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OF THE

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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-10-2865. November 22, 2010]
(Formerly A.M. OCA I.P.I. No. 09-3044-P)

Executive Judge AURORA MAQUEDA ROMAN, Regional Trial Court, Gumaca, Quezon, *complainant, vs.* **VIRGILIO M. FORTALEZA, Clerk of Court, Municipal Trial Court, Catanauan, Quezon,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT PERSONNEL MUST STRICTLY OBSERVE OFFICIAL TIME TO INSPIRE PUBLIC RESPECT FOR THE JUSTICE SYSTEM.— Court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court. Specifically, court personnel must strictly observe official time to inspire public respect for the justice system. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall **commit themselves exclusively to the business and responsibilities of their office during working hours.** Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice.

2. ID.; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; LOAFING, DEFINED; PROVEN BY SUBSTANTIAL EVIDENCE IN CASE AT BAR.— The Civil Service Commission Rules define "loafing" as "frequent unauthorized absences from duty during regular office hours." The word "frequent" connotes that the employees absent themselves from duty *more than once*. In the present case, the charge of loafing was proven by substantial evidence. Gavino, the process server and the respondent's own brother-in-law, testified that there were times the respondent left the office during office hours, although these temporary absences from office *did not exceed one hour*. Norberta, the stenographer and the respondent's wife, stated that the respondent left the office "once in a while, sometimes *for half an hour*." Melanie Macaraig, a court interpreter, narrated that the respondent would leave the office during office hours *lasting from two to three hours a day, two to three times a week*. Nilo Tabernilla, Clerk II at the Department of Agrarian Reform (*DAR*), narrated that respondent would go to the DAR office in the morning to chat, but explained that the DAR office is near the MTC. While none of these witnesses saw the respondent attend cockfights during office hours, sufficient basis exists to conclude that the respondent had indeed been loafing during office hours, albeit the witnesses differ in their reports on the length of time he actually stayed out of office. The respondent himself did not deny going out of his office during working hours, although he explained that he would go out either to smoke, to read newspapers in the library, or to discuss legal matters with the police. We find the respondent's self-serving explanation unmeritorious. *First*, these claimed activities, even if true, would not consume as much as two (2) to three (3) hours of his time. *Second*, any discussions of legal matters with the police should be upon the instructions of his judge, which the respondent has not even claimed. *Finally*, the respondent should only read newspapers and smoke during breaktime; these activities should never be done during working hours. As we explained in *Re*: *Unauthorized Absences from the Post of Pearl Marie N. Icamina*: Pursuant to the constitutional mandate that public office is a public trust, court personnel must observe the prescribed office hours and use this time efficiently for public service, "if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary."

3. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Section 52(A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936 classifies loafing or frequent unauthorized absences from duty during regular office hours as a grave offense, punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed. We consider the respondent's more than 30 years of service in the Judiciary as a mitigating circumstance and, accordingly, impose on him the minimum penalty of suspension without pay for six (6) months, as recommended by the OCA. The Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy. When an officer or employee is disciplined, the object sought is not his/her punishment, but the improvement of the public service, and the preservation of the public's faith and confidence in the government.

D E C I S I O N

BRION, *J.*:

This administrative case arose from a letter-complaint, dated May 24, 2007, by one who wanted to keep her identity confidential, addressed to former Chief Justice Reynato S. Puno, informing him of the alleged irregularities happening at the Municipal Trial Court (*MTC*) of Catanauan, Quezon. For purposes of this Decision, the letter-sender shall be referred to as the "informant."

The letter-complaint reported that respondent Clerk of Court Virgilio M. Fortaleza is the husband of stenographer Norberta Fortaleza and the brother-in-law of process server Gavino Otico Ramos. All three work at the MTC. On the basis of these relations, Norberta and Gavino got performance ratings higher than those given to the other MTC employees. The informant further claimed that the respondent made her sign blank performance evaluation

forms without telling her what rating she would get, and added that she was not evaluated for the period July to December 2006. She likewise reported that the respondent is fond of attending cockfights during office hours, and allows Norberta to sign his daily time record during his absence. She also charged the respondent and his wife of using abusive words in addressing her in the presence of other people. Despite these specific charges, the informant still requested that her identity be kept confidential.

The Office of the Chief Justice referred the letter-complaint to then Court Administrator Christopher O. Lock for discreet investigation. The Office of the Court Administrator (*OCA*), in its letter of September 20, 2007, informed the informant that her allegations regarding the abusive conduct of the respondent and his wife, as well as the irregularities in the filling up of her performance evaluation sheet, cannot prosper without the disclosure of her identity. The OCA explained that the informant's testimony was needed to substantiate these charges. The OCA, nevertheless, stated that the informant's other charges, such as attending cockfights during office hours and tampering of attendance record, may be referred to Executive Judge Aurora V. Maqueda-Roman of the Regional Trial Court, Gumaca, Quezon, for investigation. Accordingly, the OCA referred the letter-complaint to Judge Maqueda-Roman for the conduct of a discreet investigation.

In her Report and Recommendation dated January 2, 2008, Judge Maqueda-Roman found merit in the allegation that the respondent had been "loafing on his job" and recommended that he be meted a ₱3,000.00 fine, with a warning that a repetition of the same or similar acts will be dealt with more severely. Judge Maqueda-Roman dismissed the other charges against the respondent for lack of basis.

The Report and Recommendation of Judge Maqueda-Roman reads in part:

x x x x x x x x x

After careful consideration of the testimonies of Virgilio Fortaleza and his co-employees including his wife at MTC Catanauan as well as the other employees at [DAR], Catanauan, Quezon and a policeman at MPS, Catanauan, Quezon, [the] undersigned Executive Judge of RTC, Gumaca, Quezon is inclined to believe that indeed Virgilio Fortaleza has been *loafing* in office. Even his wife, Norberta Fortaleza stated that once in a while, her husband, Virgilio Fortaleza leaves office, sometimes for half an hour and stays at the police station to smoke to while away his sleepy feeling. Other employees testified that at times[,] Virgilio left office and stayed out for less than an hour or for an hour or for two (2) or three (3) hours for two (2) or three (3) days a week. In this light[,] his co-employees differ in their estimate as to the duration of his stay out of office during office hours. Where Virgilio Fortaleza went out and stayed out of office has not been clearly established, it was not shown that he stayed out of office to attend cockfight[s]. No one of the witnesses disclosed and confirmed that he went out of office and attended cockfights during office hours.[1]

In our Resolution dated February 11, 2009, the Court resolved to: (1) treat Judge Maqueda-Roman's Report and Recommendation as a complaint against the respondent and (2) require the respondent to submit his comment on the complaint. Thus, Judge Maqueda-Roman was made the nominal complainant.

The respondent, in his comment, admitted going to cockfights during Saturdays and Sundays, but denied doing so during office hours. He likewise admitted going out of his office either to smoke, read newspapers in the library, or communicate with the police on legal matters.

In our Resolution of July 6, 2009, we referred the case to the OCA for evaluation, report and recommendation. The OCA, in its Memorandum dated October 26, 2009, recommended that the respondent be held liable for loafing during office hours, and be suspended from office without pay for six (6) months.

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[1] Report and Recommendation, p. 6.

The OCA explained that the testimonies of the various witnesses during the investigation, conducted by Judge Maqueda-Roman, established that the respondent had been loafing during office hours.

THE COURT'S RULING

After due consideration, we adopt the OCA's findings.

Court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court. Specifically, court personnel must strictly observe official time to inspire public respect for the justice system. Section 1, Canon IV[2] of the Code of Conduct for Court Personnel mandates that court personnel shall **commit themselves exclusively to the business and responsibilities of their office during working hours**. Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice.[3]

The Civil Service Commission Rules define "loafing" as "frequent unauthorized absences from duty during regular office hours." The word "frequent" connotes that the employees absent themselves from duty *more than once*.[4]

In the present case, the charge of loafing was proven by substantial evidence. Gavino, the process server and the respondent's own brother-in-law, testified that there were times the respondent left the office during office hours, although these temporary absences from office *did not exceed one hour*. Norberta, the stenographer and the respondent's wife, stated

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[2] Section 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

[3] See *Re: Unauthorized Absences from the Post of Pearl Marie N. Icamina, Legal Researcher, RTC, Branch 8, Kalibo, Aklan*, A.M. No. P-062137, September 30, 2008, 567 SCRA 142, 148.

[4] See *Office of the Court Administrator v. Mallare*, 261 Phil. 18 (2003).

that the respondent left the office "once in a while, sometimes *for half an hour*." Melanie Macaraig, a court interpreter, narrated that the respondent would leave the office during office hours *lasting from two to three hours a day, two to three times a week*. Nilo Tabernilla, Clerk II at the Department of Agrarian Reform (*DAR*), narrated that respondent would go to the DAR office in the morning to chat, but explained that the DAR office is near the MTC. While none of these witnesses saw the respondent attend cockfights during office hours, sufficient basis exists to conclude that the respondent had indeed been loafing during office hours, albeit the witnesses differ in their reports on the length of time he actually stayed out of office. The respondent himself did not deny going out of his office during working hours, although he explained that he would go out either to smoke, to read newspapers in the library, or to discuss legal matters with the police.

We find the respondent's self-serving explanation unmeritorious. *First*, these claimed activities, even if true, would not consume as much as two (2) to three (3) hours of his time. *Second*, any discussions of legal matters with the police should be upon the instructions of his judge, which the respondent has not even claimed. *Finally*, the respondent should only read newspapers and smoke during breaktime; these activities should never be done during working hours. As we explained in *Re: Unauthorized Absences from the Post of Pearl Marie N. Icamina*:[5]

> Pursuant to the constitutional mandate that public office is a public trust, court personnel must observe the prescribed office hours and use this time efficiently for public service, "if only to recompense the Government, and ultimately, the people, who shoulder the cost of maintaining the Judiciary."

Other than the matter of loafing, we agree with the OCA that no evidence exists to support the charges against the respondent.

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[5] *Supra* note 3.

Section 52(A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936 classifies loafing or frequent unauthorized absences from duty during regular office hours as a grave offense, punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed. We consider the respondent's more than 30 years of service in the Judiciary as a mitigating circumstance and, accordingly, impose on him the minimum penalty of suspension without pay for six (6) months, as recommended by the OCA.

The Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy. When an officer or employee is disciplined, the object sought is not his/her punishment, but the improvement of the public service, and the preservation of the public's faith and confidence in the government.[6]

WHEREFORE, in light of all the foregoing, respondent Virgilio M. Fortaleza is hereby found *GUILTY* of (1) loafing under Section 52(A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936; and (2) violation of Section 1, Canon IV of the Code of Conduct for Court Personnel. He is hereby *SUSPENDED* from the service without pay for a period of *SIX (6) MONTHS*, with the stern warning that a repetition of the same or similar acts will warrant a more severe penalty.

SO ORDERED.

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

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[6] See *Lopena v. Saloma*, A.M. No. P-06-2280, January 31, 2008, 543 SCRA 228, 236.

THIRD DIVISION

[A.M. No. RTJ-08-2131. November 22, 2010]
(Formerly OCA IPI No. 05-2241-RTJ)

LORNA M. VILLANUEVA, *complainant, vs.* **JUDGE APOLINARIO M. BUAYA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE ACTIONS CANNOT DEPEND ON THE WILL OR PLEASURE OF THE COMPLAINANT WHO MAY, FOR REASONS OF HIS OWN, ACCEPT AND CONDONE WHAT IS OTHERWISE DETESTABLE.— The complainant's desistance is likewise not legally significant. We reiterate the settled rule that administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is otherwise detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. Where public interest is at stake and the Court can act on the propriety and legality of the conduct of judiciary officials and employees, the Court shall act irrespective of any intervening private arrangements between the parties.

2. JUDICIAL ETHICS; JUDGES; OWES THE PUBLIC AND THE COURT THE DUTY TO BE PROFICIENT IN THE LAW AND IS EXPECTED TO KEEP ABREAST OF LAWS AND PREVAILING JURISPRUDENCE.— On many occasions, we have impressed upon judges that they owe it to the public and the legal profession to know the very law they are supposed to apply in a given controversy. They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules, to be conversant with the basic law, and to maintain the desired professional competence. x x x One who accepts the exalted position of a judge owes the public and the Court the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with

the rules, he erodes the confidence of the public in the courts. A judge owes the public and the Court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; DUTIES OF A JUDGE IN AN APPLICATION FOR BAIL.— With the numerous cases already decided on the matter of bail, we feel justified to expect judges to diligently discharge their duties on the grant or denial of applications for bail. *Basco v. Rapatalo* laid down the rules outlining the duties of a judge in case an application for bail is filed: (1) **Notify the prosecutor of the hearing** of the application for bail or require him to submit his recommendation x x x; (2) **Conduct a hearing** of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion x x x; (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution x x x; [and] (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the [bail bond]. x x x Otherwise, petition should be denied.

4. ID.; ID.; ID.; WHETHER BAIL IS A MATTER OF RIGHT OR DISCRETION, A HEARING FOR PETITION FOR BAIL IS REQUIRED IN ORDER FOR THE COURT TO CONSIDER THE GUIDELINES IN FIXING THE AMOUNT OF BAIL; CASE AT BAR.— In the present case, Judge Buaya granted the *ex-parte* motion to grant bail on the same day that it was filed by the accused. He did this without the required notice and hearing. He justified his action on the *ex-parte* motion by arguing that the offense charged against the accused was a bailable offense; a hearing was no longer required since bail was a matter of right. Under the present Rules of Court, however, notice and hearing are required whether bail is a matter of right or discretion. Likewise, jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, *reclusion perpetua* or life imprisonment, where bail is a matter of discretion. x x x The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a

matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused. In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.

D E C I S I O N

BRION, *J.*:

In a verified affidavit-complaint[1] dated March 15, 2005, complainant Lorna M. Villanueva, assisted by her father Pantaleon Villanueva, charged respondent Acting Presiding Judge Apolinario M. Buaya of the Regional Trial Court (*RTC*), Branch 17, of Palompon, Leyte, with Gross Ignorance of the Law and Abuse of Authority.

In an affidavit-complaint executed on June 5, 2004,[2] Villanueva accused then Vice-Mayor Constantino S. Tupa of Palompon, Leyte, (of the crime of Qualified Seduction. She later filed another complaint against the same accused for violation of Section 5, paragraph (b), Article III of Republic Act (*R.A.*) No. 7610 (otherwise known as the *Special Protection of Children Against*

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[1] *Rollo,* pp. 2-4.

[2] *Id.* at 52-57.

Abuse, Exploitation and Discrimination Act)[3] with the Municipal Trial Court (*MTC*) of Palompon, Leyte.

MTC Judge Delia Noel-Bertulfo forwarded the case to the Office of the Assistant Provincial Prosecutor after finding probable cause for two counts of violation of Section 5, paragraph (b), Article III of R.A. No. 7610, allegedly committed on October 29, 2002 and December 16, 2002. Judge Noel-Bertulfo allowed Tupa to post bail in the amount of one hundred thousand pesos (₱100,000.00) for each case.

On September 27, 2004, Assistant Provincial Prosecutor Prudencio O. Borgueta, Jr. issued a Joint Resolution on Review,[4] recommending the filing of two separate informations for violation of Section 5(b) in relation with Section 31,[5] of R.A.

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[3] **Section 5.** ***Child Prostitution and Other Sexual Abuse.*** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

[4] *Rollo,* pp. 18-19.

[5] **Section 31.** ***Common Penal Provisions.*** –

x x x x x x x x x

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: *Provided, however*, That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: *Provided, finally*, That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; x x x

No. 7610 against the accused. He likewise recommended the cancellation of the bail bond of ₱100,000.00 (per case) posted by Tupa as, under Section 31, Article XII of R.A. No. 7610, if the offender is a public officer or employee, the penalty provided in Section 5, Article III of R.A. No. 7610[6] is imposed in the maximum period, *i.e.*, *reclusion perpetua*. Thus, bail is not a matter of right. He also added that the cancellation of the bail bond was all the more appropriate since there was strong evidence of guilt against the accused based on Villanueva's affidavit-complaint and her material declarations during the preliminary investigation. The accused did not refute these declarations and, in fact, even admitted the alleged sexual acts in his counter-affidavit and through his statements during the clarificatory hearing.

Based on the above recommendation, the Provincial Prosecutor of Leyte filed two separate Informations[7] for violation of Section 5 (b), Article III of R.A. No. 7610, in relation with Section 31, Article XII of the same law, against Tupa before RTC, Branch 17, of Palompon, Leyte. No bail was recommended in both cases.

Judge Eric F. Menchavez, then Presiding Judge of the RTC, Branch 17, of Palompon, Leyte, issued a warrant for the arrest of Tupa.[8] However, the warrant was not served because Tupa went into hiding and could not be located. Meanwhile, Judge Menchavez was reassigned to the RTC in Cebu City. This led to the designation of Judge Apolinario M. Buaya as Acting Presiding Judge of the RTC, Branch 17 on December 8, 2004.

On the very same day (December 8, 2004), Tupa allegedly surrendered voluntarily to SPO2 Charito Daau of the Ormoc City Police Station and filed with the RTC, Branch 17 an Urgent

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[6] The penalty provided is *reclusion temporal*, in its medium period, to *reclusion perpetua*.

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

[8] *Id.* at 23.

Ex-Parte Motion to Grant Bail (*ex-parte* motion).[9] Tupa argued that the Prosecutor, in recommending the denial of bail, erred in considering the special aggravating circumstance provided in Section 31, Article XII of R.A. No. 7610 in the computation of the penalty to be used as basis in determining his right to bail. Citing *People of the Philippines v. Intermediate Appellate Court*,[10] Tupa contended that for purposes of the right to bail, the criterion to determine whether the offense charged is a capital offense is the penalty provided by the law, regardless of the attendant circumstances.

In an Order[11] issued on the same day the *ex-parte* motion was filed, without hearing and without notice to the prosecution, Judge Buaya granted the *ex-parte* motion and ordered the release of Tupa on bail.

On December 16, 2004, Villanueva moved to reconsider the order granting the *ex-parte* motion. She argued that an application for bail should be heard and cannot be contained in a mere *ex-parte* motion. Judge Buaya noted that Villanueva's motion for reconsideration was submitted by the private prosecutor without the conformity of the public prosecutor, as required under the Rules on Criminal Procedure. Without acting on the merits of the said motion, Judge Buaya issued an order allowing the accused to submit his comment or opposition within ten days; thereafter, the matter would be submitted for resolution.

Judge Buaya's differing treatment of the *ex-parte* motion and her motion for reconsideration apparently irked Villanueva, prompting her to file the present administrative complaint against the RTC judge. She observed the seeming bias and unfairness of Judge Buaya's orders when he granted the *ex-parte* motion without the required notice and hearing; on the other hand, he did not act on her motion for reconsideration because it was not in the proper form, but allowed the accused to comment on her motion.

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[9] *Id.* at 24-26.

[10] G.R. Nos. 66939-41, January 10, 1987, 147 SCRA 219.

[11] *Rollo*, pp. 27-28.

In an Indorsement dated May 4, 2005,[12] then Court Administrator Presbitero J. Velasco, Jr. required Judge Buaya to comment on the administrative complaint filed against him. The Court Administrator likewise required the Judge to explain why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer, pursuant to the Court's *En Banc* Resolution dated September 17, 2002 in A.M. No. 02-9-02-SC.[13]

Judge Buaya vehemently denied the charges against him in his Comment.[14] He argued that the crime charged against Tupa was a bailable offense; when bail is a matter of right, no hearing of the motion to grant bail is required. Thus, he stood by his order granting the accused temporary liberty, through bail, without a hearing. His assailed order, reiterated in his comment, held that a hearing would be superfluous and unnecessary given the peculiar and special circumstances attendant to the case. During the preliminary examination, the investigating judge already passed upon and fixed the amount of bail for the temporary liberty of the accused. In fact, the accused had availed of and exercised his constitutional right to bail by posting the necessary bond. In his view, the prosecution, in canceling the bail bond in its joint resolution for review, acted to the prejudice of the accused's paramount right to liberty. Judge Buaya, therefore, asked for the dismissal of the present administrative complaint for lack of merit.

Villanueva filed a Reply[15] contending that Judge Buaya's assailed order on the *ex-parte* motion was contrary to the Rules

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[12] *Id.* at 84.

[13] Through this Resolution, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals, or a judge of a first- or second-level court. This is to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench as a disciplinary proceeding against him as a lawyer by mere operation of the rule.

[14] *Rollo*, pp. 85-89.

[15] *Id.* at 99-101.

of Court requirement that a motion to grant bail must be set for hearing to afford the State and the prosecutor their day in court. She further accused Judge Buaya of being manifestly partial as evidenced by the two temporary restraining orders (*TROs*) he issued in favor of the accused in another case for *quo warranto*,[16] then pending before the RTC, Branch 17. She observed that the first TRO read more like a decision on the merits even though the case had not yet reached the pre-trial stage. The second TRO, on the other hand, was allegedly issued without a hearing and was antedated.

Prior to the Office of the Court Administrator's (*OCA's*) action on the administrative complaint, the Court of Appeals (*CA*), in CA-G.R. SP No. 00449,[17] rendered its decision[18] on the bail issue, granting the petition for *certiorari* and prohibition filed by Villanueva, thus annulling and setting aside Judge Buaya's order granting bail to Tupa. Villanueva furnished the OCA with a copy of the CA decision.

On May 9, 2008, then Court Administrator Zenaida N. Elepaño further evaluated the merits of the case and opined that the issue of whether or not bail was a matter of right in the present case is judicial in nature. She preferred not to resolve the administrative complaint based on the CA decision (which found the offense non-bailable) since the decision was not yet final and executory at that time. However, she found Judge Buaya's precipitate haste in granting the accused bail to be unjust. She reasoned out that since there was doubt on whether the offense was bailable, basic considerations of fair play should have compelled Judge Buaya, at the minimum, to consult with the prosecution and the other judge (who issued the warrant of arrest) on the reason for not recommending bail. Court Administrator Elepaño, therefore, recommended that the present administrative complaint be re-docketed as a regular administrative case and that Judge Buaya,

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[16] Entitled *Constantino S. Tupa v. Harvey Fel C. Piñon*, docketed as Sp. Civil Case No. 0037-PN.

[17] Entitled *Lorna Villanueva v. Hon. Apolinario Buaya, et al.*

[18] *Rollo,* pp. 125-131.

for lack of prudence, be reprimanded, with a warning that a repetition of the same or similar acts in the future would be dealt with more severely.

By Resolution of July 9, 2008,[19] this Court required the parties to manifest, within ten days from notice, whether they were submitting the matter for resolution on the basis of the pleadings filed.

In his Manifestation,[20] Judge Buaya maintained his position that the offense at issue is a bailable offense, therefore, bail is a matter of right and a hearing is not required. He further alleged that the investigating prosecutor (who recommended that no bail should be granted to Tupa) was pressured to reverse the investigating MTC judge's recommendation for bail during the preliminary investigation stage. The prosecutor allegedly asked for a transfer of assignment from Palompon, Leyte to Tacloban, but his request was denied, prompting him to resign and work in a private bank.

As added proof of the lack of merit of the present administrative case filed against him, Judge Buaya furnished this Court with the Affidavit of Desistance and Declaration Against Interest[21] executed by Villanueva, together with the Transcript of Stenographic Notes[22] of her October 11, 2007 testimony before Presiding Judge Celso L. Mantua of the RTC, Branch 17, of Palompon, Leyte. In both documents, Villanueva retracted her accusations against Tupa and totally denied the occurrence of the alleged acts of lasciviousness committed against her by the accused. Judge Buaya alleged that Villanueva was merely used by certain political figures in their locality, and was pressured to file the criminal cases against their former vice-mayor and the present administrative case against him.

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[19] *Id.* at 151.

[20] *Id.* at 154-157.

[21] *Id.* at 158-159.

[22] *Id.* at 160-216.

THE COURT'S RULING

As a preliminary matter, we cannot give any weight to Judge Buaya's unsubstantiated allegation that the prosecutor who had recommended bail was only pressured to make his recommendation. This allegation, aside from being unsubstantiated, is totally irrelevant to the case whose issue is the propriety of the action of the judge in granting bail *ex-parte*, not the action of the prosecutor in recommending that no bail be granted.

The complainant's desistance is likewise not legally significant. We reiterate the settled rule that administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is otherwise detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. Where public interest is at stake and the Court can act on the propriety and legality of the conduct of judiciary officials and employees, the Court shall act irrespective of any intervening private arrangements between the parties.[23]

On many occasions, we have impressed upon judges that they owe it to the public and the legal profession to know the very law they are supposed to apply in a given controversy.[24] They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules, to be conversant with the basic law, and to maintain the desired professional competence.[25]

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[23] *Rodriguez v. Eugenio,* A.M. No. RTJ-06-2216 [formerly OCA IPI No. 04-2037-P], April 20, 2007, 521 SCRA 489, 497.

[24] *Padua v. Molina,* A.M. No. MTJ-00-1248, December 1, 2000, 346 SCRA 592, 599.

[25] *Dayawon v. Badilla,* A.M. No. MTJ-00-1309, September 6, 2000, 339 SCRA 702, 707.

With the numerous cases already decided on the matter of bail, we feel justified to expect judges to diligently discharge their duties on the grant or denial of applications for bail. *Basco v. Rapatalo*[26] laid down the rules outlining the duties of a judge in case an application for bail is filed:

> (1) **Notify the prosecutor of the hearing** of the application for bail or require him to submit his recommendation x x x;
>
> (2) **Conduct a hearing** of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion x x x;
>
> (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution x x x; [and]
>
> (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the [bail bond]. x x x Otherwise, petition should be denied.

In the present case, Judge Buaya granted the *ex-parte* motion to grant bail on the same day that it was filed by the accused. He did this without the required notice and hearing. He justified his action on the *ex-parte* motion by arguing that the offense charged against the accused was a bailable offense; a hearing was no longer required since bail was a matter of right. Under the present Rules of Court, however, notice and hearing are required whether bail is a matter of right or discretion.[27] Likewise, jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable

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[26] 336 Phil. 214, 237 (1997).

[27] *Cañeda v. Alaan*, A.M. No. MTJ-01-1376, January 23, 2002, 374 SCRA 225, 229; *Comia v. Antona*, A.M. No. RTJ-99-1518, August 14, 2000, 337 SCRA 656; *Chin v. Gustillo*, A.M. No. RTJ-94-1243, August 11, 1995, 247 SCRA 175; *Te v. Perez*, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130; Rule 114, Sec. 18 of the 1985 Rules of Criminal Procedure, reiterated in Rule 114, Sec. 18 of the 2000 Rules of Criminal Procedure.

by death, *reclusion perpetua* or life imprisonment, where bail is a matter of discretion.[28]

Judge Buaya further argued that in granting the *ex-parte* motion, he was merely correcting a reversible error. Believing that the offense committed was bailable in nature, he opined that when the investigating prosecutor revoked the bail already posted by the accused, the prosecutor gravely violated the accused's constitutional right to bail. Judge Buaya firmly relied on the previous order of the investigating MTC judge who, according to him, correctly fixed the amount of bail. Thus, conducting a bail hearing on the *ex-parte* motion was no longer necessary. Even assuming, however, that the previous order of the investigating MTC judge was correct in granting bail to the accused, reliance on a previous order granting bail does not justify the absence of a hearing in a subsequent petition for bail.[29]

The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong.[30] This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.

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[28] *Dericto v. Bautista,* A.M. No. MTJ-99-1205, November 29, 2000, 346 SCRA 223, 227; *Basco v. Rapatalo, supra* note 26, at 219-220; *People v. Cabral,* 362 Phil. 697, 708-709 (1999).

[29] *Basco v. Rapatalo, supra* note 26; citing *Baylon v. Sison,* 313 Phil. 99 (1995); *Tucay v. Domangas,* 312 Phil. 135 (1995).

[30] *Marzan-Gelacio v. Flores,* A.M. No. RTJ-99-1488, June 20, 2000, 334 SCRA 1, 12, citing *Aleria, Jr. v. Velez,* 359 Phil. 141 (1998); *Basco v. Rapatalo, supra* note 26; *Almeron v. Sardido,* 346 Phil. 424 (1997).

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail.[31] This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.[32]

One who accepts the exalted position of a judge owes the public and the Court the duty to maintain professional competence at all times.[33] When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the Court the

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[31] **Sec. 9. Amount of bail; guidelines**. – The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

(a) Financial liability of the accused to give bail;

(b) Nature and circumstance of the offense;

(c) Penalty for the offense charged;

(d) Character and reputation of the accused;

(e) Age and health of the accused;

(f) Weight of the evidence against the accused;

(g) Probability of the accused appearing at the trial;

(h) Forfeiture of other bail;

(i) The fact that the accused was a fugitive from justice when arrested; and

(j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required.

[32] *Baylon v. Sison*, A.M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284; *Borinaga v. Tamin*, A.M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206, 216; *Santos v. Ofilada*, A.M. RTJ-94-1217, June 16, 1995, 245 SCRA 56; *Aguirre v. Belmonte*, A.M. No. RTJ-93-1052, October 27, 1994, 237 SCRA 778.

[33] *Gozun v. Liangco*, 393 Phil. 669, 681 (2000).

duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[34]

WHEREFORE, we find respondent Acting Presiding Judge Apolinario M. Buaya of the Regional Trial Court, Branch 17, of Palompon, Leyte, *GUILTY* of Gross Ignorance of the Law and Grave Abuse of Authority, and is hereby *FINED* Twenty Thousand Pesos (₱20,000.00), with a *WARNING* that a repetition of the same or similar acts in the future shall merit a more serious penalty.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 148269. November 22, 2010]

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS thru the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, represented by Atty. ORLANDO L. SALVADOR, *petitioner, vs.* **Hon. ANIANO DESIERTO, in his capacity as OMBUDSMAN, ULPIANO TABASONDRA, ENRIQUE M. HERBOSA, ZOSIMO C. MALABANAN, ARSENIO S. LOPEZ, ROMEO V. REYES, NILO ROA, HERADEO GUBALLA, FLORITA T. SHOTWELL, BENIGNO DEL RIO, JUAN F. TRIVIÑO, SALVADOR B. ZAMORA II, and JOHN DOES,** *respondents.*

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[34] *Dela Paz v. Adiong*, A.M. No. RTJ-04-1857, November 23, 2004, 443 SCRA 480, citing *Mutilan v. Adiong*, 433 Phil. 25, 32-33 (2002).

SYLLABUS

1. **POLITICAL LAW; OFFICE OF THE OMBUDSMAN; OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OR NON-EXISTENCE OF PROBABLE CAUSE WILL NOT BE INTERFERED WITH BY THE COURT; EXCEPTIONS.—** Ordinarily, the Court does not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion, or if the action is done in a manner contrary to the dictates of the Constitution, law or jurisprudence. In these exceptional cases, the Ombudsman's action becomes subject to judicial review.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE; QUANTUM OF EVIDENCE.—** The probable cause that a complainant has to establish need not be based on clear and convincing evidence of guilt or evidence of guilt beyond reasonable doubt. *It simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction.* A finding of probable cause need only rest on evidence showing that more likely than not, a crime has been committed and was committed by the suspects.

3. **POLITICAL LAW; OFFICE OF THE OMBUDSMAN; GRAVE ABUSE OF DISCRETION; PRESENT IN CASE AT BAR.—** Given this quantum of evidence, we find that the Ombudsman gravely abused his discretion when he immediately dismissed the Amended Complaint for being insufficient. We find it particularly unsettling that the Ombudsman dismissively set aside the petitioner's voluminous exhibits with only one paragraph, and failed to discuss whether the questioned transactions bore the characteristics of a behest loan and whether the respondents – those whose names were identified and those who were identified merely as directors and officers of the entities involved – were probably guilty of violating Section 3(e) and (g) of RA 3019. Lastly, the elements of the offenses charged should have been examined and discussed, before a conclusion regarding the existence or non-existence of probable cause is arrived at.

4. ID.; EXECUTIVE DEPARTMENT; PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS; MEMORANDUM ORDER NO. 61; CRITERIA FOR DETERMINING A BEHEST LOAN; IN CASE AT BAR, QUESTIONED TRANSACTIONS BEAR THE CHARACTERISTICS OF BEHEST LOANS.— We find that despite the petitioner's failure to attach the relevant board resolutions in this case, the records provide ample support to the petitioner's claim that the officers and directors of the PNB and the NIDC had approved, in favor of CCPI, a loan that qualifies with at least three criteria of behest loans – (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) the NIDC Board of Directors approved the loan accommodation with extraordinary haste.

5. ID.; ID.; ID.; PETITIONER'S EXPERTISE IN IDENTIFYING BEHEST LOANS SHOULD BE GIVEN DUE RESPECT.— The petitioner's allegation that the questioned transactions fall under "behest loans" should not be lightly dismissed. It is worth mentioning that in our 2008 and 2009 decisions also entitled *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, we found it proper to accord the petitioner's findings with healthy respect, as they were precisely formed to determine the existence of behest loans. On account of its special knowledge in the field of banking, it is in a position to determine whether standard banking practices were followed in the approval of a loan, including the adequacy of the security for a given loan or similar transaction.

6. ID.; ID.; ID.; PETITIONER'S FAILURE TO NAME THE DIRECTORS INVOLVED SHOULD NOT RESULT IN THE OUTRIGHT DISMISSAL OF THE AMENDED COMPLAINT.— Ideally, the petitioner should have obtained copies of the board resolutions, approving the questioned transactions, to determine who voted favorably on these acts; this would enable petitioner to name the proper respondents. However, the Ombudsman did not act on its motion for the issuance of a *subpoena duces tecum*. Given this situation, the petitioner was able to identify some of the respondents by name and the others were merely denominated as John Does, in accordance with Section 7, Rule 110 of the Rules of Court: x x x Thus, even if the Ombudsman found that the Amended Complaint against the named NIDC officers should be dismissed,

the complaint against the unnamed NIDC officers remains valid. We further note that none of the named respondents denied being PNB/NIDC board members during the relevant period, or approximately from 1967 to 1970. Moreover, respondents Domingo and Herbosa, who filed their Comments, failed to deny that they were NIDC officers during this period or that they had not assented to the questioned transactions; they merely stated that their names had not appeared in any of the petitioner's exhibits pertaining to those dates. Nor should we overlook the case against the CCPI directors who were all named in the Amended Complaint.

7. ID.; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770 (OMBUDSMAN'S ACT); EMPOWERED THE OMBUDSMAN TO INVESTIGATE AND PROSECUTE OFFENSES INVOLVING PUBLIC OFFICERS AND EMPLOYEES; POWER TO ISSUE SUBPOENA, NOT PROHIBITED BY EXECUTIVE ORDER NO. 1.— The PCGG's power to issue a subpoena under EO No. 1 is pursuant to its power to investigate cases of graft and corruption. In this case the complaint was referred to the Ombudsman, not the PCGG, for preliminary investigation. Under Section 15(1) of RA 6770, the Ombudsman is empowered to investigate and prosecute offenses involving public officers and employees. In *Cojuangco, Jr. v. Presidential Commission on Good Government*, we emphasized that the Ombudsman has the primary jurisdiction over cases involving public officers and employees, even as we recognized the PCGG's concurrent jurisdiction. Nothing in EO No. 1 would have prevented the Ombudsman from exercising his powers under Section 15(8) of RA 6770 to "[a]dminister oaths, issue subpoena x x x including the power to examine and have access to bank accounts and records," especially since the complaint was filed before him.

8. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATIONS UNDER SECTION 3, PARAGRAPHS (E) AND (G); ELEMENTS; ESTABLISHED IN CASE AT BAR.— The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with the public officers; (2) that said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they

caused undue injury to any party, whether the Government or a private party; (4) that such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. On the other hand, the elements of the offense in Section 3(g) are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government. It was properly alleged in the Amended Complaint that the respondent officers and directors of PNB/NIDC, a government-owned and controlled corporation, in conspiracy with the respondent directors and officers of CCPI, granted CCPI a loan accommodation that bore the characteristics of behest loans. The government suffered injury when the loan, which ballooned to over ₱205M, remained unpaid. The terms of the loan accommodation were manifestly disadvantageous to the government that the NIDC directors' assent to this transaction could only be attended by gross inexcusable negligence, if not evident bad faith or manifest partiality. Moreover, these allegations were properly supported by the records.

APPEARANCES OF COUNSEL

Arturo Alfonso J. Herbosa and Sixto Jose C. Antonio for E. Herbosa.

Bausa Ampil Suarez Paredes & Bausa for P.O. Domingo.

D E C I S I O N

BRION, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Court seeking the reversal of the Ombudsman's Resolution[1] dated October 16, 2000, dismissing the criminal complaint (docketed as OMB-0-97-1138, entitled *Salvador v. Tabasondra, et al.*) against private respondents Ulpiano

[1] *Rollo,* pp. 34-39.

Tabasondra, Enrique M. Herbosa, P.O. Domingo, Zosimo C. Malabanan, Arsenio S. Lopez, Romeo V. Reyes, Nilo Roa, Heradeo Guballa, Florita T. Shotwell, Benigno del Rio, Juan F. Triviño, Salvador B. Zamora II, and John Does[2] for violation of Section 3(e) and (g) of Republic Act No. (*RA*) 3019 (otherwise known as the Anti-Graft and Corrupt Practices Act). Petitioner Presidential Ad Hoc Fact-Finding Committee on Behest Loans also prays that we reverse the Order,[3] dated February 27, 2001, of the Ombudsman denying petitioner's Motion for Reconsideration of November 24, 2000.

The petitioner is a government agency created under Administrative Order No. (*AO*) 13 on October 8, 1992 by then President Fidel V. Ramos. It was tasked to inventory all behest loans, determine the parties involved and recommend the appropriate actions that should be taken.[4] Under the law, behest loans entail both civil and criminal liabilities. President Ramos later issued Memorandum Order No. (*MO*) 61, dated November 9, 1992, expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest. The memorandum also provided the following criteria for determining a behest loan:

a. It is undercollaterized (*sic*).

b. The borrower corporation is undercapitalized.

c. Direct or indirect endorsement by high government officials like presence of marginal notes.

d. Stockholders, officers or agents of the borrower corporation are identified as cronies.

e. Deviation of use of loan proceeds from the purpose intended.

f. Use of corporate layering.

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[2] *Id.* at 1132. Respondents Domingo, Lopez, Guballa, del Rio, Roa, Triviño, Romeo Reyes, and Conrado Reyes have reportedly died.

[3] *Id.* at 42-44.

[4] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Tabasondra*, G.R. Nos. 133756 and 133757, July 4, 2008, 557 SCRA 31, 34.

g. Non-feasibility of the project for which financing is being sought.

h. Extra-ordinary speed in which the loan release was made.

Pursuant to its mandate under AO 13 and MO 61, the petitioner investigated a loan guarantee agreement between Coco-Complex Philippines, Inc. (*CCPI*), a domestic corporation in the business of manufacturing oil, and the National Investment Development Corporation (*NIDC*), the investment subsidiary of the Philippine National Bank (*PNB*).[5] The CCPI sought to have NIDC guarantee a loan payable to Fried Krupp of Germany for the turn-key purchase of an oil mill. On January 17, 1968, the NIDC issued Board Resolution No. 26 approving a guarantee agreement in favor of CCPI for the amount of DM7.4M plus interest at the annual rate of 6¼ %, or a total amount of ₱9,277,080.00. On March 12, 1969, the parties signed the Guaranty Agreement.[6] As of March 31, 1992, the Statement of Deficiency Claim disclosed that CCPI had an outstanding obligation of ₱205,889,545.76.

The petitioner, through Atty. Orlando Salvador, filed a Sworn Statement,[7] dated June 5, 1997, before the Ombudsman against Ulpiano Tabasondra, Enrique M. Herbosa, Zosimo C. Malabanan, P.O. Domingo, and/or all officers and members of the Board of Directors of the Development Bank of the Philippines (*DBP*),[8] Makati City; and Arsenio S. Lopez, Romeo V. Reyes, Nilo Roa, Heradeo Guballa, Benigno del Rio, Juan Triviño, and/or all officers and stockholders of CCPI. The petitioner alleged that the processing of the original loan was attended with haste considering that the CCPI was incorporated on July 12, 1967, and the Letter of Guarantee was approved in principle by the NIDC Board of Directors as early as September 20, 1967. It

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[5] *Rollo,* p. 675.

[6] *Id.* at 217-225 and 18-20.

[7] *Id.* at 395-399.

[8] The petitioner's error in writing DBP instead of NIDC and PNB would later be corrected in its Amended Complaint.

also claimed that the loan was without sufficient collateral at the time the loan guarantee was approved. CCPI's existing assets of ₱495,300.00 and assets to be acquired (turn-key cost of coconut mill) amounting to ₱6,986,031.00 had an aggregate sum of ₱7,481,331.00. Nevertheless, the NIDC considered this sufficient collateral for a loan of ₱9,277,080.00. The petitioner also pointed out that the loan was undercapitalized since at the time the NIDC granted the loan guarantee, the paid-up capital was only ₱2,111,000.00.

The petitioner further relayed in its Complaint that the NIDC granted CCPI an additional loan, restructuring and equity conversion of outstanding obligations, without sufficient collateral and adequate capital to ensure CCPI's viability and its ability to repay its loans. On November 25, 1970, the NIDC issued Board Resolution No. 361 which restructured CCPI's loan and increased it to DM12.2M, inclusive of interest.[9] It also alleged that the NIDC board issued, on December 2, 1970, Board Resolution No. 373, allowing the conversion of ₱7.07M out of a total ₱17.95M advances into CCPI common stocks. Soon thereafter, on June 9, 1971, the NIDC approved Board Resolution No. 183, permitting a further conversion of ₱14.2M of CCPI's advances into equity.[10] The petitioner also alleged that the NIDC agreed to guarantee CCPI's ₱4.5M credit line with PNB, through Board Resolution No. 40, dated February 10, 1972. And on February 10, 1972, the NIDC issued Board Resolution No. 48, granting CCPI a guarantee loan of $750,000.00.[11]

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[9] *Rollo,* p. 98.

[10] *Id.* at 182 and 198. The records show that these equity conversions, covered by Board Resolution Nos. 373 and 183, were between the NIDC and Coco Chemical Philippines, Inc, not CCPI. Coco Chemical Philippines, Inc. is in the business of manufacturing plasticizer, crude oil, copra meal pellets and refined oil. These transactions were later omitted in the Amended Complaint.

[11] *Id.* at 198. The records show that the loan guarantees covered by Board Resolution Nos. 40 and 48 were between the NIDC and Coco Chemical Philippines, Inc, not CCPI. These transactions were later omitted in the Amended Complaint.

On September 5, 1997, the Office of the Ombudsman issued the Resolution dismissing the Complaint on the ground of prescription of the offense.[12] However, we reversed this ruling in G.R. No. 130140,[13] where we held that the crime had not yet prescribed and ordered the Ombudsman to conduct a preliminary investigation.

On February 16, 2000, petitioner filed a Manifestation and Request for Issuance of *Subpoena Duces Tecum*[14] due to previous difficulties in obtaining records from the PNB. It specifically sought from the PNB the names of the NIDC directors who issued particular NIDC Board Resolutions, the specific dates they were issued, and the amount of money involved.[15] However, the Ombudsman failed to act on this request.

On October 16, 2000, the Ombudsman promulgated a resolution dismissing the complaint for the failure of the petitioner to furnish the names of the NIDC officials who should be indicted. Instead, the respondents named in the complaint appeared to be DBP officers and board members who should not be implicated since the loan did not even pass through the DBP.[16]

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[12] *Id.* at 373.

[13] 375 Phil. 697 (1999).

[14] *Rollo*, pp. 58-60.

[15] *Id.* at 60. The petitioner listed the board resolutions and sought the PNB to provide it with copies thereof so as to identify the directors who approved them.

NIDC BR No.	Date	Amount
No. 26	1-17-68	DM7.4 million
No. 361	11-25-70	DM4.8 million
No. 373	12-02-70	₱7.07 million
No. 183	06-09-71	₱14.2 million
No. 40	02-10-72	₱4.5 million
No. 48	02-10-72	$750,000

[16] *Id.* at 34-39.

On November 24, 2000, the petitioner filed a Motion for Reconsideration (With Motion for Leave to Admit Amended Complaint).[17] In the Amended Complaint,[18] the petitioner identified respondents Tabasondra, Herbosa, Domingo and Malabanan as officers and/or Board Members of PNB/NIDC, not the DBP; the mistake made in the original complaint was a mere typographical error. The officers and/or stockholders of CCPI – Shotwell, Roa, Zamora, Triviño, Lopez, Reyes, Guballa, and del Rio – were also included as respondents. However, the petitioner clarified that other individuals may still be included as respondents. The petitioner repeated its allegation that the loan granted to CCPI was under-collateralized, while CCPI was undercapitalized; these findings were reflected in a Memorandum[19] (dated January 17, 1968) submitted by NIDC Vice President Mario Consing to its Board of Directors. It added that the Executive Summary and the documents attached in the original complaint were made an integral part of the Amended Complaint.

In the assailed Order[20] of February 27, 2001, the Ombudsman denied the Motion for Reconsideration for lack of merit. He noted that there were no other documents attached to the Amended Complaint to prove that the respondents were liable for the acts complained of. He stated that the petitioner failed to provide copies of the resolution that the PNB/NIDC officials allegedly processed and approved. Thus, he considered the motion as a mere scrap of paper.

On June 7, 2001, the petitioner filed this Petition for *Certiorari* which assails the assailed Resolution and Order on the following grounds:

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[17] *Id.* at 45-46.

[18] *Id.* at 47-49.

[19] *Id.* at 123-144.

[20] *Id.* at 42-44.

I

THE HONORABLE OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN ISSUING HIS SAID RESOLUTION AND ORDER PROMULGATED ON NOVEMBER 13, 2000 (*sic*) AND MARCH 23, 2001(*sic*) RESPECTIVELY. MORE PARTICULARLY, HE GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT "APART FROM THE FOREGOING ENUMERATION, NO OTHER DOCUMENT WAS ATTACHED TO THE SAME TO PROVE THE ALLEGATION THAT INDEED THE SAID RESPONDENTS WERE LIABILE (sic) FOR THE ACTS COMPLAINED OF."

II

THE ALLEGED INSUFFICIENCY OF EVIDENCE WAS DUE TO THE OMBUDSMAN'S GROSS NEGLIGENCE IN THE PERFORMANCE OF HIS DUTIES, SPECIFICALLY HIS FAILURE TO ISSUE *SUBPOENA DUCES TECUM* AS REQUESTED BY PETITIONER.[21]

Ruling of the Court

We find the petition meritorious.

Ordinarily, the Court does not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion, or if the action is done in a manner contrary to the dictates of the Constitution, law or jurisprudence.[22] In these exceptional cases, the Ombudsman's action becomes subject to judicial review.

The Ombudsman, in dismissing a complaint – whether for want of palpable merit or after the conduct of a preliminary investigation[23] – carries the duty of explaining the basis for his

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[21] *Id.* at 23 and 26.

[22] *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 136225, April 23, 2008, 552 SCRA 513, 524; *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135703, April 15, 2009, 585 SCRA 18, 31.

[23] Sections 2 and 4, Rule II of AO 7 of the Office of the Ombudsman, otherwise known as the Rules of Procedure of the Office of the Ombudsman.

action; he must determine that the complainant had failed to establish probable cause.

The probable cause that a complainant has to establish need not be based on clear and convincing evidence of guilt or evidence of guilt beyond reasonable doubt. *It simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction*. A finding of probable cause need only rest on evidence showing that more likely than not, a crime has been committed and was committed by the suspects.[24]

Given this quantum of evidence, we find that the Ombudsman gravely abused his discretion when he immediately dismissed the Amended Complaint for being insufficient. We find it particularly unsettling that the Ombudsman dismissively set aside the petitioner's voluminous exhibits with only one paragraph, and failed to discuss whether the questioned transactions bore the characteristics of a behest loan[25] and whether the respondents – those whose names were identified and those who were identified merely as directors and officers of the entities involved – were probably guilty of violating Section 3(e) and (g) of RA 3019. Lastly, the elements of the offenses charged should have been examined and discussed, before a conclusion regarding the existence or non-existence of probable cause is arrived at.

In the present case, the Ombudsman dismissed the Amended Complaint because he considered fatal the petitioner's failure to provide copies of the resolutions duly approved by the officers and directors of the PNB and the NIDC, showing that they were

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[24] *Supra* note 22, at 528.

[25] See *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135687, July 24, 2007, 528 SCRA 9, 23-25. In this cited case, we considered the Ombudsman's failure to discuss the behest nature of the questioned loan transactions as a gross omission that would justify the review and modification of his determination that the complaint should be dismissed.

responsible for the processing and the eventual approval of the questioned loan. In its own words –

> Apart from the aforementioned enumeration no other document was attached to the same to prove the allegation that indeed the said respondents were liable for the acts complained of. There were no copies of the resolution duly approved by said officials of the PNB/NIDC showing that they were responsible for the processing and eventual approval of the questioned loan. To our mind, the enumerations, standing alone, is (*sic*) not sufficient to establish sufficient basis to proceed with the conduct of preliminary investigation against said respondents. In other words, this motion is no more than a mere scrap of paper.[26]

In his Comment,[27] the Ombudsman added that instead of burdening the Office of the Ombudsman with the issuance of the *subpoena duces tecum*, the petitioner should have asked the Presidential Commission on Good Government (*PCGG*) to subpoena the required documents, *i.e.*, the relevant board resolutions, as it was charged with the investigation of graft and corruption cases and it was empowered to issue subpoenas under Section 3 of Executive Order (*EO*) No. 1.

The questioned transactions bear the characteristics of behest loans.

We find that despite the petitioner's failure to attach the relevant board resolutions in this case, the records provide ample support to the petitioner's claim that the officers and directors of the PNB and the NIDC had approved, in favor of CCPI, a loan that qualifies with at least three criteria of behest loans – (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) the NIDC Board of Directors approved the loan accommodation with extraordinary haste.

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[26] *Rollo*, p. 43.

[27] *Id.* at 674-686.

There is prima facie proof that CCPI was undercapitalized when it applied for and was granted the loan guarantee.

Under MO 61, one of the criteria for determining a behest loan is an undercapitalized borrower corporation. Undercapitalization is the financial condition of a firm that does not have capital to carry on its business. Related to this concept is that of thin capitalization – the financial condition of a firm that has a high ratio of liabilities to capital.[28]

The Guaranty Agreement between CCPI and the NIDC, which was attached to the Amended Complaint, clearly shows that (1) the amount of the loan guarantee was ₱9,277,080.00 and (2) the amount of the paid-in capital at the time CCPI applied for the loan was ₱400,000.00.[29]

The Guaranty Agreement sought to address the wide discrepancy between the amount of the loan guarantee and CCPI's paid-in capital by adding the provision, included among the "Borrower's Covenants," that requires CCPI to pay in cash ₱1.7M as paid-in capital before the agreement is signed, and to pay cash installments of ₱600,000.00, ₱400,000.00 and ₱500,000.00 on the 9th, 12th, and 18th month after the signing of the agreement; these sums are over and above the paid-in capital of ₱400,000.00.[30] Under the terms of the agreement, the paid-in capital, even after the cash installments were made, would still be less than half of the amount of the loan accommodation applied for.

Nevertheless, CCPI failed to comply with the lenient terms of the agreement. The NIDC Credit Investigation Report, dated August 14, 1970, stated that CCPI refused to show its stock and transfer book and books of account, and its paid-up capital

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[28] Black's *Law Dictionary*, 8th edition.

[29] *Rollo*, pp. 217 and 222.

[30] *Id.* at 222.

as of December 31, 1969, or nine months after the parties signed the agreement, was only ₱2,111,000.[31] This means that the ₱600,000.00 installment due on the 9th, month after March 12, 1969 had not been complied with.

The NIDC's unexplained response to violations of these terms further proves the behest character of the loan. Under the agreement, CCPI could have been considered as having defaulted, and the obligations of CCPI would have been immediately due and payable as early as 1970.[32] Instead of taking the appropriate legal action to protect NIDC's interests, its directors issued Board Resolution No. 361 on November 25, 1970, which restructured CCPI's loan and increased it to DM12.2M, inclusive of interest.[33] This further increased the already irregular debt to equity ratio. There was no reason for NIDC to be confident that CCPI would be able to pay its obligations; NIDC had to advance the payment of the first amortization of DM600,000.00 to the supplier of the equipment on June 1, 1970.[34] It should also be noted that in 1970, the project, which should have started

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[31] *Id.* at 109-110.

[32] *Id.* at 224. The default provision of the Agreement reads:

Events of Default

That any one or more of the following shall constitute an event of default, viz:

(i) Failure to pay any accrued interest on the guaranteed amount and/or the guaranty fee within a period of two (2) months.

(ii) Failure to pay any two (2) installments on the guaranteed principal.

(iii) Default in the observance of any provision under the section hereof entitled "Borrower's Covenants."

x x x x x x x x x

When any of the events of default enumerated above has happened, occurred and/or is continuing, the NIDC may, at its exclusive option, by notice in writing to the BORROWER, declare the principal and/or any accrued interest on all outstanding promissory notes evidencing the loan or the amount subject of an NIDC guaranty to be immediately due and payable.

[33] *Id.* at 98.

[34] *Id.* at 107.

operations in April 1969, was not even operational.[35] It was only on May 10, 1978 that the NIDC directors issued Board Resolution No. 64 which approved the management's recommendation to institute legal action against CCPI.[36] And in 1981, when CCPI's liability to the NIDC had ballooned to ₱69,492,000.00, respondent Tabasondra, the Acting Senior Vice President and General Manager of NIDC, belatedly recommended the foreclosure of CCPI's insufficient collateral.[37]

There is prima facie evidence that the loan guarantee was under-collateralized.

Before the parties signed the agreement, NIDC's Board of Directors had already been informed of the insufficiency of CCPI's collateral. The Memorandum,[38] dated January 17, 1968, of NIDC Vice President Mario Consing, addressed to the Board of Directors, valued the assets allegedly used as collateral at ₱9.4M, the purported acquisition value of the assets. Even Consing characterized the valuation of the assets as "liberal,"[39] for what should have been used in this case was the appraisal value of the assets, instead of the market value or the acquisition value. As the appraised value is only 80% of the acquisition value, the assets were overstated by at least 25%. Nevertheless, he found the overvalued collateral of ₱9.4M to be insufficient and recommended that additional collateral of real estate worth ₱5.2M be raised to fully secure NIDC's ₱9.3M exposure. The pertinent part of his Memorandum reads:

> Based on the more liberal interpretation of NIDC's valuation policy (normally, the loan value is based on the appraised value which is equivalent to 80% of the market value or acquisition cost; in this case, however, the market value was used as the base for

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[35] *Id.* at 200.

[36] *Id.* at 159.

[37] *Id.* at 159-161.

[38] *Id.* at 123-144.

[39] *Id.* at 125.

computing loan value), the above properties would have an approximate loan value of only ₱5.1M, covering roughly 55% of the client's guarantee application. Additional collaterals with a market value of at least ₱5.3 million (in the form of real estate) should be offered in order to fully secure NIDC's exposure of ₱9.3 million.[40]

However, the records do not show that CCPI complied with the additional real estate collateral required. The NIDC Credit Investigation Report, dated August 14, 1970, identified the collateral as a first mortgage on two parcels of land with a total appraised value of ₱495,300.00, and a first mortgage on all assets to be acquired.[41] The same report valued CCPI's fixed assets (including land) at ₱9,139,069.83.[42] Thus, even if we assume that all of CCPI's fixed assets, as of the end of 1969, were used as collateral,[43] the amount of the loan accommodation would still be higher than the total value of the collateral. This clearly shows that the loan was under-collateralized.

By issuing Board Resolution No. 361 on November 25, 1970, which restructured CCPI's loan and increased it to DM12.2M, the NIDC directors only increased the risk exposure of PNB, and necessarily of the government, when it should have never even approved a loan accommodation with insufficient collateral.

The loan accommodation was approved with extraordinary speed.

The NIDC Board of Directors approved the loan accommodation on January 17, 1968 (through Board Resolution

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[40] *Ibid.*

[41] *Id.* at 107.

[42] *Id.* at 110. The term "fixed assets" is composed of land and improvements, machinery and equipment, transportation equipment and office equipment.

[43] *Id.* The only remaining assets reported in its balance sheet were current assets and organizational expenses, and these cannot be considered as collateral.

No. 26), the same date Vice President Mario Consing had submitted his report to the board, stating that CCPI had insufficient collateral and capital. This clearly shows that the NIDC officers prematurely approved the loan accommodation, contrary to acceptable lending practices, as it was done before they were assured that the company, whose loan they resolved to guarantee, could reasonably be expected to meet its obligations. Matters were made worse when CCPI failed to comply with the capital and collateral requirements even after the parties signed their agreement; again, the board prematurely approved the restructuring that increased CCPI's loan accommodation and provided a longer period to comply with its obligations.

The petitioner's expertise in identifying behest loans should be given due respect.

The petitioner's allegation that the questioned transactions fall under "behest loans" should not be lightly dismissed. It is worth mentioning that in our 2008 and 2009 decisions also entitled *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[44] we found it proper to accord the petitioner's findings with healthy respect, as they were precisely formed to determine the existence of behest loans. On account of its special knowledge in the field of banking, it is in a position to determine whether standard banking practices were followed in the approval of a loan, including the adequacy of the security for a given loan or similar transaction.

The petitioner's failure to name the PNB/NIDC directors involved should not result in the outright dismissal of the amended complaint.

The Ombudsman dismissed the Amended Complaint because the petitioner failed to provide copies of the board resolutions

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[44] *Supra* note 22, at 527; *supra* note 22, at 34.

that would show that the respondents were the officers and directors of PNB/NIDC who approved the questioned transactions. We find this position untenable.

Section 6 of RA 1300, the PNB charter, provides that the business affairs and the property of the PNB shall be managed and preserved by the Board of Directors. The Board of Directors consists of the bank president, one vice-president, and five members who shall be elected. From this, we may reasonably infer that the grant of the loan accommodation in CCPI's favor was accomplished through the approval of the PNB/NIDC Board of Directors.

Ideally, the petitioner should have obtained copies of the board resolutions, approving the questioned transactions, to determine who voted favorably on these acts; this would enable petitioner to name the proper respondents. However, the Ombudsman did not act on its motion for the issuance of a *subpoena duces tecum*. Given this situation, the petitioner was able to identify some of the respondents by name and the others were merely denominated as John Does,[45] in accordance with Section 7, Rule 110 of the Rules of Court:

> SEC. 7. *Name of the accused*. – The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.
>
> If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

Thus, even if the Ombudsman found that the Amended Complaint against the named NIDC officers should be dismissed, the complaint against the unnamed NIDC officers remains valid. We further note that none of the named respondents denied being PNB/NIDC board members during the relevant period, or approximately from 1967 to 1970. Moreover, respondents

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[45] *Id.* at 51.

Domingo and Herbosa, who filed their Comments,[46] failed to deny that they were NIDC officers during this period or that they had not assented to the questioned transactions; they merely stated that their names had not appeared in any of the petitioner's exhibits pertaining to those dates. Nor should we overlook the case against the CCPI directors who were all named in the Amended Complaint.

In his Comment, the Ombudsman justified his failure to issue a *subpoena duces tecum* by stating that the PCGG should have issued the subpoena, as it was empowered to do so under Section 3(e) of EO No. 1, dated February 28, 1986.[47] We find this argument flimsy.

The PCGG's power to issue a subpoena under EO No. 1 is pursuant to its power to investigate cases of graft and corruption. In this case the complaint was referred to the Ombudsman, not the PCGG, for preliminary investigation. Under Section 15(1) of RA 6770, the Ombudsman is empowered to investigate and prosecute offenses involving public officers and employees. In *Cojuangco, Jr. v. Presidential Commission on Good Government*,[48] we emphasized that the Ombudsman has the primary jurisdiction over cases involving public officers and employees, even as we recognized the PCGG's concurrent jurisdiction. Nothing in EO No. 1 would have prevented the Ombudsman from exercising his powers under Section 15(8) of RA 6770 to "[a]dminister oaths, issue subpoena x x x including the power to examine and have access to bank accounts and records," especially since the complaint was filed before him.

Even assuming that his position is correct, the Ombudsman should have immediately denied the petitioner's motion to issue a *subpoena duces tecum*. He should have informed the petitioner that he was not issuing the subpoena as it was the PCGG which should issue the subpoena, and thus giving the petitioner an

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[46] *Id.* at 692-695 and 742-759.

[47] *Id.* at 683.

[48] G.R Nos. 92319-20, October 20, 1990, 190 SCRA 226, 241-242.

opportunity to act on the matter. Instead, the Ombudsman did not act on the motion, only to issue a resolution dismissing the Amended Complaint for its failure to produce the documents that were the subject of the subpoena. By acting in this manner, he went against his mandate, decreed under Section 13 of RA 6770, to "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 corporations, 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."

The elements of violations under Section 3, paragraphs (e) and (g) of RA 3019 were sufficiently alleged in the amended complaint.

In the Amended Complaint, the petitioner sought to charge the respondents with violation of Section 3(e) and (g) of RA 3019, which reads:

> Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
>
> x x x x x x x x x
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the

same, whether or not the public officer profited or will profit thereby.

The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with the public officers; (2) that said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[49]

On the other hand, the elements of the offense in Section 3(g) are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.[50]

It was properly alleged in the Amended Complaint that the respondent officers and directors of PNB/NIDC, a government-owned and controlled corporation, in conspiracy with the respondent directors and officers of CCPI, granted CCPI a loan accommodation that bore the characteristics of behest loans. The government suffered injury when the loan, which ballooned to over ₱205M, remained unpaid. The terms of the loan accommodation were manifestly disadvantageous to the government that the NIDC directors' assent to this transaction could only be attended by gross inexcusable negligence, if not evident bad faith or manifest partiality. Moreover, these allegations were properly supported by the records.

Thus, the Ombudsman should not have immediately denied the motion for reconsideration, but should have proceeded with the preliminary investigation, by requiring the respondents to file their comments, and resolved the case based on the evidence.

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[49] *Supra* note 22, at 31.

[50] *Ibid.*

WHEREFORE, the petition is *GRANTED*. The Ombudsman's Resolution dated October 16, 2000 and Order dated February 27, 2001 in OMB-0-97-1138 are hereby *REVERSED* and *SET ASIDE*. The Ombudsman is ordered (1) to conduct *with utmost dispatch* a preliminary investigation based on the Amended Complaint; (2) to immediately issue the required subpoena for the production of Board Resolution Nos. 26 and 361, dated January 17, 1968 and November 25, 1970, and other relevant documents; and (3) to promptly evaluate the arguments of all the parties after having heard them. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 150284. November 22, 2010]

SPOUSES ELISEO SEVILLA and ERNA SEVILLA, *petitioners, vs.* **HON. COURT OF APPEALS and PATRICIA VILLAREAL, for herself and in behalf of her children, TRICIA and CLAIRE HOPE VILLAREAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONSIDERATION OF FACTUAL ISSUES ARE INAPPRORIATE.— The Court finds no solid reason to disturb the findings of the CA. Verily, the evaluation and calibration of the evidence necessarily involves consideration of factual issues — an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions

of law, because the Supreme Court is not a trier of facts. Generally, the Court is not duty-bound to analyze and weigh again the evidence introduced in, and considered by, the tribunals below.

2. ID.; EVIDENCE; WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS; NO APPLICATION IN CASE AT BAR.— When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. Unfortunately for the Sevillas, they fail to convince this Court that any of the above exceptions applies in this case. For this reason, the Court cannot but respect the findings and conclusions of the lower court. It is precluded from making further investigation on the facts of the case without violating established rules of procedure.

3. ID.; ID.; PREPONDERANCE OF EVIDENCE; ELUCIDATED; APPLICATION IN CASE AT BAR.— "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." Preponderance of evidence is a phrase which, in the last analysis, means

probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. If plaintiff claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not upon the weakness of that of his opponent. Applying said principle in the case at bench, the factual circumstances established by the Villareals through their testimonial and documentary evidences are sufficient and convincing enough to prove that they are entitled to an award of damages for the death of Jose Villareal compared to the bare allegations to the contrary of the Sevillas. These circumstances, which were earlier enumerated, have successfully swayed this Court to believe that indeed the Sevillas are liable for the death of the victim to the exclusion of others except their henchmen.

APPEARANCES OF COUNSEL

Marbibi & Associates Law Office for petitioners.
R.P. Nograles Law Office for private respondents.

D E C I S I O N

MENDOZA, *J.*:

For review in this petition is the May 22, 2001 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CV No. 63518, which affirmed the Decision[2] of the Regional Trial Court, Branch 132, Makati City *(RTC),* finding the petitioners, spouses Eliseo and Erna Sevilla, jointly and severally, liable for damages to the private respondents.

From the records, it appears that on March 2, 1987, Patricia Villareal, for herself and in behalf of her children, Tricia and Claire Hope Villareal *(the Villareals),* filed an action for damages

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[1] *Rollo*, pp. 6-24. Penned by Associate Justice Oswaldo D. Agcaoli with Associate Justice Cancio C. Garcia and Associate Justice Elvi John S. Asuncion, concurring.

[2] *Id.* at 184-207.

against spouses Eliseo and Erna Sevilla *(the Sevillas)*, on account of the killing of her (Patricia's) husband, Jose K. Villareal *(Jose)*. It was alleged that Eliseo, said to be a very jealous husband, discovered that his wife, Erna was having an illicit affair with Jose. On the early morning of June 6, 1986, Erna and Jose were caught red-handed having a rendezvous in a parking lot by Eliseo who was just waiting in ambush together with some companions. There, Jose was mauled and shot to death. Because of this incident, the Sevillas started disposing their properties and eventually left for the United States of America with their children. Thereafter, a criminal case for murder was filed against them before the RTC of Makati, but it was archived because they had already left the country. On March 2, 1987, the Villareals filed a civil case for damages against the Sevillas arising from the murder case.

Summons could not be personally served on the Sevillas as they had been residing abroad so service was made by publication in a newspaper of general circulation. The Sevillas failed to file their answer to the complaint and so the trial court declared them in default and allowed the Villareals to present evidence *ex parte*. Also, the trial court allowed the Villareals to litigate as pauper litigants.

After presenting their evidence *ex-parte*, the Villareals filed a "Motion for Leave to Admit an Amended Complaint and for Extraterritorial Service" to implead additional plaintiffs, include additional claims for damages and increase their claims for loss of income and moral and exemplary damages. The RTC admitted their amended complaint and ordered that summons be served anew on the Sevillas. But despite the proper service of summons by publication, the Sevillas failed to file their answer. This prompted the RTC to declare them again in default.

Ruling of the Regional Trial Court

On April 2, 1990, the RTC rendered its decision[3] ordering the Sevillas to pay the Villareals damages, among others, for

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[3] *Id.*

the death of Jose Villareal. The dispositive portion of which reads, as follows:

WHEREFORE, judgment is hereby rendered ordering defendants, jointly and severally, to pay plaintiffs:

(1) ₱30,000.00 by way of indemnity for the death of the victim;

(2) ₱185,883.00 for actual damages;

(3) ₱10,491,157.00 as consequential damages representing loss of the victim's earning capacity;

(4) ₱100,000.00 moral damages

(5) ₱25,000.00 as exemplary damages;

(6) ₱50,000. 00 for attorney's fees

(7) Interest on all the foregoing amounts at the rate of six percent (6%) per annum, computed from the date hereof; and

(8) The costs of suit.

The unpaid additional docket fees on the Amended Complaint shall constitute a lien to this judgment.

SO ORDERED.

The RTC ruled, among others, that the Villareals were able to establish their cause of action against the Sevillas by preponderance of evidence. They were, therefore, entitled to recover civil liability from the Sevillas based on Article 100 of the Revised Penal Code.

With this adverse ruling, the Sevillas filed a motion to lift order and set aside judgment of default. This was denied by the RTC which prompted them to file a motion for reconsideration and suspension of proceedings while the criminal case against them was pending. Again, the motions were denied by the RTC in its August 10, 1990 order.

Unwilling to accede, the Sevillas elevated the matter to the CA by way of a Petition for *Certiorari*, Prohibition and *Mandamus* with Preliminary Injunction.

The CA, on December 23, 1991, set aside the judgment by default and other related orders of the RTC and ordered the admission of the answer of the Sevillas.

On October 16, 1992, the Villareals, aggrieved by the CA's order, challenged the same before this Court through a Petition for Review on *Certiorari*.

This Court, after careful examination of the petition, issued on September 17, 1998 a decision *reversing* the CA decision and affirming the RTC order and judgment by default, but allowing the Sevillas' appeal to the CA. So, on June 15, 1999, the RTC elevated the records of the case to the CA.

On May 8, 2001, during the pendency of the appeal, the Sevillas submitted an "Urgent Motion to Resolve One Issue that Will Make All Other Issues Moot."

Ruling of the Court of Appeals

On May 22, 2001, the CA rendered a decision affirming the April 2, 1990 RTC decision. The CA ruled, among others, that a chain of factual circumstances all led to the conclusion that the Sevillas, with the help of other men, committed the crime. These were:

1. The victim was last seen alive with Erna at the 1851 Club located on the 20th floor of the said building;
2. One of the getaway cars was in fact the same car driven by Erna in going to the scene of the crime;
3. The car owned by [the Sevillas] was with another car that sped away and attempted to race with a witness' car toward the exit of the car park shortly after the shooting;
4. The car's plate was substituted with the plate number of another car owned by [the Sevillas] upon loading of gasoline;
5. Despite the close relationship between the victim and the [Sevillas], none of them attended the wake nor offered condolences to the bereaved family;
6. Erna asked her personal accountant to retrieve her intimate letters to the victim from the victim's files;

7. [The Sevillas] abruptly departed to a foreign country, to the extent of removing their children from school; and

8. [The Sevillas] failed to appear as they still refuse to appear in the criminal case for the killing of the victim – all point to a single conclusion: [The Sevillas] planned and executed the killing and are now in hiding to avoid the legal consequences of their actions.[4]

Not in conformity, the Sevillas filed a Motion for Reconsideration focusing solely on the extent of the award of unliquidated damages, which was, nonetheless, denied by the CA.

On December 3, 2001, the Sevillas filed this petition raising this lone

ISSUE

Whether or not the Court of Appeals erred in ruling that the Villareals are entitled to an award of damages for the death of Jose Villareal.

Position of the Petitioners

The Sevillas argue that the CA rendered a decision based on hearsay, incompetent, and inadmissible evidence. They claim that the Villareals failed to prove their case even by circumstantial evidence. Moreover, they opine that the rule on indigent party was violated when the Villareals were allowed to litigate as pauper litigants.

Position of the Respondents

Conversely, the Villareals counter that the petition should be dismissed based on two (2) grounds, to wit: 1] technical grounds due to a) waiver and expiry of period to appeal by *certiorari*, and b) failure to raise questions of law; and 2] substantial grounds because the petition lacks merit. They agree with the conclusion of the courts below that there was enough circumstantial evidence to hold the Sevillas civilly liable for the death of the victim.

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

The Court's Ruling

The Court finds no solid reason to disturb the findings of the CA. Verily, the evaluation and calibration of the evidence necessarily involves consideration of factual issues — an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, the Court is not duty-bound to analyze and weigh again the evidence introduced in, and considered by, the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[5]

Unfortunately for the Sevillas, they fail to convince this Court that any of the above exceptions applies in this case. For this reason, the Court cannot but respect the findings and conclusions of the lower court. It is precluded from making further

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[5] *Heirs of Jose Lim, represented by Elenito Lim v. Juliet Villa Lim*, G.R. No. 172690, March 3, 2010.

investigation on the facts of the case without violating established rules of procedure.

At any rate, the Court is convinced that the decision of the courts below are supported by a preponderance of evidence. Section 1, Rule 133 of the Revised Rules of Evidence provides how preponderance of evidence is determined:

> 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 circumstance 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 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." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth.[6] It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. If plaintiff claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not upon the weakness of that of his opponent.

Applying said principle in the case at bench, the factual circumstances established by the Villareals through their testimonial and documentary evidences are sufficient and convincing enough to prove that they are entitled to an award of damages for the death of Jose Villareal compared to the bare

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[6] *Amoroso v. Alegre*, G.R. No. 142766, June 15, 2007, 524 SCRA 641, 652.

allegations to the contrary of the Sevillas. These circumstances, which were earlier enumerated, have successfully swayed this Court to believe that indeed the Sevillas are liable for the death of the victim to the exclusion of others except their henchmen.

Furthermore, the Court notes that in the course of their appeal with the CA, the factual conclusions of the RTC were never assailed by the Sevillas. Instead of questioning the facts that would garner them a favorable judgment, what they filed were an "urgent motion to resolve one issue that will make all other issues moot"[7] and a "motion for reconsideration on the sole issue of the extent of the award of unliquidated damages."[8] Consequently, with the filing of these motions, the factual findings of the lower court were deemed admitted.

As correctly held by the CA, the Sevillas had all the opportunities to answer the criminal and civil cases filed against them, but they chose to run away and hide from the law. What makes matters worse, after having been declared in default is that they continually resorted to several delaying tactics by filing several pleadings in court, to the prejudice of the victim's family. All these have brought about inconceivable financial and emotional hardships to the Villareals in their quest for truth and justice. As can be gleaned from the facts, fifteen (15) long years have already elapsed from the time the victim was killed in June 1986 up to the time the CA rendered a decision on the main case on May 22, 2001. And throughout those years up to the present, the Sevillas never presented themselves in court.

Finally, adding insult to injury, in anticipation of their properties being levied in satisfaction of the RTC judgment against them, the Sevillas wittingly disposed all their properties. This resulted in another and separate long drawn court battle between the Villareals and the alleged buyers of the Sevilla

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[7] *Rollo*, p. 27.

[8] *Id.*

properties. Evidently, all these are but manifestations of bad faith and ill-will prejudicial to the Villareals who must in the interest of justice be compensated without further delay.

WHEREFORE, the May 22, 2001 Decision of the Court of Appeals in CA-G.R. CV No. 63518 is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 150318. November 22, 2010]

PHILIPPINE TRUST COMPANY (also known as Philtrust Bank), *petitioner, vs.* **HON. COURT OF APPEALS and FORFOM DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; MORTGAGEE, WHEN DEEMED IN BAD FAITH.— Indeed, the presence of anything which excites or arouses suspicion should prompt the vendee or mortgagee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. If the vendee or mortgagee failed to do so before the execution of the contract, the vendee or mortgagee is deemed to be in bad faith and therefore cannot acquire any title under the forged instrument.

2. MERCANTILE LAW; BANKING; BANKS; EXTRAORDINARY DILIGENCE, REQUIRED OF BANKS IN APPROVING MORTGAGE CONTRACTS; RULE THAT PERSONS DEALING WITH REGISTERED LANDS CAN RELY

SOLELY ON THE CERTIFICATE OF TITLE DOES NOT APPLY TO BANKS.— It is settled that banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, **even those involving registered lands**. The rule that persons dealing with registered lands can rely solely on the certificate of title **does not** apply to banks. Consequently, Philtrust should prove that it exercised extraordinary diligence required of it in approving the mortgage contract in favor of the spouses Claveria.

3. REMEDIAL LAW; EVIDENCE; PUBLIC DOCUMENTS; NOT ALL TYPES THEREOF ARE DEEMED *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED; NOTARIZED DOCUMENTS ARE MERELY PROOF OF THE FACT WHICH GAVE RISE TO THEIR EXECUTION AND OF THE DATE OF THE LATTER, BUT IS NOT *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED.— Notarized documents fall under the second classification of public documents. However, not all types of public documents are deemed *prima facie* evidence of the facts therein stated: Sec. 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. "Public records made in the performance of a duty by a public officer" include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the *acknowledgement, affirmation or oath, or jurat* portion of public documents under Section 19(c). Hence, under Section 23, notarized documents are merely proof of the fact which gave rise to their execution (*e.g.*, the notarized Answer to Interrogatories in the case at bar is proof that Philtrust had been served with Written Interrogatories), and of the date of the latter (*e.g.*, the notarized Answer to Interrogatories is proof that the same was executed on October 12, 1992, the date stated thereon), but is not *prima facie* evidence of the facts therein stated. Additionally, under Section 30 of the same Rule, the acknowledgement in notarized documents is *prima facie* evidence of the execution of the instrument or document involved (*e.g.*, the notarized Answer to Interrogatories is *prima facie* proof that petitioner executed

the same). The reason for the distinction lies with the respective official duties attending the execution of the different kinds of public instruments. Official duties are disputably presumed to have been regularly performed. As regards affidavits, including Answers to Interrogatories which are required to be sworn to by the person making them, the only portion thereof executed by the person authorized to take oaths is the *jurat*. The presumption that official duty has been regularly performed therefore applies only to the latter portion, wherein the notary public merely attests that the affidavit was subscribed and sworn to before him or her, on the date mentioned thereon. Thus, even though affidavits are notarized documents, we have ruled that affidavits, being self-serving, must be received with caution.

4. ID.; ID.; PRESUMPTIONS; EVIDENCE WILLFULLY SUPPRESSED WOULD BE ADVERSE IF PRODUCED; CASE AT BAR.— It is presumed that evidence willfully suppressed would be adverse if produced. When pressed in the Request for Interrogatories for details of the investigation of the bank, and for the names of the persons who allegedly visited the subject property and the alleged home of the spouses Claveria, and the names of the bank officers who dealt with said spouses, Philtrust refused to do so.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; NOT PROVEN IN CASE AT BAR.— [W]e find that the Court of Appeals did not even err in finding that Philtrust was in bad faith in the execution of the mortgage contract with the spouses Claveria. Consequently, Philtrust miserably failed to prove that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Decision and Resolution.

APPEARANCES OF COUNSEL

Jane D. Laplana and Jacqueline V. Salamo for petitioner.

Villanueva Gabionza & De Santos and *Victoriano Yabut* for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for *Certiorari* assailing the Decision[1] of the Court of Appeals dated June 15, 2001 and the subsequent Resolution[2] denying reconsideration dated August 21, 2001.

The facts of the case, as determined by the Court of Appeals, are as follows:

> Plaintiff Forfom Development Corporation is engaged in agricultural business and real estate development and owns several parcels of land in Pampanga. It is the registered owner of two (2) parcels of land subject of the present controversy, situated in Angeles City, Pampanga, under Transfer Certificate of Title Nos. 10896 and 64884 consisting of 1,126,530 and 571,014 square meters, respectively. Sometime in 1989, plaintiff received a letter from the Department of Agrarian Reform with the names Ma. Teresa Limcauco and Ellenora Limcauco as addressees. Upon verification with the DAR and the Register of Deeds made by plaintiff's Vice-President at that time, Mr. Jose Marie L. Ramos, plaintiff discovered that the subject properties had already been transferred in the names of said Ma. Teresa Limcauco and Ellenora Limcauco who were never known to plaintiff or its employees. Plaintiff's Board of Directors decided to seek the assistance of the National Bureau of Investigation (NBI) to conduct an investigation on the matter. On November 23, 1989, plaintiff caused the annotation of its adverse claim on TCT No. 75533 of the Registry of Deeds of Angeles City.
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> The results of the NBI Investigation and plaintiff's own inquiry revealed the following acts through which the subject parcels of land were transferred in the names of Ma. Teresa Limcauco and Ellenora *Vda. De* Limcauco, fictitious names which were used by defendant Honorata Dizon in the questioned transactions:

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[1] *Rollo*, pp. 155-163; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Conrado M. Vasquez, Jr. and Alicia L. Santos, concurring.

[2] *Id.* at 165.

(1) A "Deed of Absolute Sale" dated March 6, 1987 was executed over the lot covered by TCT No. 64884 in favor of Ellenora *Vda. De* Limcauco for the price of ₱500,000.00. A separate "Deed of Absolute Sale" dated October 5, 1987 was likewise executed over the property covered by TCT No. 10896 in favor of Ma. Teresa Limcauco in consideration of ₱500,000.00. In both instruments, the signature of the plaintiff's President, Felix H. Limcauco was forged. Likewise, a certification to the effect that plaintiff's Board of Directors had duly approved the sale contained the forged signature of plaintff's (sic) President, Felix H. Limcauco.

(2) On July 7, 1987, a petition for issuance of owner's duplicate copy was filed with the Regional Trial Court of Angeles City, Branch 57 by Ellenora Limcauco who allegedly lost said owner's duplicate copy of TCT No. 64884, which was docketed as Cad. Case No. A-124-160. On January 10, 1989, a separate petition for the issuance of a new owner's duplicate copy was filed with the same court by counsel for Ma. Teresa Limcauco who allegedly lost the owner's duplicate copy of TCT No. 10896, which was docketed as Cad. Case No. A-124-280. After due hearing, the court in Cad. Case No. A-124-280 granted the petition in an Order dated February 1, 1989 which directed the Register of Deeds to issue another owner's duplicate copy of TCT No. 10896 in place of the lost one.

(3) As a consequence of the court's order in Cad. Case No. A-124-280, TCT No. 10896 was cancelled and TCT No. 82760/T-414 was issued in the name of Ma. Teresa Limcauco who had the property covered thereby subdivided into different lots for which TCT Nos. 85585, 85587, 85589 and 85591 were issued in the name of said Ma. Teresa Limcauco. As to TCT No. 64884, this was also cancelled by the Register of Deeds of Angeles City, Honesto G. Guarin, by virtue of a purported court order issued by Judge Eliodoro B. Guinto of RTC-Branch 57. Also appearing as Entry No. 1127 in TCT No. 64884 is the "Secretary's Certificate" in favor of Felix H. Limcauco and Entry No. 1128 which is the sale in favor of Ellenora Limcauco. However, the copy of the court order in Cad. Case No. A-124-160 presented to said Register of Deeds was not signed by Judge Guinto who had denied before the NBI authorities having signed such order or having conducted hearing on said case. The copy submitted to the Register of Deeds was merely stamped "Original Signed." Another document certifying that the Order granting the petition in Cad. Case No. A-124-160 had become final and executory was also submitted to the Register of Deeds in connection with the cancellation

of TCT No. 64884. However, then Branch Clerk of Court Benedicto A. Pineda testified that he did not sign said certification and neither had he been aware of the proceedings in Cad. Case No. A-124-160. Atty. Pineda's signature on said certification appears to have been falsified by one Lorenzo San Andres.

(4) Although the property covered by TCT No. 10896 has already been subdivided into different lots and covered by separate titles in the name of Ma. Teresa Limcauco, said lots were not yet transferred or conveyed to third parties. But as to the property covered by TCT No. 64884, said certificate of title was cancelled and a new certificate of title, TCT No. 75436/T-378 was issued in the name of Ellenora *Vda. De* Limcauco. On September 23, 1987, a Deed of Absolute Sale was executed by Ellenora *Vda. De* Limcauco in favor of defendant Raul P. Claveria whereby the property covered by TCT No. 64884 was supposedly sold to said defendant for the sum of ₱5,139,126.00. On September 24, 1987, TCT No. 75436/T-378 was cancelled and a new certificate of title, TCT No. 75533 was issued in the name of defendant Raul P. Claveria. On October 21, 1987, defendant spouses Raul and Elea Claveria mortgaged the property with the defendant Philippine Trust Company to guarantee a loan in the amount of ₱8,000,000.00, which mortgage was duly registered and annotated as Entry No. 2858 in TCT No. 75533.

On December 26, 1989, plaintiff instituted the present action against the defendants Ma. Teresa Limcauco, Ellenora D. Limcauco, spouses Raul P. Claveria and Elea R. Claveria, Philippine Trust Company and the Register of Deeds of Angeles City. The Complaint alleged conspiratorial acts committed by said defendants who succeeded in causing the fraudulent transfer of registration of plaintiff's properties in the names of Ma. Teresa Limcauco and Ellenora D. Limcauco and the subdivision of the land covered by TCT No. 10896 over which separate titles have been issued. Plaintiff prayed that the trial court render judgment (a) declaring the deeds of sale of March 9, 1987, October 5, 1987 and September 23, 1987 as well as TCT Nos. 75436, 75533, 87269, 85585, 85587, 85589 and 85591, all of the Registry of Deeds of Angeles City as void *ab initio*, (b) directing the reconveyance of the aforesaid real property in the name of plaintiff corporation, and (c) sentencing defendants to pay plaintiff sums of ₱1,000,000.00 as moral damages, ₱100,000.00 plus daily appearance fee of ₱1,000.00 as attorney's fees, and costs of suit. Defendant Philippine Trust Bank filed a motion for bill of particulars which was granted by the trial court, and accordingly

plaintiff amended its Complaint to specifically allege the fraudulent acts and irregularities in the transfer of registration of its properties, in addition to those already specified in the Complaint. Thus plaintiff alleged in addition that (1) the supposed court Order directing the issuance of another owner's duplicate copy actually did not exist, copy of said Order not bearing either the signature of the judge or his branch clerk of court as well as the court seal, and yet accepted at face value in conspiracy or at least negligently, by defendant Register of Deeds of Angeles City, not to mention the haste, among other signs of conspiracy, with which said new owner's duplicate copy of the title was issued; (2) the mortgage executed by defendant-spouses Claveria in favor of defendant bank was characterized by irregularities, the bank having extended a loan in the amount of ₱8 million, far in excess of the property's market value of ₱2,855,070.00, as well as the haste in which said loan was granted.

In its Answer, defendant Philippine Trust Company denied the allegations of the Complaint as to the irregularities in the granting of the ₱8 million loan to defendant-spouses Raul and Elea Claveria. According to said defendant, the Claveria spouses have been their clients since 1986 and on October 2, 1987, all their outstanding obligations in the amount of ₱7,300,000.00 were consolidated into one (1) account on clean basis. Defendant bank had required the Claveria spouses to secure their clean loan of ₱7,300,000.00 with a real estate mortgage, and hence on October 21, 1987, said spouses executed mortgage on real property covered by TCT No. 75533 for an obligation of ₱8 million after securing an advance from the defendant bank in the amount of ₱700,000.00. It had subjected the land offered as security to the usual bank appraisals and examined the genuineness and authenticity of TCT No. 75533 with the Register of Deeds of Angeles City and found the same to be in existence and in order. Thereupon, the deed of mortgage executed by the Claveria spouses was registered by the defendant bank with the Register of Deeds and had it annotated in the original copy of the title. Defendant bank thus prayed that after due hearing, the complaint against it be dismissed and a decision be rendered (a) holding as valid and legal the mortgage on the real property covered by TCT No. 75533 of the Registry of Deeds of Angeles City, and (b) on its counterclaim, ordering the plaintiff to pay to defendant bank the amounts of ₱50,000.00 as actual damages, ₱1,000,000.00 as moral damages, ₱100,000.00 as attorney's fees, and the costs of suit.

On motion of plaintiff, the trial court ordered the service of summons by publication with respect to defendants Ma. Teresa Limcauco, Ellenora Limcauco, Raul P. Claveria and Elea Claveria, whose addresses could not be located by the Sheriff and even by the parties.

Defendant Register of Deeds of Angeles City filed his Answer denying that he conspired with the other defendants in effecting the transfer of registration of the subject properties and averring that it had issued the questioned transfer certificates of title to defendants Ma. Teresa Limcauco, Ellenora *Vda. de* Limcauco and the spouses Raul and Elea Claveria on the basis of documents filed with it and existing in the Office of the Register of Deeds of Angeles City. In his defense, defendant Register of Deeds maintained that he had no reason or basis to question the validity and legality of the documents presented before him for registration nor to question the genuineness of the signatures appearing therein, as well as the Orders of RTC-Angeles City, Branch 57, which contained a signature over and above the typewritten name of Judge Eliodoro B. Guinto. He had the right to assume that official functions were regularly performed. Plaintiff therefore has no cause of action against the defendant Register of Deeds as the latter merely performed his duties and functions embodied under Sec. 10 of P.D. No. 1529. By way of counterclaim, defendant Register of Deeds alleged bad faith and malice in plaintiff's filing of the complaint against him, stating that (1) despite plaintiff's knowledge that defendant Register of Deeds has not committed any act of malfeasance or misfeasance in the registration of the subject certificates of title, he was subjected to an investigation by NBI authorities at the instance of plaintiff and was compelled to give a sworn statement before said government authorities in order to clear his name; and (2) plaintiff's former counsel had earlier manifested that the Register of Deeds was being impleaded merely as a nominal party; however, in a sudden and unexplained turnabout, plaintiff impleaded defendant Register of Deeds as a principal party in its Amended Complaint. Defendant Register of Deeds thus prayed for the dismissal of the complaint against him for utter lack of merit and on his counterclaim, that a decision be rendered ordering the plaintiff to pay the defendant Register of Deeds the following sums: ₱200,000.00 by way of moral damages, ₱100,000.00 by way of exemplary damages, ₱20,000.00 by way of attorney's fees plus ₱500.00 per appearance, and costs of suit.

In an Order dated October 30, 1991, the trial court declared the defendants Ma. Teresa Limcauco, Ellenora Limcauco, Raul P. Claveria

and Elea R. Claveria in default for their failure to file the necessary responsive pleadings despite the lapse of sixty (60) days from the last day of publication of summons, and accordingly allowed the plaintiff to present its evidence *ex parte* against the said defendants. During the pre-trial conference held on November 25, 1991, plaintiff's counsel manifested that it was joining the defendant Register of Deeds only as a nominal party as the latter also waived his counterclaim against the plaintiff.

On February 4, 1992, the trial court granted plaintiff's motion to authenticate the signatures appearing in the Deeds of Sale of October 5, 1987 and March 6, 1987, and that of Josefina K. Limcauco appearing in the Secretary's Certificate containing the supposed Board resolution of plaintiff approving the sale of the parcels of land covered by TCT Nos. 10896 and 64884. The said documents were ordered forwarded to the NBI for authentication. During the pre-trial conference conducted on August 25, 1992, the parties agreed on two (2) issues for resolution during the trial: (1) whether or not the Deeds of Absolute Sale purportedly executed by the plaintiff covering the subject real properties, as well as the titles issued thereat, TCT Nos. 75436, 75533, 87269, 85585, 85587, 85589 and 85591, all of the Registry of Deeds of Angeles City are genuine and valid; and (2) whether or not the mortgage on the real property covered by TCT No. 75533 of the Registry of Deeds of Angeles City is valid and legal. At the trial proper, plaintiff presented as its witnesses Jose Marie L. Ramos (Vice-President of plaintiff corporation), Alberto Ramos (NBI officer), Eliodoro Constantino (NBI handwriting expert), Felix H. Limcauco, Jr. (former President of plaintiff corporation) and Atty. Benedicto Pineda (former Branch Clerk of Court of RTC- Angeles City, Branch 57). Defendant Philippine Trust Company, on the other hand, presented the testimony of defendant Atty. Honesto Guarin (Register of Deeds of Angeles City). After the formal offer of the respective documentary evidence of the parties and submission of their memoranda, the case was submitted for decision. x x x.[3]

On December 29, 1993, the RTC rendered its Decision in favor of private respondent Forfom Development Corporation (Forfom):

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[3] *Id.* at 156-160.

WHEREFORE, all the [foregoing] considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Philippine Trust Co., spouses Raul P. Claveria and Elea R. Claveria, Ma. Teresa Limcauco @ Honorata Dizon and Ellenora *Vda. de* Limcauco @ Honorata Dizon:

1. Declaring the Deeds of Sale of 9 March 1987, 23 September 1987 and 5 October 1987 as well as Transfer Certificates of Title Nos. 75436, 75533, 82760, 85585, 85587, 85589 and 85591 all of the Register of Deeds of Angeles City as void *ab initio*;

2. Ordering the Register of Deeds of Angeles City to reinstate Transfer Certificates of Title Nos. 10896 and 64884 in the name of the plaintiff or to issue new transfer certificate of title for the same parcels of land in the name of the plaintiff-corporation free from liens and encumbrances made subsequent to the cancellation of the said two (2) titles;

3. Ordering the defendants Philippine Trust Co., spouses Raul P. Claveria and Elea R. Claveria, Ma. Teresa Limcauco @ Honorata Dizon and Ellenora Vda. de Limcauco @ Honorata Dizon to pay jointly and severally the plaintiff the sum of ₱50,000.00 as actual damages in the form of attorney's fees; and

4. To pay the costs of this suit.[4]

On January 21, 1994, petitioner Philippine Trust Company (Philtrust) filed a Notice of Appeal, alleging that the lower court erred in declaring Transfer Certificate of Title No. 75533-Angeles City void and in concluding that it was a mortgagee in bad faith. Philtrust further claims that Forfom was negligent with its property.

On June 15, 2001, the Court of Appeals rendered the assailed Decision affirming the Decision of the RTC:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the appealed Decision of the trial court in Civil Case No. 6087 is hereby AFFIRMED and REITERATED.[5]

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[4] *Id.* at 177.

[5] *Id.* at 163.

According to the Court of Appeals, Philtrust was negligent in its credit investigation procedures and its standards for granting of loans, as shown by (a) its previously extending unsecured and uncollateralized loans to the spouses Raul and Elea Claveria, and (b) its failure to discover the latter's statement of a fictitious address in the mortgage contract and being the subject of estafa cases. The Court of Appeals agreed with the trial court's finding that Philtrust acted in haste in the execution of the mortgage and loan contracts, as the property, assessed only at more than ₱2 million and allegedly purchased at more than ₱5 million, was made to secure the principal loan obligation of ₱8 million.

The appellate court further took note of Philtrust's refusal to present the records and details of its transactions with the spouses Claveria despite being pressed to do so by Forfom. The Court of Appeals found this circumstance cast serious doubt on Philtrust's allegation that it was a mortgagee in good faith.

On August 21, 2001, the Court of Appeals denied Philtrust's Motion for Reconsideration. Hence, this Petition for *Certiorari*, where Philtrust raises the following arguments:

1. The Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding there was lack of evidence that Philtrust was a mortgagee in good faith; hence, capriciously and wantonly ascribed bad faith to the latter;[6]

2. The Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that Philtrust had actual knowledge of facts and circumstances pertaining to the fraudulent transfer of the registration of the subject property from the name of Forfom to the name of Ellenora Limcauco, when there was no iota of evidence to support such factual finding; hence, capriciously and wantonly ascribed bad faith to Philtrust as the mortgagee of the said property;[7] and

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[6] *Id.* at 693.

[7] *Id.* at 704-705.

3. The Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in completely disregarding the well-settled rule that a forged deed may be the root of a valid title; hence, capriciously and wantonly nullified the real estate mortgage executed by the spouses Claveria in favor of Philtrust.[8]

Contrary to the allegation in the third argument presented by Philtrust, the Court of Appeals did not seem to have disregarded the rule that a forged deed may be the root of a valid title. The appellate court clearly specified the circumstances allowing the application of such rule:

> A forged deed may be the root of a valid title when an innocent purchaser for value intervenes. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. It has been held that where a mortgagee bank accepted the mortgage in good faith, the land involved being registered land, it is not bound to go [beyond] the certificate of title to look for flaws in the mortgagor's title, the doctrine of innocent purchaser for value being applicable to an innocent mortgagee for value. A mortgagee in good faith and for value is entitled to protection. A bank is not required, before accepting a mortgage, to make an investigation of the title of the property being given as security. This is a consequence of the rule that a person dealing with registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry.[9]

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[8] *Id.* at 713.

[9] *Id.* at 161, citing the following cases: *Diaz-Duarte v. Ong*, 358 Phil. 876 (1998); *Rural Bank of Compostela v. Court of Appeals*, 337 Phil. 521 (1997); *Gonzales v. Intermediate Appellate Court*, 241 Phil. 630 (1988); *Mallorca v. De Ocampo*, 145 Phil. 17 (1970); *Director of Lands v. Abache*, 73 Phil. 606 (1942); *De la Cruz v. Fabie*, 35 Phil. 144 (1916).

Indeed, the presence of anything which excites or arouses suspicion should prompt the vendee or mortgagee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate.[10] If the vendee or mortgagee failed to do so before the execution of the contract, the vendee or mortgagee is deemed to be in bad faith and therefore cannot acquire any title under the forged instrument.

The determination of the case at bar, therefore, hinges on the resolution of the first two issues, which deal with whether Philtrust is a mortgagee in good or bad faith. However, since what Philtrust filed with us is a Petition for *Certiorari* rather than a Petition for Review, a finding that Philtrust is in good faith is not enough for us to grant the Petition. A mere error in the judgment of the Court of Appeals in affirming the RTC Decision would not be enough; nothing less than grave abuse of discretion on the part of the Court of Appeals is required for the issuance of the Writ of *Certiorari*.

Philtrust claims that the loans secured by the mortgage on the subject property were granted to the spouses Claveria after Philtrust was satisfied regarding the spouses' credit worthiness and capacity to pay.[11] In fact, according to Philtrust, the spouses Claveria were able to maintain a satisfactory record of payment during the early period of their transactions with the bank.[12] Philtrust insists that prior to the constitution of the mortgage, it followed the standard operating procedures in accepting property as security, including having investigators visit the subject property and appraise its value.[13]

When the Court of Appeals ruled that these claims by Philtrust were not supported by evidence, the latter countered before us

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[10] *Sandoval v. Court of Appeals*, 329 Phil. 48, 60 (1996), citing *Pino v. Court of Appeals*, G.R. No. 94114, June 19, 1991, 198 SCRA 434, 440; *Centeno v. Court of Appeals*, 224 Phil. 91, 102 (1985).

[11] *Rollo*, p. 693.

[12] *Id.*

[13] *Id.* at 694.

that its allegations were supported by the following documents: (a) the Promissory Note;[14] (b) the Deed of Mortgage;[15] and (c) TCT No. 75533.[16] Philtrust adds that it stated in the Answer to Interrogatories that it followed the standard operating procedures in accepting the property as security. Since said Answer to Interrogatories is a notarized document, Philtrust claims that it is a public document which is conclusive as to the truthfulness of its contents.[17]

It is settled that banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, **even those involving registered lands**.[18] The rule that persons dealing with registered lands can rely solely on the certificate of title **does not** apply to banks.[19] Consequently, Philtrust should prove that it exercised extraordinary diligence required of it in approving the mortgage contract in favor of the spouses Claveria.

It baffles us how Philtrust can argue that the promissory note and Deed of Mortgage executed by the spouses Claveria, and the TCT of the subject property, can prove its allegations that (a) the mortgage was granted after it was satisfied of the spouses' credit worthiness; (b) the latter was able to maintain a satisfactory record of payment early on; or (c) it followed the standard operating procedures in accepting property as security, including having investigators visit the subject property and appraise its value. The mere fact that Philtrust accepted the

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[14] Exhibit "A"; *Rollo,* p. 727.

[15] Exhibit "B"; *Id.* at 728-729.

[16] Exhibit "C"; *Id.* at 730-732.

[17] *Rollo,* pp. 694-695.

[18] *Development Bank of the Philippines v. Court of Appeals*, 387 Phil. 283, 302 (2000); *Cavite Development Bank v. Lim*, 381 Phil. 355, 368-369 (2000); *Tomas v. Philippine National Bank*, 187 Phil. 183, 187-188 (1980).

[19] *Ursal v. Court of Appeals*, G.R. No. 142411, October 14, 2005, 473 SCRA 52, 63-64; *Rural Bank of Compostela v. Court of Appeals*, *supra* note 9.

subject property as security most certainly does not prove that it followed the standard operating procedure in doing so. As regards Philtrust's claim that the Answer to Interrogatories, being a notarized document, is conclusive as to the truthfulness of its contents, we deem it necessary to clarify the doctrines cited by Philtrust on this matter.

Section 19, Rule 132 of the Rules of Court enumerates three kinds of public documents, to wit:

> Sec. 19. *Classes of Documents*. — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledged before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private.

Notarized documents fall under the second classification of public documents. However, not all types of public documents are deemed *prima facie* evidence of the facts therein stated:

> Sec. 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.[20]

"Public records made in the performance of a duty by a public officer" include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the

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[20] Rules of Court, Rule 132, Section 23.

acknowledgement,[21] *affirmation or oath*,[22] *or jurat*[23] portion of public documents under Section 19(c). Hence, under Section 23, notarized documents are merely proof of the fact which gave rise to their execution (*e.g.*, the notarized Answer to Interrogatories in the case at bar is proof that Philtrust had been served with Written Interrogatories), and of the date of the latter (*e.g.*, the notarized Answer to Interrogatories is proof that the same was executed on October 12, 1992, the date stated thereon),[24] but is not *prima facie* evidence of the facts therein stated. Additionally, under Section 30 of the same Rule, the acknowledgement in notarized documents is *prima facie* evidence of the execution of the instrument or document involved (*e.g.*, the notarized Answer to Interrogatories is *prima facie* proof that petitioner executed the same).[25]

The reason for the distinction lies with the respective official duties attending the execution of the different kinds of public instruments. Official duties are disputably presumed to have been regularly performed.[26] As regards affidavits, including Answers to Interrogatories which are required to be sworn to by the person making them,[27] the only portion thereof executed

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[21] See 2004 Rules on Notarial Practice, Rule II, Section 1.

[22] *Id.* at Section 2.

[23] *Id.* at Section 6.

[24] Records, p. 638.

[25] Sec. 30. *Proof of notarial documents*. — Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. (Rules of Court, Rule 132.)

[26] Rules of Court, Rule 131, Section 3(m).

[27] Rules of Court, Rule 25, Section 2 provides:

Sec. 2. *Answer to interrogatories*. The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. The party upon whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof, unless the court, on motion and for good cause shown, extends or shortens the time.

by the person authorized to take oaths is the *jurat*. The presumption that official duty has been regularly performed therefore applies only to the latter portion, wherein the notary public merely attests that the affidavit was subscribed and sworn to before him or her, on the date mentioned thereon. Thus, even though affidavits are notarized documents, we have ruled that affidavits, being self-serving, must be received with caution.[28]

Philtrust, therefore, presented no evidence rebutting the following badges of bad faith shown in the records of the case. Even though circumstantial, the following adequately prove by preponderance of evidence that Philtrust was aware of the fraudulent scheme perpetrated upon Forfom:

1. Within a period of less than one year, Philtrust extended unsecured loans amounting to ₱7,300,000.00 to the spouses Claveria as shown in its Answer wherein it declared:

Spouses Raul and Elea Claveria has been clients of the bank since 1986 and on October 2, 1987, all their outstanding obligations in the amount of ₱7,300,000.00 were consolidated into one account on a clean basis.[29]

All Philtrust can give is a very general explanation for these unsecured loans:

5. Why were the Claveria spouses granted loans without collaterals at the onset?[30]

[ANSWER:]

5. The Claveria spouses passed the standards set by the bank.[31]

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[28] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 776.

[29] Records, p. 127.

[30] *Id.* at 633.

[31] *Id.* at 636.

2. Although the spouses Claveria had declared their residence to be in the plush subdivision in Ayala Alabang, Philtrust was content to receive as security a land outside Metro Manila, which was only recently acquired by the said spouses. When asked about this in the Request for Interrogatories, Philtrust merely responded evasively:

7. Did the bank not request from the Claveria spouses collateral within the Metro Manila area and if so what was the reply of the Claveria spouses?[32]

[ANSWER:]

7. The bank requested for collateral on the ₱8,300,000.00 loan preferably located in Metro Manila.[33]

3. It is presumed that evidence willfully suppressed would be adverse if produced.[34] When pressed in the Request for Interrogatories for details of the investigation of the bank, and for the names of the persons who allegedly visited the subject property and the alleged home of the spouses Claveria, and the names of the bank officers who dealt with said spouses, Philtrust refused to do so:

10. Prior to the execution of the real estate mortgage by the Claveria spouses on the Angeles City property subject of the above-captioned case, what investigation, if any did the bank undertake for the physical examination of said property, what were the results, if any, of such physical examination of the property, and the name or names of the persons who visited the property?[35]

[ANSWER:]

10. The Angeles property was appraised in accordance with the usual procedure in the appraisal of property offered as collateral.

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[32] *Id.* at 633.

[33] *Id.* at 636.

[34] Rules of Court, Rule 131, Section 3(e).

[35] Records, pp. 633-634.

The property was visited by the investigators of the Credit Department of the bank.[36]

15. Did an officer or employee of the bank actually visit the given residences of the Claveria spouses in Angeles City and Bacolod City, the result of such visit, and the name or names of the persons representing the bank who visited such places?[37]

[ANSWER:]

15. As stated above, the last known address of spouses was 406 Caliraya Street, New Alabang, Muntinlupa, M.M.[38]

17. Who was the particular bank officer who dealt directly with the Claveria spouses and handled their accounts?[39]

[ANSWER:]

17. The Loans and Discounts Department of the bank handled the accounts of the spouses.[40]

The RTC and the Court of Appeals considered these circumstances as circumstantial evidence of Philtrust's awareness of the fraudulent scheme against Forfom. Nevertheless, Philtrust up to this date persists with suppressing these details:

Petitioner humbly believes and strongly maintains its position that the presentation of all documents pertaining to the loan transactions of Spouses Claveria is unnecessary, irrelevant, and immaterial in its defense of good faith before the court *a quo*. Nevertheless, as discussed above, Petitioner had sufficiently proved through its Answer to Interrogatories and loan documents extant in the records of the case that it prudently complied with the standard practice of banks in accepting mortgage.[41]

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[36] *Id.* at 637.

[37] *Id.* at 634.

[38] *Id.* at 637.

[39] *Id.* at 634.

[40] *Id.* at 637.

[41] Petitioner's Memorandum, p. 10; *rollo*, p. 695.

4. Philtrust persistently refused to cooperate with the National Bureau of Investigation (NBI) in its investigation of the fraudulent scheme perpetrated against Forfom, as testified by NBI agents Alberto V. Ramos and Pastor T. Pangan,[42] and as shown in NBI Investigation Report NBI-NCR 10-11-90 90-2-5507.[43]

5. Had Philtrust properly conducted a credit investigation of the spouses Claveria, it would have easily discovered that they did not reside and never resided in the address declared by them, as revealed in the investigation by the NBI[44] and declared by the association of homeowners in the New Alabang subdivision.[45]

All the foregoing considered, we find that the Court of Appeals did not even err in finding that Philtrust was in bad faith in the execution of the mortgage contract with the spouses Claveria. Consequently, Philtrust miserably failed to prove that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Decision and Resolution.

WHEREFORE, the instant Petition for *Certiorari* is *DISMISSED*. The Decision of the Court of Appeals dated June 15, 2001 and the subsequent Resolution denying reconsideration dated August 21, 2001 are *AFFIRMED*.

Costs against petitioner Philippine Trust Company.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[42] TSN, October 6, 1992, pp. 12, 31 and 41.

[43] Exhibit C, records, pp. 728, 741 (No. 42).

[44] TSN, October 6, 1992, p. 11.

[45] TSN, September 16, 1992, pp. 23-24; 28-29.

[*] Per Special Order No. 913 dated November 2, 2010.

THIRD DIVISION

[G.R. No. 165676. November 22, 2010]

JOSE MENDOZA,* *petitioner, vs.* **NARCISO GERMINO and BENIGNO GERMINO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT.—** It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint. It is determined exclusively by the Constitution and the law. It cannot be conferred by the voluntary act or agreement of the parties, or acquired through or waived, enlarged or diminished by their act or omission, nor conferred by the acquiescence of the court. Well to emphasize, it is neither for the court nor the parties to violate or disregard the rule, this matter being legislative in character.

2. **ID.; ID.; ID.; BATAS PAMBANSA BLG. 129 (JUDICIARY REORGANIZATION ACT OF 1980), AS AMENDED; MUNICIPAL TRIAL COURT (MTC); EXCLUSIVE ORIGINAL JURISDICTION OVER CASES OF FORCIBLE ENTRY AND UNLAWFUL DETAINER.—** Under Batas Pambansa Blg. 129, as amended by R.A. No. 7691, the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. The RRSP governs the remedial aspects of these suits.

3. **ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); PRIMARY AND EXCLUSIVE JURISDICTION, BOTH ORIGINAL AND APPELLATE, OVER AGRARIAN DISPUTES.—** Under Section 50 of R.A. No. 6657, as well as Section 34 of Executive Order No. 129-A, the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and

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* Known as "Jose C. Mendoza, Jr." in other parts of the record.

adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program, and other agrarian laws and their implementing rules and regulations.

4. ID.; ID.; ID.; ID.; ID.; AGRARIAN DISPUTES; DEFINED; ESSENTIAL REQUISITES OF AN AGRICULTURAL TENANCY RELATIONSHIP.— An agrarian dispute refers to any controversy relating to, among others, tenancy over lands devoted to agriculture. For a case to involve an agrarian dispute, the following essential requisites of an agricultural tenancy relationship must be present: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvest or payment of rental.

5. ID.; ID.; ID.; BATAS PAMBANSA BLG. 129 (JUDICIARY REORGANIZATION ACT OF 1980), AS AMENDED; MUNICIPAL TRIAL COURT; ALLEGATION OF TENANCY DOES NOT DIVEST THE MTC OF JURISDICTION.— Although respondent Narciso averred tenancy as an affirmative and/or special defense in his answer, this did not automatically divest the MTC of jurisdiction over the complaint. It continued to have the authority to hear the case precisely to determine whether it had jurisdiction to dispose of the ejectment suit on its merits. After all, jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.

6. ID.; REVISED RULES ON SUMMARY PROCEDURE; MTC IS DUTY-BOUND TO CONDUCT A PRELIMINARY CONFERENCE; A HEARING IS NOT A MATTER OF RIGHT; CASE AT BAR.— Under the RRSP, the MTC is duty-bound to conduct a preliminary conference and, if necessary, to receive evidence to determine if such tenancy relationship had, in fact, been shown to be the real issue. The MTC may even opt to conduct a hearing on the special and affirmative defense of the defendant, although under the RRSP, such a hearing is not a matter of right. If it is shown during the hearing or conference that, indeed, tenancy is the issue, the MTC should dismiss the case for lack of jurisdiction. In the present case, instead of conducting a preliminary conference,

the MTC immediately referred the case to the DARAB. This was contrary to the rules. Besides, Section 2 of P.D. No. 316, which required the referral of a land dispute case to the Department of Agrarian Reform for the preliminary determination of the existence of an agricultural tenancy relationship, has indeed been repealed by Section 76 of R.A. No. 6657 in 1988.

7. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); NOT CONFERRED JURISDICTION BY THE AMENDMENT OF THE COMPLAINT AND ABSENT ANY ALLEGATION OF TENANCY RELATIONSHIP BETWEEN THE PARTIES.— Neither did the amendment of the complaint confer jurisdiction on the DARAB. The plaintiffs alleged in the amended complaint that the subject property was previously tilled by Efren Bernardo, and the respondents took possession by strategy and stealth, without their knowledge and consent. In the absence of any allegation of a tenancy relationship between the parties, the action was for recovery of possession of real property that was within the jurisdiction of the regular courts.

APPEARANCES OF COUNSEL

Joaquin Adarlo & Caoile for petitioner.
Joventino A. Cornista for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari*[1] filed by petitioner Jose Mendoza to challenge the decision[2] and the

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 25-48.

[2] Dated October 6, 2003; penned by Associate Justice Godardo A. Jacinto, with the concurrence of Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin (now a member of this Court); *id.* at 50-59.

resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 48642.[4]

FACTUAL BACKGROUND

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

On June 27, 1988, the petitioner and Aurora C. Mendoza[5] (*plaintiffs*) filed a complaint with the Municipal Trial Court (*MTC*) of Sta. Rosa, Nueva Ecija against respondent Narciso Germino for forcible entry.[6]

The plaintiffs claimed that they were the registered owners of a five-hectare parcel of land in Soledad, Sta. Rosa, Nueva Ecija (*subject property*) under Transfer Certificate of Title No. 34267. Sometime in 1988, respondent Narciso unlawfully entered the subject property by means of strategy and stealth, and without their knowledge or consent. Despite the plaintiffs' repeated demands, respondent Narciso refused to vacate the subject property.[7]

On August 9, 1988, respondent Narciso filed his answer, claiming, among others, that his brother, respondent Benigno Germino, was the plaintiffs' agricultural lessee and he merely helped the latter in the cultivation as a member of the immediate farm household.[8]

After several postponements, the plaintiffs filed a motion to remand the case to the Department of Agrarian Reform Adjudication Board (*DARAB*), in view of the tenancy issue raised by respondent Narciso.

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[3] Dated October 12, 2004; *id.* at 61-62.

[4] Entitled "*Narciso Germino and Benigno Germino v. Jose Mendoza and Aurora Mendoza, rep. by their Attorney-In-Fact, Dolores Mendoza.*"

[5] Through their attorney-in-fact, Otelia Mendoza.

[6] *Rollo,* pp. 73-74.

[7] *Ibid.*

[8] *Id.* at 75-79.

Without conducting a hearing, and despite respondent Narciso's objection, the MTC issued an order on October 27, 1995, remanding the case to the DARAB, Cabanatuan City for further proceedings.[9]

On December 14, 1995, the plaintiffs[10] filed an amended complaint with the Provincial Agrarian Reform Adjudicator (*PARAD*), impleading respondent Benigno as additional defendant.

The plaintiffs alleged that Efren Bernardo was the agricultural lessee of the subject property. Respondent Benigno unlawfully entered the subject property in 1982 or 1983 through strategy and stealth, and without their knowledge or consent. He withheld possession of the subject property up to 1987, and appropriated for himself its produce, despite repeated demands from the plaintiffs for the return of the property. In 1987, they discovered that respondent Benigno had transferred possession of the subject property to respondent Narciso, who refused to return the possession of the subject property to the plaintiffs and appropriated the land's produce for himself. The subject property was fully irrigated and was capable of harvest for 2 cropping seasons. Since the subject property could produce 100 cavans of palay per hectare for each cropping season, or a total of 500 cavans per cropping season for the five-hectare land, the plaintiffs alleged that the respondents were able to harvest a total of 13,000 cavans of palay from the time they unlawfully withheld possession of the subject property in 1982 until the plaintiffs filed the complaint. Thus, they prayed that the respondents be ordered to jointly and severally pay 13,000 cavans of palay, or its monetary equivalent, as actual damages, to return possession of the subject property, and to pay ₱15,000.00 as attorney's fees.[11]

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[9] *Id.* at 80.

[10] Through their attorney-in-fact, Dolores Mendoza.

[11] *Rollo,* pp. 81-85.

On January 9, 1996, the respondents filed their answer denying the allegations in the complaint, claiming, among others, that the plaintiffs had no right over the subject property as they agreed to sell it to respondent Benigno for ₱87,000.00. As a matter of fact, respondent Benigno had already made a ₱50,000.00 partial payment, but the plaintiffs refused to receive the balance and execute the deed of conveyance, despite repeated demands. The respondents also asserted that jurisdiction over the complaint lies with the Regional Trial Court since ownership and possession are the issues.[12]

THE PARAD RULING

In a March 19, 1996 decision, PARAD Romeo Bello found that the respondents were mere usurpers of the subject property, noting that they failed to prove that respondent Benigno was the plaintiffs' *bona fide* agricultural lessee. The PARAD ordered the respondents to vacate the subject property, and pay the plaintiffs 500 cavans of palay as actual damages.[13]

Not satisfied, the respondents filed a notice of appeal with the DARAB, arguing that the case should have been dismissed because the MTC's referral to the DARAB was void with the enactment of Republic Act (*R.A.*) No. 6657,[14] which repealed the rule on referral under Presidential Decree (*P.D.*) No. 316.[15]

THE DARAB RULING

The DARAB decided the appeal on July 22, 1998. It held that it acquired jurisdiction because of the amended complaint

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[12] *Id.* at 86-90.

[13] *Id.* at 91-99.

[14] Otherwise known as the Comprehensive Agrarian Reform Law of 1988. The Act was signed by then President Corazon C. Aquino on June 10, 1988 and took effect on June 15, 1988.

[15] Prohibiting the Ejectment of Tenant-Tillers from their Farmholdings Pending the Promulgation of the Rules and Regulations Implementing Presidential Decree No. 27.

that sufficiently alleged an agrarian dispute, not the MTC's referral of the case. Thus, it affirmed the PARAD decision.[16]

The respondents elevated the case to the CA via a petition for review under Rule 43 of the Rules of Court.[17]

THE CA RULING

The CA decided the appeal on October 6, 2003.[18] It found that the MTC erred in transferring the case to the DARAB since the material allegations of the complaint and the relief sought show a case for forcible entry, not an agrarian dispute. It noted that the subsequent filing of the amended complaint did not confer jurisdiction upon the DARAB. Thus, the CA set aside the DARAB decision and remanded the case to the MTC for further proceedings.

When the CA denied[19] the subsequent motion for reconsideration,[20] the petitioner filed the present petition.[21]

THE PETITION

The petitioner insists that the jurisdiction lies with the DARAB since the nature of the action and the allegations of the complaint show an agrarian dispute.

THE CASE FOR THE RESPONDENTS

The respondents submit that R.A. No. 6657 abrogated the rule on referral previously provided in P.D. No. 316. Moreover, neither the Rules of Court nor the Revised Rules on Summary Procedure (*RRSP*) provides that forcible entry cases can be referred to the DARAB.

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[16] *Rollo,* pp. 100-109.

[17] *Id.* at 110-125.

[18] *Supra* note 2.

[19] *Supra* note 3.

[20] *Rollo,* pp. 63-72.

[21] *Id.* at 25-48.

THE ISSUE

The core issue is whether the MTC or the DARAB has jurisdiction over the case.

OUR RULING

We deny the petition.

Jurisdiction is determined by the allegations in the complaint

It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint.[22] It is determined exclusively by the Constitution and the law. It cannot be conferred by the voluntary act or agreement of the parties, or acquired through or waived, enlarged or diminished by their act or omission, nor conferred by the acquiescence of the court. Well to emphasize, it is neither for the court nor the parties to violate or disregard the rule, this matter being legislative in character.[23]

Under Batas Pambansa Blg. 129,[24] as amended by R.A. No. 7691,[25] the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. The RRSP[26] governs the remedial aspects of these suits.[27]

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[22] *Morta, Sr. v. Occidental*, G.R. No. 123417, June 10, 1999, 308 SCRA 167.

[23] *OCA v. Court of Appeals*, 428 Phil. 696 (2002).

[24] The Judiciary Reorganization Act of 1980, approved on August 14, 1981.

[25] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending For The Purpose Batas Pambansa Blg. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980," approved on March 25, 1994.

[26] Took effect on November 15, 1991.

[27] *Rivera v. Santiago*, G.R. No. 146501, August 28, 2003, 410 SCRA 113, 120.

Under Section 50[28] of R.A. No. 6657, as well as Section 34[29] of Executive Order No. 129-A,[30] the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program, and other agrarian laws and their implementing rules and regulations.

An agrarian dispute refers to any controversy relating to, among others, tenancy over lands devoted to agriculture.[31] For a case to involve an agrarian dispute, the following essential requisites of an agricultural tenancy relationship must be present: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvest or payment of rental.[32]

In the present case, the petitioner, as one of the plaintiffs in the MTC, made the following allegations and prayer in the complaint:

3. Plaintiffs are the registered owners of a parcel of land covered by and described in Transfer Certificate of Title Numbered 34267,

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[28] Sec. 50. *Quasi-Judicial Powers of the DAR.* – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (*DENR*).

[29] Sec. 34. *Implementing Authority of the Secretary.* — The Secretary shall issue orders, rules and regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

[30] Modifying Executive Order No. 129 Reorganizing and Strengthening the Department of Agrarian Reform and for Other Purposes.

[31] *Isidro v. Court of Appeals,* G.R. No. 105586, December 15, 1993, 228 SCRA 503, 510.

[32] *Pascual v. Court of Appeals,* G.R. No. 138781, December 3, 2001, 371 SCRA 338, 346.

with an area of five (5) hectares, more or less situated at Bo. Soledad, Sta. Rosa, Nueva Ecija. x x x;

4. That so defendant thru stealth, strategy and without the knowledge, or consent of administrator x x x much more of the herein plaintiffs, unlawfully entered and occupied said parcel of land;

5. Inspite of x x x demands, defendant Germino, refused and up to the filing of this complaint, still refused to vacate the same;

6. The continuos (*sic*) and unabated occupancy of the land by the defendant would work and cause prejudice and irreparable damage and injury to the plaintiffs unless a writ of preliminary injunction is issued;

7. This prejudice, damage or injury consist of disturbance of property rights tantamount to deprivation of ownership or any of its attributes without due process of law, a diminution of plaintiffs' property rights or dominion over the parcel of land subject of this dispute, since they are deprived of freely entering or possessing the same;

8. The plaintiffs are entitled to the relief demanded or prayed for, and the whole or part of such relief/s consist of immediately or permanently RESTRAINING, ENJOINING or STOPPING the defendant or any person/s acting in his behalf, from entering, occupying, or in any manner committing, performing or suffering to be committed or performed for him, any act indicative of, or tending to show any color of possession in or about the tenement, premises or subject of this suit, such as described in par. 3 of this complaint;

9. Plaintiffs are ready and willing to post a bond answerable to any damage/s should the issuance of the writ x x x;

10. As a consequence of defendant's malevolent refusal to vacate the premises of the land in dispute, plaintiffs incurred litigation expenses of ₱1,500.00, availing for the purpose the assistance of a counsel at an agreed honorarium of ₱5,000.00 and ₱250.00 per appearance/ not to mention the moral damages incurred due to sleepless nights and mental anxiety, including exemplary damages, the award and amount of which are left to the sound discretion of this Honorable Court.

P R A Y E R

WHEREFORE, it is respectfully prayed of this Honorable Court that pending the resolution of the issue in this case, a restraining order be issued RESTRAINING, ENJOINING, or STOPPING the defendant or any person/s acting in his behalf, from ENTERING OR OCCUPYING the parcel of land, or any portion thereof, described in paragraph 3 of this complaint, nor in any manner committing, performing or suffering to be committed or, performed for him, by himself or thru another, any act indicative of, or tending to show any color of possession in or about the premises subject of this suit;

THEREAFTER, making said writ of preliminary injunction PERMANENT; and on plaintiffs' damages, judgment be rendered ordering the defendant to pay to the plaintiffs the sum alleged in paragraph 10 above.

GENERAL RELIEFS ARE LIKEWISE PRAYED FOR.[33]

Based on these allegations and reliefs prayed, it is clear that the action in the MTC was for forcible entry.

Allegation of tenancy does not divest the MTC of jurisdiction

Although respondent Narciso averred tenancy as an affirmative and/or special defense in his answer, this did not automatically divest the MTC of jurisdiction over the complaint. It continued to have the authority to hear the case precisely to determine whether it had jurisdiction to dispose of the ejectment suit on its merits.[34] After all, jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.[35]

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[33] *Rollo*, pp. 73-74.

[34] *Isidro v. Court of Appeals, supra* note 31, at 509.

[35] *Davao Light & Power Co., Inc. v. Judge, Regional Trial Court, Davao City, Br. 8*, G.R. No. 147058, March 10, 2006, 484 SCRA 272; *Lacson Hermanas, Inc. v. Heirs of Ignacio*, G.R. No. 165973, June 29, 2005, 462 SCRA 290; *Sta. Clara Homeowners' Association v. Gaston*, 425 Phil. 221, 237-238 (2002).

Under the RRSP, the MTC is duty-bound to conduct a preliminary conference[36] and, if necessary, to receive evidence to determine if such tenancy relationship had, in fact, been shown to be the real issue.[37] The MTC may even opt to conduct a hearing on the special and affirmative defense of the defendant, although under the RRSP, such a hearing is not a matter of right.[38] If it is shown during the hearing or conference that, indeed, tenancy is the issue, the MTC should dismiss the case for lack of jurisdiction.[39]

In the present case, instead of conducting a preliminary conference, the MTC immediately referred the case to the DARAB. This was contrary to the rules. Besides, Section 2[40]

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[36] Sec. 7. *Preliminary conference; appearance of parties*. – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

[37] *Ualat v. Ramos*, A.M. Nos. MTJ-91-567 & MTJ-91-588, December 6, 1996, 265 SCRA 345, 357.

[38] *Rivera v. Santiago*, G.R. No. 146501, August 28, 2003, 410 SCRA 113.

[39] *Hilado v. Chavez*, G.R. No. 134742, September 22, 2004, 438 SCRA 623.

[40] Sec. 2. Unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction, no judge of the Court of Agrarian Relations, Court of First Instance, municipal or city court, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and corn, and if any such cases are filed, **these cases shall first be referred to the**

of P.D. No. 316, which required the referral of a land dispute case to the Department of Agrarian Reform for the preliminary determination of the existence of an agricultural tenancy relationship, has indeed been repealed by Section 76[41] of R.A. No. 6657 in 1988.

Amended complaint did not confer jurisdiction on the DARAB

Neither did the amendment of the complaint confer jurisdiction on the DARAB. The plaintiffs alleged in the amended complaint that the subject property was previously tilled by Efren Bernardo, and the respondents took possession by strategy and stealth, without their knowledge and consent. In the absence of any allegation of a tenancy relationship between the parties, the action was for recovery of possession of real property that was within the jurisdiction of the regular courts.[42]

The CA, therefore, committed no reversible error in setting aside the DARAB decision. While we lament the lapse of time this forcible entry case has been pending resolution, we are not in a position to resolve the dispute between the parties since the evidence required in courts is different from that of administrative agencies.[43]

Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute or controversy.

[41] Sec. 76. *Repealing Clause*. — Section 35 of Republic Act No. 3844, Presidential Decree No. 316, the last two paragraphs of Section 12 of Presidential Decree No. 946, Presidential Decree No. 1038, and all other laws, decrees, executive orders, rules and regulations, issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

[42] *Arzaga v. Copias*, G.R. No. 152404, March 28, 2003, 400 SCRA 148.

[43] *Caraan v. Court of Appeals*, G.R. No. 124516, April 24, 1998, 289 SCRA 579, 584.

WHEREFORE, the petition is *DENIED*. The October 6, 2003 Decision and October 12, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 48642 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Corona, C.J.,[**] *Carpio Morales (Chairperson), Villarama, Jr.,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172605. November 22, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EVANGELINE LASCANO *y* VELARDE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS THEREON ARE TO BE RESPECTED WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS AND SPECULATIVE, ARBITRARY AND UNSUPPORTED CONCLUSIONS CAN BE GLEANED FROM SUCH FINDINGS.— Well settled is the rule that findings of trial courts, which are factual in nature and which involve the credibility of witnesses, are to be respected when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gleaned from such findings. Such findings carry even more weight if they are affirmed by the Court of Appeals, as in the instant case.

[**] Designated additional Member *vice* Associate Justice Lucas P. Bersamin, per Raffle dated Nov. 15, 2010.

2. CRIMINAL LAW; ILLEGAL SALE OF MARIJUANA; ESSENTIAL ELEMENTS IN THE PROSECUTION THEREOF; DULY PROVED BEYOND REASONABLE DOUBT IN CASE AT BAR.— The essential elements to be established in the prosecution of illegal sale of marijuana are as follows: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. We find these elements duly proved beyond reasonable doubt by the prosecution.

3. ID.; ILLEGAL POSSESSION OF MARIJUANA; WHAT MUST BE PROVEN WITH MORAL CERTAINTY IN THE PROSECUTION THEREOF.— We, likewise, affirm appellant's conviction for illegal possession of marijuana. In the prosecution of such crime, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.

4. REMEDIAL LAW; EVIDENCE; FRAME-UP; A DEFENSE THAT HAS BEEN INVARIABLY VIEWED WITH DISFAVOR FOR IT CAN EASILY BE CONCOCTED BUT DIFFICULT TO PROVE.— Frame-up is a defense that has been invariably viewed with disfavor for it can easily be concocted but difficult to prove and is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We find no convincing evidence presented by appellant to prove such defense. Appellant's claim that her arrest was to make Litong Putol come out is unbelievable considering that she admitted not knowing where Putol resides; that Putol was not a frequent visitor in their house or had met with him anywhere, and that she had no communications with him. Thus, it would be futile for the police to arrest appellant just to make Putol come out when appellant herself admitted that she had no communication with Putol long before her arrest. Hence, in the absence of proof of motive of the police officers to falsely impute such serious crimes against appellant, the presumption of regularity in the performance of official duty and the findings of the trial court

on the credibility of witnesses shall prevail over appellant's claim of having been framed.

5. ID.; ID.; PUBLIC DOCUMENTS AS EVIDENCE; ENTRIES IN OFFICIAL RECORDS MADE IN THE PERFORMANCE OF OFFICIAL DUTY ARE *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED; APPLICATION TO CASE AT BAR.— The question propounded on direct examination to Drapete was what time did he report for work on October 18, 2001 to which he replied that he reported at 9 a.m. to 9 a.m. also of October 19, 2001, thus, making appellant conclude that Drapete was no longer working at the time he received the specimens in the afternoon. There was no evidence showing that Drapete did not, and could not, have worked in the afternoon of October 19, 2001. On the contrary, the evidence shows that he had worked in the afternoon of October 19 as evidenced by his stamp mark of the time of 1:45 p.m. on the request for laboratory examination of the seized items. He then subsequently conducted the examination on the specimen received and found the same positive for marijuana, which findings were embodied in a report submitted on the same afternoon. As a PNP forensic chemist, Drapete is a public officer, and his report carries the presumption of regularity in the performance of official functions. Besides, entries in official records made in the performance of official duty, as in the case of his report, are *prima facie* evidence of the facts therein stated. In fact, Drapete testified in his report and affirmed the contents of the same, thus, there could be no doubt as to the identity of the marijuana he examined which were the same items seized from appellant.

6. CRIMINAL LAW; DANGEROUS DRUGS; ILLEGAL POSSESSION OF MARIJUANA; PENALTY IN CASE AT BAR.— We find the penalty of *reclusion perpetua* imposed by the RTC on appellant for illegal possession of marijuana with a total weight of 948.64 grams proper, since they exceeded 750 grams. We, likewise, affirm the fine of ₱500,000.00 imposed by the RTC since it is the minimum of the range of fines imposed under Section 4.

7. ID.; ID.; ILLEGAL SALE OF MARIJUANA; PENALTY IN CASE AT BAR.— We also affirm the penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum imposed

by the RTC on appellant for the illegal sale of 11.54 grams of marijuana. In *People v. Simon*, and *People v. De Lara*, we clarified the proper penalties to be imposed for drug-related crimes under R.A. No. 6425, as amended by R.A. No. 7659. With regard to marijuana, the appropriate penalty is *reclusion perpetua* if the quantity of the drug weighs 750 grams or more. If the marijuana involved is below 250 grams, the penalty to be imposed is *prision correccional*; from 250 grams to 499 grams, *prision mayor*; and, from 500 grams to 749 grams, *reclusion temporal*. Since the quantity recovered from appellant was only 11.54 grams, the maximum penalty to be imposed is *prision correccional* in its medium period in the absence of any mitigating or aggravating circumstance. And applying the Indeterminate Sentence Law, the minimum sentence should be within the range of *arresto mayor*, the penalty next lower to *prision correccional*, which is the maximum range we have fixed.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Karagdag & Associates for appellant.

D E C I S I O N

PERALTA, *J.*:

Appellant Evangeline V. Lascano seeks the reversal of the Decision[1] dated February 14, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01656 which affirmed her convictions for violation of Sections 4 and 8 of Article II of Republic Act (RA) No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

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

On October 22, 2001, two separate Informations were filed before the Regional Trial Court (RTC) of Malabon City against appellant for violation of Sections 4 and 8 of Article II of R.A.

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[1] Penned by Associate Justice Eliezer R. delos Santos, with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring; *rollo*, pp. 3-15.

No. 6425, as amended. The accusatory portions of the Informations respectively read:

Criminal Case No. 25582-MN

That on or about the 18th day of October 2001, in the City of Malabon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did then and there, willfully, unlawfully and feloniously have in her possession, custody and control a transparent plastic sachet containing dried suspected Marijuana fruiting tops with net weight of 5.84 grams and one (1) plastic bag colored yellow and marked as D containing one (1) brick of dried suspected marijuana fruiting tops with markings ACF R-1/10/01 and marked as D-1 weighing 942.8 grams, which when subjected to chemistry examination gave positive result for "Marijuana" which is a prohibited drug.

CONTRARY TO LAW.[2]

Criminal Case No. 25583-MN

That on or about the 18th day of October 2001, in the City of Malabon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did then and there, willfully unlawfully and feloniously sell and deliver in consideration in the amount of ₱200.00 to poseur-buyer two (2) heat sealed transparent plastic bags, each containing Marijuana fruiting tops with net weight 5.41 grams, and 6.13 grams which when subjected to chemistry examination gave positive result for Marijuana which is a prohibited drug.

CONTRARY TO LAW.[3]

Upon her arraignment, appellant, assisted by a counsel *de oficio*, pleaded not guilty to the charges.[4] Trial thereafter ensued.

The prosecution's version of the incident were testified to by Police Officer 1 Allan Fernandez (PO1 Allan), PO1 Joel

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[2] Records, p. 1.

[3] *Id.* at 7.

[4] *Id.* at 15.

Fernandez (PO1 Joel) and Forensic Chemist Vicente Drapete (Drapete) as follows:

Around 5 p.m. of October 18, 2001, the Office of the Drug Enforcement Unit (DEU) of the Malabon City Police received a call from a confidential informant reporting that he was able to close a deal with a drug pusher known as "Belen," herein appellant, for the purchase of two sachets of marijuana leaves for ₱100.00 each. PO1 Allan and PO1 Joel respectively talked with the informant on the phone and the latter told them to meet him at Lascano Street, Malabon City. Acting on such information, a buy-bust team was formed by the DEU Chief, Lt. Noel Lasquite, who designated PO1 Joel as the poseur-buyer and to whom the two marked ₱100.00 bills were given. PO1 Joel and PO1 Allan, together with the other police operatives, went to the meeting place.

Upon arriving at Lascano St., the police operatives saw the confidential informant. Some members of the buy-bust team positioned themselves at a nearby gas station. PO1 Joel then walked ahead of PO1 Allan and met the informant. PO1 Joel and the informant went into an alley followed by PO1 Allan. PO1 Joel and the informant stopped in front of appellant's house and later met and talked with a woman, the appellant. After a while, PO1 Joel gave the money to appellant, who in turn took out two plastic sachets from her plastic bag and handed it to the former. PO1 Joel then gave the pre-arranged signal by holding the back of his head. PO1 Allan then immediately approached appellant and arrested her. He was able to recover from her the marked money and a yellow plastic bag containing one plastic sachet of marijuana and a brick of marijuana. He then informed appellant of her constitutional rights and then called for the other police operatives. They brought appellant to the *Pagamutang Bayan ng Malabon* for medical check up and then proceeded to the police station. The two plastic sachets subject of the illegal sale were marked by PO1 Joel, while the other plastic sachet and the brick of marijuana were marked by PO1 Allan before they were given to Police Investigator Vicente Mandac. A request for laboratory examination of the seized items was made to the Philippine National Police (PNP) Crime Laboratory. Drapete

submitted Physical Science Report No. D-1312-01 which contained, among others, the following:

x x x x x x x x x

SPECIMEN SUBMITTED:

1. Three (3) staple-sealed transparent plastic bags, each containing dried suspected marijuana fruiting tops with the following markings and recorded net weights:

   A-(JJF-BB/10-18-01)=5.41 grams

   B-(JJF-BB1/10-18-01) = 6.13 grams

   C-(ACF-R1/10-18-01) = 5.84 grams

2. One (1) plastic bag colored yellow and marked as D containing one (1) brick of dried suspected marijuana fruiting tops with markings ACF-R1/10-18-01, and, marked as D-1 weighing 942.8 grams.

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Marijuana, a prohibited drug.[5]

Appellant denied the accusation against her. She testified that around 7:30 p.m. of October 18, 2001, she was at home with her husband and their children watching television when the door of their house was forcibly opened with its bolt lock being destroyed. Three persons entered their house, two of whom went upstairs while the other one remained at the ground floor asking the whereabouts of a certain Litong Putol. When she replied that Putol was not around, she was dragged out to the alley and to the main road. They forced her to board a jeep and was brought to the police station. While at the station, she was told that she would not be released until Putol was produced. She denied that the marijuana came from her as they were planted evidence.

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[5] *Id.* at 46.

The testimony of Alejandro Lascano, appellant's husband, was dispensed with after the parties admitted that said witness would purely corroborate appellant's testimony.

Defense witness Emmanuel Celestino testified that he was having coffee in the alley when he saw men open appellant's door by means of a screw driver, after which four persons entered the house with one left at the door. He tried to follow, but another person held his arm. He saw appellant being dragged outside of her house to the main road and was forced to board an owner type-jeep.

Magdalena Sabenal corroborated Celestino's testimony and added that she followed appellant to the police station where they were told to wait for appellant's relatives to arrive; and that the police would not release appellant unless Putol would show up.

After trial, a Decision[6] was rendered finding appellant guilty beyond reasonable doubt of the crimes charged, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Evangeline Lascano *y* Velarde guilty as charged in these cases and she is hereby condemned to suffer the prison term of *Reclusion Perpetua* in Crim. Case No. 25582-MN for illegal possession of prohibited drug/marijuana involving a total of 948.64 grams, and to pay a fine of ₱500,000.00.
>
> In Crim. Case No. 25583-MN for drug pushing (Section 4, Art. II, RA 6425, as amended by RA 7659), in the absence of any mitigating or aggravating circumstance, and applying the provisions of the Indeterminate Sentence Law, accused Lascano is also sentenced to a prison term ranging from SIX (6) MONTHS of *arresto mayor*, as minimum, to TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of *prision correccional*, as maximum.
>
> The sachets of marijuana fruiting tops and the brick of marijuana fruiting tops subjects of these cases are hereby forfeited in favor of the government to be disposed under rules governing the same. For

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[6] CA *rollo*, pp. 19-28.

this purpose, Branch Clerk of Court Atty. Magnolia P. Gonzales is hereby ordered to turn over the sachets with marijuana fruiting tops to the National Bureau of Investigation for further disposition. The custody of brick of marijuana fruiting tops having been retained by Inspector Grapete (sic) of the PNP Crime Laboratory, let the said remain with said PNP Crime Laboratory for further disposition.

In both cases, costs against the accused.

SO ORDERED.[7]

In so ruling, the RTC gave credence to the testimonies of the prosecution witnesses regarding the buy-bust operation as well as the confiscation of sachets of marijuana and a brick of marijuana. The RTC brushed aside the defenses of denial and evidence-planting put up by appellant saying that (1) appellant's denial cannot prevail over the positive and credible testimonies of the prosecution witnesses; (2) the defense of evidence-planting does not deserve serious consideration, since it was a usual defense invoked by drug pushers and that the law enforcers were presumed to have performed their duties regularly in the absence of proof negating the same; and (3) planting evidence against someone was usually resorted to by reason of extreme hatred which the appellant did not claim was the motive of the police for doing so.

Appellant filed her appeal with us.

On May 20, 2002, appellant filed a Motion for New Trial[8] alleging newly-discovered evidence which consisted of the *Sinumpaang Salaysay* of a certain Nonie Villaester, who claimed to be a police informer of the Narcotics Unit of the Malabon Police Station. Villaester stated, among others, that the evidence against appellant was planted by the police. In the Resolution[9] dated July 29, 2002, we denied the motion, since it should have been filed with the trial court.

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[7] *Id.* at 27-28.

[8] *Id.* at 32-39.

[9] *Id.* at 42.

After the submission of the respective pleadings of the parties and pursuant to our ruling in *People v. Mateo*,[10] we referred the case to the CA for appropriate action and disposition.[11]

On February 14, 2006, the CA issued its assailed Decision, which affirmed *in toto* the RTC decision.

In affirming appellant's convictions, the CA upheld the RTC's findings which accorded credence to the testimonies of the police officers who conducted the buy-bust operation.

The CA rejected appellant's claim that no drug pusher in her right mind would bring a large amount of marijuana when the transaction was only for two sachets worth ₱200.00, saying that drugs dealers are known to sell their goods even to strangers and even ply their wares wherever prospective customers may be found. The CA also brushed aside appellant's defense of frame up as she failed to present convincing evidence to overcome the presumption that the arresting officers regularly performed their official duties.

As to appellant's claim that doubts exist as to the items examined by Drapete as the same could not have been the same items seized from her, the CA said that appellant was caught red-handed, or *in flagrante delicto,* selling and in possession of prohibited drugs and the incriminatory evidence on record adequately established her guilt beyond reasonable doubt.

Dissatisfied, appellant appealed the CA decision.

On July 5, 2006, we required the parties to submit their respective Supplemental Briefs simultaneously, if they so desire, within 30 days from notice.[12] However, only the Solicitor General filed a Supplemental Brief. Thus, in a Resolution[13] dated February

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

[11] Resolution dated January 17, 2005; CA *rollo* p. 166.

[12] *Rollo*, p. 16.

[13] *Id.* at 37.

19, 2007, we dispensed with the filing of the appellant's Supplemental Brief.

The issue for resolution is whether the prosecution was able to prove beyond reasonable doubt the crimes charged against appellant.

The appeal is not meritorious.

Well settled is the rule that findings of trial courts, which are factual in nature and which involve the credibility of witnesses, are to be respected when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gleaned from such findings.[14] Such findings carry even more weight if they are affirmed by the Court of Appeals,[15] as in the instant case.

We find no error in the CA's affirmance of the RTC's findings that appellant is guilty of illegal sale of marijuana.

The essential elements to be established in the prosecution of illegal sale of marijuana are as follows: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[16] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[17] We find these elements duly proved beyond reasonable doubt by the prosecution.

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[14] *Teodosio v. Court of Appeals*, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 203, citing *People v. Mirafuentes*, 349 SCRA 204 (2001), *People v. Flores*, 252 SCRA 31 (1996), *People v. Bahuyan*, 238 SCRA 330 (1994), *People v. Sanchez*, 250 SCRA 14 (1995).

[15] *Id.*

[16] *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 510, citing *People v. Razul*, 441 Phil. 62, 75 (2002).

[17] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 660, citing *People v. So*, 370 SCRA 252, 260-261 (2001), citing *People v. Uy*, 327 SCRA 335, 358 (2000).

Appellant was arrested in a buy bust operation conducted by the Malabon Police DEU. Prosecution witness PO1 Joel, a member of the buy-bust team and the poseur-buyer, clearly and positively identified appellant as the one who possessed and sold two plastic sachets of dried marijuana fruiting tops to him for the amount of ₱100 each. PO1 Joel narrates the incident as follows:

Q. Did you report for work on Oct. 18, 2001 at around 6:45 p.m?
A. Yes, sir.

Q. Where is your office located?
A. DEU, Malabon Police Station, F. Sevilla Blvd., Malabon City.

Q. While in your office on said date, was there anything unusual that happened?
A. Yes, sir.

Q. What was that unusual incident?
A. Our confidential informant called our office and informed us that he has closed a deal with a certain Belen for the sale of marijuana for ₱100 for two sachets.

Q. Who talked with the confidential informant on the phone?
A. It was Allan first, sir, then after that I also talked to the informant.

Q. And what did the confidential informant and you talk?
A. He confirmed that he had a close deal with *alias* Belen and said that she is "*malakas magbenta, pamangkin ni Litong Putol*."

Q. Then what happened afterwards?
A. We informed our superior, Insp. Lasquite, and he immediately formed a team.

Q. Who was designated as poseur-buyer ?
A. It was me, sir.

Q. Were you given money to be used as buy-bust?
A. Yes, sir, Two ₱100 bills.

Q. Then what happened?
A. We first recorded the planned buy-bust in the blotter and dispatch and also the buy-bust money and then we proceeded to the area.

Q. Where is that place where the buy-bust operation will take place?
A. Tugatog, Malabon City at Lascano Street, sir.

Q. Who were with you when you proceeded to the area?
A. PO1 Allan Fernandez acted as my back-up, sir, with our chief and other team members, who positioned themselves at a gasoline station along Letre Road.

Q. What about the confidential informant? Was he with you?
A. No, sir. He met us at Lascano St.

Q. Then what happened?
A. When we saw the confidential informant, I walked with him into an alley near the Epifanio delos Santos High School.

Q. Was Allan with you?
A. No, sir. The confidential informant and I walked ahead of him at the corner of Gen. San Miguel St. and Lascano St.

Q. Then where did you proceed?
A. When we were in the alley, we reached the back of a house, where our confidential informant introduced me to a female person?

Q. And who is this female person?
A. *Alias* Belen.

Q. And did you come to know what is the name of this *alias* Belen?
A. Evangeline Lascano, sir.

Q. The accused in these cases?
A. Yes, sir.

Q. And after you were introduced to this *alias* Belen, then what happened?
A. We talked for a while and then Belen, or Evangeline Lascano, demanded for the money.

Q. And did you give the money to her?
A. Yes, sir.

Q. Then what happened after you gave the money to Belen?
A. She took the money and then she handed to me two transparent plastic sachets which she took from a transparent color yellow plastic bag.

Q. After that what happened?
A. I gave the pre-arranged signal that the transaction was positive.

Q. When you gave the pre-arranged signal, what happened next?
A. PO1 Allan Fernandez immediately responded and arrested the suspect.

Q. Did you recover the buy-bust money?
A. Yes, sir.

Q. What else?
A. Also the yellow transparent plastic bag containing one transparent plastic sachet which contains dried flowering tops of suspected marijuana leaves and a brick of marijuana wrapped in masking tape.[18]

The testimony of poseur-buyer PO1 Joel was corroborated by PO1 Allan, who acted as the former's back-up. PO1 Allan testified that he saw PO1 Joel and the confidential informant enter an alley going to appellant's house and saw them talking with appellant; that, after a while, he saw appellant receive something from PO1 Joel and appellant in turn gave something to the latter.[19] After such exchange, PO1 Joel then gave the pre-arranged signal by holding the back of his head, thus, he (PO1 Allan) immediately approached them and was able to recover from appellant the buy-bust money,[20] which was also presented in court.

The testimonies of these prosecution witnesses had clearly established that a sale of marijuana took place between appellant and poseur-buyer PO1 Joel. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.[21]

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[18] TSN, December 3, 2001, pp. 3-5.

[19] TSN, November 29, 2001, pp. 9-10.

[20] *Id.* at 10.

[21] *People v. Razul*, *supra* note 16, citing *People v. Gonzales*, 430 Phil. 504 (2002); *People v. Uy*, 338 SCRA 232 (2000); *People v. De Vera*, 275 SCRA 87 1997.

PO1 Joel had also established in court the identity of the two plastic sachets of dried marijuana fruiting tops which appellant had sold to him. He testified that he marked the two plastic sachets,[22] *i.e.*, with his initials as well as the date of the buy-bust operation, and were then turned over to Police Investigator Vicente Mandac. Together with the request for a laboratory examination signed by Inspector Lasquite, the two plastic sachets of marijuana subject of the illegal sale, as well as the other plastic sachet of dried marijuana fruiting tops and a brick of marijuana recovered by PO1 Allan from appellant, were brought by investigator Mandac to the Crime Laboratory where it was duly received. Upon examination conducted by Drapete on the specimens submitted, he found them all positive for marijuana, a prohibited drug, which finding was contained in his Physical Science Report No. D-1312-01 and which he testified on during the trial.

We, likewise, affirm appellant's conviction for illegal possession of marijuana. In the prosecution of such crime, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[23]

Prosecution witness PO1 Allan testified that after the illegal sale of marijuana was consummated and the pre-arranged signal was given by PO1 Joel, he immediately approached and arrested appellant.[24] He was also able to recover from appellant one plastic sachet of dried marijuana fruiting tops and a brick of marijuana[25] wrapped in masking tape which

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[22] TSN, January 3, 2002, p. 3.

[23] *People v. Tee*, G.R. No. 140546, January 20, 2003, 395 SCRA 419, 447, citing *People v. Ting Uy*, 380 SCRA 700 (2002), citing *Manalili v. Court of Appeals*, 280 SCRA 400 (1997).

[24] TSN, November 29, 2001, p. 10.

[25] TSN, December 20, 2001, p. 23.

were both contained in a yellow plastic bag carried by appellant during the bust-buy operation. The fact that appellant consciously possessed the said drugs was further bolstered by PO1 Joel's testimony that appellant had also taken the two plastic sachets of marijuana sold to him from the same yellow plastic bag.[26] PO1 Allan testified that he placed markings on the plastic sachet of marijuana and the brick of marijuana before they were given to Investigator Mandac. These items, as we said, were found to be positive for marijuana and were properly identified in court.

Appellant claims that she was framed-up, because of her failure to divulge the whereabouts of her uncle Litong Putol, a drug pusher. We are not convinced.

Frame-up is a defense that has been invariably viewed with disfavor for it can easily be concocted but difficult to prove and is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[27] We find no convincing evidence presented by appellant to prove such defense. Appellant's claim that her arrest was to make Litong Putol come out is unbelievable considering that she admitted not knowing where Putol resides;[28] that Putol was not a frequent visitor in their house or had met with him anywhere,[29] and that she had no communications with him.[30] Thus, it would be futile for the police to arrest appellant just to make Putol come out when appellant herself admitted that she had no communication with Putol long before her arrest. Hence, in the absence of proof of motive of the police officers to falsely impute such serious crimes against appellant, the presumption of regularity in the performance of official duty and the findings of the trial

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[26] TSN, December 3, 2001, p. 5.

[27] *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38, citing *Espino v. Court of Appeals*, 288 SCRA 558, 564 (1998).

[28] TSN, January 24, 2002, p. 27.

[29] *Id.*

[30] *Id.* at 28.

court on the credibility of witnesses shall prevail over appellant's claim of having been framed.[31]

Appellant contends that Drapete testified that he ended his duty at 9 a.m. of October 19, 2001, thus, showing that he was no longer working at the time the specimens were received by his office at 1:40 p.m. of October 19, 2001; that such discrepancy created a reasonable doubt as to whether the items received by Drapete, and which he identified as the marijuana fruiting tops during his testimony in the trial court, were the same items seized from appellant.

We find the argument not meritorious.

The question propounded on direct examination to Drapete was what time did he report for work on October 18, 2001 to which he replied that he reported at 9 a.m. to 9 a.m. also of October 19, 2001,[32] thus, making appellant conclude that Drapete was no longer working at the time he received the specimens in the afternoon. There was no evidence showing that Drapete did not, and could not, have worked in the afternoon of October 19, 2001. On the contrary, the evidence shows that he had worked in the afternoon of October 19 as evidenced by his stamp mark of the time of 1:45 p.m. on the request for laboratory examination of the seized items.[33] He then subsequently conducted the examination on the specimen received and found the same positive for marijuana, which findings were embodied in a report submitted on the same afternoon. As a PNP forensic chemist, Drapete is a public officer, and his report carries the presumption of regularity in the performance of official functions. Besides, entries in official records made in the performance of official duty, as in the case of his report, are *prima facie* evidence of the facts therein stated.[34] In fact, Drapete testified in his report and affirmed

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[31] *Dacles v. People*, G.R. No. 171487, March 14, 2008, 548 SCRA 643, 658.

[32] TSN, December 20, 2001, pp. 4-5.

[33] Records, p. 46.

[34] *People v. Razul*, *supra* note 16, at 579, citing Rules of Evidence, Rule 130, Sec. 44.

the contents of the same, thus, there could be no doubt as to the identity of the marijuana he examined which were the same items seized from appellant.

Appellant also claims that both PO1 Allan and Drapete admitted that there was no marking on the yellow plastic bag which contained the brick of marijuana, thus, creating a serious doubt on the identity of such substance.

We are not persuaded.

While PO1 Allan admitted on his cross-examination that he failed to make any marking on the yellow plastic bag which contained the confiscated plastic sachet of marijuana and the brick of marijuana wrapped in masking tape, such failure had no effect on the integrity of the seized items since the contents of the yellow plastic bag were separately marked. Drapete's testimony also established that it was the yellow plastic bag which did not contain any markings.

Finally, appellant claims that after her conviction by the RTC, a certain Ma. Nonie Villaester confessed that she was the one who made a strip search on the body of appellant but failed to find marijuana; and that marijuana was only planted to force her to admit the whereabouts of her uncle, Litong Putol. Notably, such claim was embodied in the *Sinumpaang Salaysay* of Villaester which appellant attached in her Motion for New Trial[35] filed with us. We denied the motion, finding that it should have been filed in the trial court. Thus, we find no basis to consider Villaester's statement.

As to the imposable penalty, Sections 4 and 8, Article II, in relation to Section 20, of RA No. 6425, as amended by R.A. No. 7659, respectively provide:

Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.* — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand

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[35] CA *rollo*, pp. 32-39.

pesos to ten million pesos shall be imposed upon any person who, unless authorized by law shall sell, x x x any prohibited drug, x x x

Sec. 8. *Possession or Use of Prohibited Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person, who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

x x x x x x x x x

Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

5. 750 grams or more of Indian hemp or marijuana; x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

We find the penalty of *reclusion perpetua* imposed by the RTC on appellant for illegal possession of marijuana with a total weight of 948.64 grams proper, since they exceeded 750 grams. We, likewise, affirm the fine of ₱500,000.00 imposed by the RTC since it is the minimum of the range of fines imposed under Section 4.

We also affirm the penalty of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum imposed by the RTC on appellant for the illegal sale of 11.54 grams of marijuana. In *People v. Simon*,[36] and *People v. De Lara*,[37] we clarified the proper penalties to be imposed for drug-related crimes under R.A. No. 6425, as amended by R.A. No. 7659. With regard to marijuana, the appropriate penalty is *reclusion perpetua* if the quantity of the drug weighs 750 grams or more. If the marijuana involved is below 250 grams, the penalty to be imposed is *prision*

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[36] G.R. No. 93028, July 29, 1994, 234 SCRA 555, 571.

[37] G.R. No. 94953, September 5, 1994, 236 SCRA 291, 299.

correccional; from 250 grams to 499 grams, *prision mayor*; and, from 500 grams to 749 grams, *reclusion temporal*.

Since the quantity recovered from appellant was only 11.54 grams, the maximum penalty to be imposed is *prision correccional* in its medium period in the absence of any mitigating or aggravating circumstance. And applying the Indeterminate Sentence Law, the minimum sentence should be within the range of *arresto mayor*, the penalty next lower to *prision correccional*, which is the maximum range we have fixed.[38]

WHEREFORE, the Decision dated February 14, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01656, is hereby *AFFIRMED*.

SO ORDERED.

Corona,[*] *C.J., Carpio (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173428. November 22, 2010]

FROILAN DEJURAS, *petitioner, vs.* **HON. RENE C. VILLA, in his official capacity as Secretary of Agrarian Reform; the BUREAU OF AGRARIAN LEGAL ASSISTANCE, the CENTER FOR LAND USE AND POLICY PLANNING INSTITUTE, the DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD, all of the Department of Agrarian Reform; CONCHITA DELFINO; ANTHONY DELFINO; ARTEMIO ALON; and SM PRIME HOLDINGS, INC.,** *respondents.*

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[38] *People v. Simon, supra.*

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated May 11, 2009.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WRIT OF *MANDAMUS* GENERALLY LIES TO COMPEL THE PERFORMANCE OF AN OFFICIAL ACT OR DUTY WHICH NECESSARILY INVOLVES THE EXERCISE OF JUDGMENT.— Established is the procedural law precept that a writ of *mandamus* generally lies to compel the performance of a ministerial duty, but not the performance of an official act or duty which necessarily involves the exercise of judgment. Thus, when the act sought to be performed involves the exercise of discretion, the respondent may only be directed by *mandamus* to act but not to act in one way or the other. It is, nonetheless, also available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment in a particular manner. However, this rule admits of exceptions. *Mandamus* is the proper remedy in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED.— In *Valley Trading Co., Inc. v. Court of First Instance of Isabela*, it was held that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the issuing authority, conditioned on the existence of a clear and positive right of the applicant which should be protected. It is an extraordinary peremptory remedy that may be availed of only upon the grounds expressly provided by law. In *Government Service Insurance System v. Florendo* and *Searth Commodities Corp. v. Court of Appeals*, it was also held that the issuance of a writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the tribunal taking cognizance of the case, limited only by the requirement that the use of such discretion be based on ground and in the manner provided by law.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; GRANT OF INJUNCTIVE RELIEF IS NOT COMPELLABLE BY *MANDAMUS*.— Clearly, the grant of an injunctive relief in this case is not properly compellable by *mandamus* inasmuch as it requires discretion and judgment on the part of both the DAR and the DARAB to find whether

petitioner has a clear legal right that needs to be protected and that the acts of SMPHI are violative of such right. On this score alone, the Court of Appeals cannot be faulted for its refusal to issue the writ of *mandamus* prayed for.

4. ID.; ID.; ID.; ISSUE PRESENTED IN CASE AT BAR HAS CEASED TO PRESENT A JUSTICIABLE CONTROVERSY.— [W]e quote with approval the relevant portion of the assailed decision, to wit: It follows then that the relief sought in this petition for *mandamus* is now *fait accompli* since the public respondents have resolved the Dejuras' urgent motion for injunctive relief, as well as their Motion for Reconsideration in DARAB Case No. 5485. It is an issue which has become moot and academic, or one which has ceased to present a justifiable (sic) controversy, *so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.*

APPEARANCES OF COUNSEL

Lester Alvarado Flores for petitioner.
Borcelis and Associates for SM Prime Holdings, Inc.
Balagtas P. Ilagan for Conchita Delfino, *et al.*

D E C I S I O N

PERALTA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the January 10, 2006 Decision[1] and the June 30, 2006 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 88588. The assailed decision denied due course to and dismissed petitioner Froilan Dejuras' petition for *mandamus* with prayer for the issuance of temporary restraining order and

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; CA *rollo*, pp. 482-490.

[2] *Id.* at 564-567.

writ of preliminary injunction against Department of Agrarian Reform Secretary Rene C. Villa and the Department of Agrarian Reform Adjudication Board Region IV, whereas the assailed resolution denied reconsideration.

The facts follow.

On November 29, 1996, Eutiquio Dejuras, predecessor-in-interest of herein petitioner, filed with the Laguna Provincial Agrarian Reform Adjudicator (PARAD) a Complaint,[3] docketed as DARAB Case No. 0449-95, against Luis and Anthony Delfino and Artemio Alon, Jr. (Artemio) for the redemption of a 19,570 square meter piece of land located in Sta. Rosa, Laguna. The land, identified as Lot No. 1383-B, forms part of a 39,570 square-meter property now registered in the name of SM Prime Holdings, Inc. (SMPHI) under Transfer Certificate of Title (TCT) No. 502647.[4] The complaint alleged that Eutiquio had been a legitimate tenant/leaseholder on the land for 50 years with authority from the former owners thereof, namely, the spouses Luis and Conchita Delfino, but that in 1987, Luis donated the property to his son, Anthony, who, without notice to Eutiquio, later sold it to his cousin, Artemio.[5] Eutiquio thus prayed that the sale to Artemio be revoked and that he be given the first option to buy the property in accordance with Section 12 of Republic Act No. 3844 (the Agricultural Land Reform Code).[6]

The PARAD dismissed the complaint on June 18, 1996 and found Eutiquio to be a mere civil law lessee and not an agricultural leaseholder or tenant-tiller as alleged, and hence, not entitled to the right of redemption.[7] Eutiquio immediately appealed to the Department of Agrarian Reform Adjudication Board

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[3] The case was filed on November 29, 1996; *rollo*, pp. 131-136.

[4] See Annex "A", CA *rollo*, pp. 59-60.

[5] *Id.* at 79-80.

[6] *Id.* at 79-82.

[7] *Id.* at 85-99. The disposition reads:

WHEREFORE, premised on the foregoing considerations, JUDGMENT is hereby rendered:

(DARAB)[8] which, on June 17, 1998, reversed the PARAD and held Eutiquio to be an agricultural lessee/tenant-tiller entitled to exercise the right of redemption.[9] On motion for reconsideration by the Delfinos and Artemio, however, the DARAB, in its September 30, 1999 Resolution, reversed its earlier decision and reinstated the PARAD's decision.[10]

This time around, Eutiquio filed on November 8, 1999 a Motion for Reconsideration of the September 30, 1999 Resolution. Without action being taken on the motion, however, the DARAB, on August 31, 2000, issued an entry of judgment in the case.[11] Consequently, on February 14, 2001, the PARAD issued a Writ of Execution.[12] Eutiquio meantime died and was substituted by his son, Florencio Dejuras, who lost no time in seeking the quashal of the writ of execution on the ground of the pendency of Eutiquio's motion for reconsideration of the DARAB's September 30, 1999 Resolution.[13]

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1. Finding Plaintiff Eutiquio [Dejuras] to be a civil law lessee not an agricultural leaseholder or tenant-tiller;

2. Declaring Plaintiff Eutiquio [Dejuras] not entitled to exercise the right of redemption as provided for under Sec. 12, R.A. No. 3844, as amended;

3. Finding the instant case wanting in merit and ordering the same dismissed.

SO ORDERED.

[8] The appeal was docketed as DARAB Case No. 5485.

[9] CA *rollo*, pp. 100-107. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and SET ASIDE with the following pronouncements, to wit:

1.) That herein plaintiff-appellant is an agricultural lessee or a tenent-tiller (sic) and not a civil law lessee.

2.) That herein plaintiff-appellant is entitled to exercise the right of redemption pursuant to Section 12 of Republic Act No. 3844, as amended.

SO ORDERED.

[10] CA *rollo*, pp. 108-111.

[11] *Id.* at 117.

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

[13] *Id.* at 121-126.

In the interim between the entry of judgment in the redemption case and the issuance of the writ of execution therein, former DAR Secretary Horacio Morales, at the instance of Artemio,[14] issued an Exemption Order on December 26, 2000 exempting Lot No. 1383 from the coverage of agrarian reform.[15] On the basis of this development, Conchita, as Artemio's attorney-in-fact, executed a deed of absolute sale over the subject property in favor of SMPHI.[16] SMPHI then proceeded to buy out the surrounding pieces of property on which the SM City Sta. Rosa shopping mall was to be built.

On October 13, 2004, faced with the prospect of ejectment due to SMPHI's impending construction operations on the property, Florencio and his successor-in-interest, herein petitioner, filed with the DAR Regional Office a "Petition for Coverage with Urgent Prayer for Issuance of Cease-and-Desist Order"[17] against SMPHI, Conchita, Anthony and Artemio. They prayed that a cease-and-desist order be issued to enjoin SMPHI from entering the property; that the land be declared as covered by the agrarian reform program and that their family be declared qualified beneficiaries thereof.[18] Two days later, or on October 15, 2004, the DAR issued a Cease-and-Desist Order directing SMPHI to refrain from pursuing the development of the subject property.[19] SMPHI moved to recall the Cease-and-Desist Order and immediately filed an Opposition to the Petition for Coverage.[20]

On November 3, 2004, Florencio and petitioner also filed with the Office of Secretary Villa a "Petition for Revocation of Exemption Order" alleging that the exemption order dated

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[14] *Id.* at 129-130.

[15] *Id.* at 131-133.

[16] *Id.* at 134-136.

[17] *Id.* at 140-147. Petitioner was joined by Florencio Dejuras in the petition.

[18] *Id.* at 146.

[19] *Id.* at 156-157.

[20] *Id.* at 171-176.

December 26, 2000 issued by former Secretary Morales was procured and issued with fraud, serious error, grave abuse of discretion and manifest partiality.[21] Then, on December 15, 2004, DAR Regional Director Dominador Andres issued an Order[22] denying for lack of merit the Petition for Coverage and lifting the October 15, 2004 Cease-and-Desist Order.

From the denial of the Petition for Coverage, Florencio and petitioner immediately lodged an appeal with the Office of Secretary Villa.[23] Before the same office, they also filed an "Urgent *Ex Parte* Motion for Issuance of Cease-and-Desist Order or Writ of Preliminary Injunction" in connection not only with the Petition for Coverage under appeal, but also in connection with the Complaint for Redemption as well as with the Petition for Revocation, whereby they prayed that SMPHI be enjoined from entering into and carrying out development and construction operations on the subject property.[24]

Petitioner and Florencio had sought the early resolution of this motion, yet despite their efforts in filing six successive motions[25] to that end, it appears that the Office of the DAR Secretary had not promptly come up with a resolution on the application for injunctive relief.

Florencio meantime died and was survived by petitioner, who then instituted a Petition for *Mandamus*[26] before the Court of Appeals, docketed as CA-G.R. SP No. 88588, specifically praying that a temporary restraining order be issued *ex parte* to prevent SMPHI from proceeding with its construction operations; that the DARAB be directed to resolve Eutiquio's earlier motion for reconsideration of the September 30, 1999 Resolution in

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[21] *Id.* at 187-212.

[22] *Id.* at 240-242.

[23] *Id.* at 242-245.

[24] *Id.* at 246-268.

[25] *Id.* at 285-302.

[26] *Id.* at 2-55.

DARAB Case No. 5485; and that Secretary Villa be ordered to grant the urgent *ex parte* motion for injunctive relief .[27]

On January 10, 2006, the Court of Appeals issued the assailed Decision denying due course to and dismissing the petition as follows:

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.[28]

The Court of Appeals' reluctance to issue the writ of *mandamus* was informed by the supervening fact that *first*, on February 23, 2005, the DAR did indeed come up with an Order[29] denying petitioner's "Urgent *Ex Parte* Motion for the Issuance of a Cease-and-Desist Order/Writ of Preliminary Injunction" and, *second*, the DARAB likewise did issue a Resolution on April 20, 2005 denying Eutiquio's pending motion for reconsideration in the Petition for Redemption. Also, the Court of Appeals pointed out that *mandamus* does not avail to address the errors which the public respondents below may have committed, as the said remedy avails only in relation to official duties which are ministerial in character.[30]

Yet despite the issuance of the February 23, 2005 DAR Order and the April 20, 2005 DARAB Resolution denying respectively the "Urgent *Ex Parte* Motion for the Issuance of Writ of Preliminary Injunction/Cease-and-Desist Order" and Eutiquio's motion for reconsideration in the Petition for Redemption, petitioner still moved for a reconsideration of the assailed Decision of the Court of Appeals.[31] With the denial

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[27] *Id.* at 54.

[28] *Id.* at 489.

[29] Signed by Secretary Rene C. Villa.

[30] CA *rollo*, pp. 488-489.

[31] *Id.* at 493-508.

thereof,[32] he now seeks recourse to this Court in the present petition for review.

Petitioner faults the Court of Appeals in not giving weight to the issuance by the DAR in the Petition for Coverage of a cease-and-desist order against SMPHI which only signifies that there is *prima facie* basis to grant the urgent *ex parte* motion for injunctive relief,[33] as well as to the fact that the subsequent lifting of the cease-and-desist order and the dismissal of the Petition for Coverage have both undermined the Petition for Redemption.[34] He alleges that the Court of Appeals has overlooked that the December 26, 2000 Exemption Order was the basis used in the urgent *ex parte* motion in the Petition for Coverage and that despite the exemption order, the ownership of the land is still being litigated in CA-G.R. SP No. 90111— an appeal pending in the Court of Appeals which is an offshoot of the Petition for Redemption.[35]

Interestingly, while petitioner admits that it was only after the filing of the petition for *mandamus* with the Court of Appeals did the DAR act on the Urgent *Ex Parte* Motion, he nevertheless characterizes the action of the DAR to be quite predictable, leaning as it does in favor of SMPHI and allegedly based solely on the December 26, 2000 Exemption Order previously issued by former DAR Secretary Morales.[36] Petitioner notes that the SM City Sta. Rosa shopping mall is already complete, but nonetheless seeks the reversal of the herein assailed decision so that the DAR may be compelled to issue an injunction in the Petition for Coverage and Petition for Revocation and that SMPHI may be directed to restore actual possession of, and be enjoined from, performing further acts of ownership over the disputed property.[37]

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[32] *Id.* at 564-567.

[33] *Rollo,* p. 38.

[34] *Id.* at 40.

[35] *Id.*

[36] *Id.* at 41.

[37] *Id.* at 47-48.

Commenting on the petition, SMPHI emphasizes the DARAB's finding that Eutiquio had always been only a civil law tenant and, hence, the Court of Appeals was correct in dismissing the *mandamus* petition mainly because Eutiquio had no tenurial rights to speak of which might have otherwise been violated.[38] It likewise calls attention to a 1981 zoning ordinance issued by the Housing and Land Use Regulatory Board declaring the subject property to be within the light industrial zone and which previously gave the DAR the justification in granting Artemio's petition for exemption.[39] For their part, the Dejurases and Artemio posit that there is no room in the instant case for factual assertions and evidentiary evaluation inasmuch as only questions of law may be raised in a Rule 45 petition.[40]

The Court denies the petition.

Petitioner has made an extensive, effortful and elaborate essay on the factual aspects not only of the Petition for Redemption, but also of the Petition for Coverage and the Petition for Revocation of Exemption Order — particularly on the controverted nature of Eutiquio's possession of the subject land. That issue, however, is not for this Court to address, and certainly not in the instant petition which brings only the issue of whether the Court of Appeals was correct in declining to issue the writ of *mandamus* and in not compelling the DARAB to resolve Eutiquio's motion for reconsideration in the Petition for Redemption and the DAR to issue the cease-and-desist order, or writ of preliminary injunction prayed for, in the Petition for Redemption, Petition for Coverage and Petition for Revocation.

But perhaps as a last-ditch attempt to turn the table in his favor following the unfavorable issuance of the February 23, 2005 DAR Order denying the "Urgent *Ex Parte* Motion for the Issuance of Writ of Preliminary Injunction/Cease-and-Desist Order" and of the April 20, 2005 DARAB Resolution denying

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[38] *Id.* at 572-573.

[39] *Id.* at 572.

[40] *Id.* at 634-635.

Eutiquio's motion for reconsideration in the Petition for Redemption, petitioner now pursues a different theory by claiming that the DAR and the DARAB have exceeded their authority and committed grave abuse of discretion and manifest injustice in issuing the said order and resolution. Verily, petitioner is grasping at straws.

Established is the procedural law precept that a writ of *mandamus* generally lies to compel the performance of a ministerial duty, but not the performance of an official act or duty which necessarily involves the exercise of judgment.[41] Thus, when the act sought to be performed involves the exercise of discretion, the respondent may only be directed by *mandamus* to act but not to act in one way or the other.[42] It is, nonetheless, also available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment in a particular manner. However, this rule admits of exceptions. *Mandamus* is the proper remedy in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority.[43]

In *Valley Trading Co., Inc. v. Court of First Instance of Isabela*,[44] it was held that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the issuing authority, conditioned on the existence of a clear and positive right of the applicant which should be protected. It is an extraordinary peremptory remedy that may be availed of only upon the grounds expressly provided by law.[45] In *Government Service Insurance System v. Florendo*[46] and *Searth Commodities*

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[41] *Quizon v. COMELEC*, G.R. No. 177927, February 15, 2008, 545 SCRA 635; *Sison v. Court of Appeals*, G.R. No. 124086, 492 SCRA 497, 509; *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509 August 22, 2006, 499 SCRA 434.

[42] *Quizon v. COMELEC, supra*.

[43] *Sison v. Court of Appeals*, *supra* note 41, at 509.

[44] G.R. No. L-49529, March 31, 1989, 171 SCRA 501, 507.

[45] *Id.*

[46] G.R. No. L-48603, September 29, 1989, 178 SCRA 76.

Corp. v. Court of Appeals,[47] it was also held that the issuance of a writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the tribunal taking cognizance of the case, limited only by the requirement that the use of such discretion be based on ground and in the manner provided by law.[48] *Bataclan v. Court of Appeals*[49] also points out that although sufficient discretion is allowed in the grant of the relief, extreme caution must be taken in determining the necessity for the grant of the relief prayed for, because it would necessarily affect the protective rights of the parties in a case.[50]

Clearly, the grant of an injunctive relief in this case is not properly compellable by *mandamus* inasmuch as it requires discretion and judgment on the part of both the DAR and the DARAB to find whether petitioner has a clear legal right that needs to be protected and that the acts of SMPHI are violative of such right. On this score alone, the Court of Appeals cannot be faulted for its refusal to issue the writ of *mandamus* prayed for.

Be that as it may, whether the DAR or the DARAB could be properly compelled to respectively grant the "Urgent *Ex Parte* Motion for Issuance of Cease-and-Desist Order or Writ of Preliminary Injunction" and resolve Eutiquio's pending motion for reconsideration in the Petition for Redemption, is by all means already moot and academic at this point. We take note that indeed, the measure of compulsion petitioner had sought before the Court of Appeals against both the DAR and the DARAB is already unwarranted, because *first*, the DAR, on February 23, 2005, has already denied for lack of merit the "Urgent *Ex Parte* Motion for Issuance of Cease-and-Desist Order

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[47] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

[48] *Government Service Insurance System v. Florendo, supra* note 46, at 88-89; *Searth Commodities Corp. v. Court of Appeals, supra* note 47.

[49] G.R. No. 78148, July 31, 1989, 175 SCRA 764, 770.

[50] *Id.* at 770.

or Writ of Preliminary Injunction." *Second,* in a Joint Order[51] issued by the DAR on February 14, 2007, the Petition for Coverage and the Petition for Revocation have been both denied, thereby affirming the Exemption Order issued by former Secretary Morales. And *third,* the DARAB, on April 20, 2005, has already issued a resolution in the Petition for Redemption denying for lack of merit Eutiquio's motion for reconsideration of its September 30, 1999 Resolution.[52]

In this regard, we quote with approval the relevant portion of the assailed decision, to wit:

> It follows then that the relief sought in this petition for *mandamus* is now *fait accompli* since the public respondents have resolved the Dejuras' urgent motion for injunctive relief, as well as their Motion for Reconsideration in DARAB Case No. 5485. It is an issue which has become moot and academic, or one which has ceased to present a justifiable (sic) controversy, *so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.*[53]

WHEREFORE, the Petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 88588, dated January 10, 2006, and the Resolution dated June 30, 2006, are hereby *AFFIRMED*.

SO ORDERED.

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

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[51] See DARAB Order in DARCO Case No. REX/RCV-0702-050, signed by Officer-in-Charge Nasser C. Pangandaman; *rollo,* pp. 591-598.

[52] See Resolution dated April 20, 2005, signed by Assistant Secretary Edgar A. Igano; *id.* at 393-398.

[53] CA *rollo,* p. 489.

SPECIAL THIRD DIVISION

[G.R. No. 179898. November 22, 2010]

MAUNLAD HOMES, INC., N.C. PULUMBARIT, INC., N.C.P. LEASING CORPORATION, and NEMENCIO C. PULUMBARIT, SR., *petitioners, vs.* **UNION BANK OF THE PHILIPPINES and JULIE C. GO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED.—** A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party, a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case, it shall be known as a preliminary mandatory injunction. A preliminary injunction is granted at any stage of an action or a proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action, without the court issuing a final injunction.

2. **ID.; ID.; ID.; SOLE OBJECT IS THE PRESERVATION OF THE STATUS QUO UNTIL THE MERITS OF THE CASE CAN BE HEARD; STATUS QUO, DEFINED.—** The sole object of a preliminary injunction as a provisional remedy is the preservation of the status quo until the merits of the case can be heard. Status quo is defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which exists at the time of the filing of the case.

3. **CIVIL LAW; PROPERTY; OWNERSHIP; NOT IN ISSUE IN CASE AT BAR; REMEDIES AVAILABLE TO THE OWNERS.—** Ownership of the property is not in issue; respondents are the owners. However, this does not automatically vest in respondents the right to collect rentals, especially because there is a contract to sell, validly entered into by the parties which stipulate that petitioners have the right to collect rental payments from the tenants. Respondents have no right to simply enter the properties and collect the rental payments from the tenants. They cannot take the law into their own hands. There is a proper judicial recourse for the redress of their grievances.

They may opt for the rescission of the contract to sell, or file the appropriate action for recovery of possession.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GRANT OR DENIAL OF A WRIT OF A PRELIMINARY INJUNCTION IN A PENDING CASE RESTS ON THE SOUND DISCRETION OF THE COURT.— The grant or denial of a writ of a preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence toward that end involve findings of fact left to the said court for its conclusive determination. Thus, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.

5. ID.; ID.; ID.; ID.; FINDINGS AND CONCLUSIONS OF THE TRIAL COURT ON THE PROPRIETY OF THE ISSUANCE OF INJUNCTIVE WRITS ARE PREMISED SOLELY ON INITIAL EVIDENCE AND SHOULD BE CONSIDERED MERELY AS PROVISIONAL.— The findings and conclusions of the trial court on the propriety of the issuance of injunctive writs are premised solely on initial evidence, and should be considered merely as provisional. The contending rights and obligations of the parties based on the contract to sell or buy-back agreement will still have to be determined with finality by the trial court. The issue of whether there was delay in the payments under the contract to sell and whether the contract to sell is still subsisting must be determined first by the RTC. It is only proper that all the incidents in the main case be resolved in the trial court for a just determination of all the factual matters.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioners.
Macalino & Associates for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Under consideration is respondents' motion for reconsideration dated February 12, 2009 of the Decision[1] of this Court dated December 23, 2008, reversing the Decision[2] of the Court of Appeals (CA), and reinstating the Order[3] dated June 22, 2004 of the Regional Trial Court (RTC), granting the prayer for the issuance of the writ of preliminary injunction pending the final determination of the main case for injunction.

We restate the facts of the case, as follows:

The case involved several parcels of land forming the commercial complex known as Maunlad Malls 1 and 2, located in Malolos, Bulacan. Petitioners previously owned the properties. However, the same were mortgaged, and the mortgage was eventually foreclosed by respondents.[4]

On July 5, 2002, before consolidation of ownership, the parties entered into a contract to sell, essentially a buy-back agreement, where the purchase price was to be paid by petitioners on installment. By virtue of the contract to sell, petitioners remained in possession and management of the commercial complex.[5]

In February 2004, respondents began interfering with the business operations of the commercial complex, based on the

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[1] Penned by Asscociate Justice Ruben T. Reyes (ret.), with Associate Justices Consuelo Ynares-Santiago (ret.), Ma. Alicia Austria-Martinez (ret.), Minita V. Chico-Nazario (ret.), and Antonio Eduardo B. Nachura, concurring; *rollo*, pp. 210-220.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Fernanda Lampas Peralta and Lucenito N. Tagle, concurring; *id.* at 101-111 (wrong pagination).

[3] Penned by Presiding Judge Thelma R. Piñero-Cruz of the RTC of Malolos, Bulacan, Branch 16; *id.* at 61-63.

[4] *Id.* at 210-211.

[5] *Id.* at 211.

allegation that petitioners were not paying the installments due under the contract to sell. Respondents convinced the tenants of the commercial complex to pay the rentals directly to them, rather than to petitioners.[6]

On March 14, 2004, petitioners filed with the RTC of Malolos, Bulacan, a complaint for injunction with prayer for temporary restraining order (TRO) and preliminary injunction, entitled "*Maunlad Homes, Inc., N.C. Pulumbarit, Inc., NCP Leasing Corporation, and Nemencio C. Pulumbarit, Sr. v. Union Bank of the Philippines, Julie C. Go and Any and All Persons Claiming Rights Under/Thru Them, and John Does*." The case was docketed as Civil Case No. 297-M-04. In their complaint, petitioners sought to prevent respondents from collecting the rental payments directly from the tenants of the commercial complex.[7]

On June 22, 2004, the RTC issued an Order[8] granting the application for a writ of preliminary injunction upon petitioners' posting of the bond in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00). The *fallo* of the Order reads:

> WHEREFORE, upon posting and approval of the required bond[,] let a writ of preliminary injunction issue enjoining the defendants from committing further acts of preventing [petitioner Maunlad Homes] or [its] authorized representatives from collecting rental payments for the occupancy of Maunlad Shopping Malls 1 and 2 from the tenants thereof; from preventing the tenants from making rental payments directly to [petitioner Maunlad Homes] or authorized representatives; and also to restrain [respondent Union Bank] from collecting the rental payments from the tenants, under pain of contempt of court if the writ of preliminary injunction is not heeded. In short, [respondent Union Bank is] enjoined from exercising acts of ownership and/or possession over Maunlad Shopping Malls 1 and 2 by virtue of the writ of preliminary injunction.

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[6] *Id.*

[7] *Id.*

[8] *Supra* note 3.

Meanwhile, let further hearings on the other pending incidents be set after receipt by this Court of [respondents'] opposition to [petitioner Maunlad Homes'] motion to cite [respondents] in contempt of court, and of [petitioner Maunlad Homes'] reply thereto, as previously ordered.

SO ORDERED.[9]

The trial court ruled that petitioner Maunlad Homes, Inc. (Maunlad Homes) was able to show the existence of its right to be protected during the pendency of the principal action. The pertinent portions of the Order read:

Clearly, at this stage, [petitioner] Maunlad Homes, Inc. having been in possession of Maunlad Malls 1 and 2 since the inception, it has the right to remain in continuous possession subject to the final outcome of the ejectment suit pending before the MTC of Makati. On the other hand, [respondent] Union Bank cannot validly claim, even admitting the circumstances offered by it in evidence to be true and correct, because in this jurisdiction no one has the right to obtain possession of a piece of property without resorting to judicial remedies available under the circumstances. To sanction [respondent] Union Bank's claimed ownership and possession of the premises in question, at this time, *vis-à-vis* its exercise of the rights appurtenant thereto would be to permit it to contradict itself for, as already pointed out, it has already instituted an action for ejectment against Maunlad Homes, Inc. Good faith demands that [respondent] Union Bank must wait for the final determination of the ejectment suit; it cannot take the law into its own hands by interfering with or preventing [petitioner] Maunlad Homes, Inc. from exercising rights of possession over Malls 1 and 2 and cannot continue to prevent it from collecting rentals owing from the present occupants of the stalls/units therein.[10]

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[9] *Id.* at 63.

[10] *Id.* at 62-63; In a separate proceeding, Union Bank of the Philippines filed an action for ejectment with prayer for fixation of rentals against Maunlad Homes, Inc. and other persons or entities claiming rights under them before the Metropolitan Trial Court of Makati City. The case was docketed as Civil Case No. 84218. On May 18, 2005, the trial court rendered a decision dismissing the complaint for ejectment without prejudice to the filing of the appropriate action with the proper forum. The trial court ruled that since the ownership over the subject properties is in dispute, the parties should

On July 9, 2004, respondents filed a Very Urgent Motion to Dissolve Injunction and in the Alternative, to Post Counter-bond.[11] Respondents assailed the June 22, 2004 Order and the July 6, 2004 Order, which increased the injunction bond from ₱150,000.00 to One Million Five Hundred Thousand Pesos (₱1,500,000.00). Respondents averred that Union Bank, being the lawful and registered owner of the Maunlad Malls, was deprived of its right to collect and enjoy the fruits of its property, consisting of the rental payments of the tenants of the malls. They further alleged that the increase of the injunction bond was still grossly insufficient when compared to the monthly rental payments being collected from the tenants of the malls.[12]

On July 12, 2004, petitioners filed their Opposition[13] to respondents' motion, alleging that evidence showed that before, during, and after the signing of the contract to sell, they were in possession of the properties and were collecting rental payments from the tenants by virtue of the subsisting lease agreements between them. They claimed that respondents interfered with petitioners' exercise of their rights of possession over the malls and of collection of the rental payments.[14]

On July 20, 2004, the RTC issued an Order[15] denying respondents' motion. The RTC ratiocinated that the sole objective of a preliminary injunction was to maintain the status quo until the merits of the case could be heard. Status quo is defined as the last actual, peaceful, and uncontested situation that precedes a controversy, and its preservation is the office of the injunctive

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present their claim before the Regional Trial Court in an *accion publiciana* or an *accion reivindicatoria*, and not before the Metropolitan Trial Court in a summary proceeding for unlawful detainer or forcible entry. (Penned by Presiding Judge Dina Pestaño Teves; *rollo*, pp. 130-133).

[11] *Rollo*, pp. 64-70.

[12] *Id.* at 79.

[13] *Id.* at 71-78.

[14] *Id.* 79.

[15] *Id.* at 79-81.

writ. In the case at bar, the status quo was the situation of the parties at the time of the filing of the complaint with the RTC. At that time, petitioner Maunlad Homes already had a preexisting relationship with the tenants of the commercial complex by virtue of their lease agreements. Thus, the grant of the writ of preliminary injunction by the trial court was designed to preserve the status quo. The trial court further opined that the filing of the counter-bond did not necessarily warrant the dissolution of the writ of preliminary injunction; the court had discretion in weighing the relative damages that might be suffered by the parties. The evidence presented in this case showed that petitioners stood to suffer irreparable damage, unless respondents were restrained from committing the acts complained of.[16]

Respondents filed a motion for reconsideration, alleging that, when the case was filed on May 14, 2004, the lease agreements between petitioners and the tenants were no longer existing, considering that the lease contracts expired on September 30, 2003, and that, now, respondents had existing lease contracts with the tenants.

Petitioners, on the other hand, filed a partial motion for reconsideration. They countered respondents' assertion, contending that, after the expiration of the lease agreements between petitioners and the tenants in September 2003, the lease agreements continued as an implied new lease under Article 1670[17] of the Civil Code. Petitioners were the lawful possessor and lessor of the subject properties, duly acknowledged by the tenants. Thus, they were the rightful party to collect the rentals from the tenants. They also alleged that, since the lease agreements

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[16] *Id.* at 80-81.

[17] Article 1670. 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 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.

executed between petitioners and the tenants were bilateral contracts, the rescission thereof could not be done unilaterally.[18]

On September 6, 2004, the RTC issued an Order[19] denying the motions of both parties. The trial court ruled that, based on its findings of fact, petitioner Maunlad Homes, being the lawful possessor and lessor of the subject properties, had the right to collect rentals from the tenants. The lease agreements between them legally subsist, being bilateral in nature and not having been validly rescinded, and deemed impliedly renewed under the law.[20]

Aggrieved, respondents filed a petition for *certiorari* with prayer for the issuance of a TRO and/or writ of preliminary injunction before the CA. On April 28, 2005, the CA issued a Resolution[21] granting the prayer for a TRO, enjoining petitioners from enforcing the preliminary injunction issued by the RTC. On June 30, 2005, the CA issued a Resolution[22] allowing the issuance of a writ of preliminary injunction, enjoining petitioners from enforcing the writ of preliminary injunction issued by the RTC upon respondents' posting of a bond in the amount of Two Million Pesos (₱2,000,000.00). On September 21, 2007, the CA rendered a Decision,[23] the *fallo* of which reads:

> WHEREFORE, the instant petition is **GRANTED**. The assailed orders dated July 20, 2004 and the September 6, 2004 as well as the order dated June 22, 2004 and the writ of preliminary injunction issued by the RTC of Malolos, Bulacan, Branch 16, in Civil Case

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[18] *Rollo*, pp. 82-83.

[19] *Id.*

[20] *Id.* at 83.

[21] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe, concurring; *id.* at 85-86.

[22] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Hakim S. Abdulwahid and Lucenito N. Tagle, concurring; *id.* at 88-99.

[23] *Supra* note 2.

No. 297-M-04, are REVERSED and SET ASIDE for lack of factual and legal basis.

SO ORDERED.[24]

The CA reasoned that petitioners' invocation of the contract to sell, which they previously entered with respondent Union Bank and upon which they justify their right to possess and collect rental payments, was insufficient basis for the issuance of a preliminary injunction in their favor. Petitioners must show their clear and unmistakable right to sustain their claim that they would suffer irreparable injury if injunctive relief is not granted in their favor.[25]

Petitioners elevated the case to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court. The sole issue raised before this Court is whether the CA correctly reversed the RTC Order granting the preliminary injunction.[26] On December 23, 2008, the Court rendered a Decision,[27] the dispositive portion of which reads:

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision is **REVERSED AND SET ASIDE**. The Regional Trial Court order and writ of preliminary injunction are **REINSTATED**.

SO ORDERED.[28]

Hence, the instant motion for reconsideration.

We resolve to deny the motion.

No new arguments were raised by respondents that would warrant the reversal of the assailed Decision. The motion for reconsideration is merely a rehash of the arguments they previously raised, which were sufficiently discussed in the said Decision.

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[24] *Id.* at 110-111 (wrong pagination).

[25] *Id.* at 109-110.

[26] *Rollo,* p. 215.

[27] *Supra* note 1.

[28] *Id.* at 218-219.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party, a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case, it shall be known as a preliminary mandatory injunction.[29] A preliminary injunction is granted at any stage of an action or a proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action, without the court issuing a final injunction.[30]

The sole object of a preliminary injunction as a provisional remedy is the preservation of the status quo until the merits of the case can be heard.[31] Status quo is defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which exists at the time of the filing of the case.[32]

Under contention is the preliminary injunction issued by the RTC, enjoining respondents from committing further acts to prevent petitioners or their authorized representatives from collecting rental payments for the occupancy of Maunlad Malls 1 and 2 from the tenants thereof. It was merely an interlocutory order that was issued prior to the final determination of the case for injunction before the RTC. It is undisputed that petitioners were actually in possession of the malls prior to the filing of Civil Case No. 297-M-04 before the RTC. There is also no dispute that petitioners were collecting rental payments from the tenants of the malls prior to the invasion by respondents. As such, the status quo that should be preserved is that which favors petitioners.

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[29] RULES OF COURT, Rule 58, Sec. 1.

[30] *Bacolod City Water District v. Hon. Labayen*, 487 Phil. 335, 347 (2004).

[31] *Id.*

[32] *Cortez-Estrada v. Heirs of Domingo Samut*, 491 Phil. 458 472 (2005); *United Coconut Planters Bank v. United Alloy Phils. Corp.*, 490 Phil. 353, 363 (2005).

Ownership of the property is not in issue; respondents are the owners. However, this does not automatically vest in respondents the right to collect rentals, especially because there is a contract to sell, validly entered into by the parties which stipulate that petitioners have the right to collect rental payments from the tenants. Respondents have no right to simply enter the properties and collect the rental payments from the tenants. They cannot take the law into their own hands. There is a proper judicial recourse for the redress of their grievances. They may opt for the rescission of the contract to sell, or file the appropriate action for recovery of possession.

The grant or denial of a writ of a preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence toward that end involve findings of fact left to the said court for its conclusive determination. Thus, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[33]

The findings and conclusions of the trial court on the propriety of the issuance of injunctive writs are premised solely on initial evidence, and should be considered merely as provisional.[34] The contending rights and obligations of the parties based on the contract to sell or buy-back agreement will still have to be determined with finality by the trial court. The issue of whether there was delay in the payments under the contract to sell and whether the contract to sell is still subsisting must be determined first by the RTC. It is only proper that all the incidents in the main case be resolved in the trial court for a just determination of all the factual matters.

WHEREFORE, in view of the foregoing, the instant motion for reconsideration is hereby *DENIED* for lack of merit.

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[33] Spouses *Estares v. Court of Appeals*, 498 Phils 640, 655 (2005); *Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut*, *supra* note 32, at 474.

[34] *Almeida v. Court of Appeals*, 489 Phil. 648-662 (2005).

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro,*[**] *Villarama, Jr.,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181956. November 22, 2010]

VICTORIA L. TEH, *petitioner, vs.* **NATIVIDAD TEH TAN, TEH KI TIAT, and JACINTA SIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENTS; ELUCIDATED; EXCEPTIONS.— A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses, and no appeal is perfected within such period. x x x 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. Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest. No additions can be made to the decision, and no other action can be taken on it, except to order its execution. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no

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[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez (ret.) per Raffle dated May 27, 2009.

[**] Additional member in lieu of Associate Justice Ruben T. Reyes (ret.) per Raffle dated March 4, 2009.

prejudice to any party, void judgments, and cases where circumstances transpire after the finality of the decision that render its execution unjust and inequitable. Not one of these exceptions is present in this case.

2. ID.; ID.; ID.; ID.; AMENDMENT OF FINAL AND EXECUTORY JUDGMENT, WHEN PROPER.— Nonetheless, this Court has recognized that even a final and executory judgment or the *fallo* thereof may be clarified or rectified by an amendment when there is, in its dispositive portion, an inadvertent omission of what it should have logically decreed or ordered based on the discussion in the body of the decision. The Court must emphasize, however, that the court's action should be limited to explaining a vague or equivocal part of its decision, which hampers the proper and full execution of its ruling. The court cannot modify or overturn its decision in the guise of clarifying ambiguous points.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A WRIT OF *CERTIORARI* WILL NOT ISSUE WHERE THE REMEDY OF APPEAL IS AVAILABLE TO THE AGGRIEVED PARTY; EXCEPTIONS; NO APPLICATION IN CASE AT BAR.— The Court reiterates that a special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. *Certiorari* is not a substitute for a lapsed or lost appeal, especially if the party's own negligence or error in the choice of remedy occasioned such loss or lapse. The few significant exceptions recognized by the Court are when public welfare and the advancement of public policy dictate, when the broader interests of justice so require, when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority. Petitioner has not alleged, much less proven, that this case calls for the Court's authority to invoke the exceptions.

4. ID.; CIVIL PROCEDURE; APPEALS; PERFECTION OF AN APPEAL WITHIN THE STATUTORY OR REGLEMENTARY PERIOD IS NOT ONLY MANDATORY BUT ALSO JURISDICTIONAL.— The right to appeal is not a natural right nor is it a part of due process; it is merely a statutory privilege that must be exercised in the manner, and

according to procedures, laid down by law. Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision final and executory, and deprives the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal.

APPEARANCES OF COUNSEL

Layawen Layawen and Associates Law Offices for petitioner.
Elpidio Viernes 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, assailing the Resolution[1] dated January 10, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 101550, and the Resolution[2] dated March 6, 2008, denying petitioner Victoria L. Teh's (Victoria's) Motion for Reconsideration.

The factual antecedents of this case are as follows.

Spouses Teh Lin and Lim Ay Go begat eight children, namely: Natividad, Teh Ki Huat, Teh Ki Tiat, Basilio, Victoria, Modesto, Marciano, and Peter. The couple owned a 990-square-meter parcel of land, covered by Transfer Certificate of Title (TCT) No. 37337, located in Sta. Mesa Heights, Quezon City. On January 29, 1971, Lim Ay Go executed a Deed of Donation *Inter Vivos* in favor of Natividad, Teh Ki Huat, Teh Ki Tiat, and Victoria. On November 19, 1971, Teh Lin also executed a Deed of Donation in favor of the same four children.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Enrico A. Lanzanas, concurring; *rollo*, pp. 42-46.

[2] *Id.* at 48-49.

Lim Ay Go died on May 7, 1973; while Teh Lin died on June 15, 1976.[3]

On September 13, 1994, TCT No. 37337 in the name of spouses Teh Lin and Lim Ay Go was cancelled and TCT No. 117548 was issued in Victoria's name.[4]

On September 26, 1994, Natividad, Teh Ki Tiat, and Jacinta Sia (representing Teh Ki Huat) filed a Complaint before the Regional Trial Court (RTC) of Quezon City. They alleged that Victoria surreptitiously and fraudulently procured the execution of the Deed of Donation dated March 20, 1971 covering their parents' property in her favor, to the exclusion of the other donees. They further alleged that the signatures of Teh Lin and Lim Ay Go were forged. They claimed that Lim Ay Go was an illiterate Chinese woman and could not have signed the Deed of Donation *Inter Vivos* in favor of Victoria. Thus, they prayed for the annulment of TCT No. 117548 and, in lieu thereof, for another title to be issued in their and Victoria's names as co-owners *pro indiviso*.[5]

In her Answer, Victoria argued that respondents had no cause of action. She claimed that respondents Natividad, Teh Ki Tiat, and Teh Ki Huat were not real children of Teh Lin and Lim Ay Go.[6] She claimed that, aside from herself, the only children and legal heirs of her parents were Basilio, Modesto, Marciano, and Peter, all surnamed Teh. She also argued that, even if the January 29, 1971 and November 19, 1971 Deeds of Donation were valid, they would only be valid as to her, because of the four (4) donees, she, alone, is a Filipino citizen. She further claimed that she has been in actual, public, adverse, peaceful, and uninterrupted possession of the property since 1971, and has since then been paying the real estate taxes thereon.[7]

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[3] *Id.* at 92.

[4] *Id.* at 92-93.

[5] *Id.* at 93.

[6] *Id.*

[7] *Id.* at 94.

She also narrated that, in 1980, she filed a petition for the issuance of a new owner's duplicate copy of TCT No. 37337, which was decided in her favor on August 3, 1981. That decision became final and executory without any appeal filed before any court.[8]

Finally, she claimed that, even without the Deed of Donation in her favor, respondents could not be declared co-owners of the property because of prescription.[9]

On October 17, 1995, Modesto, Peter, and Marciano filed a Motion for Intervention, claiming to have legal and substantial interest over the subject matter of the controversy.[10] The same was granted on March 11, 1996.[11] They claimed that their brother, Basilio, was the judicial administrator of the estate of the deceased Teh Lin. They prayed that the March 20, 1971 Deed of Donation be declared null and void *ab initio*; that TCT No. 117548 be cancelled; and that TCT No. 37337 in the name of their parents be reinstated.[12] They likewise asked the court for the reconveyance of the subject parcel of land to the estate of Teh Lin for the adjudication of the same to his surviving heirs.[13]

Meanwhile, Natividad died on March 7, 1995. Her counsel failed to file the proper substitution of her heirs as party-plaintiffs.

Basilio also filed a separate Motion for Leave of Court to Intervene, which he subsequently withdrew, but it was nonetheless granted by the RTC. On the other hand, Robert Teh, Margaret Teh Lin, Jane Teh, Rosie Teh Ong, and Nancy Teh Chan filed a complaint in intervention on September 9, 1996, claiming to be successors-in-interest and legal representatives of the late Teh Ki Huat. They also prayed that

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 94-95.

[11] *Id.* at 100.

[12] *Id.* at 95.

[13] *Id.*

the March 20, 1971 Deed of Donation be declared null and void, and the January 19, 1971 and November 19, 1971 Deeds of Donation be upheld as valid.[14]

The RTC disregarded all complaints in intervention.[15] Thus, only Teh Ki Tiat remained as plaintiff in the case.[16]

On March 28, 2007, the RTC promulgated its decision, the dispositive portion of which states:

> Accordingly, on the basis of the aforestated ratiocination, judgment is hereby ordered declaring the following: (1) Declaring the Deed of Donation executed by Teh Lin and Lim Ay Go in favor of Victoria Lim Teh dated March 20, 1971 as null and void; (2) Declaring Transfer Certificate of Title (TCT) No. 117548 registered in the name of the Defendant Victoria Lim Teh of the Registry of Deeds for (sic) Quezon City on account of the aforestated deed of donation as likewise null and void; (3) Declaring the Deeds of [D]onation dated January 29, 1971 executed by Lim Ay Go in favor of Natividad Teh, Teh Ki Huat, Teh Ki Tiat and Victoria Lim Teh and the Deed of Donation dated November 19, 1971 executed by The (sic) Lin in favor of Natividad Teh, Teh Ki Huat, Teh Ki Tiat and Victoria Lim The (sic) as valid; (4) Directing the Registry of Deeds of Quezon City to reinstate Transfer Certificate of Title (TCT) No. 37337 in the name of Teh Lin and Lim Ay Go, subject matter of the Deeds of Donation dated January 29, 1971 and November 19, 1971; and (5) All claim for damages are dismissed.
>
> Costs against the Defendant.
>
> SO ORDERED.[17]

The RTC held that the March 20, 1971 Deed of Donation was spurious.[18] The RTC gave credence to the testimony of the handwriting expert presented by Basilio, who testified that the questioned signatures "Teh Lin" appearing on the original

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[14] *Id.*

[15] *Id.* at 99.

[16] *Id.*

[17] *Id.* at 103.

[18] *Id.* at 100.

document, entitled Deed of Donation Inter Vivos, dated March 20, 1971, were not affixed by the person who signed standard signatures used in the scientific comparative examination. The expert also found that portions of the Deed were typed using different typewriters.[19] This testimony, the RTC said, remained uncontradicted. The RTC said:

> While expert evidence on handwriting is, at best, weak and unsatisfactory, and less weight should be given to inferences from comparison than to direct and credible testimonies of witnesses as to the matters of their personal observations but in the absence of or on account of the dearth of direct or substantial evidence and countervailing evidence on the part of Victoria, the Court views the testimony of Atty. Desiderio Pagui as persuasive.[20]

The RTC also upheld Basilio's testimony that, even before his father's death, the lot covered by TCT No. 117548 had already been given to his brothers and sisters. He explained that the January 29, 1971 Deed of Donation pertained to the donation of his mother's portion, while the November 19, 1971 Deed of Donation pertained to his father's portion, which were all given to his brothers and sisters, excluding him.[21]

Subsequently, on June 4, 2007, respondents filed a Motion for Writ of Execution before the RTC, which petitioner did not oppose. The RTC granted the motion, and issued the corresponding writ in an Order dated June 19, 2007.[22]

On June 25, 2007, petitioner filed before the RTC a Manifestation and Points to be Clarified on the Decision of this Honorable Court in the Above-Entitled Case (Manifestation).[23] Petitioner argued that, based on the RTC's discussion in its decision, she is the sole beneficiary of the

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[19] *Id.* at 101.

[20] *Id.* at 102.

[21] *Id.*

[22] *Id.* at 104.

[23] *Id.* at 104-110.

November 19, 1971 Deed of Donation. Hence, she prayed for the RTC to declare her as such; and for the Registry of Deeds to cancel TCT No. 37337 and for a new TCT to be issued in her name.[24]

In respondents' Comment/Opposition to petitioner's Manifestation, they pointed out that the RTC's March 28, 2007 decision had become final and executory.[25] Petitioner's Manifestation, they argued, was actually an appeal from the RTC's decision, which should be denied because the RTC had already lost its jurisdiction over the case.[26]

On September 5, 2007, the RTC issued an Order denying petitioner's Manifestation. The RTC noted that, based on its records, petitioner received a copy of its decision on April 11, 2007, and failed to file an appeal or take any other legal action to prevent the decision from becoming final and executory. Further, the RTC said that, even assuming that it still had the power to act on petitioner's Manifestation, its March 28, 2007 decision could not be interpreted as entitling Victoria to an order declaring her to be the sole beneficiary of the November 19, 1971 Deed of Donation.[27]

Victoria's Motion for Reconsideration was subsequently denied in an Order dated November 14, 2007.[28]

Petitioner then filed a Petition for Review before the CA. On January 10, 2008, the CA promulgated a Resolution disposing of the petition, thus:

WHEREFORE, premises considered, the petition for *certiorari* is outrightly **DENIED DUE COURSE** and is hereby ordered **DISMISSED**.[29]

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[24] *Id.* at 109.

[25] *Id.* at 111.

[26] *Id.* at 113.

[27] *Id.* at 118.

[28] *Id.* at 132.

[29] *Id.* at 46.

The CA held that to rule on petitioner's prayer to be adjudged the sole beneficiary of the November 19, 1971 Deed of Donation would "have the effect of touching [on] the merits and altering and overturning the judgment of the lower court which became final and executory on April 26, 2007."[30] Since the case did not fall within the recognized exceptions to the rule on finality of judgments, petitioner was bound by the finality of the RTC's decision.[31]

Petitioner filed a Motion for Reconsideration, which was denied in a Resolution dated March 6, 2008.

Hence, the present Petition for Review on *Certiorari*. Petitioner raises the following Assignment of Errors:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DI[S]MISSING OUTRIGHT THE PETITION FOR *CERTIORARI* FILED BY PETITIONER AMOUNTING TO ABUSE OF DISCRETION AND CONTRARY TO LAW WITHOUT TAKING INTO CONSIDERATION THE EXPLICIT GROUNDS OF THE PETITION STATED THEREIN.
2. THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND SERIOUS ERROR IN RULING THAT; "PETITIONER CONTENDS THAT THE JUDGMENT RENDERED BY THE LOWER COURT IS NULL AND VOID FOR NON-OBSERVANCE OF THE RULE OF THE SUBSTITUTION BY THE LEGAL REPRESENTATIVES OF THE DECEASED PLAINTIFF NATIVIDAD TEH TAN, YET SHE WANTS TO DERIVE BENEFITS FROM SAID VOID JUDGMENT AND PRAYING THAT SHE BE ADJUDGED AS THE SOLE BENEFICIARY OF THE DEED OF DONATION DATED NOVEMBER 19, 1971 AND THAT TCT NO. 37337 ISSUED BY THE REGISTER OF DEEDS OF QUEZON CITY BE CANCELLED AND TRANSFERRED IN HER NAME." (par. 2 and 3[,] RESOLUTION OF COURT OF APPEALS).
3. THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN RULING THAT: "NOTWITHSTANDING THE

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[30] *Id.* at 44-45.

[31] *Id.* at 46.

> DEMISE OF NATIVIDAD TEH TAN DURING THE PENDENCY OF THIS CASE BEFORE THE LOWER COURT, TEH KI [T]IAT APPEARED TO BE THE REMAINING PLAINTIFF WHO COULD PROSECUTE THIS CASE FOR BEING AMONG THOSE WHO STAND TO BE BEN[E]FITED BY THE DEED OF DONATION DATED JANUARY 29, 1971 INVOLVING THE SUBJECT PROPERTY COVERED BY TCT NO. 37337. (PAR. 2 P. 3[,] RESOLUTION OF [THE] COURT OF APPEALS).[32]

The Court finds no merit in the Petition.

There is no question that the decision of the RTC has become final and executory. The records bear out this fact, and even petitioner does not contest this.

A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses, and no appeal is perfected within such period.[33]

In this case, petitioner herself admitted that she did not appeal the RTC ruling, believing that respondents failed to prove their cause of action.[34] However, her belief that she alone should be declared the sole beneficiary of the November 19, 1971 Deed of Donation has no basis in law and is, in fact, contradicted by the evidence on record.

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.[35]

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[32] *Id.* at 20-21.

[33] *Social Security System v. Isip*, G.R. No. 165417, April 3, 2007, 520 SCRA 310, 314, citing *Vlason Enterprises Corporation v. CA*, 369 Phil. 269 (1999).

[34] *Rollo*, p. 19.

[35] *Heirs of Maura So v. Obliosca*, G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418. (Citations omitted.)

Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest.[36] No additions can be made to the decision, and no other action can be taken on it,[37] except to order its execution.[38]

The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and cases where circumstances transpire after the finality of the decision that render its execution unjust and inequitable.[39] Not one of these exceptions is present in this case.

Nonetheless, this Court has recognized that even a final and executory judgment or the *fallo* thereof may be clarified or rectified by an amendment when there is, in its dispositive portion, an inadvertent omission of what it should have logically decreed or ordered based on the discussion in the body of the decision.[40]

The Court must emphasize, however, that the court's action should be limited to explaining a vague or equivocal part of its decision, which hampers the proper and full execution of its ruling. The court cannot modify or overturn its decision in the guise of clarifying ambiguous points.

In the present case, petitioner's Manifestation is, for all intents and purposes, a motion for reconsideration of the RTC's decision. Consider the prayer in her Manifestation:

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[36] *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 440, citing *Salva v. Court of Appeals*, 364 Phil. 281, 294 (1999).

[37] *Natalia Realty, Inc. v. Judge Rivera*, 509 Phil. 178, 186 (2005), citing *Toledo-Banaga v. CA*, 361 Phil. 1006 (1999).

[38] *Times Transit Credit Coop., Inc. v. NLRC*, 363 Phil. 386, 392 (1999), citing *Yu v. NLRC*, 315 Phil. 107, 120 (1995).

[39] *Heirs of Maura So v. Obliosca*, *supra* note 35, at 418, citing *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586.

[40] See *Heirs of Ferry Bayot v. Baterbonia*, G.R. No. 142345, August 13, 2004, 436 SCRA 471, 475, citing *Republic Surety and Insurance Co., Inc. v. IAC*, 236 Phil. 332, 338-339 (1987).

WHEREFORE, in x x x light of the aforequoted rulings of this Honorable Court, it shows that the sole beneficiary of the Deed of Donation dated November 19, 1971 is Victoria Teh.

Consequently, it is respectfully prayed that an ORDER be issued by this Honorable Court declaring that the sole beneficiary of the Deed of Donation dated November 19, 1971, is Victoria Teh and that the Transfer Certificate of Title No. 37337 of the Registry of Deed (sic) of Quezon City be cancelled and Transferred in the name of Victoria Teh.[41]

Clearly, petitioner sought more than just a clarification of the RTC's decision. Her Manifestation called for a reexamination and reevaluation of evidence already considered by the RTC in its assailed judgment.

Hence, the CA did not err in holding that the RTC's decision bound petitioner and, consequently, in dismissing the petition for *certiorari*.

The Court reiterates that a special civil action for *certiorari* is a limited form of review and is a remedy of last recourse.[42] The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.[43] It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. *Certiorari* is not a substitute for a lapsed or lost appeal,[44] especially if the party's own negligence or error in the choice of remedy occasioned such loss or lapse.[45]

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[41] *Rollo*, p. 109.

[42] *Heirs of Lourdes Padilla v. Court of Appeals*, 469 Phil. 196, 203-204 (2004).

[43] *Young v. Sy*, G.R. Nos. 157745 and 157955, September 26, 2006, 503 SCRA 151, 168.

[44] *Ang v. Grageda*, *supra* note 36, at 439; *Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, *supra* note 42, at 204.

[45] *Badillo v. Court of Appeals*, G.R. No. 131903, June 26, 2008, 555 SCRA 435, 451-452, citing *David v. Cordova*, 502 Phil. 626, 638 (2005).

The few significant exceptions recognized by the Court are when public welfare and the advancement of public policy dictate, when the broader interests of justice so require, when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority.[46] Petitioner has not alleged, much less proven, that this case calls for the Court's authority to invoke the exceptions.

The right to appeal is not a natural right nor is it a part of due process; it is merely a statutory privilege that must be exercised in the manner, and according to procedures, laid down by law.[47] Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision final and executory, and deprives the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal.[48]

Thus, given the factual milieu of this case, the trial court had already lost jurisdiction to act on the motion for clarification. When the decision became final and executory, not even this Court could have changed the trial court's disposition absent any showing that the case fell under one of the recognized exceptions.

WHEREFORE, the foregoing premises considered, the Petition is *DENIED*. The Resolutions dated January 10, 2008 and March 6, 2008 of the Court of Appeals in CA-G.R. SP No. 101550 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[46] *Heirs of Lourdes Padilla v. Court of Appeals, supra* note 42, at 204.

[47] *Ongpauco v. Court of Appeals*, 488 Phil. 396, 402 (2004), citing *Veloria v. Commission on Elections*, G.R. No. 94771, July 29, 1992, 211 SCRA 907, 914.

[48] *Republic v. Court of Appeals,* 372 Phil. 259, 266 (1999).

SECOND DIVISION

[G.R. No. 183868. November 22, 2010]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **MARINA SALES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS; REVISED RULES OF THE COURT OF TAX APPEALS; PETITION FOR REVIEW OF A DECISION OR RESOLUTION OF THE COURT IN DIVISION MUST BE PRECEDED BY THE FILING OF A TIMELY MOTION FOR RECONSIDERATION OR NEW TRIAL WITH THE DIVISION.— On the procedure, the Court agrees with the CTA *En Banc* that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals requiring that "the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division." The word "must" clearly indicates the mandatory — not merely directory — nature of a requirement." The rules are clear. Before the CTA *En Banc* could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division.

2. REMEDIAL LAW; RULES OF PROCEDURE; MAY BE RELAXED ONLY FOR VERY EXIGENT AND PERSUASIVE REASONS TO RELIEVE A LITIGANT OF AN INJUSTICE NOT COMMENSURATE TO HIS CARELESS NON-OBSERVANCE OF THE PRESCRIBED RULES.— Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.

3. TAXATION; TARIFF IMPORT DUTIES; TO FIT INTO THE CATEGORY LISTED UNDER THE TARIFF HARMONIZED SYSTEM HEADINGS CALLING FOR A HIGHER IMPORT DUTY RATE OF 7%, THE IMPORTED ARTICLES MUST NOT LOSE ITS ORIGINAL CHARACTER; NOT A CASE OF.— As extensively discussed by the CTA Second Division, *to fit into the category listed under the Tariff Harmonized System Headings calling for a higher import duty rate of 7%, the imported articles must not lose its original character*. In this case, however, the laboratory analysis of Marina's samples yielded a different result. The report supported Marina's position that the subject importations are not yet ready for human consumption. Moreover, Marina's plant manager, Rebecca Maronilla, testified that the juice compounds could not be taken in their raw form because they are highly concentrated and must be mixed with other additives before they could be marketed as Sunquick juice products. If taken in their unprocessed form, the concentrates without the mixed additives would produce a sour taste. In other words, the concentrates, to be consumable, must have to lose their original character. To quote the CTA Second Division: Verily, to fall under the assailed Tariff Harmonized System Headings, petitioner's (herein respondent) articles of importation, as fruit juices/mixtures, should not have lost its original character, in spite of the addition of certain "standardizing agents/constituents." Contrary thereto, We find the subject importations categorized as "non-alcoholic composite concentrates" to have apparently lost their original character due to the addition of ingredients in such quantity that the concentrated fruit juice mixture only comprises a small percentage of the entire compound.

4. ID.; ID.; ID.; ID.; 1% TARIFF IMPORT DUTY RATE UNDER TARIFF HEADING H.S. 2106.90 10, CORRECTLY APPLIED TO SUBJECT IMPORTATIONS IN CASE AT BAR.— Contrary to the Commissioner's assertions, empirical evidence shows that the subject importations would have to undergo a laborious method, as shown by its manufacturing flowchart and manufacturing process, to achieve their marketable juice consistency. Accordingly, the 1% tariff import duty rate under Tariff Heading H.S. 2106.90 10 was correctly applied to the subject importations.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Martinez Mendoza Vergara Gonzalez & Serrano for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari*[1] under Rule 45, the Commissioner of Customs *(Commissioner)*, represented by the Office of the Solicitor General *(OSG)*, assails the April 11, 2008 Resolution[2] of the Court of Tax Appeals *En Banc* (*CTA-En Banc*), in C.T.A. E.B. No. 333, dismissing his petition for review for his failure to file a motion for reconsideration before the Court of Tax Appeals Division *(CTA-Division)*.

Respondent Marina Sales, Inc. *(Marina)* is engaged in the manufacture of Sunquick juice concentrates. It was appointed by CO-RO Food A/S of Denmark, maker of Sunquick Juice Concentrates, to be its manufacturing arm in the Philippines. As such, Marina usually imports raw materials into the country for the purpose. In the past, the Bureau of Customs *(BOC)* assessed said type of importations under Tariff Heading H.S. 2106.90 10 with a 1% import duty rate.[3]

On March 6, 2003, Marina's importation, labeled as Import Entry No. C-33771-03, arrived at the Manila International Container Port *(MICP)* on board the vessel APL Iris V-111. Said Import Entry No. C-33771-03 consisted of a 1' x 20' container STC with a total of 80 drums: (a) 56 drums of 225

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[1] *Rollo*, pp. 112-145.

[2] *Id.* at 146-148. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez, concurring.

[3] *Id.* at 766-767.

kilograms Sunquick Orange Concentrate; and (b) 24 drums of 225 kilograms of Sunquick Lemon Concentrate.[4] It was supported by the following documents: (a) Bill of Lading No. APLU 800452452 dated February 2, 2003;[5] and (b) CO-RO Food A/S of Denmark Invoice No. 1619409 dated January 27, 2003.[6]

Marina computed and paid the duties under Tariff Harmonized System Heading H.S. 2106.90 10 at 1% import duty rate.

This time, however, the BOC examiners contested the tariff classification of Marina's Import Entry No. C-33771-03 under Tariff Heading H.S. 2106.90 10. The BOC examiners recommended to the Collector of Customs, acting as Chairman of the Valuation and Classification Review Committee *(VCRC)* of the BOC, to reclassify Marina's importation as Tariff Heading H.S. 2106.90 50 (covering composite concentrates for simple dilution with water to make beverages) with a corresponding 7% import duty rate.

The withheld importation being necessary to its business operations, Marina requested the District Collector of the BOC to release Import Entry No. C-33771-03 under its Tentative Release System.[7] Marina undertook to pay the reclassified rate of duty should it be finally determined that such reclassification was correct. The District Collector granted the request.

On April 15, 2003, the VCRC directed Marina to appear in a deliberation on May 15, 2003 and to explain why its shipment under Import Entry No. C-33771-03 should not be classified under Tariff Heading H.S. 2106.90 50 with import duty rate of 7%.[8]

On May 15, 2003, Marina, through its Product Manager Rowena T. Solidum and Customs Broker Juvenal A. Llaneza, attended the VCRC deliberation and submitted its

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[4] *Id.* at 345.

[5] *Id.* at 436.

[6] *Id.* at 437.

[7] *Id.* at 439.

[8] *Id.* at 348.

explanation,[9] dated May 13, 2003, along with samples of the importation under Import Entry No. C-33771-03.

On May 21, 2003, another importation of Marina arrived at the MICP designated as Import Entry No. C-67560-03. It consisted of another 1' x 20' container STC with a total of 80 drums: (a) 55 drums of 225 kilograms of Sunquick Orange Concentrate; (b) 1 drum of 225 kilograms of Sunquick Tropical Fruit Concentrate; (c) 17 drums of 225 kilograms of Sunquick Lemon Concentrate; (d) 3 drums of 225 kilograms of Sunquick Ice Lemon Concentrate; and (e) 4 drums of 225 kilograms Sunquick Peach Orange Concentrate. The said importation was accompanied by the following documents: (a) Bill of Lading No. KKLUCPH060291 dated April 17, 2003;[10] and (b) CO-RO Foods A/S Denmark Invoice No. 1619746 dated April 15, 2003.[11]

Again, the BOC examiners disputed the tariff classification of Import Entry No. C-67560-03 and recommended to the VCRC that the importation be classified at Tariff Heading H.S. 2106.90 50 with the corresponding 7% duty rate.

In order for Import Entry No. C-67560-03 to be released, Marina once again signed an undertaking under the Tentative Release System.[12]

In a letter dated July 7, 2003, the VCRC scheduled another deliberation requiring Marina to explain why Import Entry No. C-67560-03 should not be classified under Tariff Heading H.S. 2106.90 50 at the import duty rate of 7%.[13]

On July 17, 2003, Marina again attended the VCRC deliberation and submitted its explanation[14] dated July 17, 2003

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[9] *Id.* at 349-350.

[10] *Id.* at 358.

[11] *Id.* at 451.

[12] *Id.* at 452.

[13] *Id.* at 361.

[14] *Id.* at 362-363.

together with samples in support of its claim that the imported goods under Import Entry No. C-67560-03 should not be reclassified under Tariff Heading H.S. 2106.90 50.

Thereafter, the classification cases for Import Entry No. C-33771-03 and Import Entry No. C-67560-03 were consolidated.

On September 11, 2003, as reflected in its 1st Indorsement, the VCRC reclassified Import Entry No. C-33771-03 and Import Entry No. C-67560-03 under Tariff Heading H.S. 2106.90 50 at 7% import duty rate.[15]

On October 7, 2003, Marina appealed before the Commissioner challenging VCRC's reclassification.[16]

In its 1st Indorsement of November 13, 2003,[17] the VCRC modified its earlier ruling and classified Marina's Import Entry No. C-33771-03 and Import Entry No. C-67560-03 under Tariff Heading H.S. 2009 19 00 at 7% duty rate, H.S. 2009.80 00 at 7% duty rate and H.S. 2009.90 00 at 10% duty rate.

Apparently not in conformity, Marina interposed a petition for review before the CTA on February 3, 2004, which was docketed as CTA Case No. 6859.

On October 31, 2007, the CTA Second Division ruled in favor of Marina[18] holding that its classification under Tariff Heading H.S. 2106.90 10 was the most appropriate and descriptive of the disputed importations.[19] It opined that Marina's importations were raw materials used for the manufacture of its Sunquick products, not ready-to-drink juice concentrates as argued by the Commissioner.[20] Thus, the decretal portion of the CTA — Second Division reads:

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[15] *Id.* at 364.

[16] *Id.* at 365-366.

[17] *Id.* at 337-339.

[18] *Id.* at 673-701.

[19] *Id.* at 688.

[20] *Id.* at 696.

WHEREFORE, finding merit in petitioner's Petition for Review, the same is hereby GRANTED. Accordingly, the Resolution/Decision dated November 13, 2003 of the Valuation and Classification Review Committee of the Bureau of Customs is hereby SET ASIDE and petitioner's importation covered by Import Entry Nos. C-33771-03 and C-67560-03 are reclassified under Tariff Harmonized System Heading H.S. 2106.90 10 with an import duty rate of 1%.

SO ORDERED.

The Commissioner disagreed and elevated the case to the CTA-*En Banc via* a petition for review.[21]

In its Resolution of April 11, 2008, the CTA *En Banc* dismissed the petition. The pertinent portions of the decision including the *fallo* read:

A careful scrutiny of the record of this case showed that petitioner failed to file before the Second Division the required Motion for Reconsideration before elevating his case to the CTA *En Banc*.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals provided for the following rule, to wit:

RULE 8

PROCEDURE IN CIVIL CASES

SECTION 1. Review of Cases in the Court *en banc*. — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely **motion for reconsideration** or new trial with the Division.

In statutory construction, the use of the word "must" indicates that the requirement is mandatory. Furthermore, the word "must" connote an imperative act or operates to simply impose a duty which may be enforced. It is true the word "must" is sometimes construed as "may" – permissive – but this is only when the context requires it. Where the context plainly shows the provision to be mandatory, the word "must" is a command and cannot be construed as permissive, but must be given the signification which it imparts.

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[21] *Id.* at 184-211.

It is worthy to note that the Supreme Court ruled that a Motion for Reconsideration is mandatory as a precondition to the filing of a Petition for Review under Rule 43 of the Rules of Court.

WHEREFORE, applying by analogy the above ruling of the Supreme Court and taking into consideration the mandatory provision provided by Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals and considering further that petitioner did not file a Motion for Reconsideration with the Second Division before elevating the case to the Court *En Banc*, which eventually deprived the Second Division of an opportunity to amend, modify, reverse or correct its mistake or error, if there be, petitioner's Petition for Review is hereby DISMISSED.

SO ORDERED.[22]

The Commissioner sought reconsideration of the disputed decision, but the CTA *En Banc* issued a denial in its July 14, 2008 Resolution.[23]

Hence, this petition.

In his Memorandum,[24] the Commissioner submits the following issues for resolution:

A.

WHETHER THE DISMISSAL BY THE COURT OF TAX APPEALS' *EN BANC* OF PETITIONER'S PETITION BASED ON MERE TECHNICALITY WILL RESULT IN INJUSTICE AND UNFAIRNESS TO PETITIONER.

B.

WHETHER THE CHALLENGED DECISION OF THE COURT OF TAX APPEALS' SECOND DIVISION HOLDING THAT RESPONDENT'S IMPORTATION ARE COVERED BY IMPORT ENTRY NOS. C-33771-03 AND C-67560-03 ARE CLASSIFIED UNDER TARIFF HARMONIZED SYSTEM HEADING H.S.

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[22] *Id.* at 147-148.

[23] *Id.* at 149-152.

[24] *Id.* at 734-763.

2106.90 10 WITH AN IMPORT DUTY RATE OF ONE PERCENT (1%) IS NOT CORRECT.[25]

The Commissioner argues that the dismissal of his petition before the CTA-*En Banc* is inconsistent with the principle of the liberal application of the rules of procedure.[26] He points out that due to the dismissal of the petition, the government would only be collecting 1% import duty rate from Marina instead of 7%.[27] This, if sanctioned, would result in grave injustice and unfairness to the government.[28]

The Commissioner also contends that the testimony of Marina's expert witness, Aurora Kimura, pertaining to Sunquick Lemon compound shows that it could be classified as "heavy syrup"[29] falling under the category of H.S. 2190.90 50 with a 7% import duty rate.[30]

The Court finds no merit in the petition.

On the procedure, the Court agrees with the CTA *En Banc* that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals[31] requiring that "the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division." The word "must" clearly indicates the mandatory — not merely directory — nature of a requirement."[32]

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[25] *Id.* at 746.

[26] *Id.* at 747-748.

[27] *Id.* at 749.

[28] *Id.* at 750.

[29] *Id.* at 753.

[30] *Id.* at 756.

[31] A.M. No. 05-11-07-CTA.

[32] *Dangan-Corral v. Commission on Elections*, G.R. No. 190156, February 12, 2010.

The rules are clear. Before the CTA *En Banc* could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights.[33] Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.[34]

At any rate, even if the Court accords liberality, the position of the Commissioner has no merit. After examining the records of the case, the Court is of the view that the import duty rate of 1%, as determined by the CTA Second Division, is correct.

The table shows the different classification of Tariff import duties relevant to the case at bar:

TARIFF HEADING	IMPORT DUTY RATE	COVERAGE
H.S. 2106.90 10	1%	Covers flavouring materials, nes., of kind used in food and drink industries; other food preparations to be used as raw material in preparing composite concentrates for making beverages
H.S. 2106.90 50	7%	Covers composite concentrate for simple dilution with water to make beverages
H.S. 2009. 19 00	7%	Covers orange juice, not frozen

[33] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 776, 780, citing *Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683, 689.

[34] *Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683, 689, citing *Limpot v. Court of Appeals*, 252 Phil. 377, 387 (1989).

H.S. 2009.80 00	7%	Covers juice of any other single fruit or vegetable
H.S. 2009.90 00	10%	Covers mixtures of juices

The Commissioner insists that Marina's two importations should be classified under Tariff Heading H.S. 2106.90 50 with an import duty rate of 7% because the concentrates are ready for consumption by mere dilution with water.

The Court is not persuaded.

As extensively discussed by the CTA Second Division, *to fit into the category listed under the Tariff Harmonized System Headings calling for a higher import duty rate of 7%, the imported articles must not lose its original character*. In this case, however, the laboratory analysis of Marina's samples yielded a different result.[35] The report supported Marina's position that the subject importations are not yet ready for human consumption. Moreover, Marina's plant manager, Rebecca Maronilla, testified that the juice compounds could not be taken in their raw form because they are highly concentrated and must be mixed with other additives before they could be marketed as Sunquick juice products. If taken in their unprocessed form, the concentrates without the mixed additives would produce a sour taste.[36] In other words, the concentrates, to be consumable, must have to lose their original character. To quote the CTA Second Division:

> Verily, to fall under the assailed Tariff Harmonized System Headings, petitioner's (herein respondent) articles of importation, as fruit juices/mixtures, should not have lost its original character, in spite of the addition of certain "standardizing agents/constituents." Contrary thereto, We find the subject importations categorized as "non-alcoholic composite concentrates" to have apparently lost their original character due to the addition of ingredients in such quantity that the concentrated fruit juice mixture only comprises a small percentage of the entire compound.

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[35] *Rollo*, pp. 468-470.

[36] *Id.* at 643. TSN, February 7, 2005, p. 23.

This was clearly explained by the VCRC in its subsequent Resolution/ Decision ("1st Indorsement") issued on February 17, 2005 pertaining to subsequent similar importations of petitioner, effectively correcting its findings in the assailed Resolution/Decision dated November 13, 2003 concerning the same party-importer, issues and articles of importation,[37] to wit:

> SUB-GROUP OBSERVATIONS/FINDINGS:
>
> The classification issue was divided into two regimes. The era under the old Harmonized Commodity Description and Coding System, while the other is the latest revised edition, the Asean Harmonized Tariff Nomenclature.
>
> The previous committee resolution was promulgated technically not on the merit of the case but failure on the part of the importer to submit their position paper/arguments within the prescriptive period given by the committee.
>
> Importer submitted samples of subject shipment for laboratory analysis to Philippine Customs laboratory to validate the veracity of product information given by the supplier and to determine the correct tariff classification.
>
> x x x x x x x x x
>
> Based on the report of the Laboratory Analysis, compound is made up to water 57.9%, Invert Sugar 34.34%, Citric Acid 2.94%, Vitamin C (Ascorbic Acid) 105 mg.
>
> Since the item is compound which is composed of water, sugar, concentrated juice, flavourings, citric acid, stabilizer, preservatives, vitamins C and colouring to produce beverage ready to drink. ***Consequently the concentrated citrus juice has lost its original character due to the fact that it comprises only 12% of the total compound***.[38]
>
> Items (fruit juices) classifiable under HS 2009 are fruit juices generally obtained by pressing fresh, healthy and ripe fruit. Per item 4 of the Explanatory Notes to the Harmonized Commodity Description and Coding System apparently subject article has

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[37] Emphasis supplied.

[38] Emphasis supplied.

> lost its original character as concentrated fruit juice drink to the compounding ingredients which reduces the fruit juices to 12% of the total compound.
>
> In view of the foregoing subject article is classifiable under Tariff Heading H.S. 2106.90 10 at 1% for entries filed under the old regime. For those filed under the new regime tariff heading AHTN 2106.90 51 at 1% where the item are specifically provided.
>
> RESOLUTION: To apply sub-group recommendation which is ***to adopt H.S. 2106.90 10 at 1% for entries filed under the old regime and for those filed under the new regime, AHTN 2106.90 51 at 1% where the item are specifically provided***.[39]

To "manufacture" is to "make or fabricate raw materials by hand, art or machinery, and work into forms convenient for use."[40] Stated differently, it is to transform by any process into another form suitable for its intended use. Marina, as the manufacturing arm of CO-RO Food A/S of Denmark, transforms said juice compounds, being raw materials, into a substance suitable for human consumption. This is evident from the "Commissioner's Report"[41] of Executive Clerk of Court II, CTA, Jesus P. Inocando, Jr., who conducted an ocular inspection of Marina's manufacturing plant in Taguig City. Pertinent excerpts of the "Commissioner's Report" are herein reproduced:

> On our ocular inspection of the manufacturing plant of petitioner, Ms. Solidum and Mr. Domingo showed us the sample of the imported compounds (raw materials), showed to us the step by step manufacturing process of petitioner and even showed us the bottling and packaging of the finished product.
>
> Per observation of the undersigned, the imported compounds (raw materials) are very sticky, the plant is clean and that the personnel of petitioner in the plant strictly following the manufacturing process as presented in Annex A and Annex B of this report.

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[39] *Rollo*, pp. 691-692. Emphasis and underscoring supplied.

[40] Bouvier's *Law Dictionary*, Vol. II, p. 2086.

[41] *Rollo*, pp. 411-412.

Upon questioning by the counsel for respondent, Mr. Domingo said that while the imported compounds (raw materials) can be mixed with water and may be drinkable, he is not sure if the same is suitable for human consumption. None of us dared to taste the sample of imported compounds (raw materials) diluted in water. The imported compounds (raw materials) mixed with water produces bubbles on top of the mixture, not like the one that has gone through the manufacturing process. Counsel for respondent requested for the marking of Label of Sunquick Lemon (840 ml.), [Annex C], as Exhibit 1 for the respondent.[42]

Contrary to the Commissioner's assertions, empirical evidence shows that the subject importations would have to undergo a laborious method, as shown by its manufacturing flowchart[43] and manufacturing process,[44] to achieve their marketable juice consistency. Accordingly, the 1% tariff import duty rate under Tariff Heading H.S. 2106.90 10 was correctly applied to the subject importations.

In any case, the VCRC in its 1st Indorsement[45] of February 17, 2005 (a subsequent proceeding involving the same type of importation) rectified the disputed tariff reclassification rate. Thus, in Marina's succeeding importations, the VCRC already adopted the 1% import duty rate as paid by Marina in the past.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[42] *Id.* at 412.

[43] *Id.* at 351.

[44] *Id.* at 414-415.

[45] *Id.* at 472-474.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated November 22, 2010.

THIRD DIVISION

[G.R. No. 186158. November 22, 2010]

CAREER PHILIPPINES SHIP MANAGEMENT, INC., *petitioner, vs.* **GERONIMO MADJUS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES SUPPORTED BY SUBSTANTIAL EVIDENCE ARE ACCORDED RESPECT AND EVEN FINALITY.— As a rule, the Court is not a trier of facts, and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and are supported by substantial evidence, are accorded respect and even finality by this Court.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; LABOR ARBITER; "CONDITIONAL SATISFACTION OF JUDGMENT", UPHELD AS VALID AND INTERPRETED TO BE TANTAMOUNT TO AN AMICABLE SETTLEMENT OF THE CASE.— As for the "Conditional Satisfaction of Judgment," the Court holds that it is valid, hence, the "conditional" settlement of the judgment award insofar as it operates as a final satisfaction thereof to render the case moot and academic. x x x Contrary to petitioner's assertion, it could not, at the time respondent moved for the execution of the Labor Arbiter's monetary awards, have been compelled to immediately pay the judgment award, for it had filed with the NLRC an appeal bond, intended to assure respondent that if he prevailed in the case, he would receive the money judgment in his favor upon the dismissal of the employer's appeal. The Labor Arbiter and the appellate court may not thus be faulted for interpreting petitioner's "conditional settlement" to be tantamount to an amicable settlement of the case resulting in the mootness of the petition for *certiorari*.

APPEARANCES OF COUNSEL

*Del Rosario & Del R*osario for petitioner.
Rolando B. Go, Jr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Geronimo Madjus (respondent) was hired on July 13, 2000 by Career Philippines Ship Management, Inc. (petitioner) on behalf of its principal, Atlantic Limited Marine, to work as Able Seaman under a nine-month contract on board the vessel *M/V Spring Dragon*.

Before completing the contract,[1] however, respondent was medically repatriated on March 15, 2001 and was, upon arrival in the Philippines, treated at the Seaman's Hospital by the company-designated physician. He was diagnosed to be suffering from "*Nephrolithiasis*" or presence of stones in his kidney,[2] hence, he underwent electro shockwave lithotripsy or ESWL.

In the meantime, the manning agreement between Atlantic Limited Marine with petitioner ended. Petitioner later entered into a contract with Marine Management International Philippines, Inc. upon which the latter assumed responsibility for all claims arising from employment at the *M/V Spring Dragon* under an Affidavit of Assumption of Responsibility.[3]

Respondent subsequently applied for and was again hired by petitioner as Able Seaman for another nine-month period on board the vessel *Tama Star* on behalf of its principal, Columbia Ship Management, Ltd.

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[1] CA *rollo*, p. 255.

[2] *Vide* Medical Certificate, NLRC records, p. 40.

[3] *Id.* at 94.

In the Philippine Overseas Employment Administration (POEA)-approved contract[4], respondent did not reveal that he had suffered from kidney or bladder trouble, and as his Pre-employment Medical Examination (PEME) yielded normal results, the company-designated physician declared him "fit to work."

Respondent soon boarded the vessel *Tama Star* on November 19, 2002 and completed his contract on August 7, 2003. Three weeks later or on August 29, 2003, he reported to petitioner's office to claim his benefits under the contract amounting to ₱67,584.93, for which he signed a "Discharge Receipt and Release of Claim." Close to two years later or on July 28, 2005, respondent filed before the Labor Arbiter a complaint[5] claiming disability benefits, medical expenses, sickness allowance, damages and attorney's fees against petitioner.

On August 11, 2005, petitioner consulted for kidney ailment with Dr. Oscar Jesus Abarquez (Dr. Abarquez) and Dr. Maria Corazon T. Entero-Lim (Dr. Entero-Lim) who both declared in their respective medical certificates that he was suffering from the presence of stones in his kidney and was not fit to work.

By Decision[6] of April 28, 2006, the Labor Arbiter ruled in favor of respondent, holding that, *inter alia,* petitioner could not disclaim knowledge of respondent's kidney ailment when it hired him to board the *Tama Star* in light of his medical history as in fact it was on account of such ailment that he was repatriated during his contract aboard *M/V Spring Dragon*; and that respondent in fact sought medical assistance from petitioner upon his return after his contract ended.

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[4] *Id.* at 3.

[5] *Id.* at 2.

[6] *Id.* at 126-135. Penned by Labor Arbiter Madjayran H. Ajan.

The Arbiter gave no weight to the "Final Wages Account"[7] and "Discharge, Receipt and Release of Claim"[8] submitted by petitioner, noting that these documents are usually signed by seafarers, otherwise they would not be paid their claims. Thus the Arbiter disposed:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Career Phils. Shipmanagement, Inc., and Columbia Shipmanagement Inc., jointly and severally, to pay the permanent total disability benefits of complainant in the amount of US$60,000.00 and his sickness allowance of US$2,376.00 in Philippine Peso at the rate of exchange prevailing at the time of payment, plus ten percent (10%) of the said amounts as attorney's fees.
>
> SO ORDERED.

On petitioner's appeal, the National Labor Relations Commission (NLRC) **affirmed** the Labor Arbiter's ruling by Decision[9] of March 28, 2008. It held that respondent need not have a "sedentary" job for it to acquire kidney ailment and he could not be said to have concealed it, for petitioner's own physician diagnosed and treated him. Respecting respondent's failure to report his illness upon repatriation, the NLRC held that, at most, this would only result in the forfeiture of his sickness allowance.

Petitioner's Motion for Reconsideration having been denied by Resolution[10] of June 27, 2008, it appealed to the Court of Appeals, at the same time applying for a Temporary Restraining Order (TRO).

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[7] *Id.* at 69.

[8] *Id.* at 72.

[9] *Id.* at 489 – 497. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[10] *Id.* at 530-531. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

Meanwhile, respondent filed on August 1, 2008 with the Labor Arbiter a Motion for the Issuance of a Writ of Execution[11]. Believing that the execution of the Labor Arbiter's Decision was imminent as its petition for injunctive relief was denied by the appellate court by Resolution[12] of July 30, 2008, petitioner filed before the Labor Arbiter on August 20, 2008 a pleading entitled "Conditional Satisfaction of Judgment Award with Urgent Motion to Cancel Appeal Bond All Without Prejudice to the Pending Petition for *Certiorari* in the Court of Appeals"[13] ("Conditional Satisfaction of Judgment") and accordingly paid respondent the monetary award as stated in the Decision of the Labor Arbiter. In said pleading, petitioner stated that the conditional satisfaction of the judgment award was without prejudice to its pending appeal before the Court of Appeals and that it was being made only to "prevent the imminent execution being undertaken by the NLRC and the complainant."

The Labor Arbiter later issued an Order[14] dated September 4, 2008 stating that the case had been amicably settled and was thus dismissed, without prejudice to the pending petition at the Court of Appeals.

By Decision[15] dated November 28, 2008, the appellate court dismissed petitioner's appeal for being moot and academic, noting that the Decision of the Labor Arbiter had attained finality with the satisfaction of the judgment award. On the "Conditional Satisfaction of Judgment," it held that the same constituted petitioner's voluntary payment of the judgment award, and the express reservations therein to the effect that it would not prejudice

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[11] *Id.* at 536-539.

[12] CA *rollo*, pp. 335-336. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr., and Jose C. Reyes, Jr.

[13] NLRC records, pp. 565-567.

[14] *Id.* at 571. Penned by Labor Arbiter Madjayran H. Ajan.

[15] *Rollo*, pp. 81-93. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr., and Jose C. Reyes, Jr.

the outcome of the Petition for *Certiorari* only served as a "safety net imposed by Petitioners while allowing the Respondent Madjus to relinquish any future claims." Its Motion for Reconsideration having been denied by Resolution[16] of January 27, 2009, petitioner interposed the present appeal.

Petitioner faults the appellate court for not deciding the case on the merits and instead dismissing it on the ground of mootness. It maintains that the NLRC Decision had not attained finality because it was tainted with grave abuse of discretion, hence, void; and that the express agreement between it and respondent as contained in the "Conditional Satisfaction of Judgment" should be respected, it having been executed in order to "reconcile the executory nature of public respondent's decision while at the same time affirming the parties' commitment to honor the Court of Appeals' eventual judgment on the merits of the case."

Petitioner goes on to take exception to the appellate court's observation that the reservations included in the "Conditional Satisfaction of Judgment" was merely a safety net it imposed upon respondent, averring that at the time the document was drafted and signed, both parties were represented by their respective counsels and it was eventually approved by the Labor Arbiter. Petitioner adds that it can be considered that "respondent had the higher hand during the negotiations for the conditional satisfaction of judgment," as it was "only compelled to forge the agreement by the imminence of execution"; and that as respondent wanted to immediately enjoy the judgment award, it was only "right and proper that he waives his right to claim further from petitioner," the waiver to operate only in the event that the appellate court affirms the NLRC award.

Respecting the compensability of respondent's illness, petitioner reiterates that the labor tribunals erred in finding that he contracted the illness during his employment aboard *M/V Spring Dragon* and the same was aggravated during his stint

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[16] *Id.* pp. 116-117. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr., and Jose C. Reyes, Jr.

aboard *Tama Star* for the following reasons: (a) the evidence adduced by respondent consisted only of medical reports during his treatment for kidney stones in 2001, for which he stated that he had been cured; (b) respondent was able to finish his nine-month contract aboard *Tama Star* without any medical complaints; (c) he filed his complaint two years after the expiration his contract; (d) he did not submit to medical examination upon repatriation nor did he complain of any illness; (e) the medical certificates issued by Dr. Entero-Lim and Dr. Abarquez were for a one-time consultation on August 11, 2005 – two years after his contract ended and two weeks after he had filed his complaint (subject of the present case) before the Labor Arbiter; and (f) his job as an Able Seaman was not sedentary in nature to preclude urination failure to accomplish which would lead to kidney stones.

At the core of the controversy are petitioner's prayers – first, a reexamination of the evidence already passed upon by the labor tribunals and second, upholding of the validity of the parties' agreement as embodied in the "Conditional Satisfaction of Judgment."

The petition is devoid of merit.

As a rule, the Court is not a trier of facts, and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and are supported by substantial evidence, are accorded respect and even finality by this Court.[17]

As for the "Conditional Satisfaction of Judgment," the Court holds that it is valid, hence, the "conditional" settlement of the judgment award insofar as it operates as a final satisfaction thereof to render the case moot and academic. The pertinent provision of the Conditional Satisfaction reads:

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[17] *New City Builders v. NLRC*, G.R. No. 149281, June 15, 2005, 460 SCRA 220.

That this Conditional Satisfaction of Judgment Award is **without prejudice to herein respondent's Petition for *Certiorari* pending with the Court of Appeals** docketed as C.A. GR SP No. 104438 entitled "*Career Philippines Shipmanagement Ltd., vs. National Labor Relations Commission and Geronimo Madjus*" and this **Conditional Satisfaction of Judgment Award has been made only to prevent imminent execution** being undertaken by the NLRC and complainant.[18] (emphasis supplied)

Meanwhile the Receipt of Payment[19] signed by respondent states:

x x x The **Complainant undertake to return the judgment award or a fraction thereof in case of reversal or modification thereof by the Court of Appeals and/or Supreme Court. This payment also understood to be without prejudice to the Petition for *Certiorari* filed by respondents** before the Court of Appeals docketed as C.A. GR SP No. 104438 entitled "*Career Philippines Shipmanagement Ltd., vs. National Labor Relations Commission and Geronimo Madjus*."

I hereby certify and warrant that if any other person will claim from the vessel, her Owners, manager, charterers, agents or P & I Club his compensation/damages in connection with my claim, I shall hold said vessel/persons free and harmless from any and all claims and liabilities whatsoever. (emphasis supplied)

Finally, the Affidavit of Claimant[20] attached to the "Conditional Satisfaction of Judgment" states:

x x x x x x x x x

5. That I understand that the payment of the judgment award of US$66,000.00 or its peso equivalent of PhP2,932,974.00 **includes all my <u>past, present and future</u> expenses and claims, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and**

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[18] <u>*Vide*</u> Conditional Satisfaction of Judgment Award with Urgent Motion to Cancel Appeal Bond, NLRC records, pp. 565-567.

[19] *Id.* at 568.

[20] *Id.* at 569-570.

regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim.

6. That I have no further claims whatsoever in any theory of law against the Owners of MV "Tama Star" because of the payment made to me. That I certify and warrant **that I will not file any complaint or prosecute any suit of action in the Philippines, Panama, Japan or any country against the shipowners and/or released parties** herein after receiving the payment of US$66,000.00 or its peso equivalent of PhP2,932,974.00. (emphasis and underscoring supplied)

In effect, while petitioner had the luxury of having other remedies available to it such as its petition for *certiorari* pending before the appellate court, and an eventual appeal to this Court, respondent, on the other hand, could no longer pursue other claims, including for interests that may accrue during the pendency of the case.

Contrary to petitioner's assertion, it could not, at the time respondent moved for the execution of the Labor Arbiter's monetary awards, have been compelled to immediately pay the judgment award, for it had filed with the NLRC an appeal bond,[21] intended to assure respondent that if he prevailed in the case, he would receive the money judgment in his favor upon the dismissal of the employer's appeal.[22] The Labor Arbiter and the appellate court may not thus be faulted for interpreting petitioner's "conditional settlement" to be tantamount to an amicable settlement of the case resulting in the mootness of the petition for *certiorari*.

WHEREFORE, the petition is *DENIED*. The Decision dated November 28, 2008 and the Resolution dated January 22, 2009 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

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[21] *Vide* Surety Bond from Pioneer Insurance and Surety Corporation, *id.* at 192-195.

[22] *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, 23 July 2008, 559 SCRA 550, 562.

THIRD DIVISION

[G.R. No. 187751. November 22, 2010]

EDNA EUGENIO, MARY JEAN GREGORIO, RENATO PAJARILLO, ROGELIO VILLAMOR, *petitioners, vs.* **STA. MONICA RIVERSIDE HOMEOWNERS ASSOCIATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; SINCE THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) IS VESTED BY LAW WITH JURISDICTION TO REGULATE AND SUPERVISE HOMEOWNER ASSOCIATIONS, RESPONDENT CORRECTLY LODGED THEIR COMPLAINT WITH THE BOARD.— Upon conferment of quasi-judicial functions to an administrative agency, all controversies relating to the subject matter which pertain to its specialization are deemed included within its jurisdiction. Since the HLURB is vested by law with jurisdiction to regulate and supervise homeowner associations, respondent correctly lodged their complaint with the HLURB. Republic Act No. 8763 provides: Section 26. Powers over Homeowners Associations. – The powers authorities and responsibilities vested in the Corporation (formerly Home Insurance Guaranty Corporation) with respect to homeowners association under Republic Act No. 580, as amended by executive Order No. 535 is hereby transferred to the Housing and Land use Regulatory Board (HLURB). Petitioners in fact, in their reply to the complaint, acknowledged the HLURB's jurisdiction when they challenged respondent's right to exist as a corporate entity. x x x If petitioners refuse to recognize respondent's legitimacy, respondent will not be able to fulfill its obligation to collect and account for the monthly amortizations with SHFC. Individual titling would not thus be completed and the laudable objectives of the CMP would not be fully attained.

2. ID.; ID.; ID.; THE DETERMINATION OF RIGHTS AND PRIVILEGES UNDER A DISTINCTIVE SOCIAL HOUSING CONCEPT SUCH AS THE COMMUNITY

MORTGAGED PROGRAM (CMP) FALLS WITHIN THE EXPERTISE OF THE HLURB.— Undoubtedly, the case is within the competence of HLURB to decide. While the SHFC is the main government agency tasked to administer the CMP, its authority pertains only to the administrative and financing aspects of the State's social housing program schemes, *i.e.*, evaluation of the community association and originator based on the submitted documents, site inspection, releasing of funds for land acquisition, site development and housing assistance, collection of monthly amortizations from community associations and foreclosure of mortgages. While a complaint for ejectment, which raises the issue of who has a better right of possession, falls within the exclusive and original jurisdiction of first level courts, the right of possession in the present case is, however, necessarily intertwined with a determination of rights and privileges under a distinctive social housing concept such as CMP, which falls within the expertise of the HLURB. The foregoing discussions leave it unnecessary to delve on petitioners' assigned error respecting their extrajudicial and summary eviction from the lots they occupy. It is settled that eviction is a necessary consequence of petitioners' exclusion from the benefits of the CMP.

APPEARANCES OF COUNSEL

Eugenia A. Borlas for petitioners.

D E C I S I O N

CARPIO MORALES, *J.*:

The residents of a parcel of land owned by Hi-Marketing Corporation situated in Magnolia Extension Street, Barangay Sta. Monica, Novaliches, Quezon City, organized themselves into a community association, the Sta. Monica Riverside Homeowners Association (respondent), registered with the Housing and Land Use Regulatory Board (HLURB) for the purpose of acquiring land under the Community Mortgage Program (CMP) of the Social Housing Finance Corporation (SHFC).

CMP, as a mode of land acquisition was introduced by Republic Act No. 7279, "AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM AND FOR ITS IMPLEMENTATION AND OTHER PURPOSES." Section 33 of the Act specifies that "beneficiaries of the Program shall be responsible for their organization into associations to manage their subdivisions or places of residence, to secure housing loans under existing Community Mortgage Program and such other projects beneficial to them."

The mortgage financing program of the National Home Mortgage Finance Corporation (NHMFC) assists legally organized associations of underprivileged and homeless citizens to purchase and develop a tract of land under the concept of community ownership.[1]

Under the CMP, the landowner executes a contract to sell the property in favor of the community association. In turn, the community association executes an agreement with the SHFC for the collection and remittance of shares in monthly amortization from its member-borrowers, and is under obligation to keep tab of paid and unpaid amortization of its member-borrowers. In the event a member-borrower defaults, the community association has the responsibility to find a qualified substitute who shall assume the obligations of the member-borrower in default.

When respondent commenced negotiations with Hi-Marketing Corporation for purchase of the land, it invited Edna Eugenio,[2] Mary Jean Gregorio, Renato Pajarillo and Rogelio Villamor (petitioners) who are occupying a portion of the land to become

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[1] Sec. 31, R.A. 7279.

[2] Edna Eugenio passed away during the pendency of the petition for review as evidenced by Manifestation dated January 8, 2010. She is substituted by Emily Gulandrino, who presently occupies the house of Eugenio. A Waiver of Rights in favor of Gulandrino was executed by Eugenio's heir, Myrna Eugenio-General, *vide* Manifestation dated April 26, 2010, *rollo*, pp. 99-102.

its members (respondent's) but that they refused, having formed another organization which was not accredited, however, by the HLURB for lack of a Memorandum of Agreement with Hi-Marketing Corporation.

Hi-Marketing Corporation agreed to sell the land, and respondent complied with all the necessary requirements under the CMP implementing rules and regulations. The Quezon City Council in fact passed Ordinance No. SP-1303 approving respondent's subdivision plan.

Since only members of an association are allowed to avail of the benefits under the CMP, respondent invited petitioners anew to join but petitioners declined, prompting respondent to issue a formal demand for petitioners to leave their respective premises.

Petitioners ignored respondent's demand to leave, hence, respondent filed a complaint for ejectment/eviction against them before the HLURB.

Petitioners denied refusing to join the association. They questioned respondent's membership as composed of non-residents which is contrary to the CMP guidelines. They also questioned the leadership, and alleged illegal activities of respondent's president Erlinda Manalo, as well as the propriety of HLURB's cognizance of the complaint and prayed for its dismissal for lack of jurisdiction.

By Decision of July 14, 2005, Housing and Land Use Arbiter Joselito F. Melchor ordered petitioners' exclusion from the benefits of the CMP and consequently to surrender them and vacate the premises. On the issue of jurisdiction, Arbiter Melchor ruled:

> x x x The law vested HLURB the power to regulate and supervise the activities and operations of homeowners association. Beyond cavil, HLURB exercises principal jurisdiction on issues affecting the homeowners association. Consequently, complainant's [respondent] present **causes of action** against respondents are **incidental or collateral to the enforcement of interests of the members of the complainant which matters clearly fall under**

the primary jurisdiction of HLURB. In other words, HLURB's greater power of regulation and control over homeowners associations carries with it incidental powers such as the power of exclusion from benefits of CMP non members like respondents here.[3]

x x x (emphasis and underscoring supplied)

On appeal, the Board of Commissioners **affirmed** the Arbiter's Decision. Petitioners elevated the case to the Office of the President which, by Decision of July 2, 2007, **affirmed** the Decision of the Board of Commissioners in this wise:

The following factual findings of the ENCRFO which were adopted and affirmed by the HLURB should, likewise, be given respect in the absence of any clear showing that it overlooked, misunderstood and misapplied some facts or circumstances of weight and substance which would alter the result, namely:

1. The HLURB exercises principal jurisdiction on issues affecting homeowners association;
2. Such exercise of jurisdiction carries with it the incidental power of excluding non-members of the association from the benefits of the CMP;
3. In order to facilitate the CMP services on the project site, appellants may be evicted and dispossessed of their present occupancy, and the SMRHOA through its Board of Directors may evict appellants therein;
4. Questions of policy and management are left to the honest decision of the association's officers and board of directors and the courts, under the business judgment rule, is without authority to substitute its judgment of the said Board. (Citing *PSE vs. Court of Appeals*, 281 SCRA 232); and,
5. Appellants have not established any real right or interest over the property in question, thus for lack of legal personality, appellants have no right to question SMRHOA's prerogative.[4]

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[3] *Rollo*, pp. 23-24.

[4] *Id.* at 28-29.

On petitioners' petition for review, the Court of Appeals, by Decision of October 24, 2008[5] denied the petition for lack of merit as it did deny their Motion for Reconsideration by Resolution of April 28, 2009. Hence, the present petition.

In the main, petitioners assail the jurisdiction of the HLURB, inviting attention to Rule II of the Disputes triable by HIGC[6]/ Nature of Proceedings:

> Section 1. Types of Disputes. – The HIGC or any person, officer, body, board or committee duly designated or created by it shall have jurisdiction to hear and decide cases involving the following:
>
> x x x x x x x x x
>
> (9) Controversies arising out of intra-corporate relations between and among members of the association of which they are members; and between such association and the state/general public or other entity insofar as it concerns its right to exist as a corporate entity. (underscoring supplied)

Petitioners argue that the HLURB does not have jurisdiction over the case as it does not fall under the category of an intra-corporate controversy, their being non-members having been established and acknowledged by respondent. Likewise, they argue that the case cannot be deemed a controversy between the association and the general public since the main issue does not pertain to respondent's juridical personality.

Petitioners add that Batas Pambansa Blg. 129,[7] as amended, vests exclusive jurisdiction over cases of forcible entry and unlawful detainer on first level courts, such as the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts.

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[5] Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores, *id.* at 38-49.

[6] The Home Insurance Guaranty Corporation (HIGC) is the predecessor of HLURB.

[7] Otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980."

The petition is bereft of merit.

Upon conferment of quasi-judicial functions to an administrative agency, all controversies relating to the subject matter which pertain to its specialization are deemed included within its jurisdiction.[8] Since the HLURB is vested by law with jurisdiction to regulate and supervise homeowner associations, respondent correctly lodged their complaint with the HLURB. Republic Act No. 8763[9] provides:

> Section 26. Powers over Homeowners Associations. – The powers authorities and responsibilities vested in the Corporation (formerly Home Insurance Guaranty Corporation) with respect to homeowners association under Republic Act No. 580, as amended by executive Order No. 535[10] is hereby transferred to the Housing and Land use Regulatory Board (HLURB). (underscoring supplied)

Petitioners in fact, in their reply to the complaint, acknowledged the HLURB's jurisdiction when they challenged respondent's right to exist as a corporate entity, *viz*:

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[8] *Badillo v. Court of Appeals*, G.R. No. 131903, June 26, 2008, 555 SCRA 435, citing *Peña v. GSIS*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 402.

[9] Otherwise known as "AN ACT CONSOLIDATING AND AMENDING REPUBLIC ACT NOS. 580, 1557, 5488, AND 7835 AND EXECUTIVE ORDER NOS. 535 AND 90, AS THEY APPLY TO THE HOME INSURANCE AND GUARANTY CORPORATION WHICH SHALL BE RENAMED AS HOME GUARANTY CORPORATION, AND FOR OTHER PURPOSES."

[10] "2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers:

(a) x x x; and exercise all the powers, authorities and responsibilities that are vested in the Securities and Exchange Commission with respect to home owners associations, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding;

(b) To regulate and supervise the activities and operations of all houseowners associations registered in accordance therewith."

(5) That complainant's statements from number 6-12 in reference to that of the respondents are already terminated and non members and non program beneficiaries of the CMP would not hold water. At this point, respondent in this instance, would like to emphasize that they are not opposing the implementation of the Community Mortgage Program. They are only questioning the legitimacy and the illegal activities of Erlinda Manalo, highlighted hereunder, to wit:

a. Complainant have been collecting money since year 2000 from actual occupants and occupants not covered by the Community Mortgage Program. This is illegal for the simple reason that she has no juridical personality in the absence of a SEC registration. Please take note of their half hazard (sic) registration with HLURB dated only September 25, 2003 (please refer to the receipts of collection marked as Annex "B")

b. No election to legitimize her presidency.

c. Non-consultation of the majority actual occupants on which she used the names in her intent of registering with HLURB the so called Sta. Monica Riverside Homeowners Association.

d. Harassment of the child (child abuse) of one of the actual occupant who was deleted from the beneficiaries. (please refer to the medical certificate marked as Annex "C")

e. Majority of the names of officers and members as submitted to HLURB are not the actual occupants (please refer to the master list submitted to the City Government Planning Office marked as Annex "D")[11] (underscoring supplied)

If petitioners refuse to recognize respondent's legitimacy, respondent will not be able to fulfill its obligation to collect and account for the monthly amortizations with SHFC. Individual titling would not thus be completed and the laudable objectives of the CMP would not be fully attained.

Undoubtedly, the case is within the competence of HLURB to decide. While the SHFC is the main government agency tasked to administer the CMP, its authority pertains only to the administrative and financing aspects of the State's social

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[11] CA *rollo*, p. 35.

housing program schemes, *i.e.*, evaluation of the community association and originator based on the submitted documents, site inspection, releasing of funds for land acquisition, site development and housing assistance, collection of monthly amortizations from community associations and foreclosure of mortgages.

While a complaint for ejectment, which raises the issue of who has a better right of possession, falls within the exclusive and original jurisdiction of first level courts, the right of possession in the present case is, however, necessarily intertwined with a determination of rights and privileges under a distinctive social housing concept such as CMP, which falls within the expertise of the HLURB.

The foregoing discussions leave it unnecessary to delve on petitioners' assigned error respecting their extrajudicial and summary eviction from the lots they occupy. It is settled that eviction is a necessary consequence of petitioners' exclusion from the benefits of the CMP.

WHEREFORE, the petition is hereby *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188051. November 22, 2010]

ASIA UNITED BANK, *petitioner, vs.* **GOODLAND COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS; CHANGE OF ATTORNEYS; ESSENTIAL REQUISITES THAT MUST CONCUR; SINCE THE PRESCRIBED PROCEDURE PROVIDED BY THE RULES WAS NOT OBSERVED, NO VALID SUBSTITUTION OF COUNSEL WAS ACTUALIZED IN CASE AT BAR.— Under Rule 138, Section 26 of the Rules of Court, for a substitution of attorney to be effectual, the following essential requisites must concur: (1) there must be a written application for substitution; (2) it must be filed with the written consent of the client; (3) it must be with the written consent of the attorney substituted; and (4) in case the consent of the attorney to be substituted cannot be obtained, there must at least be proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court. The courts *a quo* were uniform and correct in finding that Atty. Mondragon failed to observe the prescribed procedure and, thus, no valid substitution of counsel was actualized. However, they took divergent postures as to the repercussion of such non-compliance, thereby igniting the herein controversy.

2. ID.; ID.; ID.; THE RELAXATION OR SUSPENSION OF PROCEDURAL RULES OR THE EXEMPTION OF A CASE FROM THEIR OPERATION IS WARRANTED ONLY BY COMPELLING REASONS OR WHEN THE PURPOSE OF JUSTICE REQUIRES IT.— The emerging trend of jurisprudence is more inclined to the liberal and flexible application of the Rules of Court. However, we have not been remiss in reminding the bench and the bar that zealous compliance with the rules is still the general course of action. Rules of procedure are in place to ensure the orderly, just, and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.

3. ID.; ID.; ID.; FACT THAT RESPONDENT STANDS TO LOSE A VALUABLE PROPERTY IS INADEQUATE TO DISPENSE WITH THE EXACTING IMPOSITION OF A RATHER BASIC RULE.— The primordial policy is a faithful

observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Further, a bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules. A reading of the CA's Decision readily shows that the leniency it granted GOODLAND was merely anchored on substantial justice. The CA overlooked GOODLAND's failure to advance meritorious reasons to support its plea for the relaxation of Rule 138, Section 26. The fact that GOODLAND stands to lose a valuable property is inadequate to dispense with the exacting imposition of a rather basic rule. More importantly, the CA failed to realize that the ultimate consequences that will come about should GOODLAND's appeal proceed would in fact contravene substantial justice. The CA and, eventually, this Court will just re-litigate an otherwise non-litigious matter and thereby compound the delay GOODLAND attempts to perpetrate in order to prevent AUB from rightfully taking possession of the property.

4. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; WRIT OF POSSESSION; BECOMES A MATTER OF RIGHT AFTER THE CONSOLIDATION OF TITLE IN THE BUYER'S NAME FOR FAILURE OF THE MORTGAGOR TO REDEEM THE MORTGAGED PROPERTY.— It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself. The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.

5. ID.; ID.; ID.; THE LAW DOES NOT REQUIRE THAT A PETITION FOR A WRIT OF POSSESSION BE GRANTED ONLY AFTER DOCUMENTARY AND TESTIMONIAL EVIDENCE SHALL HAVE BEEN OFFERED AND ADMITTED BY THE COURT; AS LONG AS A VERIFIED PETITION STATES THE FACTS SUFFICIENT TO ENTITLE PETITIONER TO THE RELIEF REQUESTED, THE COURT SHALL ISSUE THE WRIT PRAYED FOR.— Subsequent proceedings in the appellate courts would merely involve a reiteration of the foregoing settled doctrines. The issue involved in the assailed RTC issuances is conclusively determined by the above cited legal dictum, and it would be unnecessarily vexatious and unjust to allow the present controversy to undergo protracted litigation. AUB's right of possession is founded on its right of ownership over the property which it purchased at the auction sale. Upon expiration of the redemption period and consolidation of the title to the property, its possessory rights over the same became absolute. We quote with approval the pronouncement of the RTC, *viz.*: As the purchaser of the property in the foreclosure sale to which new title has already been issued, petitioner's right over the property has become absolute, vesting upon it the right of possession and enjoyment of the property which this Court must aid in effecting its delivery. Under the circumstances, and following established doctrine, the issuance of a writ of possession is a ministerial function whereby the court exercises neither discretion nor judgment x x x. Said writ of possession must be enforced without delay x x x. The law does not require that a petition for a writ of possession be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle petitioner to the relief requested, the court shall issue the writ prayed for.

6. ID.; ID.; ID.; TO ALLOW LIBERAL APPLICATION OF THE RULES ON SUBSTITUTION OF COUNSEL IN CASE AT BAR WILL FOSTER VEXATIOUS DELAY BY ALLOWING ITS NOTICE OF APPEAL TO CARRY ON.— We are bound to deny a liberal application of the rules on substitution of counsel and resolve definitively that GOODLAND's notice of appeal merits a denial, for the failure of Atty. Mondragon to effect a valid substitution of the counsel on record. Substantial justice would be better served if the

notice of appeal is disallowed. In the same way that the appellant in *Pioneer* was not permitted to profit from its own manipulation of the rules on substitution of counsel, so too can GOODLAND be not tolerated to foster vexatious delay by allowing its notice of appeal to carry on.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioner.
Mondragon and Montoya Law Office for respondent.

D E C I S I O N

NACHURA,[*] *J.*:

Petitioner assails the February 16, 2009 Decision[1] and the May 18, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 103304, annulling the August 23, 2007[3] and February 15, 2008[4] Orders of the Regional Trial Court (RTC) of Makati City, Branch 150, which in turn denied due course to respondent Goodland Company, Inc.'s (GOODLAND) notice of appeal for invalid substitution of counsel.

The antecedents:

An *Ex-Parte Application/Petition for the Issuance of Writ of Possession*[5] was filed by Asia United Bank (AUB) over a 5,801-square- meter lot located in Makati City and covered by Transfer Certificate of Title (TCT) No. 223120 of the Registry of Deeds of Makati in AUB's name. The property was previously registered in the name of GOODLAND under TCT No. 192674 (114645).

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[*] In lieu of Associate Justice Antonio T. Carpio.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Jose L. Sabio, Jr. and Ramon R. Garcia, concurring; *rollo*, pp. 57-66.

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

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

[4] *Id.* at 142-144.

[5] *Id.* at 145-152.

The petition alleged that, on February 20, 2000, GOODLAND executed a Third Party Real Estate Mortgage on the property in favor of AUB to secure the ₱202 million credit accommodation extended by the latter to Radiomarine Network (Smartnet) Inc. (Radiomarine).

When Radiomarine defaulted in the payment of its obligation, AUB instituted extrajudicial foreclosure proceedings against the real estate mortgage. At the public auction sale held on December 4, 2006, AUB was declared the highest bidder. On the same date, a Certificate of Sale was issued in its name and registered with the Registry of Deeds of Makati City.

With the expiration of the redemption period, AUB proceeded to execute an Affidavit of Consolidation of Ownership, through its First Vice-President, Florante del Mundo. AUB thereafter secured a Certificate Authorizing Registration from the Bureau of Internal Revenue to facilitate the transfer of the title.

On December 8, 2006, TCT No. 192674 (114645) was cancelled and, in lieu thereof, TCT No. 223120 was issued in the name of AUB.

GOODLAND, through its counsel, Atty. Antonio Bautista (Atty. Bautista), opposed the petition, denying that it executed the real estate mortgage. GOODLAND further averred that the signature of the notary public appearing on the deed was a forgery, and that no technical description of the property supposedly mortgaged was indicated therein. Concluding that AUB's title was derived from the foreclosure of a fake mortgage, GOODLAND prayed for the petition's denial.[6]

On March 1, 2007, the RTC issued the writ of possession sought by AUB. It ratiocinated that, as the purchaser of the property at the foreclosure sale and as the new title holder thereof, AUB's right of possession and enjoyment of the same had become absolute.[7]

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[6] *Id.* at 153-154.

[7] *Id.* at 157-160.

GOODLAND, through its counsel on record, Atty. Bautista, filed a motion for reconsideration[8] and a supplemental motion for reconsideration,[9] but both were denied in the Order[10] dated April 25, 2007, which was received by Atty. Bautista on June 15, 2007.[11]

Relentless, GOODLAND sought recourse with the CA by initially filing a Notice of Appeal[12] with the RTC, through a certain Atty. Lito Mondragon (Atty. Mondragon) of the Mondragon & Montoya Law Offices. On August 23, 2007, the RTC issued an Order[13] denying due course to GOODLAND's notice of appeal for being legally inutile due to Atty. Mondragon's failure to properly effect the substitution of former counsel on record, Atty. Bautista. GOODLAND moved for reconsideration, but the same was denied in the Order dated February 15, 2008.[14]

GOODLAND elevated the incident to the CA by way of a special civil acton for *certiorari*. In its February 16, 2009 Decision, the CA granted the petition and directed the RTC to give due course to the notice of appeal, thus:

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[8] *Id.* at 161-163.

[9] *Id.* at 164-180.

[10] *Id.* at 185-188.

[11] *Id.* at 58.

[12] *Id.* at 189-190.

[13] The dispositive portion of the Order reads:

In view of all the foregoing, the notice of appeal is hereby disallowed and denied due course.

SO ORDERED. (*Supra* note 3, at 141.)

[14] The dispositive portion of the Order reads:

In view of all the foregoing, Goodland's Motion for Reconsideration dated September 17, 2007 of the order dated August 23, 2007 is denied for lack of merit.

SO ORDERED. (*Supra* note 4, at 144.)

WHEREFORE, the petition is hereby GRANTED. The assailed *Orders* dated August 23, 2007 and February 15, 2008 of the Regional Trial Court, Branch 150, Makati City are ANNULLED and SET ASIDE. The trial court is DIRECTED to give due course to petitioner's Notice of Appeal.

SO ORDERED.[15]

Aggrieved, AUB moved for reconsideration, but the CA denied the motion in its Resolution dated May 18, 2009. Hence, the present petition for review on *certiorari*,[16] praying for the reinstatement of the RTC Order.

The petition is meritorious.

Under Rule 138, Section 26 of the Rules of Court, for a substitution of attorney to be effectual, the following essential requisites must concur: (1) there must be a written application for substitution; (2) it must be filed with the written consent of the client; (3) it must be with the written consent of the attorney substituted; and (4) in case the consent of the attorney to be substituted cannot be obtained, there must at least be proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court.[17]

The courts *a quo* were uniform and correct in finding that Atty. Mondragon failed to observe the prescribed procedure and, thus, no valid substitution of counsel was actualized. However, they took divergent postures as to the repercussion of such non-compliance, thereby igniting the herein controversy.

The RTC strictly imposed the rule on substitution of counsel and held that the notice of appeal filed by Atty. Mondragon was a mere scrap of paper.

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[15] *Supra* note 1, at 65.

[16] RULES OF COURT, Rule 45.

[17] *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corporation*, G.R. No. 163663, June 30, 2006, 494 SCRA 280, 305-306; *Santana-Cruz v. Court of Appeals*, G.R. No. 120176, July 20, 2001, 361 SCRA 520, 532.

However, relying on our pronouncement in *Land Bank of the Philippines v. Pamintuan Development Co.,*[18] the CA brushed aside the procedural lapse and took a liberal stance on considerations of substantial justice, *viz.:*

> It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. Thus, substantial justice would be better served by giving due course to petitioner's notice of appeal.[19]

AUB argues that the liberality applied by the Court in *Land Bank* is incompatible with the herein controversy, and that *Pioneer Insurance and Surety Corporation v. De Dios Transportation Co., Inc.,*[20] which espouses the same view adopted by the RTC, is more appropriate.

GOODLAND, on the other hand, insists that the CA committed no reversible error in ordering that the notice of appeal be allowed in order not to frustrate the ends of substantial justice.

We agree with AUB. A revisit of our pronouncements in *Land Bank* and *Pioneer* is in order.

In *Land Bank,* we held that the Department of Agrarian Reform Adjudication Board gravely abused its discretion when it denied due course to the Notice of Appeal and Notice of Entry of Appearance filed by petitioner's new counsel for failure to effect a valid substitution of the former counsel on record.

We clarified that the new counsel never intended to replace the counsel of record because, although not so specified in the notice, they entered their appearance as collaborating counsel.

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[18] 510 Phil. 839 (2005).

[19] *Supra* note 1, at 65.

[20] G.R. No. 147010, July 18, 2003, 406 SCRA 639.

Absent a formal notice of substitution, all lawyers who appear before the court or file pleadings in behalf of a client are considered counsel of the latter. We pursued a liberal application of the rule in order not to frustrate the just, speedy, and inexpensive determination of the controversy.

In *Pioneer*, we adopted a strict posture and declared the notice of withdrawal of appeal filed by appellant's new counsel as a mere scrap of paper for his failure to file beforehand a motion for the substitution of the counsel on record.

Provoking such deportment was the absence of a special power of attorney authorizing the withdrawal of the appeal in addition to the lack of a proper substitution of counsel. More importantly, we found that the withdrawal of the appeal was calculated to frustrate the satisfaction of the judgment debt rendered against appellant, thereby necessitating a rigid application of the rules in order to deter appellant from benefiting from its own deleterious manipulation thereof.

The emerging trend of jurisprudence is more inclined to the liberal and flexible application of the Rules of Court. However, we have not been remiss in reminding the bench and the bar that zealous compliance with the rules is still the general course of action. Rules of procedure are in place to ensure the orderly, just, and speedy dispensation of cases;[21] to this end, inflexibility or liberality must be weighed. The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.[22]

As early as 1998, in *Hon. Fortich v. Hon. Corona*,[23] we expounded on these guiding principles:

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[21] *Heirs of Cesar Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409.

[22] See *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.*), G.R. No. 159593, October 16, 2006, 504 SCRA 484, 496.

[23] 359 Phil. 210, 220 (1998). (Citations omitted.)

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and *administrative bodies*." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.

In *Sebastian v. Hon. Morales*,[24] we straightened out the misconception that the enforcement of procedural rules should never be permitted if it would prejudice the substantive rights of litigants:

Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

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[24] 445 Phil. 595, 605 (2003), as reiterated in *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 405.

x x x. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. x x x.

Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[25] Further, a bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules.[26]

A reading of the CA's Decision readily shows that the leniency it granted GOODLAND was merely anchored on substantial justice. The CA overlooked GOODLAND's failure to advance meritorious reasons to support its plea for the relaxation of Rule 138, Section 26. The fact that GOODLAND stands to lose a valuable property is inadequate to dispense with the exacting imposition of a rather basic rule.

More importantly, the CA failed to realize that the ultimate consequences that will come about should GOODLAND's appeal proceed would in fact contravene substantial justice. The CA and, eventually, this Court will just re-litigate an otherwise non-litigious matter and thereby compound the delay GOODLAND attempts to perpetrate in order to prevent AUB from rightfully taking possession of the property.

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right.[27] As the confirmed owner, the purchaser's right to

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[25] *Lazaro v. Court of Appeals,* 386 Phil. 412, 417 (2000).

[26] *Id.*

[27] *National Housing Authority v. Augusto Basa, Jr., Luz Basa and Eduardo S. Basa*, G.R. No. 149121, April 20, 2010, citing *Manalo v. Court of Appeals,* 419 Phil. 215, 235 (2001).

possession becomes absolute.[28] There is even no need for him to post a bond,[29] and it is the ministerial duty of the courts to issue the same upon proper application and proof of title.[30] To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.[31]

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature.[32] As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.[33]

Subsequent proceedings in the appellate courts would merely involve a reiteration of the foregoing settled doctrines. The issue involved in the assailed RTC issuances is conclusively determined by the above cited legal dictum, and it would be unnecessarily vexatious and unjust to allow the present controversy to undergo protracted litigation.

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[28] *Motos v. Real Bank (A Thrift Bank), Inc*., G.R. No. 171386, July 17, 2009, 593 SCRA 216, 226, citing *Fernandez v. Espinoza*, 551 SCRA 136, 149 (2008).

[29] *Top Art Shirt Manufacturing, Incorporated v. Metropolitan Bank and Trust Company*, G.R. No. 184005, August 4, 2009, 595 SCRA 323, 335, citing *Sps. Ong v. Court of Appeals*, 388 Phil. 857, 865-866 (2000).

[30] *Top Art Shirt Manufacturing, Incorporated v. Metropolitan Bank and Trust Company, supra*, at 336, citing *F. David Enterprises v. Insular Bank of Asia and America*, 191 SCRA 516, 523 (1990).

[31] *National Housing Authority v. Augusto Basa, Jr., Luz Basa and Eduardo S. Basa*, *supra* note 27, citing *Chailease Finance Corp. v. Spouses Ma*, 456 Phil. 498, 503 (2003); and *Manalo v. Court of Appeals*, *supra* note 27, at 235.

[32] *Idolor v. Court of Appeals*, 490 Phil. 808, 816 (2005).

[33] *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, July 23, 2009, 593 SCRA 645, 653.

AUB's right of possession is founded on its right of ownership over the property which it purchased at the auction sale. Upon expiration of the redemption period and consolidation of the title to the property, its possessory rights over the same became absolute. We quote with approval the pronouncement of the RTC, *viz.*:

> As the purchaser of the property in the foreclosure sale to which new title has already been issued, petitioner's right over the property has become absolute, vesting upon it the right of possession and enjoyment of the property which this Court must aid in effecting its delivery. Under the circumstances, and following established doctrine, the issuance of a writ of possession is a ministerial function whereby the court exercises neither discretion nor judgment x x x. Said writ of possession must be enforced without delay x x x.[34]

The law does not require that a petition for a writ of possession be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court.[35] As long as a verified petition states the facts sufficient to entitle petitioner to the relief requested, the court shall issue the writ prayed for.[36]

Given the foregoing, we are bound to deny a liberal application of the rules on substitution of counsel and resolve definitively that GOODLAND's notice of appeal merits a denial, for the failure of Atty. Mondragon to effect a valid substitution of the counsel on record. Substantial justice would be better served if the notice of appeal is disallowed. In the same way that the appellant in *Pioneer* was not permitted to profit from its own manipulation of the rules on substitution of counsel, so too can GOODLAND be not tolerated to foster vexatious delay by allowing its notice of appeal to carry on.

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[34] *Supra* note 7, at 159.

[35] *Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 120.

[36] *Spouses Santiago v. Merchants Rural Bank of Talavera, Inc.*, 493 Phil. 862, 870 (2005).

WHEREFORE, premises considered, the petition is *GRANTED*. The February 16, 2009 Decision and the May 18, 2009 Resolution of the Court of Appeals are hereby *ANNULLED* and *SET ASIDE*; and the August 23, 2007 and February 15, 2008 Orders of the Regional Trial Court of Makati City, Branch 150, are *REINSTATED*.

SO ORDERED.

Carpio Morales,[**] *Peralta, Perez,*[***] and *Mendoza, JJ., concur.*

SECOND DIVISION

[G.R. No. 188412. November 22, 2010]

CITIBANK, N.A., *petitioner, vs.* **ATTY. ERNESTO S. DINOPOL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF APPELLATE COURTS; RULE; EXCEPTIONS.— The general rule is that in petitions for review on *certiorari*, the Court will not re-examine the findings of fact of the appellate court except (a) when the latter's findings are grounded entirely on speculations, surmises or conjectures; (b) when its inference is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse of discretion; (d) when its findings of fact are conflicting; and (e) when it goes beyond the issues of the case. Citibank fails to convince the Court that the case falls under

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[**] Additional member in lieu of Associate Justice Roberto A. Abad per Raffle dated August 4, 2010.

[***] Additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated August 4, 2010.

any of the exceptions. Hence, the findings of fact should no longer be reviewed.

2. CIVIL LAW; DAMAGES; PETITIONER BANK IS LIABLE FOR MORAL, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.— The Courts agrees with the courts below in concluding that Citibank was liable to Atty. Dinopol for moral and exemplary damages and attorney's fees. A perusal of the evidentiary records shows that Citibank was at fault when it dishonored the subject check. First, Citibank claims that, as a matter of standard operating procedure, it sent to Atty. Dinopol the Citibank Ready Credit Customer Guidebook upon the approval of his Ready Credit Account application and so, he was aware of the terms and conditions stated therein. Yet, except for its bare allegation, no other substantial proof was presented by Citibank that the guidebook was indeed sent to Atty. Dinopol. In fact, its witness, Hernando, admitted that the subject handbook was not at all delivered to him.

3. ID.; ID.; RESPONDENT WAS DEFINITELY NOT YET A DELINQUENT ACCOUNT HOLDER WHEN HE ISSUED THE SUBJECT CHECK ON MARCH 16, 1997 WHICH WAS SUBSEQUENTLY DISHONORED BY PETITIONER BANK FOR INSUFFICIENCY OF FUNDS.— When Atty. Dinopol issued the subject check for the full amount of ₱30,000.00 and Citibank dishonored it because of insufficiency of funds by ₱58.33 representing the amount charged on his credit line for penalties and charges, the said amount was not yet overdue. The bank's Statement of Account dated January 26, 1997 showed that he must pay the total amount of ₱1,629.21 representing the annual membership fee of ₱1,500.00, documentary stamp tax of ₱45.00, late charges of ₱10.00 and interest/charges of ₱74.21. On February 26, 1997, he immediately paid the **full** amount of ₱1,629.21 as evidenced by his credit card payment slip. The full payment was reflected in his statement of account dated February 26, 1997. The same statement of account indicated that there were still charges amounting to ₱58.33 due for payment on **March 19, 1997**. To reiterate, the check was issued on **March 6, 1997** and dishonored on **March 12, 1997**, both dates being days before the said due date. Contrary to Citibank's insistence, Atty. Dinopol was definitely not yet a delinquent account holder. More importantly, Citibank failed to consider the fact that Atty. Dinopol

issued the check on March 6, 1997 after paying the full amount of ₱1,629.21 and clearing with the bank if he could issue a check in the amount of ₱30,000.00. Citibank did not even refute the allegation that it gave Atty. Dinopol the go-signal to issue such a check. With respect to damages, the Court is in agreement with the CA in awarding moral and exemplary damages. However, the Court cannot sanction the modification by the CA, under the circumstances attending the case. It is of the considered view that the award of the RTC would suffice subject, of course, to the payment of legal interest.

4. ID.; ID.; MORAL AND EXEMPLARY DAMAGES; WHEN AWARDED.— The award of moral damages should be granted in reasonable amounts depending on the facts and circumstances of the case. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. As to the award of exemplary damages, the law allows it by way of example for the public good. The business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service. Thus, the Court affirms the award as a way of setting an example for the public good. In addition, it also provided for attorney's fees. Both are subject to legal interest.

5. MERCANTILE LAW; BANKS; PETITIONER BANK SHOULD HAVE BEEN MORE CAUTIOUS IN DEALING WITH ITS CLIENTS SINCE ITS BUSINESS IS IMBUED WITH PUBLIC INTEREST; IT IS ALSO IRRELEVANT WHETHER THE CLIENT IS A LAWYER OR NOT; CASE AT BAR.— In any event, Citibank should have been more cautious in dealing with its clients since its business is imbued with public interest. Banks must always act in good faith and must win the confidence of clients and people in general. It is irrelevant whether the client is a lawyer or not. It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected. In its declaration

of policy, the General Banking Law of 2000 requires of banks the highest standards of integrity and performance. Needless to say, a bank is "under obligation to treat the accounts of its depositors with meticulous care." The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern.

APPEARANCES OF COUNSEL

Agcaoili & Associates for petitioner.
Romeo B. Igot Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review filed under Rule 45 of the 1997 Revised Rules of Civil Procedure questioning 1] the December 16, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 82291, which affirmed the February 20, 2004 Decision of the Regional Trial Court, Branch 226, Quezon City *(RTC)*, ordering petitioner Citibank, N. A. *(Citibank)* to pay respondent Atty. Ernesto S. Dinopol *(Atty. Dinopol)* moral damages and attorney's fees; and 2] its June 19, 2009 Resolution denying petitioner's motion for the reconsideration thereof.

Records disclose that sometime in December 1996, Atty. Dinopol availed of Citibank's "Ready Credit Checkbooks" advertised offer. After approving his application, Citibank granted Atty. Dinopol a credit line limit of ₱30,000.00. For said reason, Atty. Dinopol received from Citibank a check booklet consisting of several checks with a letter stating that the account was "ready to use." Later, Citibank billed Atty. Dinopol the sum of ₱1,545.00 representing Ready Credit Documentary Stamp and Annual Membership Fee as reflected in his Statement of Account dated December 26, 1996. Thereafter, Citibank billed him the amount

[1] *Rollo*, pp. 10-25. Penned by Associate Justice Vicente S.E.Veloso with Associate Justice Rebecca De Guia-Salvador and Associate Justice Ricardo R. Rosario, concurring.

of ₱1,629.21 for interest and charges as well as late payment charges as stated in his Statement of Account dated January 26, 1997. Atty. Dinopol paid said interests and charges on February 26, 1997.

On March 6, 1997, Atty. Dinopol issued a check using his credit checkbook account with Citibank in the amount of ₱30,000.00 in favor of one Dr. Marietta M. Geonzon *(Dr. Geonzon)* for investment purposes in her restaurant business. However, when the check was deposited on March 12, 1997, it was dishonored for the reason, "Drawn Against Insufficient Funds" or "DAIF." Humiliated by the dishonor and the demand notice he received from Dr. Geonzon, Atty. Dinopol filed a civil action for damages against Citibank before the RTC. Atty. Dinopol alleged that said bank was grossly negligent and acted in bad faith in dishonoring his check.

In defense, Citibank averred that it was completely justified in dishonoring Atty. Dinopol's check because the account did not have sufficient funds at the time it was issued. Citibank explained that when said check in the amount of ₱30,000.00 was issued, his credit line was already insufficient to accommodate it. His credit limit had been reduced by the interests and penalty charges imposed as a result of his late payment. Citibank argued that had Atty. Dinopol been prompt in the payment of his obligations, he would not have incurred interests and penalty charges and his credit line of ₱30,000.00 would have been available at the time the check was issued and presented for payment.

On February 20, 2004, the RTC rendered a decision[2] against Citibank, the dispositive portion of which reads:

> In view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant bank as follows: Defendant Citibank N.A. is hereby ordered to pay the plaintiff Atty. Ernesto S. Dinopol:

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[2] *Id.* at 317-329.

1) P100,000.00 as and for moral damages;

2) P50,000.00 as and for attorney's fees; and

3) Costs of suit.

SO ORDERED.

The RTC reasoned out, among others, that Citibank failed to completely disclose the terms and conditions of its "Citybank Ready Credit Account" when Atty. Dinopol applied for it. Only the general provisions of the agreement were explained to him. The Standard Handbook Guide which would have guided him as to fees, charges and penalties that could be billed by the bank was never given to him.

Furthermore, the RTC found that Atty. Dinopol was given a "go signal" by Citibank when he informed the latter that he was going to issue a check in the amount of ₱30,000.00. Citibank failed to advise him that he still had an outstanding balance of ₱58.33 as of February 26, 1997. Had he been informed, he could have paid such a small amount and avoided the dishonor of his check. In fact, when he issued the check on March 6, 1997, no bill had yet been sent to him for the amount of ₱58.33 because he had just paid ₱1,629.00 on February 26, 1997. The billing statement, if any, would still be due on March 15, 1997. On March 11, 1997, when the check was presented for payment, Citibank could have called his attention and he could have immediately remitted the amount of ₱58.00 within the same banking day so that the check would be honored.

Decision of the Court of Appeals

On December 16, 2008, the CA affirmed the RTC decision with modification. It increased the award of moral damages from ₱100,000.00 to ₱500,000.00 and awarded exemplary damages in the amount of ₱50,000.00.

In its decision, the CA found that Citibank, as admitted by its witness, Mark Andre P. Hernando *(Hernando)*, displayed dishonesty in claiming that Atty. Dinopol was provided with the bank's Customer Guidebook. No proof to the contrary was shown by the bank. Instead of exercising good faith by providing

a new account holder like Atty. Dinopol with the service guidebook, Citibank argued that since he was a lawyer, the latter should have already been familiar with the terms and conditions of his Ready Credit Account.

Moreover, the CA noted that before Atty. Dinopol issued the subject check, he first consulted the bank if he could issue one. It was only after being given the affirmative response that he issued said check which gave rise to this controversy. The bank should have given the necessary advice to Atty. Dinopol and thereby avoid the dishonor of the check for a measly amount of ₱58.33.

Finally, the CA ruled that Atty. Dinopol was not yet delinquent when he issued the check so as to justify the ₱58.33 deduction from his ₱30,000.00 credit line. Based on the documentary evidence, the due date for the February 26, 1997 Statement of Account was March 19, 1997. So, when Atty. Dinopol issued the check on March 6, 1997, the period within which to settle his account was still running, thus, rendering the ₱58.33 deduction unjustified.

In modifying the decision, the CA increased the amount of moral damages from ₱100,000.00 to ₱500,000.00 for the following reasons: 1] Atty. Dinopol's stature — he was a lawyer of good standing, yet he was abused by Citibank; 2] the dishonesty displayed by Citibank in claiming that Atty. Dinopol was given a service guidebook despite lack of proof thereon; 3] the bad faith displayed by Citibank in using a measly amount of ₱58.33 as basis to justify its dishonor (due to DAIF) of ₱30,000.00 worth of check issued by Atty. Dinopol; and 4] the fact that Citibank besmirched Atty. Dinopol's reputation and has considerably caused him undue humiliation.

Hence, this petition.

ISSUE

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN RULING THAT PETITIONER CITIBANK, N.A. IS LIABLE TO RESPONDENT ATTY. ERNESTO S. DINOPOL FOR DAMAGES.

Position of the Petitioner

Citibank argues that the dishonor of Atty. Dinopol's check was valid as it was done in the exercise of its rights and prerogative under the terms and conditions of his Ready Credit Facility. It insists that it sent a copy of the guidebook to Atty. Dinopol after his application for the credit facility was approved.

It also points out that upon the approval of Atty. Dinopol's Ready Credit Facility, the latter was initially billed with the amounts of ₱1,500.00 for the annual fee and ₱45.00 for the documentary stamp tax. The total amount of ₱1,545.00 was indicated in his Statement of Account dated December 26, 1996, bearing the due date on or before January 16, 1997. Atty. Dinopol, however, failed to pay it on or before said date. Thus, interest and late payment charges accrued on his unpaid account as provided for in the provisions of the guidebook.

Further, Citibank claims that a second statement of account dated January 26, 1997 was sent to Atty. Dinopol which showed that the aggregate amount of ₱1,629.21 was due and payable immediately. This amount represents the unpaid sum of ₱1,545.00 for the annual fee and documentary stamp tax, ₱10.00 as penalty charge for the late payment and ₱74.21 as accrued interest. Atty. Dinopol paid the amount of ₱1,629.21 only on February 26, 1997. Thereafter, Citibank sent him another statement of account acknowledging receipt of his payment and, at the same time, charging him the additional amount of ₱58.33 for penalties and other charges. Since the unpaid amount of ₱58.33 was automatically billed as an availment against his Ready Credit Facility, his available credit limit at the time of the issuance of the subject check on March 6, 1997 was already reduced by ₱58.33. As a result, when the subject check was negotiated, it had to be returned due to "DAIF."

Accordingly, Citibank asserts that the dishonor of the subject check was due to Atty. Dinopol's failure to timely settle his outstanding obligations despite receipt of his statements of account. It cannot, therefore, be faulted because it was just exercising its legal right under the terms and conditions of the Ready Credit Facility. It did not act fradulently or in bad faith.

No proof was shown that the dishonor of the subject check was carried out in an arbitrary, capricious, and malicious manner.

Finally, Citibank advances that Atty. Dinopol, as a practising lawyer, is presumed to have carefully considered, known, and understood the provisions and legal effects of the contracts he entered into.

Position of the Respondent

In answer to Citibank's assertions, Atty. Dinopol counters that the bank failed to prove that a copy of the guidebook was sent to him. In fact, Citibank's own witness, Hernando, categorically admitted that the bank did not send him the said guidebook. According to Atty. Dinopol, Citibank should have acted in good faith and in a manner deserving of the trust of its customers.

He also contends that the dishonor of the check due to the non-payment of the penalty charges and interests of ₱58.33 was uncalled for. The payment of said amount was not yet due on March 6, 1997 when the check was issued and even on March 12, 1997 when it was dishonored. The statement of account would show that the sum of ₱58.33 was due only on March 19, 1997. This only shows that his account was not yet delinquent, both at the time when said check was issued and when it was eventually presented for payment, thereby making the act of the bank of dishonoring the check wanting of any legal basis.

Lastly, Atty. Dinopol charges Citibank for having acted in bad faith when it dishonored the subject check for a meager amount of ₱58.33 and for imposing highly questionable charges against his credit facility account. He believes that the bank, wilfully or negligently, wronged him and damaged his reputation. Hence, it is liable to pay him damages.

The Court's Ruling

The general rule is that in petitions for review on *certiorari*, the Court will not re-examine the findings of fact of the appellate

court except (a) when the latter's findings are grounded entirely on speculations, surmises or conjectures; (b) when its inference is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse of discretion; (d) when its findings of fact are conflicting; and (e) when it goes beyond the issues of the case.[3] Citibank fails to convince the Court that the case falls under any of the exceptions. Hence, the findings of fact should no longer be reviewed.

At any rate, the Courts agrees with the courts below in concluding that Citibank was liable to Atty. Dinopol for moral and exemplary damages and attorney's fees.

A perusal of the evidentiary records shows that Citibank was at fault when it dishonored the subject check. First, Citibank claims that, as a matter of standard operating procedure, it sent to Atty. Dinopol the Citibank Ready Credit Customer Guidebook upon the approval of his Ready Credit Account application and so, he was aware of the terms and conditions stated therein. Yet, except for its bare allegation, no other substantial proof was presented by Citibank that the guidebook was indeed sent to Atty. Dinopol. In fact, its witness, Hernando, admitted that the subject handbook was not at all delivered to him.

Second, when Atty. Dinopol issued the subject check for the full amount of ₱30,000.00 and Citibank dishonored it because of insufficiency of funds by ₱58.33 representing the amount charged on his credit line for penalties and charges, the said amount was not yet overdue. The bank's Statement of Account dated January 26, 1997[4] showed that he must pay the total amount of ₱1,629.21 representing the annual membership fee of ₱1,500.00, documentary stamp tax of ₱45.00, late charges of ₱10.00 and interest/charges of ₱74.21. On February 26, 1997, he immediately paid the **full** amount of ₱1,629.21 as evidenced by his credit card payment slip.[5] The full payment was reflected

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[3] *J. Hidalgo Uy v. Spouses Medina*, G.R. No. 172541, August 8, 2010.

[4] *Rollo*, p. 257.

[5] *Id.* at 258.

in his statement of account[6] dated February 26, 1997. The same statement of account[7] indicated that there were still charges amounting to ₱58.33 due for payment on **March 19, 1997**. To reiterate, the check was issued on **March 6, 1997**[8] and dishonored on **March 12, 1997**,[9] both dates being days before the said due date. Contrary to Citibank's insistence, Atty. Dinopol was definitely not yet a delinquent account holder. More importantly, Citibank failed to consider the fact that Atty. Dinopol issued the check on March 6, 1997 after paying the full amount of ₱1,629.21 and clearing with the bank if he could issue a check in the amount of ₱30,000.00. Citibank did not even refute the allegation that it gave Atty. Dinopol the go-signal to issue such a check.

With respect to damages, the Court is in agreement with the CA in awarding moral and exemplary damages. However, the Court cannot sanction the modification by the CA, under the circumstances attending the case. It is of the considered view that the award of the RTC would suffice subject, of course, to the payment of legal interest.

The award of moral damages should be granted in reasonable amounts depending on the facts and circumstances of the case.[10] Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[11]

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[6] *Id*. at. 284.

[7] *Id*.

[8] *Id*. at 259.

[9] *Id*. at 260.

[10] *Manila Electric Company v. Spouses Edito and Felicidad Chua and Josefina Paqueo*, G.R. No. 160422, July 5, 2010.

[11] *Cagungun v. Planters Development Bank*, 510 Phil. 51, 62-63 (2005), citing *Samson, Jr. v. Bank of the Philippine Islands*, 453 Phil. 577, 583 (2003).

As to the award of exemplary damages, the law allows it by way of example for the public good. The business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service.[12] Thus, the Court affirms the award as a way of setting an example for the public good. In addition, it also provided for attorney's fees. Both are subject to legal interest.

In any event, Citibank should have been more cautious in dealing with its clients since its business is imbued with public interest. Banks must always act in good faith and must win the confidence of clients and people in general. It is irrelevant whether the client is a lawyer or not.

> It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected.
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> In its declaration of policy, the General Banking Law of 2000 requires of banks the highest standards of integrity and performance. Needless to say, a bank is "under obligation to treat the accounts of its depositors with meticulous care." The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern.[13]

WHEREFORE, the December 16, 2008 Decision of the Court of Appeals is *MODIFIED* to read as follows:

In view of the foregoing, judgment is hereby rendered ordering defendant Citibank N.A. to pay plaintiff Atty. Ernesto S. Dinopol the following:

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[12] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan*, G.R. No. 167346, April 2, 2007, 520 SCRA 123, 129.

[13] *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330-331.

1] ₱100,000.00 as and for moral damages;

2] ₱50,000.00 as and for exemplary damages;

3] ₱50,000.00 as and for attorney's fees; and

4] Costs of suit,

plus interest at the legal rate reckoned from the filing of the complaint.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190545. November 22, 2010]

JERRY M. FRANCISCO, *petitioner, vs.* **BAHIA SHIPPING SERVICES, INC. and/or CYNTHIA C. MENDOZA, and FRED OLSEN CRUISE LINES, LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AUTHORITY (POEA) STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; WORK-RELATED ILLNESS; MUST NOT BE PRE-EXISTING AT THE TIME OF COMMENCEMENT OF CONTRACT IN ORDER TO BE COMPENSABLE.— Petitioner's illness was already existing when he commenced his fourth contract of employment with respondents, hence, not compensable. Given that the employment of a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires, petitioner's illness during his previous contract with respondents is deemed pre-existing during his subsequent contract. That petitioner was

subsequently rehired by respondents despite knowledge of his seizure attacks does not make the latter a guarantor of his health. A seafarer only needs to pass the mandatory PEME in order to be deployed on duty at sea. Notably, petitioner was consistently declared "fit to work" at sea after every PEME. However, while PEME may reveal enough for respondents to decide whether a seafarer is fit for overseas employment, it may not be relied upon as reflective of petitioner's true state of health. The PEME could not have revealed petitioner's illness as the examinations were not exploratory.

2. ID.; ID.; ID.; IT MUST BE EXACTLY AND DEFINITELY ESTABLISHED THAT THE ILLNESS DID NOT ONLY OCCUR DURING THE TERM OF THE CONTRACT BUT ALSO RESULTED FROM A WORK-RELATED INJURY OR ILLNESS, OR AT THE VERY LEAST AGGRAVATED BY THE WORKING CONDITIONS OF THE WORK FOR WHICH THE SEAFARER WAS CONTRACTED FOR.— But even granting *arguendo* that petitioner's illness was not pre-existing, he still had to show that his illness not only occurred **during the term of his contract** but also that it resulted from a **work-related** injury or illness, or at the very least aggravated by the conditions of the work for which he was contracted for. Petitioner failed to discharge this burden, however. That the exact and definite cause of petitioner's illness is unknown cannot be used to justify grant of disability benefits, absent proof that there is any reasonable connection between work actually performed by petitioner and his illness.

3. ID.; ID.; ID.; PROCEDURE PROVIDED IN SECTION 20 (B) OF THE POEA STANDARD CONTRACT WAS NOT AVAILED OF BY PETITIONER TO ESTABLISH HIS CLAIMS; PRINCIPLE OF LIBERALITY CANNOT BE ALLOWED IN CLAIMS FOR COMPENSATION WHEN THE EVIDENCE PRESENTED NEGATES COMPENSABILITY.— It bears noting that the company-designated physician of respondent who monitored petitioner's condition and treatment for several months categorically stated that petitioner's illness is not work-related was controverted by petitioner's own physician, however. Section 20 (B) of the POEA Standard Contract provides that *[I]f a doctor appointed by the seafarer* ***disagrees with the assessment,*** *a third doctor may be agreed jointly between the employer and the seafarer. The third*

doctor's decision shall be final and binding on both parties. This procedure however was not availed of by the parties. While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA Standard Contract, it cannot allow claims for compensation based on surmises. When the evidence presented then negates compensability, the claim must fail, lest it causes injustice to the employer.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Esguerra & Blanco for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Jerry M. Francisco (petitioner) entered into a shipboard employment contract on April 5, 2004 with respondent Bahia Shipping Services, Inc. (Bahia Shipping) to work for its co-respondent foreign principal Fred Olsen Cruise Lines Ltd. as ordinary seaman on board the ocean-going vessel *M/S Black Prince* for a period of nine (9) months, with a monthly guaranteed pay of US$467.00, inclusive of basic salary, fixed overtime and leave pay.[1] This was the fourth contract of petitioner with respondents since May 2002.[2]

On April 20, 2004, petitioner went through the mandatory Pre-Employment Medical Examination (PEME) with Maritime Clinic for International Services, Inc., (the Clinic) which noted that he was repatriated in January 2004 while serving under a previous contract with respondents due to a *Generalized Tonic-Clonic Type Seizure Disorder* which was possibly alcohol-induced;[3] that during the repatriation, petitioner was treated from January 9, 2004 up to January 30, 2004 by the company-

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[1] National Labor Relations Commission (NLRC) records, p. 3.

[2] *Id.* at 171.

[3] *Id.* at 173.

designated physician Dr. Robert Lim (Dr. Lim) who assessed him "to consider seizure disorder."[4] The Clinic nevertheless found him fit to work, hence, he, on April 24, 2004, boarded the vessel for the fourth time.

Petitioner boarded the vessel on April 24, 2004 but was repatriated on June 3, 2004, after his *tonic-clonic seizures* recurred, having suffered four to five fits of seizures nighttime of May 26, 2004, and the ship doctor having found that petitioner was not fit to continue employment at sea.[5]

Following his repatriation, he was attended by Dr. Lim who advised him to undergo 21 Channel EEG and cranial CT scan, and referred him to a neurologist.[6]

Dr. Lim found the *Seizure Disorder, Generalized Tonic-Clonic Type*[7] with which petitioner was affected was not work-related.[8]

Petitioner continued to avail of his follow-up check-ups and re-evaluations with the company-designated physicians from June to September 2004.[9] After the lapse of the 120-day period following petitioner's repatriation, respondents informed him that further medical expenses would be on his own account.

On October 14, 2004, respondents paid petitioner his full sickness benefit amounting to ₱104,234.40.[10]

On April 21, 2005, petitioner consulted a private, independent physician, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued a Medical Certificate declaring him to be suffering from a seizure disorder with an Impediment Grade X (20.15%).[11] Dr. Vicaldo

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[4] *Id.* at 180.

[5] *Id.* at 177.

[6] *Id.* at 179-180.

[7] *Id.* at 179-181.

[8] *Id.* at 181.

[9] *Id.* at 182-185.

[10] *Id.* at 186.

[11] *Id.* at 66.

deemed petitioner's illness as work-aggravated, found him unfit to resume work as seaman in any capacity and was not expected to land a gainful employment.[12]

Petitioner thus filed on May 9, 2005 a Complaint with the National Labor Relations Commission (NLRC) for payment of disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against respondents.[13]

Respondents disclaimed that petitioner's illness is compensable, the same not being an occupational disease and was pre-existing.[14]

By Decision of December 19, 2005,[15] the Labor Arbiter ruled in favor of petitioner, holding that he got ill during the effectivity of his employment contract, hence, entitled to disability benefits. Had the illness been pre-existing, the Labor Arbiter held that it could have been discovered during the PEME.

By Decision of March 31, 2008,[16] the NLRC **overturned** the Labor Arbiter's Decision holding that the illness of petitioner was pre-existing in nature because it was the same illness for which he was medically repatriated under a previous contract with respondents;[17] that petitioner was fit to work at the time of his engagement could not be the basis to grant compensation as the results of PEME is not a measure of the seafarer's true state of health;[18] and it was error for the Labor Arbiter to award sickness wages, as it was manifest from the records that petitioner was duly paid therefor on October 14, 2004.[19]

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[12] *Id.* at 67.

[13] *Id.* at 51.

[14] *Id.* at 76.

[15] *Rollo,* pp. 94-102.

[16] *Id.* at 140-148.

[17] *Id.* at 144.

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

[19] *Id.* at 147.

The Court of Appeals upheld the decision of the NLRC, by Decision[20] of August 13, 2009, holding that under the 2000 Philippine Overseas Employment Authority (POEA) Standard Employment Contract, for disability to be compensable, it must be the result of work-related injury or illness, unlike in the 1996 POEA Standard Employment Contract in which it was sufficient that the seafarer suffered injury or illness during his term of employment;[21] that the 2000 POEA Standard Employment Contract defines a work-related illness as any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of the Contract with the conditions set therein satisfied; and that while any illness not listed in Section 32 is disputably presumed to be work-related, such disputable presumption was sufficiently rebutted when the company-designated doctors categorically stated that petitioner's seizure disorder was not work-related.

The appellate court noted that no substantial evidence was presented by petitioner to show that there is a reasonable connection between the nature of his employment or working conditions and his illness;[22] and that the findings of the company-designated physicians deserve greater weight *viz-a-viz* the conclusion of petitioner's private doctor which was arrived at after only one consultation.[23]

His motion for reconsideration of the appellate court's decision having been denied,[24] petitioner lodged the present petition for review on *certiorari*, arguing in the main that his illness is presumed to be work-related.

The petition fails.

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[20] *Id.* at 180-193.

[21] *Id.* at 189.

[22] *Id.* at 190.

[23] *Id.* at 191.

[24] *Id.* at 210-211.

Petitioner's illness was already existing when he commenced his fourth contract of employment with respondents, hence, not compensable.[25] Given that the employment of a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires,[26] petitioner's illness during his previous contract with respondents is deemed pre-existing during his subsequent contract.

That petitioner was subsequently rehired by respondents despite knowledge of his seizure attacks does not make the latter a guarantor of his health. A seafarer only needs to pass the mandatory PEME in order to be deployed on duty at sea. Notably, petitioner was consistently declared "fit to work" at sea after every PEME. However, while PEME may reveal enough for respondents to decide whether a seafarer is fit for overseas employment, it may not be relied upon as reflective of petitioner's true state of health. The PEME could not have revealed petitioner's illness as the examinations were not exploratory.[27]

But even granting *arguendo* that petitioner's illness was not pre-existing, he still had to show that his illness not only occurred **during the term of his contract** but also that it resulted from a **work-related** injury or illness, or at the very least aggravated by the conditions of the work for which he was contracted for.[28] Petitioner failed to discharge this burden, however.[29]

That the exact and definite cause of petitioner's illness is unknown cannot be used to justify grant of disability benefits,

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[25] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104. September 27, 2006, 503 SCRA 595.

[26] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002, 385 SCRA 306.

[27] *Supra* note 25 at 60.

[28] *Masangcay v. Trans-Global Maritime Agency, Inc.*, G.R. No. 172800, October 17, 2008, 569 SCRA 592, 593.

[29] *See Estate of Poseido Ortega vs. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649.

absent proof that there is any reasonable connection between work actually performed by petitioner and his illness.

It bears noting that the company-designated physician of respondent who monitored petitioner's condition and treatment for several months categorically stated that petitioner's illness is not work-related was controverted by petitioner's own physician, however. Section 20 (B) of the POEA Standard Contract provides that *[I]f a doctor appointed by the seafarer* ***disagrees with the assessment,*** *a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.* This procedure however was not availed of by the parties.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA Standard Contract, it cannot allow claims for compensation based on surmises. When the evidence presented then negates compensability, the claim must fail, lest it causes injustice to the employer.[30]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 191545. November 22, 2010]

HEIRS OF AUGUSTO SALAS, JR., represented by TERESITA D. SALAS, *petitioners, vs.* **MARCIANO CABUNGCAL, *ET AL.*,** *respondents.*

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[30] *Ibid.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PETITIONERS HAVE SHOWN *PRIMA FACIE* RIGHT TO THE EXEMPTION THEY CLAIM; THE COURT DEEMED IT MORE PRUDENT TO GRANT THE REQUESTED TEMPORARY RESTRAINING ORDER (TRO).— Petitioners have shown a *prima facie* right to the exemption that they claim. Former DAR Secretary Pagdanganan granted petitioners' application for exemption upon finding that the subject lots had already been converted to non-agricultural even prior to the effectivity of Republic Act No. 6657, due to the property's reclassification into farmlot subdivision through the Land Use and Zoning Ordinance of Lipa City. This ordinance was approved by the HLURB in Resolution No. 35, s. 1981, with a certification issued by HLURB Secretariat OIC Carolina Casaje that the Town Plan/Zoning Ordinance of Lipa City was approved by the National Coordinating Council for Town Planning, Housing and Zoning. Furthermore, the HLURB's Rules and Regulations Implementing Farmlot Subdivision Plan categorizes a farmlot subdivision as different from agricultural land as "it is without the intended qualities of an agricultural land and is never intended to be exclusively used for cultivation, livestock production and agro-forestry." Finally, the HLURB development permit and license to sell were "indications of the locational viability and the non-exclusivity for agricultural purposes of the subject lots." All these arguments were in fact adopted by the Office of the President on appeal. We therefore deem it proper to grant temporary protection to petitioners' *prima facie* right.

2. ID.; ID.; ID.; ID.; ID.; PETITIONERS SHALL POST A BOND TO ANSWER FOR DAMAGES WHICH MAY BE SUSTAINED BY RESPONDENTS AS RESULT THEREOF; CASE AT BAR.— The consummation of acts leading to the disposition of the litigated property can make it difficult to implement this Court's decision upon resolution of the case and can only prolong this protracted battle even more. On the other hand, respondents would not be unduly deprived of their livelihood as they can continue tilling the land pending the final disposition of this case. The Court therefore finds that it is to the public interest to maintain the conditions prevailing

before the filing of this case. Posting of a bond by petitioners shall answer for any damages which may be sustained by respondents as a consequence of the issuance of a TRO if the Court finally decides that petitioners are not entitled to it.

APPEARANCES OF COUNSEL

Lazaro Law Firm for petitioners.
Erwin G. Ruiz for respondents.

R E S O L U T I O N

CORONA, *C.J.*:

Augusto Salas, Jr. is the registered owner of a parcel of agricultural land consisting of 148.4354 hectares covered by Transfer Certificate of Title (TCT) No. T-2807.[1] The properties are located in Barangays Pusil, Inosluban, Marawoy and Balintawak, Lipa City, Batangas.

In May 1987, Salas entered into an Owner-Contractor Agreement with Laperal Realty Corporation for the development, subdivision and sale of the property.[2] On November 17, 1987, the Housing and Land Use Regulatory Board (HLURB) issued Development Permit No. 7-0370 allowing Salas and Laperal Realty to develop the property and subdivide it into a farmlot subdivision consisting of 80 saleable lots.[3] The property was further subdivided into smaller lots for which new TCTs were issued in the name of Salas.[4]

Despite the HLURB's issuance of the aforesaid development permit and, eventually, a license to sell covering Salas's property, portions of the same were still included in the Comprehensive

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[1] Court of Appeals decision in CA-G.R. SP No. 103703 dated October 26, 2009. *Rollo,* p. 37.

[2] CA decision. *Rollo,* p. 38.

[3] *Id.*

[4] CA decision. *Rollo,* p. 38.

Agrarian Reform Program (CARP) by the Department of Agrarian Reform (DAR).[5] Petitioners protested and have continued to untiringly protest the said inclusion and filed applications for exemption with the DAR and its various agencies, to no avail. Petitioners' latest effort consisted of another application for exemption filed with DAR-Center for Land Use, Policy Planning and Implementation (DAR-CLUPPI) on April 27, 2001.[6] The application covered a total area of 82.8494 hectares consisting of the following parcels of land:[7]

TCT No.	Area (in hectares)	Lot Survey No.
67660	23.4967	A
67661	0.9366	B (Psd-04-0262541)
67662	31.7028	B (Psd-04-0262541)
67664	9.0587	B (Psd-04-0262541)
67665	0.2925	C (Psd-04-0262542)
68223	1.2159	J-7
68224	1.0757	J-8
68225	1.2158	J-9
68226	1.3356	J-10
68227	1.00	J-11
68228	1.00	J-12
68229	1.4802	J-13
68230	2.0443	J-14

[5] Claim of the estate in its application for exemption as cited in the CA decision. *Rollo*, p. 41.

[6] CA decision. *Rollo*, p. 41. DOJ Opinion No. 44 s. 1990 by then Justice Secretary Franklin Drilon opined that the authority of the DAR to approve conversions of agricultural lands to non-agricultural uses could be exercised only from the date of the effectivity of RA No. 6657.

[7] CA decision. *Rollo*, pp. 43-44.

68231	1.8060	J-15
68232	2.1663	J-16
68233	1.5454	J-17
68234	1.4769	J-18
Total Land Area	82.8494 hectares	

This latest application for exemption gave rise to the instant petition.

Petitioner's application for exemption has been ruled upon at least four times before the instant petition in this Court. On January 7, 2004, then DAR Secretary Roberto Pagdanganan granted the application for exemption of the 17 lots (Pagdanganan order). On reconsideration, however, DAR Secretary Nasser Pangandaman, who had by then replaced Pagdanganan, ruled in favor of respondents and set aside the Pagdanganan order (Pangandaman order).[8] This order prompted petitioners to appeal to the Office of the President which set aside the Pangandaman order and reinstated the Pagdanganan order. However, this decision was reversed by the Court of Appeals on October 26, 2009.

In a resolution dated, September 15, 2010, this Court gave due course to this petition and dispensed with the filing of memoranda. The case has been calendared for deliberation.

On November 9, 2010, petitioners filed a motion for issuance of temporary restraining order (TRO) claiming that "the majority, if not all of the respondents, have clandestinely entered or are about to enter into transactions for the conveyance of the 17 parcels of land" subject of this petition.[9] Petitioners also claim that respondents have already received sizeable amounts of money as part of the consideration for the said conveyance.[10] The

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[8] Order dated September 19, 2006.

[9] *Rollo*, p. 178.

[10] *Id.*

affidavit of one Gloria Linang Mantuano, who claims to be a tenant on petitioners' land, dated August 18, 2010 was submitted as proof of petitioners' allegations.

Petitioners contend that the consummation of transactions conveying the contested property will affect their right to defend their title to the property thereby causing grave and irreparable injury to them. While this Court does not agree with that claim, we still deem it to be more prudent to grant the requested TRO.

Petitioners have shown a *prima facie* right to the exemption that they claim. Former DAR Secretary Pagdanganan granted petitioners' application for exemption upon finding that the subject lots had already been converted to non-agricultural even prior to the effectivity of Republic Act No. 6657,[11] due to the property's reclassification into farmlot subdivision through the Land Use and Zoning Ordinance of Lipa City.[12] This ordinance was approved by the HLURB in Resolution No. 35, s. 1981,[13] with a certification issued by HLURB Secretariat OIC Carolina Casaje that the Town Plan/Zoning Ordinance of Lipa City was approved by the National Coordinating Council for Town Planning, Housing and Zoning.[14]

Furthermore, the HLURB's Rules and Regulations Implementing Farmlot Subdivision Plan[15] categorizes a farmlot subdivision as different from agricultural land as "it is without the intended qualities of an agricultural land and is never intended to be exclusively used for cultivation, livestock production and agro-forestry."[16]

Finally, the HLURB development permit and license to sell were "indications of the locational viability and the non-exclusivity

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[11] The Comprehensive Agrarian Reform Law.

[12] CA decision. *Rollo*, p. 44.

[13] *Id*, pp. 44 and 48.

[14] *Supra* note 12.

[15] Promulgated on December 28, 1981 as cited by the CA decision. *Id.*

[16] CA decision. *Rollo*, pp. 44-45.

for agricultural purposes of the subject lots."[17] All these arguments were in fact adopted by the Office of the President on appeal.

We therefore deem it proper to grant temporary protection to petitioners' *prima facie* right.

The consummation of acts leading to the disposition of the litigated property can make it difficult to implement this Court's decision upon resolution of the case and can only prolong this protracted battle even more. On the other hand, respondents would not be unduly deprived of their livelihood as they can continue tilling the land pending the final disposition of this case. The Court therefore finds that it is to the public interest to maintain the conditions prevailing before the filing of this case. Posting of a bond by petitioners shall answer for any damages which may be sustained by respondents as a consequence of the issuance of a TRO if the Court finally decides that petitioners are not entitled to it.

WHEREFORE, the motion for issuance of a temporary restraining order is *GRANTED* upon posting by the petitioners of a bond in the amount of ₱2 Million. Respondents are *ENJOINED* from entering into transactions resulting in the conveyance of any part of the properties subject of this case.

The parties in this case are *DIRECTED* to maintain the *status quo* and to refrain from all actions which may affect the ownership or present possession of the contested properties until further orders of this Court.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta,[*] and *Perez, JJ.,* concur.

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[17] CA decision. *Rollo,* p. 44.

[*] Per Special Order No. 913 dated November 2, 2010.

EN BANC

[A.C. No. 5859. November 23, 2010]
(Formerly CBD Case No. 421)

ATTY. CARMEN LEONOR M. ALCANTARA, VICENTE P. MERCADO, SEVERINO P. MERCADO and SPOUSES JESUS AND ROSARIO MERCADO, *complainants, vs.* **ATTY. EDUARDO C. DE VERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MEMBERSHIP IN THE BAR IS A PRIVILEGE BURDENED WITH CONDITIONS; AN ATTORNEY MAY BE DISBARRED OR SUSPENDED FOR ANY VIOLATION OF HIS OATH OR OF HIS DUTIES AS AN ATTORNEY AND COUNSELOR, WHICH INCLUDE STATUTORY GROUNDS ENUMERATED IN SECTION 27, RULE 138 OF THE RULES OF COURT.— It is worth stressing that the practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of an attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish the attorney. In *Maligsa v. Cabanting*, we explained that the bar should maintain a high standard of legal proficiency as well as of

honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal profession should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court.

2. ID.; ID.; RESPONDENT LAWYER COMMITTED PROFESSIONAL MALPRACTICE AND GROSS MISCONDUCT.— In the present case, the respondent committed professional malpractice and gross misconduct particularly in his acts against his former clients after the issuance of the IBP Resolution suspending him from the practice of law for one year. In summary, the respondent filed against his former client, her family members, the family corporation of his former client, the Chairman and members of the Board of Governors of the IBP who issued the said Resolution, the Regional Trial Court Judge in the case where his former client received a favorable judgment, and the present counsel of his former client, a total of twelve (12) different cases in various fora which included the Securities and Exchange Commission; the Provincial Prosecutors Office of Tagum, Davao; the Davao City Prosecutors Office; the IBP-Commission on Bar Discipline; the Department of Agrarian Reform; and the Supreme Court. In addition to the twelve (12) cases filed, the respondent also re-filed cases which had previously been dismissed. The respondent filed six criminal cases against members of the Mercado family separately docketed as I.S. Nos. 97-135; 97-136; 97-137; 97-138; 97-139; and 97-140. With the exception of I.S. No. 97-139, all the aforementioned cases are re-filing of previously dismissed cases.

3. ID.; ID.; RESPONDENT'S ACT OF FILING A BARRAGE OF CASES APPEARS TO BE AN ACT OF REVENGE AND HATE DRIVEN BY ANGER AND FRUSTRATION AGAINST HIS FORMER CLIENT WHO FILED THE DISCIPLINARY COMPLAINT AGAINST HIM FOR INFIDELITY IN THE CUSTODY OF A CLIENT'S FUNDS WHERE HE WAS METED A PENALTY OF ONE YEAR SUSPENSION FROM THE PRACTICE OF LAW.— Now,

there is nothing ethically remiss in a lawyer who files numerous cases in different fora, as long as he does so in good faith, in accordance with the Rules, and without any ill-motive or purpose other than to achieve justice and fairness. In the present case, however, we find that the barrage of cases filed by the respondent against his former client and others close to her was meant to overwhelm said client and to show her that the respondent does not fold easily after he was meted a penalty of one year suspension from the practice of law. The nature of the cases filed by the respondent, the fact of re-filing them after being dismissed, the timing of the filing of cases, the fact that the respondent was in conspiracy with a renegade member of the complainants' family, the defendants named in the cases and the foul language used in the pleadings and motions all indicate that the respondent was acting beyond the desire for justice and fairness. His act of filing a barrage of cases appears to be an act of revenge and hate driven by anger and frustration against his former client who filed the disciplinary complaint against him for infidelity in the custody of a client's funds.

4. ID.; ID.; RESPONDENT NOT ONLY FILED FRIVOLOUS AND UNFOUNDED LAWSUITS THAT VIOLATED HIS DUTIES AS AN OFFICER OF THE COURT IN AIDING IN THE PROPER ADMINISTRATION OF JUSTICE, BUT HE DID SO AGAINST A FORMER CLIENT TO WHOM HE OWES LOYALTY AND FIDELITY; SUCH ACT IS AN INDIRECT VIOLATION OF THE CANONS AND WILL NOT BE TOLERATED BY THE COURT.— The respondent not only filed frivolous and unfounded lawsuits that violated his duties as an officer of the court in aiding in the proper administration of justice, but he did so against a former client to whom he owes loyalty and fidelity. Canon 21 and Rule 21.02 of the Code of Professional Responsibility provides: CANON 21 — A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated. Rule 21.02 – A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto. The cases filed by the respondent against his former client involved matters and information acquired by the respondent during the time when he was still Rosario's counsel. Information as to the

> structure and operations of the family corporation, private documents, and other pertinent facts and figures used as basis or in support of the cases filed by the respondent in pursuit of his malicious motives were all acquired through the attorney-client relationship with herein complainants. Such act is in direct violation of the Canons and will not be tolerated by the Court.

APPEARANCES OF COUNSEL

Alcantara & Alcantara Law Office and *Ricafrente San Vicente & Cacho Law Firm* for complainants.

Romulo Mabanta Buenaventura Sayoc & De los Angeles for respondent.

R E S O L U T I O N

PER CURIAM:

For our review is the Resolution[1] of the Board of Governors of the Integrated Bar of the Philippines (IBP) finding respondent Atty. Eduardo C. De Vera liable for professional malpractice and gross misconduct and recommending his disbarment.

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[1] *Rollo*, p. 254. In its Resolution No. XV-2002-391, the IBP Board of Governors resolved as follows:

> … to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the Commission finds convincing, indeed compelling evidence to sustain the indictment against Atty. Eduardo C. De Vera for professional malpractice and gross misconduct consisting of barratry, abuse of judicial proceedings and processes, exploiting a family's personal problem for vengeful and illegal purposes and employing unprofessional, intemperate and abusive language, Respondent is hereby **DISBARRED** from the practice of law. The counter-petition against Atty. Carmen Leonor M. Alcantara is **DISMISSED** for lack of merit.

The facts, as appreciated by the investigating commissioner,[2] are undisputed.

The respondent is a member of the Bar and was the former counsel of Rosario P. Mercado in a civil case filed in 1984 with the Regional Trial Court of Davao City and an administrative case filed before the Securities and Exchange Commission, Davao City Extension Office.[3]

Pursuant to a favorable decision, a writ of execution pending appeal was issued in favor of Rosario P. Mercado. Herein respondent, as her legal counsel, garnished the bank deposits of the defendant, but did not turn over the proceeds to Rosario. Rosario demanded that the respondent turn over the proceeds of the garnishment, but the latter refused claiming that he had paid part of the money to the judge while the balance was his, as attorney's fees. Such refusal prompted Rosario to file an administrative case for disbarment against the respondent.[4]

On March 23, 1993, the IBP Board of Governors promulgated a Resolution holding the respondent guilty of infidelity in the custody and handling of client's funds and recommending to the Court his one-year suspension from the practice of law.[5]

Following the release of the aforesaid IBP Resolution, the respondent filed a series of lawsuits against the Mercado family except George Mercado. The respondent also instituted cases against the family corporation, the corporation's accountant and the judge who ruled against the reopening of the case where respondent tried to collect the balance of his alleged fee from Rosario. Later on, the respondent also filed cases against the chairman and members of the IBP Board of Governors who voted to recommend his suspension from the practice of law

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[2] Commissioner Renato G. Cunanan, Report dated November 23, 2001, *rollo,* pp. 256-281.

[3] *Rollo,* p. 264.

[4] *Id.* at 265.

[5] *Id.*

for one year. Complainants allege that the respondent committed barratry, forum shopping, exploitation of family problems, and use of intemperate language when he filed several frivolous and unwarranted lawsuits against the complainants and their family members, their lawyers, and the family corporation.[6] They maintain that the primary purpose of the cases is to harass and to exact revenge for the one-year suspension from the practice of law meted out by the IBP against the respondent. Thus, they pray that the respondent be disbarred for malpractice and gross misconduct under Section 27,[7] Rule 138 of the Rules of Court.

In his defense the respondent basically offers a denial of the charges against him.

He denies he has committed barratry by instigating or stirring up George Mercado to file lawsuits against the complainants. He insists that the lawsuits that he and George filed against the complainants were not harassment suits but were in fact filed in good faith and were based on strong facts.[8]

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[6] *Rollo,* pp. 265-266.

[7] SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinatory agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be *prima facie* evidence of the ground for disbarment or suspension.

[8] *Rollo,* p. 267.

Also, the respondent denies that he has engaged in forum shopping. He argues that he was merely exhausting the remedies allowed by law and that he was merely constrained to seek relief elsewhere by reason of the denial of the trial court to reopen the civil case so he could justify his attorney's fees.

Further, he denies that he had exploited the problems of his client's family. He argues that the case that he and George Mercado filed against the complainants arose from their perception of unlawful transgressions committed by the latter for which they must be held accountable for the public interest.

Finally, the respondent denies using any intemperate, vulgar, or unprofessional language. On the contrary, he asserts that it was the complainants who resorted to intemperate and vulgar language in accusing him of "extorting from Rosario shocking and unconscionable attorney's fees."[9]

After careful consideration of the records of this case and the parties' submissions, we find ourselves in agreement with the findings and recommendation of the IBP Board of Governors.

It is worth stressing that the practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[10] Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard

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[9] *Id.* at 267-268.

[10] *Mecaral v. Velasquez*, A.C. No. 8392 (Formerly CBD Case No. 08-2175), June 29, 2010, p. 4, citing *Mendoza v. Deciembre,* A.C. No. 5338, February 23, 2009, 580 SCRA 26, 36; *Yap-Paras v. Paras*, A.C. No. 4947, February 14, 2005, 451 SCRA 194, 202.

has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of an attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish the attorney.[11] In *Maligsa v. Cabanting*,[12] we explained that the bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal profession should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court.

In the present case, the respondent committed professional malpractice and gross misconduct particularly in his acts against his former clients after the issuance of the IBP Resolution suspending him from the practice of law for one year. In summary, the respondent filed against his former client, her family members, the family corporation of his former client, the Chairman and members of the Board of Governors of the IBP who issued the said Resolution, the Regional Trial Court Judge in the case where his former client received a favorable judgment, and the present counsel of his former client, a total of twelve (12) different cases in various fora which included

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[11] *Marcelo v. Javier, Sr.*, A.C. No. 3248, September 18, 1992, 214 SCRA 1, 13.

[12] A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.

the Securities and Exchange Commission; the Provincial Prosecutors Office of Tagum, Davao; the Davao City Prosecutors Office; the IBP-Commission on Bar Discipline; the Department of Agrarian Reform; and the Supreme Court.[13]

In addition to the twelve (12) cases filed, the respondent also re-filed cases which had previously been dismissed. The respondent filed six criminal cases against members of the Mercado family separately docketed as I.S. Nos. 97-135; 97-136; 97-137; 97-138; 97-139; and 97-140. With the exception of I.S. No. 97-139, all the aforementioned cases are re-filing of previously dismissed cases.[14]

Now, there is nothing ethically remiss in a lawyer who files numerous cases in different fora, as long as he does so in good faith, in accordance with the Rules, and without any ill-motive or purpose other than to achieve justice and fairness. In the present case, however, we find that the barrage of cases filed by the respondent against his former client and others close to her was meant to overwhelm said client and to show her that the respondent does not fold easily after he was meted a penalty of one year suspension from the practice of law.

The nature of the cases filed by the respondent, the fact of re-filing them after being dismissed, the timing of the filing of cases, the fact that the respondent was in conspiracy with a renegade member of the complainants' family, the defendants named in the cases and the foul language used in the pleadings and motions[15] all indicate that the respondent was acting beyond the desire for justice and fairness. His act of filing a barrage of cases appears to be an act of revenge and hate driven by anger and frustration against his former client who filed the disciplinary complaint against him for infidelity in the custody of a client's funds.

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[13] *Rollo*, pp. 270-273.

[14] *Id.* at 273-274.

[15] *Id.* at 278-280.

In the case of *Prieto v. Corpuz*,[16] the Court pronounced that it is professionally irresponsible for a lawyer to file frivolous lawsuits. Thus, we stated in *Prieto*,

> Atty. Marcos V. Prieto must be sanctioned for filing this unfounded complaint. Although no person should be penalized for the exercise of the right to litigate, however, this right must be exercised in good faith.[17]
>
> As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing frivolous petitions that only add to the workload of the judiciary.
>
> A lawyer is part of the machinery in the administration of justice. Like the court itself, he is an instrument to advance its ends – the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments. A lawyer should not only help attain these objectives but should likewise avoid any unethical or improper practices that impede, obstruct or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice.[18] Canon 12 of the Code of Professional Responsibility promulgated on 21 June 1988 is very explicit that lawyers must exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.

Further, the respondent not only filed frivolous and unfounded lawsuits that violated his duties as an officer of the court in aiding in the proper administration of justice, but he did so against a former client to whom he owes loyalty and fidelity. Canon 21 and Rule 21.02 of the Code of Professional Responsibility[19] provides:

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[16] A.C. No. 6517, December 6, 2006, 510 SCRA 1, 11-12.

[17] *Duduaco v. Laquindanum*, A.M. No. MTJ-05-1601 (OCA-I.P.I No. 02-1213-MTJ), August 11, 2005, 466 SCRA 428, 435.

[18] Citing Agpalo, *COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT*, p. 117 (2004 Ed.).

[19] Promulgated by the Supreme Court on June 21, 1988.

CANON 21 — A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.

Rule 21.02 – A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

The cases filed by the respondent against his former client involved matters and information acquired by the respondent during the time when he was still Rosario's counsel. Information as to the structure and operations of the family corporation, private documents, and other pertinent facts and figures used as basis or in support of the cases filed by the respondent in pursuit of his malicious motives were all acquired through the attorney-client relationship with herein complainants. Such act is in direct violation of the Canons and will not be tolerated by the Court.

WHEREFORE, respondent Atty. Eduardo C. De Vera is hereby *DISBARRED* from the practice of law effective immediately upon his receipt of this Resolution.

Let copies of this Resolution be furnished the Bar Confidant to be spread on the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

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

Del Castillo, J., on official leave.

EN BANC

[A.C. No. 8391. November 23, 2010]
(Formerly CBD Case No. 06-1631)

MANUEL C. YUHICO, *complainant, vs.* **ATTY. FRED L. GUTIERREZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; DELIBERATE FAILURE TO PAY JUST DEBTS CONSTITUTE GROSS MISCONDUCT.— We have held that deliberate failure to pay just debts constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility. In the instant case, there is no question as to Gutierrez's guilt. His admission of the loan he contracted and his failure to pay the same leaves no room for interpretation. Neither can he justify his act of non-payment of debt by his dire financial condition. Gutierrez should not have contracted loans which are beyond his financial capacity to pay.

2. ID.; ID.; RESPONDENT'S PROPENSITY OF EMPLOYING DECEIT AND MISREPRESENTATIONS FOR THE PURPOSE OF OBTAINING DEBTS WITHOUT INTENTION OF PAYING THEM CANNOT BE IGNORED.— We cannot overlook Gutierrez's propensity of employing deceit and misrepresentations for the purpose of obtaining debts without the intention of paying them. Records show Gutierrez's pattern of habitually making promises of paying his debts, yet repeatedly failing to deliver. The series of text messages he sent to Yuhico promising to pay his loans,

while simultaneously giving excuses without actually making good of his promises, is clearly reprehensible. Undoubtedly, his acts demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as professionals and as officers of the court.

3. ID; ID.; THE COURT CANNOT DISBAR RESPONDENT ANEW CONSIDERING HIS PREVIOUS DISBARMENT IN *HUYSSEN V. GUTIERREZ*; NO DOUBLE OR MULTIPLE DISBARMENT IN OUR LAWS OR JURISPRUDENCE.— We also note that in *Huyssen v. Atty. Gutierrez,* the Court had already disbarred Gutierrez from the practice of law for gross misconduct due to non-payment of just debts and issuance of bouncing checks. In view of the foregoing, while we agree with the findings of the IBP, we cannot, however, adopt its recommendation to disbar Gutierrez for the second time, considering that Gutierrez had already been previously disbarred. Indeed, as the IBP pointed out, we do not have double or multiple disbarment in our laws or jurisprudence. Neither do we have a law mandating a minimum 5-year requirement for readmission, as cited by the IBP. Thus, while Gutierrez's infraction calls for the penalty of disbarment, we cannot disbar him anew.

APPEARANCES OF COUNSEL

Atilano S. Guevarra, Jr. for complainant.

D E C I S I O N

PER CURIAM:

Before us is a Complaint[1] dated January 10, 2006 for disciplinary action against respondent Atty. Fred L. Gutierrez (Gutierrez) filed by Manuel C. Yuhico (Yuhico) for violation of Rule 1.01 of the Code of Professional Responsibility.

The antecedent facts of the case are as follows:

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

Complainant Yuhico alleged that he met Gutierrez at the Office of the City Prosecutor in Pasig City on May 4, 2005. Yuhico was there to testify at the preliminary investigation of a Complaint for Estafa against one Jose S. Chicharro, who was then being represented by Gutierrez. He claimed that they eventually became acquainted as they frequently saw each other during the hearings of the case.

On June 24, 2005, Yuhico averred that Gutierrez phoned him and asked for a cash loan of ₱30,000.00. Gutierrez then claimed that he needed money to pay for the medical expenses of his mother who was seriously ill. Yuhico immediately handed the money. In turn, Gutierrez promised to pay the loan very soon, since he was expecting to collect his attorney's fees from a Japanese client.

On June 28, 2005, Gutierrez again asked Yuhico for a loan, this time in the amount of ₱60,000.00, allegedly to pay the medical expenses of his wife who was also hospitalized. Again, Yuhico readily issued to Atty. Gutierrez an Equitable PCI Bank check amounting to ₱60,000.00.[2] Again, Gutierrez promised to pay his two loans totalling to ₱90,000.00 "within a short time."

On July 12, 2005, Yuhico asked Gutierrez to pay his loans. Atty. Gutierrez failed to pay. In a text message on July 12, 2005 at 2:47 p.m., Atty. Gutierrez stated:

> I really don't know how to say this as I don't want to think that I may be taking advantage of our friendship. You see i've long expected as substantial attorney's fees since last week from my client Ogami from japan. It's more or less more than 5m and its release is delayed due to tax and the law on money laundering. From my estimate it wud be collected by me on or b4 august 5. N the meantime I am quite in a financial difficulty as everyone is.

Later, Yuhico alleged that Gutierrez attempted to borrow money from him again. He said Gutierrez claimed that his daughter

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[2] *Id.* at 7.

needed ₱70,000.00 to pay the fees required to take the licensure examination in the U.S. Medical Board. Gutierrez assured him that he will pay all his debts on or before August 10, 2005. In his text message on July 12, 2005 at 3:05 p.m., Atty. Gutierrez said:

> As you are aware of these past few days were really great trials 4 me. My mother died, my wife got sick and now my bro in law died. These events led me to struggling finances. To get me going I tried to sel my car but my buyer backed out. Now my immediate problem is the amt of 70thousand which my daughter needs for her payment sa US medical board. I dnt want her to miss this opportunity. Can u help me again? I will pay all my debts on or b4 Aug.10 pls. Thanks.

However, this time, Yuhico refused to lend Gutierrez any amount of money. Instead, he demanded from Gutierrez the payment of his debts. Gutierrez then sent another text message to Yuhico on July 12, 2005 and requested him to give him another week to pay his debts. Gutierrez failed to make the payment.

Yuhico repeatedly requested the payment of loans from Gutierrez from August to December 2005. Gutierrez, on the other hand, for numerous times promised to pay, but always failed to do so. At one point, Gutierrez even asked Yuhico's account number and promised to deposit his payment there, but he never deposited the payment.

On December 5, 2005, Yuhico's counsel sent a demand letter[3] to Gutierrez to pay his debts, but to no avail.

Thus, Yuhico filed the instant complaint against Gutierrez before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD).

On January 12, 2006, the IBP-CBD directed Gutierrez to submit his Answer on the complaint against him.[4]

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[3] *Id.* at 11.

[4] *Id.* at 13.

In his Answer,[5] Gutierrez claimed that Yuhico was the one who offered to lend him money in gratitude for the assistance he extended to the latter when he was under threat by his clients. He, however, admitted that he accepted the loan due to compelling circumstances. Gutierrez added that he has no intention of evading his obligation to pay his debts, but he is currently in financial distress, thus, he cannot pay his debts yet. He claimed he will pay his debts when his financial condition improves.

On March 24, 2006, both parties were directed to appear at the mandatory conference before the IBP-CBD. Gutierrez failed to attend on two occasions.

On June 9, 2006, the IBP-CBD directed both parties to submit their respective position papers.

Likewise, during the clarificatory hearing before the IBP-CBD, only the complainant's counsel attended. There was no appearance on the part of Gutierrez.

In his Position Paper, Yuhico manifested that the Supreme Court, in *Huyssen v. Atty. Gutierrez*,[6] had already disbarred Gutierrez from the practice of law for gross misconduct, in view of his failure to pay his debts and his issuance of worthless checks.

Subsequently, in a Resolution dated December 11, 2008, the, IBP-CBD found Gutierrez guilty of non-payment of just debts and ordered him to return the amount of Ninety Thousand Pesos (₱90,000.00) to Yuhico, with interest until full payment.

In view of the previous disbarment of Gutierrez, the IBP-CBD recommended to the Court that, instead of rendering the instant case moot, Gutierrez should be disbarred anew effective upon the expiration of the sanction pursuant to the March 26, 2004 Supreme Court Decision. The IBP-CBD explained that

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[5] *Id.* at 18-21.

[6] A.C. No. 6707, March 24, 2006, 485 SCRA 244.

while we do not have jurisprudence on the issue of double or multiple disbarment, the American jurisprudence, however, recognizes double or multiple disbarments as well as the minimum requirement of five (5) years for readmission to the Bar.

On December 11, 2008, the IBP Board of Governors, in Resolution No. XVIII-2008-649, resolved to adopt the report and recommendation of the IBP-CBD and approve it with modification as to the payment of the amount of Ninety Thousand Pesos (₱90,000.00), this time, *without interest*.

We sustain the findings of the IBP, but with modification as to its recommendations.

We have held that deliberate failure to pay just debts constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility.[7]

In the instant case, there is no question as to Gutierrez's guilt. His admission of the loan he contracted and his failure to pay the same leaves no room for interpretation. Neither can he justify his act of non-payment of debt by his dire financial condition. Gutierrez should not have contracted loans which are beyond his financial capacity to pay.

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[7] *A-1 Financial Services, Inc. v. Atty. Laarni N. Valerio*, A.C. No. 8390, July 2, 2010, citing *Barrientos v. Libiran-Meteoro*, 480 Phil. 661, 671 (2004).

Likewise, we cannot overlook Gutierrez's propensity of employing deceit and misrepresentations for the purpose of obtaining debts without the intention of paying them. Records show Gutierrez's pattern of habitually making promises of paying his debts, yet repeatedly failing to deliver. The series of text messages he sent to Yuhico promising to pay his loans, while simultaneously giving excuses without actually making good of his promises, is clearly reprehensible. Undoubtedly, his acts demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as professionals and as officers of the court.

We also note that in *Huyssen v. Atty. Gutierrez*,[8] the Court had already disbarred Gutierrez from the practice of law for gross misconduct due to non-payment of just debts and issuance of bouncing checks.

In view of the foregoing, while we agree with the findings of the IBP, we cannot, however, adopt its recommendation to disbar Gutierrez for the second time, considering that Gutierrez had already been previously disbarred. Indeed, as the IBP pointed out, we do not have double or multiple disbarment in our laws or jurisprudence. Neither do we have a law mandating a minimum 5-year requirement for readmission, as cited by the IBP. Thus, while Gutierrez's infraction calls for the penalty of disbarment, we cannot disbar him anew.

WHEREFORE, Resolution No. XVIII-2008-649 dated December 11, 2008, of the IBP, which found FRED L. GUTIERREZ guilty of *GROSS MISCONDUCT*, is *AFFIRMED*. He is *ORDERED* to *PAY* the amount of Ninety Thousand Pesos (₱90,000.00) to the complainant immediately from receipt of this decision with interest.

Let a copy of this Decision be furnished and properly recorded in the Office of the Bar Confidant, to be appended to the personal record of Gutierrez; the Integrated Bar of the Philippines; and

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[8] *Supra* note 6.

the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

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

Del Castillo, J., on official leave.

EN BANC

[A.M. No. P-06-2211. November 23, 2010]
(Formerly A.M. No. 06-5-175-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **Ms. ROSEBUEN B. VILLETA, Clerk of Court II, Municipal Trial Court, Oton, Iloilo,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; IT IS THEIR DUTY TO IMMEDIATELY DEPOSIT THEIR COLLECTIONS IN AUTHORIZED GOVERNMENT DEPOSITARIES AND FAILURE TO COMPLY CONSTITUTES GROSS NEGLECT OF DUTY AND GROSS MISCONDUCT.— We find the recommendations of Judge Mediodia and of the OCA to be in order. Villeta deserves to be separated from the service, for the following reasons: She failed to observe the rules in making deposits of court funds, particularly the requirement of regularity and frequency of putting the funds in the bank. The shortages Villeta incurred in the JDF and SAJF and the

over-remittances in the GF, as noted by the audit team, were mainly due to her failure to deposit or remit her collections. SC Administrative Circular No. 3-2000 requires that the collections for the JDF must be deposited daily and, if this is not possible, at the end of the month, provided that whenever the collection exceeds ₱500.00, it shall be deposited immediately even before the end of the month. Further, Amended Administrative Circular No. 35-2004 provides that collections for the SAJF shall be deposited daily. Clerks of court are not supposed to keep funds in their custody. They have the duty to immediately deposit their collections in authorized government depositories and failure in this regard constitutes gross neglect of duty. Moreover, failure to comply with pertinent Court circulars designed to promote full accountability for public funds is not only gross neglect; it also constitutes grave misconduct.

2. ID.; ID.; ID.; ID.; THE SHORTAGES INCURRED AND THE TAMPERING OF CASH BOND RECEIPTS DOES NOT ONLY CONSTITUTE GRAVE MISCONDUCT AND DISHONESTY BUT ALSO MALVERSATION OF PUBLIC FUNDS.— Villeta failed to render a satisfactory accounting of the shortages for the SAJF and JDF collections. Instead, she made a crude attempt to avoid liability by presenting computations showing smaller shortages in collections for a two-month period (August to September 2005) when the audit covered the period November 1993 to August 2005; worse, the collections for September were not covered and the records of transactions for the month were not shown to the audit team. Although the shortage in the FF collections was substantially reduced, there still remains ₱38,000.00 to account for. The reduction was mainly due to the discovery, after the audit, of the tampered receipts showing that the accused withdrew their cash bonds, one for ₱27,000.00 and the other for ₱10,000.00. The tampering of the receipts highlighted, rather than erased, Villeta's culpability, for it left unanswered the question of how many more receipts Villeta issued and tampered. Then there was Villeta's restitution of ₱100,000.00 after the audit, but she failed to explain the shortage supposed to be covered by the restitution and where the ₱100,000.00 came from. Without doubt, Villeta's infractions – the shortages she incurred in her collections and the tampering of cash bond receipts – constitute grave misconduct and dishonesty, and even

malversation of public funds. As the OCA noted, Article 217 of the Revised Penal Code penalizes any public officer who, being accountable for public funds, shall appropriate the funds. To justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds which he cannot account for or did not have in his possession and could not give a reasonable excuse for the disappearance of the funds.

3. ID.; ID.; ID.; ID.; FOR FAILURE TO LIVE UP TO THE HIGH ETHICAL STANDARDS EXPECTED OF COURT EMPLOYEES, RESPONDENT'S DISMISSAL FINDS BASIS; RESTITUTION OF THE AMOUNT COVERED BY HER SHORTAGES IS ALSO IN ORDER.— Villeta cannot escape liability for the tampered receipts and for appropriating the funds derived from the cash bond deposits, although she claimed that she did these to ease the burden of the litigants in withdrawing their deposits. We cannot accept these belated manifestations of good intentions as we are convinced that she took the deposits and made use of the funds for her personal gain. The facts whose consequences we now decide show that she was audited; she came short of her collections; and she failed to account for the missing funds. On the basis of these facts, we find her liable for gross misconduct. For her failure to live up to the high ethical standards expected of court employees, Villeta should be dismissed and be made to restitute the amounts covered by her shortages. Significantly, the restitution can very well be covered by Villeta's leave credits, based on the OCA's inquiry.

D E C I S I O N

PER CURIAM:

We resolve the present administrative matter that traces its roots to the financial audit conducted on the books of account of the Municipal Trial Court (*MTC*) of Oton, Iloilo, for the period November 1, 1993 to August 31, 2005. Ms. Rosebuen B. Villeta, Clerk of Court II of the court, is the accountable officer.

The Antecedents

The relevant facts are set out in the Memorandum/Report of the Office of the Court Administrator (*OCA*) dated July 28, 2008,[1] and are summarized below.

The OCA conducted the audit in 2006, due to the non-submission of financial reports to the OCA Financial Management Office.

The audit team made the following findings:[2]

1. An over-remittance of ₱1,050.50 in the General Fund (*GF*) due to Villeta's practice of not regularly depositing her collections.
2. A shortage of ₱805.60 in the collections for the Special Allowance for the Judiciary Fund (*SAJF*) for the period November 11, 2003 to August 31, 2005.
3. A shortage of ₱1,672.80 in the collections for the Judiciary Development Fund (*JDF*) for November 11, 2003 to August 31, 2005.
4. A shortage of ₱229,300.00 in the collections for the Fiduciary Fund (*FF*) coming from rental deposits and cash bonds; withdrawals of cash bonds must be supported by a court order and an acknowledgment receipt from the accused; withdrawals are disallowed without these supporting documents. The amount of ₱125,000.00 was temporarily credited in favor of Villeta pending her submission of copies of the court orders and acknowledgment receipts; otherwise, the amount shall be added to her accountability that would then amount to ₱354,400.00.
5. Tampering of official receipts involving several criminal cases where the accused's cash bonds were mispresented

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[1] *Rollo,* pp. 664-671.

[2] *Id.* at 4-10; Audit Team Report to Court Administrator Christopher Lock.

as collections either in the JDF or GF account instead of the FF account; worse, the amounts in the original copies of receipts were understated in the triplicate copies of the receipts.

The audit team reported that when it confronted Villeta with its findings, she admitted using the undeposited/unremitted collections for her personal gain.[3]

In a Resolution dated July 26, 2006,[4] the Court directed Villeta to restitute, within 15 days, her shortages in the SAJF (₱805.60), JDF (₱1,672.80), and FF (₱229,300.00) collections, for a total of ₱231,778.40; to furnish the Fiscal Management Division, Court Management Office with machine-validated deposit slips; and to submit the supporting documents for disallowed withdrawals and to explain why she should not be administratively sanctioned for her shortages and for tampering with the official receipts of cash bond deposits. The Court re-docketed the report as a regular administrative matter and suspended Villeta during the pendency of the case.

The OCA referred the matter to Presiding Judge Ernesto H. Mediodia, MTC, Oton, Iloilo, particularly the reported tampering of official receipts for the FF "to determine the extent of the responsibility of the respondent in the anomaly."[5]

Judge Mediodia, in his report dated August 22, 2006,[6] confirmed the OCA audit team's initial findings on the tampering of the official receipts of the accused's cash bonds in the criminal cases cited in the report. The judge recommended that Villeta be charged with dishonesty and gross misconduct, without prejudice to the filing of appropriate criminal charges against her.

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[3] *Id*. at 7.

[4] *Id*. at 34-35.

[5] *Id*. at 41.

[6] *Id*. at 42-47.

The OCA's Evaluation of Villeta's Explanation

In her letter dated April 10, 2007,[7] Villeta explained that her shortage for the SAJF is only ₱18.80 and not ₱805.60 as reported by the audit team. She presented the following computation:

Beginning balance (end of July 2005)		₱ 57.20
August 2005 collections		2,115.40
September 2005 collections		1,408.00
Undeposited collections		3,580.60
Less: August deposit	₱2,000.00	
September deposit	1,561.80	3, 106.40
Total undeposited collections		₱ 18.80

The OCA found Villeta's explanation unacceptable, clarifying that the deposit for September 2005 exceeded the collections by ₱153.80 (₱1,561.80 less ₱1,408.00); the excess may be part of the collections for August 2005, but Villeta never presented the September 2005 collections to the audit team; hence, there was no way of determining if the excess was part of the undeposited collections for August 2005; Villeta's computation was limited only to the computation for August to September 2005, while the audit covered the period from November 2003 to August 2005.

The OCA made the same observation regarding Villeta's shortage for the JDF, which she claimed to be only ₱81.20 and not ₱1,672.80. Likewise, she presented the following computation:

Beginning balance (end of July 2005)		₱ 442.80
August 2005 collections		5,702.80
September 2005 collections		6,042.00
Undeposited collections		12,187.60
Less: August deposit	₱5,400.00	

[7] *Id.* at 248-250.

September deposit	6,706.40	12, 106.40
Total undeposited collections		₱ 81.20

The OCA noted that the deposit for September 2005 exceeded the collections by ₱664.40 (₱6,706.40 less ₱6,042.00); the difference may be part of the undeposited collections for August 2005 but again, Villeta did not present the September 2005 collections.

With respect to the FF account, Villeta presented documents that considerably reduced her shortage for the account, with the following computation:

Collections (October, 1995 to August, 2005)		₱ 1,572,500.00
ADD: collections with tampered receipts (not presented during the audit)		37,000.00
Total		₱ 1,609,500.00
LESS: Withdrawals (with valid documents during the audit)	₱830,100.00	
Additional withdrawals (with valid documents not presented during the audit but only on April 10, 2007)	₱208,300.00	
Withdrawals with valid documents (compliance with this Court's resolution)	₱125,100.00	1,163,500.00
Total: Unwithdrawn Fiduciary Fund		₱ 446,000.00
Less: Deposits with the Municipal Treasurer's Office	₱ 94,000.00	
Additional deposits with the MTO (not presented during the audit)	19,100.00	
Deposits with Land Bank of the net of unwithdrawn interest	194,000.00	307,100.00
Balance of Accountability as of August 31, 2005		₱ 138,000.00
Less: Restitution (September 27, 2005)		100,000.00
Balance of Shortage		₱ 38,900.00

The ₱37,000.00 addition to Villeta's total collections arose from the report of Ms. Ivy Britanico, Officer-in-Charge, Office

of the Clerk of Court. Britanico disclosed that two litigants went to her office asking for the refund of their cash bonds; they showed original copies of official receipts for the bond, as follows: OR No. 1502874 for ₱27,000.00 issued on July 15, 2003 and OR No. 15026397 for ₱10,000.00 issued on January 9, 2004. Britanico discovered that these collections were not reported to the Court and the triplicate copies had been tampered with to reflect a different transaction and a smaller amount.

Villeta admitted that she tampered with the triplicate copies of the official receipts of the cash bonds, but denied doing it for personal gain, claiming that she did it to help poor litigants. The litigants, according to her, were accused of violating Presidential Decree No. 1602 (Illegal Possession of Gambling Paraphernalia), and the cases were set for arraignment immediately after they posted their cash bonds, with most of them pleading guilty; to ease the burden of the accused in following up the release of their bonds (the bank required two identification papers for the encashment checks), she came up with the scheme which gave rise to her present predicament. Under the scheme, she immediately refunded to the litigants their cash bonds as soon as the case was disposed of, an order for the release of the bond was issued, and upon presentment of the original copy of the receipt. She claimed that she had no malicious intent in tampering with the receipts and proof of this is the fact that she did not destroy said receipts, which she could have easily done.

The OCA saw no merit in Villeta's submissions and recommended her dismissal from the service.

The Court's Ruling

We find the recommendations of Judge Mediodia and of the OCA to be in order. Villeta deserves to be separated from the service, for the following reasons:

First. She failed to observe the rules in making deposits of court funds, particularly the requirement of regularity and frequency of putting the funds in the bank. The shortages Villeta incurred in the JDF and SAJF and the over-remittances in the GF, as noted by the audit team, were mainly due to her failure

to deposit or remit her collections. SC Administrative Circular No. 3-2000[8] requires that the collections for the JDF must be deposited daily and, if this is not possible, at the end of the month, provided that whenever the collection exceeds ₱500.00, it shall be deposited immediately even before the end of the month. Further, Amended Administrative Circular No. 35-2004[9] provides that collections for the SAJF shall be deposited daily.

Clerks of court are not supposed to keep funds in their custody. They have the duty to immediately deposit their collections in authorized government depositories and failure in this regard constitutes gross neglect of duty. Moreover, failure to comply with pertinent Court circulars designed to promote full accountability for public funds is not only gross neglect; it also constitutes grave misconduct.[10]

Second. Villeta failed to render a satisfactory accounting of the shortages for the SAJF and JDF collections. Instead, she made a crude attempt to avoid liability by presenting computations showing smaller shortages in collections for a two-month period (August to September 2005) when the audit covered the period November 1993 to August 2005; worse, the collections for September were not covered and the records of transactions for the month were not shown to the audit team.

Third. Although the shortage in the FF collections was substantially reduced, there still remains ₱38,000.00 to account for. The reduction was mainly due to the discovery, after the audit, of the tampered receipts showing that the accused withdrew their cash bonds, one for ₱27,000.00 and the other for ₱10,000.00. The tampering of the receipts highlighted, rather than erased, Villeta's culpability, for it left unanswered the question of how many more receipts Villeta issued and tampered. Then there was Villeta's restitution of ₱100,000.00 after the audit, but

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[8] Took effect on June 15, 2000.

[9] Took effect on August 20, 2004.

[10] *Re: Report on the Audit Conducted in MTC, Apalit-San Simon, Pampanga*, A.M. No. 08-1-30-MCTC, April 20, 2008, 551 SCRA 58.

she failed to explain the shortage supposed to be covered by the restitution and where the ₱100,000.00 came from.

Without doubt, Villeta's infractions – the shortages she incurred in her collections and the tampering of cash bond receipts – constitute grave misconduct and dishonesty, and even malversation of public funds. As the OCA noted, Article 217 of the Revised Penal Code penalizes any public officer who, being accountable for public funds, shall appropriate the funds. To justify conviction for malversation of public funds, the prosecution has only to prove that the accused receive public funds which he cannot account for or did not have in his possession and could not give a reasonable excuse for the disappearance of the funds.[11]

Villeta cannot escape liability for the tampered receipts and for appropriating the funds derived from the cash bond deposits, although she claimed that she did these to ease the burden of the litigants in withdrawing their deposits. We cannot accept these belated manifestations of good intentions as we are convinced that she took the deposits and made use of the funds for her personal gain. The facts whose consequences we now decide show that she was audited; she came short of her collections; and she failed to account for the missing funds. On the basis of these facts, we find her liable for gross misconduct.

For her failure to live up to the high ethical standards expected of court employees, Villeta should be dismissed[12] and be made to restitute the amounts covered by her shortages. Significantly, the restitution can very well be covered by Villeta's leave credits, based on the OCA's inquiry.

WHEREFORE, premises considered, Ms. Rosebuen B. Villeta, Clerk of Court II, Municipal Trial Court, Oton, Iloilo, is declared *GUILTY* of grave misconduct and dishonesty and is *DISMISSED* from the service effective immediately, with

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[11] *People of the Philippines v. Pepito*, G.R. Nos. 112761-65, February 3, 1997, 267 SCRA 358.

[12] *Supra* note 10.

forfeiture of her salaries, allowances, as well as retirement benefits, except for accrued credits for her earned leaves. She is likewise ordered *BARRED* from re-employment in all branches of the government, including government-owned and controlled corporations. The Financial Management Office of the Office of the Court Administrator is *DIRECTED* to process Villeta's terminal leave pay, dispensing with the usual documentary requirements, to answer for the following:

1. ₱1,672.80 – Judiciary Development Fund;
2. ₱805.60 – Special Allowance for the Judiciary Fund; and
3. ₱38,900.00 – Fiduciary Fund; and the balance to be released to Villeta.

The OCA's Legal Office is *DIRECTED* to file the appropriate criminal complaint against Villeta with the Office of the Ombudsman.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Del Castillo, J., on wellness leave.

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

EN BANC

[A.M. No. P-06-2225. November 23, 2010]
(Formerly OCA IPI No. 04-2027-P)

BERNALETTE L. RAMOS, *complainant, vs.* **SUSAN A. LIMETA, Legal Researcher,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GRAVE MISCONDUCT; DEFINED; NATURE OF OFFENSE.— We agree and adopt the recommendation of the OCA in imposing on Limeta the ultimate penalty of dismissal from the service for grave misconduct. Grave misconduct is a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules. It is considered as a grave offense under the Civil Service Law, with the corresponding penalty of dismissal from the service, forfeiture of retirement benefits (except accrued leave credits), and perpetual disqualification from re-employment in the government service.

2. ID.; ID.; ID.; ID; RESPONDENT COMMITTED GRAVE MISCONDUCT WHEN SHE ACCEPTED MONEY FROM THE COMPLAINANT AS PAYMENT FOR HER SERVICES IN ASSISTING THE LATTER IN FILING AN ANNULMENT CASE AGAINST HER HUSBAND.— In the present case, Limeta committed grave misconduct when she accepted money from the complainant as payment for her services in assisting the latter in filing an annulment case against her husband. In doing so, Limeta violated Section 2, Canon 1 of the Code of Conduct for Court Personnel, which provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit understanding that such gift, favor or benefit shall influence their official actions." The necessity of acting with propriety and decorum is

highlighted in Section 1 of the same Code of Conduct, which provides that "[c]ourt personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others." In our examination of the records, we found the testimonies of complainant Ramos and her witness, Atty. Geluz, as sufficient evidence to hold Limeta administratively liable for grave misconduct. The categorical and positive declarations made by Ramos, which were corroborated by the statements made under oath by Atty. Geluz, cannot but prevail over the plain denial Limeta made. In case of contradictory declarations and statements, positive testimonies carry greater weight than mere denials.

3. ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL IS WARRANTED CONSIDERING THAT RESPONDENT WAS ALREADY PREVIOUSLY SUSPENDED FOR THE SAME ACT WITH A WARNING THAT A REPETITION OF THE SAME OR SIMILAR ACT WOULD BE DEALT WITH MORE SEVERELY.— We also judicially notice that this is not the first time that Limeta was involved in acts of impropriety as an employee of the court. In *Salazar v. Limeta*, this Court already suspended Limeta for a year after having been found guilty of gross misconduct for committing the same act – receiving money from a party-litigant in exchange for her assistance in hiring a lawyer and in filing a court case for declaration of nullity of marriage. The penalty of dismissal is definitely warranted in the present case considering that Limeta was previously warned that a repetition of the same or similar act would be dealt with more severely. Time and again, we have held that court personnel carry a heavy burden of responsibility in their roles as keepers of the public faith. They must adhere to high ethical standards to preserve the Court's good name and standing, and to be examples of responsibility, competence and efficiency. They should be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must always be avoided. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish, or even just tend to diminish, the faith of the people in the judiciary cannot be countenanced. As we held in *Mendoza v. Tiongson:* What brings our judicial system into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can

be bought and sold, ultimately resulting in the disillusionment of the public. This Court has never wavered in its vigilance in eradicating the so-called "bad eggs" in the judiciary. And whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel.

D E C I S I O N

PER CURIAM:

In an Affidavit-Complaint dated August 12, 2004,[1] Bernalette L. Ramos charged Susan A. Limeta with Graft and Corruption, Gross Misconduct and/or Conduct Unbecoming of a Court Employee. Limeta works as a legal researcher in Branch 20, Regional Trial Court (*RTC*) of Imus, Cavite and is a first cousin of the complainant. She allegedly extorted money from Ramos amounting to thirty-five thousand pesos (₱35,000.00), as down payment for her services in finding a competent lawyer for her cousin and in preparing the necessary documents needed in the filing of an annulment case, including the payment of filing fees and other administrative expenses.

According to Ramos, sometime between July and August 2003, her mother approached Limeta regarding the prospect of filing an annulment case against her estranged husband. Limeta agreed to assist her cousin in the filing of an annulment case and assured her that she would not go through the long and tedious court process, for a fee amounting to seventy thousand pesos (₱70,000.00). Ramos made a down payment of ₱35,000.00, which Limeta personally received, to be used for the payment of filing fees and for the lawyer's services.

In October 2003, Ramos came across a family friend, Carissa U. Sosa. As Ramos did, Sosa had requested the assistance of Limeta in the filing of an annulment case against her husband. She likewise paid Limeta the amount of ₱35,000.00 as down payment for her services. Due probably to the length of time it

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[1] *Rollo,* pp. 1-2.

was taking for her annulment case to finally be resolved, Sosa concluded and told Ramos that Limeta extorted money from her in the same manner that the latter had allegedly done to a certain Jocelyn Mendoza.

Alarmed by this discovery, Ramos requested her lawyer-friend, Atty. Emily Aliño-Geluz, to accompany her to the chambers of Judge Lucencio N. Tagle, Presiding Judge of Branch 20, RTC of Imus, Cavite. After their introduction, Ramos informed Judge Tagle of the problem she had with his court employee. The judge seemed unsurprised of Ramos's revelations and told her that this was not the first instance that someone had complained against Limeta regarding money matters.

In his effort to resolve the situation, Judge Tagle called Limeta to his chambers and asked her to return the money she owed Ramos. Limeta answered in the vernacular that she would return the money to Ramos at the end of the month, and for her not to worry about getting her money back. Unsatisfied with this assurance, Ramos handed out a promissory note for Limeta to sign; the latter, however, refused. Furious by the distrust displayed by one she considered a relative, Limeta walked out of the judge's chambers, leaving the matter between her and Ramos unresolved. The events that transpired within Judge Tagle's chambers were attested to by Atty. Geluz in her affidavit.[2]

On August 18, 2004, Ramos and Sosa filed separate affidavit-complaints against Limeta, for graft and corruption, gross misconduct and conduct not only unbecoming of a government employee, but also prejudicial to the best interest of the service.[3] For her part, Ramos filed her complaint after unheeded demands to return the ₱35,000.00 she paid to Limeta. Ramos noticed that her annulment case had not moved since she made the down payment to Limeta, and suspected that the latter used the money for her own personal benefit and not for the purpose of filing the annulment case in accordance with their agreement.

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[2] *Id.* at 3-4.

[3] *Id.* at 29-31.

In an Indorsement dated October 11, 2004,[4] the Office of the Court Administrator (*OCA*) referred the matter to Limeta for comment. After several motions to extend time to file comment, the OCA received Limeta's Counter-Affidavit[5] on February 7, 2006.

Limeta vehemently denied all the accusations against her in her submitted counter-affidavit. She argued that there was no evidence to prove that she received money from Ramos. She suspected that the real reason Ramos filed the complaint was because of her knowledge and involvement in a family argument concerning a property, owned by an aunt, whose title was transferred to Ramos through deceitful means. Driven by this motivation, Ramos filed her complaint with malicious intent to harass and humiliate her, and to eventually cause her to resign from her work.

On May 22, 2006, the OCA recommended the redocketing of the case as a regular administrative matter and referred it to Hon. Judge Norberto J. Quisumbing (Executive Judge of the RTC, Imus, Cavite) for investigation, report and recommendation.[6] In its evaluation, the OCA felt the need for a full-blown investigation in order to ascertain the truth between the conflicting positions taken by the parties.

After a thorough investigation, Judge Quisumbing recommended Limeta's suspension for three (3) months without pay.[7] In weighing the evidence presented by the parties, the judge favored the testimonies of Ramos and her witness, Atty. Geluz. According to his assessment, their testimonies demonstrated truthfulness as they narrated their story in a categorical, straightforward and candid manner. He also took into consideration the decision of the Court in A.M. No. P-04-

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[4] *Id.* at 10.

[5] *Id.* at 21.

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

[7] *Id.* at 106-110.

1908[8] where Limeta was given a one-year suspension for gross misconduct. In that case, Limeta was found liable when she helped a prospective litigant secure the services of a lawyer and accepted money from the litigant for the filing of a case for the declaration of nullity of marriage, in the very same court where she was employed as legal researcher.

In a Memorandum dated June 6, 2007,[9] the OCA recommended Limeta's dismissal from the service with forfeiture of retirement benefits (except the value of her accrued leaves), and with prejudice to re-employment in any branch or instrumentality of the Government, including government-owned and controlled corporations. Based from the findings in the investigative report, the OCA found that Limeta's plain denial of the accusations against her was not sufficient to overcome Ramos's categorical and positive declarations regarding the former's infractions. These declarations, according to the OCA, constituted substantial evidence – the quantum of evidence required in administrative proceedings. The OCA, however, upgraded Limeta's offense to grave misconduct as defined under Section 23(c), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[10]

THE COURT'S RULING

We agree and adopt the recommendation of the OCA in imposing on Limeta the ultimate penalty of dismissal from the service for grave misconduct.

Grave misconduct is a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves.[11] It may manifest itself

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[8] *Salazar v. Limeta*, August 16, 2005, 467 SCRA 27.

[9] *Rollo*, pp. 113-115.

[10] Also known as the Administrative Code of 1987.

[11] *Fernandez v. Gatan*, A.M. No. P-03-1720, May 28, 2004, 420 SCRA 19.

in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.[12] It is considered as a grave offense under the Civil Service Law,[13] with the corresponding penalty of dismissal from the service, forfeiture of retirement benefits (except accrued leave credits), and perpetual disqualification from re-employment in the government service.

In the present case, Limeta committed grave misconduct when she accepted money from the complainant as payment for her services in assisting the latter in filing an annulment case against her husband. In doing so, Limeta violated Section 2, Canon 1 of the Code of Conduct for Court Personnel, which provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit understanding that such gift, favor or benefit shall influence their official actions." The necessity of acting with propriety and decorum is highlighted in Section 1 of the same Code of Conduct, which provides that "[c]ourt personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others."

In our examination of the records, we found the testimonies of complainant Ramos and her witness, Atty. Geluz, as sufficient evidence to hold Limeta administratively liable for grave misconduct. The categorical and positive declarations made by Ramos, which were corroborated by the statements made under oath by Atty. Geluz, cannot but prevail over the plain denial Limeta made. In case of contradictory declarations and statements, positive testimonies carry greater weight than mere denials.[14]

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[12] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9.

[13] Section 23, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19 (1999).

[14] *People v. Antoni*, G.R. No. 107950, June 17, 1994, 233 SCRA 283, 299; *Vda. de Ramos v. Court of Appeals*, 171 Phil. 354, 364 (1978).

We also judicially notice that this is not the first time that Limeta was involved in acts of impropriety as an employee of the court. In *Salazar v. Limeta*,[15] this Court already suspended Limeta for a year after having been found guilty of gross misconduct for committing the same act – receiving money from a party-litigant in exchange for her assistance in hiring a lawyer and in filing a court case for declaration of nullity of marriage. The penalty of dismissal is definitely warranted in the present case considering that Limeta was previously warned that a repetition of the same or similar act would be dealt with more severely.

Time and again, we have held that court personnel carry a heavy burden of responsibility in their roles as keepers of the public faith. They must adhere to high ethical standards to preserve the Court's good name and standing, and to be examples of responsibility, competence and efficiency. They should be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must always be avoided.[16] Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish, or even just tend to diminish, the faith of the people in the judiciary cannot be countenanced.[17] As we held in *Mendoza v. Tiongson*:[18]

> What brings our judicial system into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can be bought and sold, ultimately resulting in the disillusionment of the public. This Court has never

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[15] A.M. No. P-04-1908, August 16, 2005, 467 SCRA 27.

[16] *Apuyan, Jr. v. Sta. Isabel*, A.M. No. P-01-1497, May 28, 2004, 430 SCRA 1, 15, citing *Gutierrez v. Quitalig*, 400 SCRA 391 (2003).

[17] *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 119-120.

[18] 333 Phil. 508, 510 (1996); *In Re: Affidavit of Frankie Calabines v. Luis N. Gnilo, et al.*, A.M. No. 04-5-20-SC, March 14, 2007, 518 SCRA 268.

wavered in its vigilance in eradicating the so-called "bad eggs" in the judiciary. And whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel.

WHEREFORE, respondent Susan A. Limeta, legal researcher, Regional Trial Court, Branch 20, Imus, Cavite, is found *GUILTY* of *GRAVE MISCONDUCT*. She is hereby *DISMISSED* from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Del Castillo, J., on wellness leave.

Perez, J., no part. Acted on the matter as Deputy Court Adm.

EN BANC

[A.M. No. P-09-2603. November 23, 2010]
(Formerly A.M. No. 08-7-221-MeTC)

Re: Habitual Absenteeism of Mr. NELSON G. MARCOS, Sheriff III, Metropolitan Trial Court, Office of the Clerk of Court, Caloocan City.

Re: Habitual Absenteeism of Mr. Nelson G. Marcos, Sheriff III, MTC, Office of the Clerk of Court, Caloocan City

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; HABITUAL ABSENTEEISM; EMPLOYEE'S HABITUAL ABSENCES CONSTITUTE GROSS MISCONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE PUBLIC SERVICE WARRANTING DISMISSAL FROM THE SERVICE.— The Court Administrator's report summarized Marcos' unauthorized absences between 2005 and 2008 — he was absent for 65 days from June to December 2005, 130 days in 2006, 131.5 days in 2007, and 97 days in 2008. Notably, in September 2005, he was absent for 19 days; in 2006, he was absent for 19.5 days in January, and 20.5 days in March; in 2007, he was absent for 19 days in January, 20 days in February, and 22 days in March; and in 2008, he was absent for 18 days in January, 19 days in February, 23.5 days in March, and 20 days in April. The Court Administrator recommended that the complaint be re-docketed as a regular administrative matter and that Marcos be held liable for gross misconduct and habitual absenteeism, and be meted the penalty of dismissal from the service with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. We agree with the Court Administrator's recommendation. Sheriff Marcos' absences seriously prejudiced the public service. His excessive unauthorized absences indicated an utter lack of a sense of responsibility for his position in the court and a basic disregard for the welfare of litigants. As we held in *Juntilla v. Calleja*: Public office is a public trust. All public officers are accountable to the people at all times. Their duties and responsibilities must be strictly performed. As administration of justice is a sacred task, this Court condemns any omission or act which would tend to diminish the faith of the people in the Judiciary. Every employee or officer involved in the dispensation of justice should be circumscribed with the heavy burden of responsibility and their conduct must, at all times, be above suspicion. We find that Nelson Marcos' habitual absences constitute gross misconduct and conduct prejudicial to the best interest of the public service that warrant his dismissal from the service.

Re: Habitual Absenteeism of Mr. Nelson G. Marcos, Sheriff III, MTC, Office of the Clerk of Court, Caloocan City

D E C I S I O N

PER CURIAM:

In a letter dated June 26, 2008,[1] Court Administrator Zenaida N. Elepaño referred to the Chief of Office, Legal Office, Office of the Court Administrator (*OCA*), the June 16, 2008 report of the Leave Division, Office of Administrative Services, on the habitual absenteeism of Nelson G. Marcos, Sheriff III, Metropolitan Trial Court, Caloocan City. The report listed the number of days per month that Marcos was absent for the years 2005 to 2008 and showed that they inordinately exceeded what the law allows.[2] The Court Administrator recommended the filing of the appropriate administrative complaint, with the OCA as complainant.

Marcos was required to comment, which he did on August 11, 2008. In his comment,[3] Marcos mentioned that on October 31, 2004, he had an accident that fractured his left foot. It was placed in a cast and he "became literally incapacitated for about three (3) months, November 2004 to January 2005."[4] He also alleged that he was among those who complained to the executive judge in 2005 about the court staff's grievances against Atty. Monalisa Buencamino, his supervisor, that resulted in her hostile attitude to him. He also gave various excuses for his absences in 2006 to 2008.

Among the documents attached to Marcos' comment was the report of Dr. Ramon S. Armedilla of the Supreme Court Medical and Dental Services dated on August 30, 2005. Dr. Armedilla disapproved Marcos' application for sick leave covering January to April 2005 because Marcos failed to submit the X-ray film

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[1] *Rollo*, p. 1.

[2] *Id.* at 2-3.

[3] *Id.* at 6-10.

[4] *Id.* at 6.

of his fractured foot and because the repeat X-ray showed "no evidence of fracture as shown by intact periosteum or callus or hard adult bone formation."[5] Dr. Armedilla stated that "[i]n the absence of which it is my opinion that there was no fracture or healed fracture thus, respectfully recommended that sick leave application be disapproved."[6] Marcos, on the other hand, alleged that he submitted the X-ray film to the SC Leave Division, together with his leave application, and the X-ray film "was probably misplaced and lost in the Leave Division."[7]

The Court Administrator[8] stated in his December 16, 2008 Report[9] that:

> In the case at bar, respondent Marcos incurred unauthorized absences, more than that allowed by law in a given period. Under Civil Service Circular No. 30, Series of 1989, habitual absenteeism is classified as a grave offense. On the other hand, frequent unauthorized absences or tardiness in reporting for duty is, for the first offense, punishable with suspension of six (6) months and one (1) day to one (1) year, and with dismissal from the service for the second offense.
>
> Respondent claimed that his absences was (*sic*) due to an injury that rendered him incapacitated for three (3) months, which allegedly happened in October, 2004. The explanation offered by herein respondent revolves mainly on his alleged ill-health which occurred before June 2005. No valid explanation was adduced by herein respondent, despite the opportunity given to him, to explain in view of the Certification issued by the Leave Division relative to the unauthorized leave that he incurred covering the period stated therein. Moreover, as shown by the records on file, no substantial proof to justify his absences from 2005-2008 was presented by herein respondent.

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[5] *Id.* at 26.

[6] *Ibid.*

[7] *Id.* at 7.

[8] Jose P. Perez, now a member of this Court.

[9] *Rollo*, pp. 39-42.

Frequent and unauthorized absences without authorization are inimical to public service, and for this the respondent must be meted the proper penalty. Indeed, even with the fullest measure of sympathy and patience, the court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equation (*Re: Unauthorized absences of Rasen R. Cuenca, Clerk II, Property Division, Office of Administrative Services*, A.M. No. 2005-03-SC, March 15, 2005, 453 SCRA 403, 408).

Respondent sheriff was repeatedly absent despite disapproval of his application for leave due to habitual absenteeism by his supervisor, Atty. Mona Liza A. Buencamino. Thus, respondent neglected to perform his duties as Sheriff to the detriment of the litigants, lawyers, and even the court where he was employed. His prolonged, continuous and unauthorized absences and neglect of duty showed that he failed to live-up to the exacting standards of public office.

The report summarized Marcos' unauthorized absences between 2005 and 2008 — he was absent for 65 days from June to December 2005, 130 days in 2006, 131.5 days in 2007, and 97 days in 2008. Notably, in September 2005, he was absent for 19 days; in 2006, he was absent for 19.5 days in January, and 20.5 days in March; in 2007, he was absent for 19 days in January, 20 days in February, and 22 days in March; and in 2008, he was absent for 18 days in January, 19 days in February, 23.5 days in March, and 20 days in April.

The Court Administrator recommended that the complaint be re-docketed as a regular administrative matter and that Marcos be held liable for gross misconduct and habitual absenteeism, and be meted the penalty of dismissal from the service with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

We agree with the Court Administrator's recommendation.

CSC Memorandum Circular No. 04, s. 1991, on Habitual Absenteeism[10] states:

A. HABITUAL ABSENTEEISM

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year;

2. In case of claim of ill health, heads of department of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright; and

3. In the discretion of the Head of any department, agency or office, any government physician may be authorized to do a spot check on employees who are supposed to be on sick leave. Those found violating the leave laws, rules or regulations shall be dealt with accordingly by filing appropriate administrative cases against them.

B. SANCTIONS

The following sanctions shall be imposed for violation of the policy on habitual absenteeism:

1st offense – Suspension for six (6) months and one (1) day to one (1) year.

2nd offense — Dismissal from the service.

Sheriff Marcos' absences seriously prejudiced the public service. His excessive unauthorized absences indicated an utter lack of a sense of responsibility for his position in the court and a basic disregard for the welfare of litigants. As we held in *Juntilla v. Calleja*:[11]

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[10] Supreme Court Administrative Circular No. 14-02 "Reiterating the Civil Service Commission's Policy on Habitual Absenteeism."

[11] A.M. No. P-96-1225 (Formerly OCA I.P.I. No. 95-56-P), September 23, 1996, 262 SCRA 291, 297.

Public office is a public trust. All public officers are accountable to the people at all times. Their duties and responsibilities must be strictly performed. As administration of justice is a sacred task, this Court condemns any omission or act which would tend to diminish the faith of the people in the Judiciary. Every employee or officer involved in the dispensation of justice should be circumscribed with the heavy burden of responsibility and their conduct must, at all times, be above suspicion.

We find that Nelson Marcos' habitual absences constitute gross misconduct and conduct prejudicial to the best interest of the public service that warrant his dismissal from the service.

WHEREFORE, premises considered, the Court finds Nelson G. Marcos, Sheriff III of the Metropolitan Trial Court, Caloocan City, guilty of gross misconduct and conduct prejudicial to the best interest of the public service, and hereby *DISMISSES* him from the service, with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Del Castillo, J., on wellness leave.

Perez, J., no part. Acted on the matter as Court Adm.

EN BANC

[A.M. No. MTJ-08-1719.* November 23, 2010]

ATTY. ARNOLD B. LUGARES, *complainant, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES, Metropolitan Trial Court, Branch 60, Mandaluyong City,** *respondent.*

[A.M. No. MTJ-08-1722.** November 23, 2010]

JOSE MARIA J. SEMBRANO, *complainant, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES, Presiding Judge Metropolitan Trial Court, Branch 60, Mandaluyong City,** *respondent.*

[A.M. No. MTJ-08-1723.*** November 23, 2010]

MARCELINO LANGCAP, *complainant, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES, Presiding Judge Metropolitan Trial Court, Branch 60, Mandaluyong City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1997 CONSTITUTION; JUDICIARY DEPARTMENT; SECTION 15 (1) AND (2), ARTICLE VIII OF THE CONSTITUTION REQUIRES COURTS TO DECIDE CASES SUBMITTED FOR DECISION WITHIN THREE (3) MONTHS FROM THE DATE OF THEIR SUBMISSION.— As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. By their very nature, these

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* Formerly OCA I.P.I. No. 08-2030-MTJ.

** Formerly OCA I.P.I. No. 07-1944-MTJ.

*** Formerly OCA I.P.I. No. 08-2031-MTJ.

rules are regarded as mandatory. Section 15 (1) and (2), Article VIII of the Constitution requires courts to decide cases submitted for decision generally within three (3) months from the date of their submission. With respect to cases falling under the Rules on Summary Procedure, first level courts are only allowed thirty (30) days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment. The Court has consistently impressed upon the magistrates the need to dispose of the court's business promptly and decide cases within the required periods, for it cannot be gainsaid that justice delayed is justice denied.

2. JUDICIAL ETHICS; JUDGES; RESPONDENT JUDGE DEMONSTRATED HER PROPENSITY FOR INATTENTIVENESS AND INDIFFERENCE, IF NOT SHEER DISREGARD FOR THE RULES, WHEN SHE FAILED TO COMPLY WITH THE BASIC RULE OF DECIDING CASES WITHIN THE THIRTY-DAY PERIOD PROVIDED BY THE RULES ON SUMMARY PROCEDURE.— Basic is the rule that after the failure of the defendant to answer the complaint, the court shall render judgment as may be established by the facts alleged in the complaint. The Revised Rule on Summary Procedure authorizes a judge to render a decision on his own initiative or upon motion of the plaintiff. Judge Torres starkly deviated from the required procedure when she admitted defendants' answer at that stage of the proceedings even when she had previously denied admission of said pleading. The Court finds no logic in her sudden change of heart. Instead, respondent judge should have given due course to Atty. Lugares' motion for early resolution and manifestation, and should not have entertained the defendants' comment and counter-manifestation considering that the case was summary in nature, and a period of more than one (1) year had lapsed after the case was submitted for decision. Judge Torres demonstrated her propensity for inattentiveness and indifference, if not sheer disregard for rules, in Civil Case No. 19063 and Civil Cases Nos. 17765 and 18425 when she likewise failed to comply with the basic rule of deciding the aforementioned cases within the prescribed thirty-day period. In Civil Case No. 19063, complainant Sembrano filed a total of five (5) motions to resolve the case but to no avail and the decision thereon had been overdue for more than *three (3)*

years before the filing of an administrative complaint against respondent judge. On the other hand, complainant Marcelino Langcap alleged that judgment in Civil Cases Nos. 17765 and 18425 was due as early as March 2004 or more than *three (3) years* prior to the filing of his letter-complaint.

3. ID.; ID.; GROSS IGNORANCE OF THE LAW; WHEN THE LAW IS SO ELEMENTARY, NOT TO KNOW IT CONSTITUTES GROSS IGNORANCE OF THE LAW.— Respondent judge's actuation is quite contrary to the rationale of the Rules on Summary Procedure which was promulgated particularly for the purpose of achieving "an expeditious and inexpensive determination of cases." It is not encouraging when it is the judge herself who occasions the delay sought to be prevented by the Rule. Her lackadaisical attitude in sitting on the subject cases for years as well as her failure to immediately render judgment in Civil Case No. 19887 after the defendants therein failed to file their answer, clearly manifested her utter disregard of settled rules and jurisprudence relative to the Revised Rules on Summary Procedure, to the detriment and prejudice of the complainants. Verily, respondent judge showed gross ignorance of the law. When the law is so elementary, not to know it constitutes gross ignorance of the law.

4. ID.; ID.; ID.; FAILURE OF A JUDGE TO DECIDE A CASE WITHIN THE PRESCRIBED PERIOD CONSTITUTES GROSS DERELICTION OF DUTY; THE DELAY ALSO IMPAIRS THE PEOPLE'S FAITH IN THE ADMINISTRATION OF JUSTICE AND REINFORCES IN THE MINDS OF THE LITIGANTS THE IMPRESSION THAT THE WHEELS OF JUSTICE GRIND EVER SO SLOWLY.— Rule 3.05, Canon 3 of the Code of Judicial Conduct admonishes all judges to dispose of the court's business promptly and decide cases within the period fixed by law. This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness. Failure of a judge to resolve a case within the prescribed period constitutes gross dereliction of duty. In the process, respondent judge also contravened Section 16, Article III of the Constitution which provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it likewise impairs the people's faith in the administration of justice and reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly.

5. ID.; ID.; ID.; ID.; FAILURE TO PROMPTLY DECIDE CASES IN ACCORDANCE WITH THE LAW OR RULES OF COURT CONSTITUTES GROSS INEFFICIENCY.— This Court cannot countenance such undue delay caused by respondent judge especially now when there is an all-out effort to minimize, if not totally eradicate, the twin problems of congestion and delay which have long plagued our courts. Judge Torres knew or should have known that if her caseload absolutely prevented the disposition of the subject cases within the reglementary period, all she had to do was to request reasonable extensions of time from this Court to resolve them. The records of these administrative matters do not show that respondent judge made any attempt to make such requests. Instead, she preferred to keep the cases pending, enshrouding the same by her silence. It has been repeatedly held that failure to promptly decide cases in accordance with the Constitution or the Rules of Court constitutes gross inefficiency, warranting administrative sanction from this Court.

6. ID.; ID.; ID.; ID.; ID.; RESPONDENT JUDGE'S IMPIETY AND BLATANT DISREGARD OF THE OFFICE OF THE COURT ADMINISTRATOR'S ORDERS SHOWS HER OWN LACK OF INTEREST TO REMAIN IN THE COURT SYSTEM; CASE AT BAR.— The Court is gravely disturbed by respondent judge's failure to comment on the charges hurled against her. Nothing was heard from her except when she sent two letters dated November 13 and 28, 2006 seeking for a total extension of forty (40) days within which to file her comment in A.M. No. MTJ-08-1719. Despite giving her ample opportunities to file her comment, the Court never received any. What is on record, instead, is her defiant and contumacious silence for a period of more than *four (4) years* for A.M. No. MTJ-08-1719, and more than *three (3) years* for both A.M. No. MTJ-08-1722 and A. M. No. MTJ-08-1723. Judge Torres was merely called upon to answer the administrative charges filed against her. It appears, however, that she is not at all

interested in clearing her name. Either that, or she simply has nothing to say in her defense. Her refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of a wrongdoing, is to declare his/her innocence at the first opportune time. x x x Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary. With her obstinate defiance and adamant refusal to submit her compliance to the OCA, despite the latter's repeated directives and stern admonitions, Judge Torres exposed her insolence and disrespect for the lawful orders of the said office. It bears stressing that judges should treat directives from the OCA as if issued directly by the Court and comply promptly and conscientiously with them since it is through the OCA that this Court exercises its constitutionally mandated administrative supervision over all courts and the personnel thereof. Failure to do so constitutes misconduct and exacerbates administrative liability. Respondent judge's impiety and blatant disregard of the OCA's directives should merit no further compassion. Her continued refusal to abide by the lawful orders of the OCA can mean no less than her own lack of interest to remain with the system to which she has all along pretended to belong. Her conduct in these incidents, over the years, amounts to open defiance and downright insubordination.

7. ID.; ID.; ID.; ID.; ID.; ID.; DISMISSAL, A PROPER PENALTY IN VIEW OF THE MAGNITUDE OF RESPONDENT'S TRANSGRESSIONS IN CASE AT BAR.— [R]espondent judge's infractions here alone clearly show that she has failed to live up to the exacting standards of her office. The magnitude of her transgressions in the present consolidated cases — gross inefficiency, gross ignorance of the law, dereliction of duty, violation of the Code of Judicial Conduct, and insubordination, taken collectively, cast a heavy shadow on her moral, intellectual and attitudinal competence. She has shown herself unworthy of the judicial robe and place of honor reserved for guardians of justice. Thus, the Court is constrained to impose upon her the severest of administrative penalties – dismissal from the service, to assure the people's faith in the judiciary and the speedy administration of justice.

APPEARANCES OF COUNSEL

Nimfa E. Silvestre-Pineda for Jose Maria Sembrano.

D E C I S I O N

PER CURIAM:

A judge is a paradigm of justice who must closely adhere to the policy of prompt disposition of cases. He should be always mindful that delay in case resolution is the major culprit in the erosion of public faith and confidence in the judiciary. He is duty-bound to obey and comply with the lawful orders and processes and to exercise a high degree of professional competence at all times. A judge who cannot meet the exacting standards of judicial conduct and integrity is not worthy to wear the judicial robe because his continued presence in the bench will only tarnish the image of the judiciary.

Before this Court are three administrative complaints for dismissal from judicial service filed against respondent, Judge Lizabeth Gutierrez-Torres *(Judge Torres)*, Metropolitan Trial Court of Mandaluyong City, Branch 60 *(MeTC)*, charging her with a host of infractions. These administrative complaints have been consolidated in view of the similar nature of the complaints against her.

Administrative Matter No. MTJ-08-1719 was commenced by a complaint[1] dated September 13, 2006 filed by Atty. Arnold Lugares *(Atty. Lugares)* charging Judge Torres with Gross Inefficiency, Undue Delay in the Administration of Justice, Indecisiveness, Manifest Partiality, and Gross Ignorance of the Law relative to Civil Case No. 19887 entitled "*Arnold B. Lugares v. Zenaida M. Bautista and Alex M. Bautista.*"

Atty. Lugares alleged that on February 2, 2005, he instituted a civil case for ejectment against Zenaida and Alex Bautista before the MeTC. Summons was duly served on the defendants

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[1] *Rollo* (A.M. No. MTJ-08-1719), pp. 1-4.

on February 10, 2005 but they failed to file their answer within the reglementary period of ten (10) days. Consequently, Judge Torres issued an order[2] stating that she would render judgment in the case pursuant to Section 7, in relation to Section 6, Rule 70 of the 1997 Rules on Civil Procedure. Defendants filed a motion for reconsideration[3] with leave of court to admit attached responsive pleading, but their motion was denied on April 12, 2005.[4]

Despite repeated follow-ups and notwithstanding the lapse of more than a year, no decision was rendered by Judge Torres in Civil Case No. 19887. This prompted Atty. Lugares to file a motion for early rendition of judgment on July 12, 2006[5] and, later, a manifestation[6] dated July 24, 2006, praying that judgment be rendered considering that the case had been deemed submitted for decision as early as April 2005.

More than a year, or specifically six months, after the denial of the motion to admit responsive pleading, on August 9, 2006, Judge Torres issued an order[7] admitting defendants' answer and setting the case for preliminary conference. Atty. Lugares posited that the issuance of the August 9, 2006 Order, which was in contradiction with the April 12, 2005 Order, was obviously intended to accommodate the defendants. He added that the failure to immediately decide the case in accordance with the Rules on Summary Procedure aggravated the conflict between the parties which resulted in the filing of several cases between them.

In the 1st Indorsement,[8] dated October 6, 2006, then Court Administrator Christopher O. Lock *(CA Lock)* required Judge

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[2] *Id.* at 10.

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

[4] *Id.* at 17.

[5] *Id.* at 18-25.

[6] *Id.* at 54-58.

[7] *Id.* at 59-60.

[8] *Id.* at 62.

Torres to comment on the complaint within ten (10) days from notice. Respondent judge twice requested for an extension of 20 days in her November 13, 2006 and November 28, 2006 letters.[9] Said requests were granted by CA Lock on November 21, 2006[10] and December 6, 2006,[11] respectively. Nothing was heard or received from Judge Torres, however, on the 1st Indorsement. In view of her failure to comply, CA Lock sent a 1st Tracer,[12] dated May 7, 2007, warning her that should she fail to comply, he would recommend the resolution of the complaint without her comment. Despite receipt by respondent judge of the aforementioned communications, as borne by the Registry Return Receipts dated November 3, 2006, December 8, 2006, and May 23, 2007, respectively, she still failed to submit her comment.

Administrative Matter No. MTJ-08-1722 was initiated through a Complaint-Affidavit,[13] dated August 28, 2007, filed by Jose Maria J. Sembrano *(Sembrano)* charging Judge Torres with having committed a Violation of the Code of Judicial Conduct relative to Civil Case No. 19063 entitled *"Jose Maria A. Sembrano v. Ronick B. Aquino and Ritex Philippines, Inc."* for damages.

Sembrano averred that Civil Case No. 19063 was set for preliminary conference on January 27, 2004. Thereafter, the case was referred for mediation proceedings. Due to the failure of the parties to arrive at an amicable settlement, the case was again set for hearing on April 13, 2004. On even date, pre-trial was terminated and the parties were directed to file their respective position papers and affidavits within ten (10) days from notice. Sembrano complied on April 23, 2004 and, subsequently, he received copies of the defendants' motion to admit (position

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[9] *Id.* at 63, 68.

[10] *Id.* at 66.

[11] *Id.* at 70.

[12] *Id.* at 71.

[13] *Rollo* (A.M. No. MTJ-08-1722), pp. 1-3.

paper) with their position paper on May 12, 2004. Since no judgment had yet been rendered by respondent judge despite the fact that the case had already been submitted for decision, Sembrano filed a motion[14] to resolve the case on August 31, 2004.

On March 3, 2005 and August 4, 2005, he filed his second and third motions[15] to resolve, respectively. Meanwhile, Assistant Court Administrator Antonio H. Dujua *(ACA Dujua)* referred Sembrano's second motion to resolve to Judge Torres and required her to advise the Office of the Court Administrator (OCA) of the action taken by her on the matter.[16] All the foregoing notwithstanding, Judge Torres still failed to render a decision in Civil Case No. 19063, which constrained Sembrano to file a fourth motion[17] to resolve on December 29, 2005. On January 23, 2006, ACA Dujua again referred the motion to respondent judge for appropriate action.[18] Finally, complainant filed a fifth motion[19] to resolve on January 19, 2007. Sembrano opined that since the case was governed by the Rules on Summary Procedure, judgment was long overdue for more than three (3) years.

On September 3, 2007, CA Lock indorsed Sembrano's complaint-affidavit to Judge Torres directing her to comment thereon.[20] This directive was reiterated in the December 20, 2007 Tracer-Letter[21] to respondent judge. The Registry Return Receipts indicated that both communications were received by Judge Torres on September 14, 2007 and January 16, 2008,

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[14] *Id.* at 64-65.

[15] *Id.* at 67- 68; 69-71.

[16] *Id.* at 75.

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

[18] *Id.* at 80.

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

[20] *Id.* at 81.

[21] *Id.* at 82.

respectively. Respondent judge did not file any comment on, or reply to, said letters.

Administrative Matter No. MTJ-08-1723 was lodged by one Marcelino Langcap *(Langcap)* in a letter-complaint[22] dated March 26, 2007 charging Judge Torres with Delay in the Disposition of Civil Case Nos. 17765 and 18425 entitled *"Spouses Marcelino and Teofista Langcap v. Florencia Langcap-Padilla"* and *"Spouses Marcelino and Teofista Langcap v. Antonio Lagpitanghat,"* respectively, both for ejectment.

Langcap claimed that after the termination of the joint preliminary conference in the two cases on September 19, 2003, the parties were directed to submit their respective position papers together with the affidavits of their witnesses and other evidence within ten (10) days from receipt of the preliminary conference order.[23] The parties received copies of said order on February 11, 2004 and then filed the required pleadings and documents within the reglementary period. Langcap maintained that judgment on both cases was due as early as March 2004 pursuant to Section 11, Rule 70 of the Rules of Court. When Langcap and his counsel inquired as to the status of said cases on August 20, 2004, he was assured by Judge Torres that the decision was "already being finalized and [would] soon be released."[24] Until the filing of his letter-complaint, Langcap had yet to receive the decision.

In his March 28, 2007 1st Indorsement,[25] CA Lock required Judge Torres to comment on Langcap's letter-complaint. Thereafter, Tracer-Letter[26] dated May 30, 2007 directed her anew to file her comment within five (5) days from notice; otherwise, the case would be submitted for the consideration of

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[22] *Rollo (*A.M. No. MTJ-08-1723), pp. 1-3.

[23] *Id.* at 4-5.

[24] *Id.* at 2.

[25] *Id.* at 16.

[26] *Id.* at 17.

the Court sans her comment. The Registry Return Receipts showed that both communications were received by Judge Torres on April 12, 2007 and June 6, 2007, respectively. No compliance was received from respondent judge.

On July 28, 2008, the OCA issued its Report[27] finding that Judge Torres should be held guilty of willful disobedience and defiance of authority for ignoring its directives to file comment on the subject cases as well as of undue delay in the disposition of cases and other matters. The OCA recommended that the three administrative complaints be re-docketed as regular administrative matters against Judge Torres and that she be suspended from service without pay for a period of six (6) months effective from receipt of the decision of this Court.

Up until the resolution of these administrative cases against her, Judge Torres has not complied with any of the directives of the OCA. The Court does not have the luxury of time to wait for Judge Torres who has clearly forfeited her chance to be heard on the charges leveled against her. The Court must now proceed to resolve these administrative cases against her based on the contents of the records, the most significant of which is the report and recommendation of the OCA.

After a judicious review of the records of the case, and considering the respondent judge's repeated non-compliance with the orders to explain the undue delay in the disposition of Civil Case No. 19887, Civil Case No. 19063 and Civil Case Nos. 17765 and 18425 before her court, this Court determines that the findings of the OCA are well-taken. The Court, however, finds the recommended penalty not commensurate to the degree of her transgressions.

As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial

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[27] *Rollo* (A.M. No. MTJ-08-1719), pp. 72-78.

business. By their very nature, these rules are regarded as mandatory.[28]

Section 15 (1) and (2), Article VIII of the Constitution requires courts to decide cases submitted for decision generally within three (3) months from the date of their submission. With respect to cases falling under the Rules on Summary Procedure, first level courts are only allowed thirty (30) days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment.[29] The Court has consistently impressed upon the magistrates the need to dispose of the court's business promptly and decide cases within the required periods, for it cannot be gainsaid that justice delayed is justice denied.

In A.M. No. MTJ-08-1719, Judge Torres failed to render judgment in Civil Case No. 19887 after declaring that "the court will now render a judgment in the case pursuant to Section 7, in relation to Section 6, Rule 70 of the Rules of Court" for failure of defendants Zenaida and Alex Bautista to file their answer, per Order dated February17, 2005, and even after denying defendants' motion for reconsideration with leave to admit attached answer in its Order dated April 12, 2005. After the lapse of more than one (1) year and after Atty. Lugares had filed a motion for early rendition of judgment and a manifestation praying that a decision be immediately rendered in his favor, Judge Torres ruled to admit defendants' answer in the interest of justice in her order dated August 9, 2006.

Section 6 of the Rules on Summary Procedure clearly provides:

SEC. 6. *Effect of failure to answer*. — Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on motion of the plaintiff, shall render

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[28] *Manuel B. Arcenas v. Judge Henry B. Avelino, MCTC, Pontevedra, Capiz*, 493 Phil. 356, 360 (2005).

[29] Section 10, Revised Rules on Summary Procedure.

judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: Provided, however, that the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable.

Basic is the rule that after the failure of the defendant to answer the complaint, the court shall render judgment as may be established by the facts alleged in the complaint. The Revised Rule on Summary Procedure authorizes a judge to render a decision on his own initiative or upon motion of the plaintiff. Judge Torres starkly deviated from the required procedure when she admitted defendants' answer at that stage of the proceedings even when she had previously denied admission of said pleading. The Court finds no logic in her sudden change of heart. Instead, respondent judge should have given due course to Atty. Lugares' motion for early resolution and manifestation, and should not have entertained the defendants' comment and counter-manifestation considering that the case was summary in nature, and a period of more than one (1) year had lapsed after the case was submitted for decision.

Judge Torres demonstrated her propensity for inattentiveness and indifference, if not sheer disregard for rules, in Civil Case No. 19063 and Civil Cases Nos. 17765 and 18425 when she likewise failed to comply with the basic rule of deciding the aforementioned cases within the prescribed thirty-day period. In Civil Case No. 19063, complainant Sembrano filed a total of five (5) motions to resolve the case but to no avail and the decision thereon had been overdue for more than *three (3) years* before the filing of an administrative complaint against respondent judge. On the other hand, complainant Marcelino Langcap alleged that judgment in Civil Cases Nos. 17765 and 18425 was due as early as March 2004 or more than *three (3) years* prior to the filing of his letter-complaint.

Respondent judge's actuation is quite contrary to the rationale of the Rules on Summary Procedure which was promulgated particularly for the purpose of achieving "an expeditious and

inexpensive determination of cases."[30] It is not encouraging when it is the judge herself who occasions the delay sought to be prevented by the Rule.[31] Her lackadaisical attitude in sitting on the subject cases for years as well as her failure to immediately render judgment in Civil Case No. 19887 after the defendants therein failed to file their answer, clearly manifested her utter disregard of settled rules and jurisprudence relative to the Revised Rules on Summary Procedure, to the detriment and prejudice of the complainants. Verily, respondent judge showed gross ignorance of the law. When the law is so elementary, not to know it constitutes gross ignorance of the law.[32]

Rule 3.05, Canon 3 of the Code of Judicial Conduct[33] admonishes all judges to dispose of the court's business promptly and decide cases within the period fixed by law.[34] This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary[35] requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness. Failure of a judge to resolve a case within the prescribed period constitutes gross dereliction of duty.[36]

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[30] *Gachon v. Devera, Jr.*, G.R. No.116695, June 20, 1997, 274 SCRA 540, 549 citing *Cf Valdez v. Ocumen, et al.*, 106 Phil. 929, 933 (1960); *Alvero v. De la Rosa*, 76 Phil. 428, 434 (1946).

[31] *Cuevas v. Balderian*, 389 Phil. 580, 583 (2000).

[32] *Marcelo Cueva v. Judge Oliver T. Villanueva*, 365 Phil. 1, 8 (1999).

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

[34] Code of Judicial Conduct (1989).

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

[36] *Sanchez v. Judge Vestil*, 358 Phil. 477, 494 (1998).

In the process, respondent judge also contravened Section 16, Article III of the Constitution which provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case.[37] Not only does it magnify the cost of seeking justice, it likewise impairs the people's faith in the administration of justice and reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly.

This Court cannot countenance such undue delay caused by respondent judge especially now when there is an all-out effort to minimize, if not totally eradicate, the twin problems of congestion and delay which have long plagued our courts.[38] Judge Torres knew or should have known that if her caseload absolutely prevented the disposition of the subject cases within the reglementary period, all she had to do was to request reasonable extensions of time from this Court to resolve them. The records of these administrative matters do not show that respondent judge made any attempt to make such requests. Instead, she preferred to keep the cases pending, enshrouding the same by her silence. It has been repeatedly held that failure to promptly decide cases in accordance with the Constitution or the Rules of Court constitutes gross inefficiency,[39] warranting administrative sanction from this Court.

On top of the foregoing infractions, the Court is gravely disturbed by respondent judge's failure to comment on the charges hurled against her. Nothing was heard from her except when she sent two letters dated November 13 and 28, 2006 seeking for a total extension of forty (40) days within which to file her

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[37] *Office of the Court Administrator v. Garcia-Blanco*, A.M. No. RTJ-05-1941, April 25, 2006, 488 SCRA 109, 121.

[38] Query of Judge Tenerife, as to who should decide the cases submitted for decision in said court, 325 Phil. 464, 467 (1996).

[39] *Judge Dolores L. Espanol v. Judge Lorinda B. Toledo-Mupas*, A.M. No. MTJ-03-1462, February 11, 2010, 612 SCRA 211, 218.

comment in A.M. No. MTJ-08-1719. Despite giving her ample opportunities to file her comment, the Court never received any. What is on record, instead, is her defiant and contumacious silence for a period of more than *four (4) years* for A.M. No. MTJ-08-1719, and more than *three (3) years* for both A.M. No. MTJ-08-1722 and A. M. No. MTJ-08-1723.

Judge Torres was merely called upon to answer the administrative charges filed against her. It appears, however, that she is not at all interested in clearing her name. Either that, or she simply has nothing to say in her defense. Her refusal to face head-on the charges against her is contrary to the principle that the first impulse of an innocent person, when accused of a wrongdoing, is to declare his/her innocence at the first opportune time.[40] Her silence and non-participation in the administrative proceedings, despite due notice and directives of the OCA for her to submit her comment in her defense, strongly indicate her guilt.

Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary.[41] With her obstinate defiance and adamant refusal to submit her compliance to the OCA, despite the latter's repeated directives and stern admonitions, Judge Torres exposed her insolence and disrespect for the lawful orders of the said office. It bears stressing that judges should treat directives from the OCA as if issued directly by the Court and comply promptly and conscientiously with them since it is through the OCA that this Court exercises its constitutionally mandated administrative supervision over all courts and the personnel thereof.[42] Failure to do so constitutes misconduct and exacerbates administrative liability.

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[40] *Office of the Court Administrator v. Clerk of Court Fe P. Ganzan*, A.M. No. P-05-2046, September 17, 2009, 600 SCRA 17, 29.

[41] *Josephine Martinez v. Judge Cesar N. Zoleta*, 374 Phil. 35, 47 (1999).

[42] *Office of the Court Administrator v. Judge Ismael G. Bagundang*, A.M. No. RTJ-05-1937, January 22, 2008, 542 SCRA 153, 162-163.

Respondent judge's impiety and blatant disregard of the OCA's directives should merit no further compassion. Her continued refusal to abide by the lawful orders of the OCA can mean no less than her own lack of interest to remain with the system to which she has all along pretended to belong. Her conduct in these incidents, over the years, amounts to open defiance and downright insubordination.

This is not the first time that Judge Torres defied the Court. It is of the public record that there were previous administrative cases filed against her for failure to act with dispatch on incidents pending before her. In *"Antonio L. Del Mundo v. Judge Lizabeth Gutierrez-Torres,"* A.M. No. MTJ-05-1611, September 30, 2005, respondent judge was found guilty of gross inefficiency for undue delay in resolving a motion to dismiss and for which she was fined ₱20,000.00. In "*Eugenio Juan R. Gonzalez v. Judge Lizabeth G. Torres,*" A.M. No. MTJ-06-1653, July 30, 2007, she was sanctioned for unreasonable delay in resolving the Demurrer to Evidence in Criminal Case No. 71984 and was meted the penalty of a fine in the amount of ₱20,000.00. Still, in *"Ma. Theresa G. Winternitz, et al. v. Judge Lizabeth Gutierrez-Torres,"* A.M. No. MTJ-09-1733, February 24, 2009, the Court held her guilty of undue delay in rendering a decision or order and suspended her from office without salary and other benefits for one (1) month. In all three administrative cases, respondent judge was sternly *warned* that a repetition of the same or similar offense shall be dealt with more severely. However, she ignored these reminders and committed the same infraction as has been shown in these cases which is clearly reflective of her incorrigible character.

The Court notes that this propensity of respondent Judge Torres to disregard, if not challenge, the authority of this Court is again shown in another administrative matter pending before Us. In OCA IPI No.08-1966-MTJ, respondent judge was required to show cause why she should not be administratively dealt with for refusing to comment and/or to take appropriate action on the charge of violation of the Code of Judicial Conduct despite two directives from the OCA. There are three other pending

administrative matters involving respondent judge, namely, OCA IPI No. 04-1606-MTJ, *"Arturo Maturan v. Judge Lizabeth G. Torres"* for unreasonable delay in resolving criminal case, gross inefficiency, *etc*.; OCA IPI No.03-1496-MTJ, *"Teresa Winternitz and Raquel Gonzales v. Judge Lizabeth G. Torres"* for violation of Article 7, Section 15 of the 1987 Constitution, Canon 3, Rule 3.08 and 3.09, Code of Judicial Conduct and grave prejudice; and OCA IPI No.03-1464-MTJ, *"Michael G. Plata v. Judge Lizabeth G. Torres"* for inefficiency, gross negligence, grave abuse of discretion and violation of the Code of Judicial Conduct. These, however, are not pertinent in the resolution and adjudication of the present cases as respondent judge's infractions here alone clearly show that she has failed to live up to the exacting standards of her office.

The magnitude of her transgressions in the present consolidated cases — gross inefficiency, gross ignorance of the law, dereliction of duty, violation of the Code of Judicial Conduct, and insubordination, taken collectively, cast a heavy shadow on her moral, intellectual and attitudinal competence. She has shown herself unworthy of the judicial robe and place of honor reserved for guardians of justice. Thus, the Court is constrained to impose upon her the severest of administrative penalties – dismissal from the service, to assure the people's faith in the judiciary and the speedy administration of justice.

WHEREFORE, respondent Judge Lizabeth Gutierrez-Torres, Presiding Judge of the Metropolitan Trial Court of Mandaluyong City, Branch 60, is hereby *DISMISSED* from the service with forfeiture of all retirement benefits except earned leave and vacation benefits, with prejudice to employment in any branch of the government or any of its instrumentalities including government-owned and controlled corporations.

This decision is immediately executory. Respondent judge is ordered to cease and desist from discharging the functions of her Office upon receipt. Let a copy of this Decision be entered in the personnel records of respondent judge.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to a party.

Del Castillo, J., on official leave.

Perez, J., no part.

EN BANC

[G.R. No. 166566. November 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WENCESLAO DERI *y* BENITEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— In essence, the crime of rape is typically committed in relative isolation or even secrecy, thus, normally it is only the victim who can testify on the circumstances surrounding the forced coitus. Therefore, in the prosecution of rape, the credibility of the rape victim is usually the single most important issue to determine. Should her testimony withstand the test of credibility, the victim's account would be adequate to sustain a conviction. In the case at bench, the trial court, which had the opportunity to examine AAA's behavior in court, found her story to be clear, straightforward and credible. It wrote: "her testimony bore the earmarks of truth it being clear, positive, replete with details, straightforward, consistent and unwavering even when testifying during cross-examination. It must have been heartbreaking for her to recount

vividly her father's dastardly acts during her testimony, while shedding tears on her painful, traumatic experience in the hands of her own father who was supposed to be her own protector from evil elements at that time while her mother was abroad working and wanting to give her family a better life by looking after and caring for other people's children when all the while she was away, her daughter was being ravished by the latter's own father." Settled is the rule that findings of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect, absent any showing that it overlooked or misappreciated substantial facts and circumstances, which if considered, would materially modify the outcome of the case.

2. ID.; ID.; POSITIVE TESTIMONY, GIVEN GREATER EVIDENTIARY VALUE THAN BARE DENIAL.— [A]ccused's bare denial deserves scant or no consideration at all. The Court has consistently ruled that "denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters." In this case, AAA positively identified her father as the one who raped her on three separate occasions. Her testimony was corroborated by the medical finding that she was no longer a virgin at barely 16 years of age. A rape victim's testimony against her father deserves greater weight since Filipino culture dictates children revere and respect their elders. This trait is deep-rooted in Filipino children and families and is even acknowledged by law. It is thus improbable, if not completely absurd, that a daughter would imprudently invent a story of rape against her father in utter disregard of the unimaginable trauma and social stigma it may generate on her and the entire family. A teenage unmarried girl does not ordinarily file a rape complaint against anybody, much less her own father, if she does not speak the truth.

3. ID.; ID.; DEFENSE OF ALIBI, NOT GIVEN EVIDENTIARY WEIGHT.— [Accused's] defense of alibi warrants no evidentiary weight. For the defense of alibi to prosper, it must sufficiently prove: (a) the presence of the accused in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime. Other than the self-serving testimony of the accused, the Court

finds nary an exculpating evidence that would prove that he could not have possibly committed the crime being imputed against him. On the contrary, his job as a tricycle driver gave him all the opportunity he needed to commit the crime. It did not eliminate the possibility of him committing the said crime but all the more proved that he could easily facilitate it. Even the testimony of defense witness Gregorio Frias, who attempted to support his alibi, was evidently vague because he could not recall the exact date when they were supposedly together.

4. CRIMINAL LAW; RAPE; PENALTY FOR THREE COUNTS OF RAPE.— In Criminal Case Nos. Q-97-73621 and Q-98-75195, the incidents of rape were committed on August 14, 1995 and October 17, 1997 or after the effectivity of R.A. 7659. Article 335 of the Revised Penal Code in relation to R.A. 7659, provides that when the victim of rape is under eighteen (18) years of age and the offender is a *parent*, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, the penalty of death shall be imposed. However, in view of the effectivity of R.A. 9346, the penalty of death should now be reduced to *reclusion perpetua*, without eligibility for parole. Hence, with respect to Criminal Case Nos. Q-97-73621 and Q-98-75195, where the penalty originally imposed was death for each crime, it should now be reduced to *reclusion perpetua* without eligibility for parole.

5. ID.; ID.; CIVIL LIABILITIES.— Regarding the award of damages in these two cases, the Court affirms the award of ₱75,000.00 representing civil indemnity *ex delicto*. As explained in *People v. Lopez*, "if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00." In the same vein, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00 because the cases remain to be heinous. In Criminal Case No. Q-98-75196, the Court affirms the penalty of *reclusion perpetua* and the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. At the time of the commission of the crime in this case, rape was still classified under crimes against chastity as defined and penalized under Article 335 of the Revised Penal Code. The Court, however, deems it proper to increase the exemplary damages from ₱25,000.00 to

₱30,000.00 following jurisprudence for all counts of rape. Article 2230 of the New Civil Code provides that "in criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party." Furthermore, in *People v. Matrimonio*, the Court awarded exemplary damages to dissuade other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the January 12, 2005 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR H.C. No. 00066, which affirmed with modification the January 27, 2003 Decision[2] of the Regional Trial Court, Quezon City, Branch 98 *(RTC)*. Initially, the RTC found accused Wenceslao Deri guilty of three counts of rape committed against AAA[3] and sentenced him to suffer the penalty of death in Criminal Case Nos. Q-97-73621 and Q-98-75195 and the penalty of *reclusion perpetua* in Criminal Case

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[1] CA *rollo*, pp. 120-138. Penned by Associate Justice Eliezer De Los Santos with Associate Justices Delilah Vidallon-Magtolis and Monina Arevalo Zenarosa, concurring.

[2] *Id.* at 21-37.

[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

No. Q-98-75196. In each case, accused was also ordered to pay the following amounts: ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

THE FACTS

Accused Wenceslao Deri was charged with three counts of rape for sexually violating his minor daughter, committed on three separate incidents within a period of four years. The accusatory parts of the three (3) Informations read:

Criminal Case No. Q-97-73621[4]

That on or about the *17th day of October 1997* in Quezon City, Philippines, the said accused, [father of the complainant], by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously putting himself on top of the undersigned, ***a minor, 16 years of age, his own daughter***,[5] and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. Q-98-75195[6]

That on or about the *14th day of August 1995*, in Quezon City, Philippines, the said accused, [***father of the complainant***], by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressing her and putting himself on top of AAA, ***14 years of age, a minor***,[7] and thereafter have carnal knowledge with the said complainant against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. Q-98-75196[8]

That on or about the month of *March 1993*, in Quezon City, Philippines, the said accused, ***father of the complainant***, by means

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[4] CA *rollo*, pp. 5-6.

[5] Emphasis supplied.

[6] CA *rollo*, pp. 7-8.

[7] Emphasis supplied.

[8] CA *rollo*, pp. 9-10.

of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously putting himself on top of AAA, ***11 years of age, a minor***,[9] and thereafter have carnal knowledge with said complainant against her will and without her consent.

CONTRARY TO LAW.

During the trial, the prosecution named four witnesses: (1) AAA; (2) Dr. Ma Christina B. Freyra, Chief-Medico Legal Officer of the Philippine National Police (PNP) Crime Laboratory; (3) Lydia Velez, their stay-out househelp; and (4) Senior Police Officer 2 (SPO2) Reynato Resurreccion of Quezon City Police Station 9. The testimony of SPO2 Resurreccion was later dispensed with after the parties stipulated that his testimony would merely be on the investigation he conducted concerning the cases.[10]

The prosecution established that AAA is the eldest child of Wenceslao Deri and BBB. As indicated in her birth certificate,[11] she was born on July 10, 1981. AAA testified that when their mother, BBB, left the Philippines to work as a baby-sitter abroad, she and her brother, CCC, were left under the custody of their father, the accused, who worked as a tricycle driver.[12] Her agony began when her father started sexually defiling her. She particularly remembered being raped by her father on three occasions: (1) March, 1993; (2) August 14, 1995; and (3) October 17, 1997.

She recalled that sometime in March of 1993, when she was still 11 years old, the accused came to their room while she and her brother, CCC, were fast asleep. She was awakened, however, when she felt that someone was on top of her.[13] When finally she opened her eyes, she saw that it was her father. She tried

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[9] Emphasis supplied.

[10] TSN, April 22, 1999, pp. 2-4.

[11] Exhibits Folder, Exhibit "C", p. 5.

[12] TSN, October 30, 1998, p. 6.

[13] *Id.* at 7.

to push him away but her father threatened to kill her.[14] As she could not do anything to stop him, the latter eventually succeeded in ravishing her. This was the first time that her father raped her.

The second incident happened on August 14, 1995. It was her father's birthday and he had a drinking session with his friends in their house.[15] After his guests left, he ordered her, then 14 years old, to go to her room and undress.[16] She did not obey him and went to sleep instead. She was surprised to see her father in her bed.[17] She tried to push him away but he punched her in the buttocks to silence her.[18] After punching her, he continued raping her.

Finally, it was on October 17, 1997 when accused violated her for the third time. She was already 16 years old then. She recalled that on said date, he slid beside her while she was asleep and forcibly undressed her.[19] She tried to push him back but he hit her.[20] Already in pain, she could no longer find the strength to resist him, and so her father was able to successfully defile her yet again.

It was also this time that AAA finally found the courage to reveal her ordeal to their househelp, Lydia. The latter assured her that it would be reported to her grandfather, DDD.[21] On October 20, 1997, Lydia told DDD what she had discovered, and DDD immediately went to report this to the *barangay* authorities.[22] Thereafter, Captain Bing Garces and his men

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

[15] *Id.* at 11.

[16] *Id.* at 12.

[17] *Id.*

[18] *Id.* at 13.

[19] *Id.* at 15-16.

[20] *Id.* at 16.

[21] *Id.* at 17.

[22] *Id.* at 18.

accosted the accused and brought him to the police station.[23] Eventually, AAA was subjected to a medical examination.

On October 21, 1997, Dr. Maria Cristina Freyra conducted a physical examination on AAA and discovered deep healed lacerations on her sexual organ at the 4 o'clock and 7 o'clock positions.[24] In her medical opinion, the said lacerations could have been caused by sexual intercourse that happened more than a week before the examination.[25] The Medico-Legal Report[26] concluded that she was "in non-virgin state physically."

Lydia Velez, the stay-out househelp of the family, testified that on October 14, 1997, she noticed AAA in tears so she asked her if there was something bothering her.[27] It was then that AAA confided that her father had been sexually violating her since she was in Grade VI.[28] She even narrated that AAA considered ending her life so that her father would not be able to repeat his dastardly acts against her.[29]

The accused, on the other hand, interposed the defense of denial and alibi. He insisted that he did not rape his daughter. He surmised that AAA wanted to get back at him because she did not like the way he disciplined them. He mentioned in particular the incident where he and her daughter had an altercation about her skipping of classes and about her report card. It was during this time when, unable to control his temper, he slapped her and whipped her with his belt.[30] He also related that he worked as a tricycle driver from 12:00 o'clock midnight

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

[24] TSN, March 11, 1999, p. 5.

[25] *Id.*

[26] Exhibits folder, Exhibit "B", p. 4.

[27] TSN, July 5, 1999, p. 5.

[28] *Id.* at 10.

[29] *Id.*

[30] TSN, January 20, 2000, p. 6.

until 8:00 o'clock or 10:00 o'clock of the next morning.[31] AAA, would usually leave for school at around 7:00 o'clock in the morning, would go home at around 5:00 o'clock or 6:00 o'clock and sleep at around 11:00 o'clock in the evening.[32]

To further support his stand, he presented Gregorio Frias *(Frias)* and Violeta Tabar *(Tabar).* Frias testified that he was with the accused sometime in October of 1997 but could not remember the exact date.[33] Tabar, on the other hand, a former tenant of the accused, informed the Court that she used to lease a part of the house of the accused from 1993 to 1997. During that period, she never noticed anything out of the ordinary in the family or heard of the rapes that allegedly took place there.[34]

On January 27, 2003, the RTC convicted the accused for three counts of rape.[35] The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, the guilt of the accused having been proven beyond reasonable doubt decision is hereby rendered as follows:
>
> CRIMINAL CASE NO. Q-97-73621 – the accused WENCESLAO DERI *Y* BENITEZ is sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (₱25,000.00) as exemplary damages.
>
> CRIMINAL CASE NO. Q-98-75195 – the accused WENCESLAO DERI *Y* BENITEZ is sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as civil

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[31] *Id.* at 4.

[32] *Id.* at 4-5.

[33] TSN, August 2, 2001, pp. 5, 8-9.

[34] TSN, September 5, 2001, p. 6.

[35] CA *rollo,* pp. 21-37.

indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (₱25,000.00) as exemplary damages.

CRIMINAL CASE NO. Q-98-75196 – the accused WENCESLAO DERI *Y* BENITEZ is sentenced to suffer the penalty of *RECLUSION PERPETUA* and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (₱25,000.00) as exemplary damages.

SO ORDERED.[36]

The RTC found the testimony of AAA clear and credible and substantiated by the report of Dr. Freyra which confirmed that she had healed lacerations in her private genitalia.[37] The trial court did not give weight to the defense of denial and alibi of the accused. It opined that the testimonies of his witnesses hardly helped his case because "the testimonies of defense witnesses who did not actually see the commission of the offense cannot prevail over the positive testimony of the complainant that she was raped by the accused."[38]

The RTC did not impose the death penalty in Criminal Case No. Q-98-75196 as the rape was committed in March, 1993 or before the effectivity of Republic Act 7659.

At first, the records of this case were forwarded to the Court for automatic review. Following the Court's ruling in *People v. Mateo*,[39] this case was remanded to the CA for intermediate review.

In his Appellant's Brief,[40] the accused presented the following errors:

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[36] *Id.* at 36-37.

[37] *Id.* at 34-35.

[38] *People v. Balisnomo*, 332 Phil. 870, 881 (1996).

[39] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[40] CA *rollo*, pp. 49-70.

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT AAA.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THREE (3) COUNTS OF RAPE.[41]

Accused insisted that AAA only filed the case to get revenge as he usually employed corporal punishment on his children as his way of instilling discipline in them.[42] He also argued that it was not clearly established that he had raped his daughter on the mentioned dates: March 13, 1993, August 14, 1995 and October 17, 1997.[43]

The Office of the Solicitor General *(OSG)* countered that AAA's testimony that her father raped her on the mentioned dates was clear and categorical. The OSG added that "no woman would cry rape, allow an examination of her private parts, subject herself to humiliations, go to the rigors of public trial and taint her good name if her claim were not true."[44]

On its January 12, 2005 Decision, the CA affirmed with modification the RTC decision[45] giving more weight to the positive testimony of AAA who withstood the rigors of the trial in order to get justice than to the accused's defense of denial and alibi.

With respect to Criminal Case No. Q-98-75196, considering that the rape occurred before the effectivity of R.A. 7659,[46] the

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[41] *Id.* at 51.

[42] *Id.* at 61-62.

[43] *Id.* at 61.

[44] *Id.* at 100.

[45] *Id.* at 120-138.

[46] R.A. 7659 took effect on December 31, 1993.

CA reduced the award of civil indemnity from ₱75,000.00 to ₱50,000.00.[47]

Thus, the decretal portion of the CA Decision reads:

> WHEREFORE, the decision of the trial court in Criminal Cases Nos. Q-97-73621 and Q-98-75195 is hereby AFFIRMED *in toto*.
>
> With respect to Criminal Case No. Q-98-75196, the decision appealed from is AFFIRMED with MODIFICATION in that the accuse-appellant is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay complainant AAA the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[48]

Hence, this appeal.

Accused restates the issue he submitted before the CA: *whether or not the RTC erred in finding him guilty beyond reasonable doubt of three counts of rape*.

There was no error. The Court affirms the conviction.

In essence, the crime of rape is typically committed in relative isolation or even secrecy, thus, normally it is only the victim who can testify on the circumstances surrounding the forced coitus.[49] Therefore, in the prosecution of rape, the credibility of the rape victim is usually the single most important issue to determine.[50] Should her testimony withstand the test of credibility, the victim's account would be adequate to sustain a conviction.[51]

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[47] CA *rollo*, p. 137.

[48] *Id.* at 137-138.

[49] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[50] *People v. Babera*, 388 Phil. 44, 53 (2000), citing *People v. Dacoba*, 352 Phil. 70, 76 (1998).

[51] *People v. Gapasan*, 312 Phil. 964, 972-973 (1995).

In the case at bench, the trial court, which had the opportunity to examine AAA's behavior in court, found her story to be clear, straightforward and credible. It wrote: "her testimony bore the earmarks of truth it being clear, positive, replete with details, straightforward, consistent and unwavering even when testifying during cross-examination. It must have been heartbreaking for her to recount vividly her father's dastardly acts during her testimony, while shedding tears on her painful, traumatic experience in the hands of her own father who was supposed to be her own protector from evil elements at that time while her mother was abroad working and wanting to give her family a better life by looking after and caring for other people's children when all the while she was away, her daughter was being ravished by the latter's own father."[52]

Settled is the rule that findings of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect, absent any showing that it overlooked or misappreciated substantial facts and circumstances, which if considered, would materially modify the outcome of the case.[53]

Accordingly, accused's bare denial deserves scant or no consideration at all. The Court has consistently ruled that "denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."[54] In this case, AAA positively identified her father as the one who raped her on three separate occasions. Her testimony was corroborated by the medical finding that she was no longer a virgin at barely 16 years of age. A rape victim's testimony against her father deserves greater weight since Filipino culture dictates children revere and respect their elders. This trait is deep-rooted

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

[53] *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546, citing *People v. Manalili*, G.R. No. 184598, June 23, 2009, 590 SCRA 695.

[54] *People v. Asis*, G.R. No. 179935, April 19, 2010.

in Filipino children and families and is even acknowledged by law. It is thus improbable, if not completely absurd, that a daughter would imprudently invent a story of rape against her father in utter disregard of the unimaginable trauma and social stigma it may generate on her and the entire family. A teenage unmarried girl does not ordinarily file a rape complaint against anybody, much less her own father, if she does not speak the truth.[55]

Likewise, his defense of alibi warrants no evidentiary weight. For the defense of alibi to prosper, it must sufficiently prove: (a) the presence of the accused in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime.[56] Other than the self-serving testimony of the accused, the Court finds nary an exculpating evidence that would prove that he could not have possibly committed the crime being imputed against him.

On the contrary, his job as a tricycle driver gave him all the opportunity he needed to commit the crime. It did not eliminate the possibility of him committing the said crime but all the more proved that he could easily facilitate it. Even the testimony of defense witness Gregorio Frias, who attempted to support his alibi, was evidently vague because he could not recall the exact date when they were supposedly together.

In Criminal Case Nos. Q-97-73621 and Q-98-75195, the incidents of rape were committed on August 14, 1995 and October 17, 1997 or after the effectivity of R.A. 7659. Article 335 of the Revised Penal Code in relation to R.A. 7659, provides that when the victim of rape is under eighteen (18) years of age and the offender is a *parent*, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, the penalty of

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[55] *People v. Miranda*, G.R. No. 176634, April 5, 2010, citing *People v. Alvero*, 386 Phil. 181, 198 (2000).

[56] *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 560.

death shall be imposed. However, in view of the effectivity of R.A. 9346,[57] the penalty of death should now be reduced to *reclusion perpetua*, without eligibility for parole. Hence, with respect to Criminal Case Nos. Q-97-73621 and Q-98-75195, where the penalty originally imposed was death for each crime, it should now be reduced to *reclusion perpetua* without eligibility for parole.

Regarding the award of damages in these two cases, the Court affirms the award of ₱75,000.00 representing civil indemnity *ex delicto*. As explained in *People v. Lopez*,[58] "if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00." In the same vein, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00 because the cases remain to be heinous.[59]

In Criminal Case No. Q-98-75196, the Court affirms the penalty of *reclusion perpetua* and the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[60] At the time of the commission of the crime in this case, rape was still classified under crimes against chastity as defined and penalized under Article 335[61] of the Revised Penal Code.

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[57] "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

[58] G.R. No. 179714, October 2, 2009, 602 SCRA 517, 529. See also *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20.

[59] *People v. Dela Cruz*, G.R. No. 166723, August 2, 2007, 529 SCRA 109, 118.

[60] *People v. Arellano*, G.R. 176640, August 22, 2008, 563 SCRA 181, 189.

[61] Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

3. When the woman is *under twelve years of age*, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua*.

The Court, however, deems it proper to increase the exemplary damages from ₱25,000.00 to ₱30,000.00 following jurisprudence[62] for all counts of rape. Article 2230 of the New Civil Code provides that "in criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party." Furthermore, in *People v. Matrimonio*,[63] the Court awarded exemplary damages to dissuade other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.

Lastly, in addition to the awarded damages, the accused is further ordered to pay interest at the legal rate of 6% per annum until fully paid.[64]

WHEREFORE, the January 12, 2005 Decision of the Court of Appeals, in CA-G.R. H.C. CR No. 00066, is *MODIFIED* to read as follows:

(1) In Criminal Case Nos. Q-97-73621 and Q-98-75195, accused WENCESLAO DERI *y* BENITEZ is hereby sentenced to suffer the penalty of *Reclusion Perpetua*, without eligibility of parole, for each count. He is further ordered to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, for each count.

(2) In Criminal Case No. Q-98-75196, accused WENCESLAO DERI *y* BENITEZ is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. He is further ordered to pay the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

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[62] *People v. Alarcon*, G.R. No. 177219, July 9, 2010.

[63] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[64] *People v. Bodoso*, G.R. No. 188129, July 5, 2010, citing *People v. Guevarra*, G.R. No. 182192, October 29, 2008, 570 SCRA 288, 313; *People v. Antivola*, 466 Phil. 394 (2004) and *People v. Olaybar*, 459 Phil. 114 (2003).

(3) In all the three cases, the accused shall pay interest on the damages at the legal rate from the finality of this decision until fully paid.

SO ORDERED.

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

Nachura, J., no part.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 185766. November 23, 2010]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **COURT OF APPEALS and PHILIPPINE CHARITY SWEEPSTAKES OFFICE,** *respondents.*

[G.R. No. 185767. November 23, 2010]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **COURT OF APPEALS and PHILIPPINE CHARITY SWEEPSTAKES OFFICE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; THE POSITION OF ASSISTANT DEPARTMENT MANAGER II, PHILIPPINE CHARITY SWEEPTAKES OFFICE IS NOT COVERED BY THE CAREER EXECUTIVE SERVICE (CES) AS IT DOES NOT REQUIRE APPOINTMENT BY THE PRESIDENT.—

Following the ruling in *Office of the Ombudsman v. Civil Service Commission* cases and *Home Insurance Guarantee Corporation v. Civil Service Commission*, the Court is of the position that the CES covers presidential appointees only. Corollarily, as the position of Assistant Department Manager II does not require appointment by the President of the Philippines, it does not fall under the CES. Therefore, the temporary appointments of Sarsonas and Ortega as Assistant Department Manager II do not require third level eligibility pursuant to the Civil Service Law, rules and regulations.

2. ID.; ID.; ID.; TWO ELEMENTS THAT MUST CONCUR IN ORDER FOR A POSITION TO BE COVERED BY CES; ELEMENTS, ABSENT IN CASE AT BAR.— [I]n order for a position to be covered by the CES, two elements must concur. *First*, the position must *either* be (1) a position enumerated under Book V, Title I, Subsection A, Chapter 2, Section 7(3) of the Administrative Code of 1987, *i.e*. Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, or (2) a position of equal rank as those enumerated, and identified by the Career Executive Service Board to be such position of equal rank. *Second*, the holder of the position must be a presidential appointee. Failing in any of these requirements, a position cannot be considered as one covered by the third-level or CES. In the case at bench, it is undisputed that the position of Assistant Department Manager II is not one of those enumerated under the Administrative Code of 1987. There is also no question that the CESB has not identified the position to be of equal rank to those enumerated. Lastly, without a doubt, the holder of the position of Assistant Department Manager II is appointed by the PCSO General Manager, and not by the President of the Philippines. Accordingly, the position of Assistant Department Manager II in the PCSO is not covered by the third-level or CES, and does not require CSE eligibility.

APPEARANCES OF COUNSEL

Office for Legal Affairs (CSC) for petitioner.
The Government Corporate Counsel for PCSO.

D E C I S I O N

MENDOZA, *J.*:

These are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court filed by the Civil Service Commission *(CSC)* questioning two separate decisions of the Court of Appeals *(CA)* regarding appointments in the Philippine Charity Sweepstakes Office *(PCSO)*.

In G.R. No. 185766, petitioner CSC seeks to set aside the August 12, 2008 Decision[1] of the CA in CA-G.R. SP No. 98800 and its November 28, 2008 Resolution denying petitioner's motion for reconsideration thereof.

In G.R. No. 185767, petitioner CSC seeks to set aside the June 26, 2008 Decision[2] of the CA in CA-G.R. SP No. 99119 and its November 17, 2008 Resolution denying petitioner's motion for reconsideration.

THE FACTS

(A) G.R. No. 185766

On March 16, 2005, the Board of Directors of PCSO resolved to appoint Josefina A. Sarsonas *(Sarsonas)* as Assistant Department Manager II of the Internal Audit Department (*IAD*) of PCSO under temporary status. Thus, on the same day, PCSO General Manager Rosario Uriarte issued a temporary appointment to Sarsonas as Assistant Department Manager II.[3]

On April 26, 2005, the Civil Service Commission Field Office – Office of the President *(CSCFO-OP)* disapproved the temporary

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[1] *Rollo* (G.R. No. 185766), pp. 37-45. Penned by Associate Justice Isaias Dicdican with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlen Gonzales-Sison, concurring.

[2] *Rollo* (G.R. No. 185767), pp. 34-44. Penned by Associate Justice Rodrigo V. Cosico with Associate Hakim S. Abdulwahid and Associate Justice Mariflor Punzalan-Castillo, concurring.

[3] *Rollo* (G.R. No. 185766), p. 38.

appointment of Sarsonas as she failed to meet the eligibility requirement for the position.[4] CSCFO-OP certified that there were qualified individuals who signified their interest to be appointed to the position, namely, Mercedes Hinayon and Reynaldo Martin.[5]

On May 10, 2005, PCSO filed an appeal with the CSC-National Capital Region *(CSC-NCR)*.[6] In a letter dated June 21, 2005, the CSC-NCR affirmed the disapproval by CSCFO-OP of the temporary appointment of Sarsonas on the following grounds: (a) that she failed to meet the eligibility requirement; and (b) that there were two qualified eligibles who signified their interest to be appointed to the said position, as certified by CSCFO-OP.[7]

PCSO filed an appeal with CSC on August 15, 2005.[8] On March 15, 2006, the CSC dismissed the appeal in CSC Resolution No. 06-0466, the dispositive portion of which states:

> WHEREFORE, the appeal of General Manager Rosario C. Uriarte, Philippine Charity Sweepstakes Office (PCSO), is **DISMISSED**. Accordingly, the disapproval by the Civil Service Commission – National Capital Region (CSC-NCR), Quezon City, of the temporary appointment of Josefina A. Sarsonas as Assistant Department Manager II, Internal Audit Department (IAD), PCSO is **AFFIRMED**.[9]

PCSO filed a motion for reconsideration but it was denied in CSC Resolution No. 070572.[10]

Convinced of its position, PCSO elevated the case to the CA, which reversed the assailed CSC resolutions in its August 12,

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[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

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

[10] *Id.* at 39.

2008 decision.[11] CSC's motion for reconsideration was denied in a Resolution dated November 28, 2008.[12]

(B) G.R. No. 185767

On November 25, 2004, the PCSO Board of Directors resolved to appoint Lemuel G. Ortega *(Ortega)* as Assistant Department Manager II of its Planning and Production Department.[13] The PCSO General Manager, thus, issued a fourth renewal of his temporary appointment.[14]

On December 7, 2004, CSCFO-OP disapproved the temporary appointment of Ortega for his failure to meet the eligibility requirement for the position.[15] CSCFO-OP further reasoned out that there were other qualified third-level eligibles working in PCSO who were willing and available to be appointed to the subject position, namely, Mercedes Hinayon and Reynaldo Martin.[16]

On March 4, 2005, CSCFO-OP returned the said appointment to PCSO.[17]

On March 18, 2005, PCSO wrote to CSC-NCR seeking reconsideration of CSCFO-OP's disapproval of Ortega's temporary appointment.[18] The letter cited Ortega's thirty nine (39) years of experience in planning and production and his competence in his assigned tasks.[19] The letter also stated that PCSO management had the utmost trust and confidence in Ortega

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[11] *Supra* note 1.

[12] *Rollo* (G.R. No. 185766), pp. 34-35.

[13] *Rollo* (G.R. No. 185767), p. 35.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

with regard to carrying out the duties and responsibilities attached to the subject position.[20]

On June 21, 2005, CSC-NCR affirmed CSCFO-OP's disapproval of Ortega's temporary appointment[21] on the ground that he failed to acquire the required eligibility despite the four-year period within which he could have done so.[22]

PCSO appealed to the CSC alleging that Ortega possessed all the requirements necessary for the subject position except the needed eligibility.[23] PCSO also claimed that the qualified eligibles who had indicated their interest to be appointed to the position did not possess the same training for such highly technical positions.[24]

PCSO further reasoned out that Section 7(3), Title I, Book V of the Administrative Code of 1987 provides an exclusive enumeration of the specific positions covered by the Career Executive Service *(CES)*, all of whom are appointed by the President and are required to have Career Service Executive (CSE) eligibility.[25] PCSO argued that since the position of Assistant Department Manager II does not require presidential appointment, then it does not require CSE eligibility.[26]

On March 28, 2006, CSC issued Resolution No. 06-0528 disapproving Ortega's fourth temporary appointment.[27] PCSO's motion for reconsideration was denied in Resolution No. 07-0821 dated April 30, 2007.[28]

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 35-36.

[25] *Id.* at 36.

[26] *Id.*

[27] *Id.*

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

When PCSO appealed before the CA, the appellate court set aside the above resolutions in its June 26, 2008 Decision.[29] CSC's motion for reconsideration was denied in a Resolution dated November 17, 2008.[30]

RULING OF THE COURT OF APPEALS

In both G.R. Nos. 185766 and 185767, the CA ruled that CSC erred in finding that the position of Assistant Department Manager II requires CSE eligibility,[31] rendering improper the temporary appointments of Sarsonas and Ortega, respectively. In G.R. No. 185766, the CA held that the resolution of the PCSO Board to appoint Sarsonas as Assistant Department Manager II was a policy decision and an exercise of management prerogative over which the CSC has no power of review.[32] Since the position of Assistant Department Manager II was not one of those enumerated under the Administrative Code, and was not identified by the Career Executive Service Board *(CESB)* as equivalent to those listed under the law, then "the position of Assistant Department Manager II does not fall under the category pertaining to the Career Executive Service."[33]

In G.R. No. 185767, the CA similarly ruled that the Career Executive Service does not cover the position of Assistant Department Manager II in the Planning and Production Department of the PCSO.[34] Therefore, it follows that CSE eligibility is not required for the said position, and the CSC should have affirmed Ortega's temporary appointment to the said position.[35]

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[29] *Supra* note 2.

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

[31] *Rollo* (G.R. No. 185767), p. 40.

[32] *Id.* at 44.

[33] *Id.* at 40.

[34] *Rollo* (G.R. No. 185767), p. 40.

[35] *Id.*

In resolving both cases, the CA cited Book V, Title I, Subtitle A of Executive Order *(E.O.)* No. 292 or the Administrative Code of 1987, and stated that the position of Assistant Department Manager II of the PCSO was not one of those specific positions under the CES enumerated under Section 7(3), Title I, Book V, all the holders of which must be presidential appointees, thus, requiring CSE eligibility.[36] The said provision states:

SECTION 7. Career Service. – The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

x x x x x x x x x

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

x x x x x x x x x.

Citing *Office of the Ombudsman v. Civil Service Commission*,[37] the CA concluded that since the Assistant Department Manager II was appointed not by the President of the Philippines but by the PCSO General Manager, subject to approval or confirmation of the PCSO Board of Directors, as provided for under its Charter, then Sarsonas was not a presidential appointee, and her position should not have been included by the CSC in the list of positions requiring CSE eligibility.[38] In the case of Ortega, the CA cited

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[36] *Id.* at 40-41; *Rollo* (G.R. No. 185766), p. 40.

[37] 491 Phil. 739 (2005).

[38] *Rollo* (G.R. No. 185766), p. 42.

the same case but fell short of making a similar categorical pronouncement.[39]

Moreover, in the case of Sarsonas, the CA noted and agreed with the dissenting opinion of CSC Commissioner Cesar D. Buenaflor *(Commissioner Buenaflor)* in Resolution No. 070572.[40] Commissioner Buenaflor opined that the position of Assistant Department Manager II and other similar positions in government financial institutions and government-owned and controlled corporations were erroneously classified by the CSC as belonging to the third level position in the civil service.[41]

Regarding the two qualified eligibles who signified their interest to be permanently appointed to any third level position, the CA stated that Mercedes J. Hinayon *(Hinayon)* was designated as Officer-in-Charge, Assistant Department Manager of the Draw and Races Department, and would, according to the PCSO, be eventually considered for promotion in the said department.[42] On the other hand, Reynaldo Martin *(Martin)*, the OIC-Regional Manager of the Northern and Central Luzon Online Lottery Section, was likewise being considered by PCSO management for promotion to a position which would suit his experience and expertise.[43] The CA also stressed that there was no showing in the records that either Hinayon or Martin ever protested Sarsonas' appointment as Assistant Department Manager II.[44]

In the case of Ortega, the CA wrote that the responsibility for the establishment, administration and maintenance of qualification standards lies with the department or agency concerned. CSC's role is limited to (1) assisting the department

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[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.* at 43.

[43] *Id.*

[44] *Id.*

or agency with respect to those qualification standards, and (2) approving them.[45] Therefore, the CSC cannot substitute its own standards for those of the department or agency concerned.[46]

Lastly, the CA held that under Presidential Decree No. 807, Section 9(h), which authorized the CSC to approve appointments to positions in the civil service, except those specified therein, the CSC's authority was limited to the determination of whether the appointees possess the legal qualifications and the appropriate eligibility.[47] In this case, the CA stated, except for her lack of CSE eligibility, Sarsonas possessed the basic qualifications of an Assistant Department Manager II, as determined by the PCSO General Manager and Board of Directors. Such being the case, the CSC had the ministerial duty to approve the temporary appointment of Sarsonas to the said position.[48] The refusal to approve the appointment was a clear encroachment on the discretion vested solely in the PCSO General Manager and Board of Directors as appointing authority.[49]

CSC, in its petitions for review before this Court, raises this

ISSUE

WHETHER THE COURT OF APPEALS ERRED IN SETTING ASIDE THE CSC RESOLUTIONS DISAPPROVING THE TEMPORARY APPOINTMENTS OF SARSONAS AND ORTEGA AS ASSISTANT DEPARTMENT MANAGER II FOR LACK OF THE REQUIRED THIRD LEVEL ELIGIBILITY.

Stated otherwise, the core issue to be resolved in this case is whether or not the position of Assistant Department Manager II falls under the CES.

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[45] *Rollo* (G.R. No. 185767), p. 42.

[46] *Id.* at 42-43.

[47] *Rollo* (G.R. No. 185766), p. 44.

[48] *Id.*

[49] *Id.*

RULING OF THE COURT

Following the ruling in *Office of the Ombudsman v. Civil Service Commission* cases[50] and *Home Insurance Guarantee Corporation v. Civil Service Commission*,[51] the Court is of the position that the CES covers presidential appointees only. Corollarily, as the position of Assistant Department Manager II does not require appointment by the President of the Philippines, it does not fall under the CES. Therefore, the temporary appointments of Sarsonas and Ortega as Assistant Department Manager II do not require third level eligibility pursuant to the Civil Service Law, rules and regulations.

Executive Order No. 292 or the Administrative Code of 1987 provides for three (3) classes or levels in the career service. Book V, Title I, Subsection A, Chapter 2, Section 8 thereof provides:

SEC. 8. Classes of Positions in the Career Service. – (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

(c) The third level shall cover positions in the Career Executive Service.

(2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who shall meet the minimum qualification requirements. Entrance to a higher level

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[50] G.R. No. 162215, July 30, 2007, 528 SCRA 535, 542.

[51] G.R. No. 95450, March 19, 1993, 220 SCRA 148, 154.

does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(3) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupation groups. A candidate for promotion should, however, have previously passed the examination for that level. (Emphasis provided.)

Section 7 of the same code specifically delineates the coverage of the Career Executive Service, thus:

SEC. 7. Career Service. – The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equal rank as may be identified by the Career Executive Service Board, **all of whom are appointed by the President**;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled or unskilled. (Emphasis provided.)

Clearly, although the Administrative Code gives the CESB jurisdiction over entrance to the third level or the CES, the officers should be all "appointed by the President."

Also worthy of note are CSC Resolution No. 100623 dated March 29, 2010 and CSC Memorandum Circular No. 7, S. 2010, both of which provide for clarificatory guidelines on the scope of the third level in the civil service:

1. The third level or Career Executive Service (CES) shall only cover the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, **all of whom are appointed by the President**;

2. Executive and managerial positions in the career service other than the foregoing shall belong to the second level; and

3. All policies and issuances of the Commission which are not in conformity with these guidelines are superceded, repealed, amended or modified accordingly.

As earlier stated, the Court interpreted Section 7(3) to mean that the CES covers presidential appointees only.

In *Home Insurance Guarantee Corporation v. Civil Service Commission*, the Court stated that the position of HIGC Vice President is not covered by the CES[52] as (1) the position is not enumerated by law as falling under the third level;[53] (2) respondent Cruz has not established that the position is one of those identified by the CESB as being of equivalent rank to those listed by law;[54] and (3) the holder thereof is not appointed by the President.[55]

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[52] *Id.* at 154-155.

[53] *Id.* at 154.

[54] *Id.*

[55] *Id.*

In the 2005 case of *Office of the Ombudsman v. Civil Service Commission*,[56] the Court used a similar process of deduction to arrive at the conclusion that the position of Graft Investigation Officer III was not a CES position. In the said case, the Court wrote:

> From the above-quoted provision of the Administrative Code,[57] **persons occupying positions in the CES are presidential appointees**. A person occupying the position of Graft Investigation Officer III is not, however, appointed by the President but by the Ombudsman as provided in Article IX of the Constitution, to wit:
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> x x x x x x x x x
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> To classify the position of Graft Investigation Officer III as belonging to the CES and require an appointee thereto to acquire CES or CSE eligibility before acquiring security of tenure would be absurd as it would result either in 1) vesting the appointing power for said position in the President, in violation of the Constitution; or 2) including in the CES a position not occupied by a presidential appointee, contrary to the Administrative Code. [Reference and emphasis provided.][58]

Two years later, the Court was again confronted with the same issue in an identically named case. It held that as the position of Director II in the Central Administrative Service or Finance and Management Office of the Office of the Ombudsman was appointed by the Ombudsman, and not by the President, "he is neither embraced in the CES nor does he need to possess CSE eligibility."[59] In the 2007 *Office of the Ombudsman v. Civil Service Commission* case, the Court, citing the 2005 case, said:

> The CSC's opinion that the Director II positions in the Central Administrative Service and the Finance and Management Service

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[56] 491 Phil. 739 (2005).

[57] *Id.* at 753-755.

[58] Executive Order No. 329 (1987), Book V, Title I, Subtitle A, Chapter 2, Section 7.

[59] *Supra* note 50.

of the Office of the Ombudsman are covered by the CES is wrong. Book V, Title I, Subtitle A, Chapter 2, Section 7 of EO 292, otherwise known as "The Administrative Code of 1987," provides:

x x x x x x x x x

Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC*:

> "From the above-quoted provision of the Administrative Code, **persons occupying positions in the CES are presidential appointees.** x x x" (Underscoring supplied. Emphasis author's own.)[60]

The above 2007 case was, in turn, cited by the Court two years later in *National Transmission Corporation v. Hamoy*,[61] where again, it was categorically stated that the CES covers only presidential appointees:

> Petitioner also cites *Caringal v. Philippine Charity Sweepstakes Office (PCSO)* and *Erasmo v. Home Insurance Guaranty Corporation*, to show that a presidential appointment is not required before a position in a government corporation is classified as included in the CES. We are not convinced.
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> x x x x x x x x x
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> Positions in the CES under the Administrative Code include those of Undersecretary, Assistant Secretary, Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President. Simply put, third-level positions in the Civil Service are only those belonging to the Career Executive Service, or those appointed by the President of the Philippines. This was the same ruling handed down by the Court in *Office of the Ombudsman v. Civil Service Commission*, wherein the Court declared that **the CES covers presidential appointees only.**
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> x x x x x x x x x

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[60] *Id.* at 541-542.

[61] G.R. No. 179255, April 2, 2009, 583 SCRA 410.

Respondent was appointed Vice-President of VisMin Operations and Maintenance by Transco President and CEO Alan Ortiz, and not by the President of the Republic. On this basis alone, respondent cannot be considered as part of the CES.[62] [Underscoring and emphases supplied]

In said case, the Court clarified that the cases cited by the *National Transmission Corporation* case, to wit: *Caringal v. Philippine Charity Sweepstakes Office (PCSO)* and *Erasmo v. Home Insurance Guaranty Corporation*, which, incidentally, were also cited by CSC in this petition, were not in point with respect to the question of whether a position is covered by the CES:

Caringal and *Erasmo* cited by petitioner are not in point. There, the Court ruled that appointees to CES positions who do not possess the required CES eligibility do not enjoy security of tenure. More importantly, far from holding that presidential appointment is not required of a position to be included in the CES, we learn from *Caringal* that the appointment by the President completes the attainment of the CES rank, thus:

"Appointment to a CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, and incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES, and most importantly, confers on him security of tenure in the CES.

To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either in (1) vesting the appointing power for non-CES positions in the President, in violation of the Constitution; or (2) including in the CES a position not

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[62] *Id.* at 418-420.

held by a presidential appointee, contrary to the Administrative Code."[63] [Italics author's own]

Thus, from the long line of cases cited above, in order for a position to be covered by the CES, two elements must concur. *First*, the position must *either* be (1) a position enumerated under Book V, Title I, Subsection A, Chapter 2, Section 7(3) of the Administrative Code of 1987, *i.e*. Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, or (2) a position of equal rank as those enumerated, and identified by the Career Executive Service Board to be such position of equal rank. *Second*, the holder of the position must be a presidential appointee. Failing in any of these requirements, a position cannot be considered as one covered by the third-level or CES.

In the case at bench, it is undisputed that the position of Assistant Department Manager II is not one of those enumerated under the Administrative Code of 1987. There is also no question that the CESB has not identified the position to be of equal rank to those enumerated. Lastly, without a doubt, the holder of the position of Assistant Department Manager II is appointed by the PCSO General Manager, and not by the President of the Philippines. Accordingly, the position of Assistant Department Manager II in the PCSO is not covered by the third-level or CES, and does not require CSE eligibility.

WHEREFORE, the petitions are *DENIED*.

SO ORDERED.

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

Del Castillo, J., on official leave.

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[63] *Id.* at 420.

EN BANC

[G.R. No. 187752. November 23, 2010]

IRENE K. NACU, substituted by BENJAMIN M. NACU, ERVIN K. NACU, and NEJIE N. DE SAGUN, *petitioners, vs.* **CIVIL SERVICE COMMISSION and PHILIPPINE ECONOMIC ZONE AUTHORITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE; EXPLAINED.— Substantial evidence, the quantum of evidence required in administrative proceedings, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, *even if such evidence might not be overwhelming or even preponderant*.

2. ID.; ID.; ID.; ID.; WHEN THE EVIDENCE IS CONSIDERED SUBSTANTIAL.— Overall, the testimonies of the witnesses, the statements made by Ligan during the preliminary investigation, and the findings of the PNP Crime Lab on its examination of the signatures on the SOS, amounted to substantial evidence that adequately supported the conclusion that Nacu was guilty of the acts complained of. Petitioners' allegations of unreliability, irregularities, and inconsistencies of the evidence neither discredited nor weakened the case against Nacu.

3. ID.; ID.; ID.; TESTIMONY OF AN ORDINARY WITNESS AS TO THE GENUINENESS OF A PERSON'S SIGNATURE, GIVEN CREDENCE.— [T]he CA did not rely solely on the PNP Crime Lab report in concluding that the signatures appearing on the ten SOS were Nacu's. Margallo, a co-employee who holds the same position as Nacu, also identified the latter's signatures on the SOS. Such testimony deserves credence. It has been held that an ordinary witness may testify on a signature he is familiar with. Anyone who is familiar with

a person's writing from having seen him write, from carrying on a correspondence with him, or from having become familiar with his writing through handling documents and papers known to have been signed by him may give his opinion as to the genuineness of that person's purported signature when it becomes material in the case.

4. ID.; ID.; ID.; RIGHT AGAINST SELF-INCRIMINATION, WHEN DEEMED WAIVED.— Petitioners also posit that Nacu was denied her right against self-incrimination when she was made to give samples of her signature. We do not agree. The right against self-incrimination is not self-executing or automatically operational. It must be claimed; otherwise, the protection does not come into play. Moreover, the right must be claimed at the appropriate time, or else, it may be deemed waived. In the present case, it does not appear that Nacu invoked her right against self-incrimination at the appropriate time, that is, at the time she was asked to provide samples of her signature. She is therefore deemed to have waived her right against self-incrimination.

5. ID.; ID.; ID.; REQUIREMENT OF DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS, EXPLAINED.— It is settled that, in administrative proceedings, technical rules of procedure and evidence are not strictly applied. Administrative due process cannot be fully equated with due process in its strict judicial sense. In a recent case, a party likewise protested against the non-presentation of a witness during trial and the lack of opportunity to cross-examine the said witness. x x x The measure of due process to be observed by administrative tribunals allows a certain degree of latitude as long as fairness is not compromised. It is, therefore, not legally objectionable or violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits, or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies.

6. ID.; ID.; ADMINISTRATIVE RULES AND REGULATIONS; PHILIPPINE ECONOMIC ZONE AUTHORITY'S (PEZA) MEMORANDUM ORDER NO. 99-003 IS AN INTERNAL REGULATION EXEMPTED FROM PUBLICATION REQUIREMENT.— [N]o publication is required for such a regulation to take effect. Memorandum Order No. 99-003 is an internal regulation that clearly falls within the administrative

rules and regulations exempted from the publication requirement.

7. ID.; ID.; ID.; PEZA'S OFFICE ORDER NO. 99-0002 PROHIBITS COLLECTING DIRECT PAYMENTS FOR OVERTIME FEES FROM PEZA-REGISTERED ENTERPRISES.— Nacu should have been aware that collecting payments directly from PEZA-registered enterprises was strictly prohibited. Months before Memorandum Order No. 99-003 was promulgated, PEZA had already put a stop to the practice of collecting direct payments for overtime fees from PEZA-registered enterprises under Office Order No. 99-0002 dated March 8, 1999. The latter specifically provides that "overtime shall be paid only through the regular payroll system," and that overtime claims shall be supported by the required documents. This was followed by PEZA General Circular No. 99-0001 (Prescribing New Rates of Overtime Pay Payable by Zone Enterprises, Customs Brokers And Other Entities Concerned) dated August 10, 1999, providing that – 4.5. All payments to be made by requesting parties shall be covered by official receipts. IN NO CASE SHALL PAYMENT BE MADE DIRECTLY TO ZONE/PCDU PERSONNEL.

8. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; PEZA EMPLOYEE FOUND GUILTY OF GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; FINDINGS OF ADMINISTRATIVE BODY, UPHELD.— Nacu was rightfully found guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service, and penalized with dismissal from the service and its accessory penalties. The general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence.

APPEARANCES OF COUNSEL

Reynaldo M. De Sagun for petitioners.
Office for Legal Affairs (CSC) for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari*, seeking the reversal of the Court of Appeals (CA) Decision[1] dated December 24, 2008 and Resolution[2] dated May 6, 2009. The assailed Decision held that Irene K. Nacu (Nacu), Enterprise Service Officer III at the Philippine Economic Zone Authority (PEZA), assigned at the Bataan Economic Zone (BEZ), was guilty of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service, and imposed upon her the penalty of dismissal from the service and its accessory penalties.

The case arose from the following facts:

On December 17, 1999, PEZA issued Memorandum Order No. 99-003, prohibiting its employees from charging and collecting overtime fees from PEZA-registered enterprises. The pertinent portions of the said regulation read:

> Effective immediately, PEZA shall provide processing/ documentation services required by economic zone export-producers for incoming and outgoing shipments x x x FREE OF OVERTIME FEES/CHARGES x x x.
>
> x x x x x x x x x
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> Economic zone export producers, customs brokers, freight forwarders, truckers and other service providers and enterprises are strictly prohibited from offering financial and/or non-financial tokens, compensation, *etc*. to any PEZA official and/or personnel, in connection with PEZA overtime services rendered and/or other transactions.
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> In addition, economic zone export-producers, customs brokers, freight forwarders, truckers and other service providers and enterprises are enjoined to notify ranking PEZA officials (Administrator, Manager,

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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. 55-71.

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

Officer-in-Charge, Deputy Director Generals and the Director General) on any difficulties or problems they encounter, particularly those pertaining to lack of service-orientation or improper behavior of any PEZA officer and/or personnel.[3]

Sometime in September 2001, Edison (Bataan) Cogeneration Corporation (EBCC) filed a complaint against Nacu for allegedly charging it overtime fees, despite Memorandum Order No. 99-003.

Acting on the complaint, PEZA immediately conducted a preliminary investigation, during which Atty. Norma B. Cajulis, PEZA's lawyer, interviewed Rey Ligan (Ligan), a document processor at EBCC. Ligan attested, among others, that the overtime fees went to Nacu's group, and that, during the time Nacu was confined in the hospital, she pre-signed documents and gave them to him.

On November 21, 2001, Atty. Procolo Olaivar (Atty. Olaivar) of PEZA Legal Services Group requested the National Bureau of Investigation (NBI) to verify the genuineness of Nacu's signatures appearing on the Statements of Overtime Services (SOS).[4] Original copies of 32 SOS and a specimen of Nacu's signature were then sent to the NBI for comparison.

On January 25, 2002, the NBI informed Atty. Olaivar that "no definite opinion can be rendered on the matter" since "the standards/sample signatures of the subject submitted [we]re not sufficient and appropriate to serve as basis for a specific comparative examination." The NBI then requested that, should PEZA still want it to conduct further examination, it be furnished with additional standard/sample signatures, in the same style and pattern as that of the questioned document, appearing in official/legal documents on file, executed before, during, and after the date of the questioned document.[5]

PEZA referred the 32 SOS, together with the same standard specimen of Nacu's signatures/initials, to the Philippine National

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[3] *Id.* at 118-119.

[4] *Id.* at 78.

[5] *Id.* at 83.

Police Crime Laboratory (PNP Crime Lab) for determination of the genuineness of Nacu's signature appearing therein.

In Questioned Document Report No. 052-02 dated May 3, 2002, Rosario C. Perez, Document Examiner II of the PNP Crime Lab, stated her findings, thus –

1. Scientific comparative examination and analysis of the questioned initials/signatures IRENE NACU/I. NACU marked "Q-1 to Q-6, Q-11, Q-12, Q-13, Q-15, Q-19, Q-20, Q-21, Q-23, Q-24, Q-25, Q-27 to Q-32" and the submitted standard initials/signatures of Irene K. Nacu marked "S-1 to S-19" inclusive reveal significant divergences in the matter of execution, line quality and stroke structure.

2. Scientific comparative examination and analysis of the questioned initials/signatures IRENE NACU/I. NACU marked "Q-7 to Q-10, Q-14, Q-16 to Q-18; Q-22, Q-26" and the submitted standard signatures/initials of Irene K. Nacu marked "S-1 to S-19" inclusive reveal significant similarities in the manner of execution, line quality and stroke structure.

x x x x x x x x x

CONCLUSION

1. The questioned initials/signatures IRENE NACU/I. NACU marked "Q-1 to Q-6, Q-11, Q-12, Q-13, Q-15, Q-19 to Q-21, Q-23 to Q-25, Q-27 to Q-32" appearing in the twenty-two (22) pieces [of] Statement of Overtime Services and the submitted standard initials/signatures of Irene K. Nacu marked "S-1 to S-19" inclusive WERE NOT WRITTEN BY ONE AND THE SAME PERSON.

2. The questioned initials/signatures IRENE NACU/I. NACU marked "Q-7 to Q-10, Q-14, Q-16 to Q-18; Q-22, Q-26" appearing in the ten (10) pieces of Statement of Overtime Service and the submitted standard initials/signatures [of] Irene K. Nacu marked "S-1 to S-19" inclusive WERE WRITTEN BY ONE AND THE SAME PERSON.[6]

Finding a *prima facie* case against Nacu, PEZA Director General Lilia B. de Lima (Director General De Lima) filed a

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[6] *Id.* at 89-90.

Formal Charge against her for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. It was alleged that Nacu unlawfully charged ₱3,500.00 overtime fee from EBCC on ten occasions (covered by the ten SOS which the PNP Crime Lab found to have been written by Nacu), for a total amount of ₱35,000.00.

Nacu denied that the signatures appearing on the ten overtime billing statements were hers. She averred that it was impossible for her to charge EBCC overtime fees as the latter was well aware that PEZA employees may no longer charge for overtime services; that she had no actual notice of Memorandum Order No. 99-003; and that she caused no damage and prejudice to PEZA and EBCC.

During the hearing, PEZA presented the following witnesses: Rosario Perez, the document examiner who examined the SOS; Atty. Dante Quindoza, Zone Administrator of BEZ, who testified that Nacu was one of the officials authorized to sign the documents; Romy Zaragosa, Corporate Relations Manager of Covanta Energy, who attested that meetings were held on November 17, 2001 and January 25, 2002, wherein Ligan testified that he gave the payment for overtime fees to Nacu; Roberto Margallo (Margallo), Enterprise Service Officer III of PEZA, who testified that he knows Nacu's signature and that he was certain that the signatures appearing on the SOS were hers; Omar Dana, EBCC plant chemist, who testified that EBCC paid, through Ligan, overtime fees to Nacu and some other persons; Elma Bugho, PEZA Records Officer, who testified on the issuance of PEZA Memorandum Order No. 99-003;[7] and Miguel Herrera, then Division Chief of PEZA at the BEZ, who testified that he was responsible for the implementation of PEZA rules and regulations and for assigning examiners upon the request of zone enterprises and brokers.[8]

On February 8, 2005, the PEZA Central Board of Inquiry, Investigation, and Discipline (CBIID), with the approval of

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[7] *Id.* at 121-122.

[8] *Id.* at 19.

Director General De Lima, found Nacu guilty of the acts charged, thus:

> Wherefore, in view of the foregoing, the Central Board of Inquiry, Investigation and Discipline (CBIID) –
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> 1. resolves – that Irene K. Nacu committed an act which constitutes a ground for disciplinary action and finds her guilty of dishonesty, grave misconduct[, and conduct] prejudicial to the best interest of service pursuant to Section 46(b)(1), (4) and (27), Book V of Executive Order No. 292 and hereby
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> 2. recommends that – respondent be dismissed from service pursuant to Section 52, Rule IV, Revised Uniform Rules in Administrative Cases in Philippine Civil Service with accessory penalties of:
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> a) cancellation of eligibility;
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> b) forfeiture of retirement benefits; and
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> c) perpetual disqualification from re-employment in the government service.[9]

Nacu moved for a reconsideration of the CBIID's findings, but the motion was denied. By way of appeal, Nacu elevated the case to the Civil Service Commission (CSC).

On February 19, 2007, the CSC promulgated Resolution No. 070327, affirming the CBIID's resolution, *viz.*:

> WHEREFORE, the appeal of Irene K. Nacu, former Enterprise Service Officer III, Philippine Economic Zone Authority (PEZA), is hereby **DISMISSED**. Accordingly, the Decision dated February 08, 2005 issued by Director General Lilia B. de Lima finding Nacu guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and imposing upon her the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and disqualification from being re-employed in the government service is **AFFIRMED**.[10]

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[9] *Id.* at 60-61.

[10] *Id.* at 61-62.

Nacu filed a motion for reconsideration of CSC Resolution No. 070327, but the motion was denied in Resolution No. 071489 dated August 1, 2007.[11]

Nacu forthwith filed a petition for review with the CA, assailing the CSC resolutions. On September 17, 2007, while the case was pending resolution, Nacu died and was substituted by her heirs, Benjamin Nacu (husband), Nejie N. de Sagun (daughter), and Ervin K. Nacu (son), herein petitioners.

The CA, in the assailed Decision dated December 24, 2008, affirmed the CSC resolutions. The CA could not believe Nacu's claim that she was not aware of Memorandum Order No. 99-003, considering that the order was issued almost two years earlier. According to the CA, as a PEZA employee, Nacu had the obligation to keep herself abreast of everything that transpires in her office and of developments that concern her position. It stressed that even if Nacu had not actually received a copy of the memorandum order, such circumstance will not foreclose the order's effectivity; and that it is merely an internal regulation which does not require publication for its effectivity.[12]

The CA brushed aside Nacu's objections to (a) Ligan's written statement because it was not made under oath and Ligan was not presented as witness during the hearing; (b) the PNP Crime Lab's findings for being unreliable in light of the NBI's own finding that the samples were not sufficient; and (c) Margallo's testimony identifying Nacu's signatures on the SOS, on the ground that he was not presented as an expert witness. The CA pointed out that proceedings in administrative cases are not strictly governed by technical rules of procedure and evidence, as they are required to be disposed of summarily.

In particular, the CA found pointless Nacu's criticism of the PNP Crime Lab's findings based on the NBI's opinion on the samples given. To counter the same, the CA highlighted the fact that the NBI's opinion did not conclusively state that

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[11] *Id.* at 62.

[12] *Id.* at 65-66.

the signatures were not that of Nacu. It stressed that Nacu failed to adduce clear and convincing evidence to contradict the PNP Crime Lab's findings, relying merely on the NBI's opinion which, to the mind of the CA, did not actually absolve petitioner.

According to the CA, Memorandum Order No. 99-003, the PNP's findings, and the witnesses' testimonies, taken together, were sufficient to hold Nacu administratively liable for the acts complained of. Nacu was not denied due process, considering that she was given the opportunity to explain her side and present evidence, and that she had, in fact, participated in the hearing.

The dispositive portion of the assailed CA Decision reads:

WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED for lack of merit.

SO ORDERED.[13]

A motion for reconsideration was filed by petitioners, but the CA denied the motion in its Resolution[14] dated May 6, 2009. They then elevated the case to this Court through this petition for review on *certiorari*.

Petitioners submit to this Court the issue of whether the finding that Nacu is guilty of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service is supported by substantial evidence.

Petitioners' arguments focus largely on the weight given by the CA to the PNP Crime Lab's report, which, they insist, should not be given credence as it is unreliable. Firstly, it was not shown that the questioned document examiner who examined the SOS was a handwriting expert. Secondly, the signature samples were, according to the NBI, insufficient references for a comparative examination. Thirdly, the sample signatures used were obtained in violation of Nacu's right against self-incrimination. And lastly, the report merely states that there

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[13] *Supra* note 1, at 71.

[14] *Supra* note 2.

were similarities in the manner of execution, line quality, and stroke structures of the signatures, and that such conclusion does not translate to a finding that the signatures appearing on the SOS are genuine.

Petitioners also object to the CA's reliance on the statements made by Ligan during the preliminary investigation, which were not given under oath. They contend that Nacu was denied due process when Ligan was not presented as witness during the trial, and that there were inconsistencies in Ligan's statements.

And finally, as an affirmative defense, they reiterate that Nacu was not aware of the issuance and implementation of Memorandum Order No. 99-003. They point out that there was, in fact, no showing that the said order had been published in a newspaper, posted at the BEZ, or a copy thereof furnished to Nacu.

We find no merit in this petition.

Substantial evidence, the quantum of evidence required in administrative proceedings, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[15] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, *even if such evidence might not be overwhelming or even preponderant*.[16]

Overall, the testimonies of the witnesses, the statements made by Ligan during the preliminary investigation, and the findings of the PNP Crime Lab on its examination of the signatures on the SOS, amounted to substantial evidence that adequately supported the conclusion that Nacu was guilty of the acts complained of. Petitioners' allegations of unreliability,

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[15] *Dadulo v. Court of Appeals,* G.R. No. 175451, April 13, 2007, 521 SCRA 357, 362.

[16] *Marcelo v. Bungubung,* G.R. No. 175201, April 23, 2008, 552 SCRA 589, 608.

irregularities, and inconsistencies of the evidence neither discredited nor weakened the case against Nacu.

For one, petitioners cite the PNP's findings as unreliable in light of the NBI's opinion that the samples utilized by the PNP Crime Lab—the same samples submitted to the NBI—were not sufficient to make a comparative examination.

We do not agree. The PNP and the NBI are separate agencies, and the findings of one are not binding or conclusive upon the other. Moreover, as pointed out by the Office of the Solicitor General in its Comment, the NBI's finding referred only to the insufficiency of the samples given; the NBI did not actually make a determination of the genuineness of the signatures. While the NBI may have found the samples to be insufficient, such finding should not have any bearing on the PNP Crime Lab's own findings that the samples were sufficient and that some of the signatures found on the overtime billings matched the sample signatures. The difference of opinion with respect to the sufficiency of the samples could only mean that the PNP Crime Lab observes a standard different from that used by the NBI in the examination of handwriting.

Instead of just discrediting the PNP Crime Lab's findings, Nacu should have channeled her efforts into providing her own proof that the signatures appearing on the questioned SOS were forgeries. After all, whoever alleges forgery has the burden of proving the same by clear and convincing evidence.[17] Nacu could not simply depend on the alleged weakness of the complainant's evidence without offering stronger evidence to contradict the former.

In any case, the CA did not rely solely on the PNP Crime Lab report in concluding that the signatures appearing on the ten SOS were Nacu's. Margallo, a co-employee who holds the same position as Nacu, also identified the latter's signatures on the SOS. Such testimony deserves credence. It has been held that an ordinary witness may testify on a signature he is

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[17] *Aznar Brothers Realty v. Court of Appeals*, 384 Phil. 95, 112 (2000).

familiar with.[18] Anyone who is familiar with a person's writing from having seen him write, from carrying on a correspondence with him, or from having become familiar with his writing through handling documents and papers known to have been signed by him may give his opinion as to the genuineness of that person's purported signature when it becomes material in the case.[19]

Petitioners also posit that Nacu was denied her right against self-incrimination when she was made to give samples of her signature. We do not agree. The right against self-incrimination is not self-executing or automatically operational. It must be claimed; otherwise, the protection does not come into play. Moreover, the right must be claimed at the appropriate time, or else, it may be deemed waived.[20] In the present case, it does not appear that Nacu invoked her right against self-incrimination at the appropriate time, that is, at the time she was asked to provide samples of her signature. She is therefore deemed to have waived her right against self-incrimination.

Next, petitioners assail the credibility of Ligan's statement because it was not made under oath and Ligan was not presented as witness during the hearing. Nacu was allegedly denied due process when she was deprived of the opportunity to cross-examine Ligan.

It is settled that, in administrative proceedings, technical rules of procedure and evidence are not strictly applied. Administrative due process cannot be fully equated with due

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[18] RULES OF COURT, Rule 130, Sec. 50 provides:

SEC. 50 *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —

x x x x x x x x x

(b) A handwriting with which he has sufficient familiarity.

[19] FRANCISCO, R.J., *Evidence, Rule of Court in the Philippines,* Rules 128-134 (1996 ed.), p. 366.

[20] *People v. Ayson,* G.R. No. 85215, July 7, 1989, 175 SCRA 216, 228.

process in its strict judicial sense.[21] In a recent case, a party likewise protested against the non-presentation of a witness during trial and the lack of opportunity to cross-examine the said witness. Addressing the issue, the Court held that the contention was unavailing, stating that —

> In another case, the Court addressed a similar contention by stating that the petitioner therein could not argue that she had been deprived of due process merely because no cross-examination took place. [Citing *Casimiro v. Tandog*, 459 SCRA 624, 633 (2005)]. Indeed, in administrative proceedings, due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or given opportunity to move for a reconsideration of the action or ruling complained of.[22]

The measure of due process to be observed by administrative tribunals allows a certain degree of latitude as long as fairness is not compromised. It is, therefore, not legally objectionable or violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits, or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies.[23]

In addition, petitioners claim that there were inconsistencies in Ligan's statement. While Ligan allegedly stated that Nacu gave him pre-signed documents during the time that she was in the hospital, and that these pre-signed documents referred to the ten overtime billings referred to in the formal charge, the record does not show that Nacu was confined in the hospital on the dates indicated in the said billings.

To set the record straight, Ligan did not specifically mention that the dates indicated in the pre-signed documents were also the days when Nacu was confined in the hospital. He merely

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[21] *Ocampo v. Ombudsman,* 379 Phil. 21, 28 (2000).

[22] *Donato, Jr. v. Civil Service Commission Regional Office No. 1,* G.R. No. 165788, February 7, 2007, 515 SCRA 48, 60.

[23] *Marcelo v. Bungubung, supra* note 16, at 603-604.

said that Nacu pre-signed some documents during the time that she was in the hospital, and that she gave these documents to him. Neither did he state that these pre-signed SOS were the same ten SOS cited in the formal charge against Nacu. It was petitioners' own assumption that led to this baseless conclusion.

In Nacu's defense, petitioners contend that she (Nacu) was not aware of the existence of Memorandum Order No. 99-003. They aver that there was no evidence showing that Memorandum Order No. 99-003 was posted, published, and promulgated; hence, it cannot be said that the order had already taken effect and was being implemented in the BEZ. Petitioners claim that Nacu had, in fact, no actual knowledge of the said order as she was not furnished with a copy thereof.

Nacu cannot feign ignorance of the existence of the said order. As correctly opined by the CA, it is difficult to believe that Nacu, one of the employees of PEZA affected by the memorandum order, was not in any way informed—by posting or personal notice—of the implementation of the said order, considering that over a year had lapsed since it had been issued. From the testimonies of the other witnesses, who were employees of PEZA and PEZA-registered enterprises, it was evident that the prohibition against charging and collecting overtime fees was common knowledge to them.

At any rate, no publication is required for such a regulation to take effect. Memorandum Order No. 99-003 is an internal regulation that clearly falls within the administrative rules and regulations exempted from the publication requirement, as set forth in the prevailing case of *Tañada v. Hon. Tuvera*:[24]

> Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors

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[24] 230 Phil. 528 (1986).

concerning the rules on guidelines to be followed by their subordinates in the performance of their duties.[25]

At the very least, Nacu should have been aware that collecting payments directly from PEZA-registered enterprises was strictly prohibited. Months before Memorandum Order No. 99-003 was promulgated, PEZA had already put a stop to the practice of collecting direct payments for overtime fees from PEZA-registered enterprises under Office Order No. 99-0002 dated March 8, 1999. The latter specifically provides that "overtime shall be paid only through the regular payroll system," and that overtime claims shall be supported by the required documents.[26] This was followed by PEZA General Circular No. 99-0001 (Prescribing New Rates of Overtime Pay Payable by Zone Enterprises, Customs Brokers And Other Entities Concerned) dated August 10, 1999, providing that –

> 4.5. All payments to be made by requesting parties shall be covered by official receipts. IN NO CASE SHALL PAYMENT BE MADE DIRECTLY TO ZONE/PCDU PERSONNEL.
>
> 4.6 No additional charges or fees shall be paid by requesting parties, nor shall they offer gifts, "tips" and other financial/material favors to PEZA employees rendering overtime services.
>
> 4.7 At the end of the month, all claims of personnel for payment of overtime services shall be supported by the following documents:
>
> 4.7.1. Copies of written requests by enterprises and other parties;
>
> 4.7.2. Certificate of service or DTR;
>
> 4.7.3. Authority to render overtime services; and
>
> 4.7.4. Certificate of accomplishment.[27]

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[25] *Id.* at 535.

[26] *Rollo*, p. 98.

[27] *Id.* at 94.

Petitioners desperately argue that Nacu could not have charged and collected overtime fees from EBCC as it was well aware of Memorandum Order No. 99-003. The contention is puerile. Petitioners are, in effect, saying that knowledge of the existence of a rule prohibiting a certain act would absolutely prevent one from doing the prohibited act. This premise is undeniably false, and, as a matter of fact, judicial institutions have been founded based on the reality that not everyone abides by the law.

All told, Nacu was rightfully found guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service, and penalized with dismissal from the service and its accessory penalties. The general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence.[28]

Nacu's length of service or the fact that this was her first offense has not been clearly established. We cannot reasonably take them into consideration in reviewing the case. At any rate, these circumstances cannot serve to mitigate the violation, considering the gravity of the offense and the fact that Nacu's act irreparably tarnished the integrity of PEZA.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated December 24, 2008 and its Resolution dated May 6, 2009 are *AFFIRMED*.

SO ORDERED.

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

Del Castillo, J., on official leave.

Mendoza, J., no part.

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[28] *Remolona v. Civil Service Commission,* 414 Phil. 590, 601 (2001).

EN BANC

[G.R. No. 191618. November 23, 2010]

ATTY. ROMULO B. MACALINTAL, *petitioner, vs.* **PRESIDENTIAL ELECTORAL TRIBUNAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES OF JUDICIAL INQUIRY; TEST TO DETERMINE WHETHER A PARTY HAS *LOCUS STANDI*.— The issue of *locus standi* is derived from the following requisites of a judicial inquiry: 1. There must be an actual case or controversy; 2. The question of constitutionality must be raised by the proper party; 3. The constitutional question must be raised at the earliest possible opportunity; and 4. The decision of the constitutional question must be necessary to the determination of the case itself. On more than one occasion we have characterized a proper party as one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of. The dust has long settled on the test laid down in *Baker v. Carr*: "whether the party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions." Until and unless such actual or threatened injury is established, the complainant is not clothed with legal personality to raise the constitutional question.

2. ID.; ID.; ID.; ID.; ID.; THE FIRST APPEARANCE BEFORE THE PRESIDENTIAL ELECTORAL TRIBUNAL (PET) IS DEEMED THE EARLIEST OPPORTUNITY TO CHALLENGE THE CONSTITUTIONALITY OF THE TRIBUNAL'S CONSTITUTION; EFFECT OF FAILURE TO RAISE THE CONSTITUTIONAL CHALLENGE AT THAT TIME.— [P]etitioner's standing is still imperiled by the white elephant in the petition, *i.e.*, his appearance as counsel for former President Gloria Macapagal-Arroyo (Macapagal-Arroyo) in the election protest filed by 2004 presidential candidate Fernando Poe, Jr. before the Presidential Electoral Tribunal,

because judicial inquiry, as mentioned above, requires that the constitutional question be raised at the earliest possible opportunity. Such appearance as counsel before the Tribunal, to our mind, would have been the first opportunity to challenge the constitutionality of the Tribunal's constitution. Although there are recognized exceptions to this requisite, we find none in this instance. Petitioner is unmistakably estopped from assailing the jurisdiction of the PET before which tribunal he had ubiquitously appeared and had acknowledged its jurisdiction in 2004. His failure to raise a seasonable constitutional challenge at that time, coupled with his unconditional acceptance of the Tribunal's authority over the case he was defending, translates to the clear absence of an indispensable requisite for the proper invocation of this Court's power of judicial review. Even on this score alone, the petition ought to be dismissed outright.

3. ID.; ID.; 1987 CONSTITUTION; PRINCIPLES IN CONSTITUTIONAL CONSTRUCTION, EXPLAINED AND APPLIED.— *Verba legis* dictates that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails. x x x However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or *ratio legis et anima*. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution. In following this guideline, courts should bear in mind the object sought to be accomplished in adopting a doubtful constitutional provision, and the evils sought to be prevented or remedied. Consequently, the intent of the framers and the people ratifying the constitution, and not the panderings of self-indulgent men, should be given effect. Last, *ut magis valeat quam pereat* – the Constitution is to be interpreted as a whole. x x x On its face, the contentious constitutional provision does not specify the establishment of the PET. But neither does it preclude, much less prohibit, otherwise. It entertains divergent interpretations which, though unacceptable to petitioner, do not include his restrictive view – one which really does not offer a solution. Section 4, Article VII of the Constitution, the provision under scrutiny, should be read with other related provisions of the Constitution such as the parallel provisions on the Electoral Tribunals of the Senate and the House of Representatives.

4. ID.; ID.; ID.; SUPREME COURT'S JURISDICTION AS A PRESIDENTIAL ELECTORAL TRIBUNAL, EXPLAINED.— Contrary to petitioner's assertion, the Supreme Court's constitutional mandate to act as **sole judge** of election contests involving our country's highest public officials, and its rule-making authority in connection therewith, is not restricted; it includes all necessary powers implicit in the exercise thereof. x x x The Court could not have been more explicit then on the plenary grant and exercise of judicial power. Plainly, the abstraction of the Supreme Court acting as a *Presidential Electoral Tribunal* from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable. The *mirabile dictu* of the grant of jurisdiction to this Court, albeit found in the Article on the executive branch of government, and the constitution of the PET, is evident in the discussions of the Constitutional Commission. On the exercise of this Court's judicial power as sole judge of presidential and vice-presidential election contests, and to promulgate its rules for this purpose, we find the proceedings in the Constitutional Commission most instructive. x x x Unmistakable from the foregoing is that the exercise of our power to judge presidential and vice-presidential election contests, as well as the rule-making power adjunct thereto, is plenary; it is not as restrictive as petitioner would interpret it. In fact, former Chief Justice Hilario G. Davide, Jr., who proposed the insertion of the phrase, intended the Supreme Court to exercise exclusive authority to promulgate its rules of procedure for that purpose. To this, Justice Regalado forthwith assented and then emphasized that the sole power ought to be without intervention by the legislative department. Evidently, even the legislature cannot limit the judicial power to resolve presidential and vice-presidential election contests and our rule-making power connected thereto.

5. ID.; ID.; ID.; STRUCTURE OF THE PET AS A LEGITIMATE PROGENY OF SECTION 4, ARTICLE VII OF THE CONSTITUTION, EXPLAINED.— [W]e hasten to clarify the structure of the PET as a legitimate progeny of Section 4, Article VII of the Constitution, composed of members of the Supreme Court, sitting *en banc*. x x x Obvious from the [exchange in the 1986 Constitutional Commission] is the intent to bestow independence to the Supreme Court as the PET, to undertake the Herculean task of deciding election protests involving presidential and vice-presidential candidates in accordance with

the process outlined by former Chief Justice Roberto Concepcion. It was made in response to the concern aired by delegate Jose E. Suarez that the additional duty may prove too burdensome for the Supreme Court. This explicit grant of independence and of the plenary powers needed to discharge this burden justifies the budget allocation of the PET. The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the *doctrine of necessary implication*. We cannot overemphasize that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted. A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose." The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.*, the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which we have affirmed on numerous occasions. x x x [T]he PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal. It is obvious that the PET was constituted in implementation of Section 4, Article VII of the Constitution, and it faithfully complies – not unlawfully defies – the constitutional directive. The adoption of a separate seal, as well as the change in the nomenclature of the Chief Justice and the Associate Justices into Chairman and Members of the Tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the Tribunal's functions as a special electoral court.

6. ID.; ID.; ID.; THE SUPREME COURT'S POWER, ACTING AS PET IN RESOLVING PRESIDENTIAL AND VICE-

PRESIDENTIAL ELECTION CONTEST, IS ESSENTIALLY A JUDICIAL POWER.— The traditional grant of judicial power is found in Section 1, Article VIII of the Constitution which provides that the power "shall be vested in one Supreme Court and in such lower courts as may be established by law." Consistent with our presidential system of government, the function of "dealing with the settlement of disputes, controversies or conflicts involving rights, duties or prerogatives that are legally demandable and enforceable" is apportioned to courts of justice. With the advent of the 1987 Constitution, judicial power was expanded to include "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." The power was expanded, but it remained absolute. The set up embodied in the Constitution and statutes **characterizes the resolution of electoral contests as essentially an exercise of judicial power**. x x x It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. In the landmark case of *Angara v. Electoral Commission*, Justice Jose P. Laurel enucleated that "it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels." In fact, *Angara* pointed out that "[t]he Constitution is a definition of the powers of government." And yet, at that time, the 1935 Constitution did not contain the expanded definition of judicial power found in Article VIII, Section 1, paragraph 2 of the present Constitution. With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power *allocated to courts of law*, expressly provided in the Constitution. On the whole, the Constitution draws a thin, but, nevertheless, distinct line between the PET and the Supreme Court.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Confronting us is an undesignated petition[1] filed by Atty. Romulo B. Macalintal (Atty. Macalintal), that questions the constitution of the Presidential Electoral Tribunal (PET) as an illegal and unauthorized progeny of Section 4,[2] Article VII of the Constitution:

> The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

While petitioner concedes that the Supreme Court is "authorized to promulgate its rules for the purpose," he chafes at the creation of a purportedly "separate tribunal" complemented by a budget allocation, a seal, a set of personnel and confidential employees, to effect the constitutional mandate. Petitioner's averment is supposedly supported by the provisions of the 2005 Rules of the Presidential Electoral Tribunal (2005 PET Rules),[3] specifically:

(1) Rule 3 which provides for membership of the PET wherein the Chief Justice and the Associate Justices are designated as "Chairman and Members," respectively;

(2) Rule 8(e) which authorizes the Chairman of the PET to appoint employees and confidential employees of every member thereof;

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[1] *Rollo*, pp. 3-9.

[2] Paragraph 7.

[3] On May 4, 2010, the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules) took effect.

(3) Rule 9 which provides for a separate "Administrative Staff of the Tribunal" with the appointment of a Clerk and a Deputy Clerk of the Tribunal who, at the discretion of the PET, may designate the Clerk of Court (*en banc*) as the Clerk of the Tribunal; and

(4) Rule 11 which provides for a "seal" separate and distinct from the Supreme Court seal.

Grudgingly, petitioner throws us a bone by acknowledging that the invoked constitutional provision does allow the "appointment of additional personnel."

Further, petitioner highlights our decision in *Buac v. COMELEC*[4] which peripherally declared that "contests involving the President and the Vice-President fall within the exclusive original jurisdiction of the PET, x x x in the exercise of quasi-judicial power." On this point, petitioner reiterates that the constitution of the PET, with the designation of the Members of the Court as Chairman and Members thereof, contravenes Section 12, Article VIII of the Constitution, which prohibits the designation of Members of the Supreme Court and of other courts established by law to any agency performing quasi-judicial or administrative functions.

The Office of the Solicitor General (OSG), as directed in our Resolution dated April 6, 2010, filed a Comment[5] thereon. At the outset, the OSG points out that the petition filed by Atty. Macalintal is unspecified and without statutory basis; "the liberal approach in its preparation x x x is a violation of the well known rules of practice and pleading in this jurisdiction."

In all, the OSG crystallizes the following issues for resolution of the Court:

I

WHETHER x x x PETITIONER HAS *LOCUS STANDI* TO FILE THE INSTANT PETITION.

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[4] 465 Phil. 800, 810 (2004).

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

II

WHETHER x x x THE CREATION OF THE PRESIDENTIAL ELECTORAL TRIBUNAL IS UNCONSTITUTIONAL FOR BEING A VIOLATION OF PARAGRAPH 7, SECTION 4 OF ARTICLE VII OF THE 1987 CONSTITUTION.

III

WHETHER x x x THE DESIGNATION OF MEMBERS OF THE SUPREME COURT AS MEMBERS OF THE PRESIDENTIAL ELECTORAL TRIBUNAL IS UNCONSTITUTIONAL FOR BEING A VIOLATION OF SECTION 12, ARTICLE VIII OF THE 1987 CONSTITUTION.[6]

In his Reply,[7] petitioner maintains that:

1. He has legal standing to file the petition given his averment of transcendental importance of the issues raised therein;

2. The creation of the PET, a separate tribunal from the Supreme Court, violates Section 4, Article VII of the Constitution; and

3. The PET, being a separate tribunal, exercises quasi-judicial functions contrary to Section 12, Article VIII of the Constitution.

We winnow the meanderings of petitioner into the singular issue of whether the constitution of the PET, composed of the Members of this Court, is unconstitutional, and violates Section 4, Article VII and Section 12, Article VIII of the Constitution.

But first, we dispose of the procedural issue of whether petitioner has standing to file the present petition.

The issue of *locus standi* is derived from the following requisites of a judicial inquiry:

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[6] *Id.* at 15-16.

[7] *Id.* at 42-58.

1. There must be an actual case or controversy;
2. The question of constitutionality must be raised by the proper party;
3. The constitutional question must be raised at the earliest possible opportunity; and
4. The decision of the constitutional question must be necessary to the determination of the case itself.[8]

On more than one occasion we have characterized a proper party as one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.[9] The dust has long settled on the test laid down in *Baker v. Carr*:[10] "whether the party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions."[11] Until and unless such actual or threatened injury is established, the complainant is not clothed with legal personality to raise the constitutional question.

Our pronouncements in *David v. Macapagal-Arroyo*[12] illuminate:

> The difficulty of determining *locus standi* arises in **public suits**. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show

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[8] Cruz, *Philippine Political Law*, 1998 ed., p. 257.

[9] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 456.

[10] 369 U.S. 186 (1962).

[11] *Gov. Mandanas v. Hon. Romulo*, 473 Phil. 806 (2004).

[12] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, May 3, 2006, 489 SCRA 160, 216-221. (Citations omitted.)

that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a" citizen" or "taxpayer."

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However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United States Supreme Court laid down the more stringent **"direct injury"** *test* in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman.* The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the **"direct injury"** *test* in our jurisdiction. In *People v. Vera*, it held that the person who impugns the validity of a statute must have **"a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result**." The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate, Manila Race Horse Trainers' Association v. De la Fuente, Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix.*

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the **1949 Emergency Powers Cases,** *Araneta v. Dinglasan*, where the **"transcendental importance"** of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*, this Court resolved to pass upon the issues raised due to the **"far-reaching implications"** of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.

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By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens,

and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) cases involve constitutional issues;

(2) for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for **voters**, there must be a showing of obvious interest in the validity of the election law in question;

(4) for **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

(5) for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

Contrary to the well-settled actual and direct injury test, petitioner has simply alleged a generalized interest in the outcome of this case, and succeeds only in muddling the issues. Paragraph 2 of the petition reads:

2. x x x Since the creation and continued operation of the PET involves the use of public funds and the issue raised herein is of transcendental importance, it is petitioner's humble submission that, as a citizen, a taxpayer and a member of the BAR, he has the legal standing to file this petition.

But even if his submission is valid, petitioner's standing is still imperiled by the white elephant in the petition, *i.e.*, his appearance as counsel for former President Gloria Macapagal-Arroyo (Macapagal-Arroyo) in the election protest filed by 2004 presidential candidate Fernando Poe, Jr. before the Presidential Electoral Tribunal,[13] because judicial inquiry, as mentioned above, requires that the constitutional question be raised at the earliest possible opportunity.[14] Such appearance as counsel before the Tribunal, to our mind, would have been the first

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[13] *Poe v. Macapagal-Arroyo*, P.E.T. Case No. 002, March 29, 2005, 454 SCRA 142.

[14] Cruz, *Philippine Politcal Law*, 1998 ed., p. 263.

opportunity to challenge the constitutionality of the Tribunal's constitution.

Although there are recognized exceptions to this requisite, we find none in this instance. Petitioner is unmistakably estopped from assailing the jurisdiction of the PET before which tribunal he had ubiquitously appeared and had acknowledged its jurisdiction in 2004. His failure to raise a seasonable constitutional challenge at that time, coupled with his unconditional acceptance of the Tribunal's authority over the case he was defending, translates to the clear absence of an indispensable requisite for the proper invocation of this Court's power of judicial review. Even on this score alone, the petition ought to be dismissed outright.

Prior to petitioner's appearance as counsel for then protestee Macapagal-Arroyo, we had occasion to affirm the grant of original jurisdiction to this Court as a Presidential Electoral Tribunal in the auspicious case of *Tecson v. Commission on Elections*.[15] Thus —

> Petitioners Tecson, *et al.*, in G.R. No. 161434, and Velez, in G.R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:
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> > "The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."
>
> The provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in *Lopez vs. Roxas*, as "not (being) justiciable" controversies or disputes involving contests on the elections,

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[15] G.R. Nos. 161434, 161634, and 161824, March 3, 2004, 424 SCRA 277, 324-325. (Emphasis supplied.)

returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, *"An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same."* Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal. **Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.**

Former Chief Justice Reynato S. Puno, in his separate opinion, was even more categorical:

> The Court is unanimous on the issue of jurisdiction. It has no jurisdiction on the Tecson and Valdez petitions. Petitioners cannot invoke Article VII, Section 4, par. 7 of the Constitution which provides:
>
> > "The Supreme Court, sitting *en banc* shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice President and may promulgate its rules for the purpose."
>
> The word "contest" in the provision means that the jurisdiction of this Court can only be invoked after the election and proclamation of a President or Vice President. There can be no "contest" before a winner is proclaimed.[16]

Similarly, in her separate opinion, Justice Alicia Austria-Martinez declared:

> G.R. Nos. 161434 and 161634 invoke the Court's exclusive jurisdiction under the last paragraph of Section 4, Article VII of the 1987 Constitution. I agree with the majority opinion that these petitions should be dismissed outright for prematurity. The Court has no jurisdiction at this point of time to entertain said petitions.

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[16] *Id.* at 363.

The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET) are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively as "sole judge of all contests relating to the election, returns, and qualifications" of the President and Vice-President, Senators, and Representatives. In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election. Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal provide that, for President or Vice-President, election protest or *quo warranto* may be filed *after the proclamation of the winner*.[17]

Petitioner, a prominent election lawyer who has filed several cases before this Court involving constitutional and election law issues, including, among others, the constitutionality of certain provisions of Republic Act (R.A.) No. 9189 (The Overseas Absentee Voting Act of 2003),[18] cannot claim ignorance of: (1) the invocation of our jurisdiction under Section 4, Article VII of the Constitution; and (2) the unanimous holding thereon. Unquestionably, the **overarching framework** affirmed in *Tecson v. Commission on Elections*[19] is that the Supreme Court has original jurisdiction to decide presidential and vice-presidential election protests while concurrently **acting as an independent Electoral Tribunal**.

Despite the foregoing, petitioner is adamant on his contention that the provision, as worded, does not authorize the constitution of the PET. And although he concedes that the Supreme Court may promulgate its rules for this purpose, petitioner is insistent that the constitution of the PET is unconstitutional. However, petitioner avers that it allows the Court to appoint additional personnel for the purpose, notwithstanding the silence of the constitutional provision.

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[17] *Id.* at 431-432.

[18] *Atty. Macalintal v. COMELEC*, 453 Phil. 586 (2003).

[19] *Supra* at note 15.

Petitioner's pastiche arguments are all hurled at the Court, hopeful that at least one might possibly stick. But these arguments fail to elucidate on the scope of the rules the Supreme Court is allowed to promulgate. Apparently, petitioner's concept of this adjunct of judicial power is very restrictive. Fortunately, thanks in no part to petitioner's opinion, we are guided by well-settled principles of constitutional construction.

Verba legis dictates that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails. This Court, speaking through former Chief Justice Enrique Fernando, in *J.M. Tuason & Co., Inc. v. Land Tenure Administration*[20] instructs:

> As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are cases where the need for construction is reduced to a minimum.

However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or *ratio legis et anima*. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution.[21] In following this guideline, courts should bear in mind the object sought to be accomplished in adopting a doubtful constitutional provision, and the evils sought to be prevented or remedied.[22] Consequently, the intent of the framers

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[20] G.R. No. L-21064, February 18, 1970, 31 SCRA 413, 423.

[21] *McCulloch v. State of Maryland*, 17 U.S. 316 (Wheat.), 1819.

[22] In the Philippine context, see *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 and 83815, February 22, 1991, 194 SCRA 317.

and the people ratifying the constitution, and not the panderings of self-indulgent men, should be given effect.

Last, *ut magis valeat quam pereat* – the Constitution is to be interpreted as a whole. We intoned thus in the landmark case of *Civil Liberties Union v. Executive Secretary*:[23]

> It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.
>
> In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.

We had earlier expounded on this rule of construction in *Chiongbian v. De Leon, et al.*,[24] to wit:

> [T]he members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document.

On its face, the contentious constitutional provision does not specify the establishment of the PET. But neither does it preclude, much less prohibit, otherwise. It entertains divergent interpretations which, though unacceptable to petitioner, do not include his restrictive view – one which really does not offer a solution.

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[23] *Id.* at 330-331.

[24] 82 Phil. 771, 775 (1949).

Section 4, Article VII of the Constitution, the provision under scrutiny, should be read with other related provisions of the Constitution such as the parallel provisions on the Electoral Tribunals of the Senate and the House of Representatives.

Before we resort to the records of the Constitutional Commission, we discuss the framework of judicial power mapped out in the Constitution. Contrary to petitioner's assertion, the Supreme Court's constitutional mandate to act as **sole judge** of election contests involving our country's highest public officials, and its rule-making authority in connection therewith, is not restricted; it includes all necessary powers implicit in the exercise thereof.

We recall the unprecedented and trailblazing case of *Marcos v. Manglapus*:[25]

> The 1987 Constitution has fully restored the separation of powers of the three great branches of government. To recall the words of Justice Laurel in *Angara v. Electoral Commission*, "the Constitution has blocked but with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." Thus, the 1987 Constitution explicitly provides that "[t]he legislative power shall be vested in the Congress of the Philippines" [Art. VI, Sec. 1], "[t]he executive power shall be vested in the President of the Philippines" [Art. VII, Sec. 1], and "[t]he judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law" [Art. VIII, Sec. 1]. These provisions not only establish a separation of powers by actual division but also confer plenary legislative, executive and judicial powers subject only to limitations provided in the Constitution. **For as the Supreme Court in *Ocampo v. Cabangis* pointed out "a grant of the legislative power means a grant of all legislative power; and a grant of the judicial power means a grant of all the judicial power which may be exercised under the government."**

The Court could not have been more explicit then on the plenary grant and exercise of judicial power. Plainly, the

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[25] G.R. No. 88211, September 15, 1989, 177 SCRA 668, 688-689. (Emphasis supplied, citations omitted.)

abstraction of the Supreme Court acting as a *Presidential Electoral Tribunal* from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable.

The *mirabile dictu* of the grant of jurisdiction to this Court, albeit found in the Article on the executive branch of government, and the constitution of the PET, is evident in the discussions of the Constitutional Commission. On the exercise of this Court's judicial power as sole judge of presidential and vice-presidential election contests, and to promulgate its rules for this purpose, we find the proceedings in the Constitutional Commission most instructive:

MR. DAVIDE. On line 25, after the words "Vice-President," I propose to add AND MAY PROMULGATE ITS RULES FOR THE PURPOSE. This refers to the Supreme Court sitting *en banc*. **This is also to confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.**

MR. REGALADO. **My personal position is that the rule-making power of the Supreme Court with respect to its internal procedure is already implicit under the Article on the Judiciary; considering, however, that according to the Commissioner, the purpose of this is to indicate the sole power of the Supreme Court without intervention by the legislature in the promulgation of its rules on this particular point, I think I will personally recommend its acceptance to the Committee.**[26]

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MR. NOLLEDO. x x x.

With respect to Sections 10 and 11 on page 8, I understand that the Committee has also created an Electoral Tribunal in the Senate and a Commission on Appointments which may cover membership from both Houses. But my question is: It seems to me that the committee report does not indicate which body should promulgate the rules that

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[26] Records of the Constitutional Commission, Vol. 2, p. 433. (Emphasis supplied.)

shall govern the Electoral Tribunal and the Commission on Appointments. Who shall then promulgate the rules of these bodies?

MR. DAVIDE. **The Electoral Tribunal itself will establish and promulgate its rules because it is a body distinct and independent already from the House, and so with the Commission on Appointments also. It will have the authority to promulgate its own rules**.[27]

On another point of discussion relative to the grant of judicial power, but equally cogent, we listen to former Chief Justice Roberto Concepcion:

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. **I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.**

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. **There are legal rights which are enforceable under the law, and these are essentially justiciable questions.**

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**[28]

Echoing the same sentiment and affirming the grant of judicial power to the Supreme Court, Justice Florenz D. Regalado[29] and Fr. Joaquin Bernas[30] both opined:

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[27] *Id.* at 87-88. (Emphasis supplied.)

[28] *Id.* at 420-421. (Emphasis supplied.)

[29] Supreme Court.

[30] A Roman Catholic Priest of the Jesuit Order.

MR. VILLACORTA. Thank you very much, Madam President.

I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO. **No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.**

MR. VILLACORTA. That is right.

MR. REGALADO. **We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.**

MR. VILLACORTA. May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?

FR. BERNAS. Precisely, **this is necessary**. **Election contests are, by their nature, judicial. Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.**

So, the background of this is really the case of *Roxas v. Lopez*. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: "No, this did not involve

the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions."

Before the passage of that republic act, in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. **So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.**[31]

Unmistakable from the foregoing is that the exercise of our power to judge presidential and vice-presidential election contests, as well as the rule-making power adjunct thereto, is plenary; it is not as restrictive as petitioner would interpret it. In fact, former Chief Justice Hilario G. Davide, Jr., who proposed the insertion of the phrase, intended the Supreme Court to exercise exclusive authority to promulgate its rules of procedure for that purpose. To this, Justice Regalado forthwith assented and then emphasized that the sole power ought to be without intervention by the legislative department. Evidently, even the legislature cannot limit the judicial power to resolve presidential and vice-presidential election contests and our rule-making power connected thereto.

To foreclose all arguments of petitioner, we reiterate that the establishment of the PET simply constitutionalized what was statutory before the 1987 Constitution. The experiential context of the PET in our country cannot be denied.[32]

Consequently, we find it imperative to trace the historical antecedents of the PET.

Article VII, Section 4, paragraph 7 of the 1987 Constitution is an innovation. The precursors of the present Constitution

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[31] Records of the Constitutional Commission, Vol. 2, pp. 407-408. (Emphasis supplied.)

[32] See *Defensor-Santiago v. Ramos*, P.E.T. Case No. 001, February 13, 1996, 253 SCRA 559; *Tecson v. COMELEC, supra* at note 15.

did not contain similar provisions and instead vested upon the legislature all phases of presidential and vice-presidential elections – from the canvassing of election returns, to the proclamation of the president-elect and the vice-president elect, and even the determination, by ordinary legislation, of whether such proclamations may be contested. Unless the legislature enacted a law creating an institution that would hear election contests in the Presidential and Vice-Presidential race, a defeated candidate had no legal right to demand a recount of the votes cast for the office involved or to challenge the ineligibility of the proclaimed candidate. Effectively, presidential and vice-presidential contests were non-justiciable in the then prevailing milieu.

The omission in the 1935 Constitution was intentional. It was mainly influenced by the absence of a similar provision in its pattern, the Federal Constitution of the United States. Rather, the creation of such tribunal was left to the determination of the National Assembly. The journal of the 1935 Constitutional Convention is crystal clear on this point:

> Delegate Saguin. – For an information. It seems that this Constitution does not contain any provision with respect to the entity or body which will look into the protests for the positions of the President and Vice-President.
>
> President Recto. – Neither does the American constitution contain a provision over the subject.
>
> Delegate Saguin. – But then, who will decide these protests?
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> President Recto. – I suppose that the National Assembly will decide on that.[33]

To fill the void in the 1935 Constitution, the National Assembly enacted R.A. No. 1793, establishing an independent PET to try, hear, and decide protests contesting the election of President and Vice-President. The Chief Justice and the Associate Justices of the Supreme Court were tasked to sit as its Chairman

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[33] Constitutional Convention Record, Vol. X, pp. 471-472.

and Members, respectively. Its composition was extended to retired Supreme Court Justices and incumbent Court of Appeals Justices who may be appointed as substitutes for ill, absent, or temporarily incapacitated regular members.

The eleven-member tribunal was empowered to promulgate rules for the conduct of its proceedings. It was mandated to sit *en banc* in deciding presidential and vice-presidential contests and authorized to exercise powers similar to those conferred upon courts of justice, including the issuance of subpoena, taking of depositions, arrest of witnesses to compel their appearance, production of documents and other evidence, and the power to punish contemptuous acts and bearings. The tribunal was assigned a Clerk, subordinate officers, and employees necessary for the efficient performance of its functions.

R.A. No. 1793 was implicitly repealed and superseded by the 1973 Constitution which replaced the bicameral legislature under the 1935 Constitution with the unicameral body of a parliamentary government.

With the 1973 Constitution, a PET was rendered irrelevant, considering that the President was not directly chosen by the people but elected from among the members of the National Assembly, while the position of Vice-President was constitutionally non-existent.

In 1981, several modifications were introduced to the parliamentary system. Executive power was restored to the President who was elected directly by the people. An Executive Committee was formed to assist the President in the performance of his functions and duties. Eventually, the Executive Committee was abolished and the Office of Vice-President was installed anew.

These changes prompted the National Assembly to revive the PET by enacting, on December 3, 1985, Batas Pambansa Bilang (B.P. Blg.) 884, entitled "*An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Election Contests in the Office of the President and Vice-President of the Philippines, Appropriating Funds Therefor*

and For Other Purposes." This tribunal was composed of nine members, three of whom were the Chief Justice of the Supreme Court and two Associate Justices designated by him, while the six were divided equally between representatives of the majority and minority parties in the Batasang Pambansa.

Aside from the license to wield powers akin to those of a court of justice, the PET was permitted to recommend the prosecution of persons, whether public officers or private individuals, who in its opinion had participated in any irregularity connected with the canvassing and/or accomplishing of election returns.

The independence of the tribunal was highlighted by a provision allocating a specific budget from the national treasury or Special Activities Fund for its operational expenses. It was empowered to appoint its own clerk in accordance with its rules. However, the subordinate officers were strictly employees of the judiciary or other officers of the government who were merely designated to the tribunal.

After the historic People Power Revolution that ended the martial law era and installed Corazon Aquino as President, civil liberties were restored and a new constitution was formed.

With R.A. No. 1793 as framework, the 1986 Constitutional Commission transformed the then statutory PET into a constitutional institution, albeit without its traditional nomenclature:

> FR. BERNAS. x x x.
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> x x x. So it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.[34]

Clearly, petitioner's *bete noire* of the PET and the exercise of its power are unwarranted. His arguments that: (1) the Chief

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[34] Records of the Constitutional Commission, Vol. 2, p. 408.

Justice and Associate Justices are referred to as "Chairman" and "Members," respectively; (2) the PET uses a different seal; (3) the Chairman is authorized to appoint personnel; and (4) additional compensation is allocated to the "Members," in order to bolster his claim of infirmity in the establishment of the PET, are too superficial to merit further attention by the Court.

Be that as it may, we hasten to clarify the structure of the PET as a legitimate progeny of Section 4, Article VII of the Constitution, composed of members of the Supreme Court, sitting *en banc*. The following exchange in the 1986 Constitutional Commission should provide enlightenment:

MR. SUAREZ. Thank you. Let me proceed to line 23, page 2, wherein it is provided, and I quote:

The Supreme Court, sitting *en banc*[,] shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

Are we not giving enormous work to the Supreme Court especially when it is directed to sit *en banc* as the sole judge of all presidential and vice-presidential election contests?

MR. SUMULONG. That question will be referred to Commissioner Concepcion.

MR. CONCEPCION. **This function was discharged by the Supreme Court twice and the Supreme Court was able to dispose of each case in a period of one year as provided by law. Of course, that was probably during the late 1960s and early 1970s. I do not know how the present Supreme Court would react to such circumstances, but there is also the question of who else would hear the election protests.**

MR. SUAREZ. We are asking this question because between lines 23 to 25, there are no rules provided for the hearings and there is not time limit or duration for the election contest to be decided by the Supreme Court. Also, we will have to consider the historical background that when R.A. 1793, which organized the Presidential Electoral Tribunal, was promulgated on June 21, 1957, at least three famous election contests were presented and two of them ended up in withdrawal by the protestants out of sheer frustration because of the delay in the resolution of the cases. I am referring to the electoral protest that

was lodged by former President Carlos P. Garcia against our "kabalen" former President Diosdado Macapagal in 1961 and the vice-presidential election contest filed by the late Senator Gerardo Roxas against Vice-President Fernando Lopez in 1965.

MR. CONCEPCION. I cannot answer for what the protestants had in mind. But when that protest of Senator Roxas was withdrawn, the results were already available. Senator Roxas did not want to have a decision adverse to him. The votes were being counted already, and he did not get what he expected so rather than have a decision adverse to his protest, he withdrew the case.

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MR. SUAREZ. **I see. So the Commission would not have any objection to vesting in the Supreme Court this matter of resolving presidential and vice-presidential contests?**

MR. CONCEPCION. Personally, I would not have any objection.

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. There are legal rights which are enforceable under the law, and these are essentially justiciable questions.

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**

MR. CONCEPCION. The time consumed or to be consumed in this contest for President is dependent upon they key number of teams of revisors. I have no experience insofar as contests in other offices are concerned.

MR. SUAREZ. Although there is a requirement here that the Supreme Court is mandated to sit *en banc*?

MR. CONCEPCION. Yes.

MR. SUAREZ. I see.

MR. CONCEPCION. **The steps involved in this contest are: First, the ballot boxes are opened before teams of three, generally, a representative each of the court, of the protestant and of the "protestee." It is all a questions of how many teams are organized. Of course, that can be expensive, but it would be expensive whatever court one would choose. There were times that the Supreme Court, with sometimes 50 teams at the same time working, would classify the objections, the kind of problems, and the court would only go over the objected votes on which the parties could not agree. So it is not as awesome as it would appear insofar as the Court is concerned. What is awesome is the cost of the revision of the ballots because each party would have to appoint one representative for every team, and that may take quite a big amount.**

MR. SUAREZ. If we draw from the Commissioner's experience which he is sharing with us, what would be the reasonable period for the election contest to be decided?

MR. CONCEPCION. Insofar as the Supreme Court is concerned, the Supreme Court always manages to dispose of the case in one year.

MR. SUAREZ. In one year. Thank you for the clarification.[35]

Obvious from the foregoing is the intent to bestow independence to the Supreme Court as the PET, to undertake the Herculean task of deciding election protests involving presidential and vice-presidential candidates in accordance with the process outlined by former Chief Justice Roberto Concepcion. It was made in response to the concern aired by delegate Jose E. Suarez that the additional duty may prove too burdensome for the Supreme Court. This explicit grant of independence and of the plenary powers needed to discharge this burden justifies the budget allocation of the PET.

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[35] *Id.* at 420-421. (Emphasis supplied.)

The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the *doctrine of necessary implication*.[36] We cannot overemphasize that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted.

A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."

The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.*, the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET),[37] which we have affirmed on numerous occasions.[38]

Particularly cogent are the discussions of the Constitutional Commission on the parallel provisions of the SET and the HRET. The discussions point to the inevitable conclusion that the different electoral tribunals, with the Supreme Court functioning as the PET, are constitutional bodies, **independent** of the three

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[36] *McCulloch v. State of Maryland*, *supra* note 21.

[37] CONSTITUTION, Art. VI, Sec. 17.

[38] *Sen. Defensor-Santiago v. Sen. Guingona, Jr.*, 359 Phil. 276, 294 (1998), citing *Lazatin v. House Electoral Tribunal*, 250 Phil. 390 (1988); *Robles v. House of Representatives Electoral Tribunal*, G.R. No. 86647, February 5, 1990, 181 SCRA 780.

departments of government – Executive, Legislative, and Judiciary – **but not separate** therefrom.

MR. MAAMBONG. x x x.

My questions will be very basic so we can go as fast as we can. In the case of the electoral tribunal, either of the House or of the Senate, is it correct to say that these tribunals are constitutional creations? I will distinguish these with the case of the Tanodbayan and the Sandiganbayan which are created by mandate of the Constitution but they are not constitutional creations. Is that a good distinction?

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MR. MAAMBONG. Could we, therefore, say that either the Senate Electoral Tribunal or the House Electoral Tribunal is a constitutional body?

MR. AZCUNA. It is, Madam President.

MR. MAAMBONG. If it is a constitutional body, is it then subject to constitutional restrictions?

MR. AZCUNA. It would be subject to constitutional restrictions intended for that body.

MR. MAAMBONG. I see. But I want to find out if the ruling in the case of *Vera v. Avelino*, 77 Phil. 192, will still be applicable to the present bodies we are creating since it ruled that the electoral tribunals are not separate departments of the government. Would that ruling still be valid?

MR. AZCUNA. **Yes, they are not separate departments because the separate departments are the legislative, the executive and the judiciary; but they are constitutional bodies**.[39]

The view taken by Justices Adolfo S. Azcuna[40] and Regalado E. Maambong[41] is schooled by our holding in *Lopez v. Roxas, et al.*:[42]

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[39] Records of the Constitutional Commission, Vol. 2, pp. 111-112. (Emphasis supplied.)

[40] Supreme Court.

[41] Court of Appeals.

[42] G.R. No. L-25716, July 28, 1966, 17 SCRA 756, 762-765. (Emphasis supplied.)

Section 1 of Republic Act No. 1793, which provides that:

> "There shall be an independent Presidential Electoral Tribunal x x x which shall be the sole judge of all contests relating to the election, returns, and qualifications of the president-elect and the vice-president-elect of the Philippines."

has the effect of giving said defeated candidate the legal right to contest judicially the election of the President-elect of Vice-President-elect and to demand a recount of the votes case for the office involved in the litigation, as well as to secure a judgment declaring that he is the one elected president or vice-president, as the case may be, and that, as such, he is entitled to assume the duties attached to said office. And by providing, further, that the Presidential Electoral Tribunal "shall be composed of the Chief Justice and the other ten Members of the Supreme Court," said legislation has conferred upon such Court an *additional* original jurisdiction of an exclusive character.

Republic Act No. 1793 has *not* created a new or separate court. It has merely conferred upon the Supreme Court the *functions* of a Presidential Electoral Tribunal. The result of the enactment may be likened to the fact that courts of first instance perform the functions of such ordinary courts of first instance, those of court of land registration, those of probate courts, and those of courts of juvenile and domestic relations. It is, also, comparable to the situation obtaining when the municipal court of a provincial capital exercises its authority, pursuant to law, over a limited number of cases which were previously within the exclusive jurisdiction of courts of first instance.

In all of these instances, the *court* (court of first instance or municipal court) is only *one*, although the *functions* may be *distinct* and, even, *separate*. Thus the powers of a court of first instance, in the exercise of its jurisdiction over ordinary civil cases, are broader than, as well as distinct and separate from, those of the *same* court acting as a court of *land registration* or a *probate* court, or as a court of juvenile and domestic relations. So too, the authority of the municipal court of a provincial capital, when acting as such municipal court, is, territorially more limited than that of the *same court* when hearing the aforementioned cases which are primary within the jurisdiction of courts of first instance. In other words, there is only *one court*, although it may perform the *functions* pertaining to several types of courts, each having some characteristics different from those of the others.

Indeed, the Supreme Court, the Court of Appeals and courts of first instance, are vested with original jurisdiction, as well as with appellate jurisdiction, in consequence of which they are both trial courts and, appellate courts, without detracting from the fact that there is only *one* Supreme Court, *one* Court of Appeals, and *one* court of first instance, clothed with authority to discharge said dual functions. A court of first instance, when performing the functions of a probate court or a court of land registration, or a court of juvenile and domestic relations, although with powers less broad than those of a court of first instance, hearing ordinary actions, is *not inferior* to the latter, for one cannot be inferior to itself. So too, the Presidential Electoral Tribunal is *not* inferior to the Supreme Court, since it is *the same Court* although the *functions* peculiar to said Tribunal are *more* limited in scope than those of the Supreme Court in the exercise of its ordinary functions. Hence, the enactment of Republic Act No. 1793, does not entail an assumption by Congress of the power of appointment vested by the Constitution in the President. It merely connotes the imposition of additional duties upon the Members of the Supreme Court.

By the same token, the PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal. It is obvious that the PET was constituted in implementation of Section 4, Article VII of the Constitution, and it faithfully complies – not unlawfully defies – the constitutional directive. The adoption of a separate seal, as well as the change in the nomenclature of the Chief Justice and the Associate Justices into Chairman and Members of the Tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the Tribunal's functions as a special electoral court.

As regards petitioner's claim that the PET exercises quasi-judicial functions in contravention of Section 12, Article VIII of the Constitution, we point out that the issue in *Buac v. COMELEC*[43] involved the characterization of the enforcement and administration of a law relative to the conduct of a plebiscite which falls under the jurisdiction of the Commission on

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[43] *Supra* note 4.

Elections. However, petitioner latches on to the enumeration in *Buac* which declared, in an *obiter*, that "contests involving the President and the Vice-President fall within the exclusive original jurisdiction of the PET, also in the exercise of quasi-judicial power."

The issue raised by petitioner is more imagined than real. Section 12, Article VIII of the Constitution reads:

> SEC. 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

The traditional grant of judicial power is found in Section 1, Article VIII of the Constitution which provides that the power "shall be vested in one Supreme Court and in such lower courts as may be established by law." Consistent with our presidential system of government, the function of "dealing with the settlement of disputes, controversies or conflicts involving rights, duties or prerogatives that are legally demandable and enforceable"[44] is apportioned to courts of justice. With the advent of the 1987 Constitution, judicial power was expanded to include "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."[45] The power was expanded, but it remained absolute.

The set up embodied in the Constitution and statutes **characterizes the resolution of electoral contests as essentially an exercise of judicial power**.

At the *barangay* and municipal levels, original and exclusive jurisdiction over election contests is vested in the municipal

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[44] *Javellana v. Executive Secretary, et al.*, 151-A Phil. 36, 131 (1973).

[45] CONSTITUTION, Art. VIII, Sec. 1, second paragraph.

or metropolitan trial courts and the regional trial courts, respectively.

At the higher levels – city, provincial, and regional, as well as congressional and senatorial – exclusive and original jurisdiction is lodged in the COMELEC and in the House of Representatives and Senate Electoral Tribunals, **which are not, strictly and literally speaking, courts of law**. Although not courts of law, they are, nonetheless, empowered to resolve election contests which involve, in essence, an exercise of judicial power, because of the explicit constitutional empowerment found in Section 2(2), Article IX-C (for the COMELEC) and Section 17, Article VI (for the Senate and House Electoral Tribunals) of the Constitution. Besides, when the COMELEC, the HRET, and the SET decide election contests, their decisions are still subject to judicial review – *via* a petition for *certiorari* filed by the proper party – if there is a showing that the decision was rendered with grave abuse of discretion tantamount to lack or excess of jurisdiction.[46]

It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. In the landmark case of *Angara v. Electoral Commission*,[47] Justice Jose P. Laurel enucleated that "it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels." In fact, *Angara* pointed out that "[t]he Constitution is a definition of the powers of government." And yet, at that time, the 1935 Constitution did not contain the expanded definition of judicial power found in Article VIII, Section 1, paragraph 2 of the present Constitution.

With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's

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[46] See *Robles v. House of Representatives Electoral Tribunal*, *supra* note 38; *Lazatin v. House Electoral Tribunal*, *supra* note 38.

[47] 63 Phil. 139 (1936).

exercise of judicial power inherent in all courts,[48] the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power *allocated to courts of law*, expressly provided in the Constitution. On the whole, the Constitution draws a thin, but, nevertheless, distinct line between the PET and the Supreme Court.

If the logic of petitioner is to be followed, all Members of the Court, sitting in the Senate and House Electoral Tribunals would violate the constitutional proscription found in Section 12, Article VIII. Surely, the petitioner will be among the first to acknowledge that this is not so. The Constitution which, in Section 17, Article VI, explicitly provides that three Supreme Court Justices shall sit in the Senate and House Electoral Tribunals, respectively, effectively exempts the Justices-Members thereof from the prohibition in Section 12, Article VIII. In the same vein, it is the Constitution itself, in Section 4, Article VII, which exempts the Members of the Court, constituting the PET, from the same prohibition.

We have previously declared that the PET is not simply an agency to which Members of the Court were designated. Once again, the PET, as intended by the framers of the Constitution, is to be an institution *independent, but not separate*, from the judicial department, *i.e.*, the Supreme Court. *McCulloch v. State of Maryland*[49] proclaimed that "[a] power without the means to use it, is a nullity." The vehicle for the exercise of this power, as intended by the Constitution and specifically mentioned by the Constitutional Commissioners during the discussions on the grant of power to this Court, is the PET. Thus, a microscopic view, like the petitioner's, should not constrict an absolute and constitutional grant of judicial power.

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[48] See *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 665; *Tañada and Macapagal v. Cuenco, et al.*, 103 Phil. 1051 (1957); *Alejandrino v. Quezon*, 46 Phil. 83 (1924).

[49] *Supra* note 21.

One final note. Although this Court has no control over contrary people and naysayers, we reiterate a word of caution against the filing of baseless petitions which only clog the Court's docket. The petition in the instant case belongs to that classification.

WHEREFORE, the petition is *DISMISSED*. Costs against petitioner.

SO ORDERED.

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

Del Castillo, J., on official leave.

THIRD DIVISION

[A.M. No. P-10-2781. November 24, 2010]
(Formerly OCA IPI No. 02-1419-P)

PASTOR C. PINLAC, *complainant, vs.* **OSCAR T. LLAMAS, Cash Clerk II, Regional Trial Court, Office of the Clerk of Court, San Carlos City, Pangasinan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE; CANNOT BE DISMISSED IN VIEW OF COMPLAINANT'S AFFIDAVIT OF DESISTANCE.— Neither can we agree with the respondent's theory that the administrative case against him should be dismissed in view of the complainant's affidavit of desistance and/or retraction. We reiterate the settled rule that administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is

otherwise detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. Where public interest is at stake and the Court can act in relation to the propriety and legality of the conduct of Judiciary officials and employees, the Court shall act irrespective of any intervening private arrangements between the parties.

2. ID.; ID.; ID.; COURT PERSONNEL; ACTS CONSTITUTIVE OF GRAVE MISCONDUCT, COMMITTED.— In the present case, the respondent's act, more than anything else, is closer to the direct solicitation or acceptance of money in connection with an operation directly being acted upon by the court of which he was an employee, which the Civil Service Rules penalize as a grave offense. As the complaint states (and this was never disputed), the respondent offered assistance to the complainant, but the offer was for a fee that was in fact paid, although the fee was ostensibly handed over to the surveyor with whom a meeting had to be arranged by the respondent. In this role, the respondent acted as an active intermediary in a fee transaction between the surveyor and the complainant who was not even a friend, relative nor an acquaintance to whom, under unique Filipino cultural practices, one may understandably be beholden to render some assistance. The respondent's acts would have squarely fallen under Section 52(A)(11), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum Circular No. 19, series of 1999), were it not for the proven turnover of the initially demanded ₱2,000.00 to the surveyor. Other than on the basis of this provision, however, the respondent is liable under Section 52(A)(3) for ***grave misconduct.*** It is a ***misconduct*** because the respondent acted as an active and willing intermediary who had demanded and received money in relation to a case pending before the court where he worked. It is ***grave*** because the offer to help for a fee shows his willingness and intent to commit acts of unacceptable behavior, transgressing established and serious rules of conduct for public officers and employees. In short, the respondent undertook acts amounting to fixing, that the Court must necessarily recognize and penalize, as they were made under circumstances that unavoidably leave a heavy and adverse taint on the image of the Judiciary.

3. ID.; ID.; ID.; ID.; ID.; PENALTY; FINE IMPOSED IN LIEU OF DISMISSAL.— Grave misconduct carries the penalty of dismissal for the first offense, a penalty we cannot now impose in light of the respondent's resignation. We consider, too, as we did in *Office of the Court Administrator v. Marcelo*, that the imposition of this penalty can be tempered with compassion. In this case, the respondent appears to have returned the amount the complainant had paid. The respondent, too, chose to resign from his post even before the full resolution of this case. Under these circumstances and on the authority of the legal leeway granted to this Court in the supervision of officials and employees of the Judiciary, we do not find it amiss to impose a penalty lesser than the dismissal that the Civil Service Rules mandate. Hence, in lieu of dismissal and its equivalent, we impose on the respondent a fine of Twenty Thousand Pesos.

4. ID.; ID.; ID.; ID.; THIN LINE BETWEEN THE ACT OF LEGITIMATE ASSISTANCE AND ILLEGAL FIXING, EXPLAINED.— [W]e highlight in this case the unacceptable and deplorable act of "fixing" for which not a few judiciary officials and employees have already been penalized. To be sure, the acts they were held accountable for might not have been labeled as fixing and may have come under other labels as the gravity may differ in degrees. In essence, however, the act of fixing, as defined in lay terms in this Decision, had been committed. We particularly invite attention to this deplorable act to draw the attention of all concerned that between the act of beneficial and legitimate assistance and illegal fixing is a thin red line that judicial officials and employees must never cross; assistance should only be to the extent of what one can legitimately deliver, given as part of the duties as public servants, and with the best of motives; it can never go beyond the extent allowed us by law, and never for a fee, a gift, or for the promise of personal benefit to the assisting official or employee. When that line is crossed, this Court will not hesitate to call the act for what it truly is – an illegality that must be condemned and for which the erring judge, official or employee shall be severely penalized as a retribution for the harm done and as an example of how this Court acts to maintain public trust, by ensuring that the image and integrity of the Judiciary are not compromised.

D E C I S I O N

BRION, *J.*:

We resolve as an administrative matter the letter-complaint,[1] dated April 24, 2002, of complainant Pastor C. Pinlac, charging respondent Oscar T. Llamas, Cash Clerk II, Regional Trial Court (*RTC*), Office of the Clerk of Court, San Carlos City, Pangasinan, with violation of Republic Act No. 3019 and/or misconduct.

The complainant alleged that he went to the Office of the Clerk of Court, San Carlos City, Pangasinan, to seek assistance for the facilitation of the titling of the land that he and his siblings inherited from their deceased parents. The respondent offered him assistance, but asked for an initial sum of ₱2,000.00. The complainant acceded and gave the demanded amount; subsequently, he gave the respondent another ₱2,000.00 after the latter had claimed that the initial amount was insufficient. The complainant alleged that he gave the respondent a total of ₱10,000.00. Despite all these and the lapse of two years, the respondent failed to deliver the promised title.

In his Comment, the respondent denied having received ₱10,000.00 from the complainant. The respondent explained that the complainant went to his office and told him that he needed a surveyor. Since the respondent knew a surveyor who worked at the Department of Environment and Natural Resources, he asked the complainant if he wanted to avail of this surveyor's services. When the complainant agreed, the respondent introduced him to said surveyor. The respondent has maintained that the complainant gave the money to the surveyor, not to him. When the surveyor failed to secure the title to the land, the complainant instructed him to talk to the surveyor to ask for the return of the money. The respondent prays that the complaint against him be dismissed in view of the affidavit of

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[1] *Rollo*, p. 1.

desistance that the complainant subsequently filed during the pendency of this administrative case.[2]

In a letter[3] to this Court dated August 20, 2002, the complainant stated that the respondent went to his house on August 15, 2002 and returned to him the full amount of ₱10,000.00. The respondent pleaded with him to withdraw his complaint because he did not want to lose his job. Subsequently, he and the complainant went to the office of Atty. Salvador T. Imus, Jr. where he (the complainant) executed an *Affidavit of Desistance and/or Retraction*. The complainant continued to maintain that it was the respondent and not the surveyor who received the money from him.

In our Resolution dated January 15, 2003, we referred the case to the Executive Judge of the RTC of San Carlos City, Pangasinan, for investigation, report and recommendation. Thereafter, Investigating Judge Anthony Q. Sison conducted a hearing on the case. It was established during the hearing that the respondent introduced the complainant to the surveyor; the complainant handed the ₱2,000.00 initial fee to the respondent who, in turn, turned this money over to the surveyor; and the complainant gave the succeeding payments of ₱2,000.00 and ₱6,000.00 directly to the surveyor.

The Court, in its Resolution of June 10, 2003, accepted the resignation of the respondent as Cash Clerk II, Office of the Clerk of Court, RTC, San Carlos City, Pangasinan, without prejudice to the continuation and outcome of the administrative complaint against him.

In his Report dated January 5, 2009, Judge Sison found the respondent liable for violating reasonable office rules and regulations, and recommended that he be meted a ₱5,000.00 fine.

The Court referred Judge Sison's report to the Office of the Court Administrator (*OCA*) for evaluation, report and

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[2] *Id.* at 7.

[3] *Id.* at 12.

recommendation. The OCA, in its Report dated December 15, 2009, recommended that the respondent be found guilty of violating reasonable office rules and regulations, and be meted the penalty of fine in the amount of ₱5,000.00, to be deducted from his retirement benefits.

The OCA reasoned out as follows:

> The primordial question to be resolved now, thus, is whether or not the act of Llamas, then an employee of the court, in introducing a surveyor to Pinlac and receiving the initial amount of ₱2,000.00 and then turning over the said amount to the surveyor just to ensure that said surveyor will take care of Pinlac, proper under the surrounding circumstances.
>
> The above-quoted admission does not establish that Llamas acted as a middleman for consideration or profit forging the deal between Pinlac and the surveyor. However, by his acts, Llamas allowed himself to appear to be acting as an agent, broker, or a middleman to Pinlac and the surveyor.
>
> Even assuming that Llamas's intention in helping Pinlac was noble and true, he should have been more circumspect in his actions. As an employee of the court, Llamas should not only had seen to it to have acted accordingly. He should have ensured that his acts are devoid of any spec or semblance of impropriety.
>
> The image of the court as a bastion of justice depends to a large extent on the personal and official conduct of its employees. Thus, from the judge to the lowest clerk, judicial personnel have the sacred duty to maintain the good name of the judiciary. Court personnel, from the presiding judge to the lowliest clerk, are further required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary. Employees of the judiciary should be living examples of uprightness not only in the performance of their official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing of courts in the community.

THE COURT'S RULING

We cannot fully agree with the OCA's findings and recommendations as these merely dwell on the patently obvious,

and fail to deduce what cannot be missed from the obvious facts.

We have stressed time and time again that all officials and employees involved in the administration of justice, from judges to the lowest rank and file employees, bear on their shoulders the heavy responsibility of acting with strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the Judiciary. In the simplest terms, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.[4]

In the present case, the findings of facts show that the complainant met the respondent at the courthouse while the complainant was working on the titling of an inherited property. The respondent offered assistance and introduced the complainant to the surveyor, to facilitate the desired titling. While this introduction might have been an innocuous move, as the Investigating Judge saw it, the surrounding circumstances of the move should have alerted the Judge and the OCA that it might not have been as neutral nor as legitimate as it seemed.

In the *first* place, the respondent was a Cash Clerk II whose duties did not involve the discussion of pending cases with litigants; cash clerks solely attend to official financial transactions between the court and outside parties dealing with the court. It appears from the records, too, that the complainant and the respondent had no previous relationship that would have justified the assistance the latter offered outside of the scope of his official duties. They were not friends, relatives, or acquaintances to each other; they appear to have met in the course of the complainant's visit to the court to work on the titling of his property. Thus, their initial common point of interest was the titling of land that was then pending before the court where the respondent worked.

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[4] *In Re: Improper Solicitation of Court Employees – Rolando H. Hernandez, Executive Assistant I, Legal Office, Office of the Court Administrator*, A.M. No. 2008-12-SC (formerly A.M. No. 08-7-4-SC), April 24, 2009, 586 SCRA 325, 333.

Second, the referral to the surveyor was not an ordinary concern of a cash clerk and was not a casual referral; the respondent appeared to have gone out of his way to get the complainant and the surveyor to meet. In fact, the surveyor was from another office and a meeting necessarily had to be arranged, and was indeed arranged by the respondent.

Third, in the course of the meeting, a transaction was undisputably arranged where the surveyor was to work on the titling of the land for a fee. Significantly, the task was not simply to do a survey, as can be expected of surveyors, but to work on the titling and the release of the title.

Lastly and most importantly, the first payment was made *to the respondent* himself, thus indicating that his role was not as neutral as the simple "assistance" that he termed it to be. He was a part of the transaction, although he ostensibly handed the first payment to the surveyor and the latter made all the subsequent billings. We find it significant, in this regard, that the complainant made his follow-up on the release of his title with the respondent and had even asked the respondent to contact the surveyor for the return of the money paid. These indicated how active and deep the respondent's role was.

Under these circumstances, we consider it shortsighted to simply conclude, as the OCA did, that the respondent rendered a simple assistance and did not act as an active middleman in the transaction. The facts before us relate to realities that we find often enough among the offenses that the Court addresses in its constitutional role of supervising judicial officials and employees – the offense that in common lay terms is referred to as "fixing." Fixing may range from the patently corrupt act of serving as middleman between a litigant and the decision maker, to rendering illegal and out-of-the-way assistance such as providing referral service to lawyers and other participants in court cases, or providing information such as the identity of the *ponente*, all *for a fee*, or, likewise *for a fee*, intervening to facilitate court processes such as the release of court papers or providing advance and illegitimate copies of drafts or final

but unpromulgated decisions. To be sure, these are not newly-heard activities as invariably in many courts, *even in this Court*, there are officials and employees who can never seem to resist these kinds of tempting activities.

In the present case, we are convinced, after going beyond the obvious facts, that the respondent was acting as a "fixer," and was not simply rendering "assistance" because he was impelled to render the ideal in public service of catering to clients' legitimate needs. We disagree, too, with the OCA conclusion that the complainant's actions were simply inappropriate because "Llamas allowed himself to appear to be acting as an agent, broker, or middleman to Pinlac and the surveyor." This OCA conclusion glosses over the other circumstances pointed out above that, although not highlighted, are not disputed and are for the decision maker to properly appreciate and evaluate. Missing among the pieces of direct evidence, of course, is the actual agreement between the respondent and the surveyor as well as the actual division of spoils – evidence that would have clearly brought the present case within the realm of criminal anti-graft laws. The omissions of these pieces of direct evidence, nevertheless, the conclusion – from the undisputed facts and the directly deduced circumstances – is inescapable that the respondent was not simply rendering a legitimate service but had ventured into the field of fixing.

Neither can we agree with the respondent's theory that the administrative case against him should be dismissed in view of the complainant's affidavit of desistance and/or retraction. We reiterate the settled rule that administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is otherwise detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. Where public interest is at stake and the Court can act in relation to the propriety and legality of the conduct of Judiciary officials

and employees, the Court shall act irrespective of any intervening private arrangements between the parties.[5]

Nor can we agree with the OCA's recommendation that the respondent be found guilty of violating reasonable office rules and regulations, as no particular office rule or regulation was shown to have been violated by him. We instead find the respondent liable for grave misconduct. Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers.[6] The misconduct is grave if it involves the additional elements of corruption, willful intent to violate the law or disregard of established rules. Otherwise, the misconduct is only simple.[7]

In the present case, the respondent's act, more than anything else, is closer to the direct solicitation or acceptance of money in connection with an operation directly being acted upon by the court of which he was an employee, which the Civil Service Rules penalize as a grave offense. As the complaint states (and this was never disputed), the respondent offered assistance to the complainant, but the offer was for a fee that was in fact paid, although the fee was ostensibly handed over to the surveyor with whom a meeting had to be arranged by the respondent. In this role, the respondent acted as an active intermediary in a fee transaction between the surveyor and the complainant who was not even a friend, relative nor an acquaintance to whom, under unique Filipino cultural practices, one may understandably be beholden to render some assistance.

The respondent's acts would have squarely fallen under Section 52(A)(11), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum

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[5] *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216 (formerly OCA I.P.I. No. 04-2037-P), April 20, 2007, 521 SCRA 489, 497.

[6] See *Office of the Court Administrator v. Nitafan*, A.M. No. P-03-1679, June 16, 2003, 404 SCRA 1, 5.

[7] See *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

Circular No. 19, series of 1999),[8] were it not for the proven turnover of the initially demanded ₱2,000.00 to the surveyor. Other than on the basis of this provision, however, the respondent is liable under Section 52(A)(3) for ***grave misconduct.***

It is a ***misconduct*** because the respondent acted as an active and willing intermediary who had demanded and received money in relation to a case pending before the court where he worked.[9] It is ***grave*** because the offer to help for a fee shows his willingness and intent to commit acts of unacceptable behavior, transgressing established and serious rules of conduct for public officers and employees.[10] In short, the respondent undertook acts amounting to fixing, that the Court must necessarily recognize and penalize, as they were made under circumstances that unavoidably leave a heavy and adverse taint on the image of the Judiciary.

Grave misconduct carries the penalty of dismissal for the first offense, a penalty we cannot now impose in light of the respondent's resignation. We consider, too, as we did in *Office of the Court Administrator v. Marcelo*,[11] that the imposition of this penalty can be tempered with compassion. In this case, the respondent appears to have returned the amount the complainant had paid. The respondent, too, chose to resign from his post even before the full resolution of this case. Under these circumstances and on the authority of the legal leeway

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[8] Resolution No. 991936, August 31, 1999.

[9] Section 2(b), Canon III of the Code of Conduct for Court Personnel reads:

SEC. 2. Court personnel shall not:

x x x x x x x x x

(b) Receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary.

[10] See *Canlas-Bartolome v. Manio*, A.M. No. P-07-2397, December 4, 2007, 539 SCRA 333; *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449.

[11] A.M. No. P-08-2512, August 11, 2008, 561 SCRA 535.

granted to this Court in the supervision of officials and employees of the Judiciary, we do not find it amiss to impose a penalty lesser than the dismissal that the Civil Service Rules mandate. Hence, in lieu of dismissal and its equivalent, we impose on the respondent a fine of Twenty Thousand Pesos.

As our last word, we highlight in this case the unacceptable and deplorable act of "fixing" for which not a few judiciary officials and employees have already been penalized. To be sure, the acts they were held accountable for might not have been labeled as fixing and may have come under other labels as the gravity may differ in degrees. In essence, however, the act of fixing, as defined in lay terms in this Decision, had been committed.

We particularly invite attention to this deplorable act to draw the attention of all concerned that between the act of beneficial and legitimate assistance and illegal fixing is a thin red line that judicial officials and employees must never cross; assistance should only be to the extent of what one can legitimately deliver, given as part of the duties as public servants, and with the best of motives; it can never go beyond the extent allowed us by law, and never for a fee, a gift, or for the promise of personal benefit to the assisting official or employee.

When that line is crossed, this Court will not hesitate to call the act for what it truly is – an illegality that must be condemned and for which the erring judge, official or employee shall be severely penalized as a retribution for the harm done and as an example of how this Court acts to maintain public trust, by ensuring that the image and integrity of the Judiciary are not compromised.

WHEREFORE, respondent Oscar T. Llamas is found *GUILTY* of grave misconduct. In light of his prior resignation and out of compassion, we impose on him a *FINE of TWENTY THOUSAND PESOS (P20,000.00)* for which he shall be held personally liable even beyond whatever benefits may still be due him by reason of his past service. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157479. November 24, 2010]

PHILIP TURNER and ELNORA TURNER, *petitioners, vs.* **LORENZO SHIPPING CORPORATION,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; STOCKHOLDER; RIGHT OF APPRAISAL; EXPLAINED.—** A stockholder who dissents from certain corporate actions has the right to demand payment of the fair value of his or her shares. This right, known as the right of appraisal, is expressly recognized in Section 81 of the *Corporation Code*. x x x [T]he right of appraisal may be exercised when there is a fundamental change in the charter or articles of incorporation substantially prejudicing the rights of the stockholders. It does not vest unless objectionable corporate action is taken. It serves the purpose of enabling the dissenting stockholder to have his interests purchased and to retire from the corporation.

2. **ID.; ID.; ID.; ID.; PAYMENT TO THE DISSENTING STOCKHOLDER MUST COME FROM THE CORPORATION'S UNRESTRICTED RETAINED EARNINGS.—** [N]o payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover the payment. In case the corporation has no available unrestricted retained earnings in its books, Section 83 of the *Corporation Code* provides that if the dissenting stockholder is not paid the value of his shares within 30 days after the award, his voting and dividend rights shall immediately be restored.

3. **ID.; ID.; ID.; ID.; ID.; TRUST FUND DOCTRINE, EXPLAINED.—** The *trust fund doctrine* backstops the requirement of unrestricted retained earnings to fund the payment of the shares of stocks of the withdrawing stockholders. Under the doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who are preferred in the distribution of corporate assets. The creditors of a corporation have the right to assume that the board of directors will not use the assets of

the corporation to purchase its own stock for as long as the corporation has outstanding debts and liabilities. There can be no distribution of assets among the stockholders without first paying corporate debts. Thus, any disposition of corporate funds and assets to the prejudice of creditors is null and void.

4. **ID.; ID.; ID.; ID.; ID.; FOR A DISSENTING STOCKHOLDER TO HAVE A VALID CAUSE OF ACTION, THE UNRESTRICTED RETAINED EARNINGS MUST EXIST AT THE TIME OF THE DEMAND.—** That the respondent had indisputably no unrestricted retained earnings in its books at the time the petitioners commenced Civil Case No. 01-086 on January 22, 2001 proved that the respondent's legal obligation to pay the value of the petitioners' shares did not yet arise. Thus, the CA did not err in holding that the petitioners had no cause of action, and in ruling that the RTC did not validly render the partial summary judgment. x x x Section 1, Rule 2, of the *Rules of Court* requires that every ordinary civil action must be based on a cause of action. Accordingly, Civil Case No. 01-086 was dismissible from the beginning for being without any cause of action. The RTC concluded that the respondent's obligation to pay had accrued by its having the unrestricted retained earnings after the making of the demand by the petitioners. It based its conclusion on the fact that the *Corporation Code* did not provide that the unrestricted retained earnings must already exist at the time of the demand. The RTC's construal of the *Corporation Code* was unsustainable, because it did not take into account the petitioners' lack of a cause of action against the respondent. In order to give rise to any obligation to pay on the part of the respondent, the petitioners should first make a valid demand that the respondent refused to pay despite having unrestricted retained earnings. Otherwise, the respondent could not be said to be guilty of any actionable omission that could sustain their action to collect.

5. **ID.; ID.; ID.; ID.; ID.; ID.; SUBSEQUENT EXISTENCE OF UNRESTRICTED RETAINED EARNINGS DID NOT CURE THE LACK OF CAUSE OF ACTION AT THE TIME OF THE COMMENCEMENT OF THE ACTION.—** Neither did the subsequent existence of unrestricted retained earnings after the filing of the complaint cure the lack of cause of action in Civil Case No. 01-086. The petitioners' right of action could only spring from an *existing* cause of action. Thus, a complaint

whose cause of action has not yet accrued cannot be cured by an amended or supplemental pleading alleging the existence or accrual of a cause of action during the pendency of the action. For, only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground. In short, Civil Case No. 01-086, being a groundless suit, should be dismissed. Even the fact that the respondent already had unrestricted retained earnings more than sufficient to cover the petitioners' claims on June 26, 2002 (when they filed their *motion for partial summary judgment*) did not rectify the absence of the cause of action at the time of the commencement of Civil Case No. 01-086. The *motion for partial summary judgment*, being a mere application for relief other than by a pleading, was not the same as the complaint in Civil Case No. 01-086. Thereby, the petitioners did not meet the requirement of the *Rules of Court* that a cause of action must exist at the commencement of an action, which is "commenced by the filing of the original complaint in court."

APPEARANCES OF COUNSEL

Beltran Beltran Rubrico Koa & Mendoza for petitioners.
Herrera Teehankee Faylona & Cabrera for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the right of dissenting stockholders to demand payment of the value of their shareholdings.

In the stockholders' suit to recover the value of their shareholdings from the corporation, the Regional Trial Court (RTC) upheld the dissenting stockholders, herein petitioners, and ordered the corporation, herein respondent, to pay. Execution was partially carried out against the respondent. On the respondent's petition for *certiorari*, however, the Court of Appeals (CA) corrected the RTC and dismissed the petitioners' suit on the ground that their cause of action for collection had

not yet accrued due to the lack of unrestricted retained earnings in the books of the respondent.

Thus, the petitioners are now before the Court to challenge the CA's decision promulgated on March 4, 2003 in C.A.-G.R. SP No. 74156 entitled *Lorenzo Shipping Corporation v. Hon. Artemio S. Tipon, in his capacity as Presiding Judge of Branch 46 of the Regional Trial Court of Manila, et al.*[1]

Antecedents

The petitioners held 1,010,000 shares of stock of the respondent, a domestic corporation engaged primarily in cargo shipping activities. In June 1999, the respondent decided to amend its articles of incorporation to remove the stockholders' pre-emptive rights to newly issued shares of stock. Feeling that the corporate move would be prejudicial to their interest as stockholders, the petitioners voted against the amendment and demanded payment of their shares at the rate of ₱2.276/share based on the book value of the shares, or a total of ₱2,298,760.00.

The respondent found the fair value of the shares demanded by the petitioners unacceptable. It insisted that the market value on the date before the action to remove the pre-emptive right was taken should be the value, or ₱0.41/share (or a total of ₱414,100.00), considering that its shares were listed in the Philippine Stock Exchange, and that the payment could be made only if the respondent had unrestricted retained earnings in its books to cover the value of the shares, which was not the case.

The disagreement on the valuation of the shares led the parties to constitute an appraisal committee pursuant to Section 82 of the *Corporation Code*, each of them nominating a representative, who together then nominated the third member who would be chairman of the appraisal committee. Thus, the appraisal committee came to be made up of Reynaldo Yatco, the petitioners' nominee; Atty. Antonio Acyatan, the respondent's

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[1] *Rollo*, pp. 20-35; penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justice Jose L. Sabio, Jr. (retired) and Associate Justice Amelita G. Tolentino concurring.

nominee; and Leo Anoche of the Asian Appraisal Company, Inc., the third member/chairman.

On October 27, 2000, the appraisal committee reported its valuation of ₱2.54/share, for an aggregate value of ₱2,565,400.00 for the petitioners.[2]

Subsequently, the petitioners demanded payment based on the valuation of the appraisal committee, plus 2%/month penalty from the date of their original demand for payment, as well as the reimbursement of the amounts advanced as professional fees to the appraisers.[3]

In its letter to the petitioners dated January 2, 2001,[4] the respondent refused the petitioners' demand, explaining that pursuant to the *Corporation Code*, the dissenting stockholders exercising their appraisal rights could be paid only when the corporation had unrestricted retained earnings to cover the fair value of the shares, but that it had no retained earnings at the time of the petitioners' demand, as borne out by its Financial Statements for Fiscal Year 1999 showing a deficit of ₱72,973,114.00 as of December 31, 1999.

Upon the respondent's refusal to pay, the petitioners sued the respondent for collection and damages in the RTC in Makati City on January 22, 2001. The case, docketed as Civil Case No. 01-086, was initially assigned to Branch 132.[5]

On June 26, 2002, the petitioners filed their *motion for partial summary judgment*, claiming that:

> 7) xxx the defendant has an accumulated unrestricted retained earnings of ELEVEN MILLION NINE HUNDRED SEVENTY FIVE THOUSAND FOUR HUNDRED NINETY (₱11,975,490.00) PESOS, Philippine Currency, evidenced by its Financial Statement as of the Quarter Ending March 31, 2002; xxx

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[2] *Id.,* p.127.

[3] *Id.,* p. 100.

[4] *Id.,* pp. 118-119.

[5] *Id.,* p. 120-124.

> 8) xxx the fair value of the shares of the petitioners as fixed by the Appraisal Committee is final, that the same cannot be disputed xxx
>
> 9) xxx there is no genuine issue to material fact and therefore, the plaintiffs are entitled, as a matter of right, to a summary judgment. xxx[6]

The respondent opposed the *motion for partial summary judgment*, stating that the determination of the unrestricted retained earnings should be made at the end of the fiscal year of the respondent, and that the petitioners did not have a cause of action against the respondent.

During the pendency of the *motion for partial summary judgment*, however, the Presiding Judge of Branch 133 transmitted the records to the Clerk of Court for re-raffling to any of the RTC's special commercial courts in Makati City due to the case being an intra-corporate dispute. Hence, Civil Case No. 01-086 was re-raffled to Branch 142.

Nevertheless, because the principal office of the respondent was in Manila, Civil Case No. 01-086 was ultimately transferred to Branch 46 of the RTC in Manila, presided by Judge Artemio Tipon,[7] pursuant to the *Interim Rules of Procedure on Intra-Corporate Controversies* (Interim Rules) requiring intra-corporate cases to be brought in the RTC exercising jurisdiction over the place where the principal office of the corporation was found.

After the conference in Civil Case No. 01-086 set on October 23, 2002, which the petitioners' counsel did not attend, Judge Tipon issued an order,[8] granting the petitioners' *motion for partial summary judgment*, stating:

> As to the motion for partial summary judgment, there is no question that the 3-man committee mandated to appraise the shareholdings of

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[6] *Id.*, pp. 151-152.

[7] Already retired.

[8] *Rollo*, pp. 91-93.

plaintiff submitted its recommendation on October 27, 2000 fixing the fair value of the shares of stocks of the plaintiff at ₱2.54 per share. Under Section 82 of the Corporation Code:

> "The findings of the majority of the appraisers shall be final, and the award shall be paid by the corporation within thirty (30) days after the award is made."
>
> "The only restriction imposed by the Corporation Code is—"
>
> "That no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earning in its books to cover such payment."

The evidence submitted by plaintiffs shows that in its quarterly financial statement it submitted to the Securities and Exchange Commission, the defendant has retained earnings of ₱11,975,490 as of March 21, 2002. This is not disputed by the defendant. Its only argument against paying is that there must be unrestricted retained earning at the time the demand for payment is made.

This certainly is a very narrow concept of the appraisal right of a stockholder. The law does not say that the unrestricted retained earnings must exist at the time of the demand. Even if there are no retained earnings at the time the demand is made if there are retained earnings later, the fair value of such stocks must be paid. The only restriction is that there must be sufficient funds to cover the creditors after the dissenting stockholder is paid. No such allegations have been made by the defendant.[9]

On November 12, 2002, the respondent filed a *motion for reconsideration*.

On the scheduled hearing of the *motion for reconsideration* on November 22, 2002, the petitioners filed a *motion for immediate execution* and a *motion to strike out motion for reconsideration.* In the latter motion, they pointed out that the *motion for reconsideration* was prohibited by Section 8 of the Interim Rules. Thus, also on November 22, 2002, Judge Tipon

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[9] *Id.,* p. 92.

denied the *motion for reconsideration* and granted the petitioners' *motion for immediate execution*.[10]

Subsequently, on November 28, 2002, the RTC issued a *writ of execution*.[11]

Aggrieved, the respondent commenced a special civil action for *certiorari* in the CA to challenge the two aforecited orders of Judge Tipon, claiming that:

A.

JUDGE TIPON GRAVELY ABUSED HIS DISCRETION IN GRANTING SUMMARY JUDGMENT TO THE SPOUSES TURNER, BECAUSE AT THE TIME THE "COMPLAINT" WAS FILED, LSC HAD NO RETAINED EARNINGS, AND THUS WAS COMPLYING WITH THE LAW, AND NOT VIOLATING ANY RIGHTS OF THE SPOUSES TURNER, WHEN IT REFUSED TO PAY THEM THE VALUE OF THEIR LSC SHARES. ANY RETAINED EARNINGS MADE A YEAR AFTER THE "COMPLAINT" WAS FILED ARE IRRELEVANT TO THE SPOUSES TURNER'S RIGHT TO RECOVER UNDER THE "COMPLAINT", BECAUSE THE WELL-SETTLED RULE, REPEATEDLY BROUGHT TO JUDGE TIPON'S ATTENTION, IS "IF NO RIGHT EXISTED AT THE TIME (T)HE ACTION WAS COMMENCED THE SUIT CANNOT BE MAINTAINED, ALTHOUGH SUCH RIGHT OF ACTION MAY HAVE ACCRUED THEREAFTER.

B.

JUDGE TIPON IGNORED CONTROLLING CASE LAW, AND THUS GRAVELY ABUSED HIS DISCRETION, WHEN HE GRANTED AND ISSUED THE QUESTIONED "WRIT OF EXECUTION" DIRECTING THE EXECUTION OF HIS PARTIAL SUMMARY JUDGMENT IN FAVOR OF THE SPOUSES TURNER, BECAUSE THAT JUDGMENT IS NOT A FINAL JUDGMENT UNDER SECTION 1 OF RULE 39 OF THE RULES OF COURT AND THEREFORE CANNOT BE SUBJECT OF EXECUTION

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[10] *Id.,* pp. 94-96.

[11] *Id.,* p. 97.

UNDER THE SUPREME COURT'S CATEGORICAL HOLDING IN *PROVINCE OF PANGASINAN VS. COURT OF APPEALS.*

Upon the respondent's application, the CA issued a temporary restraining order (TRO), enjoining the petitioners, and their agents and representatives from enforcing the *writ of execution.* By then, however, the *writ of execution* had been partially enforced.

The TRO lapsed without the CA issuing a writ of preliminary injunction to prevent the execution. Thereupon, the sheriff resumed the enforcement of the *writ of execution.*

The CA promulgated its assailed decision on March 4, 2003,[12] pertinently holding:

> However, it is clear from the foregoing that the Turners' appraisal right is subject to the legal condition that no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover such payment. Thus, the Supreme Court held that:
>
> > The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock.
>
> In the instant case, it was established that there were no unrestricted retained earnings when the Turners filed their Complaint. In a letter dated 20 August 2000, petitioner informed the Turners that payment of their shares could only be made if it had unrestricted earnings in

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[12] *Id.,* pp. 20-35.

its books to cover the same. Petitioner reiterated this in a letter dated 2 January 2001 which further informed the Turners that its Financial Statement for fiscal year 1999 shows that its retained earnings ending December 31, 1999 was at a deficit in the amount of ₱72,973,114.00, a matter which has not been disputed by private respondents. Hence, in accordance with the second paragraph of sec. 82, BP 68 supra, the Turners' right to payment had not yet accrued when they filed their Complaint on January 22, 2001, albeit their appraisal right already existed.

In *Philippine American General Insurance Co. Inc. vs. Sweet Lines, Inc.*, the Supreme Court declared that:

> Now, before an action can properly be commenced all the essential elements of the cause of action must be in existence, that is, the cause of action must be complete. All valid conditions precedent to the institution of the particular action, whether prescribed by statute, fixed by agreement of the parties or implied by law must be performed or complied with before commencing the action, unless the conduct of the adverse party has been such as to prevent or waive performance or excuse non-performance of the condition.
>
> It bears restating that a right of action is the right to presently enforce a cause of action, while a cause of action consists of the operative facts which give rise to such right of action. The right of action does not arise until the performance of all conditions precedent to the action and may be taken away by the running of the statute of limitations, through estoppel, or by other circumstances which do not affect the cause of action. Performance or fulfillment of all conditions precedent upon which a right of action depends must be sufficiently alleged, considering that the burden of proof to show that a party has a right of action is upon the person initiating the suit.

The Turners' right of action arose only when petitioner had already retained earnings in the amount of ₱11,975,490.00 on March 21, 2002; such right of action was inexistent on January 22, 2001 when they filed the Complaint.

In the doctrinal case of *Surigao Mine Exploration Co. Inc., vs. Harris*, the Supreme Court ruled:

> Subject to certain qualifications, and except as otherwise provided by law, an action commenced before the cause of action has accrued is prematurely brought and should be dismissed. The fact that the cause of action accrues after the action is commenced and while it is pending is of no moment. It is a rule of law to which there is, perhaps, no exception, either at law or in equity, that to recover at all there must be some cause of action at the commencement of the suit. There are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is as yet no cause of action should not be summoned before the public tribunals to answer complaints which are groundless. An action prematurely brought is a groundless suit. Unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible.

The afore-quoted ruling was reiterated in *Young vs. Court of Appeals* and *Lao vs. Court of Appeals*.

The Turners' apprehension that their claim for payment may prescribe if they wait for the petitioner to have unrestricted retained earnings is misplaced. It is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription. Stated otherwise, the prescriptive period is to be reckoned from the accrual of their right of action.

Accordingly, We hold that public respondent exceeded its jurisdiction when it entertained the herein Complaint and issued the assailed Orders. Excess of jurisdiction is the state of being beyond or outside the limits of jurisdiction, and as distinguished from the entire absence of jurisdiction, means that the act although within the general power of the judge, is not authorized and therefore void, with respect to the particular case, because the conditions which authorize the exercise of his general power in that particular case are wanting, and hence, the judicial power is not in fact lawfully invoked.

We find no necessity to discuss the second ground raised in this petition.

WHEREFORE, upon the premises, the petition is GRANTED. The assailed Orders and the corresponding Writs of Garnishment are

NULLIFIED. Civil Case No. 02-104692 is hereby ordered DISMISSED without prejudice to refiling by the private respondents of the action for enforcement of their right to payment as withdrawing stockholders.

SO ORDERED.

The petitioners now come to the Court for a review on *certiorari* of the CA's decision, submitting that:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT GRANTED THE PETITION FOR *CERTIORARI* WHEN THE REGIONAL TRIAL COURT OF MANILA DID NOT ACT BEYOND ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION IN GRANTING THE MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN GRANTING THE MOTION FOR IMMEDIATE EXECUTION OF JUDGMENT;

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT ORDERED THE DISMISSAL OF THE CASE, WHEN THE PETITION FOR *CERTIORARI* MERELY SOUGHT THE ANNULMENT OF THE ORDER GRANTING THE MOTION FOR PARTIAL SUMMARY JUDGMENT AND OF THE ORDER GRANTING THE MOTION FOR IMMEDIATE EXECUTION OF THE JUDGMENT;

III.

THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE NOT THEREFORE DETERMINED BY THIS HONORABLE COURT AND/OR DECIDED IT IN A WAY NOT IN ACCORD WITH LAW OR WITH JURISPRUDENCE.

Ruling

The petition fails.

The CA correctly concluded that the RTC had exceeded its jurisdiction in entertaining the petitioners' complaint in Civil Case No. 01-086, and in rendering the summary judgment and issuing writ of execution.

A.

Stockholder's Right of Appraisal, In General

A stockholder who dissents from certain corporate actions has the right to demand payment of the fair value of his or her shares. This right, known as the right of appraisal, is expressly recognized in Section 81 of the *Corporation Code*, to wit:

> Section 81. *Instances of appraisal right.* — Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:
>
> 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
>
> 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Code; and
>
> 3. In case of merger or consolidation. (n)

Clearly, the right of appraisal may be exercised when there is a fundamental change in the charter or articles of incorporation substantially prejudicing the rights of the stockholders. It does not vest unless objectionable corporate action is taken.[13] It serves the purpose of enabling the dissenting stockholder to have his interests purchased and to retire from the corporation.[14]

Under the common law, there were originally conflicting views on whether a corporation had the power to acquire or purchase its own stocks. In England, it was held invalid for a corporation to purchase its issued stocks because such purchase was an indirect method of reducing capital (which was statutorily restricted), aside from being inconsistent with the privilege of

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[13] 18 CJS, *Corporations*, §314, pp. 641-642.

[14] *Ibid.*

limited liability to creditors.[15] Only a few American jurisdictions adopted by decision or statute the strict English rule forbidding a corporation from purchasing its own shares. In some American states where the English rule used to be adopted, statutes granting authority to purchase out of surplus funds were enacted, while in others, shares might be purchased even out of capital provided the rights of creditors were not prejudiced.[16] The reason underlying the limitation of share purchases sprang from the necessity of imposing safeguards against the depletion by a corporation of its assets and against the impairment of its capital needed for the protection of creditors.[17]

Now, however, a corporation can purchase its own shares, provided payment is made out of surplus profits and the acquisition is for a legitimate corporate purpose.[18] In the Philippines, this new rule is embodied in Section 41 of the *Corporation Code*, to wit:

> Section 41. *Power to acquire own shares.* — A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: Provided, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired:
>
> 1. To eliminate fractional shares arising out of stock dividends;
>
> 2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and
>
> 3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code. (n)

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[15] Ballantine, *Law of Corporations*, Revised Edition, Callaghan and Co., Chicago, 1946, p. 603.

[16] *Id.*, p. 604.

[17] *Id.*, p. 605.

[18] II Campos Jr., *The Corporation Code, Comments, Notes and Selected Cases (*1990).

The *Corporation Code* defines how the right of appraisal is exercised, as well as the implications of the right of appraisal, as follows:

1. The appraisal right is exercised by any stockholder who has voted against the proposed corporate action by making a written demand on the corporation within 30 days after the date on which the vote was taken for the payment of the fair value of his shares. The failure to make the demand within the period is deemed a waiver of the appraisal right.[19]

2. If the withdrawing stockholder and the corporation cannot agree on the fair value of the shares within a period of 60 days from the date the stockholders approved the corporate action, the fair value shall be determined and appraised by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation, and the third by the two thus chosen. The findings and award of the majority of the appraisers shall be final, and the corporation shall pay their award within 30 days after the award is made. Upon payment by the corporation of the agreed or awarded price, the stockholder shall forthwith transfer his or her shares to the corporation.[20]

3. All rights accruing to the withdrawing stockholder's shares, including voting and dividend rights, shall be suspended from the time of demand for the payment of the fair value of the shares until either the abandonment of the corporate action involved or the purchase of the shares by the corporation, except the right of such stockholder to receive payment of the fair value of the shares.[21]

4. Within 10 days after demanding payment for his or her shares, a dissenting stockholder shall submit to the corporation the certificates of stock representing his shares for notation thereon that such shares are dissenting shares. A failure to do so shall, at the option of the corporation, terminate his rights under this Title X of the *Corporation Code*. If shares represented by the

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[19] Section 82, *Corporation Code*.

[20] *Ibid.*

[21] *Id.,* Section 83.

certificates bearing such notation are transferred, and the certificates are consequently canceled, the rights of the transferor as a dissenting stockholder under this Title shall cease and the transferee shall have all the rights of a regular stockholder; and all dividend distributions that would have accrued on such shares shall be paid to the transferee.[22]

5. If the proposed corporate action is implemented or effected, the corporation shall pay to such stockholder, upon the surrender of the certificates of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.[23]

Notwithstanding the foregoing, no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover the payment. In case the corporation has no available unrestricted retained earnings in its books, Section 83 of the *Corporation Code* provides that if the dissenting stockholder is not paid the value of his shares within 30 days after the award, his voting and dividend rights shall immediately be restored.

The *trust fund doctrine* backstops the requirement of unrestricted retained earnings to fund the payment of the shares of stocks of the withdrawing stockholders. Under the doctrine, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who are preferred in the distribution of corporate assets.[24] The creditors of a corporation have the right to assume

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[22] *Id.*, Section 86.

[23] *Id.*, Section 82.

[24] *Boman Environment Development Corporation v. Court of Appeals*, G.R. No. 77860, November 22, 1988, 167 SCRA 540, 541; citing *Steinberg v. Velasco*, 52 Phil. 953 (1929).

According to 42A, Words and Phrases, *Trust Fund Doctrine*, p. 445, the "trust fund doctrine" is a "rule that the property of a corporation is a trust fund for the payment of creditors, but such property can be called a trust fund 'only by way of analogy or metaphor.' As between the corporation

that the board of directors will not use the assets of the corporation to purchase its own stock for as long as the corporation has outstanding debts and liabilities.[25] There can be no distribution of assets among the stockholders without first paying corporate debts. Thus, any disposition of corporate funds and assets to the prejudice of creditors is null and void.[26]

B.

Petitioners' cause of action was premature

That the respondent had indisputably no unrestricted retained earnings in its books at the time the petitioners commenced Civil Case No. 01-086 on January 22, 2001 proved that the respondent's legal obligation to pay the value of the petitioners' shares did not yet arise. Thus, the CA did not err in holding that the petitioners had no cause of action, and in ruling that the RTC did not validly render the partial summary judgment.

A cause of action is the act or omission by which a party violates a right of another.[27] The essential elements of a cause of action are: (*a*) the existence of a legal right in favor of the plaintiff; (*b*) a correlative legal duty of the defendant to respect such right; and (*c*) an act or omission by such defendant in violation of the right of the plaintiff with a resulting injury or damage to the plaintiff for which the latter may maintain an action for the recovery of relief from the defendant.[28] Although

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itself and its creditors it is a simple debtor, and as between its creditors and stockholders its assets are in equity a fund for the payment of its debts" (citing *McIver v. Young Hardware Co.*, 57 S.E. 169, 171, 144 N.C. 478, 119 Am. St. Rep. 970; *Gallagher v. Asphalt Co. of America*, 55 A. 259, 262, 65 N.J. Eq. 258).

[25] *Boman Environment Development Corporation v. Court of Appeals*, *supra*.

[26] *Id.*

[27] Section 2, Rule 2, *Rules of Court*.

[28] *Rebollido v. Court of Appeals*, G.R. No. 81123, February 28, 1989, 170 SCRA 800; *Heirs of Ildefonso Coscolluela v. Rico General Insurance Corporation*, G.R. No. 84628, November 16, 1989, 179 SCRA 511; *Nabus*

the first two elements may exist, a cause of action arises only upon the occurrence of the last element, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief.[29]

Section 1, Rule 2, of the *Rules of Court* requires that every ordinary civil action must be based on a cause of action. Accordingly, Civil Case No. 01-086 was dismissible from the beginning for being without any cause of action.

The RTC concluded that the respondent's obligation to pay had accrued by its having the unrestricted retained earnings after the making of the demand by the petitioners. It based its conclusion on the fact that the *Corporation Code* did not provide that the unrestricted retained earnings must already exist at the time of the demand.

The RTC's construal of the *Corporation Code* was unsustainable, because it did not take into account the petitioners' lack of a cause of action against the respondent. In order to give rise to any obligation to pay on the part of the respondent, the petitioners should first make a valid demand that the respondent refused to pay despite having unrestricted retained earnings. Otherwise, the respondent could not be said to be guilty of any actionable omission that could sustain their action to collect.

Neither did the subsequent existence of unrestricted retained earnings after the filing of the complaint cure the lack of cause of action in Civil Case No. 01-086. The petitioners' right of action could only spring from an *existing* cause of action. Thus, a complaint whose cause of action has not yet accrued cannot be cured by an amended or supplemental pleading alleging the

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v. Court of Appeals, G.R. No. 91670, February 7, 1990, 193 SCRA 732;*Mathay v. Consolidated Bank*, G.R. No. L-23136, August 26, 1974, 58 SCRA 559; *Leberman Realty Corporation v. Typingco*, G.R. No. 126647, July 29, 1998, 293 SCRA 316.

[29] *Swagman Hotels and Travel, Inc. v. Court of Appeals,* G.R. No. 161135, April 8, 2005, 455 SCRA 175.

existence or accrual of a cause of action during the pendency of the action.[30] For, only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative.[31] Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground.[32] In short, Civil Case No. 01-086, being a groundless suit, should be dismissed.

Even the fact that the respondent already had unrestricted retained earnings more than sufficient to cover the petitioners' claims on June 26, 2002 (when they filed their *motion for partial summary judgment*) did not rectify the absence of the cause of action at the time of the commencement of Civil Case No. 01-086. The *motion for partial summary judgment*, being a mere application for relief other than by a pleading,[33] was not the same as the complaint in Civil Case No. 01-086. Thereby, the petitioners did not meet the requirement of the *Rules of Court* that a cause of action must exist at the commencement of an action, which is "commenced by the filing of the original complaint in court."[34]

The petitioners claim that the respondent's petition for *certiorari* sought only the annulment of the assailed orders of the RTC (*i.e.*, granting the *motion for partial summary judgment* and the *motion for immediate execution*); hence, the CA had no right to direct the dismissal of Civil Case No. 01-086.

The claim of the petitioners cannot stand.

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[30] *Lao v. Court of Appeals*, G.R. No. L-47013, February 17, 2000, 325 SCRA 694.

[31] *Id.*

[32] *Estrada v. Court of Appeals*, G.R. No. 137862, November 11, 2004, 442 SCRA 117.

[33] Section 1, Rule 15, *Rules of Court.*

[34] Section 5, Rule 1, *Rules of Court*; *A.G. Development Corporation v. Court of Appeals*, G.R. No. 111662, October 23, 1997, 281 SCRA 155.

Although the respondent's petition for *certiorari* targeted only the RTC's orders granting the *motion for partial summary judgment* and the *motion for immediate execution*, the CA's directive for the dismissal of Civil Case No. 01-086 was not an abuse of discretion, least of all grave, because such dismissal was the only proper thing to be done under the circumstances. According to *Surigao Mine Exploration Co., Inc. v. Harris*:[35]

> Subject to certain qualification, and except as otherwise provided by law, **an action commenced before the cause of action has accrued is prematurely brought and should be dismissed**. The fact that the cause of action accrues after the action is commenced and while the case is pending is of no moment. It is a rule of law to which there is, perhaps no exception, either in law or in equity, that to recover at all there must be some cause of action at the commencement of the suit. There are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is as yet no cause of action should not be summoned before the public tribunals to answer complaints which are groundless. An action prematurely brought is a groundless suit. **Unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending**, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible.

Lastly, the petitioners argue that the respondent's recourse of a special action for *certiorari* was the wrong remedy, in view of the fact that the granting of the *motion for partial summary judgment* constituted only an error of law correctible by appeal, not of jurisdiction.

The argument of the petitioners is baseless. The RTC was guilty of an error of jurisdiction, for it exceeded its jurisdiction by taking cognizance of the complaint that was not based on an existing cause of action.

WHEREFORE, the petition for review on *certiorari* is denied for lack of merit.

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[35] 68 Phil 113 (1939).

We affirm the decision promulgated on March 4, 2003 in C.A.-G.R. SP No. 74156 entitled *Lorenzo Shipping Corporation v. Hon. Artemio S. Tipon, in his capacity as Presiding Judge of Branch 46 of the Regional Trial Court of Manila, et al.*

Costs of suit to be paid by the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160933. November 24, 2010]

NICEAS M. BELONGILOT, *petitioner, vs.* **ROLANDO S. CUA, ROEL ERIC C. GARCIA, LORENZO R. REYES, AUGUSTO P. QUIJANO, IANELA G. JUSI-BARRANTES and SALVADOR P. RAMOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE 65 PETITION, PROPER REMEDY; SUBSTANCE OF THE PETITION, GIVEN PRIMACY OVER FORM AND PROCEDURE.— The petitioner's complaint before the Ombudsman, charging the respondents with violation of Section 3(e) of R.A. No. 3019, as amended, is undoubtedly criminal in nature. The petitioner's recourse to this Court should have, therefore, been through a petition for *certiorari* under Rule 65, instead of a petition for review on *certiorari* under Rule 45. Thus, from a procedural perspective, the OSG's claim that the petitioner availed of the wrong remedy appears to be correct. We would have readily agreed with the OSG's conclusion had

the petitioner simply dwelt on errors of law in his petition. Our reading of the petition, however, and as our discussions below will show, readily reveals that the petition, while entitled and presented as a petition for review on *certiorari*, in fact, outlines and charges acts that collectively constitute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman. In other words, while the petitioner followed the Rule 45 procedures, the substance of the petition handily satisfies the requirements of a Rule 65 petition for *certiorari*. Thus viewed, the issue before us is whether the procedure and its form or substance should have primacy. Our choice when faced with this kind of conflict, particularly one that involves grave abuse of discretion amounting to lack or excess of jurisdiction, is clear. No less than the Constitution under Section 1, Article VIII expressly directs the Judiciary, as a matter of power and duty, not only "to settle actual controversies involving rights which are legally demandable and enforceable" but, "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." We, thus, have the duty to take cognizance of the allegations of grave abuse of discretion; in the performance of this duty, we see no legal stumbling block if we deviate from the requirements of form and procedure that stand in the way in favor of substance.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; COMMITTED WHEN THE OMBUDSMAN DISMISSED THE CASE INSTEAD OF RESOLVING THE ISSUE OF PROBABLE CAUSE.— The Ombudsman, in its resolution of June 10, 2003, did not give a definitive ruling on whether there was probable cause to hold respondents liable for violation of Section 3(e) of R.A. No. 3019; instead, it dismissed the complaint on the ground that the issue was "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions." x x x We note that instead of ruling on the issue of probable cause, the Ombudsman simply held that the propriety of the restraining order and injunction the DARAB ordered is a matter "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions." In short, **the Ombudsman viewed**

the case as a recourse the petitioner had taken against the restraining order and injunction the DARAB issued, not as a criminal charge for having violated the anti-graft law in issuing the restraining order/injunction. In this light, the Ombudsman's action is undoubtedly one tainted with grave abuse of discretion, as it made the wrong considerations in ruling on the probable cause issue.

3. ID.; ID.; ID.; ID.; ID.; OMBUDSMAN'S PATENT FAILURE TO NOTE AND CONSIDER THE DARAB'S OMISSION TO OBSERVE THE BASIC RULES IN RESOLVING PETITION FOR INJUNCTION AND TRO CONSTITUTES GRAVE ABUSE OF DISCRETION.— A glaring characteristic of the Ombudsman's handling of the petitioner's Section 3(e) charge is its patent failure to note and consider the DARAB's omission **to observe the most basic rules in considering a petition for injunction and TRO**, as we outline below. *First,* the respondents granted the petition for injunction when nothing could anymore be enjoined because the act sought to be prevented or prohibited had already been accomplished. x x x The settled rule is that an injunction would not lie where the acts sought to be enjoined have become *fait accompli* – an accomplished or consummated act. *Second,* the respondents entertained the injunction petition despite Constantino's failure to attach an affidavit of merit, as required by Section 1, Rule X of the 1994 DARAB Rules of Procedure. x x x The above situation raises questions not only on the propriety of the TRO and the preliminary injunction, but – for purposes of the criminal complaint before the Ombudsman – on the character of the action made in relation to those who acted. Apart from the questionable grant of the TRO and preliminary injunction, the respondents also considered the petition as an appeal, and ordered the elevation of the records of the case, completely ignoring the fact that the PARAD decision had not only become final, but had long been executed. x x x Under the above-listed circumstances, we hold that enough indicators exist to convince a reasonable man that the respondents grossly neglected to note and consider the facts and the law in the petition for injunction filed before them, to the proven prejudice of the petitioner. The Ombudsman joined this chorus of neglect and committed grave abuse of discretion when – through the use of wrong or irrelevant considerations and its own failure to properly examine the underlying DARAB case

– it concluded that there was no reason to charge the respondents of violation of Section 3(e) of R.A. No. 3019.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); SUFFICIENT BASIS TO FIND PROBABLE CAUSE FOR VIOLATION OF SECTION 3(e) THEREOF, PRESENT; ELEMENTS, EXPLAINED AND APPLIED.— The facts of this case establish sufficient basis to find probable cause to institute a charge for violation of Section 3(e) of R.A. No. 3019. x x x Reduced to its elements, a violation under this provision requires that: 1. the accused must be a public officer discharging administrative, judicial or official functions; 2. he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3. that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Among these elements, the first element is a given while the third element is in part dependent on the second element; the injury the petitioner suffered would be undue if the second element is present. The second and critical element provides the different modes for violating Section 3(e) of R.A. No. 3019, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." x x x In issuing the TRO and preliminary injunction, and accepting Constantino's appeal, the respondents demonstrated manifest partiality, evident bad faith, and gross inexcusable negligence, which, oddly enough, the Ombudsman failed to take into consideration in determining the existence of probable cause.

APPEARANCES OF COUNSEL

Francasio M. Belongilot for petitioner.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari*[1] assailing the Office of the Ombudsman's (*Ombudsman's*)

[1] Under Rule 45 of the Revised Rules of Court.

Resolution[2] and Order[3] dated June 10, 2003 and October 20, 2003, respectively, in OMB-C-C-03-0045-B. The assailed Resolution dismissed the complaint filed by petitioner Niceas M. Belongilot against respondents Salvador P. Ramos, Rolando S. Cua, Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano and Ianela G. Jusi-Barrantes, for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019 (the Anti-Graft and Corrupt Practices Act), as amended. The challenged Order denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

The petitioner's wife, Leonarda Belongilot, was the owner of several parcels of land in Bulacan, covered by Original Certificate of Title (*OCT*) No. 0-359. Sometime in 1979, Juanito Constantino forcibly entered and took possession of Lot Nos. 1, 2 and 3 (the *subject lots*) covered by OCT No. 0-359, and converted them into a fishpond. Leonarda filed an ejectment complaint against Constantino before the Provincial Agrarian Reform Adjudicator Board (*PARAB*), docketed as R-03-02-8138'98.[4]

Provincial Agrarian Reform Adjudicator (*PARAD*) Gregorio B. Sapora, in his Decision of **May 21, 2001**, directed Constantino and all persons claiming rights under him to vacate the subject lots. Constantino moved to reconsider this decision, but PARAD Sapora denied his motion.

Constantino filed, on October 8, 2001, a notice of appeal before the PARAB, but PARAD Toribio F. Ilao, in his Order of **April 16, 2002**,[5] dismissed this notice of appeal for having

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[2] Annex "E"; *rollo*, pp. 125-149.

[3] Annex "G"; *id.* at 157-170.

[4] Based on Section 2, Rule II of the 1994 DARAB Rules of Procedure, vesting the PARAD the jurisdiction to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within his assigned territorial jurisdiction.

[5] Annex "A"; *rollo*, pp. 41-44.

been filed out of time. On May 22, 2002, PARAD Ilao issued a writ of execution[6] in favor of Leonarda.

Constantino, through Atty. Restituto David, filed, on May 21, 2002, a petition for injunction with application for a temporary restraining order (*TRO*)[7] before the Department of Agrarian Reform Adjudication Board (*DARAB*), without asking for the reconsideration of the dismissal of his notice of appeal. He prayed that the implementation of PARAD Sapora's May 21, 2001 Decision be restrained and that his notice of appeal, dated October 8, 2001, be given due course.

In the meantime, the DARAB sheriff[8] enforced the writ of execution on **May 31, 2002**, and evicted Constantino from the subject lots. Consequently, the possession of the subject lots was turned over to the petitioner in his capacity as general administrator of Leonarda's properties. The petitioner, thereafter, raised thousands of *"bangus"* and *"sugpo"* fingerlings in the fishpond.

On **November 15, 2002**, or more than five (5) months after the filing of the petition for injunction, the DARAB issued a TRO in Constantino's favor, in an Order that partly reads:

> After taking into account the petitioner's allegations and arguments set forth in the pleadings filed as well as other supporting documents, it appears that grave and irreparable damage or injury would result to the petitioner before a hearing on the preliminary injunction can be held and to preserve the status quo of the parties pending the resolution of the instant case, **the Motion is hereby GRANTED restraining the public respondents and/or any other persons acting under his authority from issuing a writ of execution, or from implementing the same, if one had already been issued.**
>
> **This restraining order is effective for a period of twenty (20) days**.

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[6] Annex "A-1"; *id.* at 45-47.

[7] Annex "B"; *id.* at 48-53.

[8] Sheriff Virgilio Robles, Jr.

In the meantime, respondents are directed to submit their Answer/ Comment to the instant Motion within a period of ten (10) days from receipt of this Order.

Let the hearing on the application for the issuance of a Writ of Injunction be set on December 4, 2002, 2:00 P.M. at the DAR Adjudication Board Hearing Room, Elliptical Road, Diliman, Quezon City.

No Motion for Postponement shall be entertained.

SO ORDERED.[9]

Leonarda filed, on November 21, 2002, a motion to dismiss the petition for injunction, alleging that the DARAB has no jurisdiction over the petition because of Constantino's failure to file a motion for reconsideration of the April 16, 2002 Order of PARAD Ilao. She further argues that the decision sought to be restrained had already been implemented.[10]

On November 23, 2002, the caretaker of the subject lots reported that Constantino harvested the "*bangus*" and "*sugpo*" fingerlings from the fishpond and sold them. As a result, the petitioner filed a complaint for qualified theft before the Philippine National Police of Hagonoy, Bulacan against Constantino. **Meanwhile, the DARAB, in its Resolution**[11] **of December 27, 2002, granted Constantino's application for a writ of injunction, and "enjoined" the implementation of the writ of execution**. The DARAB also ordered that the records of the case be elevated to it within 15 days from receipt of its resolution.

On January 20, 2003, the petitioner filed with the Ombudsman an amended **criminal complaint**,[12] for violation of Section 3(e)

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

[10] *Id.* at 65-72.

[11] *Id.* at 92-99.

[12] *Id.* at 34-40.

of R.A. No. 3019,[13] against the respondents in their capacity as officers[14] and members[15] of the Department of Agrarian Reform and the DARAB, respectively. This case was docketed as OMB-C-C-03-0045-B.

In its Resolution of June 10, 2003, the Ombudsman dismissed the complaint in this wise:

> It is, therefore, apparent that the vital issue to be resolved is whether or not public respondents have jurisdiction to act on the petition filed by Juanito Constantino and subsequently issue the restraining order despite the finality of the PARAD Decision due to the belated filing of the Notice of Appeal, non-payment of appeal fee and non-filing of a Motion for Reconsideration of the Order dismissing his appeal – all pursuant to the DARAB Rules of Procedure.
>
> Assuming arguendo that the public respondents' issuance of the restraining order suffers from procedural infirmities, the same is better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions.
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> x x x x x x x x x x x x
>
> This Office, therefore, cannot forestall the power of the Courts to take cognizance of matters which squarely fall under their jurisdiction.

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[13] Section 3. *Corrupt Practices of Public Officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[14] Respondent Salvador P. Ramos holds the position of Trial Attorney II at the DAR, while respondent Rolando S. Cua is the OIC-Executive Director of the DAR.

[15] Respondents Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano, and Ianela G. Jusi-Barrantes are all members of the DARAB.

In sum, private complainant is not left without any recourse in the light of all the allegations and issues broached out before us. Nonetheless, complainant must ventilate its cause of action in the proper forum.

Prescinding from above, the charge against the public respondents must necessarily fail.

FOREGOING CONSIDERED, it is respectfully recommended that the instant complaint be dismissed, as it is hereby **DISMISSED**.

SO RESOLVED.[16]

The petitioner moved to reconsider this resolution, but the Ombudsman denied his motion in its Order dated October 20, 2003. The Ombudsman ruled that Constantino's non-filing of a motion for reconsideration, assailing the adjudicator's order before filing a petition for injunction with the DARAB, was not fatal to his case since "procedural due process is not based solely on a mechanic *(sic)* and literal application of a rule."[17] The Ombudsman further held that the respondents, in the absence of proof to the contrary, should be afforded the presumption of regularity in the performance of their official duties and functions; and added that the conspiracy theory advanced by the petitioner had no basis. Finally, it concluded that the respondents cannot be convicted for violation of Section 3(e) of R.A. No. 3019 in the absence of showing that they acted with manifest partiality, evident bad faith or gross inexcusable negligence.

In the present petition, the petitioner essentially claims that the Ombudsman erred in dismissing the complaint against the respondents for violation of Section 3(e) of R.A. No. 3019.

The Ombudsman, through the Office of the Solicitor General (*OSG*), avers that the petition must be dismissed outright because the petitioner availed of the wrong remedy. It further argues

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[16] *Rollo*, pp. 146-148.

[17] *Id.* at 163-164.

that the Ombudsman has the discretion to determine the existence of probable cause, that is, whether a criminal case should be filed or not.

THE COURT'S RULING

After due consideration, we find the petition meritorious.

I. Procedural Issue

We note at the outset that the petitioner, in seeking to annul the Ombudsman's Resolution and Order dated June 10, 2003 and October 20, 2003,[18] respectively, filed with this Court a **petition for review on *certiorari*** under Rule 45 of the Rules of Court.

In *Soriano v. Cabais*,[19] this Court had the occasion to discuss the appropriate recourse to take from decisions or resolutions of the Ombudsman, and said:

> In *Fabian*, we ruled that appeals from the decisions of the Office of the Ombudsman in **administrative disciplinary cases** should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. This ruling has been repeatedly reiterated in subsequent cases and continues to be the controlling doctrine.
>
> Here, **petitioner's complaint is *criminal in nature*.** In *Estrada v. Desierto*, we held that **the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in *criminal cases* or *non-administrative cases*, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court**, not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of **lack** of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with

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[18] The records disclose that the petitioner did not take any action to annul the DARAB's November 15, 2002 TRO and December 27, 2002 injunction; *id.* at 137.

[19] G.R. No. 157175, June 21, 2007, 525 SCRA 261, 265 (citations omitted).

the Court of Appeals. This rule was subsequently restated in *Acuña v. Deputy Ombudsman for Luzon* where we held that the remedy of an aggrieved party in **criminal** complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65.

The petitioner's complaint before the Ombudsman, charging the respondents with violation of Section 3(e) of R.A. No. 3019, as amended, is undoubtedly criminal in nature. The petitioner's recourse to this Court should have, therefore, been through a petition for *certiorari* under Rule 65, instead of a petition for review on *certiorari* under Rule 45. Thus, from a procedural perspective, the OSG's claim that the petitioner availed of the wrong remedy appears to be correct.

We would have readily agreed with the OSG's conclusion had the petitioner simply dwelt on errors of law in his petition. Our reading of the petition, however, and as our discussions below will show, readily reveals that the petition, while entitled and presented as a petition for review on *certiorari*, in fact, outlines and charges acts that collectively constitute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman.[20] In other words, while the petitioner followed the Rule 45 procedures, the substance of the petition handily satisfies the requirements of a Rule 65 petition for *certiorari*. Thus viewed, the issue before us is whether the procedure and its form or substance should have primacy.

Our choice when faced with this kind of conflict, particularly one that involves grave abuse of discretion amounting to lack or excess of jurisdiction, is clear. No less than the Constitution under Section 1, Article VIII expressly directs the Judiciary, as a matter of power and duty, not only "to settle actual controversies involving rights which are legally demandable

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[20] The petitioner alleged that "the Ombudsman has wittingly or unwittingly ignored or did not take into consideration certain material and indisputable facts that proved beyond doubt of the respondent's guilt of the offense charged. x x x the Ombudsman appeared to be manifestly and evidently partial in the performance of its official function in this case in favor of the respondents [.]" *Rollo*, pp. 17 and 20.

and enforceable" but, "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." We, thus, have the duty to take cognizance of the allegations of grave abuse of discretion; in the performance of this duty, we see no legal stumbling block if we deviate from the requirements of form and procedure that stand in the way in favor of substance.[21]

II. The Grave Abuse of Discretion Issue

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned, which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[22]

A careful review of the petition and an examination of the records reveal a collective pattern of action – done capriciously, whimsically and without regard to existing rules and attendant facts – that shows a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction in the exercise of judgment. We discuss all these below.

a. The Ombudsman erred in refusing to act on the petitioner's criminal complaint

The Ombudsman, in its resolution of June 10, 2003, did not give a definitive ruling on whether there was probable cause to hold respondents liable for violation of Section 3(e) of R.A. No. 3019; instead, it dismissed the complaint on the ground that the issue was "better addressed to the Court which has

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[21] See *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492, 507.

[22] See *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, G.R. No. 133756, July 4, 2008, 557 SCRA 31, 45.

administrative and supervisory powers over administrative agencies performing quasi-judicial functions."[23]

To justify its refusal to take cognizance of the complaint, it cited the 1980 case of *Citizens' League of Free-Workers v. Court of Industrial Relations*.[24] We find this reliance misplaced, as the facts and ruling in this cited case are totally foreign to the present case. This cited case dealt with the issue of whether this Court could review the Court of Industrial Relations' refusal to act on a late breaking development in the case – the union's motion for reinstatement and payment of backwages whose denial was alleged to be constitutive of an unfair labor practice act. The Court ruled that it was grave abuse of discretion for the respondent Court of Industrial Relations to refuse to consider and resolve the belatedly brought unfair labor practice charge: the labor court's action was rigid and severe in its application of the Industrial Peace Act (Commonwealth Act No. 103), and disregarded the fact that the new charge referred to new developments related to the unfair labor charge already pending with the labor court.

This ruling – involving a labor case under the Industrial Peace Act – has no relevance whatsoever to the issue presented before the Ombudsman, *i.e.*, whether there was probable cause to indict respondents for violation of Section 3(e) of R.A. No. 3019. If the ruling is remotely related at all, it is on the point of whether the lower tribunal should act on a matter that, by law, is under its jurisdiction. From this perspective, the cited law, in fact, supports the petitioner's case. In the same manner that the labor court should have entertained the belated charge of unfair labor practice, the Ombudsman should have squarely ruled on the question of whether probable cause exists in the criminal complaint brought before it.

We note that instead of ruling on the issue of probable cause, the Ombudsman simply held that the propriety of the restraining

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[23] *Rollo*, p. 147.

[24] No. L-38293, February 21, 1980, 96 SCRA 225.

order and injunction the DARAB ordered is a matter "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions."[25] In short, **the Ombudsman viewed the case as a recourse the petitioner had taken against the restraining order and injunction the DARAB issued, not as a criminal charge for having violated the anti-graft law in issuing the restraining order/injunction.** In this light, the Ombudsman's action is undoubtedly one tainted with grave abuse of discretion, as it made the wrong considerations in ruling on the probable cause issue.[26]

The Ombudsman's duty to act on the petitioner's complaint is undisputed. The mandate of the Ombudsman is expressed in Section 12, Article XI of the Constitution which states:

> 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.

Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the Ombudsman, among which is to:

> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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[25] *Rollo*, p. 146.

[26] The cases of *Varias v. Commission on Elections*, G.R. No. 189078, February 11, 2010, and *Pecson v. Commission on Elections*, G.R. No. 182865, December 24, 2008, 575 SCRA 634 (citing *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681), although not squarely in point, provide the basis for a conclusion that a decision or determination based on wrong considerations may be considered a grave abuse of discretion. See also *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010.

The Ombudsman Act of 1989 (R.A. No. 6770) likewise provides:

Sec. 15. *Powers, Functions and Duties.* The Office of the Ombudsman shall have the following power, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases.

These constitutional and statutory provisions grant the Ombudsman full and unqualified authority, *as well as the duty*, to investigate and prosecute violations of the Anti-Graft and Corrupt Practices Act. They embody the duty to rule on probable cause issues that the Ombudsman cannot shirk away from. By ruling as it did, the Ombudsman effectively ran away from this duty.

b. The Existence of Probable Cause

The Ombudsman attempted to remedy its error by stating in its Order denying the petitioner's motion for reconsideration, that "[t]he alleged procedural infirmities committed by the public respondents in issuing the Restraining Order and the Resolution do not, by themselves, establish a demonstrable violation of the provision of Section 3(e) of R.A. 3019."[27] *Generally, we do not interfere with the Ombudsman's authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. But when, as in this case, the Ombudsman does not take essential facts into consideration*

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[27] *Rollo*, p. 163.

in the determination of probable cause, our intervention is in order to correct the grave abuse of discretion.[28]

A finding of probable cause simply requires the existence of facts that are "sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The facts of this case establish sufficient basis to find probable cause to institute a charge for violation of Section 3(e) of R.A. No. 3019, which provides:

> Sec. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Reduced to its elements, a violation under this provision requires that:

1. the accused must be a public officer discharging administrative, judicial or official functions;
2. he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[29]

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[28] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 394, citing *Sistoza v. Desierto*, 437 Phil. 117, 129 (2002).

[29] *Collantes v. Marcelo*, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142, 152.

Among these elements, the first element is a given while the third element is in part dependent on the second element; the injury the petitioner suffered would be undue if the second element is present. The second and critical element provides the different modes for violating Section 3(e) of R.A. No. 3019, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."

In *Uriarte v. People*,[30] this Court explained that "Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. 'Evident bad faith' connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. 'Gross inexcusable negligence' refers to negligence characterized by the *want of even the slightest care*, acting or omitting to act in a situation where there is a duty to act, *not inadvertently but willfully and intentionally*, with conscious indifference to consequences insofar as other persons may be affected."[31] In issuing the TRO and preliminary injunction, and accepting Constantino's appeal, the respondents demonstrated manifest partiality, evident bad faith, and gross inexcusable negligence, which, oddly enough, the Ombudsman failed to take into consideration in determining the existence of probable cause.[32]

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[30] G.R. No. 169251, December 20, 2006, 511 SCRA 471, 487.

[31] *Id.*, citing *Siztoza v. Desierto*, 437 Phil. 117 (2002).

[32] The Ombudsman merely defined the concepts of manifest partiality, evident bad faith, and gross inexcusable negligence, without explaining why the respondents' acts did not constitute to these.

A glaring characteristic of the Ombudsman's handling of the petitioner's Section 3(e) charge is its patent failure to note and consider the DARAB's omission **to observe the most basic rules in considering a petition for injunction and TRO**, as we outline below.

First, the respondents granted the petition for injunction when nothing could anymore be enjoined because the act sought to be prevented or prohibited had already been accomplished. We stress that the DARAB issued a TRO and a preliminary injunction on November 15, 2002 and December 27, 2002, respectively. These came after the DARAB sheriff had executed and placed the petitioner in possession on May 31, 2002, pursuant to the final and executory order of PARAD Sapora. The execution was evidenced by the sheriff's Implementation Report dated June 5, 2002.[33] The settled rule is that an injunction would not lie where the acts sought to be enjoined have become *fait accompli* – an accomplished or consummated act.[34]

Second, the respondents entertained the injunction petition despite Constantino's failure to attach an affidavit of merit, as required by Section 1, Rule X of the 1994 DARAB Rules of Procedure (*1994 DARAB Rules*), which provides:

> SECTION 1. *Preliminary Injunction When Granted.* A preliminary injunction, restraining order or a status quo order may be granted by the Board or any two (2) of its Members or the Adjudicator, when it is established on the basis of allegations in the sworn complaint or motion which **shall be duly supported by affidavits of merit that the acts being complained of, if not enjoined, would cause some grave and irreparable damage or injury to any of the parties in interest so as to render ineffectual the decision in favor of such party**. Should the Board or the Adjudicator believe that it is necessary to post a bond, it shall fix the amount of the bond to be executed by the party applying for the injunction in favor of the party sought to be enjoined to answer for the damages the latter might suffer thereby,

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[33] Annex "D"; *rollo,* pp. 55-56.

[34] See *Aznar Brothers Realty Co. v. Court of Appeals*, 384 Phil. 95 (2000).

if it is finally determined that the complainant or petitioner is not entitled thereto. Upon the filing and approval of such bond, injunction may be issued.

The above situation raises questions not only on the propriety of the TRO and the preliminary injunction, but – for purposes of the criminal complaint before the Ombudsman – on the character of the action made in relation to those who acted.

Apart from the questionable grant of the TRO and preliminary injunction, the respondents also considered the petition as an appeal, and ordered the elevation of the records of the case, completely ignoring the fact that the PARAD decision had not only become final, but had long been executed.

Constantino received the May 21, 2001 PARAD decision, *through his counsel*, on June 11, 2001; he filed a motion for reconsideration on June 19, 2001. On September 27, 2001, Constantino received the PARAD's order denying his motion.[35] When Constantino filed his notice of appeal on October 8, 2001, a total of 18 days had lapsed.[36] Section 1, Rule XIII of the 1994 DARAB Rules provides for a period of only 15 days from receipt of an order, resolution or decision of the adjudicator to appeal it before the DARAB.[37] The respondents, however, declared that the notice of appeal was filed on time, erroneously counting the 15-day period from the time Constantino himself received the PARAD decision on June 14, 2001.[38] Under Section 4(b), Rule V of the 1994 DARAB Rules, notice to the counsel is notice to the party himself.

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[35] *Rollo*, p. 42.

[36] Constantino's notice of appeal was denied by PARAD Ilao in his Order of April 16, 2002; *supra* note 5.

[37] SECTION 1. *Appeal to the Board.* a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing.

[38] *Rollo*, pp. 96-97.

Neither can Constantino's petition for injunction be considered as a *certiorari* petition (recognized under Section 3, Rule VIII of the 1994 DARAB Rules [39] against the PARAD order dismissing his notice of appeal. The provision declares that a petition for *certiorari* filed with the DARAB cannot be entertained without filing a motion for reconsideration with the Adjudicator *a quo* within five days from receipt of the order subject of the petition.

Under the above-listed circumstances, we hold that enough indicators exist to convince a reasonable man that the respondents grossly neglected to note and consider the facts and the law in the petition for injunction filed before them, to the proven prejudice of the petitioner. The Ombudsman joined this chorus of neglect and committed grave abuse of discretion when – through the use of wrong or irrelevant considerations and its own failure to properly examine the underlying DARAB case – it concluded that there was no reason to charge the respondents of violation of Section 3(e) of R.A. No. 3019. To be sure, the respondents may have a valid defense against such charge, but the merits of the petitioner's case and the respondents' defenses must be ventilated in an appropriately filed criminal case before the proper forum. In the meanwhile, the filing of a criminal case is in order and one must first be brought before the proper courts.

Lest this Decision be misinterpreted, we reiterate that not every error of the Ombudsman in the determination of probable cause can be directly submitted to this Court for remedial action.

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[39] Section 3, Rule VIII in part provides:

x x x x x x x x x

The Order or resolution of the Adjudicators on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, unless modified and reversed by the Board upon a verified petition for *certiorari* which cannot be entertained without filing a motion for reconsideration with the Adjudicator *a quo* within five (5) days from receipt of the order, subject of the petition. Such interlocutory order shall not be the subject of an appeal.

We can only directly intervene through the extraordinary writ of *certiorari* when, as in this case, a grave abuse of discretion exists.

WHEREFORE, premises considered, we hereby *GRANT* the petition. The Ombudsman's Resolution and Order dated June 10, 2003 and October 20, 2003, respectively, in OMB-C-C-03-0045-B, are *REVERSED* and *SET ASIDE*. The Ombudsman is *ORDERED TO FILE* in the proper court the necessary Information for violation of Section 3(e) of Republic Act No. 3019 against respondents Rolando S. Cua, Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano, and Ianela G. Jusi-Barrantes.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173339. November 24, 2010]

LEDESCO DEVELOPMENT CORPORATION, *petitioner, vs.* **WORLDWIDE STANDARD INTERNATIONAL REALTY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; IN THE ABSENCE OF PROOF THAT THE SALES TO THE BUYERS HAD BEEN WITHDRAWN OR CANCELLED, SAID SALES ARE DEEMED CURRENT, BINDING AND CONSUMMATED.— Truly, the best evidence of the cancellation of a contract is the original of the deed. The testimony of Brosas alone, without any supporting documentation, is

insufficient to prove that the sales to the Buyers had indeed been withdrawn or cancelled. x x x In this case, the disbursement vouchers referred to by Brosas were never presented and authenticated. Without satisfactory proof that the buyers withdrew or cancelled their purchases, the said sales are deemed current, binding and consummated. Therefore, WSIRI is entitled to recover from Ledesco the corresponding ten percent (10%) commission on these sales.

2. ID.; ID.; ID.; INTERPRETATION; ENTITLEMENT TO COMMISSION DOES NOT DEPEND ON THE BUYER'S PAYMENT OF THE ENTIRE CONTRACT PRICE; CONDITIONS TO BE ENTITLED TO COMMISSION, PRESENT.— Under the above provision, commission becomes due upon the occurrence of three events: *first*, the buyer signs the reservation agreement; *second*, the buyer pays Ledesco the amount representing the downpayment; *third*, the buyer delivers to Ledesco six (6) postdated checks. To be entitled to the 2% incentive, there are two additional qualifying circumstances, to wit: (1) that all three required acts must be completed within a specific reckoning period (within six (6) months from the signing of the Project and Marketing Agreement); and (2) that the contract price of such sales totals at least Php30,000,000.00. The Court agrees with the CA that paragraph 4 of the Agreement shows that entitlement to the two percent (2%) incentive commission does not depend on the buyer's payment of the entire purchase price, but rather on the accomplishment of the five qualifying items enumerated above. Thus, upon completion of all three acts within the reckoning period of six months from signing of the Agreement, WSIRI automatically becomes entitled to payment of the 2% commission, regardless of whether amortization payments are made outside of the six-month reckoning period. It is clear from the wording of paragraph 4 of the Agreement that upon delivery of the six (6) postdated checks, the full 10% commission becomes payable. The only conclusion that can be arrived at is that in the regular sequence of events, the operative act for the entitlement to commission is the delivery of the six postdated checks, as such delivery is normally the last expected event. x x x It is clear that commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment, and the amount payable is proportional to the amount received, until full downpayment and six postdated checks are received. At

such point, the full 10% commission will be paid to WSIRI within four days from receipt of the downpayment of the contract value. Moreover, in the event that the full downpayment is received but the six postdated checks are not delivered, only proportionate commission shall be paid to WSIRI until such time that the checks are submitted.

APPEARANCES OF COUNSEL

Reynaldo Z. Calabio for petitioner.
Cacho & Chua Law Offices 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 Civil Procedure filed by Ledesco Development Corporation assailing the August 22, 2005 Decision[1] of the Court of Appeals *(CA)* in CA G.R. CV No. 61584 which ordered it to pay commissions to its contracted marketing agent, Worldwide Standard International Realty, Inc.

From the records, it appears that on December 21, 1993, respondent Worldwide Standard International Realty, Inc. *(WSIRI)* filed a collection suit against petitioner Ledesco Development Corporation *(Ledesco)* before the Regional Trial Court of Makati City *(RTC).* The case was docketed as Civil Case No. 93-4683 and raffled to Branch 134. In the said case, WSIRI sought to recover from Ledesco sums representing commissions on sales and interest thereon plus damages.[2]

The controversy centered on the interpretation of the provisions on the payment of commissions in the Project and Marketing Management Agreement *(Agreement)*[3] entered into

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[1] *Rollo*, pp. 24-39. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justice Godardo A. Jacinto and Associate Justice Bienvenido L. Reyes.

[2] *Id.* at 44-58.

[3] *Id.* at 59-63.

by Ledesco and WSIRI on February 27, 1992. Under the Agreement, Ledesco appointed WSIRI as its marketing manager for the Makiling Heights Resort Subdivision project to generate sales to the general public.

The Agreement provides that Ledesco shall pay WSIRI a sales commission of ten percent (10%) based on the contract value of the sales and an additional two percent (2%) incentive if WSIRI meets the agreed quota of ₱30,000,000.00 within six (6) months from the signing thereof, or until August 27, 1992.[4]

The Agreement further stipulates that the commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment, and that the amount payable shall be proportional to the amount received, until the full downpayment and six (6) postdated checks are received. At such time, the full ten percent (10%) commission will be paid to WSIRI within four (4) days from receipt of the downpayment of the contract value.[5]

Moreover, in the event that Ledesco fails to pay the commission within four (4) banking days from clearance of buyer's check payment, a twenty-four percent (24%) "interest penalty" will automatically accrue in favor of WSIRI.[6]

In the Complaint, WSIRI alleged that despite Ledesco's receipt of the full downpayment on the transactions attributable to its marketing efforts, and its demands to pay, Ledesco still failed to pay ₱1,610,091.18 out of its full ten percent (10%) commission amounting to ₱5,496,140.30.[7] WSIRI also claimed interest at the rate of 24% per annum on the delayed payment.[8]

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[4] *Id.* at 60.

[5] *Id.*

[6] *Id.* at 61.

[7] *Id.* at 47.

[8] *Id.* at 47-48.

WSIRI further claimed that it is entitled to an additional two percent (2%) commission, on top of its regular ten percent (10%) commission, having generated sales amounting to ₱37,313,428.00[9] within the six (6) month period from the execution of the Agreement. Ledesco likewise failed to pay such additional commission amounting to ₱743,912.06,[10] and refused to pay despite demand.[11]

In its Answer,[12] Ledesco explained that WSIRI generated sales of ₱34,876,011.00,[13] and that the 10% commission had already been paid as it already paid ₱3,592,735.21.[14] It claimed that it had actually overpaid WSIRI by ₱279,514.17.[15] It also alleged that the erroneous computation by WSIRI included sales made to buyers who later cancelled their purchases.

Ledesco listed ten (10) transactions which allegedly failed to materialize and on which no commission was due. Nonetheless, commissions were inadvertently paid to WSIRI:[16]

Lot Buyer	Overpayment by Ledesco to WSIRI
(1) Alexander Tan	Php 50,350.00
(2) Elizabeth Rodriguez	8,502.50
(3) GRC Properties	9,695.00
(4) Josephine Pinon	31,887.00
(5) J. Garcellano	2,950.00
(6) Lilia Aaron	38,000.00

[9] *Id.* at 48.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 79-87.

[13] *Id.* at 79.

[14] *Id.* at 83.

[15] *Id.*

[16] *Id.* at 89.

(7) Magdalena de Vera	43,263.00
(8) Ofelia Roque	6,175.00
(9) Teresita Martinez	59,602.62
(10) Theresa Nagasima	6,275.00
(11) Magdalena Cordora	2,365.60
TOTAL	**Php 259,065.72**

In addition to these contested sales, Ledesco and WSIRI also disagreed over the First Asia Ventures Capital *(First Asia)* transaction, the net price of which is ₱6,384,000.00.[17] The amount is wholly determinative of WSIRI's entitlement to the additional 2% commission. Without the full value of the said transaction, WSIRI's generated sales within the 6-month period would only amount to Php27,692,011,[18] less than the ₱30 million pesos threshold.

Ledesco further denied WSIRI's claim that it was able to hurdle the 30-million mark *within* six (6) months from the execution of the Agreement, countering that the 30-million quota was reached only *after* the six-month period. Per its computation, only ₱27,692,011.00 worth of sales was generated by WSIRI during the said period,[19] and the quota was reached only on September 20, 1993, *after* the six-month period.[20]

Ledesco explained that only ₱3,172,848.00 of the First Asia transaction was credited to WSIRI's sales for the 6-month reckoning period[21] it being the amount *actually paid* by First Asia *within the 6-month period*. Ledesco received an additional payment from First Asia in the amount of ₱3,172,848.00 representing the remainder of the net price on September 20,

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[17] *Id.* at 88.

[18] *Id.* at 84.

[19] *Id.*

[20] *Id.* at 81.

[21] *Id.* at 94.

1993, at which time the 6-month reckoning period had already expired.[22]

WSIRI, however, argued that the entire net price should have been credited as a sale made within the 6-month period.

WSIRI further claimed that Ledesco's disclaimer of its entitlement to the 2% commission was anchored on a false claim that the First Asia transaction did not materialize within the six-month reckoning period when, in fact, it did, as shown by Ledesco's payment of the 10% commission due on the said sale.[23]

On June 10, 1998, the RTC *decided in favor of WSIRI* awarding it the two percent (2%) incentive commission based on generated sales of ₱34,076,011.00, plus a penalty at the rate of 24% per annum from the filing of the complaint, attorney's fees and cost of suit.

Both parties moved for reconsideration. Resolving the motions, the RTC, in its September 29, 1998 Order, *set aside* its June 10, 1998 decision and *dismissed* the case.[24] The dispositive portion of the September 29, 1998 Order reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

1. This Court's June 10, 1998 Decision is hereby set aside;
2. Defendant's Motion for Reconsideration is hereby GRANTED and plaintiff's Motion for Reconsideration is consequently denied;
3. Civil Case No. 93-4683 is hereby DISMISSED in favor of defendant and against the plaintiff.

SO ORDERED.[25]

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[22] *Id.* at 81.

[23] *Id.* at 54.

[24] *Id.* at 25-26.

[25] *Id.* at 240.

On appeal by WSIRI, the CA *reversed* the appealed RTC Order. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the assailed Order dated 29 September 1998 of the Regional Trial Court of Makati City, Branch 134 is hereby REVERSED and SET ASIDE and its Decision dated 10 June 1998 is hereby REINSTATED and AFFIRMED with the following modifications:
>
> Defendant-appellee is hereby ordered to pay plaintiff-appellant —
>
> (1) ten (10%) percent commission on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez, based on contract price; and
>
> (2) two (2%) percent commission on sales amounting to Thirty Four Million Seventy Six Thousand Eleven Pesos (₱34,076,011.00).
>
> The award of 24% penalty interest, attorney's fees and cost of suit is hereby deleted.
>
> SO ORDERED.[26]

The CA held that WSIRI's claim for commissions on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez was meritorious.[27]

> Although the names are listed in Annex 2 [a list of all accounts on which commissions had purportedly been paid by Ledesco], of Ledesco's Answer, no competent evidence was presented to substantiate its claim that commissions had been paid on these accounts. The letters and documents presented in evidence and allegedly signed by the said buyers withdrawing and cancelling their purchases did not clearly and satisfactorily prove

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[26] *Id.* at 29-30.

[27] *Id.* at 29.

the alleged withdrawal or cancellation, as such documentary evidence had not been authenticated by the persons whose signatures appeared thereon.[28] Moreover, the disbursement vouchers mentioned by Ledesco's witness, Eulogio F. Brosas *(Brosas)*, evidencing the alleged refunds made to the buyers who withdrew or cancelled their purchase were never presented and authenticated in court. Without satisfactory proof that the buyers indeed withdrew or cancelled their purchases, the said sales were deemed consummated, entitling WSIRI to the ten percent (10%) commission.[29]

The CA further held that paragraph 4 of the Agreement does not show that entitlement to the two percent (2%) incentive commission depends on the buyer's full payment of the net price.[30] Paragraph 4 was interpreted by the CA to mean that if *first*, the sale is consummated, *second*, the whole downpayment is completed, and *third*, six (6) postdated checks are received within the six-month period, then such sale would be considered as a sale made and consummated within the said period, even if amortization payments are made after the lapse of the 6-month reckoning period.[31]

The CA ruled that WSIRI is no longer entitled to a ten percent (10%) commission on the sales made to First Asia and to Teresita Martinez. The Court stated that by WSIRI's own admissions, Ledesco had already paid commissions on the said accounts.[32]

On May 24, 2006, the CA denied WSIRI's motion for reconsideration.[33]

Hence, this petition.

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[28] *Id.* at 30.

[29] *Id.* at 32.

[30] *Id.* at 33.

[31] *Id.* at 33.

[32] *Id.* at 28.

[33] *Id.* at 41.

ISSUES

I.

WHETHER THE SALES MADE TO THERESA NAGASIMA, LILIA AARON, RODOLFO GARCIA, OFELIA ROQUE, JULIETA GARCELLANO, ERMELO ALMEDA, GRC PROPERTIES, INC., ALEXANDER TAN, JOSEPHINE PINON, MAGDALENA DE VERA, AND ELIZABETH RODRIGUEZ SHOULD BE INCLUDED IN THE COMPUTATION OF THE TEN PERCENT (10%) COMMISSION –

II.

WHETHER THE SALE OF THE LAND TO FIRST ASIA VENTURE WAS MADE WITHIN SIX (6) MONTHS AS CONTEMPLATED IN THE MARKETING AGREEMENT –

III.

WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE ON THE CLAIMS OF PETITIONER FOR OVERPAYMENT OF COMMISSION –

THE COURT'S RULING

The sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties, Inc., Alexander Tan, Josephine Pinon, Magdalena De Vera and Elizabeth Rodriguez should be included in the computation of the 10% commission.

Ledesco submits that commission is due only on "consummated" sales,[34] which it implies to be the contract price of which have already been fully paid.[35] It insists that the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera and Elizabeth Rodriguez *(Buyers)* were cancelled or withdrawn after

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[34] *Id.* at 15.

[35] *Id.* at 14-19.

the signing of the Reservation Agreement.[36] According to Ledesco, as these "sales" were not consummated contracts, they should no longer be considered in the computation of commission.[37]

Ledesco points out that the testimony of its witness, Brosas, and the list shown in Annex "2" of its Answer,[38] which is in the records of the transaction of WSIRI, are indubitable proof that the transactions in question were indeed withdrawn or cancelled.[39] WSIRI failed to show proof to the contrary.[40] Regarding the disbursement vouchers, they are of no moment for they would only show the payments, if there were indeed reimbursements.[41]

WSIRI, on the other hand, counters that the sales should be included in the computation of commissions because there is no competent evidence to prove that these sales were cancelled or withdrawn.[42]

After going over the records, the Court finds no cogent reason to disturb the findings of the CA on the matter of WSIRI's claim for commissions. As this Court has ruled in a long line of cases, the Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[43]

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[36] *Id.* at 15.

[37] *Id.*

[38] *Id.* at 89.

[39] *Id.* at 315.

[40] *Id.*

[41] *Id.* at 315-316.

[42] *Id.* at 495.

[43] *Gonzales v. Civil Service Commission and Philippine Amusement and Gaming Corporation*, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 747-748.

At any rate, the CA ruling is in accordance with the rules and prevailing jurisprudence. Section 20 of Rule 132 of the Rules of Evidence provides:

> SEC. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as what it is claimed to be.

Truly, the best evidence of the cancellation of a contract is the original of the deed. The testimony of Brosas alone, without any supporting documentation, is insufficient to prove that the sales to the Buyers had indeed been withdrawn or cancelled.

In *Harris Sy Chua v. Court of Appeals and State Financing Center, Inc.*,[44] it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents.[45] When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded.[46]

Failure to comply with this rule on authentication of private documents resulted in the exclusion of the document sought to be admitted.[47]

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[44] G.R. No. 88383, February 19, 1992, 206 SCRA 339, 345, citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*, 120 Phil. 702, 717 (1964).

[45] *Id.*

[46] *Id.*

[47] See *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*, 430 Phil. 162, 168-169 (2003); *Tigno v. Spouses Aquino*, 486 Phil. 254, 274-275 (2004).

In this case, the disbursement vouchers referred to by Brosas were never presented and authenticated. Without satisfactory proof that the buyers withdrew or cancelled their purchases, the said sales are deemed current, binding and consummated. Therefore, WSIRI is entitled to recover from Ledesco the corresponding ten percent (10%) commission on these sales.

The sale to First Asia Ventures Capital was made within six (6) months as contemplated in the Agreement.

On this second issue, Ledesco emphasizes that the two percent (2%) incentive was conditioned on WSIRI's reaching the Php30,000,000.00 hurdle within six (6) months from the signing of the Agreement.[48] Corollary to its position that the agreed commission is determined only on the basis of perfected sales, Ledesco argues that since the contract price of the First Asia sale was not paid within the six-month reckoning period, such sale should not be considered in determining whether WSIRI is entitled to the 2% incentive.[49]

WSIRI, on the other hand, posits that because it generated sales of more than P30 million within the six-month reckoning period, it is entitled to the 2% incentive.[50]

As earlier stated, the CA interpreted paragraph 4 to mean that a sale is considered completed and accomplished within the six-month reckoning period if *first*, the sale is consummated; *second*, the whole downpayment is made, *third*, six (6) postdated checks are received, and *lastly*, if all such acts are completed within the six-month period, even if amortization payments are made after the lapse of the six-month reckoning period.[51]

The conflict here stems from a divergence of opinion as to the interpretation of this provision of the Agreement, the

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[48] *Rollo*, p. 317.

[49] *Id.* at 318.

[50] *Id.* at 300.

[51] *Id.* at 33.

computation of commissions due, and the applicability of the additional two percent (2%) incentive.

Ledesco apparently proceeds from a misleading premise, that is, that commission is due only when full payment is received. This is contrary not only to the provisions of the Agreement but also to its previous conduct.

The disputed provision of the Agreement states:

> 4. COMMISSION – The FIRST PARTY agrees to pay the SECOND PARTY direct sales commission and overrides of ten (10) percent based on the contract value of the sales and an additional two (2) percent incentive upon reaching the quota of P30 Million within six (6) months from signing of this agreement. The FIRST PARTY further agrees to pay a 2% Management Fee to the SECOND PARTY of all sales made by in-house sales of the FIRST PARTY (In-house sales meaning any sales made by anyone other than Globo Realty).
>
> This commission is payable within 4 banking days from receipt and clearance of Buyer's Check payment and the amount payable is proportional to the account received, until full downpayment and six (6) postdated checks are received. At this point, the full 10% commission will be paid to the SECOND PARTY within 4 days from receipt of the downpayment of the contract value. Further, in the event that the full downpayment is received but six (6) postdated checks are not received then only proportionate commission shall be paid the SECOND PARTY until such time that six (6) postdated checks are submitted. In the event the account of the Buyer is thru Bank Financing, full commission is due upon approval and release of loan.
>
> In case of failure of FIRST PARTY to pay the commission within four (4) banking days from clearance of Buyer's check payment pursuant to the abovementioned schedule then a 24% interest will automatically accrue in favor of the second party. [Underscoring supplied][52]

Under the above provision, commission becomes due upon the occurrence of three events: *first*, the buyer signs the reservation agreement; *second*, the buyer pays Ledesco the amount representing the downpayment; *third*, the buyer delivers to Ledesco six (6) postdated checks.

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[52] *Id.* at 60-61.

To be entitled to the 2% incentive, there are two additional qualifying circumstances, to wit: (1) that all three required acts must be completed within a specific reckoning period (within six (6) months from the signing of the Project and Marketing Agreement); and (2) that the contract price of such sales totals at least Php30,000,000.00.

The Court agrees with the CA that paragraph 4 of the Agreement shows that entitlement to the two percent (2%) incentive commission does not depend on the buyer's payment of the entire purchase price, but rather on the accomplishment of the five qualifying items enumerated above. Thus, upon completion of all three acts within the reckoning period of six months from signing of the Agreement, WSIRI automatically becomes entitled to payment of the 2% commission, regardless of whether amortization payments are made outside of the six-month reckoning period.

It is clear from the wording of paragraph 4 of the Agreement that upon delivery of the six (6) postdated checks, the full 10% commission becomes payable. The only conclusion that can be arrived at is that in the regular sequence of events, the operative act for the entitlement to commission is the delivery of the six postdated checks, as such delivery is normally the last expected event.

> This commission is payable within 4 banking days from receipt and clearance of Buyer's Check payment and the amount payable is proportional to the account received, until full downpayment and six (6) postdated checks are received. At this point, the full 10% commission will be paid to the SECOND PARTY within 4 days from receipt of the downpayment of the contract value. Further, in the event that the full downpayment is received but six (6) postdated checks are not received then only proportionate commission shall be paid the SECOND PARTY until such time that six (6) postdated checks are submitted. In the event the account of the Buyer is thru Bank Financing, full commission is due upon approval and release of loan. [Underscoring supplied]

It is clear that commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment,

and the amount payable is proportional to the amount received, until full downpayment and six postdated checks are received. At such point, the full 10% commission will be paid to WSIRI within four days from receipt of the downpayment of the contract value. Moreover, in the event that the full downpayment is received but the six postdated checks are not delivered, only proportionate commission shall be paid to WSIRI until such time that the checks are submitted.

The observations of the CA as to Ledesco's contemporaneous and subsequent acts are also instructive as to the real intention of the parties:

> To prove defendant-appellee's contemporaneous and subsequent acts, plaintiff-appellant presented as evidence a letter dated 23 March 1993 of defendant-appellee addressed to plaintiff-appellant stating as follows:
>
> > "Lastly, the first amortization payment of First Asia Venture is still due in September 1993. We have to find out if they will make good their payments.
> >
> > As of date we acknowledge as accredited sales for the 2% incentive bonus the amount of ₱26,334,320. If the 3rd, 4th and 5th categories (as above) are perfected, the total amount will reach ₱29,834,916. As such, it is imperative that the First Asia Venture payment is made good so that LEDESCO provides only the manner as to how the commission shall be paid on a consummated sale."[53]

Thus, as the CA ruled, all conditions for entitlement to the 2% incentive have been met, and there is no adequate proof to show that the questioned sales have been cancelled or withdrawn.

Significantly, Ledesco did not challenge the fact that the First Asia sale had been consummated. What Ledesco questioned was the point *when* the sale was consummated – whether it was within or outside of the six-month reckoning period. At any rate, Ledesco admitted having already paid WSIRI's 10% commission on such sale. The Court cannot fathom why it would

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[53] *Id.* at 33-34.

pay commission on an unconsummated sale. Such is not only an unwise business practice, but also contrary to logic.

In view of the foregoing, the First Asia sale is considered to have been completed within the six-month reckoning period, and should be considered for the computation of the 2% incentive commission.

On the matter of entitlement to the 2% additional incentive, according to Ledesco's computation, if the First Asia sale is not considered consummated within the reckoning period, WSIRI would have generated sales of Php27,692,011.00.[54] Thus, based on Ledesco's own representation, if the First Asia sale, priced at Php6,384,000.00,[55] is considered to have been consummated within six months from the signing of the Agreement, then WSIRI will be entitled to the 2% additional commission, as the total sales generated by WSIRI would then be Php34,076,011.00, or well above the Php30 million mark.

On the third issue, suffice it to state that overpayment, if any, should be threshed out in the court of origin where the matter of execution would be due. There, the final amount due to WSIRI will be finally computed.

WHEREFORE, the August 22, 2005 of the Court of Appeals in CA-G.R. CV No. 61584 is *AFFIRMED*.

SO ORDERED.

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

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[54] *Id.* at 84.

[55] *Id.* at 88.

SECOND DIVISION

[G.R. No. 173815. November 24, 2010]

MILWAUKEE INDUSTRIES CORPORATION, *petitioner, vs.* **COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES TO PROSPER; GROUNDS, EXPLAINED.—** In order for a petition for *certiorari* to succeed, the following requisites must concur, namely: (*a*) that the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (*b*) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. *Without jurisdiction* denotes that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent exceeds its power or acts without any statutory authority. *Grave abuse of discretion* connotes such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; otherwise stated, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.—** Milwaukee was given more than ample time to collate and gather its evidence. It should have been prepared for the continuance of the trial. True, the incident on said date was for the cross-examination of Milwaukee's witness but it could be short; it could be lengthy. Milwaukee should have prepared for any eventuality. It is discretionary on the part of the court to allow a piece-meal presentation of evidence. If it decides not to allow it, it cannot be considered an abuse of discretion. "As defined, discretion is a faculty of a court or an official by which he may decide a question either way, and still be right."

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS, NOT VIOLATED.— Milwaukee's right to due process was not transgressed. The Court has consistently reminded litigants that due process is simply an opportunity to be heard. The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This resolves the petition for *certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Milwaukee Industries Corporation *(Milwaukee)* assailing the February 27, 2006 Verbal Order and the June 1, 2006 Resolution[2] of the Court of Tax Appeals *(CTA)*, in CTA Case No. 6202 entitled "*Milwaukee Industries Corporation v. Commissioner of Internal Revenue*."

The Facts

In a Letter of Authority,[3] dated July 17, 1998, public respondent Commissioner of Internal Revenue (*CIR*) notified Milwaukee of its intent to examine their books of account and other accounting records for all internal revenue taxes for 1997 and other unverified prior years.

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[1] *Rollo*, pp. 14-52.

[2] *Id.* at 93-95. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring.

[3] *Id.* at 96.

Milwaukee complied with the directive and submitted its documents to CIR.

Thereafter, CIR issued three undated assessment notices[4] together with a demand letter and explanation of the deficiency tax assessments. Milwaukee allegedly owed a total of ₱173,063,711.58 corresponding to the deficiencies on income tax, expanded withholding and value-added taxes for the 1997 taxable year. The table shows the supposed deficiency taxes due against Milwaukee:[5]

	Basic Tax	Interest	Compromise Penalty	Total
Deficiency Income Tax ST-Income-97-0093-2000	₱43,114,980.66	₱20,264,040.91	₱25,000.00	₱63,404,021.57
Deficiency expanded withholding tax ST-EWT-97-0092-2000	19,438.95	9,284.23	1,000.00	29,723.18
Deficiency value-added tax ST-VAT-97-0091-2000	72,108,530.81	37,496,436.02	25,000.00	109,629,966.83
TOTALS	₱15,242,950.42	₱57,796,761.16	₱51,000.00	₱173,063,711.58

In a letter[6] dated February 21, 2000, Milwaukee protested the assessments.

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[4] *Id.* at 97-99.

[5] *Id.* at 17.

[6] *Id.* at 109-118.

Due to CIR's inaction regarding its protest, on November 20, 2000, Milwaukee filed a petition for review before the CTA.[7] This was docketed as CTA Case No. 6202.

After Milwaukee had presented its evidence-in-chief, CIR offered the testimony of Ms. Edralin Silario *(Silario),* the group supervisor of the BIR examiners, who conducted the examination of Milwaukee's books. She testified on the Final Report she prepared for the BIR and explained the grounds for the disallowance of the deductions being claimed by Milwaukee on the following: (1) foreign exchange losses classified as miscellaneous expenses; and (2) interest and bank charges paid in 1997.

Subsequently, Milwaukee manifested its intention to present documentary rebuttal evidence.[8] By its Order of July 11, 2005, the CTA permitted Milwaukee to present rebuttal evidence starting September 5, 2005.[9] Milwaukee, however, moved for resetting on the scheduled hearings, particularly on September 5, 2005 and October 26, 2005.[10]

On January 16, 2006, Milwaukee was able to partially present its rebuttal evidence in a commissioner's hearing.[11] The CTA scheduled another hearing on February 27, 2006.

On February 27, 2006, during the scheduled hearing, the CIR waived its right to cross-examine Milwaukee's witness.[12] The CTA then asked Milwaukee to continue its presentation of rebuttal evidence. Not prepared, Milwaukee moved for the postponement of the pre-marking and presentation of its rebuttal evidence relative to the deductibility of some interests and bank

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[7] *Id.* at 118a-122.

[8] *Id.* at 130-131.

[9] *Id.* at 142.

[10] *Id.* at 460.

[11] *Id.*

[12] *Id.* at 461.

charges from its corporate income tax for the year 1997 amounting to ₱18,128,498.26.

Immediately, the CTA issued a verbal order denying Milwaukee's motion to be allowed additional commissioner's hearing for further presentation of its rebuttal evidence. The CTA likewise gave Milwaukee ten (10) days within which to submit its Formal Offer of Rebuttal Evidence.[13]

Consequently, Milwaukee moved for reconsideration of the CTA's verbal order. Milwaukee likewise moved to toll the running of the period for filing its formal offer of rebuttal evidence.[14]

In its June 1, 2006 Resolution, the CTA denied Milwaukee's motion for reconsideration but allowed its motion to suspend the period for filing of formal offer of rebuttal evidence.[15] Specifically, the CTA stated:

> This Court agrees with the respondent. The Court, upon motion, allowed petitioner to present rebuttal evidence. However, it was petitioner who asked for several postponements of trial and commissioner's hearing, which lead the Court to issue final warnings on October 26, 2005, January 16, 2006 and January 31, 2006.
>
> It is worth stressing that the objective of the procedural rules is to secure a just, speedy and inexpensive disposition of every action to the benefit of all litigants. The Court will not countenance further delay of the proceedings. Thus, the Court hereby RESOLVES to DENY Petitioner's Motion for Reconsideration for lack of merit.
>
> However, finding petitioner's Motion to Toll Running of the Period for Filing Formal Offer of Rebuttal Evidence to be in order, the Court hereby RESOLVES to GRANT the same.
>
> WHEREFORE, petitioner is ordered to submit its Formal Offer of Rebuttal Evidence within the remaining period prescribed by this Court upon receipt of this Resolution. Respondent is given a period

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[13] *Id.* at 61.

[14] *Id.* at 143-146.

[15] *Id.* at 93-95.

of 10 days to file his Comment thereto. Thereafter, petitioner's Formal Offer of Rebuttal Evidence shall be deemed submitted for resolution.

SO ORDERED.[16]

On June 21, 2006, Milwaukee filed its Formal Offer of Rebuttal Evidence (*ex Abundanti ad Cautelam*) before the CTA.[17]

Aggrieved by the denial of its motion for reconsideration of the verbal order, Milwaukee filed this petition.

In its Memorandum,[18] Milwaukee submits the following:

ISSUES

WHETHER OR NOT RESPONDENT CTA COMMITTED GRAVE ABUSE OF DISCRETION (AMOUNTING TO LACK OR EXCESS OF JURISDICTION) IN DENYING PETITIONER'S MOTION TO BE ALLOWED TO PRESENT REBUTTAL EVIDENCE, AND ITS SUBSEQUENT MOTION FOR RECONSIDERATION THEREON:

A. Whether or not petitioner unduly delayed the case;

B. Whether or not petitioner was denied due process by not being allowed to present its rebuttal evidence in relation to its disallowed interest and bank charges for the year 1997; and

C. Whether or not petitioner's proffered evidence, if allowed and admitted, would have sufficiently substantiated its claims for deductibility of the disallowed interest and bank charges.[19]

Milwaukee explained that it "sought postponement of the 27 February 2006 hearing, but only because the same was originally scheduled for respondent CIR's cross-examination of Milwaukee's witness. Unexpectedly, on that very same

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[16] *Id.* at 94-95.

[17] *Id.* at 147-160.

[18] *Id.* at 450-527.

[19] *Id.* at 458.

hearing date, counsel for respondent CIR suddenly manifested that he was waiving cross-examination. Understandably, Milwaukee was constrained to request for postponement of said hearing, not because it intended to delay the proceedings, but because the evidence it intended to present, while already available, was yet to be collated and sorted out for a more orderly presentation."[20]

Milwaukee claimed that the denial of its motions deprived it of its right to have the case be decided on the merits. It wrote: "Without said countervailing evidence, the adjudication of the issue of deductibility of certain interest and bank charges will [be] seriously impaired, because it will not be based on substantial evidence or on the entire facts."[21]

The Court finds no merit in the petition.

In order for a petition for *certiorari* to succeed, the following requisites must concur, namely: (*a*) that the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (*b*) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[22] *Without jurisdiction* denotes that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent exceeds its power or acts without any statutory authority. *Grave abuse of discretion* connotes such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; otherwise stated, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross

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[20] *Id.* at 459.

[21] *Id.* at 469.

[22] Section 1, Rule 65, 1997 *Rules of Civil Procedure*; *Delos Santos v. Court of Appeals,* G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700; *Camacho v. Coresis, Jr.*, 436 Phil. 449, 458 (2002).

as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[23]

"As a rule, the grant or denial of a motion for postponement is addressed to the sound discretion of the court which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties, the ends of justice and fairness should be served thereby."[24] Furthermore, this discretion must be exercised intelligently.[25]

In this case, the Court is of the view that the CTA gave enough opportunity for Milwaukee to present its rebuttal evidence. Records reveal that when Milwaukee requested for resetting on September 5, 2005 and October 26, 2005, its motions were granted by the CTA. As a matter of fact, by January 16, 2006, Milwaukee was already able to partially present its rebuttal evidence. Thus, when the CTA called on Milwaukee to continue its presentation of rebuttal evidence on February 27, 2006, it should have been prepared to do so. It cannot be said that the CTA arbitrarily denied Milwaukee's supposed simple request of resetting because it had already given the latter several months to prepare and gather its rebuttal evidence.

Milwaukee tried to reason out that if only the CIR gave an advance notice that it would be waiving its right to cross-examine its witness, then it could have "rushed the collation and sorting of its rebuttal documentary exhibits."[26]

The Court, however, is not persuaded.

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[23] *Republic v. Sandiganbayan,* G.R. No. 129406, March 6, 2006, 484 SCRA 119, 127; *Sarigumba v. Sandiganbayan,* 491 Phil. 704, 719 (2005)*; Angara v. Fedman Development Corporation,* 483 Phil. 495, 505-506 (2004); *People v. Court of Appeals,* G.R. No. 144332, June 10, 2004, 431 SCRA 610, 616-617; *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002); *Litton Mills, Inc. v. Galleon Trader, Inc.*, 246 Phil. 503, 509 (1988).

[24] *Jaime R. Sevilla v. Judge Edison F. Quintin*, 510 Phil. 487, 494 (2005).

[25] *Id.*

[26] *Rollo,* p. 462.

As stated earlier, Milwaukee was given more than ample time to collate and gather its evidence. It should have been prepared for the continuance of the trial. True, the incident on said date was for the cross-examination of Milwaukee's witness but it could be short; it could be lengthy. Milwaukee should have prepared for any eventuality. It is discretionary on the part of the court to allow a piece-meal presentation of evidence. If it decides not to allow it, it cannot be considered an abuse of discretion. "As defined, discretion is a faculty of a court or an official by which he may decide a question either way, and still be right."[27]

Accordingly, Milwaukee's right to due process was not transgressed. The Court has consistently reminded litigants that due process is simply an opportunity to be heard.[28] The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.*, concur.

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[27] *Go Uan v. Galang*, 120 Phil. 1366, 1369 (1964).

[28] *Villaruel, Jr. v. Fernando*, 458 Phil. 642, 656 (2003).

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated November 22, 2010.

FIRST DIVISION

[G.R. No. 175080. November 24, 2010]

EUGENIO R. REYES, joined by TIMOTHY JOSEPH M. REYES, MA. GRACIA S. REYES, ROMAN GABRIEL M. REYES, and MA. ANGELA S. REYES, *petitioners, vs.* **LIBRADA F. MAURICIO (deceased) and LEONIDA F. MAURICIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; ISSUE ON THE EXISTENCE OF TENANCY RELATIONSHIP IS A QUESTION OF FACT WHICH IS BEYOND THE AMBIT OF A RULE 45 PETITION; FACTUAL FINDINGS OF THE PROVINCIAL ADJUDICATOR AS AFFIRMED BY DARAB AND THE COURT OF APPEALS ARE BINDING ON THE COURT.— In the main, Eugenio insists that no tenancy relationship existed between him and Godofredo. This is a question of fact beyond the province of this Court in a petition for review under Rule 45 of the Rules of Court in which only questions of law may be raised. Absent any of the obtaining exceptions to this rule, the findings of facts of the Provincial Adjudicator, as affirmed by DARAB and especially by the Court of Appeals, are binding on this Court.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY ACT (R.A. 1199); TENANCY RELATIONSHIP CANNOT BE EXTINGUISHED BY MERE EXPIRATION OF TERM IN A LEASEHOLD CONTRACT OR BY SALE OR TRANSFER OF LEGAL POSSESSION OF THE LAND.— We agree with the Court of Appeals that a tenancy relationship cannot be extinguished by mere expiration of term or period in a leasehold contract; or by the sale, alienation or the transfer of legal possession of the landholding. Section 9 of Republic Act No. 1199 or the Agricultural Tenancy Act provides: SECTION 9. *Severance of Relationship*. x x x **The expiration of the period of the contract as fixed by the parties, and the sale or alienation of the land does not of themselves extinguish the relationship. In the latter case, the purchaser**

or transferee shall assume the rights and obligations of the former landholder in relation to the tenant. In case of death of the landholder, his heir or heirs shall likewise assume his rights and obligations.

3. CIVIL LAW; FAMILY CODE; FILIATION; STATUS AND FILIATION OF A PARTY CANNOT BE COLLATERALLY ATTACKED IN AN ACTION FOR ANNULMENT OF A CONTRACT.— We are in full accord with the Court of Appeals when it ruled that Eugenio cannot collaterally attack the status of Leonida in the instant petition. It is settled law that filiation cannot be collaterally attacked. Well-known *civilista* Dr. Arturo M. Tolentino, in his book "Civil Code of the Philippines, Commentaries and Jurisprudence," noted that the aforecited doctrine is rooted from the provisions of the Civil Code of the Philippines. x x x In *Braza v. City Civil Registrar of Himamaylan City, Negros Occidental,* the Court stated that legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack. The same rule is applied to adoption such that it cannot also be made subject to a collateral attack. In *Reyes v. Sotero,* this Court reiterated that adoption cannot be assailed collaterally in a proceeding for the settlement of a decedent's estate. Furthermore, in *Austria v. Reyes,* the Court declared that the legality of the adoption by the testatrix can be assailed only in a separate action brought for that purpose and cannot be subject to collateral attack. Against these jurisprudential backdrop, we have to leave out the status of Leonida from the case for annulment of the "*Kasunduan*" that supposedly favors petitioners' cause.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra for petitioners.
Valeriano B. Mariano for respondents.

D E C I S I O N

PEREZ, *J.*:

Subject of this petition is the Decision[1] of the Court of Appeals dated 10 August 2006 in CA-G.R. SP No. 87148, affirming the Decision dated 7 July 1998 and Resolution dated 28 September 2004 of the Department of Agrarian Reform Adjudication Board (DARAB).

Eugenio Reyes (Eugenio) was the registered owner of a parcel of land located at Turo, Bocaue, Bulacan, with an area of four thousand five hundred twenty-seven (4,527) square meters, more or less, and covered by Transfer Certificate of Title (TCT) No. 109456(M). Said title came from and cancelled TCT No. T-62290 registered in the name of Eufracia and Susana Reyes, siblings of Eugenio. The subject property was adjudicated to Eugenio by virtue of an extrajudicial settlement among the heirs following the death of his parents.

The controversy stemmed from a complaint filed before the DARAB of Malolos, Bulacan by respondents Librada F. Mauricio (Librada), now deceased, and her alleged daughter Leonida F. Mauricio (Leonida) for annulment of contract denominated as *Kasunduan* and between Librada and Eugenio as parties. Respondents also prayed for maintenance of their peaceful possession with damages.

Respondents alleged that they are the legal heirs of the late Godofredo Mauricio (Godofredo), who was the lawful and registered tenant of Eugenio through his predecessors-in-interest to the subject land; that from 1936 until his death in May 1994, Godofredo had been working on the subject land and introduced improvements consisting of fruit-bearing trees, seasonal crops, a residential house and other permanent improvements; that through fraud, deceit, strategy and other unlawful means, Eugenio

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Godardo A. Jacinto and Magdangal M. De Leon, concurring. *Rollo*, pp. 44-51.

caused the preparation of a document denominated as *Kasunduan* dated 28 September 1994 to eject respondents from the subject property, and had the same notarized by Notary Public Ma. Sarah G. Nicolas in Pasig, Metro Manila; that Librada never appeared before the Notary Public; that Librada was illiterate and the contents of the *Kasunduan* were not read nor explained to her; that Eugenio took undue advantage of the weakness, age, illiteracy, ignorance, indigence and other handicaps of Librada in the execution of the *Kasunduan* rendering it void for lack of consent; and that Eugenio had been employing all illegal means to eject respondents from the subject property. Respondents prayed for the declaration of nullity of the *Kasunduan* and for an order for Eugenio to maintain and place them in peaceful possession and cultivation of the subject property. Respondents likewise demanded payment of damages.[2] During trial, respondents presented a leasehold contract executed between Susana and Godofredo to reaffirm the existing tenancy agreement.[3]

Eugenio averred that no tenancy relationship existed between him and respondents. He clarified that Godofredo's occupation of the subject premises was based on the former's mere tolerance and accommodation. Eugenio denied signing a tenancy agreement, nor authorizing any person to sign such an agreement. He maintained that Librada, accompanied by a relative, voluntarily affixed her signature to the *Kasunduan* and that she was fully aware of the contents of the document. Moreover, Librada received ₱50,000.00 from Eugenio on the same day of the execution of the *Kasunduan*. Eugenio also questioned the jurisdiction of the DARAB since the principal relief sought by respondents is the annulment of the contract, over which jurisdiction is vested on the regular courts. Eugenio also asserted that Leonida had no legal personality to file the present suit.[4]

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[2] *Id.* at 55-57.

[3] *Id.* at 65-66.

[4] *Id.* at 68-75.

Based on the evidence submitted by both parties, the Provincial Adjudicator[5] concluded that Godofredo was the tenant of Eugenio, and Librada, being the surviving spouse, should be maintained in peaceful possession of the subject land. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Librada Mauricio and against defendant Eugenio R. Reyes and order is hereby issued:
>
> 1. Declaring the *kasunduan* null and void;
> 2. Ordering defendant to respect the peaceful possession of herein plaintiff Librada Mauricio over the subject landholding;
> 3. Ordering plaintiff to return the amount of ₱50,000.00 to herein defendant;
> 4. No pronouncement as to costs.[6]

On appeal, two issues were presented to and taken up by the DARAB, namely: (1) Whether or not there is tenancy relation between the parties; and (2) whether or not the *Kasunduan* dated 28 September 1994 is valid and enforceable. The DARAB held that the Mauricio's are former tenants of Spouses Reyes. It found that when Spouses Reyes died, siblings Eufracia, Susana and Eugenio, among others inherited the subject property. Under the law, they were subrogated to the rights and substituted to the "obligations" of their late parents as the agricultural lessors over the farmholding tenanted by respondents. Moreover, the DARAB banked on the *Kasunduang Buwisan sa Sakahan* or the leasehold contract executed by Susana in favor of Godofredo to support the tenancy relationship. Furthermore, the DARAB declared the other *Kasunduan* as void by relying on the evaluation of the Provincial Adjudicator as to the legal incapacity of Librada to enter into such a contract.[7]

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[5] Gregorio D. Sapera.

[6] *Rollo*, p. 88.

[7] *Id.* at 95-97.

Eugenio filed a motion for reconsideration which was denied by the DARAB on 28 September 2004.[8]

Aggrieved by the DARAB ruling, Eugenio filed a petition for review with the Court of Appeals. On 10 July 2006, the Court of Appeals issued a resolution regarding the status of Leonida as a legal heir and allowed her to substitute Librada, who died during the pendency of the case.[9] On 10 August 2006, the Court of Appeals affirmed the decision and resolution of the DARAB. It sustained the factual findings of the DARAB with respect to the tenancy relation between Godofredo and Spouses Reyes and the nullity of the *Kasunduan*.[10]

Undaunted, Eugenio filed the instant petition. Eugenio submits that no tenancy relationship exists between him and respondents. He insists that the *Kasunduang Buwisan sa Sakahan* allegedly executed between Godofredo and Susana in 1993 giving the former the right to occupy and cultivate the subject property is unenforceable against Eugenio, having been entered into without his knowledge and consent. Eugenio further asserts that per records of the Department of Agrarian Reform (DAR), no leasehold contract was entered into by Godofredo and Eugenio with respect to the disputed property. Eugenio attributes error on the part of the Court of Appeals in concluding that a tenancy relationship existed between the parties despite the absence of some of the essential requisites of a tenancy relationship such as personal cultivation and the subject land being agricultural. Finally, Eugenio defends the validity of the *Kasunduan* entered into between him and Librada wherein the latter agreed to vacate the subject property, in that it was voluntarily entered into and the contents thereof were mutually understood by the parties.[11]

In a Resolution dated 7 February 2007, this Court denied the petition for failure to show that the Court of Appeals

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[8] *Id.* at 172.

[9] CA *rollo*, p. 159.

[10] *Rollo*, pp. 49-50.

[11] *Id.* at 23-30.

committed reversible error in its challenged decision and resolution. The Court also dismissed the issues raised as factual. However, upon filing of a motion for reconsideration by Eugenio, this Court reinstated the petition and required respondent Leonida to comment on the petition.[12]

In her comment, respondent prayed for the denial of the petition because the jurisdiction of this Court is limited to review of errors of law and not of facts.[13]

In the main, Eugenio insists that no tenancy relationship existed between him and Godofredo. This is a question of fact beyond the province of this Court in a petition for review under Rule 45 of the Rules of Court in which only questions of law may be raised.[14] Absent any of the obtaining exceptions[15] to this rule, the findings of facts of the Provincial Adjudicator, as affirmed by DARAB and especially by the Court of Appeals, are binding on this Court.

The DARAB ruling outlined how the tenancy relationship between Godofredo and the Mauricio's came about, thus:

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[12] *Id.* at 125.

[13] *Id.* at 238.

[14] *Tarona v. Court of Appeals*, G.R. No. 170182, 18 June 2009, 589 SCRA 474, 482; *Cornes v. Leal Realty Centrum Co., Inc.*, G.R. No. 172146, 30 July 2008, 560 SCRA 545, 567.

[15] (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. See *Cornes v. Leal Realty Centrum Co., Inc., id.*

This Board, after a thorough evaluation of the evidences, is convinced that the Mauricios are former tenants of the parents of the herein Defendant-Appeallant (sic). A perusal of Exhibit "H" which is the Tax Declaration of the property in controversy proves that upon the death of the parents of Defendant-Appellant, the property was the subject matter of their extra-judicial partition/settlement and this property was initially under the ownership of the appellant's sisters, Eufracia and Susana Reyes until the same property was finally acquired/ transferred in the name of Respondent-Appellant. Obviously, in order to re-affirm the fact that the Mauricios are really the tenants, Susana Reyes had voluntarily executed the Leasehold Contract with Godofredo Librada being the tenant on the property and to prove that she (Susana Reyes) was the predecessor-in-interest of Respondent-Appeallant (sic) Eugenio Reyes. x x x. The "*Kasunduang Buwisan sa Sakahan*" alleging that their tenancy relationship began in the year 1973 and their agreement as to the rental shall remain until further revised.[16]

This is a contest of *"Kasunduans."* Respondents rely on a *Kasunduan* of tenancy. Petitioners swear by a *Kasunduan* of termination of tenancy.

Librada claims that her late husband had been working on the land since 1936 until his death in 1994. She presented the *Kasunduang Buwisan sa Sakahan* dated 26 May 1993 and executed by Godofredo and Susana which reaffirmed the leasehold tenancy over the subject land. On the other hand, Eugenio disputes the claims of Librada and presented another *Kasunduan* executed between him and Librada on 28 September 1994 which effectively terminates the leasehold tenancy when the latter allegedly agreed to vacate the subject premises in exchange of monetary considerations.

This second *Kasunduan* is the subject of the instant complaint. In its disquisition, the DARAB nullified the second *Kasunduan*, to wit:

x x x Insofar as this *"Kasunduan"* is concerned, and after reading the transcript of the testimony of the old woman Librada Mauricio, this Board is convinced that indeed the purpose of the document was

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[16] *Rollo*, p. 95.

to eject her from the farmholding but that Librada Mauricio wanted to return the money she received because the contents of the document was never explained to her being illiterate who cannot even read or write. This Board is even further convinced after reading the transcript of the testimonies that while the document was allegedly signed by the parties in Turo, Bocaue, Bulacan, the same document was notarized in Pasig, Metro Manila, thus, the Notary Public was not in a position to explain much less ascertain the veracity of the contents of the alleged "*Kasunduan"* as to whether or not Plaintiff-Appellee Librada Mauricio had really understood the contents thereof. This Board further adheres to the principle that it cannot substitute its own evaluation of the testimony of the witnesses with that of the personal evaluation of the Adjudicator *a quo* who, in the case at bar, had the best opportunity to observe the demeanor of the witness Librada Mauricio while testifying on the circumstances relevant to the execution of the alleged "*Kasunduan.*" Furthermore, this Board adheres to the principle that in all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, mental weakness or other handicap, the courts (and in the case at bar, this Board) must be vigilant for his protection (Art. 24, New Civil Code). In the case at bar, Plaintiff-Appellee is already eighty-one (81) years old who can neither read nor write, thus, she just simply signs her name with her thumbmark.[17]

Applying the principle that only questions of law may be entertained by this Court, we defer to the factual ruling of the Provincial Adjudicator, as affirmed by DARAB and the Court of Appeals, which clearly had the opportunity to closely examine the witnesses and their demeanor on the witness stand.

Assuming that the leasehold contract between Susana and Godofredo is void, our conclusion remains. We agree with the Court of Appeals that a tenancy relationship cannot be extinguished by mere expiration of term or period in a leasehold contract; or by the sale, alienation or the transfer of legal possession of the landholding. Section 9 of Republic Act No. 1199 or the Agricultural Tenancy Act provides:

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[17] *Id.* at 96-97.

SECTION 9. *Severance of Relationship*. — The tenancy relationship is extinguished by the voluntary surrender of the land by, or the death or incapacity of, the tenant, but his heirs or the members of his immediate farm household may continue to work the land until the close of the agricultural year. **The expiration of the period of the contract as fixed by the parties, and the sale or alienation of the land does not of themselves extinguish the relationship. In the latter case, the purchaser or transferee shall assume the rights and obligations of the former landholder in relation to the tenant.** In case of death of the landholder, his heir or heirs shall likewise assume his rights and obligations. (Emphasis supplied)

Moreover, Section 10 of Republic Act No. 3844 (Code of Agrarian Reforms of the Philippines) likewise provides:

SEC. 10. *Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc.* — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. **In case the agricultural lessor** sells, alienates or **transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.** (Emphasis supplied)

As an incidental issue, Leonida's legal standing as a party was also assailed by Eugenio. Eugenio submitted that the complaint was rendered moot with the death of Librada, Godofredo's sole compulsory heir. Eugenio contended that Leonida is a mere ward of Godofredo and Librada, thus, not a legal heir.[18]

We are in full accord with the Court of Appeals when it ruled that Eugenio cannot collaterally attack the status of Leonida in the instant petition.[19]

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[18] *Id.* at 32.

[19] *Id.* at 49.

It is settled law that filiation cannot be collaterally attacked.[20] Well-known *civilista* Dr. Arturo M. Tolentino, in his book "Civil Code of the Philippines, Commentaries and Jurisprudence," noted that the aforecited doctrine is rooted from the provisions of the Civil Code of the Philippines. He explained thus:

> The legitimacy of the child cannot be contested by way of defense or as a collateral issue in another action for a different purpose. The necessity of an independent action directly impugning the legitimacy is more clearly expressed in the Mexican code (article 335) which provides: "The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void." This principle applies under our Family Code. Articles 170 and 171 of the code confirm this view, because they refer to "the action to impugn the legitimacy." This action can be brought only by the husband or his heirs and within the periods fixed in the present articles.[21]

In *Braza v. City Civil Registrar of Himamaylan City, Negros Occidental*,[22] the Court stated that legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack.[23]

The same rule is applied to adoption such that it cannot also be made subject to a collateral attack. In *Reyes v. Sotero*,[24] this Court reiterated that adoption cannot be assailed collaterally in a proceeding for the settlement of a decedent's estate.[25]

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[20] *Trinidad v. Court of Appeals*, G.R. No. 118904, 20 April 1998, 289 SCRA 188, 210.

[21] TOLENTINO, *CIVIL CODE OF THE PHILIPPINES, COMMENTARIES AND JURISPRUDENCE*, Vol. I, 1990 ed., p. 536. See *Rosales v. Castillo-Rosales*, G.R. No. L-31712, 28 September 1984, 132 SCRA 132, 141-142.

[22] G.R. No. 181174, 4 December 2009, 607 SCRA 638.

[23] *Id.* at 643.

[24] G.R. No. 167405, 16 February 2006, 482 SCRA 520, 531 citing *Santos v. Aranzanso*, G.R. No. L-26940, 21 August 1982, 116 SCRA 1.

[25] *Santos v. Aranzanso, id.* at 5-6.

Furthermore, in *Austria v. Reyes*,[26] the Court declared that the legality of the adoption by the testatrix can be assailed only in a separate action brought for that purpose and cannot be subject to collateral attack.[27]

Against these jurisprudential backdrop, we have to leave out the status of Leonida from the case for annulment of the "*Kasunduan*" that supposedly favors petitioners' cause.

WHEREFORE, based on the foregoing premises, the instant petition for review on *certiorari* is *DENIED* and the Decision dated 10 August 2006 of the Court of Appeals in CA-G.R. SP No. 87148 is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175887. November 24, 2010]

HEIRS OF THE LATE NESTOR TRIA, *petitioners, vs.* **ATTY. EPIFANIA OBIAS,** *respondent.*

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[26] G.R. No. L-23079, 27 February 1970, 31 SCRA 754.

[27] *Id.* at 762-763.

[*] 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.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; IT IS NOT MANDATORY FOR THE PRESIDENT TO ORDER THE DEPARTMENT OF JUSTICE (DOJ) TO REOPEN OR REVIEW THE CASE EVEN IF IT RAISED NEW AND MATERIAL ISSUES.—** The offense for which respondent was charged is punishable by *reclusion perpetua* to death, which is clearly within the jurisdiction of the OP in accordance with Memorandum Circular No. 58. Respondent's appeal was initially dismissed when Senior Deputy Executive Secretary Waldo Q. Flores issued the Resolution dated June 27, 2003 affirming *in toto* the appealed resolutions of the Secretary of Justice and adopting the latter's findings and conclusions. However, subsequent to her filing of a motion for reconsideration of the said June 27, 2003 Resolution, respondent filed a Supplemental Pleading and Submission of Newly Discovered Evidence. The arguments of respondent in support of her motion for reconsideration were duly considered by the OP in reexamining the appealed resolutions. As the word "*may*" in the second paragraph of Memorandum Circular No. 58 signifies, it is not mandatory for the President to order the DOJ to reopen or review respondent's case even if it raised "new and material issues" allegedly not yet passed upon by the DOJ. Hence, the OP acted well within its authority in reexamining the merits of respondent's appeal in resolving the motion for reconsideration.

2. **ID.; ID.; ID.; NON-REFERRAL BY THE OFFICE OF THE PRESIDENT TO THE DOJ OF THE APPEAL OR MOTION FOR RECONSIDERATION DID NOT VIOLATE RIGHT TO DUE PROCESS.—** Petitioners' argument that the non-referral by the OP to the DOJ of the appeal or motion for reconsideration filed by the respondent had deprived them of the opportunity to confront and cross-examine the witnesses on those affidavits belatedly submitted by the respondent is likewise untenable. Under the procedure for preliminary investigation provided in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, as amended, in case the investigating prosecutor conducts a hearing where there are facts and issues to be clarified from a party or witness, "[t]he parties can be present at the hearing *but without the right to examine or cross-*

examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned." Hence, the non-referral by the OP to the DOJ of the motion for reconsideration of respondent, in the exercise of its discretion, did not violate petitioners' right to due process.

3. **ID.; ID.; ID.; DUTY OF THE PROSECUTOR AND THE SECRETARY OF JUSTICE IN THE DETERMINATION OF PROBABLE CAUSE, EXPLAINED.—** A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. The decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the Secretary of Justice. The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.

4. **ID.; ID.; ID.; PROBABLE CAUSE, DEFINED.—** Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A finding of probable cause merely binds

over the suspect to stand trial; it is not a pronouncement of guilt.

5. ID.; ID.; ID.; NATURE OF PRELIMINARY INVESTIGATION, EXPLAINED.— Preliminary investigation is executive in character. It does not contemplate a judicial function. It is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime. Prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.

6. ID.; ID.; ID.; CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE, PRESENT.— After a careful evaluation of the entire evidence on record, we find no such grave abuse when the Secretary of Justice found probable cause to charge the respondent with murder in conspiracy with Aclan and Ona. The following facts and circumstances established during preliminary investigation were sufficient basis to incite reasonable belief in respondent's guilt: (a) *Motive* – respondent had credible reason to have Engr. Tria killed because of the impending criminal prosecution for *estafa* from her double sale of his lot prior to his death, judging from the strong interest of Engr. Tria's family to run after said property and/or proceeds of the second sale to a third party; (b) *Access* – respondent was close to Engr. Tria's family and familiar with his work schedule, daily routine and other transactions which could facilitate in the commission of the crime eventually carried out by a hired gunmen, one of *whom (Aclan) she and her father categorically admitted being in her company while she visited Engr. Tria hours before the latter was fatally shot at the airport*; (c) *Suspicious Behavior* — respondent while declaring such close personal relationship with Engr. Tria and even his family, failed to give any satisfactory explanation why she reacted indifferently to the violent killing of her friend while they conversed and shook hands at the airport. Indeed, a relative or a friend would not just stand by and walk away from the place as if nothing happened, as what she did, nor refuse to volunteer information that would help the authorities

investigating the crime, considering that she is a vital eyewitness. Not even a call for help to the people to bring her friend quickly to the hospital. She would not even dare go near Engr. Tria's body to check if the latter was still alive.

APPEARANCES OF COUNSEL

Samonte Felicen Tria Samonte Law Offices for petitioners.
Noe Botor for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision[1] dated August 14, 2006 and Resolution[2] dated December 11, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 86210. The CA denied the petition for *mandamus*/*certiorari* filed by the petitioners which assailed the Order[3] dated March 24, 2004 of the Office of the President (OP) dismissing the murder charge against the respondent.

The factual antecedents are as follows:

On May 22, 1998, at around 10:00 o'clock in the morning at the Pili Airport in Camarines Sur, Engr. Nestor Tria, Regional Director of the Department of Public Works and Highways (DPWH), Region V and concurrently Officer-In-Charge of the 2nd Engineering District of Camarines Sur, was shot by a gunman

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[1] *Rollo*, pp. 57-66. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta.

[2] *Id.* at 84. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta.

[3] CA *rollo*, pp. 50-56.

while waiting to board his flight to Manila. He was brought to a hospital but died the following day from the lone gunshot wound on his nape. Subsequently, the incident was investigated by the National Bureau of Investigation (NBI).

On July 31, 1998, NBI Regional Director Alejandro R. Tenerife, Chairman of Task Force Tria, recommended to the Provincial Prosecutor of Camarines Sur the indictment of Roberto "Obet" Aclan y Gulpo, Juanito "Totoy" Ona *y* Masalonga and Atty. Epifania "Fanny" Gonzales-Obias, for the murder of Engr. Tria.

On the basis of statements given by twenty-six (26) individuals, autopsy and ballistic examination reports, and relevant documents gathered,[4] the NBI submitted its findings, as follows:

> Our investigation disclosed that about two weeks before the incident ACLAN and ONA had been conducting an almost daily stakeout at the DPWH 2nd Engineering District of Camarines Sur in Sta. Elena, Iriga City where Regional Director TRIA was holding office from time to time as District Engineer in concurrent capacity. Alternately ACLAN and ONA would ask the security guard on duty if Director TRIA had already arrived and the usual days and time of his coming to the office. At noontime or early afternoon, after waiting vainly for TRIA's arrival, the duo would leave, riding tandem on a red motorcycle. During their surveillance it was ONA who frequently sat on the couch at the lobby of the Engineering Building while ACLAN was waiting near their motorcycle at the parking space. At times ONA would approach ACLAN to whisper a message and the latter would relay the message to someone else through a hand-held radio. There were also some instances when ACLAN would wait at the lobby while ONA was staying near the parked motorcycle. At one instance an employee had noticed a gun tucked on the waistline of ACLAN.
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> Around 8:00 o'clock in the morning of May 22, 1998, ACLAN and ONA were spotted in their usual places at the 2nd Engineering District in Iriga City. ONA was wearing a loose, yellow long sleeved shirt, maong pants and a pair of sneakers; ACLAN was in a white and gray striped shirt and a pair of maong pants. Shortly before 9:00 a.m. on

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[4] *Id.* at 87-153.

that day, THEO RUBEN CANEBA, a DPWH employee and newly elected Municipal Councilor of Buhi, Camarines Sur, arrived. He was warmly greeted and congratulated by his former co-employees outside the engineering building. It was at this point when CANEBA noticed a man about 5'4" in height, sturdy, with semi-curly hair, wearing a white and gray-striped shirt with maong pants and about 40 years old. The man (later identified through his photograph as ROBERTO ACLAN) was looking intensely at him and was shifting position from left to right to get a better view of him. Obviously, ACLAN was trying to figure out whether CANEBA was Director TRIA. After about 20 minutes, Administrative Officer JOSE PECUNDO announced to those who had some documents for signature of Director TRIA to proceed to Pili Airport where TRIA would sign them before leaving for Manila. Upon hearing this, ACLAN and ONA left hurriedly on board a red motorcycle. No sooner had ACLAN and ONA left that CANEBA cautioned the guards to be extra alert because he had some sense of foreboding about that man (referring to ACLAN).

Shortly after 10:00 a.m. on that day, Director TRIA arrived at the Airport. After signing some documents at the parking lot he proceeded towards the pre-departure area on the second floor of the airport building. ONA, who was waiting on the stairway, immediately followed TRIA as the latter was going up the stairs. As TRIA was approaching the pre-departure area he was met by Atty. [E]PIFANIA OBIAS who shook his hands and started conversing with him. It was at this juncture that a gunshot rang out and TRIA dropped like a log on the floor, bleeding profusely from a gunshot wound at the back of his head. As a commotion ensued, ONA was seen running down the stairway while tucking a gun on his waistline. Even before ONA could come out of the doorway, ACLAN was already outside the building, pointing a handgun at everybody – obviously to discourage any attempt of pursuit – while swiftly stepping backward to where their motorcycle was parked. He then fired shots at an army man who tried to chase ONA. The army man, who was then unarmed, sought cover behind a parked van. ACLAN and ONA then boarded a red motorcycle and sped away. Director TRIA died from a lone gunshot wound on his nape at the Mother Seton Hospital in Naga City the following day.

Atty. EPIFANIA OBIAS, on the other hand, admitted that she was with ROBERTO "OBET" ACLAN in the early morning of May 22, 1998; that at about 7:00 a.m. on that day she went to the residence of Director TRIA at Liboton, Naga City, had a brief talk with the latter and left immediately. She also volunteered the information

that ROBERTO ACLAN was not the gunman who had fired the fatal shot at Director TRIA. She was also the last person seen talking with Director TRIA when the latter was gunned down. A practicing lawyer, Atty. OBIAS also engages herself in real estate business on the side. In 1997 she had brokered a sale of real estate between and among spouses PRUDENCIO and LORETA JEREMIAS, as Vendors, and Spouses NESTOR and PURA TRIA, as Vendees, over a .9165 hectare of land in Balatas, Naga City. It was Atty. OBIAS who received, for and in behalf of the vendors, the full payment of P2.8 Million of the sale from the TRIAs with the agreement that Atty. OBIAS would take care of all legal processes and documentations until the Deed of Absolute Sale is delivered to the TRIA family. After the death of TRIA, the surviving spouse and heirs made several attempts to contact Atty. OBIAS to demand immediate delivery of the deed of sale, but the latter deliberately avoided the TRIA family and, despite verbal and written demands, she failed and refused, as she still fails and refuses, to fulfill her legal obligation to the TRIA family. At one instance, a representative of the TRIA family had chanced upon Atty. OBIAS at her residence and demanded of her to deliver the deed of sale to the TRIA family immediately. But Atty. OBIAS replied that Director TRIA had already disposed of the property before his death, a claim that can no longer be disputed by Director TRIA as his lips had already been sealed forever, except for the fact that neither the surviving spouse nor anyone of the heirs had given any consent to the purported subsequent sale.

During the lifetime of Director TRIA, Atty. OBIAS was one of the frequent visitors of the TRIA family and had been known to the family members as a friend and a close associate of Director TRIA. Yet, she never attended the wake of Director TRIA nor made any gesture of sympathy or condolence to the TRIA family up to the present time.[5]

During the preliminary investigation conducted by the Office of the Provincial Prosecutor, respondent filed her Counter-Affidavit denying that she was in anyway involved with the killing of Engr. Tria. Respondent admitted that Engr. Tria was a longtime friend and that she went to his residence at about 7:30 o'clock in the morning of May 22, 1998. Since Engr. Tria had many visitors at that time, they just agreed to see each

[5] *Id.* at 84-86.

other at the airport later. Respondent denied having admitted to NBI Supervising Agent (SA) Atty. Manuel Eduarte that she was with Aclan then, and neither did she volunteer the information that Aclan was not the triggerman. Respondent submitted the sworn statement of Edgar Awa, one of those witnesses interviewed by the NBI, who declared that Aclan and Ona were at the Iriga City DPWH Office in the morning of May 22, 1998 at 8:00 o'clock in the morning. Such is also corroborated by the sworn statement of another NBI witness, Theo Ruben Caneba, who declared that when he arrived at the DPWH Iriga office at about 8:30 o'clock in the morning of May 22, 1998, he noticed the presence of Aclan who was supposedly eyeing him intensely, and that after it was announced that those who have some transactions with Engr. Tria should just proceed to the airport, Caneba saw Aclan with a companion later identified as Ona, immediately left the compound in a motorcycle.[6]

Respondent likewise denied that she met Engr. Tria as the latter was approaching the pre-departure area of the airport and that she supposedly shook his hands. The truth is that when she and Engr. Tria met at the airport, the latter took her by the arm and led her to a place where they talked. Respondent asserted that from the totality of evidence gathered by the NBI, it has not established *prima facie* the existence of conspiracy as to implicate her in the death of Engr. Tria.[7]

On July 2, 1999, the Office of the Provincial Prosecutor of Camarines Sur issued a resolution[8] directing the filing of an information for murder against Aclan and Ona but dismissing the case for insufficiency of evidence as against herein respondent, Atty. Epifania Obias.

Petitioners appealed to the Department of Justice (DOJ) assailing the Provincial Prosecutor's order to dismiss the charge

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[6] *Id.* at 154-155.

[7] *Id.* at 155-156.

[8] *Id.* at 176-181.

against respondent.[9] On January 25, 2000, then Justice Secretary Serafin Cuevas issued a Resolution[10] modifying the July 2, 1999 resolution of the Provincial Prosecutor and directing the latter to include respondent in the information for murder filed against Aclan and Ona.

The DOJ agreed with the contention of petitioners that there is interlocking circumstantial evidence sufficient to show that respondent conspired with Aclan and Ona in the killing of Engr. Tria. It cited the following circumstances: (1) Despite respondent's admission regarding her friendship and close association with Engr. Tria, her visit at his house early morning of the same day, and her presence at the airport where she met Engr. Tria and was the person last seen with him, respondent never lifted a finger to help Engr. Tria when he was gunned down and neither did she volunteer to help in the investigation of Engr. Tria's murder nor visit the grieving family to give her account of the fatal shooting of Engr. Tria, which behavior negates her claim of innocence; (2) In the sworn statement of NBI SA Manuel Eduarte, he declared that respondent admitted to him that she and Aclan were together when she went to the residence of Engr. Tria at 7:30 in the morning of May 22, 1998 and that while she later denied such admission and explained that Aclan could not have been with her as the latter was at the DPWH Regional office at about 8:00 a.m., such does not render impossible the fact of Aclan's presence at the residence of Engr. Tria considering that the time given was mere approximation by respondent not to mention the possibility that Aclan could have easily gotten to the DPWH office after coming from the house of Engr. Tria using the same motorcycle which Aclan used as get-away vehicle at the airport; (3) SA Eduarte's statement cannot be simply disregarded as he had no ill motive to impute upon respondent the said admission; and (4) The double sale of the property wherein the Tria spouses already paid ₱2.8 million to respondent who brokered the sale, only to

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[9] *Id.* at 192-213.

[10] *Id.* at 341-347.

sell it to another buyer for ₱3.3 million, without turning over to the Tria family the deed of sale and her failure to attend to the registration of the land in the name of the Tria spouses – this strongly establishes the fact that respondent had the strongest motive to have Engr. Tria murdered by Aclan and Ona who were obviously guns for hire. Also mentioned was the respondent's representation of Aclan as the latter's defense lawyer in a frustrated murder case which was dismissed. Such client-lawyer relationship could have spawned respondent's ascendancy over Aclan.[11]

The DOJ was thus convinced that the sequence of events and respondent's conduct before, during and after the killing of Engr. Tria undeniably points to her complicity with Aclan and Ona. Moreover, it pointed out that respondent's defense consisted merely of denial which cannot prevail over the positive allegations of witnesses showing her complicity with the gunmen in the perpetration of the crime.[12]

Respondent along with Aclan and Ona filed a motion for reconsideration of the DOJ's January 25, 2000 resolution.[13] On February 18, 2000, Justice Secretary Artemio G. Tuquero issued a directive to State Prosecutor Josefino A. Subia who was the Acting Provincial Prosecutor of Camarines Sur, to defer, until further orders, the filing of the information for the inclusion of respondent, in order not to render moot the resolution of the motion for reconsideration of the January 25, 2000 resolution.[14]

On September 17, 2001, then Justice Secretary Hernando B. Perez issued a resolution denying respondent's motion for reconsideration.[15]

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[11] *Id.* at 344-346.

[12] *Id.* at 346.

[13] *Id.* at 252-265.

[14] *Id.* at 348.

[15] *Id.* at 274.

In the meantime, the information charging Aclan and Ona has already been filed with the Regional Trial Court (RTC) of Pili, Camarines Sur. Upon request however, the venue was transferred to the RTC Quezon City by resolution of this Court in A.M. No. 00-3145-RTC.[16]

Sometime in October 2001, the prosecution filed with the RTC Quezon City a Motion to Admit Amended Information to include respondent as one of the accused for the murder of Tria.[17]

On October 8, 2001, respondent filed a Notice of Appeal with the DOJ under the provisions of Administrative Order No. 18, series of 1987.[18] In a letter dated December 3, 2001 addressed to respondent's counsel, the DOJ denied respondent's notice of appeal on the ground that pursuant to Memorandum Circular No. 1266 dated November 4, 1983, as amended by Memorandum Circular No. 58 dated June 30, 1993, appeals to the OP where the penalty prescribed for the offense charged is "*reclusion perpetua* to death," shall be taken by petition for review.[19] Respondent filed a motion for reconsideration of the denial of her notice of appeal.[20]

It appears that on January 28, 2002, the RTC Quezon City issued an order admitting the amended information which includes respondent. The latter then filed with the RTC a Motion for Reconsideration with Prayer for the Suspension of the Issuance of a Warrant of Arrest dated February 28, 2002, a copy of which was furnished to the Legal Office of the OP on March 6, 2002.[21]

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[16] See Motion for Reconsideration with Prayer for the Suspension of the Issuance of a Warrant of Arrest, O.P. records, folder 1.

[17] *Id.*

[18] CA *rollo*, pp. 276-279.

[19] *Id.* at 280-281.

[20] *Id.* at 284-289.

[21] See O.P. records, folder 1.

On February 6, 2002, the DOJ denied respondent's motion for reconsideration stating that the proper procedure is the filing of an appeal or petition for review with the OP and not before the DOJ. Hence, the case was considered closed and terminated.[22] However, the DOJ directed the Provincial Prosecutor to forward the records of the case to the OP in compliance with the Order dated October 18, 2001 of Deputy Executive Secretary Jose Tale.[23] It turned out that respondent filed on October 1, 2001 a notice of appeal before the OP (O.P. Case No. 01-J-118).[24]

On June 27, 2003, Senior Deputy Executive Secretary Waldo Q. Flores adopted the findings of facts and conclusions of law in the appealed Resolutions dated January 25, 2000 and September 17, 2001 of the DOJ, and affirmed the same.[25] Respondent filed a motion for reconsideration on September 17, 2003.[26] On December 3, 2003, respondent filed a Supplemental Pleading and Submission of Newly Discovered Evidence.[27]

In his Order dated March 24, 2004, Presidential Assistant Manuel C. Domingo granted respondent's motion for reconsideration and reversed the DOJ resolutions. It was held that mere close relationship without any corroborative evidence showing intent to perpetrate the crime is not enough probable cause. The conclusion that respondent was the only one interested in the death of Engr. Tria because of the double sale from which respondent supposedly wanted to get away from her obligation to the Tria spouses, was based merely on the opinion of SA Eduarte. Also, since Mrs. Pura Tria admitted she knew of the said transaction, she could very well file a civil case for collection such that even with the death of Engr. Tria, respondent will

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[22] CA *rollo*, pp. 300-301.

[23] *Id.* at 302.

[24] *Id.* at 293-294.

[25] *Id.* at 340.

[26] *Id.* at 354-373.

[27] *Id.* at 374-378.

not be able to evade her obligation. As to the presence of both Aclan and respondent at the house of Engr. Tria early morning before the incident took place, the same was not sufficiently established, as shown by the affidavit of Felix Calayag. The OP thus concluded there was no interlocking circumstantial evidence of respondent's acts before, during and after the killing of Engr. Tria that would establish conspiracy among Aclan, Ona and respondent to commit the crime. Accordingly, the case against respondent was dismissed for insufficiency of evidence.[28]

Petitioners filed a motion for reconsideration[29] which was denied by the OP in its Order[30] dated June 10, 2004. Before the CA, petitioners filed a petition for *mandamus*/*certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

On August 14, 2006, the CA rendered the assailed Decision denying the petition. On the issue of the alleged grave abuse committed by the OP in modifying the findings of the DOJ instead of ordering the Secretary of Justice to reopen/review the case in accordance with Memorandum Circular No. 58, the CA held that it was not mandatory for the OP to do so. As for the evaluation of factual matters and credence to be accorded to the testimonies of respondent and her witnesses, the CA declared that these are not proper grounds in a petition for *certiorari* which is confined only to the correction of errors of jurisdiction. Neither will *mandamus* lie to compel the performance of a discretionary duty in view of the failure of petitioners to show a clear and certain right to justify the grant of relief.[31]

Their motion for reconsideration having been denied by the CA, petitioners are now before us contending that the CA manifestly overlooked relevant facts which, if properly considered, would justify a different conclusion. They maintain

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[28] *Id.* at 50-55.

[29] *Id.* at 57-82.

[30] *Id.* at 83.

[31] *Rollo,* pp. 57-65.

that the CA decision is contrary to law and established jurisprudence.

Petitioners argue that since the preliminary investigation and review of the resolution finding probable cause have already been terminated years before respondent's appeal to the OP — more so with the earlier denial of the said appeal for failing to raise any new issue not raised before the DOJ — the alleged new affidavits should have been referred to the DOJ for reinvestigation. As to the affidavits of Calayag and Jennis Nidea, said witnesses have not been confronted by the petitioners in violation of the latter's right to due process. Thus, the CA decision affirmed the OP's dismissal of the case against respondent at the level of the DOJ without referral to the said office and without consideration of the pendency of the case at RTC of Quezon City, Branch 76. Lacking such authority on appeal to appreciate newly submitted affidavits of Calayag and Nidea, Presidential Assistant Manuel C. Domingo arrogated unto himself the judicial task of analyzing the said documents without confrontation of the witnesses by the other party. Further, the CA overlooked the fact that such affidavits submitted by respondent as newly discovered evidence was merely a ploy in order for her appeal to qualify as raising new and material issues which were supposedly not raised before the DOJ.[32]

Petitioners further argue that the CA should not have affirmed the OP's dismissal of the murder charge against the respondent pursuant to *Crespo v. Mogul*[33] that once an information has been filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.

On the procedural issue raised by the petitioners, we hold that the OP did not err in taking cognizance of the appeal of respondent, and that the CA likewise had jurisdiction to pass

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[32] *Id.* at 43-46.

[33] G.R. No. 53373, June 30, 1987, 151 SCRA 462, 471.

upon the issue of probable cause in a petition challenging the OP's ruling.

Memorandum Circular No. 58[34] provides:

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No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death wherein **new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution**, in which case the President may order the Secretary of Justice to reopen/review the case, *provided*, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and *provided further*, that, the appeal or petition for review is filed within thirty (30) days from such notice.

Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright and no order shall be issued requiring the payment of the appeal fee, the submission of appeal brief/memorandum or the elevation of the records to the Office of the President from the Department of Justice.

If it is not readily apparent from the appeal or petition for review that the case is within the jurisdiction of the Office of the President, the appellant/petitioner shall be ordered to prove the necessary jurisdictional facts, under penalty of outright dismissal of the appeal or petition, and no order to pay the appeal fee or to submit appeal brief/memorandum or to elevate the records of the case to the Office of the President shall be issued unless and until the jurisdictional requirements shall have been satisfactorily established by the appellant/petitioner.

x x x x x x x x x (Emphasis supplied.)

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[34] "Reiterating And Clarifying The Guidelines Set Forth in Memorandum Circular No. 1266 (4 November 1983) Concerning The Review By The Office Of The President Of Resolutions Issued By The Secretary Of Justice Concerning Preliminary Investigations of Criminal Cases" issued on June 30, 1993. See *rollo*, pp. 219-220.

The offense for which respondent was charged is punishable by *reclusion perpetua* to death, which is clearly within the jurisdiction of the OP in accordance with Memorandum Circular No. 58. Respondent's appeal was initially dismissed when Senior Deputy Executive Secretary Waldo Q. Flores issued the Resolution dated June 27, 2003 affirming *in toto* the appealed resolutions of the Secretary of Justice and adopting the latter's findings and conclusions. However, subsequent to her filing of a motion for reconsideration of the said June 27, 2003 Resolution, respondent filed a Supplemental Pleading and Submission of Newly Discovered Evidence. The arguments of respondent in support of her motion for reconsideration were duly considered by the OP in reexamining the appealed resolutions. As the word "*may*" in the second paragraph of Memorandum Circular No. 58 signifies, it is not mandatory for the President to order the DOJ to reopen or review respondent's case even if it raised "new and material issues" allegedly not yet passed upon by the DOJ. Hence, the OP acted well within its authority in reexamining the merits of respondent's appeal in resolving the motion for reconsideration.

In arguing that the CA gravely abused its discretion when it affirmed the OP's dismissal of the murder charge against respondent, petitioner invoked our ruling in *Crespo v. Mogul* that any disposition of the case rests on the sound discretion of the court once an information has been filed with it.

A refinement of petitioners' understanding of the *Crespo* ruling is in order. In *Crespo,* we ruled that after the information has already been filed in court, the court's permission must be secured should the fiscal find it proper that reinvestigation be made. Thereafter, the court shall consider and act upon the findings and recommendations of the fiscal.

In *Ledesma v. Court of Appeals*,[35] we clarified that the justice secretary is not precluded from exercising his power of review over the investigating prosecutor even after the information

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[35] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

has already been filed in court. However, the justice secretary's subsequent resolution withdrawing the information or dismissing the case does not cause the court to lose jurisdiction over the case. In fact, the court is duty-bound to exercise judicial discretion and its own independent judgment in assessing the merits of the resulting motion to dismiss filed by the prosecution, to wit:

> When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, the bounded duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action. (Underscoring supplied.)

Further, it is well within the court's sound discretion to suspend arraignment to await the result of the justice secretary's review of the correctness of the filing of the criminal information.[36] There are exceptional cases, such as in *Dimatulac v. Villon*[37] wherein we have suggested that it would have been

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[36] *Solar Team Entertainment, Inc. v. How,* 393 Phil. 172 (2000).

[37] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

In *Dimatulac,* petitioners filed a complaint for the murder of SPO3 Virgilio Dimatulac with the judge-designate of the Municipal Circuit Trial Court of Macabebe, Pampanga against Mayor Santiago Yabut, his siblings, and several others, including two John Does. After preliminary investigation, the judge-designate recommended that an Information for murder be filed against the said accused. However, the Assistant Provincial Prosecutor conducted a reinvestigation and issued a Resolution that the accused be charged with homicide only. Petitioners appealed the Assistant Provincial Prosecutor's Resolution with the secretary of justice. Notwithstanding the appeal, an Information for homicide was filed against the accused, and the case was assigned to Judge Reynaldo Roura of Branch 55, RTC Macabebe. Petitioners filed an Urgent Motion to Defer Proceedings pending resolution of their

wiser for the court to await the justice secretary's resolution before proceeding with the case to avert a miscarriage of justice. Evidently however, this is not a hard and fast rule, for the court has complete control over the case before it.

Petitioners' argument that the non-referral by the OP to the DOJ of the appeal or motion for reconsideration filed by the respondent had deprived them of the opportunity to confront and cross-examine the witnesses on those affidavits belatedly submitted by the respondent is likewise untenable. Under the procedure for preliminary investigation provided in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, as amended,[38] in case the investigating prosecutor conducts a hearing where there are facts and issues to be clarified from a party or witness, "[t]he parties can be present at the hearing

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appeal to the Secretary of Justice. Judge Roura denied the motion, holding that there was no indication that the secretary of justice had given due course to the appeal. Petitioners filed 1) a Motion to Inhibit against Judge Roura; and 2) a Petition for Prohibition with the CA to enjoin from proceeding with the arraignment of the accused. Judge Roura voluntarily inhibited himself from the case, which was then transferred to Branch 54 presided by Judge Sesinando Villon. The CA issued a Resolution directing respondents to comment and show cause why no Preliminary Injunction should issue. Meanwhile, Judge Villon set the arraignment of the accused who, during arraignment, all pleaded not guilty to the homicide charge. On the other hand, the justice secretary issued an Order that the information be amended from homicide to murder. The accused moved for reconsideration of the said Order, alleging that they would otherwise be placed in double jeopardy; and citing DOJ Order No. 223, Series of 1993, particularly Section 4 thereof, which provides that no appeal to the justice secretary shall be entertained once the accused has already been arraigned. In response to this, the justice secretary issued a Resolution setting aside his Order, reasoning that petitioners' appeal was rendered moot and academic by the accused's arraignment for homicide. Judge Villon cited this Resolution of the justice secretary, as well as Section 4 of DOJ Order No. 223, Series of 1993 in denying petitioners' Motion to Set Aside Arraignment. On the other hand, the CA dismissed the petition before it for being moot and academic in view of Judge Roura's voluntary inhibition, the accused's arraignment, and the justice secretary's dismissal of petitioners' appeal.

[38] See *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76 & 175013, June 1, 2007, 523 SCRA 318, 341-342.

but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned."[39] Hence, the non-referral by the OP to the DOJ of the motion for reconsideration of respondent, in the exercise of its discretion, did not violate petitioners' right to due process.

In resolving the issue of whether the CA gravely abused its discretion in affirming the OP's reversal of the ruling of the Secretary of Justice, it is necessary to determine whether probable cause exists to charge the respondent for conspiracy in the murder of Engr. Tria.

A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. The decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the Secretary of Justice.[40]

The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.[41] Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether

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[39] Sec. 3 (e), Rule 112.

[40] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 40, citing *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[41] *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 252, citing the RULES OF COURT, Rule 112, Section 4, last paragraph.

the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.

However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice,[42] or to avoid oppression or multiplicity of actions.[43]

In reversing the DOJ's finding of probable cause, the OP found merit in the argument of the respondent that the DOJ's finding that she was with Aclan when she went to the residence of Engr. Tria early in the morning of May 22, 1998, was not sufficiently established. The OP gave more weight to the affidavit[44] of Calayag (attached to respondent's supplemental pleading on motion for reconsideration) — stating that Aclan was not around when they and respondent, among other visitors, were at Engr. Tria's house at that time — than that account given by SA Eduarte which was uncorroborated. As to the double sale allegedly committed by the respondent from which the latter's strong motive to liquidate Engr. Tria was inferred, the OP found this as a mere expression of opinion by the investigators considering that Engr. Tria's widow, Mrs. Pura Tria, categorically admitted her knowledge of the said transaction. Neither was the OP persuaded by the NBI's "kiss of death" theory since it is but a customary way of greeting a friend to shake hands and hence it cannot imply that respondent utilized this as a signal or identification for the gunman to shoot Engr. Tria. Respondent's alleged indifference immediately after Engr. Tria was gunned down while conversing with her, was

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[42] *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627-628, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[43] *Alawiya v. Datumanong, id.*, citing *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 615 (1996), *Brocka v. Enrile*, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188.

[44] CA *rollo*, pp. 382-383.

also negated by the affidavit of an employee of Philippine Air Lines based at the Pili Airport, stating that right after the incident took place he saw respondent in the radio room in shock and was being given water by another person.

Considering the totality of evidence, the OP was convinced there was nothing suspicious or abnormal in respondent's behavior before, during and after the fatal shooting of Engr. Tria as to engender a well-founded belief of her complicity with the killing of Engr. Tria, thus:

> The act of Obias in failing to help the deceased when the latter was shot should not be taken against her. In a tragic moment such as the incident, it is safe to assume that one could be overtaken by shock, grief or fear especially if the one involved is an acquaintance or a friend, leaving the former unable to act or think properly. Obias could have been overtaken by shock or grief making her body unable to function or think properly.
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> Moreover, the act of Obias in failing to contact or to visit the family of the deceased during the wake of the latter should not be taken against her. With rumors circulating that she is a possible primary suspect over the death of Engr. Tria, and to avoid any unnecessary confrontation with the family of the latter, whose emotions could be uncontrollable or animated by anger or revenge, Obias' act in keeping her silence and distance is permissive.
>
> The behavior of Obias before, during and after the incident should not be taken against her. It is worthy to note that Obias was confronted with extraordinary situations or circumstances wherein a definite or common behavior could not be easily formulated or determined. One's behavior or act during said extraordinary situations should not prejudice the actor if the latter failed to act or behave in such a manner acceptable to all or which, upon reflection afterwards, could be deemed the more appropriate, common or acceptable reaction.
>
> Obias' actions could be presumed common or acceptable considering the attendant circumstances surrounding the same, and they do not evince or show any malice or intent whatsoever.[45]

The relevant portion of SA Eduarte's affidavit reads:

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[45] *Id.* at 53-54.

3. That our first meeting was on or about 10:00 AM of May 25, 1998 at our office. She was accompanied by a certain RODEL who was introduced as her Office Assistant. On said meeting she verbally admitted the fact that she was the last person conversing with Dir. Tria when shot at the airport on or about 10:20 AM of May 22, 1998; that the shooting took place even before her first step after their short talk, but she could not identify the assailant/s because she had blacked out or became senseless because of fear;

4. That our second meeting was on or about 11:20 AM of May 28, 1998 at our office and she was alone then. That she stood pat on her claim that she was overwhelmed with fear and became oblivious of her surroundings after the gunshot that hit Dir. TRIA. When asked about the veracity of the information that she was seen at TRIA's residence at Molave St., Liboton, Naga City, Atty. Obias admitted that she was indeed at the residence of Director TRIA at around 7:30 AM of May 22, 1998, claiming her visit as official matter, she being the lawyer of the victim in some cases;

5. That finally we met on or about 5:00 PM of June 1, 1998 at the restaurant of Villa Caceres Hotel, Magsaysay Avenue, Naga City, upon arrangement made by our former Assistant Regional Director FRANCISCO "FRANK" OBIAS of NBI (now retired) and father-in-law of Atty. FANNY OBIAS; That said meeting materialized when on the morning of the said date, **Atty. FRANK OBIAS visited me at the office asking why her daughter-in-law FANNY was being implicated in the case of TRIA. Verbally, he said, FANNY had admitted to him that our suspect ROBERTO "OBET" ACLAN was with her at the residence of TRIA at about 7:30 AM on 22 May 1998, but he (Aclan) was not the triggerman.** During this meeting, ATTY. FRANK OBIAS was also around. Atty. FANNY OBIAS said she was worried because two (2) men who introduced themselves as NBI Agents visited her mother at Godofredo Reyes, Sr., (GRS) Ragay, Camarines Sur, telling the latter that she, (FANNY) was being tagged as the finger (identifier of the victim to the assailant) in the case of TRIA. This matter causes anxiety to her mother, she said. On said meeting, she admitted OBET ACLAN was with her at the residence of TRIA on or about 7:30 AM on May 22, 1998, and further, that OBET ACLAN was actually at the Pili Airport on that morning but insisted that ROBERTO "OBET" ACLAN was not the triggerman; x x x.[46] (Emphasis supplied.)

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[46] *Id.* at 139.

In its Comment filed before the CA, the Solicitor General argued that the alleged "interlocking circumstantial evidence" is pure speculation. To render even a preliminary finding of culpability based thereon does not sit well with the cherished "right to be presumed innocent" under Section 14 (2), Article III of the 1987 Constitution. Moreover, the case for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of evidence for the defense.[47]

Petitioners, however, maintain that the records are replete with abundant proof of respondent's complicity in the murder of Engr. Tria. They cite the following circumstances showing the existence of probable cause against the respondent: (1) In a radio interview in Naga City sometime in August 1998, respondent admitted that Aclan is her relative and that she is close to the family of Ona; (2) Respondent was present at the residence of Engr. Tria in the morning of May 22, 1998 between 7:00 to 7:30 a.m. with passengers in her vehicle waiting outside, and when later she was invited by the NBI as possible witness considering that she was the last person seen talking to Engr. Tria before the latter was gunned down at the airport, respondent admitted to SA Eduarte that Aclan was with her that morning at the residence of Engr. Tria; (3) The pre-arranged signal provided by respondent was in the form of a handshake while Ona was at the stairway observing the two, and thereupon Ona waited for the right moment to shoot Engr. Tria from behind; (4) Respondent despite having claimed to be a friend of the Tria family, just left the scene of the crime without asking for help to render assistance to her fallen friend; instead, she just boarded the plane as if no astounding event took place before her very eyes which snuffed the life of her longtime client-friend; and (5) In a conduct unbecoming of Filipinos, respondent never bothered to see the grieving family of Engr. Tria at anytime during the wake, burial or thereafter, and neither did she give them any account of what she saw during the shooting incident, which does not constitute normal behavior.

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[47] *Id.* at 426-427.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[48] It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.[49] A finding of probable cause merely binds over the suspect to stand trial; it is not a pronouncement of guilt.[50]

On the other hand, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[51] Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.[52]

We reverse the OP's ruling that the totality of evidence failed to establish a *prima facie* case against the respondent as a conspirator in the killing of Engr. Tria.

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[48] *Tan v. Ballena, supra* note 41 at 251, citing *Cruz, Jr. v. People,* G.R. No. 110436, June 27, 1994, 233 SCRA 439; *Ladlad v. Velasco, supra* note 38 at 335.

[49] *Id.*, citing *Pilapil v. Sandiganbayan,* G.R. No. 101978, April 7, 1993, 221 SCRA 349, 360.

[50] *Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City,* G.R. No. 174350, August 13, 2008, 562 SCRA 184, 205.

[51] Article 8, Revised Penal Code.

[52] *People v. Perez,* G.R. No. 179154, July 31, 2009, 594 SCRA 701, 714-715, citing *Mangangey v. Sandiganbayan,* G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51, 66.

To begin with, whether or not respondent actually conspired with Aclan and Ona need not be fully resolved during the preliminary investigation. The absence or presence of conspiracy is factual in nature and involves evidentiary matters. The same is better left ventilated before the trial court during trial, where the parties can adduce evidence to prove or disprove its presence.[53]

Preliminary investigation is executive in character. It does not contemplate a judicial function. It is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime.[54] Prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.[55]

After a careful evaluation of the entire evidence on record, we find no such grave abuse when the Secretary of Justice found probable cause to charge the respondent with murder in conspiracy with Aclan and Ona. The following facts and circumstances established during preliminary investigation were sufficient basis to incite reasonable belief in respondent's guilt: (a) *Motive* – respondent had credible reason to have Engr. Tria killed because of the impending criminal prosecution for *estafa* from her double sale of his lot prior to his death, judging from

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[53] *People v. Dumlao,* G.R. No. 168918, March 2, 2009, 580 SCRA 409, 432.

[54] *Torres, Jr. v. Aguinaldo,* G.R. No. 164268, June 28, 2005, 461 SCRA 599, 610.

[55] *Insular Life Assurance Company Limited v. Serrano,* G.R. No. 163255, June 22, 2007, 525 SCRA 400, 406, citing *D.M. Consunji, Inc. v. Esguerra,* 328 Phil. 1168 (1996) citing *Roberts, Jr. v. Court of Appeals,* 324 Phil. 568 (1996) and *Joaquin, Jr. v. Drilon,* 361 Phil. 900 (1999).

the strong interest of Engr. Tria's family to run after said property and/or proceeds of the second sale to a third party; (b) *Access* – respondent was close to Engr. Tria's family and familiar with his work schedule, daily routine and other transactions which could facilitate in the commission of the crime eventually carried out by a hired gunmen, one of *whom (Aclan) she and her father categorically admitted being in her company while she visited Engr. Tria hours before the latter was fatally shot at the airport*; (c) *Suspicious Behavior* — respondent while declaring such close personal relationship with Engr. Tria and even his family, failed to give any satisfactory explanation why she reacted indifferently to the violent killing of her friend while they conversed and shook hands at the airport. Indeed, a relative or a friend would not just stand by and walk away from the place as if nothing happened, as what she did, nor refuse to volunteer information that would help the authorities investigating the crime, considering that she is a vital eyewitness. Not even a call for help to the people to bring her friend quickly to the hospital. She would not even dare go near Engr. Tria's body to check if the latter was still alive.

All the foregoing circumstances, in our mind, and from the point of view of an ordinary person, lead to a reasonable inference of respondent's probable participation in the well-planned assassination of Engr. Tria. We therefore hold that the OP in reversing the DOJ Secretary's ruling, and the CA in affirming the same, both committed grave abuse of discretion. Clearly, the OP and CA arbitrarily disregarded facts on record which established probable cause against the respondent.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The Decision dated August 14, 2006 and Resolution dated December 11, 2006 of the Court of Appeals in CA-G.R. SP No. 86210 are *REVERSED* and *SET ASIDE*. The January 25, 2000 Resolution of then Justice Secretary Serafin Cuevas modifying the July 2, 1999 resolution of the Provincial Prosecutor of Camarines Sur and directing the latter to include respondent in the information for murder filed against Aclan and Ona is hereby *REINSTATED and UPHELD*.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176260. November 24, 2010]

LUCIA BARRAMEDA *VDA. DE* BALLESTEROS, *petitioner, vs.* **RURAL BANK OF CANAMAN, INC., represented by its Liquidator, the PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DOCTRINE ON ADHERENCE OF JURISDICTION; EXCEPTION.— [T]he Court recognizes the doctrine on adherence of jurisdiction. Lucia, however, must be reminded that such principle is not without exceptions. It is well to quote the ruling of the CA on this matter, thus: "This Court is not unmindful nor unaware of the doctrine on the adherence of jurisdiction. However, the rule on adherence of jurisdiction is not absolute and has exceptions. One of the exceptions is that when the change in jurisdiction is curative in character (*Garcia v. Martinez*, 90 SCRA 331 [1979]; *Calderon, Sr. v. Court of Appeals*, 100 SCRA 459 [1980]; *Atlas Fertilizer Corporation v. Navarro*, 149 SCRA 432 [1987]; *Abad v. RTC of Manila, Br. Lll*, 154 SCRA 664 [1987]). For sure, Section 30, R.A. 7653 is curative in character when it declared that the liquidation court shall have jurisdiction in the same proceedings to assist in the adjudication of the disputed claims against the Bank. The interpretation of this Section (formerly Section 29, R.A.

265) becomes more obvious in the light of its intent. In *Manalo v. Court of Appeals* (366 SCRA 752, [2001]), the Supreme Court says: xxx The requirement that all claims against the bank be pursued in the liquidation proceedings filed by the Central Bank is intended to prevent multiplicity of actions against the insolvent bank and designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness (citing *Ong v. CA*, 253 SCRA 105 [1996]). The lawmaking body contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate his operations (citing *Central Bank of the Philippines, et al. v. CA, et al.*, 163 SCRA 482 [1988]).*"*

2. ID.; ID.; ID.; THE TIME OF THE FILING OF PETITIONER'S COMPLAINT IS IMMATERIAL IN CASE AT BAR.— As regards Lucia's contention that jurisdiction already attached when Civil Case No. IR-3128 was filed with, and jurisdiction obtained by, the RTC-Iriga prior to the filing of the liquidation case before the RTC-Makati, her stance fails to persuade this Court. In refuting this assertion, respondent PDIC cited the case of *Lipana v. Development Bank of Rizal* where it was held that the time of the filing of the complaint is immaterial, *viz*: "It is the contention of petitioners, however, that the placing under receivership of Respondent Bank long after the filing of the complaint removed it from the doctrine in the said Morfe Case. This contention is untenable. The time of the filing of the complaint is immaterial. It is the execution that will obviously prejudice the other depositors and creditors. Moreover, as stated in the said Morfe case, the effect of the judgment is only to fix the amount of the debt, and not to give priority over other depositors and creditors." The cited *Morfe* case held that "after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the creditors, including depositors. The assets of the insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise." Thus, to allow Lucia's case to proceed independently of the liquidation case, a possibility of favorable judgment and execution thereof against the assets of RBCI would not only prejudice the other

creditors and depositors but would defeat the very purpose for which a liquidation court was constituted as well.

3. MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); PROCEEDINGS IN RECEIVERSHIP AND LIQUIDATION; DISPUTED CLAIMS; DEFINED.— Lucia's complaint involving annulment of deed of mortgage and damages falls within the purview of a disputed claim in contemplation of Section 30 of R.A. 7653 (The New Central Bank Act). The jurisdiction should be lodged with the liquidation court. Section 30 provides: "Sec. 30. *Proceedings in Receivership and Liquidation.* – x x x If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall: (1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate *disputed claims* against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution. x x x" "Disputed claims" refers to all claims, whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever. Lucia's action being a claim against RBCI can properly be consolidated with the liquidation proceedings before the RTC-Makati.

4. ID.; ID.; ID.; LIQUIDATION PROCEEDING; ELUCIDATED.— A liquidation proceeding has been explained in the case of *In Re: Petition For Assistance in the Liquidation of the Rural Bank of BOKOD (Benguet), Inc. v. Bureau of Internal Revenue* as follows: "A liquidation proceeding is a single proceeding which consists of a number of cases properly classified as "claims." It is basically a two-phased proceeding. The first phase is concerned with the approval and disapproval of claims. Upon

the approval of the petition seeking the assistance of the proper court in the liquidation of a closed entity, all money claims against the bank are required to be filed with the liquidation court. This phase may end with the declaration by the liquidation court that the claim is not proper or without basis. On the other hand, it may also end with the liquidation court allowing the claim. In the latter case, the claim shall be classified whether it is ordinary or preferred, and thereafter included Liquidator. In either case, the order allowing or disallowing a particular claim is final order, and may be appealed by the party aggrieved thereby. The second phase involves the approval by the Court of the distribution plan prepared by the duly appointed liquidator. The distribution plan specifies in detail the total amount available for distribution to creditors whose claim were earlier allowed. The Order finally disposes of the issue of how much property is available for disposal. Moreover, it ushers in the final phase of the liquidation proceeding – payment of all allowed claims in accordance with the order of legal priority and the approved distribution plan. x x x A liquidation proceeding is commenced by the filing of a single petition by the Solicitor General with a court of competent jurisdiction entitled, "Petition for Assistance in the Liquidation of *e.g.*, Pacific Banking Corporation." ***All claims*** against the insolvent are required to be filed with the liquidation court. Although the claims are litigated in the same proceeding, the treatment is individual. Each claim is heard separately. And the Order issued relative to a particular claim applies only to said claim, leaving the other claims unaffected, as each claim is considered separate and distinct from the others. x x x"

5. REMEDIAL LAW; COURTS; LIQUIDATION COURT; HAS JURISDICTION OVER ALL CLAIMS AGAINST AN INSOLVENT BANK.— [T]he liquidation court has jurisdiction over all claims, including that of Lucia against the insolvent bank. As declared in *Miranda v. Philippine Deposit Insurance Corporation*, regular courts do not have jurisdiction over actions filed by claimants against an insolvent bank, unless there is a clear showing that the action taken by the BSP, through the Monetary Board, in the closure of financial institutions was in excess of jurisdiction, or with grave abuse of discretion. The same is not obtaining in this present case.

6. MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); MONETARY BOARD; THE POWER AND AUTHORITY THEREOF TO CLOSE BANKS AND LIQUIDATE THEM THEREAFTER WHEN PUBLIC INTEREST SO REQUIRES IS AN EXERCISE OF THE POLICE POWER OF THE STATE.— The power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution.

APPEARANCES OF COUNSEL

Sonny H. Manangit for petitioner.
Office of the General Counsel (PDIC) for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the August 15, 2006 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. No. 82711, modifying the decision of the Regional Trial Court of Iriga City, Branch 36 *(RTC-Iriga)*, in Civil Case No. IR-3128, by ordering the consolidation of the said civil case with Special Proceeding Case No. M-5290 *(liquidation case)* before the Regional Trial Court of Makati City, Branch 59 *(RTC-Makati)*.

It appears from the records that on March 17, 2000, petitioner Lucia Barrameda *Vda. De* Ballesteros *(Lucia)* filed a complaint for *Annulment of Deed of Extrajudicial Partition, Deed of*

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[1] *Rollo*, pp. 16-24. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Rebecca De Guia Salvador and Vicente S.E. Veloso, concurring.

Mortgage and Damages with prayer for Preliminary Injunction against her children, Roy, Rito, Amy, Arabel, Rico, Abe, Ponce Rex and Adden, all surnamed Ballesteros, and the Rural Bank of Canaman, Inc., Baao Branch *(RBCI)* before the RTC-Iriga. The case was docketed as Civil Case No. IR-3128.

In her complaint, Lucia alleged that her deceased husband, Eugenio, left two (2) parcels of land located in San Nicolas, Baao, Camarines Sur, each with an area of 357 square meters; that on March 6, 1995, without her knowledge and consent, her children executed a deed of extrajudicial partition and waiver of the estate of her husband wherein all the heirs, including Lucia, agreed to allot the two parcels to Rico Ballesteros *(Rico)*; that, still, without her knowledge and consent, Rico mortgaged Parcel B of the estate in favor of RBCI which mortgage was being foreclosed for failure to settle the loan secured by the lot; and that Lucia was occupying Parcel B and had no other place to live. She prayed that the deed of extrajudicial partition and waiver, and the subsequent mortgage in favor of RBCI be declared null and void having been executed without her knowledge and consent. She also prayed for damages.

In its Answer, RBCI claimed that in 1979, Lucia sold one of the two parcels to Rico which represented her share in the estate of her husband. The extrajudicial partition, waiver and mortgage were all executed with the knowledge and consent of Lucia although she was not able to sign the document. RBCI further claimed that Parcel B had already been foreclosed way back in 1999 which fact was known to Lucia through the auctioning notary public. Attorney's fees were pleaded as counterclaim.

The case was then set for pre-trial conference. During the pre-trial, RBCI's counsel filed a motion to withdraw after being informed that Philippine Deposit Insurance Corporation *(PDIC)* would handle the case as RBCI had already been closed and placed under the receivership of the PDIC. Consequently, on February 4, 2002, the lawyers of PDIC took over the case of RBCI.

On May 9, 2003, RBCI, through PDIC, filed a motion to dismiss on the ground that the RTC-Iriga has no jurisdiction over the subject matter of the action. RBCI stated that pursuant to Section 30, Republic Act No. 7653 *(RA No. 7653)*, otherwise known as the "New Central Bank Act," the RTC-Makati, already constituted itself, per its Order dated August 10, 2001, as the liquidation court to assist PDIC in undertaking the liquidation of RBCI. Thus, the subject matter of Civil Case No. IR-3128 fell within the exclusive jurisdiction of such liquidation court. Lucia opposed the motion.

On July 29, 2003, the RTC-Iriga issued an order[2] granting the Motion to Dismiss, to wit:

> This resolves the Motion to Dismiss filed by the defendant Rural Bank of Canaman, Inc., premised on the ground that this court has no jurisdiction over the subject matter of the action. This issue of jurisdiction was raised in view of the pronouncement of the Supreme Court in *Ong v. C.A.* 253 SCRA 105 and in the case of *Hernandez v. Rural Bank of Lucena, Inc*., G.R. No. L-29791 dated January 10, 1978, wherein it was held that "the liquidation court shall have jurisdiction to adjudicate all claims against the bank whether they be against assets of the insolvent bank, for Specific Performance, Breach of Contract, Damages or whatever."
>
> It is in view of this jurisprudential pronouncement made by no less than the Supreme Court, that this case is, as far as defendant Rural Bank of Canaman Inc., is concerned, hereby ordered DISMISSED without prejudice on the part of the plaintiff to ventilate their claim before the Liquidation Court now, RTC Branch 59, Makati City.
>
> SO ORDERED.

Not in conformity, Lucia appealed the RTC ruling to the CA on the ground that the RTC-Iriga erred in dismissing the case because it had jurisdiction over Civil Case No. IR-3128 under the rule on adherence of jurisdiction.

On August 15, 2006, the CA rendered the questioned decision ordering the consolidation of Civil Case No. IR-3128 and the

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[2] Annex C of petition, *id.* at 29.

liquidation case pending before RTC-Makati. The appellate court ratiocinated thus:

> …The consolidation is desirable in order to prevent confusion, to avoid multiplicity of suits and to save unnecessary cost and expense. Needless to add, this procedure is well in accord with the principle that the rules of procedure shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding (*Vallacar Transit, Inc. v. Yap*, 126 SCRA 500 [1983]; *Suntay v. Aguiluz*, 209 SCRA 500 [1992] citing *Ramos v. Ebarle*, 182 SCRA 245 [1990]). It would be more in keeping with the demands of equity if the cases are simply ordered consolidated. Pursuant to Section 2, Rule 1, Revised Rules of Court, the rules on consolidation should be liberally construed to achieve the object of the parties in obtaining just, speedy and inexpensive determination of their cases (*Allied Banking Corporation v. Court of Appeals*, 259 SCRA 371 [1996]). …

The dispositive portion of the decision reads:

> IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby **MODIFIED**, in such a way that the dismissal of this case (Civil Case No. IR-3128) is set aside and in lieu thereof another one is entered ordering the **consolidation** of said case with the liquidation case docketed as Special Proceeding No. M-5290 before Branch 59 of the Regional Trial Court of Makati City, entitled "*In Re: Assistance in the Judicial Liquidation of Rural Bank of Canaman, Camarines Sur, Inc., Philippine Deposit Corporation, Petitioner.*" No pronouncement as to cost.
>
> SO ORDERED.[3]

Lucia filed a motion for reconsideration[4] but it was denied by the CA in its Resolution dated December 14, 2006.[5]

Hence, the present petition for review on *certiorari* anchored on the following:

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[3] *Id.* at 24.

[4] Annex I of petition, *id.* at 65.

[5] *Id.* at 28.

GROUNDS

(I)

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE REGIONAL TRIAL COURT OF IRIGA CITY, BRANCH 36 IS VESTED WITH JURISDICTION TO CONTINUE TRYING AND ULTIMATELY DECIDE CIVIL CASE NO. IR-3128.

(II)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN ORDERING THE CONSOLIDATION OF CIVIL CASE NO. IR-3128 WITH THE LIQUIDATION CASE DOCKETED AS SPECIAL PROCEEDINGS NO. M-5290 BEFORE BRANCH 59 OF THE REGIONAL TRIAL COURT OF MAKATI CITY.[6]

Given the foregoing arguments, the Court finds that the core issue to be resolved in this petition involves a determination of whether a liquidation court can take cognizance of a case wherein the main cause of action is not a simple money claim against a bank ordered closed, placed under receivership of the PDIC, and undergoing a liquidation proceeding.

Lucia contends that the RTC-Iriga is vested with jurisdiction over Civil Case No. 3128, the constitution of the liquidation court notwithstanding. According to her, the case was filed before the RTC-Iriga on March 17, 2000 at the time RBCI was still doing business or before the defendant bank was placed under receivership of PDIC in January 2001.

She further argues that the consolidation of the two cases is improper. Her case, which is for annulment of deed of partition and waiver, deed of mortgage and damages, cannot be legally brought before the RTC-Makati with the liquidation case considering that her cause of action against RBCI is not a simple claim arising out of a creditor-debtor relationship, but one which involves her rights and interest over a certain property irregularly acquired by RBCI. Neither is she a creditor of the bank, as

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[6] *Id.* at 8.

only the creditors of the insolvent bank are allowed to file and ventilate claims before the liquidator, pursuant to the August 10, 2001 Order of the RTC-Makati which granted the petition for assistance in the liquidation of RBCI.

In its Comment,[7] PDIC, as liquidator of RBCI, counters that the consolidation of Civil Case No. 3128 with the liquidation proceeding is proper. It posits that the liquidation court of RBCI, having been established, shall have exclusive jurisdiction over *all* claims against the said bank.

After due consideration, the Court finds the petition devoid of merit.

Lucia's argument, that the RTC-Iriga is vested with jurisdiction to continue trying Civil Case No. IR-3128 until its final disposition, evidently falls out from a strained interpretation of the law and jurisprudence. She contends that:

> Since the RTC-Iriga has already obtained jurisdiction over the case it should continue exercising such jurisdiction until the final termination of the case. The jurisdiction of a court once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and the Court retains jurisdiction until it finally disposes of the case (*Aruego Jr. v. Court of Appeals*, 254 SCRA 711).
>
> When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to final determination of the case is not affected by a new legislation transferring jurisdiction over such proceedings to another tribunal. (*Alindao v. Joson*, 264 SCRA 211). Once jurisdiction is vested, the same is retained up to the end of the litigation (*Bernate v. Court of Appeals*, 263 SCRA 323).[8]

The afore-quoted cases, cited by Lucia to bolster the plea for the continuance of her case, find no application in the case at bench.

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[7] *Id.* at 74.

[8] *Id.* at 9.

Indeed, the Court recognizes the doctrine on adherence of jurisdiction. Lucia, however, must be reminded that such principle is not without exceptions. It is well to quote the ruling of the CA on this matter, thus:

> This Court is not unmindful nor unaware of the doctrine on the adherence of jurisdiction. However, the rule on adherence of jurisdiction is not absolute and has exceptions. One of the exceptions is that when the change in jurisdiction is curative in character (*Garcia v. Martinez*, 90 SCRA 331 [1979]; *Calderon, Sr. v. Court of Appeals*, 100 SCRA 459 [1980]; *Atlas Fertilizer Corporation v. Navarro*, 149 SCRA 432 [1987]; *Abad v. RTC of Manila, Br. Lll*, 154 SCRA 664 [1987]).
>
> For sure, Section 30, R.A. 7653 is curative in character when it declared that the liquidation court shall have jurisdiction in the same proceedings to assist in the adjudication of the disputed claims against the Bank. The interpretation of this Section (formerly Section 29, R.A. 265) becomes more obvious in the light of its intent. In *Manalo v. Court of Appeals* (366 SCRA 752, [2001]), the Supreme Court says:
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> > xxx The requirement that all claims against the bank be pursued in the liquidation proceedings filed by the Central Bank is intended to prevent multiplicity of actions against the insolvent bank and designed to establish due process and orderliness in the liquidation of the bank, to obviate the proliferation of litigations and to avoid injustice and arbitrariness (citing *Ong v. CA*, 253 SCRA 105 [1996]). The lawmaking body contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate his operations (citing *Central Bank of the Philippines, et al. v. CA, et al.*, 163 SCRA 482 [1988]).[9]

As regards Lucia's contention that jurisdiction already attached when Civil Case No. IR-3128 was filed with, and jurisdiction obtained by, the RTC-Iriga prior to the filing of the liquidation case before the RTC-Makati, her stance fails to persuade this Court. In refuting this assertion, respondent PDIC

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

cited the case of *Lipana v. Development Bank of Rizal*[10] where it was held that the time of the filing of the complaint is immaterial, *viz*:

> It is the contention of petitioners, however, that the placing under receivership of Respondent Bank long after the filing of the complaint removed it from the doctrine in the said Morfe Case.
>
> This contention is untenable. The time of the filing of the complaint is immaterial. It is the execution that will obviously prejudice the other depositors and creditors. Moreover, as stated in the said Morfe case, the effect of the judgment is only to fix the amount of the debt, and not to give priority over other depositors and creditors.

The cited *Morfe* case[11] held that "after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the creditors, including depositors. The assets of the insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise."

Thus, to allow Lucia's case to proceed independently of the liquidation case, a possibility of favorable judgment and execution thereof against the assets of RBCI would not only prejudice the other creditors and depositors but would defeat the very purpose for which a liquidation court was constituted as well.

Anent the second issue, Lucia faults the CA in directing the consolidation of Civil Case No. IR-3128 with Special Proceedings No. M-5290. The CA committed no error. Lucia's complaint involving annulment of deed of mortgage and damages falls within the purview of a disputed claim in contemplation of Section 30 of R.A. 7653 (The New Central Bank Act). The jurisdiction should be lodged with the liquidation court. Section 30 provides:

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[10] 238 Phil. 246, 252 (1987).

[11] *Central Bank of the Philippines v. Morfe*, 159 Phil. 727 (1975).

Sec. 30. *Proceedings in Receivership and Liquidation.* – Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has wilfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designated as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors and creditors and the general public: *Provided*, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of

directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate ***disputed claims*** against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. [Emphasis supplied]

x x x x x x x x x

"Disputed claims" refers to all claims, whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages, or whatever.[12] Lucia's action being a claim against RBCI can properly be consolidated with the liquidation proceedings before the RTC-Makati. A liquidation proceeding has been explained in the case of *In Re: Petition For Assistance*

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[12] *Miranda v. Philippine Deposit Insurance Corporation*, G.R. 169334, September 8, 2006, 501 SCRA 288, 298, citing *Ong v. Court of Appeals*, 323 Phil. 126, 131 (1996).

in the Liquidation of the Rural Bank of BOKOD (Benguet), Inc. v. Bureau of Internal Revenue[13] as follows:

A liquidation proceeding is a single proceeding which consists of a number of cases properly classified as "claims." It is basically a two-phased proceeding. The first phase is concerned with the approval and disapproval of claims. Upon the approval of the petition seeking the assistance of the proper court in the liquidation of a closed entity, all money claims against the bank are required to be filed with the liquidation court. This phase may end with the declaration by the liquidation court that the claim is not proper or without basis. On the other hand, it may also end with the liquidation court allowing the claim. In the latter case, the claim shall be classified whether it is ordinary or preferred, and thereafter included Liquidator. In either case, the order allowing or disallowing a particular claim is final order, and may be appealed by the party aggrieved thereby.

The second phase involves the approval by the Court of the distribution plan prepared by the duly appointed liquidator. The distribution plan specifies in detail the total amount available for distribution to creditors whose claim were earlier allowed. The Order finally disposes of the issue of how much property is available for disposal. Moreover, it ushers in the final phase of the liquidation proceeding – payment of all allowed claims in accordance with the order of legal priority and the approved distribution plan.

x x x x x x x x x

A liquidation proceeding is commenced by the filing of a single petition by the Solicitor General with a court of competent jurisdiction entitled, "Petition for Assistance in the Liquidation of *e.g.*, Pacific Banking Corporation." ***All claims*** against the insolvent are required to be filed with the liquidation court. Although the claims are litigated in the same proceeding, the treatment is individual. Each claim is heard separately. And the Order issued relative to a particular claim applies only to said claim, leaving the other claims unaffected, as each claim is considered separate and distinct from the others. x x x [Emphasis supplied.]

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[13] G.R. No. 158261, December 18, 2006, 511 SCRA 123, 149-150, citing *Pacific Banking Corporation Employees' Organization (PaBCEO) v. Court of Appeals,* 312 Phil. 578 (1995).

It is clear, therefore, that the liquidation court has jurisdiction over all claims, including that of Lucia against the insolvent bank. As declared in *Miranda v. Philippine Deposit Insurance Corporation*,[14] regular courts do not have jurisdiction over actions filed by claimants against an insolvent bank, unless there is a clear showing that the action taken by the BSP, through the Monetary Board, in the closure of financial institutions was in excess of jurisdiction, or with grave abuse of discretion. The same is not obtaining in this present case.

The power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution.[15]

In sum, this Court holds that the consolidation is proper considering that the liquidation court has jurisdiction over Lucia's action. It would be more in keeping with law and equity if Lucia's case is consolidated with the liquidation case in order to expeditiously determine whether she is entitled to recover the property subject of mortgage from RBCI and, if so, how much she is entitled to receive from the remaining assets of the bank.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[14] G.R. No. 169334, September 8, 2006, 501 SCRA 288, 297.

[15] *Miranda v. Philippine Deposit Insurance Corporation*, G.R. No. 169334, September 8, 2006, 501 SCRA 288, 297, citing *Banco Filipino Savings and Mortgage Bank v. Monetary Board, Central Bank of the Philippines*, G.R. Nos. 70054, 68878, 77255-58, 78766, 78767, 78894, 81303, 81304, 90473, December 11, 1991, 204 SCRA 767, 798.

FIRST DIVISION

[G.R. No. 180914. November 24, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO DOMINGUEZ, JR., *alias* "SANDY,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; HOW COMMITTED.— Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. In *People v. Orillosa*, we held that in incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.

2. ID.; ACTS OF LASCIVIOUSNESS; COMMITTED ABSENT ANY SHOWING THAT THE OFFENDER ACTUALLY COMMENCES TO FORCE HIS PENIS INTO THE VICTIM'S SEXUAL ORGAN.— We x x x affirm the convictions of accused-appellant in Criminal Case Nos. 02-548 and 02-552, for two counts of acts of lasciviousness and not for attempted rape. The Court of Appeals aptly cited *Perez v. Court of Appeals* in which we ruled: "[A] careful review of the records of the case shows that the crime committed by petitioner was acts of lasciviousness not attempted rape. x x x **[F]or there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.** There is no showing in this case that petitioner's sexual organ had ever touched complainant's vagina nor any part of her body. x x x." (Emphasis ours.) We also reiterated in *Perez* our pronouncements in *People v. Caingat*, that the

offender's acts of lying on top of the victim, embracing and kissing her, mashing her breasts, inserting his hand inside her panty, and touching her sexual organ, which were interrupted were it not for the timely arrival of the victim's mother, do not constitute the crime of attempted rape, absent any showing that the offender actually commenced to force his penis into the victim's sexual organ, and that said acts rather constitute the crime of acts of lasciviousness punishable under Article 336 of the Revised Penal Code.

3. ID.; ATTEMPTED RAPE; THE GAUGE IN DETERMINING WHETHER THE CRIME HAD BEEN COMMITTED IS THE COMMENCEMENT OF THE ACT OF SEXUAL INTERCOURSE.— We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption.

4. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.— The elements of acts of lasciviousness, punishable under Article 336 of the Revised Penal Code, are: "(1)That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex."

5. ID.; ID.; LEWDNESS; DEFINED.— Lewdness is defined as an "obscene, lustful, indecent, and lecherous" act which signifies that form of immorality carried on a wanton manner. It is morally inappropriate, indecent, and lustful for accused-appellant to undress himself and his own daughter (who was completely capable of dressing or undressing herself), while his wife was away and his other children were asleep; or doing the same

acts in an isolated coconut farm where only the two of them were present.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SILENCE AND APPARENT ASSENT OF THE VICTIM TO THE SEXUAL ABUSES OF HER FATHER FOR A PERIOD OF TIME IS UNDERSTANDABLE IN CASE AT BAR.—We find completely understandable AAA's silence and apparent assent to the sexual abuses of her father for a period of time. No standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. More importantly, in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. AAA sufficiently explained that fear of her father's authority and shame kept her from revealing to others her ghastly ordeal at the hands of her own father. Moreover, AAA's fear of physical harm if she defied her father was real. By accused-appellant's own admission, on cross examination, he had used physical force to discipline his children whenever he was angry or mad.

7. ID.; ID.; ID.; THE ISSUE THEREON IS A QUESTION BEST ADDRESSED TO THE PROVINCE OF THE TRIAL COURT.— Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts" and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." This rule is even more stringently applied if the appellate court concurred with the trial court.

8. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE VICTIM AND THE STRAIGHTFORWARD RECOUNTING OF THE COMMISSION OF THE CRIME.— In *People v. Nieto*, we stressed further that the bare denial and uncorroborated alibi of the accused cannot overcome his positive identification by the victim and straightforward recounting of his commission of a crime x x x. This is even more particularly true in rape cases where the accused and the victim are father and daughter, respectively.

9. CRIMINAL LAW; QUALIFIED RAPE; PENALTY; CASE AT BAR.— Given the enactment of Republic Act No. 9346, the Court of Appeals properly reduced the penalty of death and, instead, imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole for each count of his three convictions for qualified rape in Criminal Case Nos. 02-549, 02-550, and 02-551.

10. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED TO THE VICTIM FOR EACH COUNT OF QUALIFIED RAPE IN CASE AT BAR.— The appellate court also correctly ordered accused-appellant to pay the victim for each count of qualified rape, the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, consistent with current jurisprudence on qualified rape. However, the exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) should be increased to Thirty Thousand Pesos (₱30,000.00) in line with recent case law.

11. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; PENALTY; CASE AT BAR.— We likewise affirm the penalty imposed by the Court of Appeals upon accused-appellant for his conviction on two counts of acts of lasciviousness in Criminal Case Nos. 02-548 and 02-552. Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punishable by *prision correccional*. With the alternative circumstance of relationship taken as

an aggravating circumstance in the commission of the crime, the penalty prescribed by law shall be imposed in its maximum period following Article 64(3) of the said Code, or four (4) years, two (2) months and one (1) day to six (6) years. Applying the indeterminate sentence law, the said penalty shall constitute the maximum term while the minimum term shall be within the range of the penalty next lower in degree to that of the penalty provided by law which is *arresto mayor* or one (1) month and one (1) day to six (6) months. Thus, accused-appellant is hereby sentenced to suffer, for each count of acts of lasciviousness, the penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum.

12. CIVIL LAW; DAMAGES; MORAL DAMAGES; CIVIL INDEMNITY AND EXEMPLARY DAMAGES; AWARDED FOR EACH COUNT OF ACTS OF LASCIVIOUSNESS IN CASE AT BAR.—The award by the Court of Appeals of moral damages to AAA in the amount of Thirty Thousand Pesos (₱30,000.00), for each count of acts of lasciviousness, is appropriate, in the same way that moral damages are awarded to victims of rape even without need of proof because of the presumption that the victim has suffered moral injury, rests on settled jurisprudence. We also deem that AAA is further entitled to an award of civil indemnity in the amount of Twenty Thousand Pesos (₱20,000.00), for each count of acts of lasciviousness. The amount of exemplary damages should also be increased from the Twenty-Five Thousand Pesos (₱25,000.00) awarded by the Court of Appeals, to Thirty Thousand Pesos (₱30,000.00), for each count of acts of lasciviousness, considering the presence of the aggravating circumstance of relationship in the commission of the crime. Exemplary damages should be awarded "in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02131 which affirmed with modifications the Decision[2] dated February 6, 2006 of Branch 65 of the Regional Trial Court (RTC) of Bulan, Sorsogon, convicting accused-appellant Domingo Dominguez, Jr., also known as "Sandy," of three counts of rape and two counts of attempted rape of his minor daughter.

Consistent with our ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstances or any other information tending to establish or compromise her identity. The initials AAA represent the private offended party, the initials BBB refer to her mother, and the initials CCC stand for one of her relatives.

Accused-appellant was indicted for four counts of rape and one count of attempted rape, all qualified by his relationship with and the minority of the private offended party. The criminal informations read:

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[1] *Rollo*, pp. 2-39; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring.

[2] CA *rollo*, pp. 25-41.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597.

Criminal Case No. 02-548 [Amended Information]

That on or about July 20, 2001 at more or less 7:00 o'clock in the evening, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[5]

Criminal Case No. 02-549 [Amended Information]

That on the 4th week of July 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[6]

Criminal Case No. 02-550 [Amended Information]

That in the second week of August 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did

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[5] Records, Vol. 1, p. 41.

[6] Records, Vol. 2, p. 39.

then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[7]

Criminal Case No. 02-551 [Amended Information]

That in the second week of September 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[8]

Criminal Case No. 02-552

That on or about November 20, 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously, commence the commission of the crime of Rape directly by overt acts upon the person of [AAA], a minor, 12 years of age, through force and intimidation taking advantage of his moral ascendancy being the father, to wit: by undressing the victim, thereby removing all her clothing apparel with the intention of having carnal knowledge, against her will and without her consent, but said accused did not however perform all the acts of execution which should have produced the crime of rape, as a consequence, by reason of some causes or accident other than his

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[7] Records, Vol. 3, p. 24.

[8] Records, Vol. 4, p. 27.

own spontaneous desistance, that is because somebody saw them, and said acts produced psychological and emotional trauma to said [AAA], to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[9]

Upon arraignment, accused-appellant pleaded not guilty to all charges. A pre-trial conference[10] followed and, thereafter, the criminal charges were jointly tried.

The prosecution presented four witnesses, namely, the private offended party, AAA;[11] her mother, BBB;[12] her relative who claimed to be an eyewitness to the sexual abuse, CCC;[13] and the medico-legal who physically examined her for signs of sexual abuse, Dr. Irene V. Ella.[14] The documentary exhibits of the prosecution consisted of the Medico-Legal Report[15] dated November 23, 2001 issued by Dr. Ella; the Certificate of Live Birth of AAA[16] issued by the Office of the Municipal Civil Registrar, Magallanes, Sorsogon; and the Marriage Contract of AAA's parents.[17] The defense, on the other hand, presented the testimony of accused-appellant.[18]

Based on the combined testimonies of the witnesses and documentary evidence for the prosecution, the RTC accounted the prosecution's version of the facts as follows:

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[9] Records, Vol. 5, p. 1.

[10] Records, Vol. 1, pp. 57-58.

[11] TSN, June 22, 2004 and August 10, 2004.

[12] TSN, December 14, 2004, pp. 7-19.

[13] TSN, September 21, 2004 and December 14, 2004, pp. 1-7.

[14] TSN, March 9, 2004.

[15] CA *rollo*, p. 46.

[16] *Id.* at 47 and 49.

[17] *Id.* at 48.

[18] TSN, September 6, 2005.

The evidence for the prosecution shows and as narrated in open court by the victim herself [AAA]; that the first incident of rape happened before the fiesta of Magallanes which was in the month of July 2001. Her small siblings were already asleep and she was about to go to sleep also, when she noticed her father (the accused) already beside her. Her father (accused) undressed her while he also undressed himself, and as he was about to mount her for the purpose of raping her, her mother arrived and inquired why she was naked. Because of fear of bodily harm brought about by the threat coming from the accused who was then holding a bolo, the victim did not say anything. She positively identified her father (the accused) inside the courtroom when asked to do so by the public prosecutor. The accused failed to consummate the rape during the first incident.

The second rape happened after a week from the first attempt, which could be between the fourth week of July or first week of August 2001 because the victim stated that it was no longer in the month of July 2001. It happened in a coconut farm in Anibong, Magallanes, Sorsogon. The victim was asked by her father to accompany him in getting coconut leaves because they are going to weave it in their house. When the two (2) of them reached the place, her father (accused) undressed her and thereafter undressed himself also and made her lie down then inserted his penis into her vagina. She felt weak and pain all over her body including her vagina which she felt to be swollen at that time. She tried to struggle but she was helpless, particularly so, that the accused was also armed with a bolo at that time. After the bestial act was consummated they proceeded home bringing with them the coconut leaves that they gathered. She did not tell anyone about the incident because of fear of the accused and the thought that they might not believe her.

The third incident of rape happened two (2) weeks after the second incident, which was sometime in the month of August 2001. While the fourth incident of rape happened three (3) weeks after the third incident which was sometime in the month of September 2001. The fifth and last incident of rape happened according to the victim sometime in the 20th of November 2001. All the 3rd, 4th and 5th incidents of rape happened in the same coconut farm although in the different places of the farm. The same pattern of execution was adopted by the accused. He would ask the victim to go with him to the coconut farm to gather coconut leaves, and once they reached the place the accused would undress the victim then undress himself also and have sexual intercourse with her against her will. The victim could not refuse or disobey the

command of the accused (her father) because he will scold and threaten her with punishment if she would not go with him. She could not also tell her mother about it because of fear. At the time of the first and second rapes the victim was only 12 years old. She was already 13 years old when the third, fourth, and fifth incidents of rape happened. Her date of birth was January 3, 1989.

During the fifth incident of rape on November 20, 2001 the accused and the victim [were] again in the same coconut farm in order to get coconut leaves. Both of them were already naked and the accused was about to mount the victim when they were seen by prosecution eyewitness [CCC] who shouted at them, that's why the accused fled leaving the victim behind. Because of what happened the victim was able to gain enough courage to tell her mother and to report the incident to the *barangay* captain of their place, thus leading to the apprehension of the accused.[19] (Citations omitted.)

The RTC pointed out that on cross-examination, AAA again narrated straightforwardly how, when, and where she was sexually abused by her own father:

On cross-examination the credibility of the victim was even enhanced by her consistent and very candid answers to the very important questions propounded on her by the defense counsel. This notwithstanding some minor lapses on her part, which can be explained by her tender age and lack of exposure to a usually pressure packed court atmosphere. The minor-victim was consistent in her claim that accused Domingo Dominguez is her natural father; that she was raped by him; that nobody forced her to file these cases against her own father; that they are seven (7) children in the family; that the first attempted rape happened in the year 2001 before the fiesta in Magallanes at around 7:00 o'clock in the evening; their house is situated on a hill where there is no electricity and they are only using kerosene lamp in their house; there are no rooms in their house and usually sleep in one place; at the time of the first attempted rape she and her five small siblings together with her father were the only ones present in their house; her mother went to her lola's house in order to get a viand; while she was attending to her five small siblings making them sleep the accused undressed her; when her mother arrived she was already naked but her father (the accused) made an alibi that he was

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[19] CA *rollo*, pp. 29-30.

just dressing her up because they were going to the market; when her mother asked her about it she did not give any answer; nothing happened during that time because of the timely arrival of her mother; the first consummated rape (the second incident) happened in the coconut farm in Anibong, Magallanes, Sorsogon, which is far from their house at around 1:00 o'clock in the afternoon; it was her first sexual experience and her private part bled; she could not refuse to go with her father to the coconut plantation because of fear of punishment if she will not go with him, her mother could not go against her father; she did not tell her mother about the rape for fear that she might not believe her, because the culprit is her own father who is her own blood; during the second incident she threw her panty away because it was already stained with blood and just used her shorts; the third incident of rape (second consummated rape) happened in the same coconut plantation; the accused told her brother to fetch the carabao, when they were already alone the accused raped her and after he was through with her they gathered coconut leaves and when her brother together with the carabao arrived later, they loaded them on the carabao and proceeded home; during the 3rd incident there was no more bleeding of her vagina unlike the second she did not throw her panty after the rape, she used it again; she did not tell her mother, not even her friends nor her teacher nor her lola about the rape because of fear that they might laugh at her; the fourth incident of rape (3rd consummated rape) happened in the same coconut plantation under the same pattern of execution with the accused succeeding in inserting his penis into her vagina; the fifth and last incident of attempted rape happened on November 20, 2001 in the same coconut farm when [CCC] saw her and her father (accused) both naked; because of what happened the victim gained courage to open up to her lola and reported the incident to their *barangay* captain, knowing that [CCC] will support her accusation; that even if her father will be meted out the penalty of death she will not withdraw the case against her father and will insist in her accusation that she was raped by him.[20] (Citation omitted.)

The RTC also summed up the corroborating evidence for the prosecution as follows:

The aforequoted testimony of the offended party, [AAA], was amply supported by the medical findings and the testimony made in open

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

court by the medico-legal officer who physically examined her, Dr. Irene V. Ella, MHO – Magallanes, Sorsogon.

Dr. Ella declared, that the minor victim was brought to her office by the *Barangay* Captain of Anibong and the Municipal Social Welfare Development Officer of Magallanes, Mrs. Mercadero, for physical examination based on the alleged complaint of rape. Based on the result of the physical examination, it was found out that the vaginal canal of the victim admits 1 cm. in diameter test tube with no resistance. Meaning, that something has been inserted on it for several times that's why the vaginal canal admits very easily a 1 cm. in diameter test tube with no resistance. Accordingly, a girl without sexual experience would show some resistance if you insert on her vagina a 1 cm. in diameter test tube. Another finding was that the labia majora/minora was slightly gaping indicative of a sexual experience on the part of the victim. Normally, a girl without any experience in sex or sexual abuse would show a closely adherent labia majora/minora which is the covering of the vaginal canal. The medico legal officer concluded, that the above findings confirmed penile penetration for several times. Her basis is the laxity of the vaginal wall and the easy insertion of the 1 cm. test tube. Accordingly, if the penetration only happened once it will not cause such laxity or it might cause a laxity but not as manifest as what was reflected in her findings.

The claim of the offended party, [AAA], that the last attempt to rape her was committed by her father (accused) on November 20, 2001 at around 1:00 o'clock in the afternoon was supported by the very candid and credible testimony of prosecution eyewitness [CCC] who declared that on November 20, 2001 at more or less 1:00 o'clock in the afternoon he was at the forest of Anibong, Magallanes, looking for snails when he chanced upon father and daughter, Sandy (accused) and [AAA], standing close to each other totally naked. [AAA] was crying while Sandy was standing. He did not go near them because of fear of Sandy who had a bolo with him, so he left the place and went home. He related the incident to his cousin x x x. Both Sandy and [AAA] saw him when he chanced upon them.

On cross-examination, the aforenamed witness was able to clarify further his position when he stated, that he was about 3 to 4 meters away from the two when he first saw them standing both naked. He took two steps forward closer to them that's why he was able to confirm that it was his Manoy Sandy (Domingo Dominguez, Jr./Accused) and his daughter [AAA] who were standing. [AAA] was shouting for

help but the witness could not come to her aid because of fear of Sandy who was carrying a bolo. What was made clear however from the testimony of said witness was the fact, that he did not witness any sexual intercourse between the two thus implying in all probability that the rape was just in its attempted stage.[21] (Citations omitted.)

The RTC then summarized the evidence for the defense, based on the denial and alibi of accused-appellant, as follows:

Accused Domingo Dominguez, Jr. admitted during his testimony on direct examination, that he is the father of the victim [AAA]; that his wife is [BBB]; that they have seven (7) children; three of them were girls, the eldest is x x x while the youngest is [AAA]; his main occupation is that of a farmer who works in the rice field; all his children are in school and he provides for their education and daily sustenance; that he loves his children and just wanted to discipline them but he was placed into this kind of situation; he cannot afford to do to [AAA] the charges that were filed against him; he cannot say whether he still loves [AAA] considering that he is presently incarcerated; he had no bad record in the *barangay* and had never been charged of a similar case before; he likewise scold his two other daughters if they commit a wrong.

On cross-examination, the accused further stated, that he spanks or maltreats his children whenever they commit mistakes as a form of discipline; that whenever he physically maltreats or disciplines his children they suffer injuries, although he do[es] it only when he is angry; sometime when he arrived from work and nobody is around he gets mad; that his children [have] developed that fear of him because of his way of disciplining them even his wife is afraid of him; he claims that all the charges filed against him were fabricated by members of his family because they wanted to show other people that he is bad, but he denied having done those criminal acts; that [AAA] filed this case against him because he scolded her; that if he really planned to rape somebody he could have done it to other persons but not to [AAA]; in 1999, [AAA] was about ten (10) years old and [had] many male friends who are her classmates but had no boyfriend.[22] (References to case records deleted.)

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

[22] *Id.* at 32-33.

In its Decision dated February 6, 2006, the RTC found accused-appellant guilty beyond reasonable doubt of three counts of qualified rape in Criminal Case Nos. 02-549, 02-550 and 02-551, and two counts of attempted rape in Criminal Case Nos. 02-548 and 02-552. The dispositive portion of said RTC judgment reads as follows:

WHEREFORE, premises considered, the GUILT of accused DOMINGO DOMINGUEZ, JR. *alias* "Sandy" having been established beyond reasonable doubt, SENTENCE is hereby pronounced against him as follows:

a) In **Criminal Case No. 02-548**, above-named accused who is found **guilty** only of **Attempted Rape**, defined and penalized under Article 6 of the Revised Penal Code, as amended, is sentenced to an indeterminate penalty of 10 years and 1 day of *Prision Mayor* to 20 years of *Reclusion Temporal*, present the aggravating circumstances of minority and relationship without any mitigating circumstance;

b) In **Criminal Case No. 02-549**, above-named accused having been found **guilty** of **Qualified Rape** is sentenced to indivisible penalty of death, to indemnify [AAA] in the amount of Php75,000.00 as indemnity ex delicto; another Php75,000.00 as moral damages and another Php50,000.00 as exemplary damages, with no subsidiary imprisonment in case of insolvency;

c) In **Criminal Case Nos. 02-550 and 02-551**, above-named accused is likewise found **guilty** of **Qualified Rape** in each case and sentenced to an indivisible penalty of death for each count of Qualified Rape, to indemnify [AAA] in the amount of Php150,000.00 as indemnity *ex delicto*; another Php150,000.00 as moral damages; and another Php100,000.00 as exemplary damages, with no subsidiary imprisonment in case of insolvency;

d) In **Criminal Case No. 02-552**, above-named accused is likewise found **guilty** of **Attempted Rape**, defined and penalized under Article 6 of the Revised Penal Code, as amended, and is sentenced to an indeterminate penalty of 10 years and 1 day of *Prision Mayor* to 20 years of *Reclusion Temporal*, present the aggravating circumstances of minority and relationship without any mitigating circumstance.

The period of preventive imprisonment already served by the accused shall be credited in the service of his sentences pursuant to Article 29 of the Revised Penal Code, as amended.

The above-mentioned penalties shall be served by the accused in the order of succession provided for in Article 70 of the same Code.[23] (Emphases ours.)

Accused-appellant interposed his appeal from the judgment of the RTC to the Court of Appeals. On April 11, 2006, the trial court transmitted the records of the cases to the appellate court. Accused-appellant filed his *Brief*[24] on November 21, 2006 while the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed its *Brief*[25] on March 21, 2007.

In his appeal before the Court of Appeals, accused-appellant cited the following assignment of errors:

I

The trial court gravely erred in convicting the accused-appellant of the crime of attempted rape in Criminal Case Nos. 02-548 and 02-552.

II

Granting *arguendo* that the accused-appellant is guilty of attempted rape in Criminal Case Nos. 02-548 and 02-552, the penalty imposed was not proper.

III

The trial court gravely erred in convicting the accused-appellant of the crime of rape in Criminal Case Nos. 02-549, 02-550 and 02-551 thereby imposing upon him the supreme penalty of death.

Accused-appellant asserted his innocence and asked for his acquittal from all the charges.

On the two counts of attempted rape, accused-appellant claimed that the prosecution failed to show any overt act which would prove his intent to rape AAA. AAA's claims during her testimony that accused-appellant was "about to rape her"

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[23] *Id.* at 40-41.

[24] *Id.* at 59-77.

[25] *Id.* at 101-137.

or "about to go on top of her" were it not for the timely arrival of her mother, BBB, in Criminal Case No. 02-548, or were it not for the fortunate appearance of a relative, CCC, in Criminal Case No. 02-552, were allegedly so vague that one cannot make a clear conclusion whether the accused-appellant really intended to rape AAA.

Accused-appellant also noted that should his conviction for the crime of attempted rape be sustained, the trial court committed an error in the imposition of the proper penalty. With the abrogation of the death penalty, the imposable penalty for the crime of rape committed in the attempted stage, which must be two degrees lower than that of the penalty imposed for the crime intended to be committed, should be *prision mayor*.

Anent the three counts of qualified rape, accused-appellant denied the accusations and questioned the motive of AAA in charging him with said crime. Accused-appellant pointed out that it was implausible that AAA would not tell her mother and siblings about the alleged rapes. It was also incredible that AAA would still accompany accused-appellant repeatedly to the coconut farm despite her having been previously sexually assaulted by him, with AAA knowing that their seclusion was another opportunity for accused-appellant to sexually assault her again. Accused-appellant averred that AAA's unexplained silence and continuous acquiescence to the sexual abuses supposedly committed against her made her accusations dubious.

Plaintiff-appellee, on the other hand, claimed that accused-appellant was properly convicted in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape. Citing settled jurisprudence, plaintiff-appellee argued that the appreciation by the trial court of all the evidence on the rape charges deserved great weight and respect. AAA's consistent, candid, and straightforward narrations that she was raped for several times by her own father were duly supported by the medico-legal findings of sexual abuse. Accused-appellant's bare denials and ascription of ill motive on AAA's part in filing the criminal charges were allegedly untenable.

In Criminal Case Nos. 02-548 and 02-552, however, plaintiff-appellee posited that accused-appellant should be held criminally liable for two counts of acts of lasciviousness instead of attempted rape. Plaintiff-appellee noted that the most significant element of attempted rape is the intent of the offender to penetrate the sexual organ of his victim.[26] In the aforesaid cases, accused-appellant was able to do nothing more than undress AAA and himself.

After its review of the evidence, the Court of Appeals affirmed accused-appellant's conviction in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape; while it modified the RTC judgment in Criminal Case Nos. 02-548 and 02-552 and convicted accused-appellant for two counts of acts of lasciviousness. The appellate court also modified the penalties and damages imposed against accused-appellant as follows:

WHEREFORE, the appealed Decision dated February 6, 2006 is AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Cases Nos. 02-549; 02-550; and 02-551, the penalty of death imposed on the accused-appellant for each count of qualified rape is hereby reduced to *reclusion perpetua*, pursuant to Republic Act No. 9346 without eligibility for parole. The award of exemplary damages for each count of qualified rape committed, is reduced to ₱25,000.00.

(2) In Criminal Cases Nos. 02-548 and 02-552, the accused-appellant is found GUILTY beyond reasonable doubt of acts of lasciviousness and is hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum penalty to six (6) years of *prision correccional* as maximum penalty for each count of the acts of lasciviousness committed. The accused-appellant is likewise ordered to pay private complainant the amount of ₱30,000.00 as moral damages and ₱25,000.00 as exemplary damages for each count of the acts of lasciviousness committed.[27]

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[26] Citing *People v. Campuhan*, 385 Phil. 912, 927 (2000) and *People v. Collado*, 405 Phil. 880, 896 (2001).

[27] *Rollo*, pp. 38-39.

Thereafter, accused-appellant appealed his convictions before us.

In a Minute Resolution[28] dated February 4, 2008, we required the parties to file their respective supplemental briefs. The parties, however, manifested that they had exhausted their arguments before the Court of Appeals and, thus, would no longer file any supplemental brief.[29]

We sustain the findings of the Court of Appeals and affirm accused-appellant's conviction in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape.

Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. In *People v. Orillosa*,[30] we held that in incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.

In this case, the prosecution has established beyond reasonable doubt that the accused-appellant, through force, threat or intimidation, had carnal knowledge of his daughter, AAA, who was then only 12 to 13 years old.

AAA recounted in sufficient detail the rape incidents as follows:

[Criminal Case No. 02-549]

Q: Now after that incident, was it repeated?
A: Yes, ma'am.

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[28] *Id.* at 44-45.

[29] *Id.* at 52-56 and 57-59.

[30] G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

Q: And when did it happen?
A: That second time happened after a week.

Q: A week after the first incident?
A: Yes, ma'am.

Q: Where did it happen?
A: In a coconut farm.

Q: In what place?
A: Anibong, Magallanes, Sorsogon.

Q: Now why were you in that farm at that time?
A: He told me to accompany him to get coconut leaves because we were going to weave it in our house.

Q: Who is that "he" who told you to accompany him?
A: My father.

Q: Now when you reached the place, what happened?
A: He undressed me and after undressing me he also undressed himself.

Q: You were at that coconut plantation, only the two of you?
A: Yes, ma'am.

Q: After you were undressed and after he also undressed himself, what happened next?
A: His penis was inserted inside my vagina.

Q: Were you made to lie down?
A: Yes, ma'am.

Q: Now, what did you feel when his penis [was] inserted [into] your vagina?
A: I felt weak and I felt pain in all of my body and even my vagina felt pain and I felt it is swollen.

Q: Now, did you see your father holding anything at that time?
A: There was.

Q: What was that?
A: It was also a bolo because we were about to get coconut leaves.

Q: Now did you not struggle or fight him back?
A: Yes, I tried to struggle.

x x x x x x x x x

Q: Now, after your father inserted his penis in your private organ, what happened next?
A: After that we proceeded home because we brought home the coconut leaves that we gathered.

Q: Now did you not tell anyone about the incident?
A: None.

Q: Why not?
A: I was afraid and that they might not believe me.[31]

[Criminal Case No. 02-550]

Q: Now [AAA], after that second incident, was it again repeated for the third time?
A: Yes, ma'am.

Q: Do you remember the date when it was repeated?
A: I cannot recall the exact date but I could remember that it was two (2) weeks after the second incident and I was free then because I didn't have any classes.

Q: Now where did it happen?
A: At the coconut farm also.

Q: The same coconut farm where the second incident took place?
A: Yes, ma'am.

Q; And how did it happen?
A: The same, he undressed me and he undressed himself and he made me [lie] down.

Q: Now why were you with him on that particular date?
A: The same, I helped him in getting coconut leaves.

Q: Now why did you go with him considering the second incident of rape that happened to you?
A: Of course, because he was threatening me that I went with him.

Q: What did he exactly tell you that made you fear [him]?
A: Because he scolded us why we were not going with him.

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[31] TSN, June 22, 2004, pp. 6-8.

Q: Now when he undressed himself and you were also undressed, what happened next?
A: He again inserted his penis inside my vagina.

Q: And afterwards, what happened next?
A: We proceeded home and again we brought with us the coconut leaves.

Q: Did you not tell your mother or anyone about the third incident that happened?
A: Yes, ma'am.

Q: Why not?
A: Because I was still afraid.[32]

[Criminal Case No. 02-551]

Q: Now after this third incident, [AAA], do you still remember of another incident that took place?
A: Yes, ma'am.

Q: And do you still remember when it happened?
A: Yes, ma'am.

Q: When?
A: Three (3) weeks after the third incident.

Q: Now where did it happen?
A: The same place, coconut farm.

Q: Now why were you with him at that time?
A: Still to gather coconut leaves.

Q: So when you reached the place, what happened?
A: The same happened, he undressed me and he also undressed himself.

Q: And what happened next after both of you were already undressed?
A: He again inserted his penis to my vagina.

Q: And what did you feel at that time?
A: I felt weak and my body felt pain.

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[32] *Id.* at 8-10.

Q: By the way [AAA], do you know how old were you at that time of the first incident?
A: Yes, ma'am.

Q: How old were you then?
A: Twelve.

Q: The second time, how old were you?
A: Twelve.

Q: Until the fourth time, you were still 12 years old when the incident happened?
A: During the third time I was already 13 years old.

Q: Now after your father inserted his penis on your vagina the fourth incident, what happened next?
A: We again gathered coconut leaves in order to bring to our house.[33]

The birth certificate of AAA shows that she was born on January 3, 1989. Medical examination revealed AAA's old hymenal laceration and the examining physician concluded penile penetration for several times. These support AAA's claim that she was repeatedly raped when she was only 12 to 13 years old.

We also affirm the convictions of accused-appellant in Criminal Case Nos. 02-548 and 02-552, for two counts of acts of lasciviousness and not for attempted rape.

The Court of Appeals aptly cited *Perez v. Court of Appeals*[34] in which we ruled:

> [A] careful review of the records of the case shows that the crime committed by petitioner was acts of lasciviousness not attempted rape.

Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which

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

[34] 431 Phil. 786 (2002).

should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. **Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.**

There is no showing in this case that petitioner's sexual organ had ever touched complainant's vagina nor any part of her body. x x x.[35] (Emphasis ours.)

We also reiterated in *Perez* our pronouncements in *People v. Caingat*,[36] that the offender's acts of lying on top of the victim, embracing and kissing her, mashing her breasts, inserting his hand inside her panty, and touching her sexual organ, which were interrupted were it not for the timely arrival of the victim's mother, do not constitute the crime of attempted rape, absent any showing that the offender actually commenced to force his penis into the victim's sexual organ, and that said acts rather constitute the crime of acts of lasciviousness punishable under Article 336 of the Revised Penal Code.

In Criminal Case Nos. 02-548 and 02-552, there is a similar dearth of evidence that accused-appellant was able to commence penetration of his penis into AAA's vagina. What the evidence on record established was that during these two occasions, accused-appellant was only able to undress himself and his daughter before the arrival of BBB and CCC. As AAA testified:

[Criminal Case No. 02-548]

Q: Can you still remember the first incident that happened?
A: Yes, ma'am.

Q: And what happened at that time?
A: The first incident happened before the Fiesta of Magallanes during which my siblings, small ones, were already asleep and I was also about to go to sleep and then I suddenly noticed

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[35] *Id.* at 793.

[36] 426 Phil. 782 (2002).

that my father was beside me and then **he undressed me and he also undressed himself and when he was about to rape me my mother arrived** and she asked me why I was naked. I was afraid then.

Q: Now what did you observe in the person of your father at that time that he undressed you?
A: Because he was about to rape me.

Q: Why were you afraid of your father at that time?
A: Of course, because he was threatening me and I was before already afraid of him.

Q: And how did he threaten you?
A: That he was going to kill everyone of us.

Q: Now at the time of the incident, did you see him holding anything?
A: There was.

Q: And what was that?
A: Bolo.[37] (Emphasis supplied.)

[Criminal Case No. 02-552]

Q: Now after that fourth incident, do you still remember of any other incident?
A: Yes, ma'am.

Q: And do you still remember when did it happen?
A: November 20, 2001.

Q: Fifth?
A: Yes, ma'am.

Q: Are you sure?
A: Yes, ma'am.

Q: Where did it happen?
A: The same place, coconut farm.

Q: And why were you at that time also with him?
A: We were still going to get coconut leaves.

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[37] TSN, June 22, 2004, pp. 4-6.

Q: And after reaching the coconut plantation, what happened next?
A: He undressed me and he undressed himself also.

Q: Then after both of you were already undressed, what happened next?
A: When he was about to go on top of me he suddenly saw [CCC] and I saw also [CCC]. What he did was to flee.

Q: Both of you were already undressed from top to your drawers?
A: During that time I was only using shorts and my shorts [were] already taken off but I had [a] shirt [on] my body.

Q: How about your panty, was it still on your body?
A: Yes, ma'am.

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Q: Now at that time, when [CCC] witnessed you and your father, was your father still wearing an upper apparel?
A: Only upper apparel.

Q: What about his underwears and his shorts?
A: He was only wearing brief[s] but his shorts [were] already taken off.

Q: Was your father able to mount on your top?
A: No, he was about to go on top of me.

Q: Now when [CCC] witnessed you and your father in that position, what happened next?
A: My father hid from [CCC] and what I did was to leave the place. So what [CCC] did was to go home.[38] (Emphases supplied.)

We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime

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[38] *Id.* at 11-13.

of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption.

As the Court of Appeals found, it has been established beyond reasonable doubt in Criminal Case Nos. 02-548 and 02-552 that accused-appellant committed the crime of acts of lasciviousness.

The elements of acts of lasciviousness, punishable under Article 336 of the Revised Penal Code, are:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

   a. By using force or intimidation; or

   b. When the offended party is deprived of reason or otherwise unconscious; or

   c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[39]

All elements are present in Criminal Case Nos. 02-548 and 02-552.

Lewdness is defined as an "obscene, lustful, indecent, and lecherous" act which signifies that form of immorality carried on a wanton manner.[40] It is morally inappropriate, indecent, and lustful for accused-appellant to undress himself and his own daughter (who was completely capable of dressing or undressing herself), while his wife was away and his other children were asleep; or doing the same acts in an isolated coconut farm where only the two of them were present.

We find completely understandable AAA's silence and apparent assent to the sexual abuses of her father for a period

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[39] *Amployo v. People*, 496 Phil. 747, 755 (2005).

[40] *People v. Lizada*, 444 Phil. 67, 97 (2003).

of time. No standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.[41] More importantly, in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants.[42] Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[43] AAA sufficiently explained that fear of her father's authority and shame kept her from revealing to others her ghastly ordeal at the hands of her own father. Moreover, AAA's fear of physical harm if she defied her father was real. By accused-appellant's own admission, on cross examination, he had used physical force to discipline his children whenever he was angry or mad.[44]

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[41] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 637.

[42] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 598.

[43] *People v. Orillosa*, *supra* note 29 at 698.

[44] Pertinent portion of TSN dated September 6, 2005, pp. 5-6, are quoted as follows:

Q: Mr. Witness when you said that you are disciplining your children you mean to say that you always spank or physically maltreat them whenever they [commit] mistakes?

A: Yes, sir I was put to this situation because of disciplining my children.

Q: Now, looking at your size Mr. Witness the bigness of your body one would assume that whenever you physically maltreated or discipline your daughter or your children they would receive severe injuries brought by the discipline that you are trying to tell us, am I correct?

A: Yes, but I seldom do it. It is only when I am angry. (*Kung nababaldi lang ako*.)

Q: Now, Mr. Witness, how often would you get irritated?

A: Sometimes when I arrive at our house coming from work and nobody is around that is the time I get mad.

We find no reason to doubt AAA's credibility, and accord great weight and respect to the findings of the trial and appellate courts that her testimonies are consistent, candid, and straightforward. Accused-appellant's bare denial, as opposed to AAA's positive testimonies, and accused-appellant's uncorroborated allegation of ill motive on AAA's part in filing the criminal charges, are bereft of evidentiary value.

Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts"[45] and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case."[46] This rule is even more stringently applied if the appellate court concurred with the trial court.

Q: And that often happens, am I correct?

A: It seldom happens.

Q: Now, Mr. Witness because of your habit of disciplining your children of course they develop fear from you, am I correct?

A: Yes.

Q: Even your wife is also afraid of you because of your tendency to inflict physical harm on your children, am I correct?

A: Yes.

Q: Is it not a fact Mr. Witness that your wife is also afraid of you because you also inflict physical injury on her person whenever you are mad?

A: I do not harm her if she is doing right.

[45] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

[46] *Id.*

In *People v. Nieto*,[47] we stressed further that the bare denial and uncorroborated alibi of the accused cannot overcome his positive identification by the victim and straightforward recounting of his commission of a crime:

> It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of alibi is likewise unavailing. Firstly, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Secondly, alibi is unacceptable when there is a positive identification of the accused by a credible witness. Lastly, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[48]

This is even more particularly true in rape cases where the accused and the victim are father and daughter, respectively. We declared in *People v. Mendoza*[49] that:

> It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness. Accused-appellant's bare assertion that private complainant was just "using" him to allow her to freely frolic with other men, particularly with a certain Renato Planas, begs the credulity of this Court. This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt – the dire consequence of a rape charge – unless she is, in fact, a rape victim." More in point is our pronouncement in *People v. Canoy*, to wit:
>
> … It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts,

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[47] *Id.*

[48] *Id.* at 527-528.

[49] 490 Phil. 737 (2005).

> put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.[50]

Finally, we adopt the penalties imposed by the Court of Appeals upon accused-appellant, but modify the damages awarded in AAA's favor.

Given the enactment of Republic Act No. 9346, the Court of Appeals properly reduced the penalty of death and, instead, imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole for each count of his three convictions for qualified rape in Criminal Case Nos. 02-549, 02-550, and 02-551.

The appellate court also correctly ordered accused-appellant to pay the victim for each count of qualified rape, the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, consistent with current jurisprudence on qualified rape. However, the exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) should be increased to Thirty Thousand Pesos (₱30,000.00) in line with recent case law.[51]

We likewise affirm the penalty imposed by the Court of Appeals upon accused-appellant for his conviction on two counts of acts of lasciviousness in Criminal Case Nos. 02-548 and 02-552. Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punishable by *prision correccional*. With the alternative circumstance of relationship taken as an aggravating circumstance in the commission of the crime, the

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[50] *Id.* at 746-747.

[51] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

penalty prescribed by law shall be imposed in its maximum period following Article 64(3) of the said Code, or four (4) years, two (2) months and one (1) day to six (6) years. Applying the indeterminate sentence law, the said penalty shall constitute the maximum term while the minimum term shall be within the range of the penalty next lower in degree to that of the penalty provided by law which is *arresto mayor* or one (1) month and one (1) day to six (6) months. Thus, accused-appellant is hereby sentenced to suffer, for each count of acts of lasciviousness, the penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum.

The award by the Court of Appeals of moral damages to AAA in the amount of Thirty Thousand Pesos (₱30,000.00), for each count of acts of lasciviousness, is appropriate, in the same way that moral damages are awarded to victims of rape even without need of proof because of the presumption that the victim has suffered moral injury, rests on settled jurisprudence.[52] We also deem that AAA is further entitled to an award of civil indemnity in the amount of Twenty Thousand Pesos (₱20,000.00), for each count of acts of lasciviousness.[53] The amount of exemplary damages should also be increased from the Twenty-Five Thousand Pesos (₱25,000.00) awarded by the Court of Appeals, to Thirty Thousand Pesos (₱30,000.00), for each count of acts of lasciviousness, considering the presence of the aggravating circumstance of relationship in the commission of the crime. Exemplary damages should be awarded "in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters."[54]

WHEREFORE, in view of the foregoing, the Decision dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02131, which affirmed with modifications the Decision dated February 6, 2006 of the Regional Trial Court, Branch

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[52] *Amployo v. People*, 496 Phil. 747, 761-762 (2005).

[53] *People v. Poras*, G.R. No. 177747, February 16, 2010.

[54] *People v. Blancaflor*, 466 Phil. 87, 103 (2004).

65, of Bulan, Sorsogon, is hereby *AFFIRMED with MODIFICATION*, to read as follows:

(1) In Criminal Case Nos. 02-549, 02-550 and 02-551, accused Domingo Dominguez, Jr. is hereby held *GUILTY* beyond reasonable doubt *for three counts of qualified rape* and that, for each count, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00);

(2) In Criminal Case Nos. 02-548 and 02-552, accused Domingo Dominguez, Jr. is hereby held *GUILTY* beyond reasonable doubt *for two counts of acts of lasciviousness* and that, for each count, he is hereby sentenced to suffer the penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay the private offended party civil indemnity in the amount of Twenty Thousand Pesos (₱20,000.00), moral damages in the amount of Thirty Thousand Pesos (₱30,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00); and

(3) Accused Domingo Dominguez, Jr. is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.*, concur.

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[*] Per Special Order No. 913 dated November 2, 2010.

SECOND DIVISION

[G.R. No. 181858. November 24, 2010]

KEPCO PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* AND PETITION FOR *CERTIORARI*, DISTINGUISHED.— Time and again, the Court has emphasized that there is a whale of difference between a Rule 45 petition (*Petition for Review on Certiorari*) and a Rule 65 petition (*Petition for Certiorari*.) A Rule 65 petition is an original action that dwells on jurisdictional errors of whether a lower court acted without or in excess of its jurisdiction or with grave abuse of discretion. A Rule 45 petition, on the other hand, is a mode of appeal which centers on the review on the merits of a judgment, final order or award rendered by a lower court involving purely questions of law.

2. TAXATION; VALUE-ADDED TAX; REVENUE REGULATIONS 7-95, SECTION 4. 108-1; ZERO-RATED TRANSACTIONS; THE WORD ZERO-RATED SHOULD APPEAR ON THE FACE OF INVOICES COVERING ZERO-RATED SALES; PURPOSE.— The issue of whether the word "zero-rated" should be imprinted on invoices and/or official receipts as part of the invoicing requirement has been settled in the case of *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue* and restated in the later case of *J.R.A. Philippines, Inc. v. Commissioner*. x x x Denying *Panasonic's* claim for refund, the Court stated: Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents

buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.

3. ID.; ID.; ID.; NEITHER EXPANDED NOR SUPPLANTED THE TAX CODE BUT MERELY SUPPLEMENTED WHAT THE TAX CODE ALREADY DEFINED AND DISCUSSED.— Section 4.108-1 of RR 7-95 neither expanded nor supplanted the tax code but merely supplemented what the tax code already defined and discussed. In fact, the necessity of indicating "zero-rated" into VAT invoices/receipts became more apparent when the provisions of this revenue regulation was later integrated into RA No. 9337, the amendatory law of the 1997 NIRC. Section 113, in relation to Section 237 of the 1997 NIRC, as amended by RA No. 9337, now reads:SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* – (A) *Invoicing Requirements.* – A VAT-registered person shall issue: (1) A *VAT invoice* for every sale, barter or exchange of goods or properties; ***and*** (2) A *VAT official receipt* for every lease of goods or properties, and for every sale, barter or exchange of services. (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt: (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That: (a) The amount of the tax shall be shown as a separate item in the invoice or receipt; (b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt; (c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be *written or printed prominently on the invoice or receipt*; x x x."

4. ID.; ID.; ID.; SPECIFICALLY REQUIRES THE VALUE-ADDED TAX (VAT) REGISTERED PERSON TO IMPRINT TIN-VAT ON ITS INVOICES OR RECEIPTS.— Internal

Revenue Regulation 7-95 (Consolidated Value-Added Tax Regulations) is clear. "Only VAT registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT' Invoice. All purchases covered by invoices other than VAT Invoice shall not give rise to any input tax." Contrary to Kepco's allegation, the regulation specifically requires the VAT registered person to imprint TIN-VAT on its invoices or receipts. Thus, the Court agrees with the CTA when it wrote: "[T]o be considered a 'VAT invoice,' the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT is not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as 'VAT Invoices.'"

5. ID.; ID.; VALUE-ADDED TAX (VAT) INVOICE AND VAT OFFICIAL RECEIPT, DISTINGUISHED; SALES OR COMMERCIAL INVOICE AND RECEIPT, DISTINGUISHED.— Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation*, the Court distinguished an invoice from a receipt, thus: "A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer." In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of*

transaction), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DECISIONS OF THE COURT OF TAX APPEALS ARE GENERALLY UPHELD ON APPEAL.— The CTA is devoted exclusively to the resolution of tax-related issues and has unmistakably acquired an expertise on the subject matter. In the absence of abuse or reckless exercise of authority, the CTA *En Banc*'s decision should be upheld.

7. TAXATION; TAX REFUNDS; MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER.— The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking reversal of the February 20, 2008 Decision[2] of the Court of Tax Appeals *En Banc (CTA)* in C.T.A.

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[1] *Rollo*, pp. 16-99.

[2] *Id.* at 100-129. Penned by Associate Justice Lovell R. Bautista with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring, and Presiding Justice Ernesto D. Acosta, concurring and dissenting.

EB No. 299, which ruled that "in order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to its zero-rated sales for taxable year 2002, it must comply with the substantiation requirements under the appropriate Revenue Regulations."

Petitioner KEPCO Philippines Corporation *(Kepco)* is a VAT-registered independent power producer engaged in the business of generating electricity. It exclusively sells electricity to National Power Corporation *(NPC)*, an entity exempt from taxes under Section 13 of Republic Act No. 6395 *(RA No. 6395)*.[3]

Records show that on December 4, 2001, Kepco filed an application for zero-rated sales with the Revenue District Office (*RDO*) No. 54 of the Bureau of Internal Revenue *(BIR)*. Kepco's application was approved under VAT Ruling 64-01. Accordingly, for taxable year 2002, it filed four Quarterly VAT Returns declaring zero-rated sales in the aggregate amount of ₱3,285,308,055.85 itemized as follows:

Exhibit	Quarter Involved	Zero-Rated Sales
B	1st Quarter	₱651,672,672.47
C	2nd Quarter	725,104,468.99
D	3rd Quarter	952,053,527.29
E	4th Quarter	956,477,387.10
	Total	₱3,285,308,055.85[4]

In the course of doing business with NPC, Kepco claimed expenses reportedly sustained in connection with the production and sale of electricity with NPC. Based on Kepco's calculation, it paid input VAT amounting to ₱11,710,868.86 attributing the same to its zero-rated sales of electricity with NPC. The table shows the purchases and corresponding input VAT it paid.

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[3] An Act Revising the Charter of the National Power Corporation.

[4] *Rollo*, p. 101.

Exhibit	Quarter Involved	Purchases	Input VAT
B	1st Quarter	₱6,063,184.90	₱606,318.49
C	2nd Quarter	18,410,193.20	1,841,019.32
D	3rd Quarter	16,811,819.21	1,681,181.93
E	4th Quarter	75,823,491.20	7,582,349.12
		₱117,108,688.51	₱11,710,868.86[5]

Thus, on April 20, 2004, Kepco filed before the Commissioner of Internal Revenue *(CIR)* a claim for tax refund covering unutilized input VAT payments attributable to its zero-rated sales transactions for taxable year 2002.[6] Two days later, on April 22, 2004, it filed a petition for review before the CTA. The case was docketed as C.T.A. Case No. 6965.[7]

In its Answer,[8] respondent CIR averred that claims for refund were strictly construed against the taxpayer as it was similar to a tax exemption. It asserted that the burden to show that the taxes were erroneous or illegal lay upon the taxpayer. Thus, failure on the part of Kepco to prove the same was fatal to its cause of action because it was its duty to prove the legal basis of the amount being claimed as a tax refund.

During the hearing, Kepco presented court-commissioned Independent Certified Public Accountant, Victor O. Machacon, who audited their bulky documentary evidence consisting of official receipts, invoices and vouchers, to prove its claim for refund of unutilized input VAT.[9]

On February 26, 2007, the CTA Second Division ruled that out of the total declared zero-rated sales of ₱3,285,308,055.85, Kepco was only able to properly substantiate ₱1,451,788,865.52

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[5] *Id.* at 102.

[6] Records, pp. 17-21.

[7] *Id.* at 1-10.

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

[9] *Id.* at 91.

as its zero-rated sales. After factoring, only 44.19% of the validly supported input VAT payments being claimed could be considered.[10] The CTA Division used the following computation in determining Kepco's total allowable input VAT:

Substantiated zero-rated sales to NPC	₱1,451,788,865.52
Divided by the total declared zero-rated sales	÷ 3,285,308,055.85
Rate of substantiated zero-rated sales	44.19%[11]

Total Input VAT Claimed		₱11,710,868.86
Less:Disallowance		
(a) Per verification of the independent CPA	₱125,556.40	
(b) Per Court's verification	5,045,357.80	5,170,914.20
Validly Supported Input VAT		₱6,539,954.66
Multiply by Rate of Substantiated Zero-Rated Sales		44.19%
Total Allowed Input VAT		**₱2,890,005.96**[12]

The CTA Second Division likewise disallowed the ₱5,170,914.20 of Kepco's claimed input VAT due to its failure to comply with the substantiation requirement. Specifically, the CTA Second Division wrote:

> [i]nput VAT on purchases supported by invoices or official receipts stamped with TIN-VAT shall be disallowed because these purchases are not supported by "VAT Invoices" under the contemplation of the aforequoted invoicing requirement. To be considered a "VAT Invoice,"

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[10] *Rollo*, pp. 284-285.

[11] *Id.* at 285.

[12] *Id.* at 295-296.

the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT are not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are not NON-VAT are disallowed because these invoices or official receipts are not considered as "VAT Invoices." Hence, the claims for input VAT on purchases referred to in item (e) are properly disallowed.[13]

Accordingly, the CTA Second Division partially granted Kepco's claim for refund of unutilized input VAT for taxable year 2002. The dispositive portion of the decision[14] of the CTA Second Division reads:

> WHEREFORE, petitioner's claim for refund is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED to REFUND petitioner the reduced amount of TWO MILLION EIGHT HUNDRED NINETY THOUSAND FIVE PESOS AND 96/100 (₱2,890,005.96) representing unutilized input value-added tax for taxable year 2002.
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> SO ORDERED.[15]

Kepco moved for partial reconsideration, but the CTA Second Division denied it in its June 28, 2007 Resolution.[16]

On appeal to the CTA *En Banc*,[17] Kepco argued that the CTA Second Division erred in not considering ₱8,691,873.81 in addition to ₱2,890,005.96 as refundable tax credit for Kepco's zero-rated sales to NPC for taxable year 2002.

On February 20, 2008, the CTA *En Banc* dismissed the petition[18] and ruled that "in order for Kepco to be entitled to its claim for refund/issuance of tax credit certificate representing

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[13] *Id.* at 295.

[14] *Id.* at 276-298.

[15] *Id.* at 296-297.

[16] *Id.* at 155-157.

[17] Records, Volume II, pp. 10-30.

[18] *Rollo*, pp. 100-120.

unutilized input VAT attributable to its zero-rated sales for taxable year 2002, it must comply with the substantiation requirements under the appropriate Revenue Regulations, *i.e.* Revenue Regulations 7-95."[19] Thus, it concluded that "the Court in Division was correct in disallowing a portion of Kepco's claim for refund on the ground that input taxes on Kepco's purchase of goods and services were not supported by invoices and receipts printed with "TIN-VAT."[20]

CTA Presiding Justice Ernesto Acosta concurred with the majority in finding that Kepco's claim could not be allowed for lack of proper substantiation but expressed his dissent on the denial of certain claims,[21] to wit:

> [I] dissent with regard to the denial of the amount ₱4,720,725.63 for nothing in the law allows the automatic invalidation of official receipts/invoices which were not imprinted with "TIN-VAT;" and further reduction of petitioner's claim representing input VAT on purchase of goods not supported by invoices in the amount of ₱64,509.50 and input VAT on purchase of services not supported by official receipts in the amount of ₱256,689.98, because the law makes use of invoices and official receipts interchangeably. Both can validly substantiate petitioner's claim.[22]

Hence, this petition alleging the following errors:

ASSIGNMENT OF ERRORS

I.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT NON-COMPLIANCE WITH THE INVOICING REQUIREMENT SHALL RESULT IN THE AUTOMATIC DENIAL OF THE CLAIM.

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[19] *Id.* at 110.

[20] *Id.* at 119.

[21] *Id.* at 122-129.

[22] *Id.* at 129.

II.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISALLOWED PETITIONER'S CLAIM ON THE GROUND THAT 'TIN-VAT' IS NOT IMPRINTED ON THE INVOICES AND OFFICIAL RECEIPTS.

III.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ABUSED ITS DISCRETION WHEN IT MADE A DISTINCTION BETWEEN INVOICES AND OFFICIAL RECEIPTS AS SUPPORTING DOCUMENTS TO CLAIM FOR AN INPUT VAT REFUND.[23]

At the outset, the Court has noticed that although this petition is denominated as Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Kepco, in its assignment of errors, impugns against the CTA *En Banc* grave abuse of discretion amounting to lack or excess of jurisdiction, which are grounds in a petition for *certiorari* under Rule 65 of the Rules of Court. Time and again, the Court has emphasized that there is a whale of difference between a Rule 45 petition (*Petition for Review on Certiorari*) and a Rule 65 petition (*Petition for Certiorari*.) A Rule 65 petition is an original action that dwells on jurisdictional errors of whether a lower court acted without or in excess of its jurisdiction or with grave abuse of discretion.[24] A Rule 45 petition, on the other hand, is a mode of appeal which centers on the review on the merits of a judgment, final order or award rendered by a lower court involving purely questions of law.[25] Thus, imputing jurisdictional errors against the CTA is not proper in this Rule 45 petition. Kepco failed to follow the correct procedure. On this point alone, the Court can deny the subject petition outright.

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[23] *Id.* at 26.

[24] Rules of Court, Rule 65, Section 1.

[25] *De Castro v. Fernandez, Jr.*, G.R. No. 155041, February 14, 2007, 515 SCRA 682, 686.

At any rate, even if the Court would disregard this procedural flaw, the petition would still fail.

Kepco argues that the 1997 National Internal Revenue Code *(NIRC)* does not require the imprinting of the word zero-rated on invoices and/or official receipts covering zero-rated sales.[26] It claims that Section 113 in relation to Section 237 of the 1997 NIRC "does not mention the requirement of imprinting the words 'zero-rated' to purchases covering zero-rated transactions."[27] Only Section 4.108-1 of Revenue Regulation No. 7-95 *(RR No. 7-95)* "required the imprinting of the word 'zero-rated' on the VAT invoice or receipt."[28] "Thus, Section 4.108-1 of RR No. 7-95 cannot be considered as a valid legislation considering the long settled rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce."[29]

The Court does not agree.

The issue of whether the word "zero-rated" should be imprinted on invoices and/or official receipts as part of the invoicing requirement has been settled in the case of *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*[30] and restated in the later case of *J.R.A. Philippines, Inc. v. Commissioner*.[31] In the first case, Panasonic Communications Imaging Corporation *(Panasonic),* a VAT-registered entity, was engaged in the production and exportation of plain paper copiers and their parts and accessories. From April 1998 to March 31, 1999, Panasonic generated export sales amounting to US$12,819,475.15 and US$11,859,489.78 totaling

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[26] *Rollo,* p. 28.

[27] *Id.*

[28] *Id.* at 29.

[29] *Id.* at 31.

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

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

US$24,678,964.93. Thus, it paid input VAT of ₱9,368,482.40 that it attributed to its zero-rated sales. It filed applications for refund or tax credit on what it had paid. The CTA denied its application. Panasonic's export sales were subject to 0% VAT under Section 106(A)(2)(a)(1) of the 1997 NIRC but it did not qualify for zero-rating because the word "zero-rated" was not printed on Panasonic's export invoices. This omission, according to the CTA, violated the invoicing requirements of Section 4.108-1 of RR No. 7-95. Panasonic argued, however, that "in requiring the printing on its sales invoices of the word 'zero-rated,' the Secretary of Finance unduly expanded, amended, and modified by a mere regulation (Section 4.108-1 of RR No. 7-95) the letter and spirit of Sections 113 and 237 of the 1997 NIRC, prior to their amendment by R.A. 9337."[32] Panasonic stressed that Sections 113 and 237 did not necessitate the imprinting of the word "zero-rated" for its zero-rated sales receipts or invoices. The BIR integrated this requirement only after the enactment of R.A. No. 9337 on November 1, 2005, a law that was still inexistent at the time of the transactions. Denying *Panasonic's* claim for refund, the Court stated:

> Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.
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> Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those

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[32] *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28, 36-37.

sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.[33]

Following said ruling, Section 4.108-1 of RR 7-95[34] neither expanded nor supplanted the tax code but merely supplemented what the tax code already defined and discussed. In fact, the necessity of indicating "zero-rated" into VAT invoices/receipts became more apparent when the provisions of this revenue regulation was later integrated into RA No. 9337,[35] the amendatory law of the 1997 NIRC. Section 113, in relation to

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[33] *Id.* at 36-37.

[34] Section 4.108-1. Invoicing Requirements –

All VAT registered persons shall for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of services;

4. the name, TIN, business style, if any, and address of service;

5. the ***word 'zero-rated' imprinted on the invoice covering zero-rated sales***; and

6. the invoice value or consideration.

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

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

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

[35] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

Section 237 of the 1997 NIRC, as amended by RA No. 9337, now reads:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A *VAT invoice* for every sale, barter or exchange of goods or properties; ***and***

(2) A *VAT official receipt* for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be *written or printed prominently on the invoice or receipt*;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

(C) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

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SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section. [Emphases supplied]

Evidently, as it failed to indicate in its VAT invoices and receipts that the transactions were zero-rated, Kepco failed to comply with the correct substantiation requirement for zero-rated transactions.

Kepco then argues that non-compliance of invoicing requirements should not result in the denial of the taxpayer's refund claim. Citing *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*,[36] it claims that a party who fails to issue VAT official receipts/invoices for its sales should only be imposed penalties as provided under Section 264 of the 1997 NIRC.[37]

The Court has read the *Atlas* decision, and has not come across any categorical ruling that refund should be allowed for those who had not complied with the substantiation requirements. It merely recited "Section 263" which provided for penalties in case of "Failure or refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations." It does not categorically say that the claimant should be refunded. At any rate, Section 264 (formerly Section 263)[38] of the 1997 NIRC was not intended to excuse the compliance of the substantive invoicing requirement needed to justify a claim for refund on input VAT payments.

Furthermore, Kepco insists that Section 4.108-1 of Revenue Regulation 07-95 does not require the word "TIN-VAT" to be imprinted on a VAT-registered person's supporting invoices and official receipts[39] and so there is no reason for the denial of its ₱4,720,725.63 claim of input tax.[40]

In this regard, Internal Revenue Regulation 7-95 (Consolidated Value-Added Tax Regulations) is clear. Section 4.108-1 thereof reads:

Only VAT registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be

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[36] 376 Phil. 495 (1999).

[37] *Rollo*, p. 58.

[38] Paragraph (b) (4) has been deleted.

[39] *Rollo*, p. 71.

[40] *Id.*

considered as a "VAT" Invoice. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

Contrary to Kepco's allegation, the regulation specifically requires the VAT registered person to imprint TIN-VAT on its invoices or receipts. Thus, the Court agrees with the CTA when it wrote: "[T]o be considered a 'VAT invoice,' the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT is not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as 'VAT Invoices.'"[41]

Kepco further argues that under Section 113(A) of the 1997 NIRC, invoices and official receipts are used interchangeably for purposes of substantiating input VAT.[42] Hence, it claims that the CTA should have accepted its substantiation of input VAT on (1) ₱64,509.50 on purchases of goods with official receipts and (2) ₱256,689.98 on purchases of services with invoices.[43]

The Court is not persuaded.

Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services.[44] In *Commissioner of Internal Revenue v. Manila Mining Corporation*,[45] the Court distinguished an invoice from a receipt, thus:

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[41] *Id.* at 295.

[42] *Id.* at 85.

[43] *Id.* at 89.

[44] Section 113, 1997 National Internal Revenue Code, as amended.

[45] 505 Phil. 650, 665 (2005), citing Deoferio and Mamalateo, *The Value Added Tax in the Philippines*, 279 (1st ed., 2000).

A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*).[46] Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.

Although it is true that the CTA is not strictly governed by technical rules of evidence,[47] the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims. Verily, the CTA *En Banc* correctly disallowed the input VAT that did not meet the required standard of substantiation.

The CTA is devoted exclusively to the resolution of tax-related issues and has unmistakably acquired an expertise on the subject matter. In the absence of abuse or reckless

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[46] *Commissioner of Internal Revenue v. Manila Mining Corporation*, 505 Phil. 650, 666 (2005).

[47] Section 8, R.A. No. 1125 entitled "An Act Creating the Court of Tax Appeals," as amended.

exercise of authority,[48] the CTA *En Banc*'s decision should be upheld.

The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[49]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182086. November 24, 2010]

BEBINA G. SALVALOZA, representing her late husband, GREGORIO SALVALOZA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, GULF PACIFIC SECURITY AGENCY, INC., and ANGEL QUIZON,** *respondents.*

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[48] *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009, 608 SCRA 207, 214 citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

[49] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE WAS NOT DISMISSED, OR, IF DISMISSED, THAT THE DISMISSAL WAS NOT ILLEGAL.—** It is settled that, in labor cases, the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal. Failure to discharge this burden would be tantamount to an unjustified and illegal dismissal.

2. **ID.; REPUBLIC ACT NO. 5487 (THE PRIVATE SECURITY AGENCY LAW); SECURITY GUARDS; A LICENSE IS REQUIRED BEFORE ONE CAN ACT OR WORK AS A SECURITY GUARD.—** The relevant provisions of Republic Act (R.A.) No. 5487 (The Private Security Agency Law) stipulate—"Section 6. *License Necessary*. – No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary which permit as approved is prerequisite in obtaining a license or license certificate: x x x. x x x Section 9. *Employees Need Not be Licensed.* – Every person operating, managing, directing or conducting a licensed private detective or watchmen agency shall also be considered a licensed private detective, or watchman and **no person shall be employed or used in a private detective work unless he be a licensed private detective or watchman**: *Provided*, That nothing in this section shall be construed as requiring detective license for persons employed solely for clerical or manual work." From the foregoing provisions, it is clear that a license is required before one can act or work as a security guard.

3. **ID.; ID.; ID.; A SECURITY GUARD HAS THE PERSONAL RESPONSIBILITY TO ENSURE THAT HE HAS A VALID AND SUBSISTING LICENSE TO BE QUALIFIED AND AVAILABLE FOR AN ASSIGNMENT.—** [C]ontrary to the posture of Gregorio, we hold that a security guard has the personal responsibility to obtain his license. Notwithstanding the practice of some security agencies to procure the licenses of their security guards for a fee, it remains the personal obligation of a security

guard to ensure that he or she has a valid and subsisting license to be qualified and available for an assignment. Thus, when Gregorio was given the Memorandum dated August 2, 2001, directing him to complete his 201 file requirements, it meant that he had to submit each and every document to show his qualifications to work as a security guard, most important of which is his security guard license. Thus, his excuse that he was not informed that he already had an expired license and had to renew the same cannot be sustained. He should have known when his license was to expire. When he received the Memorandum, Gregorio did not even bother to verify what requirement he was supposed to complete or submit, whether it was indeed the license and/or some other document. Neither was it shown that he ever complied with this directive.

4. **ID.; ID.; ID.; A RELIEF AND TRANSFER ORDER IN ITSELF DOES NOT SEVER THE EMPLOYMENT BETWEEN A SECURITY GUARD AND THE AGENCY.—** We are mindful of the fact that, in cases involving security guards, most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. It is true that a security guard has the right to security of tenure, but this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.

5. **ID.; ID.; ID.; TEMPORARY "OFF-DETAIL" OR "FLOATING STATUS"; ELUCIDATED.—** Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts

are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.

6. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice except to forego continued employment. It exists when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.

7. ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— It should be pointed out that, per his service record, Gregorio was thrice put on "floating status" by Gulf Pacific: (1) from October 22, 1996 to April 13, 1997, or a total of 174 days, or six (6) days less than six (6) months; (2) from July 14, 1999 to May 2, 2001, or a total of almost 22 months; and (3) indefinitely, starting from August 30, 2001. Of the three instances when Gregorio was temporarily "off-detailed," we find that the last two already ripened into constructive dismissal. While we acknowledge that Gregorio's service record shows that his performance as a security guard was below par, we join the LA in his finding that Gulf Pacific never issued any memo citing him for the alleged repeated errors, inefficiency, and poor performance while on duty, and instead continued to assign him to various posts. This amounts to condonation by Gulf Pacific of whatever infractions Gregorio may have committed. Even assuming the reasons behind Gregorio's being relieved as indicated in his service record to be true, it was incumbent upon

Gulf Pacific to be vigilant in its compliance with labor laws. Although we understand that it could have been difficult for Gulf Pacific to post Gregorio given his age, about 50 years old, and his service record, still the agency should not have allowed him to wait indefinitely for an assignment if its clients were in truth less likely to accept him. If, indeed, Gregorio was undesirable as an employee, Gulf Pacific could just have dismissed him for cause. The unreasonable lengths of time that Gregorio was not posted inevitably resulted in his being constructively dismissed from employment.

8. ID.; ID.; ID.; SEPARATION PAY; AWARDED IN LIEU OF REINSTATEMENT IN CASE AT BAR.— On the LA's ruling ordering Gregorio's reinstatement, we differ. Gregorio's position paper did not pray for reinstatement, but only sought payment of money claims. Likewise, we consider the strained relations between the parties which make reinstatement impracticable. What is more, even during the time of the LA's decision, reinstatement was no longer legally feasible since Gregorio was past the age qualification for a security guard license, taking into account his three (3) different birthdates, as appearing in his service record. Section 5 of R.A. 5487, enumerating the qualifications for a security guard, provides, among others, that the person should not be less than 21 nor over 50 years of age. And as previously mentioned, as early as June 13, 2002, Gregorio was no longer in possession of a valid license. Thus, separation pay should be paid instead of reinstatement.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
G. Echalar Calalang for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 28, 2007 and the Resolution[3] dated March 13, 2008 of the Court of Appeals (CA) in CA G.R. SP No. 96101.

The relevant facts and proceedings follow—

On March 6, 2002, petitioner Gregorio G. Salvaloza[4] (Gregorio) filed a complaint[5] against respondent Gulf Pacific Security Agency, Inc. (Gulf Pacific) for illegal dismissal with claim for underpayment of wages, non-payment of overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, 13th month pay, damages, and attorney's fees before the National Labor Relations Commission (NLRC), National Capital Region. The case was docketed as NLRC NCR Case No. 03-01551-2002.

In his position paper,[6] Gregorio alleged that, in August 1996, he was employed by Gulf Pacific as a security guard, working from 7:00 a.m. to 7:00 p.m., Mondays to Sundays, receiving a monthly salary of ₱4,000.00. He stated that he was assigned to several establishments, working continuously for almost five (5) years until his alleged termination in August 2001. According to him, he reported daily to Gulf Pacific, waiting for his new assignment, but he was not given any because there was no

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[1] *Rollo*, pp. 12-36.

[2] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring; *id*. at 254-263.

[3] *Id.* at 279.

[4] Now deceased and substituted by his wife Bebina G. Salvaloza.

[5] *Rollo*, p. 68.

[6] *Id.* at 69-71.

position available for him. His last visit to Gulf Pacific's office was in February 2002, but still no assignment was given to him.

In their position paper,[7] Gulf Pacific and private respondent Angel Quizon (Quizon), the owner and manager of the agency, denied Gregorio's allegations and countered that he had been relieved several times from his assignments for various reasons or had been on Absence Without Leave (AWOL), as shown by a summary of his service record[8] below—

DATE	PLACE OF ASSIGNMENT	REMARKS
07/29/96	Shakey's food chain	Relieved on August 1, 1996 due to poor performance
08/03/96	Zeus Cargo Forwarders	Relieved on October 22, 1996 due to poor performance.
10/22/96 to 04/13/97		Floating status; did not show up to ask for possible assignment
04/14/97	MS Metal Machineries	Relieved on 08/18/97 due to expired requirements
08/19/97	Skyline Garments	Relieved 04/02/98 per client's request
04/06/98	IGC Construction	AWOL from 05/10/98 to 01/03/99 (8 months); reported on 01/04/99 for a possible assignment
01/04/99	Viva Primero	Relieved on 03/01/99 upon client's request

[7] *Id.* at 72-76.

[8] *Id.* at 78.

03/01/99	Venson Farm	Relieved on 07/13/99 due to body pains
07/14/99 to 05/02/01		Floating status; clients would not accept him due to old age and poor performance record
05/03/01 to 06/04/01	ABC Lumber	
06/05/01	Anfran Realty	Relieved on 08/29/01 due to habitual SOD violation and old age
08/30/01		Floating status

The service record also indicated that, per Gulf Pacific's records, Gregorio had three (3) birthdates – (a) SSS records – November 10, 1944; (b) Office of the Civil Registrar – November 10, 1948; and (c) Security Guard License – November 10, 1951.

They claimed that, in January 2002, Gregorio wanted to be posted, but was told by Gulf Pacific to first renew and update his license as a security guard. Instead of reporting back to work, Gregorio filed his complaint[9] on March 6, 2002.

On July 10, 2002, both parties filed their respective replies.

On one hand, Gregorio contended that he was given only a monthly salary of ₱4,000.00, way below the rate prescribed by the Philippine Association of Detective and Protective Agency Operators (PADPAO), which was ₱13,000.00 to ₱14,000.00 per month. Gregorio claimed that the failure to renew a security license was merely an afterthought on the part of Gulf Pacific in order to put a semblance of legality on his constructive dismissal.[10]

On the other hand, Gulf Pacific and Quizon argued that Gregorio had been paid in accordance with the contract rate

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[9] *Supra* note 5.

[10] *Rollo*, p. 82.

for security guard services prescribed by PADPAO in its Memorandum Circular No. 1, Series of 2001, dated December 12, 2001,[11] *i.e.*, computing the equivalent number of days in one (1) year at ₱391.50, inclusive of ordinary days, legal holidays, Sundays, rest days, and special holidays. They further maintained that Gregorio was not illegally dismissed, but was only placed on floating status due to his failure to comply with the Memorandum dated August 2, 2001,[12] requiring him to complete the requirements for his 201 file. They pointed out that Gregorio even submitted a spurious security guard license, as rebutted by the Certification dated June 13, 2002,[13] issued by the Security Agencies and Guards Supervision Division of the Philippine National Police (PNP), to the effect that Gregorio was not included in the master list of registered private security guards.[14]

In his rejoinder,[15] Gregorio stated that he did not go on AWOL, since he was permitted to go on leave by his operations manager. He denied submitting a fake license. He said it had been the practice of Gulf Pacific for many years to renew the licenses of its security guards, with the expenses incurred for the license renewal deducted from their salaries. While he admitted signing some of the payroll sheets of Gulf Pacific, he claimed that the amounts indicated therein were not fully received by him. He further said that he was directed to sign the payroll sheets despite non-receipt of his full salaries; otherwise, he would not receive any.

In their rejoinder,[16] Gulf Pacific and Quizon denied that it was the obligation of the agency to renew the license of any of its security guards, but, rather, it was the security guards'

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[11] *Id.* at 79-81.

[12] *Id.* at 113.

[13] *Id.* at 114.

[14] *Id.* at 83-85.

[15] *Id.* at 115.

[16] *Id.* at 116-118.

personal responsibility, Gregorio not exempted. They reiterated that Gregorio submitted to them a spurious license.

On June 30, 2004, the Labor Arbiter (LA) rendered a decision[17] in favor of Gregorio, disposing as follows—

> WHEREFORE, responsive to the foregoing, judgment is hereby rendered finding respondents guilty of illegal dismissal and are therefore, ordered jointly and severally liable:
>
> 1. To reinstate complainant to his former or substantially equivalent position without loss of seniority rights, benefits and privileges;
> 2. To pay complainant the amount of ₱258,355.41, representing his backwages from the time of his dismissal up to the promulgation of this decision;
> 3. To pay the aggregate amount of ₱149,996.75 representing service incentive leave pay, 13th month pay and wage differential;
> 4. To pay the equivalent amount of ten (10%) percent of the total judgment award, as and for attorney's fees;
> 5. Other claims are hereby dismissed for lack of sufficient merit.
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> SO ORDERED.[18]

Aggrieved, Gulf Pacific and Quizon appealed to the NLRC.

On November 30, 2005, the NLRC Second Division promulgated its decision[19] reversing the LA decision, and dismissing Gregorio's complaint for lack of merit.

Consequently, Gregorio filed a Motion for Reconsideration[20] of the November 30, 2005 NLRC Second Division Decision, which was denied in the resolution dated February 28, 2006.[21]

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[17] *Id.* at 120-126.

[18] *Id.* at 125-126.

[19] *Id.* at 138-145.

[20] *Id.* at 146-148.

[21] *Id.* at 150-152.

Gregorio then filed a petition for *certiorari*[22] before the CA, assailing the NLRC Second Division's reversal of the LA decision. Gulf Pacific and Quizon filed their Comment/ Opposition.[23]

On September 28, 2007, the CA rendered its Decision dismissing Gregorio's petition, thereby affirming the NLRC Second Division decision and resolution. A motion for reconsideration of the CA Decision was then filed.

During the pendency of the motion for reconsideration, Gregorio's counsel filed on December 28, 2007 a motion for substitution, alleging that Gregorio died on August 24, 2007 of Acute Myocardial Infarction, and that the Certificate of Death was made available only on December 27, 2007. The motion for substitution prayed that Gregorio be substituted by his wife, Bebina.

In the Resolution dated March 13, 2008, the CA denied the motion for reconsideration. Hence, this petition, raising the following issues—

I

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST ERROR IN HOLDING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED, THUS, TOTALLY DISREGARDING THE EVIDENCE ON RECORD, IN VIOLATION OF THE LABOR CODE[,] AS AMENDED[,] AND THE REVISED RULES OF EVIDENCE.

II

THE DECISION OF THE HONORABLE COURT OF APPEALS IS PREMISED ON A GRAVE MISAPPREHENSION OF FACT, WHEN IT HELD THAT THE RESPONDENT SECURITY AGENCY DIRECTED IN WRITING THE PETITIONER TO RENEW HIS SECURITY GUARD LICENSE AND THAT THE LATTER FAILED

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[22] *Id.* at 48-67.

[23] *Id.* at 153-177.

TO COMPLY DESPITE CONSTANT REMINDERS TO DO SO. SAID ALLEGED FACTS ARE MERE CONCLUSIONS MANIFESTLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD.[24]

The petition filed on behalf of Gregorio alleges that, in termination cases, the burden of proving just cause for dismissing an employee is on the employer. It contends that Gulf Pacific and Quizon failed to discharge this burden when they claimed that Gregorio's employment was severed for his failure to renew his security guard license, for his alleged inefficiency at work, and for his submission of a spurious security guard license.

It is further argued that the Memorandum dated August 2, 2001, requiring Gregorio to complete the requirements in his 201 file does not suffice as proof that he was directed to renew his security guard license, as nowhere in the said document can be found an express statement to that effect. It is claimed that, as a matter of practice, it was Gulf Pacific that renews the licenses of its security guards, and then deducts the cost from their salaries. Gregorio was allegedly misled with respect to his lack of license when he was placed on "floating status" for an indefinite period of time. According to the petition, all the documents for Gregorio's 201 file, *i.e.*, clearances and certifications, were already in the possession of Gulf Pacific, and it could have been easy for the latter to just renew his license. It is claimed that the alleged lack of a license was just a ploy to terminate him from employment. With respect to Gregorio's salaries, it is alleged that there were no other evidence submitted by Gulf Pacific and Quizon, except for the payroll sheets, which, although Gregorio signed, did not reflect the amounts actually received by him.

It is settled that, in labor cases, the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal. Failure to discharge this

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[24] *Id.* at 20.

burden would be tantamount to an unjustified and illegal dismissal.[25]

The relevant provisions of Republic Act (R.A.) No. 5487 (The Private Security Agency Law)[26] stipulate—

> Section 6. *License Necessary*. – No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary[27] which permit as approved is prerequisite in obtaining a license or license certificate: x x x.
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> x x x x x x x x x
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> Section 9. *Employees Need Not be Licensed.* – Every person operating, managing, directing or conducting a licensed private detective or watchmen agency shall also be considered a licensed private detective, or watchman and **no person shall be employed or used in a private detective work unless he be a licensed private detective or watchman**: *Provided*, That nothing in this section shall be construed as requiring detective license for persons employed solely for clerical or manual work.[28]

From the foregoing provisions, it is clear that a license is required before one can act or work as a security guard.

On this note, contrary to the posture of Gregorio, we hold that a security guard has the personal responsibility to obtain his license. Notwithstanding the practice of some security agencies to procure the licenses of their security guards for a fee, it remains the personal obligation of a security guard to

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[25] *Leopard Integrated Services, Inc. v. Macalinao*, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 197; *Abad v. Roselle Cinema*, G.R. No. 141371, March 24, 2006, 485 SCRA 262, 268.

[26] An Act to Regulate the Organization and Operation of Private Detective Watchmen or Security Guard Agencies, as amended.

[27] Now the Philippine National Police.

[28] Emphasis supplied.

ensure that he or she has a valid and subsisting license to be qualified and available for an assignment. Thus, when Gregorio was given the Memorandum dated August 2, 2001, directing him to complete his 201 file requirements, it meant that he had to submit each and every document to show his qualifications to work as a security guard, most important of which is his security guard license. Thus, his excuse that he was not informed that he already had an expired license and had to renew the same cannot be sustained. He should have known when his license was to expire. When he received the Memorandum, Gregorio did not even bother to verify what requirement he was supposed to complete or submit, whether it was indeed the license and/or some other document. Neither was it shown that he ever complied with this directive.

It is also observed that the date of the Memorandum reminding Gregorio to complete his 201 file requirements preceded the time when he was placed on "floating status" on August 30, 2001. The Memorandum indicated that, if on August 20, 2001, Gregorio had not yet completed his requirements, he would be relieved from his then assigned post at Anfran Realty. Per his service record, he was relieved from the said post on August 29, 2001, and he started to be on "floating status" on August 30, 2001.

However, it is likewise noted that the records of this case do not show when Gregorio's security guard license actually expired. Notwithstanding the admission of Gregorio that his license expired, although insisting that it was Gulf Pacific's practice to renew the licenses of its security guards for a fee, Gulf Pacific failed to specifically show when the legal impossibility of posting Gregorio for an assignment due to the latter's lack of a valid license commenced. Even the PNP Certification dated June 13, 2002 proffered by Gulf Pacific and Quizon does not conclusively show such fact. At most, it only proves that, as of that date, Gregorio was not included in the master list of registered security guards. Thus, the validity of Gulf Pacific's contention that it was legally impossible for it to assign Gregorio due to lack of a license may only be reckoned from that date.

We are mindful of the fact that, in cases involving security guards, most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. It is true that a security guard has the right to security of tenure, but this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.[29]

Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal,

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[29] *Leopard Integrated Services, Inc. v. Macalinao, supra* note 25, at 198; *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117; *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 540; *OSS Security & Allied Services, Inc. v. NLRC*, 382 Phil. 35, 44-45 (2000).

as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.[30]

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice except to forego continued employment. It exists when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[31]

Based on the foregoing circumstances and the applicable law and jurisprudence, we now address the question of whether Gregorio was constructively dismissed by Gulf Pacific. We answer in the affirmative.

It should be pointed out that, per his service record, Gregorio was thrice put on "floating status" by Gulf Pacific: (1) from October 22, 1996 to April 13, 1997, or a total of 174 days, or six (6) days less than six (6) months; (2) from July 14, 1999 to May 2, 2001, or a total of almost 22 months; and (3) indefinitely, starting from August 30, 2001.

Of the three instances when Gregorio was temporarily "off-detailed," we find that the last two already ripened into constructive dismissal. While we acknowledge that Gregorio's service record shows that his performance as a security guard

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[30] *Megaforce Security and Allied Services, Inc. v. Lactao*, *supra*, at 117; *Pido v. National Labor Relations Commission*, G.R. No. 169812, February 23, 2007, 516 SCRA 609, 615-616; *Phil. Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951, 962 (1999); *Sentinel Security Agency, Inc. v. NLRC*, 356 Phil. 434, 443, 446 (1998).

[31] *Megaforce Security and Allied Services, Inc. v. Lactao*, *supra*, at 117-118; *Duldulao v. Court of Appeals*, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199; *Phil. Employ Services and Resources, Inc. v. Paramio*, 471 Phil. 753, 778 (2004).

was below par, we join the LA in his finding that Gulf Pacific never issued any memo citing him for the alleged repeated errors, inefficiency, and poor performance while on duty, and instead continued to assign him to various posts. This amounts to condonation by Gulf Pacific of whatever infractions Gregorio may have committed. Even assuming the reasons behind Gregorio's being relieved as indicated in his service record to be true, it was incumbent upon Gulf Pacific to be vigilant in its compliance with labor laws. Although we understand that it could have been difficult for Gulf Pacific to post Gregorio given his age, about 50 years old, and his service record, still the agency should not have allowed him to wait indefinitely for an assignment if its clients were in truth less likely to accept him. If, indeed, Gregorio was undesirable as an employee, Gulf Pacific could just have dismissed him for cause. The unreasonable lengths of time that Gregorio was not posted inevitably resulted in his being constructively dismissed from employment.

However, with respect to Gregorio's "off-detail" starting from August 30, 2001, we hold that it should only be counted up to June 13, 2002, and not up to the promulgation of the decision of the LA, considering that, on that date, it was legally impossible for Gulf Pacific to deploy him for lack of a valid security guard license.

With respect to the alleged underpayment of wages and benefits, suffice it to state that Gulf Pacific was able to rebut this claim through its payroll sheets correspondingly signed by Gregorio. As the payroll sheets provide a convincing proof of payment of his salaries and other benefits during his tours of duty as a security guard, the burden of proof was shifted to Gregorio to prove otherwise, but only with respect to those salaries and benefits indicated in the said payroll sheets.

On the LA's ruling ordering Gregorio's reinstatement, we differ. Gregorio's position paper did not pray for reinstatement, but only sought payment of money claims. Likewise, we consider the strained relations between the parties which make

reinstatement impracticable.[32] What is more, even during the time of the LA's decision, reinstatement was no longer legally feasible since Gregorio was past the age qualification for a security guard license, taking into account his three (3) different birthdates, as appearing in his service record. Section 5[33] of R.A. 5487, enumerating the qualifications for a security guard, provides, among others, that the person should not be less than 21 nor over 50 years of age. And as previously mentioned, as early as June 13, 2002, Gregorio was no longer in possession of a valid license. Thus, separation pay should be paid instead of reinstatement.

Finally, private respondent Quizon, manager of Gulf Pacific, should be excepted from paying Gregorio's money entitlements inasmuch as Gregorio's employer, Gulf Pacific, is a corporation with a separate and distinct legal personality.[34]

This case should therefore be remanded to the LA for the proper computation of the judgment award in favor of Gregorio.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The assailed Decision dated September 28, 2007 and the Resolution dated March 13, 2008 of the Court of Appeals in CA G.R. SP No. 96101 are *REVERSED* and *SET ASIDE*. The decision of

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[32] *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, February 21, 2007, 516 SCRA 413, 414; *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 511 (2005).

[33] Section 5. *Qualifications Required*. – No person shall be employed as a security guard or watchman or private detective unless he is: (a) a Filipino citizen; (b) a high school graduate; (c) physically and mentally fit; **(d) not less than 21 nor more than 50 years of age;** (e) at least five feet and four inches in height; and (f) suffering none of the disqualifications provided for in the preceding section: *Provided*, That foreigners who are already employed as watchmen or security guards prior to the approval of this Act shall not be subject to the above-mentioned requirements: *Provided, further*, That veterans shall be given priority in employment as security guard, watchman or private detective: *And provided, finally*, That a person convicted of any crime involving moral turpitude shall not be employed as security guard, watchman or private detective. (Emphasis supplied.)

[34] Corporation Code, Section 2.

the Labor Arbiter dated June 30, 2004 is *REINSTATED* with the *MODIFICATION* that the deceased Gregorio Salvaloza, as represented by his wife Bebina G. Salvaloza, be awarded separation pay in lieu of reinstatement, and that his backwages and other monetary benefits be computed only up to June 13, 2002.

This case is remanded to the Labor Arbiter for the proper computation of the judgment award in favor of Gregorio within thirty (30) days from receipt hereof. Costs against Gulf Pacific Security Agency, Inc.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183699. November 24, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROSALIE COLILAP BAÑAGA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; COMMITTED IN CASE AT BAR.— The testimony given by Araceli who conducted an audit of the accounts of the landowners is supported by documentary evidence. This was not rebutted by appellant. In fact, her counsel stipulated that the pertinent data stated in Araceli's audit report refer to the monthly *deficiencies* in the amounts to be deposited to the landowners' accounts. x x x [T]he position held by appellant in St. John, and the special assignment given to her by the land owners, were vested with trust and confidence. She had custody of two bank books in

which deposits of what she received were to be reflected. Her failure to account for the subject funds which she was under obligation to deposit constitutes asportation with intent of gain, committed with grave abuse of the confidence reposed on her. The appellate court's affirmance of her guilt for qualified theft must thus be upheld.

2. ID.; FORGERY; NOT ESTABLISHED IN CASE AT BAR.— Respecting appellant's imputation to Lani of forgery of her signature in the petty cash vouchers showing that she received the questioned amounts, the same fails. For a rubber stamp of her printed name and of her position as Secretary was especially procured for her to be stamped on the petty cash vouchers "so nobody could forge [her] signature."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Rosalie Colilap Bañaga (appellant) assails the January 22, 2008 Decision of the Court of Appeals[1] *affirming with modification* that of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 which convicted her of Qualified Theft in eight cases – Criminal Case Nos. L-6503, L-6504, L-6510, L-6511, L-6512, L-6513, L-6514 and L-6515.

Appellant was actually charged with 16 counts of Qualified Theft, Criminal Case Nos. L-6503 up to L-6517. The Information in the first case, Criminal Case No. L-6503, reads:

x x x x x x x x x

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[1] The assailed Decision was penned by Associate Justice Sesinando E. Villon with the concurrence of Associate Justices Martin S. Villarama, Jr. (now an Associate Justice of this Court) and Noel G. Tijam; *rollo*, pp. 4-17.

That in the month of January, 1999 in the municipality of Mangatarem, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and with grave abuse of confidence, being then an employee of complainants Perfecto B. Velasquez, Jr. and Petrocenia B. Velasquez in the latter's establishment named St. John Memorial Park and also of the Lisondra Land, Inc., a land developer both located in Mangatarem, Pangasinan, did then and there willfully, unlawfully and feloniously take, carry away, convert and misappropriate for her own use and benefit the case amounts totaling One Hundred Thousand Six Hundred Eight and 39/100 Pesos (P106,608.39) (sic) which were handed to and received by her as such employee with the assigned duty to deposit immediately the said amounts to the corresponding bank book accounts opened/maintained by the complainants pertaining to their share as landowner's fund and the share for the perpetual care fund of said St. John Memorial Park with the Rural Bank of Anda, (Pangasinan), Inc., Mangatarem Branch, to the damage and prejudice of the said complainants.

Contrary to Articles 309 & 310 of the Revised Penal Code.[2]

x x x x x x x x x

The 15 other Informations are similarly worded except with respect to the dates of commission and amounts involved.

The brothers Jude B. Velasquez and Perfecto B. Velasquez, Jr., as landowners, entered into a joint venture agreement (the agreement) with Lisondra Land, Inc. (Lisondra Land) to develop a memorial park, to be named St. John Memorial Park and Garden (St. John). The landowners agreed to provide the parcel of land to be developed and the lots to be sold by Lisondra Land,[3] the gross sales to be shared by them – 45% to the landowners and 55% to Lisondra Land.

The parties to the agreement further agreed to put up a Perpetual Care Plan to serve as trust fund for the maintenance and upkeep of the lots, to be generated from payments collected from lot buyers.

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[2] Records, p. 1.

[3] *Id*. at 10.

St. John was in fact developed and went into full operation in January 1999. Lisondra Land employed John Barbo (Barbo) and Lani Ramirez (Lani) as branch managers, Rowena Pabros (Rowena) as marketing manager, and appellant as secretary.[4]

The landowners entrusted to appellant the responsibility of receiving their share in the gross sales of the lots; to Lani the responsibility of receiving their share from the Perpetual Care Plan; and still to appellant the responsibility of depositing their share at the Rural Bank of Anda (the Bank), Mangatarem Branch, Pangasinan where they maintained two accounts – the landowners' share and the perpetual care fund (the fund).

Petrocenia B. Velasquez (Petrocenia), mother of the landowners and designated representative of one of them (Jude), was in charge of overseeing their bank accounts. She noticed that there were no deposits to the landowners' share for December 1999, while there were only partial deposits for the other months of 1999; and that appellant did not deposit ₱95,193.65 to the landowners' share account and ₱110,828.79 to the fund from January 1999 to April 2000.

Denying the accusations, applellant claimed that while she affixed her signature on some of the petty cash vouchers acknowledging receipt of some amounts, her signatures on the weekly remittances were forged by Lani.[5]

Petrocenia countered, however, that appellant, together with her husband, had admitted having appropriated the questioned amounts and that she in fact promised to reimburse them[6] but failed to.

By Decision of June 25, 2003, the trial court convicted appellant in the already specified eight cases but acquitted her in the other eight cases, disposing as follows:

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[4] Transcript of Stenographic Notes (TSN), August 13, 2001, pp. 3-7; TSN, October 22, 2001, pp. 2-4.

[5] TSN, July 22, 2002, pp. 10 and 12.

[6] TSN, August 17, 2001, pp. 25-26.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused ROSALIE COLLILAP [*sic*] BAÑAGA, guilty beyond reasonable doubt of the crime of Qualified Theft in Crim. Cases Nos. L-6503, L-6504, L-6510, L-6511, L-6512, L-6513, L-6514 and L-6515.[7]

Accordingly, the accused is hereby sentenced to suffer:

1. Crim. Case No. L-6503, the penalty of 27 years of *Reclusion Perpetua*, and, to pay the complainants the sum of ₱80,973.35 which is the amount she misappropriated;

2. Crim. Case No. L-6504, the penalty of 10 years and 1 day of *Prision Mayor* as minimum to 14 years 8 mos. and 1 day of *Reclusion Temporal* as maximum, and, to pay the complainants the sum of ₱16,139.98 which is the amount unlawfully taken by her;

3. Crim. Case No. L-6510, the penalty of 4 years, 2 mos. and 1 day of *Prision Correctional* as minimum to 8 years and 1 day of *Prision Mayor* as maximum, and, to pay the complainants the sum of ₱2,607.82 which is the amount unlawfully taken by the accused;

4. Crim. Case No. L-6511, the penalty of 10 years and 1 day of *Prision Mayor* as minimum to 14 years 8 mos. and 1 day of *Reclusion Temporal* as maximum;

5. Crim. Case No. L-6512, the penalty of 14 years, 8 mos. of *Reclusion Temporal* as minimum to 20 years of *Reclusion Temporal* as maximum, and, to pay the complainants the sum of ₱23,108.21 which is the amount stolen by her;

6. Crim. Case No. L-6513, the penalty of 6 years and 1 day of *Prision Mayor* as minimum to 10 years and 1 day of *Prision*

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[7] The first case, Crim. Case No. L-6503, involved the amount of ₱80,973.35; the second case, Crim Case No. L-6504, involved the amount of ₱16,139.98; the third case, Crim. Case No. L-6510, involved the amount of ₱2,607.82; the fourth case, Crim. Case No. L-6511, involved the amount of ₱20,826.04; the fifth case, Crim. Case No. L-6512, involved the amount of ₱23,108.12; the sixth case, Crim. Case No. L-6513, involved the amount of ₱6,934.19; the seventh case, Crim. Case No. L-6514, involved the amount of ₱101,851.67; and the eighth case, Crim. Case No. L-6515, involved the amount of ₱7,503.04.

Mayor as maximum, and, to pay the complainants the sum of ₱6,934.19 which is the amount unlawfully taken by her;

7. Crim. Case No. L-6514, the penalty of 29 years of *Reclusion Perpetua*, and, to pay the complainants the sum of ₱101,851.67 which is the amount unlawfully taken by her;

8. Crim. Case No. L-6515 the penalty of 6 years and 1 day of *Prision Mayor* as minimum to 10 years of *Prision Mayor* as maximum, and, to pay the complainants the sum of ₱7,503.04 the amount stolen by her.

The accused is also ordered to pay the costs in the aforementioned cases

On the other hand, on the grounds of reasonable doubt the accused is hereby ACQUITTED in Crim. Cases Nos. L-6505, L-6506, L-6507, L-6508, L-6509, L-6516, L-6517 and L-6518.

No costs.

SO ORDERED.

As stated early on, the Court of Appeals *affirmed* the trial court's decision *with modification* on the penalties imposed, consistent with the proper application of the Indeterminate Sentence Law. Thus the appellate court disposed:

WHEREFORE, in view of the foregoing, the assailed decision is hereby MODIFIED, in that appellant is hereby sentenced to suffer:

1. In Crim. Case No. L-6503, the penalty of 11 years, 4 months and 1 day of *prision mayor* maximum, as minimum penalty to 18 years, 8 months and 1 day of *reclusion temporal* maximum as maximum penalty.

2. In Crim. Case No. L-6504, the penalty of 10 years and 1 day of *prision mayor* maximum as minimum penalty to 16 years, 5 months and 11 days of *reclusion temporal* medium as maximum penalty.

3. In Crim. Case No. L-6510, the penalty of 4 years, 2 months and 1 day of *prision correctional* maximum as minimum penalty to 9 years, 4 months and 1 day of *prision mayor* medium as maximum penalty.

4. In Crim. Case No. L-6511, the penalty of 10 years and 1 day of *prision mayor* maximum as minimum penalty to 16 years, 5 months and 11 days of *reclusion temporal* medium as maximum penalty.

5. In Crim. Case No. L-6512, the penalty of 10 years and 1 day of *prision mayor* maximum as minimum penalty to 16 years, 5 months and 11 days of *reclusion temporal* medium as maximum penalty.

6. In Crim. Case No. L-6513, the penalty of 8 years, 8 months and 1 day of *prision mayor* medium as minimum penalty to 13 years, 1 month and 10 days of *reclusion temporal* minimum as maximum penalty.

7. In Crim. Case No. L-6514, the penalty of *reclusion perpetua*.

8. In Crim. Case No. L-6515, the penalty of 7 years, 4 months and 1 day of *prision mayor* minimum as minimum penalty to 13 years, 1 month and 10 days of *reclusion temporal* minimum as maximum penalty.

The assailed decision is hereby affirmed in all other aspects.

SO ORDERED.

Hence, the present petition.

Appellant faults the appellate court in affirming the trial court's crediting of the testimony of prosecution witness accountant Araceli Cruz (Araceli).

The petition fails.

The testimony given by Araceli who conducted an audit of the accounts of the landowners is supported by documentary evidence. This was not rebutted by appellant. In fact, her counsel stipulated that the pertinent data stated in Araceli's audit report refer to the monthly *deficiencies* in the amounts to be deposited to the landowners' accounts.[8]

Respecting appellant's imputation to Lani of forgery of her signature in the petty cash vouchers showing that she received

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[8] TSN, September 7, 2001, pp. 4-5.

the questioned amounts, the same fails. For a rubber stamp of her printed name and of her position as Secretary was especially procured for her to be stamped on the petty cash vouchers "so nobody could forge [her] signature."[9] Consider her testimony below which shows that forgery could not have taken place.

> Atty. Perez [to appellant]:
>
> Q So Madam Witness, the rubber stamp [appearing on the petty cash vouchers] was in your sole possession and nobody could get it, is it not?
>
> A It's true, sir.
>
> Q So Madam Witness, **all these transactions in petty cash vouchers bearing the rubber stamp, are in fact transactions in which you personally received the money, is it not?**
>
> A **Yes, sir**.[10] (emphasis and underscoring supplied)

Verily, the position held by appellant in St. John, and the special assignment given to her by the land owners, were vested with trust and confidence. She had custody of two bank books in which deposits of what she received were to be reflected. Her failure to account for the subject funds which she was under obligation to deposit constitutes asportation with intent of gain, committed with grave abuse of the confidence reposed on her. The appellate court's affirmance of her guilt for qualified theft must thus be upheld. And so must its modification of the penalties imposed by the trial court.

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00134 is *AFFIRMED*.

SO ORDERED.

Brion, Peralta,[*] *Bersamin,* and *Sereno, JJ.*, concur.

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[9] TSN, November 15, 2002, p. 46.

[10] *Id.* at 11.

[*] Additional member per Raffle dated November 24, 2010 in lieu of Justice Martin S. Villarama, Jr.

FIRST DIVISION

[G.R. No. 184599. November 24, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEDDY BATOON *y* MIGUEL and MELCHOR BATOON *y* MIGUEL,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

2. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PROCEDURE IN THE CUSTODY OF SEIZED PROHIBITED DRUGS; COMPLIED WITH IN CASE AT BAR.— Records show that the chain of custody over the seized substances was not broken, and that the drugs seized from appellants were properly identified before the trial court. As correctly appreciated by the trial and appellate courts, a legitimate buy-bust operation led to the arrest of accused-appellants. During the police operation, PO2 Vicente received from Melchor a sachet containing the drugs. On the other hand, PO1 Cabotaje seized from Teddy three sachets, also containing drugs. PO2 Vicente and PO1 Cabotaje marked and separately prepared the certification of the seized items. Thereafter, they personally turned over the items to the crime laboratory for examination. The police chemist, P/Insp. Laya II, tested the marked sachets, which turned out positive for *methamphetamine hydrochloride*. Finally, during trial, the same marked sachets were identified by PO2 Vicente and PO1 Cabotaje. Thus, the foregoing facts confirm that the police officers complied with the procedure in the custody of seized prohibited drugs.

3. ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.— For conviction of illegal possession of a prohibited drug to lie, the following elements must be established:

(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.

4. ID.; ID.; EXCLUSIVE POSSESSION OF THE PROHIBITED DRUG IS NOT REQUIRED; ELUCIDATED.— [E]xclusive possession of the prohibited drug is not required. As explained in *People v. Huang Zhen Hua*: "Possession under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another. Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same way may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion or within such premises in the absence of any satisfactory explanation."

5. ID.; CONSPIRACY; DULY ESTABLISHED IN CASE AT BAR.— In this case, although the three sachets containing *shabu* were found solely in the possession of Teddy, it was evident that Melchor had knowledge of its existence. Moreover, as correctly found by the CA, Melchor had easy access to the *shabu*, because they conspired to engage in the illegal business of drugs. The CA explained, thus: "As the records would show, when PO2 Vicente handed to Melchor Batoon a marked [PhP] 500.00 bill, the latter went to his brother Teddy and gave him money. Upon receipt of the money, Teddy Batoon handed a sachet to

Melchor, who then gave it to PO2 Vicente. When the arrest [was] affected on both of them, the three additional sachets were found on [Teddy] by PO1 Cabotaje. These acts of the accused indubitably demonstrate a coordinated plan on their part to actively engage in the illegal business of drugs. From their concerted conduct, it can easily be deduced that there was common design to deal with illegal drugs. Needless to state, when conspiracy is shown, the act of one is the act of all conspirators."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the February 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02472 entitled *People of the Philippines v. Teddy Batoon and Melchor Batoon*, which affirmed the August 11, 2006 Decision[2] in Criminal Case Nos. 11823-12 and 11823-13 of the Regional Trial Court (RTC), Branch 13 in Laoag City. The trial court held accused-appellants Teddy Batoon and Melchor Batoon guilty of violating Sections 5 and 11 of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charges against accused-appellants stemmed from the following Informations:

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[1] *Rollo*, pp. 2-23. Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Andres B. Reyes Jr. and Ramon Bato, Jr.

[2] CA *rollo*, pp. 68-91. Penned by Judge Philip G. Salvador.

That, on or about July 14, 2005, at Brgy. 14, in the municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed plastic sachet containing 0.12345 grams of Methamphetamine Hydrochloride otherwise known as "*shabu*" a prohibited drug to a poseur buyer of the police authorities of INPPO PAID-SOT, Camp Juan, Laoag city who posed as buyer in a buy-bust operation without authority to do so.

CONTRARY TO LAW.[3]

That on or about July 14, 2005, at Brgy. 14, in the municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and knowingly have in his possession, control and custody three (3) heat-sealed plastic sachets containing 0.1559 grams, 0.1168 grams and 0.1337 grams respectively, of Methamphetamine Hydrochloride otherwise known as "*shabu*", a prohibited drug without the authority or license to possess the same from the appropriate authority.

CONTARY TO LAW.[4]

Accused-appellants pleaded not guilty to the charges.

In the ensuing trial, the prosecution presented in evidence the oral testimonies of Police Officer 2 (PO2) Excel Vicente and PO1 Alizer Cabotaje of the Philippine National Police Provincial Anti-Illegal Drugs Special Operations Team (PAID-SOT) of Ilocos Norte in Camp Valentin Juan, Laoag City. The prosecution and the defense agreed to stipulate on the facts of the testimony of Police Inspector (P/Insp.) Valeriano Laya II, a forensic chemist of the same office.

The People's version of the incident is as follows:

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[3] *Id.* at 9.

[4] *Id.* at 11.

On July 14, 2005, the PAID-SOT received a report that there was rampant selling of *shabu* in *Barangay* 14, San Nicolas, Ilocos Norte. According to the report, brothers Teddy and Melchor Batoon were two of the most notorious sellers of illegal drugs in the area.[5]

Acting on this information, a team was formed to confirm the veracity of the report through a buy-bust operation. The team was composed of P/Insp. Teddy Rosqueta, Senior Police Officer 4 (SPO4) Angel Salvatierra, SPO3 Arthur Mateo, PO3 Rousel Albano, PO2 Excel Vicente, PO2 Danny Valdez, and PO1 Alizer Cabotaje. During the briefing for the operation, PO2 Vicente was designated as the poseur-buyer. He was given a PhP 500 bill which he marked with the letter "e." The briefing was recorded by PO3 Albano in the police blotter.

Thereafter, PO2 Vicente and the police asset proceeded to accused-appellants' residence in *Barangay* 14, San Nicolas, Ilocos Norte. The other members of the team followed on board two vehicles. Upon arriving in the area, the asset approached accused-appellant Melchor and introduced PO2 Vicente as customer. Melchor informed PO2 Vicente that the *shabu* was with his brother, accused-appellant Teddy. He then asked the money from PO2 Vicente and the latter gave him the marked PhP 500 bill.[6] Thereafter, Melchor approached Teddy, who was about 10 meters away from them. He handed the marked money to Teddy, who, in turn, gave Melchor a sachet.

Melchor returned to where PO2 Vicente was and handed him the sachet. Upon receiving the sachet, PO2 Vicente signaled to his companions by turning his cap, to have its visor at the back of his head. The other team members rushed to arrest Melchor and Teddy. PO2 Vicente frisked Melchor and recovered from him one PhP 100 bill, three pieces of five-peso coins, three pieces of one-peso coin, one jungle knife, one lighter, and one brown wallet. PO1 Cabotaje got hold of Teddy and

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[5] *Rollo*, p. 4.

[6] *Id.*

recovered from him the marked PhP 500 bill, six PhP 100 bills, one candy, and one black coin purse containing three elongated sachets of *shabu*. Accused-appellants were then detained in the PAID-SOT, Camp Juan.

Immediately upon reaching the camp, PO2 Vicente and PO1 Cabotaje brought the confiscated sachets to the crime laboratory for examination. The examination results showed that the four sachets taken from accused-appellants contained a substance positive for methamphetamine hydrochloride or *shabu*. The sachet subject of the buy-bust operation contained 0.1235 gram of *shabu*. On the other hand, the three sachets seized from Teddy contained *shabu* weighing 0.1559 gram, 0.1168 gram, and 0.1337 gram, or an aggregate net weight of 0.4064 gram.

In their defense, accused-appellants claimed denial and frame-up. Accused-appellants alleged that in the afternoon of July 14, 2005, Melchor was seated at the corner of Castro and McKinley Streets in *Barangay* 14, San Nicolas, Ilocos Norte when a car stopped in front of him. Suddenly, the male passengers of the car alighted, approached him, and boxed him. Melchor did not know who the men were. Neither did he know why the men boxed him. Thereafter, the men forced Melchor to go inside the car.[7]

Meanwhile, Teddy, who had just come home from the Municipal Trial Court of San Nicolas, was called by a neighbor and was told that his brother was being arrested. He ran towards the place where his brother was, about 30 to 40 meters north of their house. Upon reaching the place, he asked the men what the commotion was about. Instead of answering him, however, the men boxed him on the face. Thereafter, he was also boarded into the vehicle together with Melchor.[8] The men then took his money amounting to PhP 1,320 and his mobile phone.

Thereafter, Melchor and Teddy were detained at Camp Juan. While under police custody, they were continuously maltreated and mauled.

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[7] *Id.* at 6.

[8] *Id.*

Charles Tirona, Melchor's son, Elizabeth Domingo, and Mary Jane Mariano corroborated the testimonies of accused-appellants as to the facts and circumstances surrounding accused-appellants' arrest and physical abuse in the hands of the police. On the other hand, Emerson Cabel confirmed that Teddy attended a court hearing in the municipal hall at around 2:00 p.m. of July 14, 2005. He also testified that he saw Teddy being boarded into a Wrangler-type jeep.[9]

On August 11, 2006, the RTC rendered a Decision, the dispositive part of which reads:

> WHEREFORE, the Court hereby renders judgment finding both accused Teddy Batoon and Melchor Batoon GUILTY beyond reasonable doubt as charged of illegal sale of *shabu* in criminal case NO. 11823 and are, therefore, sentenced to suffer the penalty of life imprisonment and for each of them to pay the fine of PhP 2,000,000.00. Both accused are likewise found GUILTY beyond reasonable doubt as charged of illegal possession of *shabu* with an aggregate weight of 0.4064 gram in Criminal Case No. 11824 and are, therefore, sentenced to suffer the indeterminate penalty of imprisonment ranging from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and for each of them to pay a fine of PhP 300,000.00.
>
> The contraband subject of theses cases are hereby confiscated, the same to be disposed of as law prescribes, with costs *de oficio*.
>
> SO ORDERED.[10]

The case was appealed to the CA.

The Ruling of the CA

Convinced of the regularity of the buy-bust operation against accused-appellants, the CA dismissed accused-appellants' claim of frame-up and upheld their conviction. Also, it held that the prosecution was able to prove that the substance submitted for forensic examination was the same as that seized from the accused.

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[9] *Id.* at 7.

[10] CA *rollo,* pp. 80-81.

Hence, we have this appeal.

The Issues

In a Resolution dated November 19, 2008, this Court required the parties to submit supplemental briefs if they so desired. On January 19, 2009, accused-appellants, through counsel, signified that they were not going to file a supplemental brief. Thus, the following issues raised in accused-appellants' brief dated March 2, 2007 are now deemed adopted in this present appeal:

I.

The trial court gravely erred in convicting the accused-appellants of the crimes charged despite the prosecution's failure to establish the identity of the prohibited drugs constituting the *corpus delicti* of the offenses.

II.

The trial court gravely erred in finding that there was conspiracy in the crime of illegal possession of *shabu* under Criminal Case No. 11824 when the alleged confiscated drugs were seized only from appellant Teddy Batoon's possession.

III.

The trial court gravely erred in convicting the accused appellant Melchor Batoon of the crime of illegal possession of *shabu* under Criminal Case No. 11824 despite the prosecution's failure to prove his guilt beyond reasonable doubt.[11]

In essence, accused-appellants question the chain of custody over the alleged confiscated prohibited drugs and Melchor's conviction for illegal possession of *shabu*.

The Ruling of the Court

The appeal is without merit.

In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the

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[11] *Id.* at 93.

transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[12]

There is no question that the police conducted a valid buy-bust operation against accused-appellants. The positive testimonies of the police officers show the coordinated efforts of the PAID-SOT to entrap accused-appellants while in the act of selling a prohibited drug. The regularity of the performance of their duty on this matter could not be overturned absent any convincing evidence to the contrary.[13]

Accused-appellants hinge their appeal on the alleged failure of the police to comply with the procedure in the custody of seized prohibited and regulated drugs as embodied in Sec. 21(a) of the Implementing Rules and Regulations of RA 9165. They alleged that there was no conclusive evidence to prove that the substances seized from accused-appellants were the same substances subjected to examination and presented in court.

We are not convinced. Records show that the chain of custody over the seized substances was not broken, and that the drugs seized from appellants were properly identified before the trial court. As correctly appreciated by the trial and appellate courts, a legitimate buy-bust operation led to the arrest of accused-appellants. During the police operation, PO2 Vicente received from Melchor a sachet containing the drugs.[14] On the other hand, PO1 Cabotaje seized from Teddy three sachets, also containing drugs.[15] PO2 Vicente and PO1 Cabotaje marked[16] and separately prepared the certification of the seized items.[17]

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[12] *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486, 490; citing *People of the Philippines v. Hajili and Unday*, 447 Phil. 283, 295 (2003).

[13] *People v. Llamado*, G.R. No. 185278, March 13, 2009, 581 SCRA 544, 552.

[14] TSN, September 26, 2005, p. 13.

[15] TSN, October 6, 2005, p. 14.

[16] TSN, September 26, 2005, p. 22 and October 6, 2005, p. 16.

[17] Records, pp. 39-40.

Thereafter, they personally turned over the items to the crime laboratory for examination.[18] The police chemist, P/Insp. Laya II, tested the marked sachets, which turned out positive for *methamphetamine hydrochloride*.[19] Finally, during trial, the same marked sachets were identified by PO2 Vicente[20] and PO1 Cabotaje.[21]

Thus, the foregoing facts confirm that the police officers complied with the procedure in the custody of seized prohibited drugs.

Also, Melchor cannot deny his involvement in the possession of the *shabu*. For conviction of illegal possession of a prohibited drug to lie, the following elements must be established: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. Notably, exclusive possession of the prohibited drug is not required. As explained in *People v. Huang Zhen Hua*:

> Possession under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.
>
> Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom.

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[18] TSN, *supra* note 15, at 18.

[19] CA *rollo*, pp. 15-16.

[20] TSN, *supra* note 14, at 24.

[21] TSN, *supra* note 15, at 16.

However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same way may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion or within such premises in the absence of any satisfactory explanation.[22]

In this case, although the three sachets containing *shabu* were found solely in the possession of Teddy, it was evident that Melchor had knowledge of its existence. Moreover, as correctly found by the CA, Melchor had easy access to the *shabu*, because they conspired to engage in the illegal business of drugs. The CA explained, thus:

As the records would show, when PO2 Vicente handed to Melchor Batoon a marked [PhP] 500.00 bill, the latter went to his brother Teddy and gave him money. Upon receipt of the money, Teddy Batoon handed a sachet to Melchor, who then gave it to PO2 Vicente. When the arrest [was] affected on both of them, the three additional sachets were found on [Teddy] by PO1 Cabotaje.

These acts of the accused indubitably demonstrate a coordinated plan on their part to actively engage in the illegal business of drugs. From their concerted conduct, it can easily be deduced that there was common design to deal with illegal drugs. Needless to state, when conspiracy is shown, the act of one is the act of all conspirators.[23]

Hence, the prosecution successfully adduced proof beyond reasonable doubt of accused-appellants Melchor and Teddy Batoon's guilt of the crimes charged.

WHEREFORE, the appeal is *DENIED*. The February 28, 2008 CA Decision in CA-G.R. CR-H.C. No. 02472 upholding the conviction of accused-appellants is *AFFIRMED*.

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[22] G.R. No. 139301, September 29, 2004, 439 SCRA 350, 368; citing *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[23] *Rollo*, p. 21.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185616. November 24, 2010]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARNEL MACAFE *y* NABONG,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; WHAT THE LAW PUNISHES IN STATUTORY RAPE IS CARNAL KNOWLEDGE OF A WOMAN BELOW TWELVE YEARS OLD.— Rape is defined and penalized under Article 335 of the Revised Penal Code x x x. Rape under paragraph 3 of this article is termed **statutory rape** as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF YOUNG AND IMMATURE RAPE VICTIMS DESERVE FULL CREDENCE.— This Court has held time and again that

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[*] Additional member per Special Order No. 913 dated November 2, 2010.

testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, pervert herself by subjecting herself to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime as serious as rape if what she claims is not true.

3. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The prosecution x x x positively established the elements of statutory rape under Article 335, paragraph 3 of the Revised Penal Code. *First*, the appellant succeeded in having carnal knowledge of AAA on three occasions on September 1997. *Second*, AAA was below twelve years of age at the time of the incidents, as evidenced by her birth certificate and testimony showing that she was born on June 1, 1986.

4. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE VICTIM'S POSITIVE DECLARATION ON THE ACCUSED'S IDENTITY AND INVOLVEMENT IN THE CRIME.— The appellant's defense of denial must crumble in light of AAA's positive and specific testimony. We have consistently held that the identification of the accused, when categorical and consistent, and without any showing of ill motive on the part of the eyewitness testifying, should prevail over mere denial. In the context of this case, the appellant's denial, unsupported by any other evidence, cannot overcome the victim's positive declaration on his identity and involvement in the crime attributed to him.

5. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; WHERE THE CIRCUMSTANCE OF RELATIONSHIP WAS NOT ALLEGED IN THE COMPLAINT, THE PENALTY OF *RECLUSION PERPETUA* SHALL BE IMPOSED; CASE AT BAR.— Under the second part of Article 335 of the Revised Penal Code, the death penalty shall be imposed when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse

of the parent of the victim. As shown by her Certificate of Live Birth, AAA was born on June 1, 1986; AAA also testified to this fact. Clearly, AAA was only eleven years old when the three rapes happened in September 1997. Nonetheless, the CA was correct in reducing the death penalty to *reclusion perpetua* because the circumstance of relationship was not alleged in the complaints. None of the complaints alleged that the appellant was the stepfather of AAA.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— We affirm the awards of ₱50,000.00 as civil indemnity and moral damages, respectively, for each count of rape, as they are in accord with prevailing jurisprudence. Civil indemnity is awarded on the finding that rape was committed. Similarly, moral damages are awarded to rape complainants without the need of a pleading or proof of their basis; it is assumed that a rape complainant actually suffered moral injuries, entitling her to this award. However, we increase the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00 pursuant to established jurisprudence. The award of exemplary damages is justified, under Article 2229 of the Civil Code, to set a public example and serve as deterrent against elders who abuse and corrupt the youth.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

BRION, *J.*:

This is an appeal from the decision,[1] dated May 26, 2008, of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00277, affirming with modification the March 10, 1999 decision of

[1] Penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Edgardo T. Lloren; *rollo*, pp. 5-19.

the Regional Trial Court (*RTC*), Branch 16, Zamboanga City. The RTC decision[2] found appellant Arnel Macafe *y* Nabong guilty beyond reasonable doubt of three (3) counts of rape and meted him the death penalty for each count.

BACKGROUND FACTS

The records show that AAA[3] is the daughter of BBB and CCC. After CCC died, BBB married the appellant in 1994; they lived together in Parang, Marikina together with BBB's children from her first marriage.[4] In August 1995, the appellant and BBB, together with AAA and her sister, DDD, went to Zamboanga City and stayed at the house of BBB's older brother, EEE. BBB's three other children were already in Zamboanga City at that time.[5] In May 1996, BBB went to Israel to work as a caregiver; she left her five children under the appellant's care.

1st rape

At around 10:00 a.m. of September 10, 1997, AAA was sitting alone on the sofa located at the sala of EEE's house, when the appellant approached her and told her to lie down. When AAA did as ordered, the appellant pulled down her shorts and panty. AAA resisted but the appellant succeeded in removing them. The appellant spread AAA's legs apart, and went on top of her. The appellant removed his shorts and briefs, and inserted his penis in AAA's private parts. AAA felt pain in her private parts. She tried to push the appellant but was unsuccessful. Afterwards, she felt a warm sticky substance coming from the

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[2] Penned by Judge Jesus C. Carbon, Jr.; records, pp. 23-93.

[3] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, September 28, 1998, pp. 6 and 9-10.

[5] *Id.* at 11-13.

appellant's penis. The appellant told her to wash her private parts in the bathroom. Thereafter, the appellant left. AAA saw blood in her private parts when she washed them.[6]

2nd rape

On September 15, 1997, the appellant instructed AAA not to attend her classes so that he will have a companion in the house. At around 11:00 a.m., AAA was at the balcony of the house when the appellant ordered her to go to the *bodega*. When AAA arrived at the *bodega*, the appellant told her to lie down on the blanket on the floor. When AAA did as ordered, the appellant removed her shorts and panty. AAA resisted, but the appellant tied her both hands with a shoelace. Afterwards, the appellant spread AAA's legs apart. The appellant then removed his shorts and briefs, went on top of AAA, and inserted his penis in her vagina. AAA felt pain in her private parts. Thereafter, she noticed blood and a sticky substance coming out of her vagina.[7]

3rd rape

On September 18, 1997, the appellant told AAA not to go to school. AAA followed the appellant's order because she was afraid that he would whip her if she disobeyed. In the afternoon and while AAA was sitting at the balcony, the appellant ordered AAA to go to the *bodega*. AAA went there as instructed, and on her arrival, the appellant ordered her to lie down on the blanket on the floor. AAA refused, but the appellant slapped her. When AAA laid on the blanket, the appellant removed her shorts and panty, and then spread her legs apart. The appellant then removed his pants and briefs, went on top of AAA, and inserted his penis in her vagina. AAA felt pain in her private parts; she also felt "something warm" coming from the appellant's penis. She noticed blood coming from her vagina when she washed it afterwards.[8]

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[6] *Id.* at 17-20.

[7] *Id.* at 22-28.

[8] *Id.* at 30-35; TSN, September 30, 1998, pp. 2-16.

On all three (3) occasions, the appellant threatened to kill AAA if she revealed the incident to anyone.[9]

The records likewise reveal that on September 30, 1997, the appellant whipped AAA on the different parts of her body because she came home late.[10] AAA reported the whipping incident to her teacher, Grace Alvarez. When Grace saw the contusions on AAA's body, she advised AAA to leave their house; she also referred the matter to Esteban "Steve" Pasol, Jr., the father of one of AAA's classmates.[11] AAA told Esteban that she ran away from home because the appellant whipped her. Esteban reported the incident to a *barangay* official and to the ABS CBN radio station. On the next day, AAA was interviewed by an ABS CBN radio personnel. Esteban, thereafter, brought AAA to the Department of Social Welfare and Development and then to the Zamboanga Medical Center for a medical examination.[12]

On November 13, 1997, AAA revealed to Grace that she had been raped, although she did not immediately name her rapist. AAA disclosed the rape because she "could not take it anymore"; and because she learned that the appellant also raped her younger sister.[13] Grace called AAA's grandparents, and requested them to go to the school. On their arrival, AAA told them that she had been raped by the appellant.[14] Immediately after, they brought AAA to the Zamboanga Medical Center.[15]

Dr. Ma. Regina Bucoy Vasquez, the resident physician of the Zamboanga Medical Center, conducted a physical

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[9] TSN, September 28, 1998, pp. 35-36; TSN, September 29, 1998, p. 22.

[10] TSN, September 28, 1998, pp. 37 and 42.

[11] *Id.* at 38-39; TSN, September 30, 1998, pp. 18-21.

[12] TSN, September 28, 1998, pp. 40-46; TSN, October 5, 1998, pp. 5-8.

[13] TSN, September 28, 1998, pp. 55 and 61; TSN, September 29, 1998, p. 25; TSN, October 1, 1998, pp. 9-11.

[14] TSN, September 28, 1998, pp. 57 and 62.

[15] TSN, September 29, 2010, p. 3.

examination on AAA on November 14, 1997,[16] and saw incomplete and healed multiple lacerations in her hymen. According to Dr. Vasquez, the multiple lacerations on AAA's private parts imply that she has had previous sexual contacts.[17]

AAA was brought to the Tetuan Police Station, where she gave her statement to the police.[18] Thereafter, the prosecution filed three (3) complaints for rape, before the RTC, against the appellant, docketed as Criminal Case Nos. 15124-26.[19]

The appellant denied the allegations against him, and claimed that AAA's aunt, FFF, merely instigated AAA to say that she had been raped by him. He explained that FFF was mad at him for his failure to give the money sent by BBB for her (FFF). The appellant further added that FFF wanted to put him in jail so that she (FFF) would manage the money BBB sent. The appellant admitted that he whipped AAA on September 30, 1997 because she came home late.[20]

THE RTC RULING

The RTC convicted the appellant of three (3) counts of rape under Article 335 of the Revised Penal Code, and sentenced him to suffer the death penalty for each count. The RTC also ordered the appellant to pay the victim ₱50,000.00, as civil indemnity, and ₱25,000.00, as exemplary damages, for each count of rape.

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[16] TSN, September 28, 2010, pp. 13-14.

[17] *Id.* at 23-24.

[18] TSN, September 29, 1998, p. 4.

[19] Except for the dates of the commission of the crime, the three (3) criminal complaints are similarly worded, as follows:

That on or about September 10, 1997, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned, [AAA], a girl, 11 years of age, against her will.

CONTRARY TO LAW.

[20] CA *rollo*, pp. 167-184; TSN, October 8, 1998, pp. 30 and 35.

The RTC found AAA's testimony to be clear, straightforward, credible, convincing, and free from any contradiction. It, likewise, found no ill motive on AAA's part to falsely testify against her own stepfather. Furthermore, AAA's testimony was supported by the medical findings of Dr. Vasquez, who found incomplete healed lacerations on the victim's hymen.

The RTC also held that AAA's one (1) month delay in reporting the rapes did not impair her credibility. The RTC explained that it is not uncommon for young girls to conceal the assaults on their virtue due to the threats on their lives, more so when the rapist is the victim's own stepfather living with her. The RTC finally ruled that the appellant's denial was not supported by any other evidence.

THE CA DECISION

The CA, in its decision dated May 26, 2008, affirmed the RTC decision with the modification that the death penalty be reduced to *reclusion perpetua* for each count of rape, as the complaints failed to allege the appellant's relationship to the victim. The CA also ordered the appellant to further pay the victim ₱50,000.00, as moral damages, for each count.

The CA found AAA's testimony credible and convincing, more so since it was supported by the medical findings of Dr. Vasquez. The CA also disregarded the appellant's denial and imputation of ill-motive on the part of FFF, for lack of evidence to support these defenses.

THE ISSUE

In his brief, the appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He claims that AAA was not a credible witness, and avers that she was merely influenced by FFF to make false accusations against him.

THE COURT'S RULING

After due consideration, we dismiss the appeal but increase the awarded exemplary damages from ₱25,000.00 to ₱30,000.00 for each count of rape.

Sufficiency of Prosecution Evidence

Rape is defined and penalized under Article 335[21] of the Revised Penal Code, as amended, which provides:

> ARTICLE 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. **When the woman is under twelve years of age** or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua*.

Rape under paragraph 3 of this article is termed ***statutory rape*** as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[22]

In her testimony, AAA positively identified the appellant as the one who raped her on three occasions, namely, September 10, 1997, September 15, 1997, and September 18, 1997. Her testimonies were clear and straightforward; she was consistent in her recollection of the details of her defloration. In addition, her testimonies were corroborated by the medical findings of Dr. Vasquez.

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[21] The crimes subject of Criminal Case Nos. 15124-26 were committed before Article 335 of the Revised Penal Code was repealed by Republic Act No. 8353 or the Anti-Rape Law of 1997.

[22] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157, 164.

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, pervert herself by subjecting herself to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime as serious as rape if what she claims is not true.[23]

The prosecution, thus, positively established the elements of statutory rape under Article 335, paragraph 3 of the Revised Penal Code. *First*, the appellant succeeded in having carnal knowledge of AAA on three occasions on September 1997. *Second*, AAA was below twelve years of age at the time of the incidents, as evidenced by her birth certificate and testimony showing that she was born on June 1, 1986.

The Appellant's Defenses

The appellant denied having raped AAA, and insisted that AAA only filed the cases at the instigation of FFF, who was mad at him for failing to remit the money that BBB sent.

The appellant's defense of denial must crumble in light of AAA's positive and specific testimony. We have consistently held that the identification of the accused, when categorical and consistent, and without any showing of ill motive on the part of the eyewitness testifying, should prevail over mere denial. In the context of this case, the appellant's denial, unsupported by any other evidence, cannot overcome the victim's positive declaration on his identity and involvement in the crime attributed to him.

We also find unmeritorious the appellant's claim that FFF merely instigated AAA to file the complaints against him. We

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[23] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671.

stress that it was not FFF but AAA's grandparents who decided to file the case against the appellant. At any rate, the appellant's claim that FFF convinced AAA to file fabricated rape charges because the appellant failed to give the money due her is too flimsy a reason for an aunt to subject her niece to humiliation and scandal.

The Proper Penalty and Indemnity

Under the second part of Article 335 of the Revised Penal Code, the death penalty shall be imposed when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

As shown by her Certificate of Live Birth,[24] AAA was born on June 1, 1986; AAA also testified to this fact.[25] Clearly, AAA was only eleven years old when the three rapes happened in September 1997. Nonetheless, the CA was correct in reducing the death penalty to *reclusion perpetua* because the circumstance of relationship was not alleged in the complaints. None of the complaints alleged that the appellant was the stepfather of AAA.

We affirm the awards of ₱50,000.00 as civil indemnity and moral damages, respectively, for each count of rape, as they are in accord with prevailing jurisprudence. Civil indemnity is awarded on the finding that rape was committed. Similarly, moral damages are awarded to rape complainants without the need of a pleading or proof of their basis; it is assumed that a rape complainant actually suffered moral injuries, entitling her to this award.[26]

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[24] See records, p. 26; see also TSN, October 7, 1998, pp. 63-67 (Formal offer of exhibits).

[25] TSN, September 28, 1998, p. 6.

[26] See *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588, 606.

However, we increase the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00 pursuant to established jurisprudence. The award of exemplary damages is justified, under Article 2229 of the Civil Code, to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[27]

WHEREFORE, in light of all the foregoing, we *AFFIRM* the May 26, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00277, with the following *MODIFICATIONS*:

(a) appellant Arnel Macafe *y* Nabong is hereby found GUILTY beyond reasonable doubt of three (3) counts of STATUTORY RAPE, as defined and penalized under Article 335 of the Revised Penal Code; and

(b) the amount of the awarded exemplary damages is INCREASED from ₱25,000.00 to ₱30,000.00.

SO ORDERED.

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

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[27] See *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307; *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378; *People v. Jumawid*, G.R. No. 184756, June 5, 2009, 588 SCRA 808.

FIRST DIVISION

[G.R. No. 187978. November 24, 2010]

ROMULO R. PERALTA, *petitioner, vs.* **HON. RAUL E. DE LEON, Presiding Judge, Regional Trial Court of Parañaque, Branch 258, HON. ARBITER DUNSTAN SAN VICENTE, in his capacity as Housing and Land Use Regulatory Arbiter and LUCAS ELOSO EJE, in his capacity as Sheriff, Regional Trial Court, Parañaque City and CONCEPTS AND SYSTEM DEVELOPMENT INC., as represented by its CHAIRMAN KASUO NORO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD; JURISDICTION.— Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. Presidential Decree No. 1344, "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957," clarifies and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB in the following specific terms: "Sec 1. In the exercise of its functions to regulate real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have the exclusive jurisdiction to hear and decide cases of the following nature. A. Unsound real estate business practices; B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker or salesman."

2. ID.; ID.; ID.; ID.; ID.; DETERMINED BY THE NATURE OF THE CAUSE OF ACTION, THE SUBJECT MATTER OR

PROPERTY INVOLVED AND THE PARTIES; CASE AT BAR.— It is a settled rule that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties. In Civil Case No. 07-0141, petitioner prayed for the issuance of temporary restraining order and preliminary injunction to restrain respondent CSDI from cancelling the Contract to Sell, forfeiting the amortization payment, foreclosing petitioner's condominium units, and garnishing his bank deposits. x x x We have to agree with the trial court and the Court of Appeals that jurisdiction over the complaint filed by the petitioner is with the HLURB.

3. ID.; ID.; ID.; ID.; HAS JURISDICTION OVER CONTRACTUAL RIGHTS AND OBLIGATIONS OF PARTIES UNDER SUBDIVISION AND CONDOMINIUM CONTRACTS.— *Maria Luisa Park Association, Inc. v. Almendras,* finds application in this case. The Court ruled: "**The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums.** The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts." This Court was equally explicit in *Chua v. Ang,* when it pronounced that: "x x x The law recognized, too, that subdivision and condominium development involves public interest and welfare and should be brought to a body, like the HLURB, that has technical expertise. In the exercise of its powers, the HLURB, on the other hand, is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts. This ancillary power, generally judicial, is now no longer with the regular courts to the extent that the pertinent HLURB laws provide. Viewed from this perspective, the HLURB's jurisdiction over contractual rights and obligations

of parties under subdivision and condominium contracts comes out very clearly."

4. ID.; ID.; ID.; QUASI-JUDICIAL FUNCTION; EXERCISED BY ADMINISTRATIVE BODIES AS AN INCIDENT OF THE PRINCIPAL POWER ENTRUSTED TO THEM OF REGULATING CERTAIN ACTIVITIES FALLING UNDER THEIR PARTICULAR EXPERTISE.— As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*: "The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise."

APPEARANCES OF COUNSEL

Raymundo G. Hipolito for petitioner.
Abrenica Ardiente Abrenica & Partners for CSDI.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals in CA G.R. SP No. 98922 dated 29 May 2008 denying the Petition filed by petitioner Romulo R. Peralta, which sought to set aside the Order of the Regional Trial Court (RTC), Branch 258, Parañaque City in Civil Case No. 07-0141, dismissing the Complaint filed by petitioner against respondent Concepts and System Development Inc. (CSDI) on the ground of lack of jurisdiction and forum shopping. Likewise assailed is the

[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Andres B. Reyes, Jr. and Arturo G. Tayag, concurring. *Rollo,* pp. 31-46.

Resolution[2] of the Court of Appeals dated 11 May 2009 denying Petitioner's Motion for Reconsideration.

The facts are:

Respondent CSDI is the developer and owner of the condominium project called the Elysium in a three and a half (3½) hectare lot in Parañaque City inside B.F. Homes Subdivision. Each phase of development was issued a respective Certificate of Registration and "License to Sell." On 22 April 1997, petitioner and CSDI entered into a Contract to Sell involving a condominium unit at Phase II of "The Elysium Project," specifically Unit 10, Block 3 (subject property), in a Deferred Cash Payment Scheme, and under the authority of its "License to Sell," for ₱5 Million Pesos.

Petitioner and CSDI agreed on the following scheme of payment:[3]

NAME OF BUYER:	MR. ROMULO R. PERALTA	
DISCRIPTION OF UNIT:	BLOCK 03/UNIT 10 ALPHA THE ELYSIUM PH. II	
PURCHASE PRICE:	₱5,000,000.00	
50% DOWNPAYMENT:	₱2,500,000.00	April 22, 1997
50% BALANCE:	₱1,250,000.00	October 23, 1997
	₱1,250,000.00	April 23, 1998

The subject property was completed in 1996 and issued a Condominium Certificate of Title No. 6132 on 9 October 1996. On its due date, petitioner failed to pay in full in accordance with the Contract to Sell despite the delivery, acceptance, and his possession and enjoyment of the condominium unit in November 1997.

On 16 September 1999, CSDI filed a complaint for collection of sum of money/specific performance against petitioner with

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[2] *Id.* at 48-49.

[3] Records, Vol. I, p. 22.

the Housing and Land Use Regulatory Board (HLURB) which was docketed as HLURB Case No. REM-091699-10646 (HLURB Case No. REM-AO991214-0275).

Meanwhile, on 5 May 2000, the petitioner together with the other unit owners filed a case against CSDI before the HLURB for Cancellation of Certificate of Registration, License to Sell, Declaration of Nullity of HLURB Case No. REM-051500-10995, Cancellation of Title, Specific Performance and Damages, entitled *Ferdinand V. Aragon, et al. v. CSDI, et al.*, docketed as HLURB Case No. REM-051500-10995.

On 14 October 2000, respondent HLURB Arbiter Dunstan San Vicente (HLURB Arbiter San Vicente) rendered a decision in HLURB Case No. REM-091699-10646, filed by CSDI against petitioner, requiring the latter to pay Three Million Twenty-Two Thousand Pesos (₱3,022,000.00) plus interest with the alternative remedy of rescission of contract to sell plus forfeiture of payments. The HLURB held:

> WHEREFORE, a judgment (*sic*) is hereby rendered:
>
> 1. Ordering respondent to pay complainant the amount of THREE MILLION TWENTY-TWO THOUSAND PESOS (₱3,022,000.00) plus 3% interest per month from June 2000 until the full amount is paid and satisfied.
>
> 2. Ordering respondent to pay complainant liquidated damages equivalent to ½ of all sums paid upon the purchase price.
>
> 3. Ordering respondent to pay complainant attorney's fees in the amount of ₱20,000.00; and
>
> 4. Ordering respondent to pay complainant the cost of suit.
>
> In the event that respondent would fail or refuse, or continue to fail or refuse, to pay his monetary obligations, the subject Contract to Sell is hereby rescinded/cancelled and the total amount paid by respondent be forfeited in favor of the complainant. In that same event, the respondent is hereby ordered to turn-over and cede peacefully the possession of or vacate the Condominium unit, Block 3, Unit 10, Phase II of the Elysium Community Condominium, to the complainant.

All compulsory counterclaims of respondent are hereby denied.[4]

Petitioner filed an appeal to the Office of the President which was docketed as O.P. Case No. 02-C-072. The appeal was dismissed by the Office of the President. Petitioner's Motion for Reconsideration was denied with finality by the same office in an Order dated 4 May 2005.[5]

Meanwhile, on 29 October 2002, respondent HLURB Arbiter San Vicente rendered a decision against CSDI in the complaint

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[4] *Id.* at 258-259.

[5] The Order of the Office of the President reads:

This refers to the motion of Romulo R. Peralta for reconsideration of the Order of this Office dated February 10, 2005 declaring our earlier Order of July 20, 2004 as final and executory and remanding the records of the case to the Housing and Land Use Regulatory Board for its appropriate disposition.

In this recourse, movant vehemently denied receiving a copy of the July 20, 2004 Order.

We deny reconsideration.

The registry return receipt on file with the records of this Office clearly shows that movant, through his counsel of record, received the July 20, 2004 Order on July 29, 2004. This single proof of evidence is enough to repudiate the aforesaid claim of movant. The excuse offered by movant's counsel as reason for the non-receipt of the said Order is, to our mind the most hackneyed and habitual subterfuge employed by litigants and their counsels to prevent decisions from attaining finality. It has been oft-repeated that lawyers are required to be more circumspect with the cases they handle. As such, they are expected to devise an efficient receiving and filing system in their office so that no disorderliness can affect the smooth flow of the cases, particularly the receipt of notices of decision from courts and administrative tribunals. Obviously, the records of movant's counsel are in complete disarray that he cannot find a single copy of the Order duly delivered to him by the Postal Office on July 29, 2004. This neglect or omission on the part of movant's counsel will not stay the finality of the Order of this Office.

WHEREFORE, the motion for reconsideration is hereby DENIED with finality.

SO ORDERED.

Manila, Philippines, 4 May 2005. (*Id.* at 226-227).

docketed as HLURB Case No. REM-051500-10995 for Cancellation of Certificate of Registration, License to Sell, Declaration of Nullity of REM-051500-10995, Cancellation of Title, Specific Performance and Damages.[6] The dispositive portion of the HLURB decision states:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering respondent Concepts and Systems Development, Inc. to accelerate the completion or full development of The Elysium Condominium project, consisting of its Phase I, II, and III; and to continue maintaining properly the common areas embraced in the whole condominium project, save those that the ECC Corporation have begun to manage or deliver services for the benefit of its members.
>
> 2. Return to the Elysium Community Condominium Corporation the percentage or fraction of the aggregate assessment fees it cumulatively collected from the unit buyers and credited to the cost of its maintenance of the Elysium project reckoned from organization of the ECC Corporation on 25 October 1990 up to 20 July 2000;
>
> 3. Turn-over to the ECC Corporation the accumulated membership fees paid by all corporation members starting from the ECC Corporation's date of organization in October 25, 1990 up to July 20, 2000, the date that management of the corporation was relinquished to the members;
>
> 4. Cease and desist from collecting maintenance fees from the unit owners, except when the same is demanded by the ECC Corporation in furtherance of its management of the project after the turn-over of the common areas thereto;
>
> 5. Pay the ECC Corporation the cost of this suit and the reasonable amount of ₱50,000.00 as damages by way of developmental charges for its alteration of the project without the consent of the majority of registered owners of the project, or its unit owners;
>
> 6. Pay and settle (its) loan obligations, or redeem the encumbrance of titles, to RCBC and the Land Bank of the

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[6] *Id.* at 25.

Philippines in consonance with the mortgage clearance issued by this Office;

7. The complaint against the Rizal Commercial Banking Corporation, the Land Bank of the Philippines, and the Register of Deeds of Parañaque City and Las Piñas City are hereby dismissed.

All other claims and counter-claims are denied for lack of merit.[7]

On 12 December 2005, pursuant to the decision dated 14 October 2000 in HLURB Case No. REM 091699-10646, a Writ of Execution was issued by HLURB Regional Director Jesse A. Obligacion resulting in the garnishment of petitioner's cash deposit with Bank of the Philippine Islands.[8]

Petitioner filed repeated motions to quash the Writ of Execution citing the 29 October 2002 decision of the HLURB in Case No. REM-051500-10995. Unmoved, HLURB Arbiter San Vicente issued on 30 April 2007 an Order to break open and to force the ejectment of petitioner from said condominium unit in HLURB Case No. REM-091699-10646.

HLURB Arbiter San Vicente stood firm in his position that the decision of the HLURB in HLURB Case No. REM-051500-10995 cannot stay the execution of the decision in HLURB Case No. REM-091699-10646.

The HLURB held:

In this case, the subject matter was the unpaid condominium unit purchased by respondent and the uncollected sums of amortizations in favor of complainant. Neither are the causes of action in both cases identical. In the former case, the cause of action involves non-development of the entire project, non-redemption of the encumbered title/s that embrace the whole project, failure to turn over the project to ECCC. In the instant case, the cause of action involved is the unjust failure of respondent to pay the price of the condominium unit he bought. The alleged same pieces of evidence adduced in both actions would not sustain the causes of action raised in each of them.

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[7] *Id.* at 44-45.

[8] *Id.* at 107-111.

To the extent that our disposition on the facts and issues embodied in this case is now final and executory, our ruling based thereon is now the law herein. Our decision is already conclusive as to the matters actually and directly controverted or determined in this case. The enforcement of the decision cannot be varied nor may it be barred by conclusions drawn from another case regardless of how both may possibly relate to each case. Even respondent's allusion to the ruling of the Supreme Court in the '*Oropeza Marketing Corporation v. Allied Banking Corporation*' will not save his day.

As we have stressed, the subject matters in this case and in the *Ferdinand Aragon* case are not identical. In that case, the subject involved is the whole condominium project and its development, turn-over of condominium facilities as well as encumbrance of the titles of the project. In this case, the subject matter is the unpaid condominium unit purchased by respondent and the uncollected sums of amortizations in favor of complainant.

WHEREFORE, the respondent's motion to quash the Writ of Execution dated December 12, 2005 is hereby DENIED.

In view of the plain and manifest refusal of respondent to obey the judgment and writ which ordered him to pay his accumulated installments in this case, let the alternative remedy of cancellation of the contract of the parties as well as forfeiture of the payments of respondent take effect immediately. Consequently, the Office of the *Ex-Officio* Sheriff is hereby directed to compel respondent Peralta to turn-over and cede peacefully his possession of the condominium unit, Block 3, Unit 10, Phase II of the Elysium Community Condominium, to the complainant; and, should respondent continue to defy or disobey this Order, to break open and enter the premises of the said condominium unit, inventory and take possession of the personal belongings of respondent in the premises of his unit and deliver or turn-over them to the respondent; or in case of his refusal, to entrust or deposit the same in a secure and enclosed area within the compound of the condominium project, and finally to place complainant in peaceful possession of the unit.[9]

On 7 May 2007, petitioner filed a Complaint for Injunction and Damages before the RTC Branch 258 of Parañaque City

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[9] Records, Vol. II, pp. 412-413.

docketed as Civil Case No. 07-0141 entitled *Romulo R. Peralta v. Concepts and Systems Development Inc.*[10]

The RTC Branch 258 dismissed the complaint in Civil Case No. 07-0141 on the grounds of lack of jurisdiction and forum shopping through its Order dated 11 May 2007.

Petitioner sought recourse before the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court. On 29 May 2008, the Court of Appeals rendered the assailed Decision, which affirmed the RTC's Order dismissing the case for injunction and damages in Civil Case No. 07-0141 on the grounds of lack of jurisdiction and forum shopping.

The Court of Appeals explained:

> The fact that the petition or complaint before the public respondent prays also for damages suffered by the petitioner in the implementation of the writ of execution has no controlling significance. The bottom line is that it was connected with, or arose out of, the implementation of the writ of execution issued by the HLURB. Under Presidential Decree Nos. 957 and 1344, the Regional Trial Court cannot encroach into the domain of said quasi-judicial agency.
>
> The petitioner cited the case of *Suntay v. Gocolay,* [G.R. No. 144892, September 23, 2005] but it is clearly not applicable. In said case, the issue was jurisdiction over issues regarding title or ownership of a condominium unit. Supreme Court held that the HLURB has no jurisdiction to rule on such issues.
>
> As to forum shopping, the non-disclosure of other cases in the courts of law or quasi judicial agency is a ground for dismissal. Section 5 of Rule 7 of the 1997 Rules of Civil Procedure specifies that:
>
> > SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no

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[10] Records, Vol. I, pp. 1-11.

> such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

For failure to disclose the cases cited by the public respondent in the subject order, the petitioner risked his case being, as it was, dismissed. In the case of *Sadang v. Court of Appeals* [G.R. No. 140138, October 11, 2006], the Supreme Court ruled that there was a violation of the rule on forum shopping by the non-disclosure of the filing with an administrative agency, the HLURB, of a complaint raising the same issues as those brought before the Regional Trial Court.[11]

In the end, the Court of Appeals decreed:

> WHEREFORE, the petition is DENIED.[12]

Assiduous, petitioner is now before this Court *via* the present recourse raising the single issue of whether or not the Court of Appeals is correct in affirming the lack of jurisdiction of the RTC to enjoin the implementation of the HLURB decision that was allegedly rendered contrary to Section 1 of Presidential Decree No. 1344.[13]

We affirm the Court of Appeals.

Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. Presidential Decree No. 1344, "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957," clarifies

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[11] *Rollo,* pp. 44-45.

[12] *Id.* at 46.

[13] *Id.* at 98.

and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB in the following specific terms:

> Sec 1. In the exercise of its functions to regulate real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have the exclusive jurisdiction to hear and decide cases of the following nature.
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker or salesman.[14]

It is noteworthy that the HLURB in HLURB Case No. REM-091699-10646, rendered a decision against petitioner ordering him to pay CSDI the unpaid amount due from his purchase of a condominium unit or in the alternative, the rescission of contract with forfeiture of payments made by petitioner. A writ of execution was issued against petitioner and his appeal was dismissed by the Office of the President. Petitioner no longer assailed this dismissal, thus the same became final and executory. Unable to obtain relief before the Office of the President, petitioner filed Civil Case No. 07-0141 before the RTC of Parañaque City. As adverted to earlier, the RTC concluded that the jurisdiction over petitioner's complaint falls on the HLURB. This was affirmed by the Court of Appeals.

It is a settled rule that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.[15]

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[14] *Osea v. Ambrocio,* G.R. 162774, 7 April 2006, 486 SCRA 599, 605-606.

[15] *De los Santos v. Sarmiento,* G.R. No. 154877, 27 March 2007, 519 SCRA 62, 73.

In Civil Case No. 07-0141, petitioner prayed for the issuance of temporary restraining order and preliminary injunction to restrain respondent CSDI from cancelling the Contract to Sell, forfeiting the amortization payment, foreclosing petitioner's condominium units, and garnishing his bank deposits. Specifically, petitioner asked that the RTC, Branch 258:

> 1. Immediately upon receipt of this petition, a temporary restraining Order be issued and/or a Preliminary Injunction, pending the determination of the merits of the case, by way of restraining defendants from forfeiting the amortization payments, foreclosure of plaintiff's condominium unit, its break opening, and garnishment of plaintiff's bank deposits at Bank of Philippine Islands, Forbes Park branch, Makati City.
>
> 2. To order the final and permanent injunction.
>
> 3. And to order defendant-developer to pay plaintiff the actual damages of his hospitalization amounting to Php 60,000.00 including the interest until fully paid, caused by the unlawful and damaging acts of defendants as above shown;
>
> 4. To order defendant developer to pay ₱300,000.00 as moral damages to plaintiff;
>
> 5. Another payment of ₱300,000.00 as exemplary damages to plaintiff;
>
> 6. To pay Attorneys fees of ₱50,000.00 and costs of suit;
>
> 7. Ordering defendants to adhere to the License to Sell and all its strict compliance thereto imposed on defendant developer.[16]

We have to agree with the trial court and the Court of Appeals that jurisdiction over the complaint filed by the petitioner is with the HLURB.

Maria Luisa Park Association, Inc. v. Almendras,[17] finds application in this case. The Court ruled:

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[16] Records, Vol. I, pp. 10-11.

[17] G.R. No. 171763, 5 June 2009, 588 SCRA 663.

The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.[18]

This Court was equally explicit in *Chua v. Ang*,[19] when it pronounced that:

x x x The law recognized, too, that subdivision and condominium development involves public interest and welfare and should be brought to a body, like the HLURB, that has technical expertise. In the exercise of its powers, the HLURB, on the other hand, is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts. This ancillary power, generally judicial, is now no longer with the regular courts to the extent that the pertinent HLURB laws provide.

Viewed from this perspective, the HLURB's jurisdiction over contractual rights and obligations of parties under subdivision and condominium contracts comes out very clearly.[20]

We are in accord with the RTC when it held:

First: On the matter of lack of jurisdiction of this Court over this case – This Court is fully aware of the cited decisions of respondents particularly those which pertain to the exclusive jurisdiction of the

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[18] *Id.* at 672-673 citing *Antipolo Realty Corp. v. National Housing Authority*, 237 Phil. 389, 397-398 (1987).

[19] G.R. No. 156164, 4 September 2009, 598 SCRA 229.

[20] *Id.* at 242.

Housing and Land Use Regulatory Board (HLURB) as provided for under pertinent laws to the exclusion of the regular courts and this is one of them. It cannot be gainsaid that while [plaintiff] harps on Arts. 20 and 21 of the New Civil Code of the Philippines to be the basis of his cause of action for damages before this Court, the issue of his claiming damages against respondent Concepts & Systems Dev't. Inc. (CSDI), has already been resolved in HLURB Case No. REM-091699-10646 in favor of CSDI and against him to which a Writ of Execution has been issued, partially implemented by co-respondent Sheriff Lucas Eloso Eje and to which [plaintiff] is asking this Court to issue a temporary restraining order in order to suspend the full implementation of said writ. While [plaintiff] claims that his cause of action is one of damages, the truth is his main objective is to have this Court enjoin the enforcement of the writ of execution issued by the HLURB. Such subterfuge is easily discernible in view of the amount of damages [plaintiff] is only claiming in this case against that which respondent CSDI is entitled to if the writ of execution is fully satisfied. This cannot be done for it is tantamount to undue interference with the decision of a quasi-judicial body which, as above-stated, is vested by law and jurisprudence with exclusive authority to hear and decide cases between sellers and buyers of subdivision lots and condominium units, among others.

The Court, therefore, hereby adopts by reference the arguments of respondent CSDI relative to this Court's lack of jurisdiction to hear and decide this case which need no longer be repeated herein as it will not serve any useful purpose.[21]

As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*:[22]

The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise.

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[21] *Id.* at 345-347.

[22] G.R. No. 80916, 9 November 1990, 191 SCRA 268, 272.

Finally, it must be emphasized that the decision of the HLURB in HLURB Case No. REM-091699-10646, has already become final and executory due to the failure of the petitioner to elevate the dismissal of his appeal by the Office of the President to the Court of Appeals. It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.[23]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit and the Decision of the Court of Appeals dated 29 May 2008 in CA G.R. SP No. 98922 as well as its Resolution dated 11 May 2009 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[23] *Peña v. Government Service Insurance System,* G.R. No. 159520, 19 September 2006, 502 SCRA 383, 396-397 citing *Teodoro v. Court of Appeals,* 437 Phil. 336, 346 (2002).

[*] 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.

THIRD DIVISION

[G.R. No. 189239. November 24, 2010]

SPOUSES LETICIA & JOSE ERVIN ABAD, SPS. ROSARIO AND ERWIN COLLANTES, SPS. RICARDO AND FELITA ANN, SPS. ELSIE AND ROGER LAS PIÑAS, LINDA LAYDA, RESTITUTO MARIANO, SPS. ARNOLD AND MIRIAM MERCINES, SPS. LUCITA AND WENCESLAO A. RAPACON, SPS. ROMEO AND EMILYN HULLEZA, LUZ MIPANTAO, SPS. HELEN AND ANTHONY TEVES, MARLENE TUAZON, SPS. ZALDO AND MIA SALES, SPS. JOSEFINA AND JOEL YBERA, SPS. LINDA AND JESSIE CABATUAN, SPS. WILMA AND MARIO ANDRADA, SPS. RAYMUNDO AND ARSENIA LELIS, FREDY AND SUSANA PILONEO, *petitioners, vs.* **FIL-HOMES REALTY CORPORATION and MAGDIWANG REALTY CORPORATION,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; DEFINED.—** In the exercise of the power of eminent domain, the State expropriates private property for public use upon payment of just compensation. A socialized housing project falls within the ambit of public use as it is in furtherance of the constitutional provisions on social justice.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; EJECTMENT PROCEEDINGS ARE NOT SUSPENDED OR THEIR RESOLUTION HELD IN ABEYANCE DESPITE THE PENDENCY OF A CIVIL ACTION REGARDING OWNERSHIP; EXCEPTION.—** As a general rule, ejectment proceedings, due to its summary nature, are not suspended or their resolution held in abeyance despite the pendency of a civil action regarding ownership. Section 1 of Commonwealth Act No. 538 enlightens, however: " Section 1. When the Government

seeks to acquire, through purchase or expropriation proceedings, lands belonging to any estate or chaplaincy *(cappellania)*, any action for ejectment against the tenants occupying said lands shall be **automatically suspended**, for such time as may be required by the expropriation proceedings or the necessary negotiations for the purchase of the lands, in which latter case, the period of suspension shall **not exceed one year**. To avail himself of the benefits of the suspension, the tenants shall **pay to the landowner the current rents** as they become due or **deposit the same with the court** where the action for ejectment has been instituted."

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; POWER OF EMINENT DOMAIN;HOW EXERCISED.— The exercise of expropriation by a local government unit is covered by Section 19 of the Local Government Code (LGC): "SEC. 19. *Eminent Domain*. – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value of the property."

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; STAGES.— *Lintag v. National Power Corporation* clearly outlines the stages of expropriation, *viz*: "Expropriation of lands consists of two stages: The ***first*** is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It

ends with an order, if not of dismissal of the action, of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint x x x. The ***second*** phase of the eminent domain action is concerned with the determination by the court of 'the just compensation for the property sought to be taken.' This is done by the court with the assistance of not more than three (3) commissioners x x x. It is only upon the completion of these two stages that expropriation is said to have been completed. The process is not complete until payment of just compensation. Accordingly, the issuance of the writ of possession in this case does not write *finis* to the expropriation proceedings. To effectuate the transfer of ownership, it is necessary for the NPC to pay the property owners the **final just compensation**." In the present case, the mere issuance of a writ of possession in the expropriation proceedings did not transfer ownership of the lots in favor of the City. Such issuance was only the first stage in expropriation. There is even no evidence that judicial deposit had been made in favor of respondents prior to the City's possession of the lots, contrary to Section 19 of the LGC.

5. ID.; ID.; ID.; FORCIBLE ENTRY AND UNLAWFUL DETAINER; AN ACTION FOR EJECTMENT IS THE PROPER REMEDY AGAINST A PERSON WHO OCCUPIES THE LAND OF ANOTHER AT THE LATTER'S TOLERANCE AND FAILS TO VACATE UPON DEMAND.— [P]etitioners posit that respondents failed to prove that their possession is by mere tolerance. This too fails. *Apropos* is the ruling in *Calubayan v. Pascual*: "In allowing several years to pass without requiring the occupant to vacate the premises nor filing an action to eject him, **plaintiffs have acquiesced to defendant's possession and use of the premises. It has been held that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand**, failing which a summary action for ejectment is the proper remedy against them. The status of the defendant is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such a case, the unlawful deprivation or

withholding of possession is to be counted from the date of the demand to vacate." Respondents bought the lots from Pilipinas Development Corporation in 1983. They stepped into the shoes of the seller with respect to its relationship with petitioners. Even if early on respondents made no demand or filed no action against petitioners to eject them from the lots, they thereby merely maintained the *status quo* – allowed petitioners' possession by tolerance.

APPEARANCES OF COUNSEL

Lopez Rance Aldea & Associates for petitioners.
Ferdinand Raymund J. Navarro for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Fil-Homes Realty Corporation and Magdiwang Realty Corporation (respondents), co-owners of two lots situated in Sucat, Parañaque City and covered by Transfer Certificates of Title Nos. 21712 and 21713, filed a complaint for unlawful detainer on May 7, 2003 against above-named petitioners before the Parañaque Metropolitan Trial Court (MeTC).

Respondents alleged that petitioners, through tolerance, had occupied the subject lots since 1980 but ignored their repeated demands to vacate them.

Petitioners countered that there is no possession by tolerance for they have been in adverse, continuous and uninterrupted possession of the lots for more than 30 years; and that respondent's predecessor-in-interest, Pilipinas Development Corporation, had no title to the lots. In any event, they contend that the question of ownership must first be settled before the issue of possession may be resolved.

During the pendency of the case or on June 30, 2004, the City of Parañaque filed expropriation proceedings covering the lots before the Regional Trial Court of Parañaque with the

intention of establishing a socialized housing project therein for distribution to the occupants including petitioners. A writ of possession was consequently issued and a Certificate of Turn-over given to the City.

Branch 77 of the MeTC, by Decision of March 3, 2008, rendered judgment in the unlawful detainer case against petitioners, disposing as follows:

> WHEREFORE, **judgment is hereby rendered in favor of the plaintiff** and against the defendants Leticia and Ervin Abad *et als*. ordering the latter and all persons claiming rights under them to **VACATE** and **SURRENDER** possession of the premises (Lots covered by TCT NOS. (71065) 21712 and (71066) 21713 otherwise known as Purok I Silverio Compound, Barangay San Isidro, Parañaque City to plaintiff and to PAY the said plaintiff as follows:
>
> 1. The reasonable compensation in the amount of ₱20,000.00 a month commencing November 20, 2002 and every month thereafter until the defendants shall have finally vacated the premises and surrender peaceful possession thereof to the plaintiff;
> 2. ₱20,000.00 as and for attorney's fees, and finally
> 3. Costs of suit.
>
> SO ORDERED.[1] (emphasis in the original)

The MeTC held that as no payment had been made to respondents for the lots, they still maintain ownership thereon. It added that petitioners cannot claim a better right by virtue of the issuance of a Writ of Possession for the project beneficiaries have yet to be named.

On appeal, the Regional Trial Court (RTC), by Decision of September 4, 2008,[2] **reversed** the MeTC decision and **dismissed** respondents' complaint in this wise:

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[1] *Rollo*, p. 150.

[2] *Id.* at 169-176.

x x x The court *a quo* ruled that the case filed by plaintiffs (respondents herein) is unlawful detainer as shown by the allegations of the Complaint. The ruling of the court *a quo* is not accurate. **It is not the allegations of the Complaint that finally determine whether a case is unlawful detainer, rather it is the evidence in the case.**

Unlawful detainer requires the significant element of "tolerance". Tolerance of the occupation of the property must be present right from the start of the defendants' possession. The phrase "from the start of defendants' possession" is significant. **When there is no "tolerance" right from the start of the possession sought to be recovered, the case of unlawful detainer will not prosper.**[3] (emphasis in the original; underscoring supplied)

The RTC went on to rule that the issuance of a writ of possession in favor of the City bars the continuation of the unlawful detainer proceedings, and since the judgment had already been rendered in the expropriation proceedings which effectively turned over the lots to the City, the MeTC has no jurisdiction to "disregard the . . . final judgment and writ of possession" due to non-payment of just compensation:

The Writ of Possession shows that possession over the properties subject of this case had already been given to the City of Parañaque since January 19, 2006 after they were expropriated. **It is serious error for the court *a quo* to rule in the unlawful detainer case that Magdiwang Realty Corporation and Fil-Homes Realty Corporation could still be given possession of the properties which were already expropriated in favor of the City of Parañaque.**

There is also another serious lapse in the ruling of the court *a quo* that the case for expropriation in the Regional Trial Court would not bar, suspend or abate the ejectment proceedings. The court *a quo* had failed to consider the fact that the case for expropriation was already decided by the Regional Trial Court, Branch 196 way back in the year 2006 or 2 years before the court *a quo* rendered its judgment in the unlawful detainer case in the year 2008. In fact, there was already a Writ of Possession way back in the year 1996 (*sic*) issued in the expropriation case by the Regional Trial Court,

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[3] *Id.* at 172.

Branch 196. **The court *a quo* has no valid reason to disregard the said final judgment and the writ of possession already issued by the Regional Trial Court in favor of the City of Parañaque and against Magdiwang Realty Corporation and Fil-Homes Realty Corporation and make another judgment concerning possession of the subject properties contrary to the final judgment of the Regional Trial Court, Branch 196.**[4] (emphasis in the original)

Before the Court of Appeals where respondents filed a petition for review, they maintained that respondents' "act of allowing several years to pass without requiring [them] to vacate nor filing an ejectment case against them amounts to acquiescence or tolerance of their possession."[5]

By Decision of May 27, 2009,[6] the appellate court, noting that petitioners did not present evidence to rebut respondents' allegation of possession by tolerance, and considering petitioners' admission that they commenced occupation of the property without the permission of the previous owner — Pilipinas Development Corporation — as indicium of tolerance by respondents' predecessor-in-interest, ruled in favor of respondents. Held the appellate court:

Where the defendant's entry upon the land was with plaintiff's tolerance from the date and fact of entry, unlawful detainer proceedings may be instituted within one year from the demand on him to vacate upon demand. The status of such defendant is analogous to that of a tenant or lessee, the term of whose lease, has expired but whose occupancy is continued by the tolerance of the lessor. The same rule applies where the defendant purchased the house of the former lessee, who was already in arrears in the payment of rentals, and thereafter occupied the premises without a new lease contract with the landowner.[7]

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[4] *Id.* at 174-176.

[5] CA *rollo*, Petition for Review, p. 20.

[6] Penned by Associate Justice Myrna Dimaranan-Vidal with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente, *rollo*, pp. 64-76.

[7] *Id.* at 71-72 (citations omitted).

Respecting the issuance of a writ of possession in the expropriation proceedings, the appellate court, citing *Republic v. Gingoyon*,[8] held the same does not signify the completion of the expropriation proceedings. Thus it disposed:

> WHEREFORE, premises considered, the instant Petition is GRANTED. The assailed Decision of the Court *a quo* is REVOKED and SET ASIDE. The Decision of the Metropolitan Trial Court dated March 3, 2008 is hereby REINSTATED with MODIFICATION [by] deleting the award for attorney's fees.
>
> SO ORDERED. (underscoring supplied)

Petitioners' motion for reconsideration was denied by Resolution dated August 26, 2009, hence, the filing of the present petition for review.

The petition fails.

In the exercise of the power of eminent domain, the State expropriates private property for public use upon payment of just compensation. A socialized housing project falls within the ambit of public use as it is in furtherance of the constitutional provisions on social justice.[9]

As a general rule, ejectment proceedings, due to its summary nature, are not suspended or their resolution held in abeyance despite the pendency of a civil action regarding ownership.

Section 1 of Commonwealth Act No. 538[10] enlightens, however:

> Section 1. When the Government seeks to acquire, through purchase or expropriation proceedings, lands belonging to any estate or chaplaincy *(cappellania)*, any action for ejectment against the tenants occupying said lands shall be **automatically suspended**, for such time as may be required by the expropriation proceedings or the

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[8] G.R. No. 166429, December 19, 2005, 478 SCRA 474.

[9] *Vide Antonio v. Geronimo*, G.R. No. 124779, November 29, 2005, 476 SCRA 340-341.

[10] Took effect on May 26, 1940.

necessary negotiations for the purchase of the lands, in which latter case, the period of suspension shall **not exceed one year**.

To avail himself of the benefits of the suspension, the tenants shall **pay to the landowner the current rents** as they become due or **deposit the same with the court** where the action for ejectment has been instituted. (emphasis and underscoring supplied)

Petitioners did not comply with any of the acts mentioned in the law to avail of the benefits of the suspension. They nevertheless posit that since the lots are the subject of expropriation proceedings, respondents can no longer assert a better right of possession; and that the City Ordinance authorizing the initiation of expropriation proceedings designated them as beneficiaries of the lots, hence, they are entitled to continue staying there.

Petitioners' position does not lie.

The exercise of expropriation by a local government unit is covered by Section 19 of the Local Government Code (LGC):

SEC. 19. *Eminent Domain*. – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value of the property.

Lintag v. National Power Corporation[11] clearly outlines the stages of expropriation, *viz*:

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[11] G.R. No. 158609, July 27, 2007, 528 SCRA 287.

> Expropriation of lands consists of two stages:
>
> The ***first*** is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint x x x.
>
> The ***second*** phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." This is done by the court with the assistance of not more than three (3) commissioners x x x.
>
> It is only upon the completion of these two stages that expropriation is said to have been completed. The process is not complete until payment of just compensation. Accordingly, the issuance of the writ of possession in this case does not write *finis* to the expropriation proceedings. To effectuate the transfer of ownership, it is necessary for the NPC to pay the property owners the **final just compensation**.[12] (emphasis and underscoring supplied)

In the present case, the mere issuance of a writ of possession in the expropriation proceedings did not transfer ownership of the lots in favor of the City. Such issuance was only the first stage in expropriation. There is even no evidence that judicial deposit had been made in favor of respondents prior to the City's possession of the lots, contrary to Section 19 of the LGC.

Respecting petitioners' claim that they have been named beneficiaries of the lots, the city ordinance authorizing the initiation of expropriation proceedings does not state so.[13] Petitioners cannot thus claim any right over the lots on the basis of the ordinance.

Even if the lots are eventually transferred to the City, it is *non sequitur* for petitioners to claim that they are automatically

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[12] *Id.* at 287.

[13] *Vide rollo,* pp. 227-228.

entitled to be beneficiaries thereof. For certain requirements must be met and complied with before they can be considered to be beneficiaries.

In another vein, petitioners posit that respondents failed to prove that their possession is by mere tolerance. This too fails. *Apropos* is the ruling in *Calubayan v. Pascual*:[14]

> In allowing several years to pass without requiring the occupant to vacate the premises nor filing an action to eject him, **plaintiffs have acquiesced to defendant's possession and use of the premises. It has been held that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand**, failing which a summary action for ejectment is the proper remedy against them. The status of the defendant is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such a case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. (emphasis and underscoring supplied)

Respondents bought the lots from Pilipinas Development Corporation in 1983. They stepped into the shoes of the seller with respect to its relationship with petitioners. Even if early on respondents made no demand or filed no action against petitioners to eject them from the lots, they thereby merely maintained the *status quo* – allowed petitioners' possession by tolerance.

WHEREFORE, the petition for review is *DENIED*.

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

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[14] G.R. No. L-22645, September 18, 1967, 21 SCRA 146, 148.

SECOND DIVISION

[G.R. No. 189326. November 24, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FRANCISCO RELOS, SR.,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS ON THE CREDIBILITY OF WITNESSES ARE GENERALLY ACCORDED RESPECT ON APPEAL.— Findings of trial courts, which are factual in nature and which involve credibility of witnesses, are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. None of these circumstances is present in this case. The Court therefore sustains the findings of fact of the trial court, as affirmed by the CA, particularly on the weight given to the testimony of the victim's son, Ramon, Jr. The testimonies of Ramon, Jr. and the other witnesses firmly established appellant's identity and his participation in the killing of Ramon, Sr. Thus, Oliver's testimony that he did not see appellant at the scene of the crime when the victim was killed was obviously a blatant lie, not worthy of any credence.

2. CRIMINAL LAW; CONSPIRACY; EXISTS WHEN TWO OR MORE PERSONS COME TO AN AGREEMENT TO COMMIT AN UNLAWFUL ACT.— Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. It may be inferred from the conduct of the accused before, during, and after the commission of the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest.

3. ID.; ID.; WHERE CONSPIRACY IS SHOWN, THE PRECISE MODALITY OR EXTENT OF PARTICIPATION OF EACH ACCUSED BECOMES SECONDARY, AND THE ACT OF ONE MAY BE IMPUTED TO ALL THE CONSPIRATORS; CASE AT BAR.— The presence of conspiracy was definitely

established by the synchronized acts of appellant, Oliver, and Francisco, Jr. in carrying out their common objective of killing the victim. The three assailants simultaneously approached the victim and delivered successive blows that seriously injured the latter. Though it was not clear who delivered the fatal blow, it does not make any difference in light of the finding of conspiracy. Where conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary, and the act of one may be imputed to all the conspirators. In other words, a person found in conspiracy with the actual perpetrator of the crime by performing specific acts with such closeness and coordination as the one who executed the criminal act is equally guilty as the latter, because, in the eyes of the law, each conspirator is a co-principal and is equally guilty with the other members of the plot.

4. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE SWIFT AND UNEXPECTED ATTACK ON AN UNSUSPECTING AND UNARMED VICTIM WHO DOES NOT GIVE THE SLIGHTEST PROVOCATION.—** We also affirm the trial court's finding that the crime was attended by treachery. There is treachery when the means, methods, and forms of execution gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself. The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.

5. **ID.; ID.; ID.; PRESENT IN CASE AT BAR.—** The victim was not prepared to meet the initial attack made by appellant as he was distracted by Oliver who greeted him, "Merry Christmas, *insan*!" He was then caught off guard by the subsequent blows delivered by the other assailants, which were successive and gave him no opportunity to defend himself. Moreover, he did not have the means to defend himself as he was unarmed. Hence, treachery was clearly present.

6. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES, EXEMPLARY DAMAGES AND TEMPERATE DAMAGES; AWARDED IN CASE AT BAR.—**In view of

current jurisprudence, we, however, modify the award of damages by increasing the amount of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00, and exemplary damages to ₱30,000.00. As to the amount of ₱25,000.00 as temperate damages, we find the same reasonable under the circumstances.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

NACHURA, *J.*:

In an Information dated December 28, 2005, appellant Francisco Relos, Sr., together with his brother, Oliver Relos (Oliver); sons, Francisco Relos, Jr. (Francisco, Jr.) and Regie Relos (Regie); nephews, Georgie Relos (Georgie), Larry Relos (Larry), and Olijames Relos (Olijames); and sons-in-law, Allan Falabiano (Allan) and Steve Paa (Steve), was charged for killing his cousin, Ramon Relos, Sr., thus:

That on or about DECEMBER 26, 2005, in the [M]unicipality of Lal-lo, [P]rovince of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with knives, bolos and a hand grenade, with intent to kill, with evident premeditation and with treachery, and by the use of superior strength, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack, stab[,] and hack one Ramon Relos, Sr., inflicting upon the latter multiple stab/hack wounds in the different parts of his body which caused his death.

CONTRARY TO LAW.[1]

On December 26, 2005, at past 7:00 a.m., the victim and his son, Ramon Relos, Jr. (Ramon, Jr.), alighted from a jeepney and walked along the highway towards the house of Feliciano Relos, Jr. (Feliciano, Jr.), the victim's brother. Appellant was

[1] CA *rollo,* p. 10.

then leaning on the fence in front of his house, while his son, Francisco, Jr., and Oliver were across the road. The victim was walking about five meters ahead of his son and was almost in front of appellant's house when Oliver approached him and greeted him, "Merry Christmas, *insan*!" while drawing his knife. Appellant approached the victim from behind and suddenly hacked him with a bolo on the right shoulder. Francisco, Jr. followed it with hack to the victim's left shoulder. Oliver then placed his arm over the victim's shoulders and stabbed the victim several times on the front portion of his body.

Ramon, Jr. shouted at the assailants, telling them to stop hurting his father, but he was chased by Francisco, Jr., who was holding a bolo with a long handle, and Allan and Larry, who were also armed with knives. Francisco, Jr. caught up with Ramon, Jr. and hacked him, but the latter was able to jump over a drainage canal and run away.

Meanwhile, the victim fell on the ground after he was stabbed by Oliver. Rogelio Bautista, Jr. (Rogelio, Jr.), the victim's nephew, who had just come from the store, witnessed the incident and shouted to Feliciano, Jr. that his brother had been killed. Feliciano, Jr. and Rogelio, Jr.'s mother, Gloria, ran out of the house in the direction of where the victim was, but they were met by Georgie and Olijames, who were holding a *kris* and a bolo, so they retreated.

Regie and Steve pushed the victim's body towards a canal. Thereafter, Oliver cut off the victim's head, showed it to passersby, and then dropped it on the road. He then went to his house and brought out a gun and a hand grenade. He tried to shoot Gloria and Rogelio, Jr., but the gun would not fire. Instead, he threw the hand grenade at them, but it hit a tree near him and exploded.

About 10 to 15 minutes later, the police arrived and arrested appellant, Oliver, Francisco, Jr., Larry, and Georgie. The others ran away.

During arraignment, Oliver pleaded guilty, while the others, including herein appellant, pleaded not guilty.

On October 25, 2006, the Regional Trial Court (RTC) rendered a decision[2] finding appellant, Oliver, and Francisco, Jr. guilty of murder, thus:

> WHEREFORE, the Court finds accused Oliver Relos and Francisco Relos, Sr., "GUILTY" beyond reasonable doubt of the crime of "Murder" for killing Ramon Relos, Sr., and finds accused Larry Relos, Allan Falabiano, Regie Relos, Olijames Relos, Steve Paa[,] and Georgie Relos "Not Guilty" for lack of evidence and orders their acquittal. They being detention prisoners, they are hereby ordered released immediately unless detained for some other lawful cause.
>
> The sentencing of minor accused Francisco Relos, Jr.[,] though found to be guilty[,] is hereby suspended pursuant to the provisions [of] Article 80 of the Revised Penal Code and Article 192 of PD 603. However[,] he must be sent to a reformatory institution. Let accused Francisco Relos, Jr. be transferred from his detention and be placed under the care and custody of the DSWD for his rehabilitation pursuant to law.
>
> The court hereby sentences accused Oliver Relos and Francisco Relos, Sr. to each suffer the penalty of *reclusion perpetua*, to pay the heirs of the victim the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, the amount of Forty Thousand Pesos (₱40,000.00) as actual damages and pay the costs of [the] suit.
>
> SO DECIDED.[3]

On appeal, the Court of Appeals (CA) affirmed the RTC decision, with modification as to the award of damages. The CA gave credence to the testimonies of Ramon, Jr. and Rogelio, Jr., noting that their narration of events was corroborated by physical evidence, that is, the location and the nature of the wounds sustained by the victim as indicated in the autopsy report. Correlatively, the CA did not give weight to Oliver's testimony that appellant was not at the scene of the crime at the time the incident happened, which testimony would have exonerated appellant. Finally, the CA affirmed the trial court's

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[2] *Id.* at 77-97.

[3] *Id.* at 96-97.

findings of conspiracy and the qualifying circumstance of treachery. Thus, the dispositive portion of the CA Decision[4] dated May 19, 2009 reads:

> WHEREFORE, the Decision dated October 25, 2006 of the Regional Trial Court of Aparri, Cagayan, Branch 8, in Criminal Case No. II-9527 which found accused-appellant Francisco Relos, Sr. guilty of MURDER and sentenced him to *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity and costs of [the] suit is hereby AFFIRMED with MODIFICATION. Accused-appellant is also ORDERED to pay the heirs of Ramon Relos, Sr. the amounts of ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages. We delete the award of actual damages.
>
> SO ORDERED.[5]

Appellant filed a notice of appeal, which was given due course by the CA in its Resolution[6] dated July 2, 2009.

We find no reversible error in the assailed Decision.

Findings of trial courts, which are factual in nature and which involve credibility of witnesses, are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[7] None of these circumstances is present in this case. The Court therefore sustains the findings of fact of the trial court, as affirmed by the CA, particularly on the weight given to the testimony of the victim's son, Ramon, Jr.

The testimonies of Ramon, Jr. and the other witnesses firmly established appellant's identity and his participation in the killing of Ramon, Sr. Thus, Oliver's testimony that he did not see

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[4] *Rollo,* pp. 2-26.

[5] *Id.* at 25.

[6] *Id.* at 30.

[7] *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 752.

appellant at the scene of the crime when the victim was killed was obviously a blatant lie, not worthy of any credence.

Based on the narration of events that led to the victim's death, we find that the finding of conspiracy was indeed warranted.

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act.[8] It may be inferred from the conduct of the accused before, during, and after the commission of the crime.[9] Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest.[10]

The presence of conspiracy was definitely established by the synchronized acts of appellant, Oliver, and Francisco, Jr. in carrying out their common objective of killing the victim. The three assailants simultaneously approached the victim and delivered successive blows that seriously injured the latter.

Though it was not clear who delivered the fatal blow, it does not make any difference in light of the finding of conspiracy. Where conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary, and the act of one may be imputed to all the conspirators. In other words, a person found in conspiracy with the actual perpetrator of the crime by performing specific acts with such closeness and coordination as the one who executed the criminal act is equally guilty as the latter, because, in the eyes of the law, each conspirator is a co-principal and is equally guilty with the other members of the plot.[11]

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[8] *People v. Delos Santos,* 399 Phil. 405, 417 (2000).

[9] *People v. Cabrera,* G.R. No. 105992, February 1, 1995, 241 SCRA 28, 34.

[10] *People v. Agpawan,* 393 Phil. 434, 438 (2000).

[11] *People v. Bermas,* 369 Phil. 191, 233 (1999).

We also affirm the trial court's finding that the crime was attended by treachery. There is treachery when the means, methods, and forms of execution gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself.[12] The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.[13]

The victim was not prepared to meet the initial attack made by appellant as he was distracted by Oliver who greeted him, "Merry Christmas, *insan*!" He was then caught off guard by the subsequent blows delivered by the other assailants, which were successive and gave him no opportunity to defend himself. Moreover, he did not have the means to defend himself as he was unarmed. Hence, treachery was clearly present.

In view of current jurisprudence, we, however, modify the award of damages by increasing the amount of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00, and exemplary damages to ₱30,000.00.[14] As to the amount of ₱25,000.00 as temperate damages, we find the same reasonable under the circumstances.

WHEREFORE, the petition is *DENIED*. The Court of Appeals Decision dated May 19, 2009 is *AFFIRMED* with *MODIFICATION* that appellant is ordered to pay the heirs of Ramon Relos, Sr. ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[12] *People v. Sades*, G.R. No. 171087, July 12, 2006, 494 SCRA 716, 727-728.

[13] *People v. Bermas, supra,* at 234.

[14] *Virgilio Bug-atan, Bernie Labandero, and Gregorio Manatad v. The People of the Philippines*, G.R. No. 175195, September 15, 2010.

FIRST DIVISION

[G.R. No. 190755. November 24, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ALFREDO ONG,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; APPLICATION OF ARTICLE 1236 OF THE CIVIL CODE IN CASE AT BAR.— Land Bank contends that Art. 1236 of the Civil Code backs their claim that Alfredo should have sought recourse against the Spouses Sy instead of Land Bank. Art. 1236 provides: "The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor." We agree with Land Bank on this point as to the first part of paragraph 1 of Art. 1236. Land Bank was not bound to accept Alfredo's payment, since as far as the former was concerned, he did not have an interest in the payment of the loan of the Spouses Sy. However, in the context of the second part of said paragraph, Alfredo was not making payment to fulfill the obligation of the Spouses Sy. Alfredo made a conditional payment so that the properties subject of the Deed of Sale with Assumption of Mortgage would be titled in his name. It is clear from the records that Land Bank required Alfredo to make payment before his assumption of mortgage would be approved. He was informed that the certificate of title would be transferred accordingly. He, thus, made payment not as a debtor but as a prospective mortgagor. x x x Alfredo, as a third person, did not, therefore, have an interest in the fulfillment of the obligation of the Spouses Sy, since his interest hinged on Land Bank's approval of his application, which was denied. The circumstances of the instant case show that the second paragraph of Art. 1236 does not apply. As Alfredo made the payment for his own interest and not on

behalf of the Spouses Sy, recourse is not against the latter. And as Alfredo was not paying for another, he cannot demand from the debtors, the Spouses Sy, what he has paid.

2. ID.; ID.; ID.; NOVATION; NOT PRESENT IN CASE AT BAR.— We do not agree x x x with the CA in holding that there was a novation in the contract between the parties. Not all the elements of novation were present. Novation must be expressly consented to. Moreover, the conflicting intention and acts of the parties underscore the absence of any express disclosure or circumstances with which to deduce a clear and unequivocal intent by the parties to novate the old agreement.

3. ID.; ID.; ESTOPPEL; ELEMENTS.— Land Bank is correct in arguing that it has no obligation as creditor to recognize Alfredo as a person with interest in the fulfillment of the obligation. But while Land Bank is not bound to accept the substitution of debtors in the subject real estate mortgage, it is estopped by its action of accepting Alfredo's payment from arguing that it does not have to recognize Alfredo as the new debtor. The elements of estoppel are: "First, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action." By accepting Alfredo's payment and keeping silent on the status of Alfredo's application, Land Bank misled Alfredo to believe that he had for all intents and purposes stepped into the shoes of the Spouses Sy.

4. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; WHEN PRESENT.— Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." There is unjust enrichment under Art. 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.

5. ID.; ID.; *ACCION IN REM VERSO*; CONDITIONS.— [U]njust enrichment has been applied to actions called *accion in rem verso*. In order that the *accion in rem verso* may prosper, the following conditions must concur: (1) that the defendant has been enriched; (2) that the plaintiff has suffered a loss; (3) that the enrichment of the defendant is without just or legal ground; and (4) that the plaintiff has no other action based on contract, quasi-contract, crime, or quasi-delict. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.

6. ID.; ID.; PRINCIPLE OF ABUSE OF RIGHTS; APPLICABLE IN CASE AT BAR.— [T]he Civil Code likewise requires under Art. 19 that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Land Bank, however, did not even bother to inform Alfredo that it was no longer approving his assumption of the Spouses Sy's mortgage. Yet it acknowledged his interest in the loan when the branch head of the bank wrote to tell him that his daughter's loan had not been paid. Land Bank made Alfredo believe that with the payment of PhP 750,000, he would be able to assume the mortgage of the Spouses Sy. The act of receiving payment without returning it when demanded is contrary to the adage of giving someone what is due to him. The outcome of the application would have been different had Land Bank first conducted the credit investigation before accepting Alfredo's payment. He would have been notified that his assumption of mortgage had been disapproved; and he would not have taken the futile action of paying PhP 750,000. The procedure Land Bank took in acting on Alfredo's application cannot be said to have been fair and proper.

7. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; EQUITY JURISDICTION; PROPERLY EXERCISED IN CASE AT BAR.— As to the claim that the trial court erred in applying equity to Alfredo's case, we hold that Alfredo had no other remedy to recover from Land Bank and the lower court properly exercised its equity jurisdiction in resolving the collection suit. As we have held in one case: Equity, as the complement of legal jurisdiction, seeks to reach and complete justice where courts of law, through the inflexibility of their

rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.

8. ID.; EVIDENCE; DEFENSES; DEFENSE OF GOOD FAITH; CANNOT PROSPER IN CASE AT BAR.—The defense of good faith fails to convince given Land Bank's actions. Alfredo was not treated as a mere prospective borrower. After he had paid PhP 750,000, he was made to sign bank documents including a promissory note and real estate mortgage. He was assured by Atty. Hingco that the titles to the properties covered by the Spouses Sy's real estate mortgage would be transferred in his name, and upon payment of the PhP 750,000, the account would be considered current and renewed in his name.

9. ID.; CIVIL PROCEDURE; APPEALS; ISSUES, ARGUMENTS, THEORIES, AND CAUSES NOT RAISED BELOW MAY NO LONGER BE POSED ON APPEAL.— Land Bank posits as a defense that it did not unduly enrich itself at Alfredo's expense during the foreclosure of the mortgaged properties, since it tendered its bid by subtracting PhP 750,000 from the Spouses Sy's outstanding loan obligation. It is observed that this is the first time Land Bank is revealing this defense. However, issues, arguments, theories, and causes not raised below may no longer be posed on appeal. Land Bank's contention, thus, cannot be entertained at this point.

10. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY BINDING ON APPEAL.— Land Bank further questions the lower court's decision on the basis of the inconsistencies made by Alfredo on the witness stand. It argues that Alfredo was not a credible witness and his testimony failed to overcome the presumption of regularity in the performance of regular duties on the part of Land Bank. This claim, however, touches on factual findings by the trial court, and we defer to these findings of the trial court as sustained by the appellate court. These are generally binding on us. While there are exceptions to this rule, Land Bank has not satisfactorily shown that any of them is applicable to this issue. Hence, the rule that the trial court is in a unique position to observe the demeanor of witnesses should be applied and respected in the instant case.

11. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; INTEREST; SHALL BE COMPUTED FROM THE DATE OF JUDICIAL DEMAND IN CASE AT BAR.— No evidence was presented by Alfredo that he had sent a written demand to Land Bank before he filed the collection suit. Only the verbal agreement between the lawyers of the parties on the return of the payment was mentioned. Consequently, the obligation of Land Bank to return the payment made by Alfredo upon the former's denial of the latter's application for assumption of mortgage must be reckoned from the date of judicial demand on December 12, 1997, as correctly determined by the trial court and affirmed by the appellate court.

12. ID.; ID.; ID.; ID.; THE 6% PER ANNUM RATE APPLIES TO TRANSACTIONS INVOLVING THE PAYMENT OF INDEMNITIES IN THE CONCEPT OF DAMAGES ARISING FROM THE BREACH OR A DELAY IN THE PERFORMANCE OF OBLIGATIONS IN GENERAL.— [T]he proper imposable interest rate is 6% per annum pursuant to Art. 2209 of the Civil Code. *Sunga-Chan v. Court of Appeals* is illuminating in this regard: "In *Reformina v. Tomol, Jr.*, the Court held that the legal interest at 12% per annum under Central Bank (CB) Circular No. 416 shall be adjudged only in cases involving the loan or forbearance of money. And **for transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general** and/or for money judgment not involving a loan or forbearance of money, goods, or credit, the governing provision is Art. 2209 of the Civil Code prescribing a yearly 6% interest. x x x *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the **6% per annum under Art. 2209 of the Civil Code applies 'when the transaction involves the payment of indemnities in the concept of damages arising from the breach or a delay in the performance of obligations in general,'** with the application of both rates reckoned 'from the time the complaint was filed until the [adjudged] amount is fully paid.' In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition 'that the courts are vested with

discretion, depending on the equities of each case, on the award of interest.'"

13. ID.; ID.; ID.; ID.; FORBEARANCE OF MONEY; DEFINED.— [F]orbearance of money refers to the contractual obligation of the lender or creditor to desist for a fixed period from requiring the borrower or debtor to repay the loan or debt then due and for which 12% per annum is imposed as interest in the absence of a stipulated rate. In the instant case, Alfredo's conditional payment to Land Bank does not constitute forbearance of money, since there was no agreement or obligation for Alfredo to pay Land Bank the amount of PhP 750,000, and the obligation of Land Bank to return what Alfredo has conditionally paid is still in dispute and has not yet been determined. Thus, it cannot be said that Land Bank's alleged obligation has become a forbearance of money.

14. ID.; ID.; ID.; ATTORNEY'S FEES AND EXPENSES OF LITIGATION; AWARDED WHEN THE DEFENDANT'S ACT OR OMISSION HAS COMPELLED THE PLAINTIFF TO LITIGATE WITH THIRD PERSONS OR TO INCUR EXPENSES TO PROTECT HIS INTEREST.— On the award of attorney's fees, attorney's fees and expenses of litigation were awarded because Alfredo was compelled to litigate due to the unjust refusal of Land Bank to refund the amount he paid. There are instances when it is just and equitable to award attorney's fees and expenses of litigation. Art. 2208 of the Civil Code pertinently states: "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: x x x (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." Given that Alfredo was indeed compelled to litigate against Land Bank and incur expenses to protect his interest, we find that the award falls under the exception above and is, thus, proper given the circumstances.

APPEARANCES OF COUNSEL

Legal Services Group (LBP) for petitioner.
Ireneo M. De Luman for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the October 20, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-CV No. 84445 entitled *Alfredo Ong v. Land Bank of the Philippines*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 17 in Tabaco City.

The Facts

On March 18, 1996, spouses Johnson and Evangeline Sy secured a loan from Land Bank Legazpi City in the amount of PhP 16 million. The loan was secured by three (3) residential lots, five (5) cargo trucks, and a warehouse. Under the loan agreement, PhP 6 million of the loan would be short-term and would mature on February 28, 1997, while the balance of PhP 10 million would be payable in seven (7) years. The Notice of Loan Approval dated February 22, 1996 contained an acceleration clause wherein any default in payment of amortizations or other charges would accelerate the maturity of the loan.[1]

Subsequently, however, the Spouses Sy found they could no longer pay their loan. On December 9, 1996, they sold three (3) of their mortgaged parcels of land for PhP 150,000 to Angelina Gloria Ong, Evangeline's mother, under a Deed of Sale with Assumption of Mortgage. The relevant portion of the document[2] is quoted as follows:

> WHEREAS, we are no longer in a position to settle our obligation with the bank;
>
> NOW THEREFORE, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) Philippine Currency, we hereby these presents SELL, CEDE, TRANSFER and CONVEY, by way of sale unto ANGELINA GLORIA ONG, also of

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[1] *Rollo*, p. 44.

[2] Records, pp. 63-64.

legal age, Filipino citizen, married to Alfredo Ong, and also a resident of Tabaco, Albay, Philippines, their heirs and assigns, the above-mentioned debt with the said LAND BANK OF THE PHILIPPINES, and by reason hereof they can make the necessary representation with the bank for the proper restructuring of the loan with the said bank in their favor;

That as soon as our obligation has been duly settled, the bank is authorized to release the mortgage in favor of the vendees and for this purpose VENDEES can register this instrument with the Register of Deeds for the issuance of the titles already in their names.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this 9th day of December 1996 at Tabaco, Albay, Philippines.

(signed)	(signed)
EVANGELINE O. SY	JOHNSON B. SY
Vendor	Vendor

Evangeline's father, petitioner Alfredo Ong, later went to Land Bank to inform it about the sale and assumption of mortgage.[3] Atty. Edna Hingco, the Legazpi City Land Bank Branch Head, told Alfredo and his counsel Atty. Ireneo de Lumen that there was nothing wrong with the agreement with the Spouses Sy but provided them with requirements for the assumption of mortgage. They were also told that Alfredo should pay part of the principal which was computed at PhP 750,000 and to update due or accrued interests on the promissory notes so that Atty. Hingco could easily approve the assumption of mortgage. Two weeks later, Alfredo issued a check for PhP 750,000 and personally gave it to Atty. Hingco. A receipt was issued for his payment. He also submitted the other documents required by Land Bank, such as financial statements for 1994 and 1995. Atty. Hingco then informed Alfredo that the certificate of title of the Spouses Sy would be transferred in his name but this never materialized. No notice of transfer was sent to him.[4]

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[3] *Rollo*, p. 45.

[4] *Id.* at 45-46.

Alfredo later found out that his application for assumption of mortgage was not approved by Land Bank. The bank learned from its credit investigation report that the Ongs had a real estate mortgage in the amount of PhP 18,300,000 with another bank that was past due. Alfredo claimed that this was fully paid later on. Nonetheless, Land Bank foreclosed the mortgage of the Spouses Sy after several months. Alfredo only learned of the foreclosure when he saw the subject mortgage properties included in a Notice of Foreclosure of Mortgage and Auction Sale at the RTC in Tabaco, Albay. Alfredo's other counsel, Atty. Madrilejos, subsequently talked to Land Bank's lawyer and was told that the PhP 750,000 he paid would be returned to him.[5]

On December 12, 1997, Alfredo initiated an action for recovery of sum of money with damages against Land Bank in Civil Case No. T-1941, as Alfredo's payment was not returned by Land Bank. Alfredo maintained that Land Bank's foreclosure without informing him of the denial of his assumption of the mortgage was done in bad faith. He argued that he was lured into believing that his payment of PhP 750,000 would cause Land Bank to approve his assumption of the loan of the Spouses Sy and the transfer of the mortgaged properties in his and his wife's name.[6] He also claimed incurring expenses for attorney's fees of PhP 150,000, filing fee of PhP 15,000, and PhP 250,000 in moral damages.[7]

Testifying for Land Bank, Atty. Hingco claimed during trial that as branch manager she had no authority to approve loans and could not assure anybody that their assumption of mortgage would be approved. She testified that the breakdown of Alfredo's payment was as follows:

PhP 101,409.59	applied to principal
216,246.56	accrued interests receivable

[5] *Id.* at 46.

[6] *Id.*

[7] *Id.* at 92.

396,571.77	interests
18,766.10	penalties
16,805.98	accounts receivable

Total: 750,000.00	

According to Atty. Hingco, the bank processes an assumption of mortgage as a new loan, since the new borrower is considered a new client. They used character, capacity, capital, collateral, and conditions in determining who can qualify to assume a loan. Alfredo's proposal to assume the loan, she explained, was referred to a separate office, the Lending Center.[8]

During cross-examination, Atty. Hingco testified that several months after Alfredo made the tender of payment, she received word that the Lending Center rejected Alfredo's loan application. She stated that it was the Lending Center and not her that should have informed Alfredo about the denial of his and his wife's assumption of mortgage. She added that although she told Alfredo that the agreement between the spouses Sy and Alfredo was valid between them and that the bank would accept payments from him, Alfredo did not pay any further amount so the foreclosure of the loan collaterals ensued. She admitted that Alfredo demanded the return of the PhP 750,000 but said that there was no written demand before the case against the bank was filed in court. She said that Alfredo had made the payment of PhP 750,000 even before he applied for the assumption of mortgage and that the bank received the said amount because the subject account was past due and demandable; and the Deed of Assumption of Mortgage was not used as the basis for the payment.[9]

The Ruling of the Trial Court

The RTC held that the contract approving the assumption of mortgage was not perfected as a result of the credit

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[8] Records, pp. 162-163.

[9] *Id.* at 160.

investigation conducted on Alfredo. It noted that Alfredo was not even informed of the disapproval of the assumption of mortgage but was just told that the accounts of the spouses Sy had matured and gone unpaid. It ruled that under the principle of equity and justice, the bank should return the amount Alfredo had paid with interest at 12% per annum computed from the filing of the complaint. The RTC further held that Alfredo was entitled to attorney's fees and litigation expenses for being compelled to litigate.[10]

The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, a decision is rendered, ordering defendant bank to pay plaintiff, Alfredo Ong the amount of ₱750,000.00 with interest at 12% per annum computed from Dec. 12, 1997 and attorney's fees and litigation expenses of ₱50,000.00.
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> Costs against defendant bank.
>
> SO ORDERED.[11]

The Ruling of the Appellate Court

On appeal, Land Bank faulted the trial court for (1) holding that the payment of PhP 750,000 made by Ong was one of the requirements for the approval of his proposal to assume the mortgage of the Sy spouses; (2) erroneously ordering Land Bank to return the amount of PhP 750,000 to Ong on the ground of its failure to effect novation; and (3) erroneously affirming the award of PhP 50,000 to Ong as attorney's fees and litigation expenses.

The CA affirmed the RTC Decision.[12] It held that Alfredo's recourse is not against the Sy spouses. According to the appellate court, the payment of PhP 750,000 was for the approval of his

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[10] *Id.* at 168.

[11] CA *rollo*, p. 87. Penned by Judge Virginia G. Almonte.

[12] *Rollo*, p. 53. The CA Decision was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Apolinario D. Bruselas, Jr.

assumption of mortgage and not for payment of arrears incurred by the Sy spouses. As such, it ruled that it would be incorrect to consider Alfredo a third person with no interest in the fulfillment of the obligation under Article 1236 of the Civil Code. Although Land Bank was not bound by the Deed between Alfredo and the Spouses Sy, the appellate court found that Alfredo and Land Bank's active preparations for Alfredo's assumption of mortgage essentially novated the agreement.

On January 5, 2010, the CA denied Land Bank's motion for reconsideration for lack of merit. Hence, Land Bank appealed to us.

The Issues

I

Whether the Court of Appeals erred in holding that Art. 1236 of the Civil Code does not apply and in finding that there is no novation.

II

Whether the Court of Appeals misconstrued the evidence and the law when it affirmed the trial court decision's ordering Land Bank to pay Ong the amount of Php750,000.00 with interest at 12% annum.

III

Whether the Court of Appeals committed reversible error when it affirmed the award of Php50,000.00 to Ong as attorney's fees and expenses of litigation.

The Ruling of this Court

We affirm with modification the appealed decision.

Recourse is against Land Bank

Land Bank contends that Art. 1236 of the Civil Code backs their claim that Alfredo should have sought recourse against the Spouses Sy instead of Land Bank. Art. 1236 provides:

> The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

We agree with Land Bank on this point as to the first part of paragraph 1 of Art. 1236. Land Bank was not bound to accept Alfredo's payment, since as far as the former was concerned, he did not have an interest in the payment of the loan of the Spouses Sy. However, in the context of the second part of said paragraph, Alfredo was not making payment to fulfill the obligation of the Spouses Sy. Alfredo made a conditional payment so that the properties subject of the Deed of Sale with Assumption of Mortgage would be titled in his name. It is clear from the records that Land Bank required Alfredo to make payment before his assumption of mortgage would be approved. He was informed that the certificate of title would be transferred accordingly. He, thus, made payment not as a debtor but as a prospective mortgagor. But the trial court stated:

[T]he contract was not perfected or consummated because of the adverse finding in the credit investigation which led to the disapproval of the proposed assumption. There was no evidence presented that plaintiff was informed of the disapproval. What he received was a letter dated May 22, 1997 informing him that the account of spouses Sy had matured but there [were] no payments. This was sent even before the conduct of the credit investigation on June 20, 1997 which led to the disapproval of the proposed assumption of the loans of spouses Sy.[13]

Alfredo, as a third person, did not, therefore, have an interest in the fulfillment of the obligation of the Spouses Sy, since his interest hinged on Land Bank's approval of his application, which was denied. The circumstances of the instant case show that the second paragraph of Art. 1236 does not apply. As Alfredo made the payment for his own interest and not on behalf of the Spouses Sy, recourse is not against the latter. And as Alfredo

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[13] CA *rollo*, p. 87.

was not paying for another, he cannot demand from the debtors, the Spouses Sy, what he has paid.

Novation of the loan agreement

Land Bank also faults the CA for finding that novation applies to the instant case. It reasons that a substitution of debtors was made without its consent; thus, it was not bound to recognize the substitution under the rules on novation.

On the matter of novation, *Spouses Benjamin and Agrifina Lim v. M.B. Finance Corporation*[14] provides the following discussion:

> Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have dual functions — one to extinguish an existing obligation, the other to substitute a new one in its place — requiring a conflux of four essential requisites: **(1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation**. x x x
>
> In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. x x x (Emphasis supplied.)

Furthermore, Art. 1293 of the Civil Code states:

> Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or

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[14] G.R. No. 164300, November 29, 2006, 508 SCRA 556, 560-561; citing *Fabrigas v. San Francisco del Monte, Inc.*, G.R. No. 152346, November 25, 2005, 476 SCRA 247, 258-259.

against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in articles 1236 and 1237.

We do not agree, then, with the CA in holding that there was a novation in the contract between the parties. Not all the elements of novation were present. Novation must be expressly consented to. Moreover, the conflicting intention and acts of the parties underscore the absence of any express disclosure or circumstances with which to deduce a clear and unequivocal intent by the parties to novate the old agreement.[15] Land Bank is thus correct when it argues that there was no novation in the following:

> [W]hether or not Alfredo Ong has an interest in the obligation and payment was made with the knowledge or consent of Spouses Sy, he may still pay the obligation for the reason that even before he paid the amount of ₱750,000.00 on January 31, 1997, the substitution of debtors was already perfected by and between Spouses Sy and Spouses Ong as evidenced by a Deed of Sale with Assumption of Mortgage executed by them on December 9, 1996. And since the substitution of debtors was made without the consent of Land Bank – a requirement which is indispensable in order to effect a novation of the obligation, it is therefore not bound to recognize the substitution of debtors. Land Bank did not intervene in the contract between Spouses Sy and Spouses Ong and did not expressly give its consent to this substitution.[16]

Unjust enrichment

Land Bank maintains that the trial court erroneously applied the principle of equity and justice in ordering it to return the PhP 750,000 paid by Alfredo. Alfredo was allegedly in bad faith and in estoppel. Land Bank contends that it enjoyed the presumption of regularity and was in good faith when it accepted Alfredo's tender of PhP 750,000. It reasons that it did not unduly

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[15] *Philippine Savings Bank v. Spouses Mañalac*, G.R. No. 145441, April 26, 2005, 457 SCRA 203, 218.

[16] *Rollo*, p. 23.

enrich itself at Alfredo's expense during the foreclosure of the mortgaged properties, since it tendered its bid by subtracting PhP 750,000 from the Spouses Sy's outstanding loan obligation. Alfredo's recourse then, according to Land Bank, is to have his payment reimbursed by the Spouses Sy.

We rule that Land Bank is still liable for the return of the PhP 750,000 based on the principle of unjust enrichment. Land Bank is correct in arguing that it has no obligation as creditor to recognize Alfredo as a person with interest in the fulfillment of the obligation. But while Land Bank is not bound to accept the substitution of debtors in the subject real estate mortgage, it is estopped by its action of accepting Alfredo's payment from arguing that it does not have to recognize Alfredo as the new debtor. The elements of estoppel are:

> First, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[17]

By accepting Alfredo's payment and keeping silent on the status of Alfredo's application, Land Bank misled Alfredo to believe that he had for all intents and purposes stepped into the shoes of the Spouses Sy.

The defense of Land Bank Legazpi City Branch Manager Atty. Hingco that it was the bank's Lending Center that should have notified Alfredo of his assumption of mortgage disapproval is unavailing. The Lending Center's lack of notice of disapproval, the Tabaco Branch's silence on the disapproval, and the bank's subsequent actions show a failure of the bank as a whole, *first*,

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[17] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 109803, April 20, 1998, 289 SCRA 185, 186.

to notify Alfredo that he is not a recognized debtor in the eyes of the bank; and *second*, to apprise him of how and when he could collect on the payment that the bank no longer had a right to keep.

We turn then on the principle upon which Land Bank must return Alfredo's payment. Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[18] There is unjust enrichment under Art. 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.[19]

Additionally, unjust enrichment has been applied to actions called *accion in rem verso*. In order that the *accion in rem verso* may prosper, the following conditions must concur: (1) that the defendant has been enriched; (2) that the plaintiff has suffered a loss; (3) that the enrichment of the defendant is without just or legal ground; and (4) that the plaintiff has no other action based on contract, quasi-contract, crime, or quasi-delict.[20] The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.[21]

The principle applies to the parties in the instant case, as, Alfredo, having been deemed disqualified from assuming the loan, had no duty to pay petitioner bank and the latter had no right to receive it.

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[18] *Car Cool Philippines v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412.

[19] *H.L. Carlos Corporation, Inc. v. Marina Properties Corporation*, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 437; citing *MC Engineering, Inc. v. Court of Appeals*, G.R. No. 104047, April 3, 2002, 380 SCRA 116, 138.

[20] 1 Tolentino, *CIVIL CODE OF THE PHILIPPINES COMMENTARIES AND JURISPRUDENCE* 77 (1990).

[21] *Gil Miguel T. Puyat v. Ron Zabarte*, G.R. No. 141536. February 26, 2001, 352 SCRA 738, 750.

Moreover, the Civil Code likewise requires under Art. 19 that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Land Bank, however, did not even bother to inform Alfredo that it was no longer approving his assumption of the Spouses Sy's mortgage. Yet it acknowledged his interest in the loan when the branch head of the bank wrote to tell him that his daughter's loan had not been paid.[22] Land Bank made Alfredo believe that with the payment of PhP 750,000, he would be able to assume the mortgage of the Spouses Sy. The act of receiving payment without returning it when demanded is contrary to the adage of giving someone what is due to him. The outcome of the application would have been different had Land Bank first conducted the credit investigation before accepting Alfredo's payment. He would have been notified that his assumption of mortgage had been disapproved; and he would not have taken the futile action of paying PhP 750,000. The procedure Land Bank took in acting on Alfredo's application cannot be said to have been fair and proper.

As to the claim that the trial court erred in applying equity to Alfredo's case, we hold that Alfredo had no other remedy to recover from Land Bank and the lower court properly exercised its equity jurisdiction in resolving the collection suit. As we have held in one case:

> Equity, as the complement of legal jurisdiction, seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[23]

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[22] CA *rollo*, p. 86.

[23] *LCK Industries Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 652; citing *Tamio v. Ticson*, G.R. No. 154895, November 18, 2004, 443 SCRA 44, 55.

Another claim made by Land Bank is the presumption of regularity it enjoys and that it was in good faith when it accepted Alfredo's tender of PhP 750,000.

The defense of good faith fails to convince given Land Bank's actions. Alfredo was not treated as a mere prospective borrower. After he had paid PhP 750,000, he was made to sign bank documents including a promissory note and real estate mortgage. He was assured by Atty. Hingco that the titles to the properties covered by the Spouses Sy's real estate mortgage would be transferred in his name, and upon payment of the PhP 750,000, the account would be considered current and renewed in his name.[24]

Land Bank posits as a defense that it did not unduly enrich itself at Alfredo's expense during the foreclosure of the mortgaged properties, since it tendered its bid by subtracting PhP 750,000 from the Spouses Sy's outstanding loan obligation. It is observed that this is the first time Land Bank is revealing this defense. However, issues, arguments, theories, and causes not raised below may no longer be posed on appeal.[25] Land Bank's contention, thus, cannot be entertained at this point.

Land Bank further questions the lower court's decision on the basis of the inconsistencies made by Alfredo on the witness stand. It argues that Alfredo was not a credible witness and his testimony failed to overcome the presumption of regularity in the performance of regular duties on the part of Land Bank.

This claim, however, touches on factual findings by the trial court, and we defer to these findings of the trial court as sustained by the appellate court. These are generally binding on us. While there are exceptions to this rule, Land Bank has not satisfactorily shown that any of them is applicable to this issue.[26] Hence,

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[24] CA *rollo*, p. 86.

[25] *Agra v. Philippine National Bank*, G.R. No. 133317, June 29, 1999, 514 SCRA 509, 528.

[26] See *Royal Cargo Corporation v. DFS Sports Unlimited Inc.*, G.R. No. 158621, December 10, 2008, 573 SCRA 414, 421-422.

the rule that the trial court is in a unique position to observe the demeanor of witnesses should be applied and respected[27] in the instant case.

In sum, we hold that Land Bank may not keep the PhP 750,000 paid by Alfredo as it had already foreclosed on the mortgaged lands.

Interest and attorney's fees

As to the applicable interest rate, we reiterate the guidelines found in *Eastern Shipping Lines, Inc. v. Court of Appeals*:[28]

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably

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[27] See *Tugade v. Court of Appeals*, G.R. No. 120874, July 31, 2003, 407 SCRA 497, 508.

[28] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

No evidence was presented by Alfredo that he had sent a written demand to Land Bank before he filed the collection suit. Only the verbal agreement between the lawyers of the parties on the return of the payment was mentioned.[29] Consequently, the obligation of Land Bank to return the payment made by Alfredo upon the former's denial of the latter's application for assumption of mortgage must be reckoned from the date of judicial demand on December 12, 1997, as correctly determined by the trial court and affirmed by the appellate court.

The next question is the propriety of the imposition of interest and the proper imposable rate of applicable interest. The RTC granted the rate of 12% per annum which was affirmed by the CA. From the above-quoted guidelines, however, the proper imposable interest rate is 6% per annum pursuant to Art. 2209 of the Civil Code. *Sunga-Chan v. Court of Appeals* is illuminating in this regard:

In *Reformina v. Tomol, Jr.*, the Court held that the legal interest at 12% per annum under Central Bank (CB) Circular No. 416 shall be adjudged only in cases involving the loan or forbearance of money. And **for transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general** and/or for money judgment not involving a loan or forbearance of money, goods, or credit, the governing provision is Art. 2209 of the Civil Code prescribing a yearly 6% interest. Art. 2209 pertinently provides:

> Art. 2209. If the **obligation consists in the payment of a sum of money, and the debtor incurs in delay**, the indemnity

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[29] Records, p. 255.

> for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and **in the absence of stipulation, the legal interest, which is six percent per annum**.

The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the **6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damages arising from the breach or a delay in the performance of obligations in general,"** with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[30] (Emphasis supplied.)

Based on our ruling above, forbearance of money refers to the contractual obligation of the lender or creditor to desist for a fixed period from requiring the borrower or debtor to repay the loan or debt then due and for which 12% per annum is imposed as interest in the absence of a stipulated rate. In the instant case, Alfredo's conditional payment to Land Bank does not constitute forbearance of money, since there was no agreement or obligation for Alfredo to pay Land Bank the amount of PhP 750,000, and the obligation of Land Bank to return what Alfredo has conditionally paid is still in dispute and has not yet been determined. Thus, it cannot be said that Land Bank's alleged obligation has become a forbearance of money.

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[30] G.R. No. 164401, June 25, 2008, 555 SCRA 275, 287-288 [citations omitted].

On the award of attorney's fees, attorney's fees and expenses of litigation were awarded because Alfredo was compelled to litigate due to the unjust refusal of Land Bank to refund the amount he paid. There are instances when it is just and equitable to award attorney's fees and expenses of litigation.[31] Art. 2208 of the Civil Code pertinently states:

> In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> x x x x x x x x x
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

Given that Alfredo was indeed compelled to litigate against Land Bank and incur expenses to protect his interest, we find that the award falls under the exception above and is, thus, proper given the circumstances.

On a final note. The instant case would not have been litigated had Land Bank been more circumspect in dealing with Alfredo. The bank chose to accept payment from Alfredo even before a credit investigation was underway, a procedure worsened by the failure to even inform him of his credit standing's impact on his assumption of mortgage. It was, therefore, negligent to a certain degree in handling the transaction with Alfredo. It should be remembered that the business of a bank is affected with public interest and it should observe a higher standard of diligence when dealing with the public.[32]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-CV No. 84445 is *AFFIRMED* with *MODIFICATION* in that the amount of PhP 750,000 will earn interest at 6% per annum reckoned from December 12, 1997,

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[31] *Trade & Investment Development Corporation v. Roblett Industrial Construction Corp.*, G.R. No. 139290, November 11, 2005, 474 SCRA 510, 540-541.

[32] *Philippine Bank of Communications v. Court of Appeals*, *supra* note 17.

and the total aggregate monetary awards will in turn earn 12% per annum from the finality of this Decision until fully paid.

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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Monetary Board — The power and authority of the Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the state. (Vda. de Ballesteros *vs*. Rural Bank of Canaman, Inc., G.R. No. 176260, Nov. 24, 2010) p. 476

Proceedings in receivership and liquidation — A single proceeding which consist of a number of cases properly classified as "claims." (Vda. de Ballesteros *vs*. Rural Bank of Canaman, Inc., G.R. No. 176260, Nov. 24, 2010) p. 476

— If the receiver determines that the institution cannot be rehabilitated or permitted to resume business xxx, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. *(Id.)*

CERTIORARI

Grave abuse of discretion — Committed in case of the Ombudsman's patent failure to note and consider the Department of Agrarian Reform Adjudication Board's omission to observe the basic rules in resolving a petition for injunction and a temporary restraining order. (Belongilot *vs*. Cua, G.R. No. 160933, Nov. 24, 2010) p. 392

— Committed when the Ombudsman dismissed the case instead of resolving the issue of probable cause. *(Id.)*

Petition for — Could be availed of only if a 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 if there is no appeal or other plain, speedy,

and adequate remedy in the ordinary course of law. (Milwaukee Industries Corp. *vs*. CTA, G.R. No. 173815, Nov. 24, 2010) p. 429

— Distinguished from a petition for review under Rule 45 of the Rules of Court. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

— Proper only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. (Teh *vs*. Tan, G.R. No. 181956, Nov. 22, 2010) p. 130

— Substance of the petition is given primacy over form and procedure. (Belongilot *vs*. Cua, G.R. No. 160933, Nov. 24, 2010) p. 392

CIVIL SERVICE

Career Executive Service (CES) — Does not include the position of Assistant Department Manager II, Philippine Charity Sweepstakes Office and it does not require appointment by the President. (Civil Service Commission *vs*. CA, G.R. No. 185766, Nov. 23, 2010) p. 292

— Elements that must concur in order for a position to be covered thereby, cited. *(Id.)*

Loafing — Defined as frequent unauthorized absences from duty during regular office hours. (Exec. Judge Roman *vs*. Fortaleza, A.M. No. P-10-2865, Nov. 22, 2010) p. 1

— Imposable penalty. *(Id.)*

CLERKS OF COURT

Conduct of — Clerks of court are required to deposit all collections with the Land Bank of the Philippines within twenty four (24) hours upon receipt of collections and restitution does not fully exonerate them for failure to do so. (OCAD *vs*. Villeta, A.M. No. P-06-2211, Nov. 23, 2010) p. 232

Gross neglect of duty and gross misconduct — Committed in case of failure to immediately deposit their collections in authorized government depositaries. (OCAD *vs*. Villeta, A.M. No. P-06-2211, Nov. 23, 2010) p. 232

Malversation of public funds — Shortages and tampering of cash bond receipts, a case of. (OCAD *vs*. Villeta, A.M. No. P-06-2211, Nov. 23, 2010) p. 232

COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)

Chain of custody rule — How the integrity of the substance seized from the accused might be preserved. (People *vs*. Batoon, G.R. No. 184599, Nov. 24, 2010) p. 569

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*. Batoon, G.R. No. 184599, Nov. 24, 2010) p. 569

(People *vs*. Bañaga, G.R. No. 183699, Nov. 24, 2010) p. 561

— Exclusive possession of the prohibited drug is not required. (People *vs*. Batoon, G.R. No. 184599, Nov. 24, 2010) p. 569

(People *vs*. Bañaga, G.R. No. 183699, Nov. 24, 2010) p. 561

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*. Batoon, G.R. No. 184599, Nov. 24, 2010) p. 569

(People *vs*. Bañaga, G.R. No. 183699, Nov. 24, 2010) p. 561

CONSPIRACY

Existence of — Established when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (People *vs*. Relos, Sr., G.R. No. 189326, Nov. 24, 2010) p. 619

(People *vs*. Bañaga, G.R. No. 183699, Nov. 24, 2010) p. 561

— The act of one is the act of all the conspirators. (People *vs*. Batoon, G.R. No. 184599, Nov. 24, 2010) p. 569

— Where conspiracy is shown, the precise modality or extent of participation of each accused becomes secondary, and the act of one may be imputed to all the conspirators. (People *vs*. Relos, Sr., G.R. No. 189326, Nov. 24, 2010) p. 619

CONSTITUTION

Construction — Verbal legis dictates that wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed, in which case, the significance thus attached to them prevails, however, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or *ratio legis et anima*. (Atty. Macalintal *vs*. PET, G.R. No. 191618, Nov. 23, 2010) p. 326

CORPORATIONS

Right of appraisal — For a dissenting stockholder to have a valid cause of action, the unrestricted retained earnings must exist at the time of the demand. (Turner *vs*. Lorenzo Shipping Corp., G.R. No. 157479, Nov. 24, 2010) p. 372

— May be exercised when there is a fundamental change in the charter or articles of incorporation substantially prejudicing the rights of the stockholders. *(Id.)*

— Payment to the dissenting stockholder must come from the corporation's unrestricted retained earnings. *(Id.)*

Trust fund doctrine — The capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who are preferred in the distribution of corporate assets. (Turner *vs*. Lorenzo Shipping Corp., G.R. No. 157479, Nov. 24, 2010) p. 372

COURT OF TAX APPEALS

Appellate jurisdiction — Decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Commissioner of Customs *vs*. Marina Sales, Inc., G.R. No. 183868, Nov. 22, 2010) p. 143

COURT PERSONNEL

Duties — Court personnel must strictly observe official time to inspire public respect for the justice system. (Exec. Judge Roman *vs*. Fortaleza, A.M. No. P-10-2865, Nov. 22, 2010) p. 1

Gross misconduct — Act of soliciting money from party litigants, a case of. (Pinlac *vs*. Llamas, A.M. No. P-10-2781, Nov. 24, 2010) p. 360 p. 360

— Committed in case a court employee accepts money from the complainant as payment for her services in assisting the latter in filing an annulment case against her husband. (Ramos *vs*. Limeta, A.M. No. P-06-2225, Nov. 23, 2010) p. 243

— Defined as a serious transgression of some established and definite rule of action that tends to threaten the very existence of the system of administration of justice an official or employee serves. *(Id.)*

— Penalty in case respondent had already resigned. (Pinlac *vs*. Llamas, A.M. No. P-10-2781, Nov. 24, 2010) p. 360

Habitual absenteeism — Constitutes gross misconduct prejudicial to the best interest of the public service warranting dismissal from the service. (*Re*: Habitual Absenteeism of Mr. Nelson G. Marcos, Sheriff III, MTC, Office of the Clerk of Court, Caloocan City, A.M. No. P-09-2603, Nov. 23, 2010) p. 251

DAMAGES

Interests — Interest rates imposed on temperate and moral damages shall commence to run from the date of the promulgation of the decision. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

— The proper imposable interest rate of 6% per annum pursuant to Art. 2209 of the Civil Code applies to a transaction involving the payment of indemnities in the concept of damages arising from breach or a delay in the performance of obligations in general. *(Id.)*

DANGEROUS DRUGS ACT OF 1972 (R.A. No. 6425)

Illegal possession of prohibited or regulated drugs — Elements of the crime are: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. (People *vs*. Lascano, G.R. No. 172605, Nov. 22, 2010) p. 87

— Imposable penalty. *(Id.)*

Illegal sale of dangerous drugs — Elements that must concur are: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Lascano, G.R. No. 172605, Nov. 22, 2010) p. 87

— Imposable penalty. *(Id.)*

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive identification made by witnesses. (People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

— Cannot prevail over the positive and credible testimony of the prosecution witnesses. (People *vs*. Macafe, G.R. No. 185616, Nov. 24, 2010) p. 580

(People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

(People *vs*. Deri, G.R. No. 166566, Nov. 23, 2010) p. 276

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction — Primary and exclusive, both original and appellate over agrarian disputes. (Mendoza *vs*. Germino, G.R. No. 165676, Nov. 22, 2010) p. 74

DOCUMENTARY EVIDENCE

Entries in official records — When made in the performance of official duty, they are prima facie evidence of the facts therein stated. (People *vs*. Lascano, G.R. No. 172605, Nov. 22, 2010) p. 87

Notarized documents — Merely proof of the fact which gave rise to their execution and of the date of the latter, but are not *prima facie* evidence of the facts therein stated. (Phil. Trust Co. vs. CA, G.R. No. 150318, Nov. 22, 2010) p. 54

EJECTMENT

Action for — Proper remedy against a person who occupies the land of another at the latter's tolerance and fails to vacate upon demand. (Sps. Abad *vs*. Fil-Homes Realty and Dev't. Corp., G.R. No. 189239, Nov. 24, 2010) p. 608

EMPLOYMENT, TERMINATION OF

Constructive dismissal — Established if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. (Salvaloza *vs*. NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

Separation pay — Awarded when reinstatement proves impracticable. (Salvaloza *vs*. NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

Valid termination — Burden of proving the validity of the termination of employment rests with the employer. (Salvaloza *vs*. NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

ESTOPPEL

Estoppel in pais — Arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be

prejudiced if the former is permitted to deny the evidence of such facts. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

EVIDENCE

Genuineness of a person's signature — An ordinary witness may testify on a signature he is familiar with. (Nacu *vs*. Civil Service Commission, G.R. No. 187752, Nov. 23, 2010) p. 309

Preponderance of evidence — Defined as 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." (Sps. Sevilla *vs*. CA, G.R. No. 150284, Nov. 22, 2010) p. 44

Substantial evidence — Defined as such relevant evidence as a reasonable mind will accept as adequate to support a conclusion and does not mean just any evidence in the record of the case for, otherwise, no finding of fact would be wanting in basis. (Nacu *vs*. Civil Service Commission, G.R. No. 187752, Nov. 23, 2010) p. 309

EXPROPRIATION

Stages of expropriation — Cited. (Sps. Abad *vs*. Fil-Homes Realty and Dev't. Corp., G.R. No. 189239, Nov. 24, 2010) p. 608

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)

Writ of possession — Becomes a matter of right after the consolidation of title in the buyer's name for failure of the mortgagor to redeem the mortgaged property. (Asia United Bank *vs.* Goodland Co., Inc., G.R. No. 188051, Nov. 22, 2010) p. 174

FRAME-UP

Defense of — Invariably viewed with disfavor for it can easily be concocted but difficult to prove. (People *vs*. Lascano, G.R. No. 172605, Nov. 22, 2010) p. 87

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Jurisdiction — Exclusive over cases involving: (1) unsound real estate business practices; (2) claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and (3) cases involving specific performance of contractual and statutory obligations filed by a buyer of a subdivision lot or condominium unit against the owner, developer, dealer, broker, or salesman. (Peralta *vs*. Judge De Leon, G.R. No. 187978, Nov. 24, 2010) p. 592

— Includes the determination of rights and privileges under a distinctive social housing concept such as the community mortgaged program. (Eugenio *vs*. Sta. Monica Riverside Homeowners Ass'n., G.R. No. 187751, Nov. 22, 2010) p. 166

— Includes the jurisdiction to regulate and supervise homeowner associations. *(Id.)*

JUDGES

Duties — Judges are expected to keep abreast of prevailing jurisprudence. (Villanueva *vs*. Judge Buaya, A.M. No.RTJ-08-2131, Nov. 22, 2010) p. 9

Gross ignorance of the law — When the law is so elementary, not to know it constitutes gross ignorance of the law. (Atty. Lugares *vs*. Judge Gutierrez-Torres, A.M. No.MTJ-08-1719, Nov. 23, 2010) p. 258

Gross inefficiency — Committed in case of failure of a judge to decide cases within the reglementary period, without strong and justifiable reason. (Atty. Lugares *vs*. Judge Gutierrez-Torres, A.M. No.MTJ-08-1719, Nov. 23, 2010) p. 258

JUDGMENTS

Amendment of final and executory judgment — Proper when there is, in its dispositive portion, an inadvertent omission of what it should have logically decreed or ordered based on the discussion in the body of the decision but it should be limited to explaining a vague or equivocal part

of its decision, which hampers the proper and full execution of its ruling. (Teh *vs*. Tan, G.R. No. 181956, Nov. 22, 2010) p. 130

Conditional satisfaction of judgment — Valid and interpreted to be tantamount to an amicable settlement. (Career Phils. Ship Management, Inc. *vs*. Madjus, G.R. No. 186158, Nov. 22, 2010) p. 157

Immutability of judgment doctrine — As a rule, once a judgment attains finality it thereby becomes immutable and unalterable and it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. (Teh *vs*. Tan, G.R. No. 181956, Nov. 22, 2010) p. 130

JUDICIAL DEPARTMENT

Period to decide cases — The Constitution requires courts to decide cases submitted for decision generally within three (3) months from the date of their submission, while in cases falling under the Rules on Summary Procedure, the first level courts are only allowed thirty (30) days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment. (Atty. Lugares *vs*. Judge Gutierrez-Torres, A.M. No.MTJ-08-1719, Nov. 23, 2010) p. 258

JUDICIAL REVIEW

Power of — Limited by four exacting requisites, viz: (1) there must be an actual case or controversy; (2) petitioners must possess locus standi; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the *lis mota* of the case, (Atty. Macalintal *vs*. PET, G.R. No. 191618, Nov. 23, 2010) p. 326

— The first appearance before the Presidential Electoral Tribunal (PET) is deemed the earliest opportunity to challenge the constitutionality of the Tribunal's Constitution. *(Id.)*

JURISDICTION

Doctrine on the adherence of jurisdiction — One of the exceptions is when the change in jurisdiction is curative in character. (Vda. de Ballesteros *vs*. Rural Bank of Canaman, Inc., G.R. No. 176260, Nov. 24, 2010) p. 476

Equity jurisdiction — Seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgment to the special circumstances of cases, are incompetent to do so. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

Jurisdiction over the subject matter or nature of the action — Determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted. (Mendoza *vs*. Germino, G.R. No. 165676, Nov. 22, 2010) p. 74

LOANS

Behest loans — Criteria that qualifies loans as behest loans are: (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) the NIDC Board of Directors approved the loan accommodation with extraordinary haste. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs*. Hon. Desierto, G.R. No. 148269, Nov. 22, 2010) p. 22

Forbearance of money — Refers to the contractual obligation of the lender or creditor to desist for a fixed period from requiring the borrower or debtor to repay the loan or debt then due and for which 12% per annum is imposed as interest in the absence of a stipulated rate. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Power of eminent domain — How exercised; rule. (Sps. Abad *vs*. Fil-Homes Realty and Dev't. Corp., G.R. No. 189239, Nov. 24, 2010) p. 608

MANDAMUS

Writ of — Cannot be issued to compel the grant of an injunctive relief. (Dejuras *vs.* Hon. Villa, G.R. No. 173428, Nov. 22, 2010) p. 106

— Generally lies to compel the performance of an official act or duty which necessarily involves the exercise of judgment. *(Id.)*

MORTGAGES

Mortgagee in bad faith — Present when mortgagee failed to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate before the execution of the contract. (Phil. Trust Co. *vs.* CA, G.R. No. 150318, Nov. 22, 2010) p. 54

MUNICIPAL TRIAL COURTS

Jurisdiction — Exclusive over cases of forcible entry and unlawful detainer. (Mendoza *vs*. Germino, G.R. No. 165676, Nov. 22, 2010) p. 74

— In cases of ejectment over agricultural lands, the court is duty bound to conduct a preliminary conference to receive evidence to determine if tenancy relationship had, in fact, been shown to be the real issue. *(Id.)*

MURDER

Commission of — Civil liabilities of accused, cited. (People *vs*. Relos, Sr., G.R. No. 189326, Nov. 24, 2010) p. 619

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Must be expressly consented to. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

Payment or performance — Rule that whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor; when not applicable. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

— The creditor is not bound to accept the payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. *(Id.)*

OMBUDSMAN

Jurisdiction— Determination of the existence or non-existence of probable cause will not be interfered with by the court; exceptions. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs*. Hon. Desierto, G.R. No. 148269, Nov. 22, 2010) p. 22

— Includes the power to investigate and prosecute offenses involving public officers and employees; power to issue a subpoena is not prohibited by E.O. No. 1. *(Id.)*

PATERNITY AND FILIATION

Status and filiation of a party — Cannot be collaterally attacked in an action for annulment of a contract. (Reyes *vs*. Mauricio, G.R. No. 175080, Nov. 24, 2010) p. 438

PHILIPPINE ECONOMIC ZONE AUTHORITY

Administrative rules and regulations — Being an internal regulation, it is exempted from the publication requirement. (Nacu *vs*. Civil Service Commission, G.R. No. 187752, Nov. 23, 2010) p. 309

PEZA's Office Order No. 99-0002 — Prohibits collecting direct payments for overtime fees from PEZA-registered enterprises. (Nacu *vs*. Civil Service Commission, G.R. No. 187752, Nov. 23, 2010) p. 309

PRELIMINARY INJUNCTION

Concept — An order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party, a court, an agency, or a person to refrain from a particular act or acts. (Maunlad Homes, Inc. *vs*. Union Bank of the Phils., G.R. No. 179898, Nov. 22, 2010) p. 119

Preliminary mandatory injunction — Requires the performance of a particular act or acts. (Maunlad Homes, Inc. *vs*. Union Bank of the Phils., G.R. No. 179898, Nov. 22, 2010) p. 119

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. (Maunlad Homes, Inc. *vs*. Union Bank of the Phils., G.R. No. 179898, Nov. 22, 2010) p. 119

Temporary restraining order — Posting of bond by petitioners shall answer for any damages which may be sustained by respondents as a consequence of the issuance of the TRO, if the court finally decides that petitioners are not entitled to it. (Heirs of Augusto Salas, Jr. *vs*. Cabungcal, G.R. No. 191545, Nov. 22, 2010) p. 207

Writ of — Addressed to the sound discretion of the issuing authority, conditioned on the existence of a clear and positive right of the applicant which should be protected. (Dejuras *vs.* Hon. Villa, G.R. No. 173428, Nov. 22, 2010) p. 106

— Claim for exemption in the issuance thereof, when may be availed of in agrarian reform cases. (Heirs of Augusto Salas, Jr. *vs*. Cabungcal, G.R. No. 191545, Nov. 22, 2010) p. 207

— Findings and conclusions of the trial court on the propriety of the issuance of the writ are premised solely on initial evidence and should be considered merely as provisional. (Maunlad Homes, Inc. *vs*. Union Bank of the Phils., G.R. No. 179898, Nov. 22, 2010) p. 119

— 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. *(Id.)*

— 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

Concept — It is not mandatory for the President to order the Department of Justice to reopen or review the case even if it raised new and material issues. (Heirs of the Late Nestor Tria *vs.* Atty. Obias, G.R. No. 175887, Nov. 24, 2010) p. 449

Probable cause — A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. (Heirs of the Late Nestor Tria *vs.* Atty. Obias, G.R. No. 175887, Nov. 24, 2010) p. 449

— 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.)*

— Essentially an inquisitorial proceeding and often, the only means of ascertaining who may be reasonably charged with a crime. *(Id.)*

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS

Behest loans — Criteria that qualifies loans as behest loans are: (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) The National Investment Development Corp. (NIDC) Board of Directors approved the loan accommodation with extraordinary haste. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs.* Hon. Desierto, G.R. No. 148269, Nov. 22, 2010) p. 22

— Identification by the Committee should be given due respect. *(Id.)*

PRESUMPTIONS

Adverse presumption of suppression of evidence — Application. (Phil. Trust Co. *vs.* CA, G.R. No. 150318, Nov. 22, 2010) p. 54

PRIVATE SECURITY AGENCY LAW (R.A. NO. 5487)

Employment relationship between security guard and agency — A relief and transfer order in itself does not sever the employment relationship. (Salvaloza *vs.*NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

Security guards — A license is required before one can act or work as a security guard. (Salvaloza *vs.* NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

Temporary "off-detail" or "floating status" — Defined as the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. (Salvaloza *vs.* NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

— Does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. *(Id.)*

— When it lasts for more than six (6) months, the employee may be considered to have been constructively dismissed. *(Id.)*

PROSECUTION OF OFFENSES

Probable cause — Simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans *vs.* Hon. Desierto, G.R. No. 148269, Nov. 22, 2010) p. 22

PUBLIC OFFICERS AND EMPLOYEES

Administrative complaint against public employees — Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is otherwise detestable. (Villanueva *vs*. Judge Buaya, A.M. No.RTJ-08-2131, Nov. 22, 2010) p. 9

QUALIFIED THEFT

Commission of — Established when a person failed to account for the subject funds which he/she was under obligation to deposit which constitutes asportation with intent of gain, committed with grave abuse of confidence reposed on her. (Salvaloza *vs*. NLRC, G.R. No. 182086, Nov. 24, 2010) p. 543

QUALIFYING CIRCUMSTANCES

Minority and relationship as special qualifying circumstances — Where the circumstance of relationship was not alleged in the complaint, the penalty of *reclusion perpetua* shall be imposed in case of rape. (People *vs*. Macafe, G.R. No. 185616, Nov. 24, 2010) p. 580

Treachery — Appreciated when the attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. (People *vs*. Relos, Sr., G.R. No. 189326, Nov. 24, 2010) p. 619

RAPE

Attempted rape — The gauge in determining whether the crime had been committed is the commencement of the act of sexual intercourse. (People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

Prosecution of rape cases — The silence and apparent assent of the victim to the sexual abuses of her father for a period of time is understandable. (People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

Qualified rape — Imposable penalty. (People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

(People *vs*. Deri, G.R. No. 166566, Nov. 23, 2010) p. 276

— Liability for civil indemnity and moral damages. *(Id.)*

Statutory rape — Civil liabilities of accused. (People *vs*. Macafe, G.R. No. 185616, Nov. 24, 2010) p. 580

— Committed by a man who shall have carnal knowledge of a woman who is under twelve (12) years of age. *(Id.)*

(People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

RULES OF PROCEDURE

Application — May be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules. (Commissioner of Customs *vs*. Marina Sales, Inc., G.R. No. 183868, Nov. 22, 2010) p. 143

— The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it. (Asia United Bank *vs*. Goodland Co., Inc., G.R. No. 188051, Nov. 22, 2010) p. 174

SALES

Sale on commission basis — Entitlement to commission does not depend on the buyer's payment of the entire contract price; conditions to be entitled to commission, cited. (Ledesco Dev't. Corp. *vs*. Worldwide Standard Int'l. Realty, Inc., G.R. No. 173339, Nov. 24, 2010) p. 412

Sales invoice — A written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

Validity of — In the absence of proof that the sales to the buyers had been withdrawn or cancelled, said sales are deemed current, binding and consummated. (Ledesco Dev't. Corp. *vs*. Worldwide Standard Int'l. Realty, Inc., G.R. No. 173339, Nov. 24, 2010) p. 412

SEAFARERS

Claim for compensation for illness — Procedure provided in Section 20 (B) of the POEA Standard Contract; principle of liberality cannot be allowed in claims for compensation when the evidence presented negates compensability. (Francisco *vs.* Bahia Shipping Services, Inc. and/or Cynthia C. Mendoza, G.R. No. 190545, Nov. 22, 2010) p. 200

Work-related illness — It must be exactly and definitely established that the illness did not only occur during the term of the contract but also resulted from a work-related injury or illness or at the very least aggravated by the working conditions of the work for which the seafarer was contracted for. *(Id.)*

— Must not be pre-existing at the time of commencement of the contract in order to be compensable. *(Id.)*

STATE, INHERENT POWERS OF

Power of eminent domain — A socialized housing project falls within the ambit of public use as it is in furtherance of the constitutional provisions on social justice. (Sps. Abad *vs*. Fil-Homes Realty and Dev't. Corp., G.R. No. 189239, Nov. 24, 2010) p. 608

— The State expropriates private property for public use upon payment of just compensation. *(Id.)*

SUPREME COURT

Jurisdiction as a Presidential Electoral Tribunal — The Supreme Court acts as sole judge of election contests involving our country's highest public official, and its rule-making authority in connection therewith. (Atty. Macalintal *vs*. PET, G.R. No. 191618, Nov. 23, 2010) p. 326

TARIFF AND CUSTOMS

Tariff import duties — To fit into the category listed under the Tariff Harmonized System Headings calling for a higher import duty rate of 7%, the imported article must lose its original character. (Commissioner of Customs *vs*. Marina Sales, Inc., G.R. No. 183868, Nov. 22, 2010) p. 143

TAX REFUNDS

Construction — A tax refund is in the nature of a tax exemption and the rule of strict interpretation against the taxpayer-claimant applies. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

UNJUST ENRICHMENT

Principle of — Applied to actions called accion in rem verso and in order that it may prosper, the following conditions must concur: (1) that the defendant has been enriched; (2) that the plaintiff has suffered a loss; (3) that the enrichment of the defendant is without just or legal ground; and (4) that the plaintiff has no other action based on contract, quasi-contract, crime, or quasi-delict. (Land Bank of the Phils. *vs*. Ong, G.R. No. 190755, Nov. 24, 2010) p. 627

— Contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. *(Id.)*

UNLAWFUL DETAINER

Proceedings — Not suspended or their resolution held in abeyance despite the pendency of a civil action regarding ownership; exception. (Sps. Abad *vs*. Fil-Homes Realty and Dev't. Corp., G.R. No. 189239, Nov. 24, 2010) p. 608

VALUE-ADDED TAX

Revenue Regulation 7-95, Sec. 4.108-1 — Neither expanded nor supplanted the Tax Code but merely supplemented what the Tax Code already defined and discussed. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

— Specifically requires the value-added tax registered person to imprint TIN-VAT on its invoices or receipts. *(Id.)*

VAT invoice — As distinguished from a VAT official receipt, a VAT invoice is necessary for every sale, barter, or exchange of goods or properties, while an official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

Zero-rated transactions — The word zero-rated should appear on the face of invoices covering zero-rated sales; purpose. (Kepco Phils., Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 181858, Nov. 24, 2010) p. 525

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Relos, Sr., G.R. No. 189326, Nov. 24, 2010) p. 619

(People *vs*. Dominguez, Jr., G.R. No. 180914, Nov. 24, 2010) p. 492

(People *vs*. Deri, G.R. No. 166566, Nov. 23, 2010) p. 276

(People *vs*. Lascano, G.R. No. 172605, Nov. 22, 2010) p. 87

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Rule 114, Sec. 18 19
Rules on Criminal Procedure, 2000
Rule 112, Sec. 3 467
Sec. 3 (e) 468
Rule 114, Sec. 18 19

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DARAB Rules of Procedure, 1994
Rule V, Sec. 4 (b) 410
Rule VIII, Sec. 3 411
Rule X, Sec. 1 409
Rule XIII, Sec. 1 410
Omnibus Rules Implementing Book V of E.O. No. 292
Rule XIV, Sec. 23 249
Sec. 23 (c) 248
Rules on Notarial Practice, 2004
Rule II, Sec. 1 69

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Uniform Rules on Administrative Cases in Civil Service
(CSC Memorandum Circular No. 19, series of 1999)
Rule IV, Sec. 52 (A) (11) 369-370

D. BOOKS
(Local)

Agpalo, Comments on the Code of Professional
Responsibility and the Code of Judicial Conduct,
p. 117 (2004 Ed.) 223
II Campos Jr., The Corporation Code, Comments,
Notes and Selected Cases (1990) 385
Cruz, Philippine Political Law, 1998 Ed., p. 257, 263 ..... 334, 336
Deoferio and Mamalateo, The Value Added Tax
in the Philippines, 279 (1st Ed., 2000) 541
Francisco, R.J., Evidence, Rules of Court in the Philippines,
Rules 128-134 (1996 Ed.), p. 366 321
Tolentino, Civil Code of the Philippines,
Commentaries and Jurisprudence, Vol. I,
1990 Ed., p. 536 448
1 Tolentino, Civil Code of the Philippines
Commentaries and Jurisprudence 77 (1990) 643

II. FOREIGN AUTHORITIES

BOOKS

Ballantine, Law of Corporations, Revised Edition,
Callaghan and Co., Chicago, 1946, p. 603 385
Black's Law Dictionary, 8th Edition 35
Bouvier's Law Dictionary, Vol. II, p. 2086 155
18 C.J.S., Corporations, §314, pp. 641-642 384