nor restrict his/her leeway in deciding the matters before him/her. *(Id.)*

DOCUMENTARY EVIDENCE

Affidavit — Considered inadmissible under the hearsay rule unless affiant is placed on the witness stand to testify and affirm the truth and veracity of his statements. (Imani *vs.* Metropolitan Bank & Trust Co., G.R. No. 187023, Nov. 17, 2010) p. 647

Genuineness of a document — Photocopies of documents such as checks have no probative value and are inadmissible in evidence. (Imani *vs.* Metropolitan Bank & Trust Co., G.R. No. 187023, Nov. 17, 2010) p. 647

EMPLOYEES, KINDS OF

Project employee — Defined as one whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. (Millennium Erectors Corp. *vs.* Magallanes, G.R. No. 184362, Nov. 15, 2010) p. 199

Regular employees — Continued rehiring of the employee converts his status from a project employee to that of a regular employee. (Millennium Erectors Corp. *vs.* Magallanes, G.R. No. 184362, Nov. 15, 2010) p. 199

EMPLOYER-EMPLOYEE RELATIONSHIP

Control test — A strong indicator of the existence of an employer-employee relationship. (Teng *vs*. Pahagac, G.R. No. 169704, Nov. 17, 2010) p. 460

Indirect employer — Shall be responsible with his contractor or subcontractor for any violation of any provision of the Labor Code. (GSIS *vs.* NLRC, G.R. No. 180045, Nov. 17, 2010) p. 538

Management's prerogatives — Must be exercised in good faith. (PLDT Co. *vs*. Teves, G.R. No. 143511, Nov. 15, 2010) p. 39

EMPLOYMENT, TERMINATION OF

Backwages — Award thereof is not proper in view of the participation in an illegal strike. (SolidBank Corp. *vs*. Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of his actual reinstatement. (PLDT Co. *vs*. Teves, G.R. No. 143511, Nov. 15, 2010) p. 39

Just causes — Three (3) unauthorized absences within a three-year period are not sufficient cause for dismissal. (PLDT Co. *vs*. Teves, G.R. No. 143511, Nov. 15, 2010) p. 39

Reinstatement — If no longer feasible due to strained relationship between the employer and the illegally dismissed employee, payment of separation pay is in order. (SolidBank Corp. *vs.* Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

Valid termination — Burden of proving the validity of the termination of employment rests with the employer. (Teng *vs.* Pahagac, G.R. No. 169704, Nov. 17, 2010) p. 460

— Dismissal must be for a just or authorized cause, and the employee must be afforded an opportunity to be heard and to defend himself. *(Id.)*

EVIDENCE

Credibility — Evidence, to be worthy of credit, must not only proceed from the mouth of a credible witness but must be credible in itself. (Sps. Bolaños *vs*. Zuñiga, G.R. No. 180997, Nov. 17, 2010) p. 552

Flight of the accused — Evinces consciousness of guilt and a silent admission of culpability. (People *vs*. Manulit, G.R. No. 192581, Nov. 17, 2010) p. 715

Guilt beyond reasonable doubt — Determined by the court based on the evidence presented by the parties at the trial of the merits. (Jacob *vs*. Sandiganbayan 4th Division, G.R. No. 162206, Nov. 17, 2010) p. 374

Parol evidence rule — Should not be strictly applied to labor cases; the Labor Arbiter is not precluded from accepting and evaluating evidence other than what is stated in the Collective Bargaining Agreement. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, Nov. 15, 2010) p. 255

EXEMPLARY DAMAGES

Award of — Not proper unless the claimant first establishes a clear right to moral damages. (Filinvest Dev't. Corp. *vs*. Golden Haven Memorial Park, Inc., G.R. No. 187824, Nov. 17, 2010) p. 662

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — The purpose thereof is to give the agency every opportunity to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. (Teng *vs*. Pahagac, G.R. No. 169704, Nov. 17, 2010) p. 460

EXPROPRIATION

Just compensation — Between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good (but not better than) the position he was in before the taking occurred. (Land Bank of the Phils. *vs.* Rivera, G.R. No. 182431, Nov. 17, 2010) p. 575

— If just compensation is not settled prior to the passage of R.A. No. 6657, it should be computed in accordance with said law even if the property was acquired under P.D. No. 27. *(Id.)*

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)

Writ of possession — The issuance and the immediate implementation thereof are ministerial and mandatory. (Sps. Topacio *vs.* Banco Filipino Savings and Mortgage Bank, G.R. No. 157644, Nov. 17, 2010) p. 331

FORUM SHOPPING

Concept — By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, hoping that one or the other tribunal would favorably dispose of the matter. (Central Azucarera de Bais Employees Union-NFL *vs.* Central Azucarera de Bais, Inc., G.R. No. 186605, Nov. 17, 2010) p. 629

(Phil Pharmawealth, Inc. *vs.* Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

— The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to res

judicata in the action under consideration. (Central Azucarera de Bais Employees Union-NFL *vs*. Central Azucarera de Bais, Inc., G.R. No. 186605, Nov. 17, 2010) p. 629

(Phil Pharmawealth, Inc. *vs*. Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

HOMICIDE

Commission of — Civil liabilities of accused, cited. (Ilisan *vs*. People, G.R. No. 179487, Nov. 15, 2010) p. 151

— Imposable penalty. *(Id.)*

— Negative result of the paraffin test is not conclusive. *(Id.)*

INTERESTS

Interest for payment of a sum of money — Increased to 12% per annum from the finality of the decision until its satisfaction, the interim period deemed equivalent to forbearance of credit. (Vitarich Corp. *vs*. Losin, G.R. No. 181560, Nov. 15, 2010) p. 164

JUDGES

Conduct of — Judges are required to live up to the strictest standard of honesty, integrity, and uprightness. (Sps. Ching *vs*. Family Savings Bank, G.R. No. 167835, Nov. 15, 2010) p. 84

JUDGMENTS

Acquittal of accused — When moral certainty as to the culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right. (People *vs*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

Execution of — Execution by motion or by independent action is not applicable to an ex parte petition for the issuance of the writ of possession as it is not in the nature of a civil action. (Sps. Topacio *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 157644, Nov. 17, 2010) p. 331

— Under Section 16, Rule 39 of the Rules of Court, a third-party claimant or a stranger to the foreclosure suit, can opt to file a remedy known as terceria against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor. (Imani *vs*. Metropolitan Bank & Trust Co., G.R. No. 187023, Nov. 17, 2010) p. 647

Final judgment — Distinguished from an interlocutory order. (Phil. Business Bank *vs*. Chua, G.R. No. 178899, Nov. 15, 2010) p. 131

Judgment by default — The policy of the law is to have every litigant's case tried on the merits as much as possible, hence, judgments by default are frowned upon. (San Pedro Cineplex Properties, Inc. *vs*. Heirs of Manuel Humada Enaño, G.R. No. 190754, Nov. 17, 2010) p. 710

Redemption — Failure to redeem the property within the prescribed period transfers the ownership to the purchaser and the right to request for issuance of writ of possession therein never prescribes. (Sps. Ching *vs*. Family Savings Bank, G.R. No. 167835, Nov. 15, 2010) p. 84

Service of judgment — As a rule, judgments are sufficiently served when they are delivered personally, or through registered mail to the counsel on record, or by leaving them in his office with his clerk or with a person having charge thereof. (Sps. Topacio *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 157644, Nov. 17, 2010) p. 331

JUDICIAL DEPARTMENT

Judicial power — Includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Phil Pharmawealth, Inc. *vs*. Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

JUDICIAL NOTICE

Coverage — Judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. (Central Azucarera de Bais Employees Union-NFL *vs*. Central Azucarera de Bais, Inc., G.R. No. 186605, Nov. 17, 2010) p. 629

JUSTIFYING CIRCUMSTANCES

Self-defense — Elements are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. (People *vs.* Manulit, G.R. No. 192581, Nov. 17, 2010) p. 715

— Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person; in case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. *(Id.)*

LABOR RELATIONS

Labor disputes — Include any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees. (SolidBank Corp. *vs.* Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

LAND REGISTRATION ACT (ACT NO. 496)

Annotation of adverse claim — Intended to protect the claimant's interest in the property. (Filinvest Dev't. Corp. *vs*. Golden Haven Memorial Park, Inc., G.R. No. 187824, Nov. 17, 2010) p. 662

— The notice is a warning to third parties dealing with the property that someone claims an interest in it or asserts a better right than the registered owner. *(Id.)*

Decree of registration — Does not confer title but merely confirms one already existing. (Imani *vs*. Metropolitan Bank & Trust Co., G.R. No. 187023, Nov. 17, 2010) p. 647

LEASE

Contract of lease —Not deemed perfected absent concurrence of offer and acceptance of the terms of the proposed lease agreement. (Cebu Bionic Builders Supply, Inc. *vs*. DBP, G.R. No. 154366, Nov. 17, 2010) p. 292

— The subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of their possession. *(Id.)*

Implied lease — Only those terms which are germane to the lessee's right of continued enjoyment of the property leased are revived in the implied new lease; special arrangement in the prior lease contract, which are by nature are foreign to the right of occupancy or enjoyment such as the right of first refusal are not revived in the implied new lease. (Cebu Bionic Builders Supply, Inc. *vs*. DBP, G.R. No. 154366, Nov. 17, 2010) p. 292

Period of lease — A lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor. (Cebu Bionic Builders Supply, Inc. *vs*. DBP, G.R. No. 154366, Nov. 17, 2010) p. 292

— If at the end of the contract, the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687 of the Civil Code. *(Id.)*

MOTION FOR RECONSIDERATION

Period to file — If the motion for reconsideration is not seasonably filed, it renders the decision final and executory but the rule may be relaxed in the higher interest of substantial

justice. (Cebu Bionic Builders Supply, Inc. *vs*. DBP, G.R. No. 154366, Nov. 17, 2010) p. 292

MURDER

Commission of — Civil liabilities of accused, cited. (People *vs*. Francisco, G.R. No. 192818, Nov. 17, 2010) p. 729

(People *vs*. Manulit, G.R. No. 192581, Nov. 17, 2010) p. 715

— Defined as the unlawful killing of a person which is not parricide or infanticide, provided treachery or evident premeditation, inter alia, attended the killing. (People *vs*. Francisco, G.R. No. 192818, Nov. 17, 2010) p. 729

(People *vs*. Manulit, G.R. No. 192581, Nov. 17, 2010) p. 715

NEGOTIABLE INSTRUMENTS LAW

Promissory note — When there is no date of payment indicated therein, the creditor has the right to demand immediate payment. (Hongkong and Shanghai Banking Corp., Ltd. Staff Retirement Plan *vs*. Sps. Broqueza, G.R. No. 178610, Nov. 17, 2010) p. 511

OBLIGATIONS, EXTINGUISHMENT OF

Payment or performance — One who alleges payment or performance has the burden of proof. (Vitarich Corp. *vs*. Losin, G.R. No. 181560, Nov. 15, 2010) p. 164

— Receipts and mercantile documents as proof thereof are appreciated. *(Id.)*

PATENT OFFICE (R.A. NO. 165)

Rights of patentees — A patentee shall have the exclusive right to make, use and sell the patented machine, article, or product, and to use the patented process for the purpose of industry or commerce, throughout the territory of the Philippines for the term of the patent; and such making, using, or selling by any person without the authorization of the patentee constitutes infringement of the patent. (Phil. Pharmawealth, Inc. *vs*. Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

PLEADINGS

Filing of — Where the filing is made by registered mail, the date of mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of filing. (GSIS *vs*. NLRC, G.R. No. 180045, Nov. 17, 2010) p. 538

Rule on pleadings and practice — No new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings. (Pineda *vs*. CA, G.R. No. 181643, Nov. 17, 2010) p. 562

Service of pleadings — Requirement of proof of service may be dispensed with in appeals in labor cases. (Millennium Erectors Corp. *vs*. Magallanes, G.R. No. 184362, Nov. 15, 2010) p. 199

— Substantial compliance with the rule is allowed. (Central Azucarera de Bais Employees Union-NFL *vs*. Central Azucarera de Bais, Inc., G.R. No. 186605, Nov. 17, 2010) p. 629

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. (Millennium Erectors Corp. *vs*. Magallanes, G.R. No. 184362, Nov. 15, 2010) p. 199

PLEAS

Plea of guilty to a capital offense — Presentation by the accused of evidence in his behalf is not mandatory, he is only accorded an opportunity to do so. (People *vs*. Francisco, G.R. No. 192818, Nov. 17, 2010) p. 729

— When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability; purpose. *(Id.)*

— Where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his

guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged. *(Id.)*

PRELIMINARY INJUNCTION

Status quo — Defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case. (Pineda *vs*. CA, G.R. No. 181643, Nov. 17, 2010) p. 562

Writ of — May be issued upon the concurrence of the following essential requisites, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and (3) that there is an urgent and paramount necessity for the writ to prevent serious damage. (Strategic Alliance Dev't.Corp. *vs*. Star Infrastructure Dev't. Corp., G.R. No. 187872, Nov. 17, 2010) p. 669

(Phil Pharmawealth, Inc. *vs*. Pfizer, Inc., G.R. No. 167715, Nov. 17, 2010) p. 423

— Purpose thereof is to prevent the threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. (Pineda *vs*. CA, G.R. No. 181643, Nov. 17, 2010) p. 562

— While the grant or denial thereof is discretionary on the part of the trial court, grave abuse of discretion is committed when it does not maintain the status quo which is the last, actual, peaceable and uncontested status which preceded the actual controversy. *(Id.)*

PRELIMINARY INVESTIGATION

Probable cause — A finding thereof does not require an inquiry on the sufficiency of evidence to procure a conviction; a reasonable belief that the act complained of constitutes the offense charged is enough. (Pineda-Ng *vs*. People, G.R. No. 189533, Nov. 15, 2010) p. 225

— Defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Who may apply — Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Dela Paz, G.R. No. 171631, Nov. 15, 2010) p. 106

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal partnership of gains — All property acquired during the marriage, whether the acquisition appears to have been made, contracted, or registered in the name of one or both spouses, is presumed conjugal unless the contrary is proved. (Imani *vs*. Metropolitan Bank & Trust Co., G.R. No. 187023, Nov. 17, 2010) p. 647

PROSECUTION SERVICE ACT OF 2010 (R.A. NO. 10071)

Application — Given retroactive effect. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

PUBLIC OFFICERS AND EMPLOYEES

Administrative complaint against public employees — Resignation from office after the filing of an administrative case will not render the same moot and academic. (Babante-Caples *vs*. Caples, A.M. No.HOJ-10-03, Nov. 15, 2010) p. 1

Immoral conduct — Committed when a civil servant abandoned his family and cohabited with another woman; imposable penalty. (Babante-Caples *vs*. Caples, A.M. No.HOJ-10-03, Nov. 15, 2010) p. 1

RAPE

Civil liabilities of accused — Cited. (People *vs*. Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

Commission of — Established when a man shall have carnal knowledge of a woman by means of force, threat or intimidation. (People *vs*. Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

Prosecution of rape cases — Guiding principles in the determination of the innocence or guilt of the accused. (People *vs.* Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

"Sweetheart defense" — Being an affirmative defense, the invocation of a love affair must be supported by convincing proof. (People *vs.* Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

RECKLESS IMPRUDENCE

Concept — Considered a single crime, its consequences on persons and property are material only to determine the penalty. (Ivler *vs*. Judge Modesto-San Pedro, G.R. No. 172716, Nov. 17, 2010) p. 478

— Distinguished from complex crimes. *(Id.)*

— Prior conviction or acquittal for the crime of reckless imprudence bars prosecution for the same quasi-offense. *(Id.)*

REGALIAN DOCTRINE

Concept — All lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. (Rep. of the Phils. *vs*. Dela Paz, G.R. No. 171631, Nov. 15, 2010) p. 106

— Surveyor's annotation that the land is alienable and disposable is insufficient and does not constitute incontrovertible evidence to overcome the presumption that the land remains part of the inalienable public domain. *(Id.)*

RES JUDICATA

Two concepts of — The first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under

paragraph (c) of Rule 39. (Sps. Topacio *vs*. Banco Filipino Savings and Mortgage Bank, G.R. No. 157644, Nov. 17, 2010) p. 331

RETIREMENT

Retirement benefits — A form of reward for an employee's loyalty and service to the employer, and are intended to help the employee enjoy the remaining years of his life, lessening the burden of having to worry about his financial support or upkeep. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

Retirement benefits for government employees — Prior to the effectivity of R.A. No. 8291, retiring government employees who were not entitled to the benefits under R.A. No. 910 had the option to retire under either of two laws: Commonwealth Act No. 186, as amended by R.A. No. 660 or P.D. No. 1146. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

Retirement laws — Liberally construed in favor of the retiree. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

Retirement pension — Partakes of the nature of "retained wages" of the retiree for a dual purpose: to entice competent people to enter the government service, and to permit them to retire from the service with relative security, not only those who have retained their vigor, but more so for those who have been incapacitated by illness or accident. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

RIGHTS OF THE ACCUSED

Right to presumption of innocence — Prevails and the accused shall be acquitted where the prosecution fails to meet the required quantum of evidence. (People *vs*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

ROBBERY WITH HOMICIDE

Commission of — When a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery

with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing. (People *vs*. Ebet, G.R. No. 181635, Nov. 15, 2010) p. 181

RULES OF PROCEDURE

Application — Liberally construed but the provisions on reglementary periods are strictly applied. (Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010) p. 213

— Rules are mere tools designed to facilitate the attainment of justice. (GSIS *vs*. De Leon, G.R. No. 186560, Nov. 17, 2010) p. 610

— Should not be applied in a very rigid and technical sense in labor cases. (Millennium Erectors Corp. *vs*. Magallanes, G.R. No. 184362, Nov. 15, 2010) p. 199

— Strict and rigid application especially on technical matters, which tend to frustrate rather than promote substantial justice, must be avoided. (Strategic Alliance Dev't.Corp. *vs*. Star Infrastructure Dev't. Corp., G.R. No. 187872, Nov. 17, 2010) p. 669

(Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010) p. 213

— Subsequent submission of required documents of a party-litigant may warrant the relaxation of the rules of procedure. (Sps. Ching *vs*. Family Savings Bank, G.R. No. 167835, Nov. 15, 2010) p. 84

SALES

Buyer in good faith — To prove good faith, the buyer of registered lands needs only to show that he relied on the title that covers the property; exception. (Filinvest Dev't. Corp. *vs*. Golden Haven Memorial Park, Inc., G.R. No. 187824, Nov. 17, 2010) p. 662

SEARCH AND SEIZURE

Warrantless search and seizure — Legal and valid when accused was found in possession of dangerous drugs. (People *vs*. Tan, G.R. No. 191069, Nov. 15, 2010) p. 262

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. (Strategic Alliance Dev't.Corp. *vs.* Star Infrastructure Dev't. Corp., G.R. No. 187872, Nov. 17, 2010) p. 669

Special Commercial Courts — The designation thereof as such has not in any way limited their jurisdiction to hear and decide cases of all kinds, whether civil, criminal or special proceedings. (Strategic Alliance Dev't.Corp. *vs.* Star Infrastructure Dev't. Corp., G.R. No. 187872, Nov. 17, 2010) p. 669

SHERIFFS

Abuse of authority — A special order of the court is required to remove improvements on a property subject of execution and violation thereof constitutes abuse of authority. (Yaeso *vs.* Legal Researcher/Officer-in-Charge Enolfe, A.M. No. P-08-2584, Nov. 15, 2010) p. 8

Conduct of — Sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion. (Ramas-Uypitching, Jr. *vs*. Magalona, A.M. No. P-07-2379, Nov. 17, 2010) p. 280

(Yaeso *vs*. Legal Researcher/Officer-in-Charge Enolfe, A.M. No. P-08-2584, Nov. 15, 2010) p. 8

Duties — Duty to execute a valid writ is ministerial and not discretionary and should determine with reasonable certainty the proper subject of the levy on execution. (Ramas-Uypitching, Jr. *vs*. Magalona, A.M. No. P-07-2379, Nov. 17, 2010) p. 280

— Sheriffs have no authority to levy on execution upon the property of any person other than that of the judgment debtor. *(Id.)*

Liability of — Rule in case of irregular implementation of an alias writ of execution. (Ramas-Uypitching, Jr. *vs.* Magalona, A.M. No. P-07-2379, Nov. 17, 2010) p. 280

— Sheriffs may be fined, suspended, or dismissed from office where rights of individuals are jeopardized by their actions. *(Id.)*

— The dismissal of a sheriff from the service for previous infractions does not render the present administrative case against him moot. *(Id.)*

STRIKES

Concept — Comprise not only concerted work stoppages, but also slowdowns, mass leaves, sit downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities. (SolidBank Corp. *vs*. Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

— Defined as any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. *(Id.)*

Illegal strike — Liability of union officers as distinguished from liability of members. (SolidBank Corp. *vs*. Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

— No strike or lockout shall be declared after assumption of jurisdiction by the President or the Secretary of Labor or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout. *(Id.)*

Prohibited activities during a strike — Illegal activities by union members, cited. (SolidBank Corp. *vs*. Gamier, G.R. No. 159460, Nov. 15, 2010) p. 54

SUCCESSION

Order of intestate succession — Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex, age, and even if they should come from different marriages. (Sps. Bolaños *vs*. Zuñiga, G.R. No. 180997, Nov. 17, 2010) p. 552

— The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares. *(Id.)*

SUMMARY JUDGMENT

Application —Where the facts appear undisputed from the pleadings, the court is allowed to decide the case summarily by applying the law to the material facts. (Phil. Business Bank *vs*. Chua, G.R. No. 178899, Nov. 15, 2010) p. 131

Partial summary judgment — Specifies the disputed facts that have to be settled in the course of the trial. (Phil. Business Bank *vs*. Chua, G.R. No. 178899, Nov. 15, 2010) p. 131

Propriety of — May be corrected only on appeal or other direct review, not a petition for certiorari, since it imputes error on the lower court's judgment. (Phil. Business Bank *vs*. Chua, G.R. No. 178899, Nov. 15, 2010) p. 131

TRIAL

Commencement of — Delays resulting from extraordinary remedies against interlocutory orders shall be excluded in computing the time within which trial must commence; accused's right to speedy trial is not violated. (Imperial *vs*. Joson, G.R. No. 160067, Nov. 17, 2010) p. 351

UNFAIR LABOR PRACTICES

Concept — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Central Azucarera de Bais Employees Union-NFL *vs*. Central Azucarera de Bais, Inc., G.R. No. 186605, Nov. 17, 2010) p. 629

VALUE-ADDED TAX

VAT on sale of goods or properties — There must be a sale, barter, or exchange of goods or properties before any VAT may be levied. (Commissioner of Internal Revenue *vs*. Sony Phils., Inc., G.R. No. 178697, Nov. 17, 2010) p. 511

VOLUNTARY ARBITRATORS

Decision of — May still be a subject of a motion for reconsideration; reason. (Teng *vs*. Pahagac, G.R. No. 169704, Nov. 17, 2010) p. 460

WITNESSES

Credibility of —Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Manulit, G.R. No. 192581, Nov. 17, 2010) p. 715

(People *vs*. Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

(People *vs*. Baga, G.R. No. 189844, Nov. 15, 2010) p. 232

(People *vs*. Ebet, G.R. No. 181635, Nov. 15, 2010) p. 181

(Ilisan *vs*. People, G.R. No. 179487, Nov. 15, 2010) p. 151

— Incomplete entry in the police blotter must not overcome the positive and categorical identification of accused as one of the perpetrators. (People *vs*. Ebet, G.R. No. 181635, Nov. 15, 2010) p. 181

— Not affected by the fact that the witnesses are relatives of the victim. (Ilisan *vs*. People, G.R. No. 179487, Nov. 15, 2010) p. 151

— Stands in the absence of ill-motive to falsely testify against the accused. (People *vs*. Cabanilla, G.R. No. 185839, Nov. 17, 2010) p. 590

— Testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of a complaining witness. *(Id.)*

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