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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. RTJ-09-2188. January 10, 2011]
(Formerly A.M. OCA-IPI No. 08-2995-RTJ)

PROSECUTOR HILARIO RONSON H. TILAN, *complainant, vs.* **JUDGE ESTER PISCOSO-FLOR, RTC, BRANCH 34, BANAUE, IFUGAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES ARE REQUIRED TO DECIDE CASES AND RESOLVE MOTIONS WITH DISPATCH WITHIN THE REGLEMENTARY PERIOD; RATIONALE. — No less than the Constitution sets the limits on this all-important aspect in the administration of justice. It mandates that lower courts have three (3) months or ninety (90) days within which to decide cases or matters submitted to them for resolution. Also, the Code of Judicial Conduct requires judges to dispose of the Court's business promptly and decide cases within the prescribed period. It cannot be over emphasized that judges need to decide cases promptly and expeditiously. Delay in the disposition of cases, it must again be stated, is a major cause in the erosion of public faith and confidence in the justice system. For this fundamental and compelling reason, judges are required to decide cases and resolve motions with dispatch within the reglementary period. Failure to comply constitutes gross inefficiency, a lapse that warrants the imposition of administrative sanctions against the erring magistrate.

2. ID.; ID.; UNDUE DELAY IN RENDERING DECISION OR ORDER; IMPOSABLE PENALTY. — Section 9, Rule 140 of the Rules of Court defines undue delay in rendering a decision or order as a less serious charge, punishable under Section 11(b) of the same Rule and imposes a penalty of suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light, however, of the fact that this is Judge Piscoso-Flor's first infraction and considering that most of the cases involved were inherited cases, we deem a fine in its minimum range an appropriate penalty for Judge Piscoso-Flor. **WHEREFORE**, premises considered, Judge Ester Piscoso-Flor is declared liable for delay in the disposition of cases. Accordingly, she is *FINED* ₱10,000.00, with a stern warning against the commission of a similar offense in the future.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the Administrative Matter against Judge Ester Piscoso-Flor of the Regional Trial Court, Branch 34, Banaue, Ifugao.

The Antecedents

The case arose from the verified complaint, dated September 1, 2008,[1] filed by Public Prosecutor Hilario Ronson H. Tilan, charging Judge Piscoso-Flor with gross inefficiency, gross negligence and dishonesty.

The records show that the prosecutor was then handling Criminal Case No. 127, *People of the Philippines v. Juanito Baguilat, for Falsification of Public Document*, and Criminal Case No. 140, *People of the Philippines v. Wihlis Talanay, for Violation of RA 7610*, pending promulgation before Judge Piscoso-Flor. He was also handling Criminal Case No. 221, *People of the Philippines v. Macario Tenefrancia, for Libel*, pending arraignment in the same court.

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[1] *Rollo*, pp. 2-3.

In *People v. Baguilat*, Judge Piscoso-Flor issued an order dated October 20, 2007[2] directing the parties to submit their respective memoranda within thirty (30) days from receipt of the order. The complainant alleged that the judge failed to render a decision within the ninety (90)-day reglementary period; instead, she issued an order, dated April 8, 2008,[3] reiterating her earlier directive for the parties to submit their respective memoranda.

In *People v. Talanay*, Judge Piscoso-Flor issued an order dated September 25, 2007[4] giving the accused fifteen (15) days to file his formal offer of evidence, and five (5) days for the prosecution to file its comment/objections. Allegedly, Judge Piscoso-Flor again failed to resolve the case within the 90-day reglementary period; instead, she issued another order dated May 21, 2008[5] giving the parties fifteen (15) days within which to file their memoranda.

Prosecutor Tilan claimed that in both cases, Judge Piscoso-Flor resorted to the issuance of an order requiring the submission of the parties' memoranda to circumvent the statutory period for the resolution of cases. Prosecutor Tilan pointed out that the father of the victim (a minor) in *People v. Talanay* sought the assistance of the Commission on Human Rights (CHR) "regarding the slow process of resolving the case,"[6] and the CHR even called his attention on the matter.[7]

In *People v. Tenefrancia*, Prosecutor Tilan alleged that the accused filed a Petition for Suspension of Trial, prompting Judge Piscoso-Flor to call a hearing on the petition. Despite the parties' submission of the matter for resolution, Judge Piscoso-Flor failed to resolve the petition within the required period.

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[2] *Id*. at 5; Complaint, Annex "A".

[3] *Id*. at 6; Complaint, Annex "B".

[4] *Id*. at 7; Complaint, Annex "C".

[5] *Id*. at 8; Complaint, Annex "D".

[6] *Id*. at 11.

[7] *Id*. at 10.

The Office of the Court Administrator (OCA)[8] required Judge Piscoso-Flor to submit her comment, and she complied on November 7, 2008.[9] She offered the following explanation: in the court's monthly report for January 2008,[10] Criminal Case No. 127, *People v. Baguilat*, was submitted for decision on January 31, 2008, and was due for decision on May 1, 2008; the reason for this was the parties' failure to submit their memoranda as required in her order dated October 20, 2007; on April 8, 2008, she issued another order reiterating her directive for the parties to file their memoranda because the case had been heard previously by her two predecessors.

Judge Piscoso-Flor further explained that on April 28, 2008, accused Baguilat moved for extension of time to submit his memorandum.[11] She herself requested for an extension of time to decide the case up to July 2, 2008.[12] She promulgated the decision on September 29, 2008,[13] after several postponements due to the absence of Prosecutor Tilan, the counsel for the accused, and of the accused himself.

In conclusion, she stated that Prosecutor Tilan filed the present complaint after she personally went to Justice Secretary Raul M. Gonzales to complain about the former's actuations towards her,[14] and after she cited him for direct contempt.[15]

On November 19, 2008, Prosecutor Tilan filed a reply,[16] reiterating the allegations in his complaint, and adding that he filed a Motion for Inhibition of Judge Piscoso-Flor in Criminal

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[8] *Id*. at 16; 1st Indorsement, September 29, 2008.

[9] *Id*. at 17-18.

[10] *Id*. at 19-20; Comment, Annex "A".

[11] *Id*. at 21-22; Comment, Annex "B".

[12] *Id*. at 23-24; Comment, Annex "C" & "D".

[13] *Id*. at 25-33; Comment, Annex "E".

[14] *Id*. at 38; Comment, Annex "I".

[15] *Id*. at 40; Comment, Annex "K".

[16] *Id*. at 42.

Case No. 228, *People of the Philippines v. Eddie Immongor and Senando Bannog*," which was deemed submitted for resolution on July 18, 2008.

In a rejoinder dated November 25, 2008,[17] Judge Piscoso-Flor explained that in Criminal Case No. 142, *People of the Philippines v. Myleen Dimpatan,* for Estafa, which Prosecutor Tilan mentioned in his reply, she received the accused's memorandum on April 20, 2007, and that of the prosecution on April 17, 2007. She added that on July 24, 2007, the court received a joint manifestation by Prosecutor Tilan, Private Prosecutor Rufino Lamase, and the accused's counsel (Atty. Gerald Tabayan) asking that the promulgation of the decision be deferred pending a possible settlement of the case. It was only on October 8, 2008 that Prosecutor Lamase moved to have the case resolved for failure of the accused to settle the civil aspect of the case. She immediately finalized the decision and scheduled its promulgation on November 14, 2008, but this was reset to November 24, 2008 upon motion of the counsel for the accused.

Judge Piscoso-Flor further explained that the motion for inhibition in Criminal Case No. 228 had been the subject of a contempt case which reached the Court of Appeals and gave rise to numerous complaints filed by Prosecutor Tilan against her. One of the cases had been considered closed and terminated by Deputy Court Administrator Reuben P. de la Cruz in a letter dated November 4, 2008.[18]

Upon recommendation of the OCA, the Court issued a Resolution on July 6, 2009:[19] (1) re-docketing the case as a regular administrative matter; (2) directing Judge Piscoso-Flor to conduct an inventory of cases pending in her court and find out whether there were cases submitted for decision that had not been decided within the required period, and to decide these cases within thirty (30) days; and (3) requiring the parties to

[17] *Id*. at 63.

[18] *Id*. at 66; Rejoinder, Annex "C".

[19] *Id*. at 7.

manifest whether they were willing to submit the case for resolution on the basis of the pleadings and the records.

Judge Piscoso-Flor and Prosecutor Tilan submitted the case for resolution on August 27, 2009 and October 8, 2009, respectively.

The Court's Ruling

In his Memorandum dated March 19, 2009,[20] Court Administrator Jose P. Perez (now a member of the Court) found Judge Piscoso-Flor to have been remiss in her duty to decide cases within the period required by law. He recommended that the judge be merely admonished considering that this is her first infraction and that she inherited most of the cases that gave rise to the complaint. At the same time, he recommended that a stern warning be given against the commission of a similar offense in the future.

The OCA evaluation tells us that Judge Piscoso-Flor is guilty of failing to decide cases within the required periods, citing Criminal Case No. 127 (*People v. Juanito Baguilat*) as the principal basis of its conclusion. In this case, the OCA faulted Judge Piscoso-Flor for using as justification for her inaction the parties' failure to submit their respective memoranda. The OCA opined that this is not a valid reason for not deciding the case; if she believed she would not be able to decide the case on time, she could have asked the Court for an extension of the required period. The OCA acknowledged though that Judge Piscoso-Flor requested for an extension to decide the case in her monthly report of cases and certificate of service.[21]

We find the OCA evaluation in order. Although Judge Piscoso-Flor claimed that she had requested for an extension of time to decide Criminal Case No. 127, there was no showing that the request was ever granted. Over and above this consideration, she allowed the parties to control the period of disposition of the case through their lukewarm response to her call for the

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[20] *Id.* at 67-71.

[21] *Supra* note 12.

submission of memoranda, which she had to do twice. She could have acted more firmly, considering, as she said, that she only inherited the case, which implies that it had been on the docket for quite some time. In any event, Judge Piscoso-Flor should have known that "[t]he Court may grant extension of time to file memoranda, but the ninety (90) day period for deciding the case shall not be interrupted thereby."[22]

The same is true with Criminal Case No. 140 (*People v. Talanay*). As early as March 6, 2006,[23] the CHR Office in the Cordillera Administrative Region relayed to Judge Piscoso-Flor the concern of the parent of the victim of the child abuse regarding the delay in the resolution of the case. It was only on May 21, 2008 when Judge Piscoso-Flor called for the submission of memoranda.

Judge Piscoso-Flor had no comment on Criminal Case No. 221 (*People v. Tenefrancia*). On the other hand, the Motion for Inhibition in Criminal Case No. 228, filed by Prosecutor Tilan, was deemed submitted for resolution on July 18, 2008,[24] but Judge Piscoso-Flor herself admitted that she resolved the motion on November 10, 2008 or beyond the required 90-day period.

Judge Piscoso-Flor, however, cannot be held liable for delay in the disposition of Criminal Case No. 142 (*People v. Dimpatan*), which Prosecutor Tilan cited in his reply.[25] While he claimed that the case was deemed submitted for decision on March 12, 2007, it appears from the records that he, Private Prosecutor Rufino Lamase, and the accused's counsel (Atty. Gerald Tabayan) executed a joint manifestation[26] praying that the promulgation of the decision be deferred pending negotiations among them on the civil aspect of the case. When the negotiations bogged down and upon motion

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[22] Administrative Circular No. 28, July 3, 1989.

[23] *Supra* note 6.

[24] *Supra* note 16.

[25] *Rollo*, p. 42.

[26] *Id*. at 64; Rejoinder, Annex "A".

of Prosecutor Lamase (dated October 8, 2008),[27] Judge Piscoso-Flor promulgated the decision on November 24, 2008.

On the whole, we find Judge Piscoso-Flor guilty of undue delay in the disposition of cases. Except for *People v. Dimpatan*, Judge Piscoso-Flor failed to resolve the other cases within the required period, in violation of the law and the rules. No less than the Constitution sets the limits on this all-important aspect in the administration of justice. It mandates that lower courts have three (3) months or ninety (90) days within which to decide cases or matters submitted to them for resolution.[28] Also, the Code of Judicial Conduct requires judges to dispose of the Court's business promptly and decide cases within the prescribed period.[29]

It cannot be over emphasized that judges need to decide cases promptly and expeditiously. Delay in the disposition of cases, it must again be stated, is a major cause in the erosion of public faith and confidence in the justice system.[30] For this fundamental and compelling reason, judges are required to decide cases and resolve motions with dispatch within the reglementary period. Failure to comply constitutes gross inefficiency, a lapse that warrants the imposition of administrative sanctions against the erring magistrate.[31]

Section 9, Rule 140 of the Rules of Court defines undue delay in rendering a decision or order as a less serious charge, punishable under Section 11(b) of the same Rule and imposes a penalty of suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light, however, of the fact that this is Judge Piscoso-Flor's first infraction and considering that most of the cases involved

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[27] *Id*. at 65; Rejoinder, Annex "B".

[28] CONSTITUTION, Article VIII, Section 15(1).

[29] Rule 3.05.

[30] *Michael G. Plata v. Judge Lizabeth G. Torres*, A.M. No. MTJ-08-172, October 24, 2008, 570 SCRA 14.

[31] *Sanchez v. Vestil*, A.M. No. RTJ-98-1419, October 13, 1998, 298 SCRA 1.

were inherited cases, we deem a fine in its minimum range an appropriate penalty for Judge Piscoso-Flor.

WHEREFORE, premises considered, Judge Ester Piscoso-Flor is declared liable for delay in the disposition of cases. Accordingly, she is *FINED* ₱10,000.00, with a stern warning against the commission of a similar offense in the future.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171379. January 10, 2011]

JOSE MARQUES and MAXILITE TECHNOLOGIES, INC., *petitioners, vs.* **FAR EAST BANK AND TRUST COMPANY, FAR EAST BANK INSURANCE BROKERS, INC., and MAKATI INSURANCE COMPANY,** *respondents.*

[G.R. No. 171419. January 10, 2011]

FAR EAST BANK AND TRUST COMPANY and MAKATI INSURANCE COMPANY, *petitioners, vs.* **JOSE MARQUES and MAXILITE TECHNOLOGIES, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; ESTOPPEL; IN ESTOPPEL, A PARTY CREATING AN APPEARANCE OF FACT, WHICH IS FALSE, IS BOUND BY THAT APPEARANCE AS AGAINST ANOTHER PERSON WHO ACTED IN GOOD FAITH ON IT. — Estoppel is based

on public policy, fair dealing, good faith and justice. Its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one who reasonably relied thereon. It springs from equity, and is designed to aid the law in the administration of justice where without its aid injustice might result.

2. ID.; ID.; ESTOPPEL BY SILENCE; CLARIFIED. — In *Santiago Syjuco, Inc. v. Castro*, the Court stated that "estoppel may arise from silence as well as from words." 'Estoppel by silence' arises where a person, who by force of circumstances is obliged to another to speak, refrains from doing so and thereby induces the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice. Silence may support an estoppel whether the failure to speak is intentional or negligent.

3. ID.; DAMAGES; AWARD THEREOF IS SUSTAINED AS A CONSEQUENCE OF NEGLIGENCE. — Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do." As a consequence of its negligence, FEBTC must be held liable for damages pursuant to Article 2176 of the Civil Code which states "whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done." Indisputably, had the insurance premium been paid, through the automatic debit arrangement with FEBTC, Maxilite's fire loss claim would have been approved. Hence, Maxilite suffered damage to the extent of the face value of the insurance policy or the sum of ₱2.1 million.

4. COMMERCIAL LAW; CORPORATIONS; ABSENT ANY SHOWING OF ILLEGITIMATE OR ILLEGAL FUNCTIONS, THE SEPARATE EXISTENCE OF A SUBSIDIARY CORPORATION MUST BE RESPECTED; CASE AT BAR. — Suffice it to state that FEBTC, FEBIBI, and Makati Insurance Company are independent and separate juridical entities, even if FEBIBI and Makati Insurance Company are subsidiaries of FEBTC. Absent any showing of its illegitimate or illegal functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary shall be confined to those arising in their respective business. Besides, the records are bereft of

any evidence warranting the piercing of corporate veil in order to treat FEBTC, FEBIBI, and Makati Insurance Company as a single entity. Likewise, there is no evidence showing FEBIBI's and Makati Insurance Company's negligence as regards the non-payment of the insurance premium.

5. CIVIL LAW; DAMAGES; INTEREST; GUIDELINES FOR THE APPLICATION OF THE PROPER INTEREST RATES. — The Court agrees with the Court of Appeals in reducing the interest rate from 12% to 6% as the obligation to pay does not arise from a loan or forbearance of money. In *Eastern Shipping Lines, Inc. v. Court of Appeals*, the Court laid down the x x x guidelines for the application of the proper interest rates.

APPEARANCES OF COUNSEL

Law Firm of Tiongco Avecilla Flores & Palarca for Jose Marques, *et al.*

Angara Abello Concepcion Regala & Cruz for FEBTC, *et al.*

D E C I S I O N

CARPIO, *J.*:

The Case

These consolidated petitions for review[1] assail the 31 May 2005 Decision[2] and the 26 January 2006 Resolution[3] of the Court of Appeals-Cebu City in CA-G.R. CV No. 62105. The Court of Appeals affirmed with modifications the 4 September 1998 Decision[4] of the Regional Trial Court of Cebu City, Branch 58, in Civil Case No. CEB-18979.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 171419), pp. 94-113. Penned by Associate Justice Vicente L. Yap, with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring.

[3] *Id.* at 114-118.

[4] *Id.* at 631-664. Penned by Judge Jose P. Soberano, Jr.

The Facts

Maxilite Technologies, Inc. (Maxilite) is a domestic corporation engaged in the importation and trading of equipment for energy-efficiency systems. Jose N. Marques (Marques) is the President and controlling stockholder of Maxilite.

Far East Bank and Trust Co. (FEBTC)[5] is a local bank which handled the financing and related requirements of Marques and Maxilite. Marques and Maxilite maintained accounts with FEBTC. Accordingly, FEBTC financed Maxilite's capital and operational requirements through loans secured with properties of Marques under the latter's name. Among Maxilite's and Marques' transactions with FEBTC were:

a. A straight loan in the name of Jose N. Marques for Maxilite at the original principal amount of ₱1 million. This is secured by real estate mortgage. From said original principal amount, the bank increased it by ₱300,000.00 about 26 October 1994 to enable the wiping out of Maxilite's Trust Receipts Account and simplify the remaining accounts into straight loan accounts.

b. A straight loan in the name of Maxilite Technologies, Inc. for a principal amount of ₱2 million. This is secured with a Real Estate Mortgage of Marques' residential property.

c. Master Card transactions covering two (2) Master Card Accounts of Marques, and

d. Local credit card transactions covering one credit card account of Marques.[6]

Far East Bank Insurance Brokers, Inc. (FEBIBI) is a local insurance brokerage corporation while Makati Insurance Company[7] is a local insurance company. Both companies are subsidiaries of FEBTC.[8]

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[5] FEBTC has been merged with Bank of the Philippine Islands (BPI), which is the surviving corporation.

[6] *Rollo* (G.R. No. 171379), p. 157.

[7] Now known as BPI/MS Insurance Corporation (BPI/MS-IC), *id*. at 198.

[8] *Rollo* (G.R. No. 171419), p. 330; TSN, 9 February 1998, p. 20.

On 17 June 1993, Maxilite and Marques entered into a trust receipt transaction with FEBTC, in the sum of US$80,765.00, for the shipment of various high-technology equipment from the United States,[9] with the merchandise serving as collateral. The foregoing importation was covered by a trust receipt document signed by Marques on behalf of Maxilite, which pertinently reads:

> The undersigned (Marques) further agree(s) to keep said merchandise insured against fire to its full value, payable to the said bank, at the cost and expense of the undersigned, who hereby further agree(s) to pay all charges for storage on said merchandise or any or other expenses incurred thereon.
>
> x x x x x x x x x[10]

Sometime in August 1993, FEBIBI, upon the advice of FEBTC, facilitated the procurement and processing from Makati Insurance Company of four separate and independent fire insurance policies over the trust receipted merchandise: (1) Policy No. BR-F-1016333, issued on 15 September 1993, covering the period 12 August 1993 to 12 November 1993 in the amount of ₱1,000,000.00;[11] (2) Policy No. BR-F-1016888, issued on 15 September 1993 covering the period 8 September 1993 to 8 December 1993 in the amount of ₱605,494.28;[12] (3) Policy No. BR-F-1016930, issued on 18 October 1993, covering the period 14 October 1993 to 12 January 1994 in the amount of ₱527,723.66;[13] and (4) Policy No. BR-F-1018392, issued on 14 December 1993, covering the period 1 December 1993 to 1 March 1994 in the amount of ₱725,000.00.[14] Maxilite paid the premiums for these policies through debit arrangement. FEBTC would debit Maxilite's account for the premium payments, as reflected in statements of accounts sent by FEBTC to Maxilite.

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[9] *Id.* at 251.

[10] *Id.* at 225; TSN, 31 July 1997, p. 8 (Benjamin Torno).

[11] *Id.* at 306.

[12] *Id.* at 309.

[13] *Id.* at 310.

[14] *Id.* at 308.

On 19 August 1994, Insurance Policy No. 1024439, covering the period 24 June 1994 to 24 June 1995, was released to cover the trust receipted merchandise. The policy relevantly provides:

> 2. This policy including any renewal thereof and/or any endorsement thereon is not in force until the premium has been fully paid to and duly receipted by the Company in the manner provided herein.
>
> Any supplementary agreement seeking to amend this condition prepared by agent, broker or Company official, shall be deemed invalid and of no effect.[15]

Finding that Maxilite failed to pay the insurance premium in the sum of ₱8,265.60 for Insurance Policy No. 1024439 covering the period 24 June 1994 to 24 June 1995, FEBIBI sent written reminders to FEBTC, dated 19 October 1994,[16] 24 January 1995,[17] and 6 March 1995, to debit Maxilite's account.[18]

On 24 and 26 October 1994, Maxilite fully settled its trust receipt account.

On 9 March 1995, a fire gutted the Aboitiz Sea Transport Building along M.J. Cuenco Avenue, Cebu City, where Maxilite's office and warehouse were located. As a result, Maxilite suffered losses amounting to at least ₱2.1 million, which Maxilite claimed against the fire insurance policy with Makati Insurance Company. Makati Insurance Company denied the fire loss claim on the ground of non-payment of premium. FEBTC and FEBIBI disclaimed any responsibility for the denial of the claim.

Maxilite and Marques sued FEBTC, FEBIBI, and Makati Insurance Company. Maxilite prayed for (1) actual damages totaling ₱2.3 million representing full insurance coverage and "business opportunity losses," (2) moral damages, and (3) exemplary damages.[19] On the other hand, Marques sought payment

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[15] *Id.* at 414.

[16] *Id.* at 403.

[17] *Id.* at 404.

[18] *Id.* at 405.

[19] *Id.* at 616-617.

of actual, moral and exemplary damages, attorney's fees, and litigation expenses. Maxilite and Marques also sought the issuance of a preliminary injunction or a temporary restraining to enjoin FEBTC from (1) imposing penalties on their obligations; (2) foreclosing the real estate mortage securing their straight loan accounts; and (3) initiating actions to collect their obligations.

FEBTC, FEBIBI, and Makati Insurance Company countered that Maxilite and Marques have no cause of action against them and essentially denied the allegations in the complaint.

The Ruling of the Trial Court

In ruling in favor of Maxilite and Marques, the Regional Trial Court of Cebu City, Branch 58, explained:

> Considering the interest of the defendant FEBTC in the property insured, hence, its concern that the insurance policy therefor has to be effected and enforceable, and considering that the payment of the premium thereof was the procedure adopted by debiting the plaintiffs' account, the Court is of the view that the non-payment of the premium of the insurance policy in question was due to the fault or negligence of the defendant FEBTC. What could have happened to the interest of the defendant FEBTC in the insurance policy in question had the fire occurred prior to the full settlement and payment of plaintiff's Maxilite trust receipt account? Would defendant FEBTC have tossed the blame on the non-payment of premium to the plaintiffs?
>
> Although there were reminders by defendant FEBIBI of the non-payment of the premium, the same were made by said defendant through the defendant FEBTC and not to the plaintiffs directly. Despite said reminders, the first of which was made on October 19, 1994 when plaintiff Maxilite has sufficient fund in its trust receipt account, defendant FEBTC did not heed the same and more so did it not care to pay the premium after the plaintiff Maxilite fully and finally settled its trust receipt account with defendant FEBTC as the latter has already lost its interest in the insurance policy in question by virtue of said full payment. But despite the non-payment of the insurance premium, the defendant Makati Insurance did not cancel the policy in question nor informed plaintiffs of its cancellation if the insurance premium should not be paid. Just as defendant FEBIBI failed to notify directly the plaintiffs of the said non-payment. Considering the relationship

of the three (3) defendants herein, as undeniably sister companies, the non-payment of the premium of the insurance policy in question should be imputable to their fault or negligence. Under the factual milieu in the case at bar, the Court finds it just and equitable to hold said defendants liable to pay all the consequent damages suffered by the plaintiffs and their liability is solidary (Art. 2194, Civil Code).[20]

The trial court disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the defendants to pay jointly and severally to the plaintiff Maxilite the sum of Two Million One Hundred Thousand Pesos (₱2,100,000.00), Philippine Currency, representing the full coverage of Insurance Policy No. 1024439 (Exh. 'A'), as actual damages, plus interest of 12% per annum from filing of Complaint on July 11, 1996 until fully paid, to the plaintiff Marque[s] the sum of ₱400,000.00 as moral damages, to both plaintiffs the sum of ₱500,000.00 as exemplary damages, the sum of ₱50,000.00 as attorney's fees, the sum of ₱23,082.50, representing the filing fees, as litigation expenses, and to pay the costs.

The counter-claims are hereby dismissed.

The writ of preliminary injunction is hereby made permanent.

SO ORDERED.[21]

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's decision, with modifications, on the following grounds:

First, the relations among defendants with each other are closely related and so intertwined. The said three defendants, FEBTC, FEBIBI and MICI, are sister companies. This was never denied by the defendants themselves.

Second, the insurance coverage was the business of sister companies FEBIBI and Makati Insurance, not with FEBTC, which has been the bank of plaintiffs which handled the latter's financing and related transactions. Stated a bit differently, defendant FEBTC handled the financing and related requirements of plaintiffs; defendant

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[20] *Id.* at 661-662.

[21] *Id.* at 663-664.

FEBIBI on the other hand is an insurance brokerage company of defendant FEBTC, while Makati Insurance is the insurance (arm) company of both defendants FEBIBI and FEBTC.

Third, defendant FEBTC caused FEBIBI to facilitate the insurance coverage of plaintiffs. FEBIBI then asked Makati Insurance to issue the subject policy. Makati Insurance delivered the policy to FEBIBI which it tasked with the collection of premium. FEBIBI in turn delivered the policy to FEBTC from where it sought the payment of the premiums.

Fourth, it must be noted that the cover note and policy was supposedly issued and made effective on June 24, 1994, when the trust receipt account was still outstanding and the insured merchandise was still theoretically owned by the bank. Thus, for all intents and purposes, it was to the best interest and protection of the bank to see to it that the goods were properly covered by insurance.

Fifth, the payment of premium has never been made an issue when the subject policy was still separated into three. Or even after the said consolidation into one policy (No. 1024439), still, payment of the premium has never become an issue.

x x x x x x x x x

For another, if We were to believe defendants' claim that the premium for the subject policy was not paid, then defendants should have cancelled the policy long before. But even up to the time the fire gutted plaintiffs' warehouse in March 1995, defendants acknowledged that the subject policy remained effective. x x x

Furthermore, there was no notice of cancellation or any communication from defendants sent to plaintiffs that the policy shall be cancelled because of non-payment of premiums. Thus, the more reasonable and logical conclusion is that the subject policy was still fully in force because plaintiffs are still paying its premiums and defendants are collecting the same through debit account.[22]

The Court of Appeals disposed of the case as follows:

UPON THE VIEW WE TAKE OF THIS CASE, judgment appealed from is hereby MODIFIED in such that:

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[22] *Id.* at 107-109.

a. the interest shall be at the rate of six percent (6%) per annum to run from the time of demand on April 11, 1995, in accordance with Article 1589 of the Civil Code, until the finality of this decision;

b. the moral damages of ₱400,000.00 is reduced to ₱50,000.00;

c. the exemplary damages of ₱500,000.00 is reduced to ₱50,000.00; and

d. the writ of preliminary injunction previously issued lifted and set aside.

In all other respects, judgment appealed from is AFFIRMED. Without pronouncement as to costs.

SO ORDERED.[23]

Hence, these petitions.

The Issues

In G.R. No. 171379, petitioners assail the Court of Appeals' reduction of (1) the interest rate from 12% to 6% per annum to be imposed on respondents' liabilities; and (2) the award of moral and exemplary damages. Petitioners also question the portion of the Court of Appeals' judgment allowing FEBTC to foreclose the real estate mortgage securing petitioners' loans and disallowing legal compensation for the parties' mutual obligations.

In G.R. No. 171419, petitioners challenge the Court of Appeals' findings that (1) the premium for the subject insurance policy has in fact been paid; (2) FEBTC, FEBIBI and Makati Insurance Company are jointly and severally liable to pay respondents the full coverage of the subject insurance policy despite (a) their separate juridical personalities; (b) the absence of any fault or negligence on their part; and (c) respondents' failure to prove the extent of the alleged loss. Petitioners further impugn the award of damages and attorney's fees.

The Court's Ruling

The petition in G.R. No. 171319 lacks merit, whereas the petition in G.R. No. 171419 is partially meritorious.

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[23] *Id.* at 112-113.

Essentially, Maxilite and Marques invoke estoppel in claiming against FEBTC, FEBIBI, and Makati Insurance Company the face value of the insurance policy. In their complaint, Maxilite and Marques alleged they were led to believe and they in fact believed that the settlement of Maxilite's trust receipt account included the payment of the insurance premium.[24] Maxilite and Marques faulted FEBTC "if it failed to transmit the premium payments on subject insurance coverage contrary to its represented standard operating procedure of solely handling the insurance coverage and past practice of debiting [Maxilite's] account."[25]

Article 1431 of the Civil Code defines estoppel as follows:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

Meanwhile, Section 2(a), Rule 131 of the Rules of Court provides:

> SEC. 2. Conclusive presumptions. – The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

In estoppel, a party creating an appearance of fact, which is false, is bound by that appearance as against another person who acted in good faith on it.[26] Estoppel is based on public policy, fair dealing, good faith and justice.[27] Its purpose is to forbid one to speak against his own act, representations, or commitments to

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[24] *Id.* at 605.

[25] *Id.* at 608.

[26] AQUINO, RAMON C., *THE CIVIL CODE OF THE PHILIPPINES*, Vol. 2, 1990 Edition, p. 508, citing *Strong v. Gutierrez Repide*, 6 Phil. 680, 685.

[27] *Id.* at 509.

the injury of one who reasonably relied thereon.[28] It springs from equity, and is designed to aid the law in the administration of justice where without its aid injustice might result.[29]

In *Santiago Syjuco, Inc. v. Castro*,[30] the Court stated that "estoppel may arise from silence as well as from words." 'Estoppel by silence' arises where a person, who by force of circumstances is obliged to another to speak, refrains from doing so and thereby induces the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.[31] Silence may support an estoppel whether the failure to speak is intentional or negligent.[32]

Both trial and appellate courts basically agree that FEBTC is estopped from claiming that the insurance premium has been unpaid. That FEBTC induced Maxilite and Marques to believe that the insurance premium has in fact been debited from Maxilite's account is grounded on the following facts: (1) FEBTC represented and committed to handle Maxilite's financing and capital requirements, including the related transactions such as the insurance of the trust receipted merchandise; (2) prior to the subject Insurance Policy No. 1024439, the premiums for the three separate fire insurance policies had been paid through automatic debit arrangement; (3) FEBIBI sent FEBTC, not Maxilite nor Marques, written reminders dated 19 October 1994, 24 January 1995, and 6 March 1995 to debit Maxilite's account, establishing FEBTC's obligation to automatically debit Maxilite's account for the premium amount; (4) there was no written demand from FEBTC or Makati Insurance Company for Maxilite or Marques to pay the insurance premium; (5) the subject insurance policy was released to Maxilite on 19 August 1994; and (6) the subject insurance policy remained uncancelled despite the alleged

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[28] *Id*.

[29] *Id.*, citing 28 Am Jur 2nd 28; *PNB v. Perez*, 183 Phil. 54 (1979); *Lazo v. Republic Surety & Ins. Co., Inc.*, 142 Phil. 158 (1970).

[30] G.R. No. 70403, 7 July 1989, 175 SCRA 171, 192, citing 31 C.J.S., pp. 490-494.

[31] *Id*.

[32] *Id*.

non-payment of the premium, making it appear that the insurance policy remained in force and binding.

Moreover, prior to the full settlement of the trust receipt account on 24 and 26 October 1994, FEBTC had insurable interest over the merchandise, and thus had greater reason to debit Maxilite's account. Further, as found by the trial court, and apparently undisputed by FEBTC, FEBIBI and Makati Insurance Company, Maxilite had sufficient funds at the time the first reminder, dated 19 October 1994, was sent by FEBIBI to FEBTC to debit Maxilite's account for the payment of the insurance premium. Since (1) FEBTC committed to debit Maxilite's account corresponding to the insurance premium; (2) FEBTC had insurable interest over the property prior to the settlement of the trust receipt account; and (3) Maxilite's bank account had sufficient funds to pay the insurance premium prior to the settlement of the trust receipt account, FEBTC should have debited Maxilite's account as what it had repeatedly done, as an established practice, with respect to the previous insurance policies. However, FEBTC failed to debit and instead disregarded the written reminder from FEBIBI to debit Maxilite's account. FEBTC's conduct clearly constitutes negligence in handling Maxilite's and Marques' accounts. Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do."[33]

As a consequence of its negligence, FEBTC must be held liable for damages pursuant to Article 2176 of the Civil Code which states "whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done." Indisputably, had the insurance premium been paid, through the automatic debit arrangement with FEBTC, Maxilite's fire loss claim would have been approved. Hence, Maxilite suffered damage to the extent of the face value of the insurance policy or the sum of ₱2.1 million.

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[33] *Bank of the Philippine Islands v. Suarez*, G.R. No. 167750, 15 March 2010, 615 SCRA 291, 298.

Contrary to Maxilite's and Marques' view, FEBTC is solely liable for the payment of the face value of the insurance policy and the monetary awards stated in the Court of Appeals' decision. Suffice it to state that FEBTC, FEBIBI, and Makati Insurance Company are independent and separate juridical entities, even if FEBIBI and Makati Insurance Company are subsidiaries of FEBTC. Absent any showing of its illegitimate or illegal functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary shall be confined to those arising in their respective business.[34] Besides, the records are bereft of any evidence warranting the piercing of corporate veil in order to treat FEBTC, FEBIBI, and Makati Insurance Company as a single entity. Likewise, there is no evidence showing FEBIBI's and Makati Insurance Company's negligence as regards the non-payment of the insurance premium.

The Court agrees with the Court of Appeals in reducing the interest rate from 12% to 6% as the obligation to pay does not arise from a loan or forbearance of money. In *Eastern Shipping Lines, Inc. v. Court of Appeals*,[35] the Court laid down the following guidelines for the application of the proper interest rates:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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

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[34] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, 19 February 2007, 516 SCRA 231, 258.

[35] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. *When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.* No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be . . . 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 forbearance of credit. (Emphasis supplied)

With respect to Maxilite's and Marques' invocation of legal compensation, we find the same devoid of merit. Aside from their bare allegations, there is no clear and convincing evidence that legal compensation exists in this case. In other words, Maxilite and Marques failed to establish the essential elements of legal compensation. Therefore, Maxilite's and Marques' claim of legal compensation must fail.

WHEREFORE, we *AFFIRM with MODIFICATION* the 31 May 2005 Decision and the 26 January 2006 Resolution of the Court of Appeals-Cebu City in CA-G.R. CV No. 62105. Only Far East Bank and Trust Company, and not Far East Bank Insurance Brokers, Inc. or Makati Insurance Company, is

ORDERED to *PAY* the face value of the subject insurance policy and the monetary awards stated in the Court of Appeals' decision.

SO ORDERED.

Brion,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176264. January 10, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TERESITA "TESSIE" LAOGO,** *appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT; DEFINED; ILLEGAL RECRUITMENT, ELEMENTS.— Recruitment and placement refers to the act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. When a person or entity, in any manner, offers or promises for a fee employment to two or more persons, that person or entity shall be deemed engaged in recruitment and placement. Article 38(a) of the Labor Code, as amended, specifies that recruitment activities undertaken by non-licensees or non-holders of authority are deemed illegal and punishable by law. And when the illegal recruitment is committed against three or more persons, individually or as a group, then it is deemed committed in large scale and carries with it stiffer penalties as the same

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[*] Designated additional member per Raffle dated 9 June 2010.

is deemed a form of economic sabotage. But to prove illegal recruitment, it must be shown that the accused, without being duly authorized by law, gave complainants the distinct impression that he had the power or ability to send them abroad for work, such that the latter were convinced to part with their money in order to be employed. It is important that there must at least be a promise or offer of an employment from the person posing as a recruiter, whether locally or abroad.

2. REMEDIAL LAW; EVIDENCE; ABSENT ANY SHOWING THAT THE TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED OR MISAPPRECIATED CERTAIN SIGNIFICANT FACTS AND CIRCUMSTANCES, WHICH IF PROPERLY CONSIDERED WOULD CHANGE THE RESULT, THE SUPREME COURT IS BOUND BY THE SAID FINDINGS; ELEMENTS OF ILLEGAL RECRUITMENT IN LARGE SCALE, PROVED.— [B]oth the trial court and the CA found that all the five complainants were promised to be sent abroad by Susan and herein appellant as cooks and assistant cooks. The follow up transactions between appellant and her victims were done inside the said travel agency. Moreover, all four receipts issued to the victims bear the name and logo of Laogo Travel Consultancy, with two of the said receipts personally signed by appellant herself. Indubitably, appellant and her co-accused acting together made complainants believe that they were transacting with a legitimate recruitment agency and that Laogo Travel Consultancy had the authority to recruit them and send them abroad for work when in truth and in fact it had none as certified by the POEA. Absent any showing that the trial court and the CA overlooked or misappreciated certain significant facts and circumstances, which if properly considered, would change the result, we are bound by said findings.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition assails the July 31, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01664, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 12, of Malolos, Bulacan in Criminal Case No. 693-M-2001. The RTC found appellant Teresita "Tessie" Laogo guilty beyond reasonable doubt of the crime of illegal recruitment in large scale.

Appellant Teresita "Tessie" Laogo was the proprietor and manager of Laogo Travel Consultancy, a travel agency firm located along Padre Faura Street in Manila. On March 7, 2001, an Information[3] was filed against appellant and a certain Susan Navarro (Susan) in Malolos, Bulacan charging them of the crime of Illegal Recruitment (Large Scale). The information reads:

INFORMATION

The undersigned Asst. Provincial Prosecutor accuses Susan Navarro and Tessie [Teresita] Laogo of the crime of illegal recruitment, penalized under Art. 38 in relation to Art[s]. 34 and 39 of the Labor Code of the Philippines, as amended by Presidential Decree No. 1412, committed as follows:

That in or about and during the months of May and June 2000, in the municipality of Bulacan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing that they are non-licensee or non-holder of authority from the Department of Labor to recruit and/or place workers in employment either locally or overseas, conspiring, confederating together and helping each other, did then and there wi[l]lfully, unlawfully and feloniously engage in illegal recruitment, placement or deployment activities for a fee, which they received from complainants Edith Bonifacio-Ulanday, Rogelio Enriquez *y*

[1] *Rollo*, pp. 4-23. Penned by then Court of Appeals Associate Justice Jose L. Sabio, Jr. (now retired), with Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon, concurring.

[2] CA *rollo*, pp. 23-28. Penned by Judge Crisanto C. Concepcion.

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

Buenavidez, Billy dela Cruz, Jr. *y* Fernandez, Dante Lopez *y* Enriquez, Teodulo dela Cruz *y* Mendoza, Edwin Enriquez *y* Panganiban and Gary Bustillos *y* de Guzman by recruiting and promising them job placement abroad, more particularly in Guam, which did not materialize, without first having secured the required license or authority from the Department of Labor and Employment.

That the crime is committed in a large scale tantamount to economic sabotage as the aforementioned seven persons were [recruited] individually or as a group.

Contrary to law.

The charge stemmed from the following set of facts.

Sometime during the second week of March 2000, Susan invited several individuals including six of the seven complainants – namely, Teodulo dela Cruz, Billy dela Cruz, Jr., Dante Lopez, Edwin Enriquez, Rogelio Enriquez, and Gary Bustillos – to her house in Bulacan, Bulacan to celebrate the town fiesta. Appellant was among the several guests in Susan's house during the said occasion.

According to Teodulo dela Cruz, during the fiesta, Gary Bustillos introduced him to Susan as somebody who could help him find work abroad. Since Susan was Gary's aunt, Teodulo immediately trusted Susan. Susan told him he can apply as assistant cook and can work in Guam, USA. Upon Susan's instruction, Teodulo filled up an application form[4] and gave her ₱3,000.00 after the latter promised to process his application to work abroad.[5] On May 22, 2000, Susan accompanied Teodulo to appellant's travel agency office in Ermita where he paid an additional ₱15,000.00 for his placement fee.[6] A receipt bearing the logo and name of Laogo Travel Consultancy was issued to him signed by Susan.[7] Months later, when Susan's promise to send him abroad remained unfulfilled, Teodulo, along with several

[4] TSN, Teodulo dela Cruz, August 21, 2001, p. 4.

[5] Records, Vol. I, p. 8. "Sinumpaang Salaysay" dated November 23, 2000 of Teodulo dela Cruz.

[6] TSN, Teodulo dela Cruz, August 21, 2001, p. 5.

[7] Exh. "A".

other applicants, went to appellant's office and to Susan's house to follow up their application, but the two always told them that their visas have yet to be released.[8]

Similarly, Billy dela Cruz, Jr. also met Susan through Gary, who himself was seeking help from Susan to work in Guam. At Susan's house, Billy saw Dante Lopez, Edwin Enriquez, and Rogelio Enriquez. Like him, the three were also seeking Susan's help to work abroad.[9] Susan introduced Billy to appellant, who promised him that she will send them abroad within three months.[10] After the meeting, Billy issued to Susan two Metrobank checks, dated March 11 and May 10, 2000, bearing the amounts ₱23,000.00 and ₱44,000.00, respectively, as partial payment for his placement fee.[11] On May 19, 2000, Billy also went to appellant's travel agency in Ermita and personally handed an additional cash of ₱6,000.00 to Susan, who thereafter gave the money to appellant. Appellant issued a corresponding receipt[12] for the ₱6,000.00 cash bearing her signature and the name and logo of Laogo Travel Consultancy. After several months, no word was heard from either Susan or appellant. Sensing that something was wrong, Billy decided to report the matter to the authorities in Bulacan, Bulacan and filed the complaint against Susan and appellant.[13]

Dante Lopez testified that he was also introduced by Gary Bustillos to appellant and Susan. Susan identified herself as an employee of appellant's travel agency. The two told him that they can send him and his companions to Guam within the span of three months.[14] Lopez paid both accused ₱6,000.00 to process his papers, covered by a receipt dated May 19, 2000

[8] TSN, Teodulo dela Cruz, August 21, 2001, p. 7.

[9] TSN, Billy dela Cruz, Jr., September 13, 2001, pp. 3, 6.

[10] *Id.* at 10.

[11] *Id.* at 4. See also Exhs. "C" and "C-1".

[12] Exh. "C-3".

[13] TSN, Billy dela Cruz, Jr., September 13, 2001, p. 5.

[14] TSN, Dante Lopez, October 2, 2001, p. 4.

showing appellant's signature.[15] Appellant's promise, however, turned sour after three months. When he confronted appellant, the latter told him that he would be sent to a different country. Left without a choice, Lopez waited. Again, the promise remained unfulfilled.[16]

According to Rogelio Enriquez, he also met appellant during the town fiesta when Susan invited him to cook for her guests. Susan introduced appellant as someone who could send him to work abroad. Eager about the prospect, Rogelio immediately gave his ₱3,000.00 cash to Susan for the processing of his visa and employment documents.[17] He saw Susan hand the money to appellant.[18] A week later, Rogelio gave an additional ₱900.00 to Susan.[19] No receipts were issued on both payments since Rogelio failed to complete the required ₱6,000.00 placement fee.[20] Months passed but Rogelio heard nothing from either Susan or appellant. Apprehensive, Rogelio verified the status of the Laogo Travel Consultancy with the Philippine Overseas Employment Administration (POEA). From the POEA, Rogelio learned that neither of the accused nor Laogo Travel was licensed to recruit workers for employment abroad. Aggrieved, Rogelio, together with his six companions, filed the complaint against Susan and appellant.

Edwin Enriquez also paid ₱12,000.00 to Susan as processing fee for his application to work in Guam. According to him, Susan's husband and appellant were present when he gave the money to Susan during the town fiesta.[21] Susan issued a receipt dated May 16, 2000 to Edwin. The receipt contained the logo of Laogo Travel Consultancy and was signed by Susan with a description which says "Payment was for Placement Fee."[22]

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[15] Exh. "E".

[16] *Supra* note 14.

[17] TSN, Rogelio Enriquez, October 9, 2001, pp. 3-4.

[18] *Id.* at 7.

[19] *Id.* at 8.

[20] *Id.* at 4.

[21] TSN, Edwin Enriquez, October 18, 2001, pp. 3-4, 7.

[22] Exh. "H".

Two other persons, namely Edith Bonifacio-Ulanday and Gary Bustillos, Susan's nephew, were among the seven who filed the complaint against Susan and appellant. The two, however, later decided to withdraw their complaints after executing their respective affidavits of desistance.[23]

On March 15, 2001, warrants of arrest[24] were issued against Susan and appellant. When arraigned, appellant pleaded not guilty.[25] Susan, meanwhile, remained at large. An *alias* warrant of arrest[26] was issued by the trial court against her but to no avail.

During the trial, appellant denied any participation in the illegal activities undertaken by Susan. She insisted that Susan was not in any way connected with her travel agency and that she confronted the latter when she came to know of Susan's recruitment activities. Appellant claimed that she even had to rename her travel agency to Renz Consultancy and Employment Services to avoid being associated with Susan's recruitment activities.[27]

Appellant admitted having met Rogelio at Susan's house during the town fiesta, but denied knowing the other complainants. According to appellant, she came to know Rogelio when Susan specifically identified him as the one who cooked the dishes after some guests prodded Susan.[28]

Unsatisfied with appellant's explanation, the trial court promulgated a Decision[29] finding her guilty of large scale illegal recruitment. The *fallo* of the trial court's July 16, 2002 Decision reads:

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[23] Records, Vol. I, pp. 30-31.

[24] *Id.* at 13, 15.

[25] *Id.* at 93.

[26] *Id.* at 110.

[27] TSN, Teresita Laogo, November 23, 2001, pp. 7-8.

[28] *Id.* at 5-6.

[29] CA *rollo*, pp. 23-28.

WHEREFORE, finding herein accused Teresita (Tessie) Laogo *y* Villamor guilty as principal beyond reasonable doubt of the crime of illegal recruitment in large scale, she is hereby sentenced to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00 as imposed by law[;] to indemnify the private offended parties x x x actual damages, as follows: Teodulo dela Cruz – ₱15,000.00, Billy dela Cruz – ₱73,000.00, Dante Lopez – ₱6,000.00, Rogelio Enriquez – ₱3,000.00, and Edwin Enriquez – ₱12,000.00[;] and to pay the costs of the proceedings.

In the service of her sentence the said accused, a detention prisoner, shall be credited with the full time during which she had undergone preventive imprisonment, pursuant to the provisions of Art. 29 of the Revised Penal Code.

Pending the actual apprehension of the other accused Susan Navarro, [who is] still at-large, on the strength of the warrant of arrest earlier issued, let the record be committed to the archives subject to recall and reinstatement, should circumstances so warrant for due prosecution against her of this case.

SO ORDERED.[30]

Appellant filed an appeal before this Court, but said appeal was transferred to the CA following our pronouncement in *People v. Mateo*.[31]

In her Appellant's Brief[32] before the CA, appellant insisted that she had no hand in the recruitment of the complainants and maintains that the recruitment activities were made solely upon the initiative of accused Susan Navarro.[33] Appellant anchored her defense on the testimonies of the complainants who declared that the transactions and the payments were made not with her but with Susan.[34] Appellant admitted that her consultancy firm was merely engaged in the business of assisting clients in the procurement of passports and visas, and denied

[30] *Id.* at 28 and subsequent unnumbered page.

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

[32] CA *rollo*, pp. 61-74.

[33] *Id.* at 72.

[34] *Id.* at 69-72.

that her agency was involved in any recruitment activity as defined under the Labor Code, as amended.[35]

On July 31, 2006, the appellate court rendered the assailed decision affirming appellant's conviction.[36] The CA noted that although at times, it was Susan with whom the complainants transacted, the records nevertheless bear that appellant had a hand in the recruitment of the complainants. The CA pointed out that appellant, together with Susan, repeatedly assured the private complainants that her consultancy firm could deploy them for overseas employment,[37] leading the appellate court to conclude that appellant consciously and actively participated in the recruitment of the complainants.[38]

Aggrieved, appellant brought the case to us on appeal, raising the same arguments she had raised at the CA.

We affirm appellant's conviction.

Recruitment and placement refers to the act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. When a person or entity, in any manner, offers or promises for a fee employment to two or more persons, that person or entity shall be deemed engaged in recruitment and placement.[39]

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[35] *Id.* at 72.

[36] The dispositive portion of the Court of Appeals' Decision dated July 31, 2006 reads:

WHEREFORE, in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 693-M-2001, finding appellant Teresita "Tessie" Laogo guilty beyond reasonable doubt of the crime charged, is, hereby, **AFFIRMED** with **MODIFICATION**.

As modified, the award of actual damages in the amount of Php 3,000.00, in favor of Rogelio Enriquez, is **DELETED**.

SO ORDERED. (*Rollo*, p. 22.)

[37] *Rollo*, pp. 12-17.

[38] *Id.* at 18.

[39] Article 38(b), LABOR CODE.

Article 38(a) of the Labor Code, as amended, specifies that recruitment activities undertaken by non-licensees or non-holders of authority are deemed illegal and punishable by law. And when the illegal recruitment is committed against three or more persons, individually or as a group, then it is deemed committed in large scale and carries with it stiffer penalties as the same is deemed a form of economic sabotage.[40]

But to prove illegal recruitment, it must be shown that the accused, without being duly authorized by law, gave complainants the distinct impression that he had the power or ability to send them abroad for work, such that the latter were convinced to part with their money in order to be employed.[41] It is important that there must at least be a promise or offer of an employment from the person posing as a recruiter, whether locally or abroad.[42]

Here, both the trial court and the CA found that all the five complainants were promised to be sent abroad by Susan and herein appellant[43] as cooks and assistant cooks. The follow up transactions between appellant and her victims were done inside the said travel agency. Moreover, all four receipts issued to the

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ART. 38. *Illegal recruitment*. – x x x

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

x x x x x x x x x

[40] Section 7, in relation to the last paragraph of Section 6, of R.A. No. 8042.

[41] *Lapasaran v. People*, G.R. No. 179907, February 12, 2009, 578 SCRA 658, 662.

[42] *People v. Angeles*, G.R. No. 132376, April 11, 2002, 380 SCRA 519, 526-527.

[43] TSN, Billy dela Cruz, Jr., September 13, 2001, pp. 9-10; TSN, Dante Lopez, October 2, 2001, pp. 3-4.

victims bear the name and logo of Laogo Travel Consultancy,[44] with two of the said receipts personally signed by appellant herself.[45] Indubitably, appellant and her co-accused acting together made complainants believe that they were transacting with a legitimate recruitment agency and that Laogo Travel Consultancy had the authority to recruit them and send them abroad for work when in truth and in fact it had none as certified by the POEA.[46] Absent any showing that the trial court and the CA overlooked or misappreciated certain significant facts and circumstances, which if properly considered, would change the result, we are bound by said findings.[47]

Appellant's contention that she had to change the name of her travel agency to disassociate herself with Susan's recruitment activities is too lame to deserve serious consideration. In light of the testimonies of the complainants that appellant with her co-accused promised them employment abroad, we find appellant's act of closing Laogo Travel Consultancy and establishing a new one under her husband's name[48] as just an afterthought, a belated decision which cannot undo the damage suffered by the private offended parties. It could indeed hardly be construed as a simple reaction of an innocent person, as it in fact smacks of a desperate attempt of a guilty individual to escape liability or to confuse and dishearten her victims.

WHEREFORE, the appeal is *DENIED*. The Decision dated July 31, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01664 is *AFFIRMED in toto.*

With costs against the accused-appellant.

SO ORDERED.

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

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[44] Exhs. "A", "C-3", "E", and "H".

[45] Exhs. "C-3" and "E".

[46] Records, Vol. I, pp. 172-173; Exh. "B".

[47] *People v. Costelo*, G.R. No. 134311, October 13, 1999, 316 SCRA 895, 898.

[48] Renz Travel Consultancy and Employment Services, Exh. "2".

SECOND DIVISION

[G.R. No. 176339. January 10, 2011]

DO-ALL METALS INDUSTRIES, INC., SPS. DOMINGO LIM and LELY KUNG LIM, *petitioners, vs.* **SECURITY BANK CORP., TITOLAIDO E. PAYONGAYONG, EVYLENE C. SISON, PHIL. INDUSTRIAL SECURITY AGENCY CORP. and GIL SILOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; LEGAL FEES; THE PLAINTIFFS' NON-PAYMENT OF THE ADDITIONAL FILING FEES DUE ON THEIR ADDITIONAL CLAIMS WILL NOT DIVEST THE REGIONAL TRIAL COURT OF THE JURISDICTION IT ALREADY HAD OVER THE CASE.— On the issue of jurisdiction, respondent Bank argues that plaintiffs' failure to pay the filing fees on their supplemental complaint is fatal to their action. But what the plaintiffs failed to pay was merely the filing fees for their Supplemental Complaint. The RTC acquired jurisdiction over plaintiffs' action from the moment they filed their original complaint accompanied by the payment of the filing fees due on the same. The plaintiffs' non-payment of the additional filing fees due on their additional claims did not divest the RTC of the jurisdiction it already had over the case.

2. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO THE PETITIONERS FOR THE INTIMIDATION AND HARASSMENT COMMITTED AGAINST THEM BY THE BANK'S REPRESENTATIVES, PROPER.— Domingo Lim and some employees of DMI testified regarding the Bank guards' unmitigated use of their superior strength and firepower. Their testimonies were never refuted. Police Inspector Priscillo dela Paz testified that he responded to several complaints regarding shooting incidents at the leased premises and on one occasion, he found Domingo Lim was locked in the building. When he asked why Lim had been locked in, a Bank representative told him that they had instructions to prevent anyone from taking any property out of the premises. It was

only after Dela Paz talked to the Bank representative that they let Lim out. Payongayong, the Bank's sole witness, denied charges of harassment against the Bank's representatives and the guards. But his denial came merely from reports relayed to him. They were not based on personal knowledge. While the lease may have already lapsed, the Bank had no business harassing and intimidating the Lims and their employees. The RTC was therefore correct in adjudging moral damages, exemplary damages, and attorney's fees against the Bank for the acts of their representatives and building guards.

3. REMEDIAL LAW; ACTIONS; LEGAL FEES; AFTER-JUDGMENT LIEN APPLIES TO CASES WHERE THE FILING FEES WERE INCORRECTLY ASSESSED OR PAID OR WHERE THE COURT HAS DISCRETION TO FIX THE AMOUNT OF THE AWARD; NOT PRESENT IN CASE AT BAR.— As to the damages that plaintiffs claim under their supplemental complaint, their stand is that the RTC committed no error in admitting the complaint even if they had not paid the filing fees due on it since such fees constituted a lien anyway on the judgment award. But this after-judgment lien, which implies that payment depends on a successful execution of the judgment, applies to cases where the filing fees were incorrectly assessed or paid or where the court has discretion to fix the amount of the award. None of these circumstances obtain in this case.

4. ID.; ID.; ID.; FILING FEES DUE ON A COMPLAINT MUST BE PAID UPON ITS FILING; SPECIAL ASSESSMENTS NOT REQUIRED IN CASES OF SUPPLEMENTAL COMPLAINTS.— Here, the supplemental complaint specified from the beginning the actual damages that the plaintiffs sought against the Bank. Still plaintiffs paid no filing fees on the same. And, while petitioners claim that they were willing to pay the additional fees, they gave no reason for their omission nor offered to pay the same. They merely said that they did not yet pay the fees because the RTC had not assessed them for it. But a supplemental complaint is like any complaint and the rule is that the filing fees due on a complaint need to be paid upon its filing. The rules do not require the court to make special assessments in cases of supplemental complaints.

5. ID.; ID.; ID.; ONLY THE SUPREME COURT CAN GRANT EXEMPTIONS TO THE PAYMENT OF THE FEES DUE TO THE COURTS.— Plaintiffs of course point out that the Bank itself raised the issue of non-payment of additional filing fees only after the RTC had rendered its decision in the case. The implication is that the Bank should be deemed to have waived its objection to such omission. But it is not for a party to the case or even for the trial court to waive the payment of the additional filing fees due on the supplemental complaint. Only the Supreme Court can grant exemptions to the payment of the fees due the courts and these exemptions are embodied in its rules.

APPEARANCES OF COUNSEL

Renato T. Nuguid Teresita De Leon-Nuguid and Oliver C. Ong for petitioners.

Lariba Perez Anastacio Mangrobang Miralles & Cacha for Security Bank Corp.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of awarding damages based on claims embodied in the plaintiff's supplemental complaint filed without prior payment of the corresponding filing fees.

The Facts and the Case

From 1996 to 1997, Dragon Lady Industries, Inc., owned by petitioner spouses Domingo Lim and Lely Kung Lim (the Lims) took out loans from respondent Security Bank Corporation (the Bank) that totaled ₱92,454,776.45. Unable to pay the loans on time, the Lims assigned some of their real properties to the Bank to secure the same, including a building and the lot on which it stands (the property), located at M. de Leon St., Santolan, Pasig City.[1]

[1] Covered by Transfer Certificate of Title 79603.

In 1998 the Bank offered to lease the property to the Lims through petitioner Do-All Metals Industries, Inc. (DMI) primarily for business although the Lims were to use part of the property as their residence. DMI and the Bank executed a two-year lease contract from October 1, 1998 to September 30, 2000 but the Bank retained the right to pre-terminate the lease. The contract also provided that, should the Bank decide to sell the property, DMI shall have the right of first refusal.

On December 3, 1999, before the lease was up, the Bank gave notice to DMI that it was pre-terminating the lease on December 31, 1999. Wanting to exercise its right of first refusal, DMI tried to negotiate with the Bank the terms of its purchase. DMI offered to pay the Bank ₱8 million for the property but the latter rejected the offer, suggesting ₱15 million instead. DMI made a second offer of ₱10 million but the Bank declined the same.

While the negotiations were on going, the Lims claimed that they continued to use the property in their business. But the Bank posted at the place private security guards from Philippine Industrial Security Agency (PISA). The Lims also claimed that on several occasions in 2000, the guards, on instructions of the Bank representatives Titolaido Payongayong and Evylene Sison, padlocked the entrances to the place and barred the Lims as well as DMI's employees from entering the property. One of the guards even pointed his gun at one employee and shots were fired. Because of this, DMI was unable to close several projects and contracts with prospective clients. Further, the Lims alleged that they were unable to retrieve assorted furniture, equipment, and personal items left at the property.

The Lims eventually filed a complaint with the Regional Trial Court (RTC) of Pasig City for damages with prayer for the issuance of a temporary restraining order (TRO) or preliminary injunction against the Bank and its co-defendants Payongayong, Sison, PISA, and Gil Silos.[2] Answering the complaint, the Bank pointed out that the lease contract allowed it to sell the property

[2] Docketed as Civil Case 68184.

at any time provided only that it gave DMI the right of first refusal. DMI had seven days from notice to exercise its option. On September 10, 1999 the Bank gave notice to DMI that it intended to sell the property to a third party. DMI asked for an extension of its option to buy and the Bank granted it. But the parties could not agree on a purchase price. The Bank required DMI to vacate and turnover the property but it failed to do so. As a result, the Bank's buyer backed-out of the sale. Despite what happened, the Bank and DMI continued negotiations for the purchase of the leased premises but they came to no agreement.

The Bank denied, on the other hand, that its guards harassed DMI and the Lims. To protect its property, the Bank began posting guards at the building even before it leased the same to DMI. Indeed, this arrangement benefited both parties. The Bank alleged that in October of 2000, when the parties could not come to an agreement regarding the purchase of the property, DMI vacated the same and peacefully turned over possession to the Bank.

The Bank offered no objection to the issuance of a TRO since it claimed that it never prevented DMI or its employees from entering or leaving the building. For this reason, the RTC directed the Bank to allow DMI and the Lims to enter the building and get the things they left there. The latter claimed, however, that on entering the building, they were unable to find the movable properties they left there. In a supplemental complaint, DMI and the Lims alleged that the Bank surreptitiously took such properties, resulting in additional actual damages to them of over ₱27 million.

The RTC set the pre-trial in the case for December 4, 2001. On that date, however, counsel for the Bank moved to reset the proceeding. The court denied the motion and allowed DMI and the Lims to present their evidence *ex parte*. The court eventually reconsidered its order but only after the plaintiffs had already presented their evidence and were about to rest their case. The RTC declined to recall the plaintiffs' witnesses for cross-examination but allowed the Bank to present its

evidence.[3] This prompted the Bank to seek relief from the Court of Appeals (CA) and eventually from this Court but to no avail.[4]

During its turn at the trial, the Bank got to present only defendant Payongayong, a bank officer. For repeatedly canceling the hearings and incurring delays, the RTC declared the Bank to have forfeited its right to present additional evidence and deemed the case submitted for decision.

On September 30, 2004 the RTC rendered a decision in favor of DMI and the Lims. It ordered the Bank to pay the plaintiffs ₱27,974,564.00 as actual damages, ₱500,000.00 as moral damages, ₱500,000 as exemplary damages, and ₱100,000.00 as attorney's fees. But the court absolved defendants Payongayong, Sison, Silos and PISA of any liability.

The Bank moved for reconsideration of the decision, questioning among other things the RTC's authority to grant damages considering plaintiffs' failure to pay the filing fees on their supplemental complaint. The RTC denied the motion. On appeal to the CA, the latter found for the Bank, reversed the RTC decision, and dismissed the complaint as well as the counterclaims.[5] DMI and the Lims filed a motion for reconsideration but the CA denied the same, hence this petition.

The Issues Presented

The issues presented in this case are:

1. Whether or not the RTC acquired jurisdiction to hear and adjudicate plaintiff's supplemental complaint against the Bank considering their failure to pay the filing fees on the amounts of damages they claim in it;

[3] Order of the RTC dated May 10, 2002 and Resolution of the RTC dated August 5, 2002; records, Volume 1, pp. 317-318 and 340-341, respectively.

[4] The appeals were docketed as CA-G.R. SP No. 73520 and G.R. No. 161828, respectively.

[5] In the decision of the Court of Appeals dated October 10, 2006 in CA-G.R. CV No. 85667, penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Amelita G. Tolentino and Jose Catral Mendoza, now a member of this Court; CA *rollo*, pp. 151-168.

2. Whether or not the Bank is liable for the intimidation and harassment committed against DMI and its representatives; and

3. Whether or not the Bank is liable to DMI and the Lims for the machineries, equipment, and other properties they allegedly lost after they were barred from the property.

The Court's Rulings

One. On the issue of jurisdiction, respondent Bank argues that plaintiffs' failure to pay the filing fees on their supplemental complaint is fatal to their action.

But what the plaintiffs failed to pay was merely the filing fees for their Supplemental Complaint. The RTC acquired jurisdiction over plaintiffs' action from the moment they filed their original complaint accompanied by the payment of the filing fees due on the same. The plaintiffs' non-payment of the additional filing fees due on their additional claims did not divest the RTC of the jurisdiction it already had over the case.[6]

Two. As to the claim that Bank's representatives and retained guards harassed and intimidated DMI's employees and the Lims, the RTC found ample proof of such wrongdoings and accordingly awarded damages to the plaintiffs. But the CA disagreed, discounting the testimony of the police officers regarding their investigations of the incidents since such officers were not present when they happened. The CA may be correct in a way but the plaintiffs presented eyewitnesses who testified out of personal knowledge. The police officers testified merely to point out that there had been trouble at the place and their investigations yielded their findings.

The Bank belittles the testimonies of the petitioners' witnesses for having been presented *ex parte* before the clerk of court. But the *ex parte* hearing, having been properly authorized, cannot be assailed as less credible. It was the Bank's fault that it was

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[6] See *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 62 (1998).

unable to attend the hearing. It cannot profit from its lack of diligence.

Domingo Lim and some employees of DMI testified regarding the Bank guards' unmitigated use of their superior strength and firepower. Their testimonies were never refuted. Police Inspector Priscillo dela Paz testified that he responded to several complaints regarding shooting incidents at the leased premises and on one occasion, he found Domingo Lim was locked in the building. When he asked why Lim had been locked in, a Bank representative told him that they had instructions to prevent anyone from taking any property out of the premises. It was only after Dela Paz talked to the Bank representative that they let Lim out.[7]

Payongayong, the Bank's sole witness, denied charges of harassment against the Bank's representatives and the guards. But his denial came merely from reports relayed to him. They were not based on personal knowledge.

While the lease may have already lapsed, the Bank had no business harassing and intimidating the Lims and their employees. The RTC was therefore correct in adjudging moral damages, exemplary damages, and attorney's fees against the Bank for the acts of their representatives and building guards.

Three. As to the damages that plaintiffs claim under their supplemental complaint, their stand is that the RTC committed no error in admitting the complaint even if they had not paid the filing fees due on it since such fees constituted a lien anyway on the judgment award. But this after-judgment lien, which implies that payment depends on a successful execution of the judgment, applies to cases where the filing fees were incorrectly assessed or paid or where the court has discretion to fix the amount of the award.[8] None of these circumstances obtain in this case.

Here, the supplemental complaint specified from the beginning the actual damages that the plaintiffs sought against the Bank. Still plaintiffs paid no filing fees on the same. And, while petitioners claim that they were willing to pay the additional

[7] TSN, January 18, 2002, pp. 3-4.

[8] RULES OF COURT, Rule 141, Section 2 (Fees in Lien).

fees, they gave no reason for their omission nor offered to pay the same. They merely said that they did not yet pay the fees because the RTC had not assessed them for it. But a supplemental complaint is like any complaint and the rule is that the filing fees due on a complaint need to be paid upon its filing.[9] The rules do not require the court to make special assessments in cases of supplemental complaints.

To aggravate plaintiffs' omission, although the Bank brought up the question of their failure to pay additional filing fees in its motion for reconsideration, plaintiffs made no effort to make at least a late payment before the case could be submitted for decision, assuming of course that the prescription of their action had not then set it in. Clearly, plaintiffs have no excuse for their continuous failure to pay the fees they owed the court. Consequently, the trial court should have treated their Supplemental Complaint as not filed.

Plaintiffs of course point out that the Bank itself raised the issue of non-payment of additional filing fees only after the RTC had rendered its decision in the case. The implication is that the Bank should be deemed to have waived its objection to such omission. But it is not for a party to the case or even for the trial court to waive the payment of the additional filing fees due on the supplemental complaint. Only the Supreme Court can grant exemptions to the payment of the fees due the courts and these exemptions are embodied in its rules.

Besides, as correctly pointed out by the CA, plaintiffs had the burden of proving that the movable properties in question had remained in the premises and that the bank was responsible for their loss. The only evidence offered to prove the loss was Domingo Lim's testimony and some undated and unsigned inventories. These were self-serving and uncorroborated.

WHEREFORE, the Court *PARTIALLY GRANTS* the petition and *REINSTATES* with modification the decision of the Regional Trial Court of Pasig City in Civil Case 68184. The Court *DIRECTS*

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[9] Section 1 (Payment of Fees) in relation to Section 7 (Fees collectible by the Clerks of Regional Trial Courts for filing an action).

respondent Security Bank Corporation to pay petitioners DMI and spouses Domingo and Lely Kung Lim damages in the following amounts: ₱500,000.00 as moral damages, ₱500,000.00 as exemplary damages, and ₱100,000.00 for attorney's fees. The Court *DELETES* the award of actual damages of ₱27,974,564.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178895. January 10, 2011]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF AGRARIAN REFORM, through the HON. SECRETARY NASSER C. PANGANDAMAN, *petitioner, vs.* **SALVADOR N. LOPEZ AGRI-BUSINESS CORP., represented by SALVADOR N. LOPEZ, JR., President and General Manager,** *respondent.*

(G.R. No. 179071. January 10, 2011)

SALVADOR N. LOPEZ AGRI-BUSINESS CORP., represented by SALVADOR N. LOPEZ, JR., President and General Manager, *petitioner, vs.* **DEPARTMENT OF AGRARIAN REFORM, through the Honorable Secretary,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUES THAT CAN BE RAISED THEREIN

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated January 10, 2011.

ARE LIMITED TO QUESTIONS OF LAW; EXCEPTIONS; PRESENT IN CASE AT BAR.— Preliminarily, in a petition for review on *certiorari* filed under Rule 45, the issues that can be raised are, as a general rule, limited to questions of law. However, as pointed out by both the DAR and SNLABC, there are several recognized exceptions wherein the Court has found it appropriate to re-examine the evidence presented. In this case, the factual findings of the DAR Regional Director, the DAR Secretary and the CA are contrary to one another with respect to the following issue: whether the Lopez lands were actually, directly and exclusively used for SNLABC's livestock business; and whether there was intent to evade coverage from the Comprehensive Agrarian Reform Program (CARP) based on the documentary evidence. On the other hand, SNLABC argues that these authorities misapprehended and overlooked certain relevant and undisputed facts as regards the inclusion of the Limot lands under the CARL. These circumstances fall within the recognized exceptions and, thus, the Court is persuaded to review the facts and evidence on record in the disposition of these present Petitions.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; LANDS DEVOTED TO THE RAISING OF LIVESTOCK, POULTRY AND SWINE HAVE BEEN CLASSIFIED AS INDUSTRIAL, AND THUS EXEMPT FROM AGRARIAN REFORM.— In *Luz Farms v. Secretary of the Department of Agrarian Reform*, the Court declared unconstitutional the CARL provisions that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that it was never the intention of the framers of the Constitution to include the livestock and poultry industry in the coverage of the constitutionally mandated agrarian reform program of the government. Thus, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus exempt from agrarian reform.

3. ID.; ID.; THE FINDINGS OF THE MUNICIPAL AGRARIAN REFORM OFFICER (MARO) ON THE USE AND NATURE OF THE LAND, IF SUPPORTED BY SUBSTANTIAL EVIDENCE ON RECORD, ARE TO BE ACCORDED GREATER WEIGHT, IF NOT FINALITY.— Under the rules then prevailing, it was the Municipal Agrarian Reform Officer (MARO) who was primarily responsible for investigating the legal status, type and areas of the land sought to be excluded; and for ascertaining whether the area subject of the application for exemption had been devoted to livestock-raising as of 15 June 1988. The MARO's authority to investigate has subsequently been replicated in the current DAR guidelines regarding lands that are actually, directly and exclusively used for livestock raising. As the primary official in charge of investigating the land sought to be exempted as livestock land, the MARO's findings on the use and nature of the land, if supported by substantial evidence on record, are to be accorded greater weight, if not finality.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ACCORDED RESPECT BECAUSE OF THEIR SPECIAL KNOWLEDGE AND EXPERTISE OVER MATTERS FALLING UNDER THEIR JURISDICTION.— Verily, factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence. The Court generally accords great respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction. In the instant case, the MARO in its ocular inspection found on the Lopez lands several heads of cattle, carabaos, horses, goats and pigs, some of which were covered by several certificates of ownership. There were likewise structures on the Lopez lands used for its livestock business, structures consisting of two chutes where the livestock were kept during nighttime. The existence of the cattle prior to the enactment of the CARL was positively affirmed by the farm

workers and the overseer who were interviewed by the MARO. Considering these factual findings and the fact that the lands were in fact being used for SNLABC's livestock business even prior to 15 June 1988, the DAR Regional Director ordered the exemption of the Lopez lands from CARP coverage. The Court gives great probative value to the actual, on-site investigation made by the MARO as affirmed by the DAR Regional Director. The Court finds that the Lopez lands were in fact actually, directly and exclusively being used as industrial lands for livestock-raising.

5. ID.; EVIDENCE; PRESUMPTION OF REGULARITY; ABSENT CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION, THE FINDINGS OF MARO, AS AFFIRMED BY THE DAR REGIONAL DIRECTOR, ARE TO BE ACCORDED GREAT PROBATIVE VALUE, OWING TO THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF HIS DUTIES.— Simply because the on-site investigation was belatedly conducted three or four years after the effectivity of the CARL does not perforce make it unworthy of belief or unfit to be offered as substantial evidence in this case. Contrary to DAR's claims, the lack of information as regards the initial breeders and the specific date when the cattle were first introduced in the MARO's Report does not conclusively demonstrate that there was no livestock-raising on the Lopez lands prior to the CARL. Although information as to these facts are significant, their non-appearance in the reports does not leave the MARO without any other means to ascertain the duration of livestock-raising on the Lopez lands, such as interviews with farm workers, the presence of livestock infrastructure, and evidence of sales of cattle – all of which should have formed part of the MARO's Investigation Report. Hence, the Court looks with favor on the expertise of the MARO in determining whether livestock-raising on the Lopez lands has only been recently conducted or has been a going concern for several years already. Absent any clear showing of grave abuse of discretion or bias, the findings of the MARO — as affirmed by the DAR Regional Director — are to be accorded great probative value, owing to the presumption of regularity in the performance of his official duties.

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; THE LAND CLASSIFICATION EMBODIED IN THE TAX DECLARATIONS IS NOT CONCLUSIVE OR FINAL NOR WOULD PROSCRIBE ANY FURTHER INQUIRY; TAX DECLARATIONS ARE NOT THE SOLE BASIS OF THE CLASSIFICATION OF A LAND.— In the Petition, the DAR argued that the tax declarations covering the Lopez lands characterized them as agricultural lands and, thus, detracted from the claim that they were used for livestock purposes. The Court has since held that "there is no law or jurisprudence that holds that the land classification embodied in the tax declarations is conclusive and final nor would proscribe any further inquiry"; hence, "tax declarations are clearly not the sole basis of the classification of a land." Applying the foregoing principles, the tax declarations of the Lopez lands as agricultural lands are not conclusive or final, so as to prevent their exclusion from CARP coverage as lands devoted to livestock-raising. Indeed, the MARO's on-site inspection and actual investigation showing that the Lopez lands were being used for livestock-grazing are more convincing in the determination of the nature of those lands.

7. ID.; ID.; LANDS ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR LIVESTOCK ARE EXEMPT FROM COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) COVERAGE, REGARDLESS OF THE CHANGE OF OWNER.— Neither can the DAR in the instant case assail the timing of the incorporation of SNLABC and the latter's operation shortly before the enactment of the CARL. That persons employ tactics to precipitously convert their lands from agricultural use to industrial livestock is not unheard of; they even exploit the creation of a new corporate vehicle to operate the livestock business to substantiate the deceitful conversion in the hopes of evading CARP coverage. Exemption from CARP, however, is directly a function of the land's usage, and not of the identity of the entity operating it. Otherwise stated, lands actually, directly and exclusively used for livestock are exempt from CARP coverage, regardless of the change of owner. In the instant case, whether SNLABC was incorporated

prior to the CARL is immaterial, since the Lopez lands were already being used for livestock-grazing purposes prior to the enactment of the CARL, as found by the MARO. Although the managing entity had been changed, the business interest of raising livestock on the Lopez lands still remained without any indication that it was initiated after the effectivity of the CARL.

8. ID.; ID.; THE PRESENCE OF COCONUT TREES, ALTHOUGH AN INDICIA THAT THE LANDS MAY BE AGRICULTURAL, MUST BE PLACED WITHIN THE CONTEXT OF HOW THEY FIGURE IN THE ACTUAL, DIRECT AND EXCLUSIVE USE OF THE SUBJECT LANDS.— Furthermore, the presence of coconut trees, although an indicia that the lands may be agricultural, must be placed within the context of how they figure in the actual, direct and exclusive use of the subject lands. The DAR failed to demonstrate that the Lopez lands were actually and primarily agricultural lands planted with coconut trees. This is in fact contradicted by the findings of its own official, the MARO. Indeed, the DAR did not adduce any proof to show that the coconut trees on the Lopez lands were used for agricultural business, as required by the Court in *DAR v. Uy*, wherein we ruled thus: It is not uncommon for an enormous landholding to be intermittently planted with trees, and this would not necessarily detract it from the purpose of livestock farming and be immediately considered as an agricultural land. It would be surprising if there were no trees on the land. Also, petitioner did not adduce any proof to show that the coconut trees were planted by respondent and used for agricultural business or were already existing when the land was purchased in 1979. In the present case, the area planted with coconut trees bears an insignificant value to the area used for the cattle and other livestock-raising, including the infrastructure needed for the business. There can be no presumption, other than that the "coconut area" is indeed used for shade and to augment the supply of fodder during the warm months; any other use would be only be incidental to livestock farming. The substantial quantity of livestock heads could only mean that respondent is engaged in farming for this purpose. The single conclusion

gathered here is that the land is entirely devoted to livestock farming and exempted from the CARP.

9. ID.; ID.; THE FINDINGS OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) AND THE COURT OF APPEALS THAT THE "LOPEZ LANDS" WERE ACTUALLY, DIRECTLY AND EXCLUSIVELY BEING USED FOR THE LIVESTOCK BUSINESS, AND ARE EXEMPT FROM CARP COVERAGE, AFFIRMED.— On the assumption that five thousand five hundred forty-eight (5,548) coconut trees were existing on the Lopez land (TCT No. T-12637), the DAR did not refute the findings of the MARO that these coconut trees were merely incidental. Given the number of livestock heads of SNLABC, it is not surprising that the areas planted with coconut trees on the Lopez lands where forage grass grew were being used as grazing areas for the livestock. It was never sufficiently adduced that SNLABC was primarily engaged in agricultural business on the Lopez lands, specifically, coconut-harvesting. Indeed, the substantial quantity of SNLABC's livestock amounting to a little over one hundred forty (140) livestock heads, if measured against the combined 110.5455 hectares of land and applying the DAR-formulated ratio, leads to no other conclusion than that the Lopez lands were exclusively devoted to livestock farming. In any case, the inconsistencies appearing in the documentation presented (albeit sufficiently explained) pale in comparison to the positive assertion made by the MARO in its on-site, actual investigation - that the Lopez lands were being used actually, directly and exclusively for its livestock-raising business. The Court affirms the findings of the DAR Regional Director and the Court of Appeals that the Lopez lands were actually, directly and exclusively being used for SNLABC's livestock business and, thus, are exempt from CARP coverage.

10. ID.; ID.; LANDS THAT WERE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR AGRICULTURAL ACTIVITIES ARE SUBJECT TO THE CARP; FINDINGS THAT THE "LIMOT LANDS" ARE BEING USED FOR AGRICULTURAL PURPOSES, NOT FOR ITS LIVESTOCK BUSINESS, AFFIRMED.— In contrast, the Limot lands were found to be agricultural lands devoted to coconut trees and rubber and are

thus not subject to exemption from CARP coverage. In the Report dated 06 April 1994, the team that conducted the inspection found that the entire Limot lands were devoted to coconuts (41.5706 hectares) and rubber (8.000 hectares) and recommended the denial of the application for exemption. Verily, the Limot lands were actually, directly and exclusively used for agricultural activities, a fact that necessarily makes them subject to the CARP. These findings of the inspection team were given credence by the DAR Regional Director who denied the application, and were even subsequently affirmed by the DAR Secretary and the Court of Appeals. x x x [T]he MARO itself, in the Investigation Report cited by no less than SNLABC, found that the livestock were only moved to the Limot lands sporadically and were not permanently designated there. The DAR Secretary even described SNLABC's use of the area as a "seasonal extension of the applicant's 'grazing lands' during the summer." Therefore, the Limot lands cannot be claimed to have been actually, directly and exclusively used for SNLABC's livestock business, especially since these were only intermittently and secondarily used as grazing areas. The said lands are more suitable — and are in fact actually, directly and exclusively being used — for agricultural purposes. x x x The confluence of these factual circumstances leads to the logical conclusion that the Limot lands were not being used for livestock grazing and, thus, do not qualify for exemption from CARP coverage. SNLABC's belated filing of the application for exemption of the Limot lands was a ruse to increase its retention of its landholdings and an attempt to "save" these from compulsory acquisition.

APPEARANCES OF COUNSEL

Europa Dacanay Cubelo Europa Flores & Caharian Law Offices and *Jacinto Baydo Magtanong & Uy Law Offices* for Salvador Lopez Agri-Business Corp.

Delfin B. Samson for Department of Agrarian Reform.

D E C I S I O N

SERENO, *J.*:

Before us are two Rule 45 Petitions[1] filed separately by the Department of Agrarian Reform (DAR), through the Office of the Solicitor General, and by the Salvador N. Lopez Agri-Business Corp. (SNLABC). Each Petition partially assails the Court of Appeals Decision dated 30 June 2006[2] with respect to the application for exemption of four parcels of land — located in Mati, Davao Oriental and owned by SNLABC — from Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL).

There is little dispute as to the facts of the case, as succinctly discussed by the Court of Appeals and adopted herein by the Court, to wit:

Subject of this petition are four (4) parcels of land with an aggregate area of 160.1161 hectares registered in the name of Salvador N. Lopez Agri-Business Corporation. Said parcels of land are hereinafter described as follows:

Title No.	Area	Location
TCT No. T-12635 (Lot 1454-A & 1296)	49.5706 has.	Bo. Limot, Mati, Davao Oriental
TCT No. T-12637 (Lot 1298)	42.6822 has	Bo. Don Enrique Lopez, Mati, Dvo. Or.
TCT No. T-12639 (Lot 1293-B)	67.8633 has.	Bo. Don Enrique Lopez, Mati, Dvo. Or.

On August 2, 1991, Municipal Agrarian Reform Officer (MARO) Socorro C. Salga issued a Notice of Coverage to petitioner with regards (sic) to the aforementioned landholdings which were

[1] Department of Agrarian Reform's Petition for Review on *Certiorari* dated 14 August 2007, *rollo* (G.R. No. 178895), pp. 9-80; Salvador N. Lopez Agri-Business Corporation's Petition for Review on *Certiorari* dated 04 September 2007, *rollo* (G.R. No. 179071), pp. 10-72.

[2] *Rollo* (G.R. No. 178895), pp. 44-56; *rollo* (G.R. No. 179071), pp. 31-43.

subsequently placed under Compulsory Acquisition pursuant to R.A. 6657 (Comprehensive Agrarian Reform Law).

On December 10, 1992, petitioner filed with the Provincial Agrarian Reform Office (PARO), Davao Oriental, an Application for Exemption of the lots covered by TCT No. T-12637 and T-12639 from CARP coverage. It alleged that pursuant to the case of *Luz Farms v. DAR Secretary* said parcels of land are exempted from coverage as the said parcels of land with a total area of 110.5455 hectares are used for grazing and habitat of petitioner's 105 heads of cattle, 5 carabaos, 11 horses, 9 heads of goats and 18 heads of swine, prior to the effectivity of the Comprehensive Agrarian Reform Law (CARL).

On December 13, 1992 and March 1, 1993, the MARO conducted an onsite investigation on the two parcels of land confirming the presence of the livestock as enumerated. The Investigation Report dated March 9, 1993 stated:

> That there are at least 2[5] to 30 heads of cows that farrow every year and if the trend of farrowing persist (sic), then the cattle shall become overcrowded and will result to scarcity of grasses for the cattle to graze;
>
> That during the week cycle, the herds are being moved to the different adjacent lots owned by the corporation. It even reached Lot 1454-A and Lot 1296. Thereafter, the herds are returned to their respective night chute corrals which are constructed under Lot 1293-B and Lot 1298.
>
> x x x x x x x x x
>
> That the age of coconut trees planted in the area are already 40 to 50 years and have been affected by the recent drought that hit the locality.
>
> That the presence of livestocks (sic) have already existed in the area prior to the Supreme Court decision on *LUZ FARMS vs. Secretary of Agrarian Reform*. We were surprised however, why the management of the corporation did not apply for Commercial Farm Deferment (CFD) before, when the two years reglamentary (sic) period which the landowner was given the chance to file their application pursuant to R.A. 6657, implementing Administrative Order No. 16, Series of 1989;
>
> However, with regards to what venture comes (sic) first, coconut or livestocks (sic), majority of the farmworkers including

> the overseer affirmed that the coconut trees and livestocks (sic) were (sic) simultaneously and all of these were inherited by his (applicant) parent. In addition, the financial statement showed 80% of its annual income is derived from the livestocks (sic) and only 20% from the coconut industry.
>
> Cognitive thereto, we are favorably recommending for the exemption from the coverage of CARP based on LUZ FARMS as enunciated by the Supreme Court the herein Lot No. 1293-B Psd-65835 under TCT No. T-12639 except Lot No. 1298, Cad. 286 of TCT No. T-12637 which is already covered under the Compulsory Acquisition (CA) Scheme and had already been valued by the Land Valuation Office, Land Bank of the Philippines.

On June 24, 1993, TCT No. T-12635 covering Lots 1454-A & 1296 was cancelled and a new one issued in the name of the Republic of the Philippines under RP T-16356. On February 7, 1994, petitioner through its President, Salvador N. Lopez, Jr., executed a letter-affidavit addressed to the respondent-Secretary requesting for the exclusion from CARP coverage of Lots 1454-A and 1296 on the ground that they needed the additional area for its livestock business. On March 28, 1995, petitioner filed before the DAR Regional Director of Davao City an application for the exemption from CARP coverage of Lots 1454-A and 1296 stating that it has been operating grazing lands even prior to June 15, 1988 and that the said two (2) lots form an integral part of its grazing land.

The DAR Regional Director, after inspecting the properties, issued an Order dated March 5, 1997 denying the application for exemption of Lots 1454-A and 1296 on the ground that it was not clearly shown that the same were actually, directly and exclusively used for livestock raising since in its application, petitioner itself admitted that it needs the lots for additional grazing area. The application for exemption, however of the other two (2) parcels of land was approved.

On its partial motion for reconsideration, petitioner argued that Lots 1454-A & 1296 were taken beyond the operation of the CARP pursuant to its reclassification to a Pollutive Industrial District (Heavy Industry) per Resolution No. 39 of the Sangguniang Bayan of Mati, Davao Oriental, enacted on April 7, 1992. The DAR Regional Director denied the Motion through an Order dated September 4, 1997, ratiocinating that the reclassification does not affect agricultural lands already issued a Notice of Coverage as provided in Memorandum

Circular No. 54-93: Prescribing the Guidelines Governing Section 20 of R.A. 7160.

Undaunted, petitioner appealed the Regional Director's Orders to respondent DAR. On June 10, 1998, the latter issued its assailed Order affirming the Regional Director's ruling on Lots 1454-A & 1296 and further declared Lots 1298 and 1293-B as covered by the CARP. Respondent ruled in this wise considering the documentary evidence presented by petitioner such as the Business Permit to engage in livestock, the certification of ownership of large cattle and the Corporate Income Tax Returns, which were issued during the effectivity of the Agrarian Reform Law thereby debunking petitioner's claim that it has been engaged in livestock farming since the 1960s. Respondent further ruled that the incorporation by the Lopez family on February 12, 1988 or four (4) months before the effectivity of R.A. 6657 was an attempt to evade the noble purposes of the said law.

On October 17, 2002, petitioner's Motion for Reconsideration was denied by respondent prompting the former to file the instant petition.[3]

In the assailed Decision dated 30 June 2006,[4] the Court of Appeals partially granted the SNLABC Petition and excluded the two (2) parcels of land (Transfer Certificate of Title [TCT] Nos. T-12637 and T-12639) located in Barrio Don Enrique Lopez (the "Lopez lands") from coverage of the CARL. However, it upheld the Decisions of the Regional Director[5] and the DAR[6] Secretary denying the application for exemption with respect to Lots 1454-A and 1296 (previously under TCT No. T-12635) in Barrio Limot (the "Limot lands"). These lots were already covered by a new title under the name of the Republic of the Philippines (RP T-16356).

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[3] Court of Appeals Decision dated 30 June 2006, pp. 2-6; *rollo* (G.R. No. 178895), pp. 45-49; *Rollo* (G.R. No. 179071), pp. 32-36.

[4] *Supra*. Note 2.

[5] DAR Regional Director's Order dated 05 March 1997. (Annex "C" of DAR's Petition; *rollo* [G.R. No. 178895], pp. 59-62; and Annex "F" of SNLABC's Petition); *rollo* [G.R. No. 179071], pp. 69-72.)

[6] DAR Secretary's Order dated 10 June 1998 (Annex "C" of DAR's Petition; *rollo* [G.R. No. 178895], pp. 63-80.)

The DAR and SNLABC separately sought a partial reconsideration of the assailed Decision of the Court of Appeals, but their motions for reconsideration were subsequently denied in the Court of Appeals Resolution dated 08 June 2007.[7]

The DAR and SNLABC elevated the matter to this Court by filing separate Rule 45 Petitions (docketed as G.R. Nos. 178895[8] and 179071,[9] respectively), which were subsequently ordered consolidated by the Court.

The main issue for resolution by the Court is whether the Lopez and Limot lands of SNLABC can be considered grazing lands for its livestock business and are thus exempted from the coverage of the CARL under the Court's ruling in *Luz Farms v. DAR*.[10] The DAR questions the disposition of the Court of Appeals, insofar as the latter allowed the exemption of the Lopez lands, while SNLABC assails the inclusion of the Limot lands within the coverage of the CARL.

The Court finds no reversible error in the Decision of the Court of Appeals and dismisses the Petitions of DAR and SNLABC.

Preliminarily, in a petition for review on *certiorari* filed under Rule 45, the issues that can be raised are, as a general rule, limited to questions of law.[11] However, as pointed out by both

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[7] Court of Appeals Resolution 08 June 2007; *rollo* (G.R. No. 178895), pp. 57-58, and *rollo* (G.R. No. 179071), pp. 45-46.

[8] DAR's Petition for Review on *Certiorari* dated 14 August 2007; *rollo* (G.R. No. 178895), pp. 9-80.

[9] SNLABC's Petition for Review on *Certiorari* dated 04 September 2007; *rollo* (G.R. No. 179071), pp. 10-72.

[10] The Court ruled that lands devoted to livestock and poultry-raising are not included in the definition of agricultural land; and declared as unconstitutional certain provisions of the CARL insofar as they included livestock farms in the coverage of agrarian reform. (*Luz Farms v. DAR*, G.R. No. 86889, 04 December 1990, 192 SCRA 51; *DAR v. Sutton*, G.R. No. 162070, 19 October 2005, 473 SCRA 392; *DAR v. Berenguer*, G.R. No. 154094, 09 March 2010).

[11] Rules of Court, Rule 45, Section 1; *New Rural Bank of Guimba (N.E.), Inc. v. Abad*, G.R. No. 161818, 20 August 2008, 562 SCRA 503.

the DAR and SNLABC, there are several recognized exceptions wherein the Court has found it appropriate to re-examine the evidence presented.[12] In this case, the factual findings of the DAR Regional Director, the DAR Secretary and the CA are contrary to one another with respect to the following issue: whether the Lopez lands were actually, directly and exclusively used for SNLABC's livestock business; and whether there was intent to evade coverage from the Comprehensive Agrarian Reform Program (CARP) based on the documentary evidence. On the other hand, SNLABC argues that these authorities misapprehended and overlooked certain relevant and undisputed facts as regards the inclusion of the Limot lands under the CARL. These circumstances fall within the recognized exceptions and, thus, the Court is persuaded to review the facts and evidence on record in the disposition of these present Petitions.

The Lopez lands of SNLABC are actually and directly being used for livestock and are thus exempted from the coverage of the CARL.

Briefly stated, the DAR questions the object or autoptic evidence relied upon by the DAR Regional Director in concluding that the Lopez lands were actually, directly and exclusively being used for SNLABC's livestock business prior to the enactment of the CARL.

[12] "The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) **the judgment is based on a misapprehension of facts**; (5) the **findings of fact are conflicting**; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the **findings of the CA are contrary to those of the trial court**; (9) **the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion**; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties." (Emphasis supplied; *Malayan Insurance Co., v. Jardine Davies Transport Services, Inc.*, G.R. No. 181300, 18 September 2009, 600 SCRA 706, citing *International Container Services,*

In *Luz Farms v. Secretary of the Department of Agrarian Reform*,[13] the Court declared unconstitutional the CARL provisions[14] that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that it was never the intention of the framers of the Constitution to include the livestock and poultry industry in the coverage of the constitutionally mandated agrarian reform program of the government.[15] Thus, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus exempt from agrarian reform.[16]

Under the rules then prevailing, it was the Municipal Agrarian Reform Officer (MARO) who was primarily responsible for investigating the legal status, type and areas of the land sought to be excluded;[17] and for ascertaining whether the area subject of the application for exemption had been devoted to livestock-raising as of 15 June 1988.[18] The MARO's authority to investigate has subsequently been replicated in the current DAR guidelines regarding lands that are actually, directly and exclusively used for livestock raising.[19] As the primary official in charge of investigating the land sought to be exempted as livestock land, the MARO's findings on the use and nature of the land, if supported by substantial evidence on record, are to be accorded greater weight, if not finality.

Inc. v. FGU Insurance Corporation, G.R. No. 161539, 27 June 2008, 556 SCRA 194, 199)

[13] *Luz Farms v. Secretary of the Department of Agrarian Reform*, G.R. No. 86889, 04 December 1990, 192 SCRA 51.

[14] CARL, Sections 3(b), 11, 13 and 32.

[15] *Luz Farms v. Secretary of the Department of Agrarian Reform*, *supra*.

[16] *DAR v. Sutton*, G.R. No. 162070, 19 October 2005, 473 SCRA 392.

[17] DAR Administrative Order No. 9-1993, Rule IV (A) (2).

[18] DAR Administrative Order No. 9-1993, Rule IV (A) (3).

[19] "The Municipal Agrarian Reform Officer (MARO), together with a representative of the DAR Provincial Office (DARPO), shall conduct an inventory and ocular inspection of all agricultural lands with livestock raising activities." (DAR Administrative Order No. 07-08 dated 03 September 2008)

Verily, factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.[20] The Court generally accords great respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction.[21]

In the instant case, the MARO in its ocular inspection[22] found on the Lopez lands several heads of cattle, carabaos, horses, goats and pigs, some of which were covered by several certificates of ownership. There were likewise structures on the Lopez lands used for its livestock business, structures consisting of two chutes where the livestock were kept during nighttime. The existence of the cattle prior to the enactment of the CARL was positively affirmed by the farm workers and the overseer who were interviewed by the MARO. Considering these factual findings and the fact that the lands were in fact being used for SNLABC's livestock business even prior to 15 June 1988, the DAR Regional Director ordered the exemption of the Lopez lands from CARP coverage. The Court gives great probative value to the actual, on-site investigation made by the MARO as affirmed by the DAR Regional Director. The Court finds that the Lopez lands were in fact actually, directly and exclusively being used as industrial lands for livestock-raising.

Simply because the on-site investigation was belatedly conducted three or four years after the effectivity of the CARL does not perforce make it unworthy of belief or unfit to be offered as substantial evidence in this case. Contrary to DAR's claims, the lack of information as regards the initial breeders and the specific date when the cattle were first introduced in

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[20] *Taguinod v. Court of Appeals*, G.R. No. 154654, 14 September 2007, 533 SCRA 403.

[21] *A.Z. Arnaiz Realty, Inc. v. Office of the President,* G.R. No. 170623, 09 July 2010.

[22] Investigation Report dated 09 March 1993. (Annex "E" of SNLABC's Petition for Review on *Certiorari*; *rollo* [G.R. No. 179071], pp. 67-68)

the MARO's Report does not conclusively demonstrate that there was no livestock-raising on the Lopez lands prior to the CARL. Although information as to these facts are significant, their non-appearance in the reports does not leave the MARO without any other means to ascertain the duration of livestock-raising on the Lopez lands, such as interviews with farm workers, the presence of livestock infrastructure, and evidence of sales of cattle – all of which should have formed part of the MARO's Investigation Report.

Hence, the Court looks with favor on the expertise of the MARO in determining whether livestock-raising on the Lopez lands has only been recently conducted or has been a going concern for several years already. Absent any clear showing of grave abuse of discretion or bias, the findings of the MARO — as affirmed by the DAR Regional Director — are to be accorded great probative value, owing to the presumption of regularity in the performance of his official duties.[23]

The DAR, however, insisted in its Petition[24] on giving greater weight to the inconsistencies appearing in the documentary evidence presented, and noted by the DAR Secretary, in order to defeat SNLABC's claim of exemption over the Lopez lands. The Court is not so persuaded.

In the Petition, the DAR argued that the tax declarations covering the Lopez lands characterized them as agricultural lands and, thus, detracted from the claim that they were used for livestock purposes. The Court has since held that "there is no law or jurisprudence that holds that the land classification embodied in the tax declarations is conclusive and final nor would proscribe any further inquiry"; hence, "tax declarations are clearly not the sole basis of the classification of a land."[25] Applying the foregoing principles, the tax declarations of the

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[23] Rules of Court, Rule 131, Sec. 3(m).

[24] DAR's Petition for Review on *Certiorari* dated 04 September 2007, pp. 26-29 (*Rollo* [G.R. No. 178895], pp. 34-37).

[25] *Republic v. Court of Appeals*, G.R. No. 139592, 05 October 2000, 342 SCRA 189.

Lopez lands as agricultural lands are not conclusive or final, so as to prevent their exclusion from CARP coverage as lands devoted to livestock-raising. Indeed, the MARO's on-site inspection and actual investigation showing that the Lopez lands were being used for livestock-grazing are more convincing in the determination of the nature of those lands.

Neither can the DAR in the instant case assail the timing of the incorporation of SNLABC and the latter's operation shortly before the enactment of the CARL. That persons employ tactics to precipitously convert their lands from agricultural use to industrial livestock is not unheard of; they even exploit the creation of a new corporate vehicle to operate the livestock business to substantiate the deceitful conversion in the hopes of evading CARP coverage. Exemption from CARP, however, is directly a function of the land's usage, and not of the identity of the entity operating it. Otherwise stated, lands actually, directly and exclusively used for livestock are exempt from CARP coverage, regardless of the change of owner.[26] In the instant case, whether SNLABC was incorporated prior to the CARL is immaterial, since the Lopez lands were already being used for livestock-grazing purposes prior to the enactment of the CARL, as found by the MARO. Although the managing entity

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[26] "Lands devoted to raising of livestock, poultry and swine have been classified as industrial, not agricultural, lands and thus exempt from agrarian reform. Petitioner DAR argues that, in issuing the impugned A.O., it was seeking to address the reports it has received that some unscrupulous landowners have been converting their agricultural lands to livestock farms to avoid their coverage by the agrarian reform. Again, we find neither merit nor logic in this contention. The undesirable scenario which petitioner seeks to prevent with the issuance of the A.O. clearly does not apply in this case. Respondents' family acquired their landholdings as early as 1948. They have long been in the business of breeding cattle in Masbate which is popularly known as the cattle-breeding capital of the Philippines. Petitioner DAR does not dispute this fact. **Indeed, there is no evidence on record that respondents have just recently engaged in or converted to the business of breeding cattle after the enactment of the CARL that may lead one to suspect that respondents intended to evade its coverage. It must be stressed that what the CARL prohibits is the conversion of agricultural lands for non-agricultural purposes after the effectivity of the CARL. There has been no change of business interest in the case of respondents**." (*DAR v. Sutton*, *supra* note 10; emphasis supplied.)

had been changed, the business interest of raising livestock on the Lopez lands still remained without any indication that it was initiated after the effectivity of the CARL.

As stated by SNLABC, the Lopez lands were the legacy of Don Salvador Lopez, Sr. The ownership of these lands was passed from Don Salvador Lopez, Sr., to Salvador N. Lopez, Jr., and subsequently to the latter's children before being registered under the name of SNLABC. Significantly, SNLABC was incorporated by the same members of the Lopez family, which had previously owned the lands and managed the livestock business.[27] In all these past years, despite the change in ownership, the Lopez lands have been used for purposes of grazing and pasturing cattle, horses, carabaos and goats. Simply put, SNLABC was chosen as the entity to take over the reins of the livestock business of the Lopez family. Absent any other compelling evidence, the inopportune timing of the incorporation of the SNLABC prior to the enactment of the CARL was not by itself a categorical manifestation of an intent to avoid CARP coverage.

Furthermore, the presence of coconut trees, although an indicia that the lands may be agricultural, must be placed within the context of how they figure in the actual, direct and exclusive use of the subject lands. The DAR failed to demonstrate that the Lopez lands were actually and primarily agricultural lands planted with coconut trees. This is in fact contradicted by the findings of its own official, the MARO. Indeed, the DAR did not adduce any proof to show that the coconut trees on the Lopez lands were used for agricultural business, as required by the Court in *DAR v. Uy*,[28] wherein we ruled thus:

> It is not uncommon for an enormous landholding to be intermittently planted with trees, and this would not necessarily detract it from the purpose of livestock farming and be immediately considered as an agricultural land. It would be surprising if there were no trees on the land. Also, petitioner did not adduce any proof to show that

[27] Memorandum dated 03 June 2009, pp. 5-6; *rollo* (G.R. No. 178895), pp. 155-156.

[28] G.R. No. 169277, 09 February 2007, 515 SCRA 376.

the coconut trees were planted by respondent and used for agricultural business or were already existing when the land was purchased in 1979. In the present case, the area planted with coconut trees bears an insignificant value to the area used for the cattle and other livestock-raising, including the infrastructure needed for the business. There can be no presumption, other than that the "coconut area" is indeed used for shade and to augment the supply of fodder during the warm months; any other use would be only be incidental to livestock farming. The substantial quantity of livestock heads could only mean that respondent is engaged in farming for this purpose. The single conclusion gathered here is that the land is entirely devoted to livestock farming and exempted from the CARP.

On the assumption that five thousand five hundred forty-eight (5,548) coconut trees were existing on the Lopez land (TCT No. T-12637), the DAR did not refute the findings of the MARO that these coconut trees were merely incidental. Given the number of livestock heads of SNLABC, it is not surprising that the areas planted with coconut trees on the Lopez lands where forage grass grew were being used as grazing areas for the livestock. It was never sufficiently adduced that SNLABC was primarily engaged in agricultural business on the Lopez lands, specifically, coconut-harvesting. Indeed, the substantial quantity of SNLABC's livestock amounting to a little over one hundred forty (140) livestock heads, if measured against the combined 110.5455 hectares of land and applying the DAR-formulated ratio, leads to no other conclusion than that the Lopez lands were exclusively devoted to livestock farming.[29]

In any case, the inconsistencies appearing in the documentation presented (albeit sufficiently explained) pale in comparison to the positive assertion made by the MARO in its on-site, actual investigation — that the Lopez lands were being used actually, directly and exclusively for its livestock-raising business. The

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[29] Under DAR Administrative Order No. 09-1993, for land to be excluded from the coverage of the CARL because it is devoted to livestock, there must be established a proportion of a minimum ratio of one head of cattle to one hectare of land, and one head of cattle to 1.7815 hectares of infrastructure as of 15 June 1998, the date of the effectivity of the CARL. (*DAR v. Berenguer*, G.R. No. 154904, 09 March 2010)

Court affirms the findings of the DAR Regional Director and the Court of Appeals that the Lopez lands were actually, directly and exclusively being used for SNLABC's livestock business and, thus, are exempt from CARP coverage.

The Limot lands of SNLABC are not actually and directly being used for livestock and should thus be covered by the CARL.

In contrast, the Limot lands were found to be agricultural lands devoted to coconut trees and rubber and are thus not subject to exemption from CARP coverage.

In the Report dated 06 April 1994, the team that conducted the inspection found that the entire Limot lands were devoted to coconuts (41.5706 hectares) and rubber (8.000 hectares) and recommended the denial of the application for exemption.[30] Verily, the Limot lands were actually, directly and exclusively used for agricultural activities, a fact that necessarily makes them subject to the CARP. These findings of the inspection team were given credence by the DAR Regional Director who denied the application, and were even subsequently affirmed by the DAR Secretary and the Court of Appeals.

SNLABC argues that the Court of Appeals misapprehended the factual circumstances and overlooked certain relevant facts, which deserve a second look. SNLABC's arguments fail to convince the Court to reverse the rulings of the Court of Appeals.

In the 07 February 1994 Letter-Affidavit addressed to the DAR Secretary, SNLABC requested the exemption of the Limot lands on the ground that the corporation needed the additional area for its livestock business. As pointed out by the DAR Regional Director, this Letter-Affidavit is a clear indication that the Limot lands were not directly, actually and exclusively used for livestock raising. SNLABC casually dismisses the clear import of their Letter-Affidavit as a "poor choice of words." Unfortunately, the semantics of the declarations of SNLABC

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[30] Order dated 05 March 1997 at 3; *rollo* (G.R. No. 178895), p. 61; *rollo* (G.R. No. 179071), p. 71.

in its application for exemption are corroborated by the other attendant factual circumstances and indicate its treatment of the subject properties as non-livestock.

Verily, the MARO itself, in the Investigation Report cited by no less than SNLABC, found that the livestock were only moved to the Limot lands sporadically and were not permanently designated there. The DAR Secretary even described SNLABC's use of the area as a "seasonal extension of the applicant's 'grazing lands' during the summer." Therefore, the Limot lands cannot be claimed to have been actually, directly and exclusively used for SNLABC's livestock business, especially since these were only intermittently and secondarily used as grazing areas. The said lands are more suitable — and are in fact actually, directly and exclusively being used — for agricultural purposes.

SNLABC's treatment of the land for non-livestock purposes is highlighted by its undue delay in filing the application for exemption of the Limot lands. SNLABC filed the application only on 07 February 1994, or three years after the Notice of Coverage was issued; two years after it filed the first application for the Lopez lands; and a year after the titles to the Limot lands were transferred to the Republic. The SNLABC slept on its rights and delayed asking for exemption of the Limot lands. The lands were undoubtedly being used for agricultural purposes, not for its livestock business; thus, these lands are subject to CARP coverage. Had SNLABC indeed utilized the Limot lands in conjunction with the livestock business it was conducting on the adjacent Lopez lands, there was nothing that would have prevented it from simultaneously applying for a total exemption of all the lands necessary for its livestock.

The defense of SNLABC that it wanted to "save" first the Lopez lands where the corrals and chutes were located, before acting to save the other properties does not help its cause. The piecemeal application for exemption of SNLABC speaks of the value or importance of the Lopez lands, compared with the Limot lands, with respect to its livestock business. If the Lopez and the Limot lands were equally significant to its operations and were actually being used for its livestock business, it would

have been more reasonable for it to apply for exemption for the entire lands. Indeed, the belated filing of the application for exemption was a mere afterthought on the part of SNLABC, which wanted to increase the area of its landholdings to be exempted from CARP on the ground that these were being used for its livestock business.

In any case, SNLABC admits that the title to the Limot lands has already been transferred to the Republic and subsequently awarded to SNLABC's farm workers.[31] This fact only demonstrates that the land is indeed being used for agricultural activities and not for livestock grazing.

The confluence of these factual circumstances leads to the logical conclusion that the Limot lands were not being used for livestock grazing and, thus, do not qualify for exemption from CARP coverage. SNLABC's belated filing of the application for exemption of the Limot lands was a ruse to increase its retention of its landholdings and an attempt to "save" these from compulsory acquisition.

WHEREFORE, the Petitions of the Department of Agrarian Reform and the Salvador N. Lopez Agri-Business Corp. are *DISMISSED,* and the rulings of the Court of Appeals and the DAR Regional Director are hereby *AFFIRMED.*

SO ORDERED.

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

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[31] SNLABC's Petition for Review on *Certiorari*, p. 6, para. 12; *rollo* (G.R. No. 179071), p. 15, and SNLABC's Memorandum dated 03 June 2009, p. 8; *rollo* (G.R. No. 178895), p. 158.

SECOND DIVISION

[G.R. No. 179446. January 10, 2011]

LOADMASTERS CUSTOMS SERVICES, INC., *petitioner, vs.* **GLODEL BROKERAGE CORPORATION and R&B INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; MARINE INSURANCE; SUBROGATION; THE INSURANCE COMPANY IS SUBROGATED TO THE RIGHTS OF THE INSURED TO THE EXTENT OF THE AMOUNT IT PAID THE CONSIGNEE; SUBROGEE HAS THE RIGHT OF REIMBURSEMENT.— Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. Doubtless, R&B Insurance is subrogated to the rights of the insured to the extent of the amount it paid the consignee under the marine insurance, as provided under Article 2207 of the Civil Code[.] x x x As subrogee of the rights and interest of the consignee, R&B Insurance has the right to seek reimbursement from either Loadmasters or Glodel or both for breach of contract and/or tort.

2. ID.; COMMON CARRIERS; DEFINED AND DISTINGUISHED FROM A PRIVATE CARRIER; CASE AT BAR.— Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. Based on the aforecited definition, Loadmasters is a common carrier because it is engaged in the business of transporting goods by land, through its trucking service. It is a *common carrier* as distinguished from a *private carrier* wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public. The distinction is significant in the sense that "the rights and obligations of the parties to a contract of private carriage are governed principally by their stipulations,

not by the law on common carriers." In the present case, there is no indication that the undertaking in the contract between Loadmasters and Glodel was private in character. There is no showing that Loadmasters solely and exclusively rendered services to Glodel. In fact, Loadmasters *admitted* that it is a common carrier. In the same vein, Glodel is also considered a common carrier within the context of Article 1732. In its Memorandum, it states that it "is a corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of customs brokering." It cannot be considered otherwise because as held by this Court in *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, a customs broker is also regarded as a common carrier, the transportation of goods being an integral part of its business.

3. ID.; ID.; COMMON CARRIERS ARE REQUIRED TO OBSERVE EXTRAORDINARY DILIGENCE IN THE VIGILANCE OVER THE GOODS; EXPLAINED.— Loadmasters and Glodel, being both common carriers, are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance over the goods transported by them according to all the circumstances of such case, as required by Article 1733 of the Civil Code. When the Court speaks of extraordinary diligence, it is that extreme measure of care and caution which persons of unusual prudence and circumspection observe for securing and preserving their own property or rights. This exacting standard imposed on common carriers in a contract of carriage of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for shipment. Thus, in case of loss of the goods, the common carrier is presumed to have been at fault or to have acted negligently. This presumption of fault or negligence, however, may be rebutted by proof that the common carrier has observed extraordinary diligence over the goods. With respect to the time frame of this extraordinary responsibility, the Civil Code provides that the exercise of extraordinary diligence lasts from the time the goods are unconditionally placed in the possession of, and received by, the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.

4. ID.; ID.; A COMMON CARRIER WHO DID NOT HAVE DIRECT CONTRACTUAL RELATION WITH THE CONSIGNEE MAY STILL BE HELD LIABLE FOR TORT.— Loadmasters' claim that it was never privy to the contract entered into by Glodel with the consignee Columbia or R&B Insurance as subrogee, is not a valid defense. It may not have a direct contractual relation with Columbia, but it is liable for tort under the provisions of Article 2176 of the Civil Code[.] x x x It is not disputed that the subject cargo was lost while in the custody of Loadmasters whose employees (truck driver and helper) were instrumental in the hijacking or robbery of the shipment. As employer, Loadmasters should be made answerable for the damages caused by its employees who acted within the scope of their assigned task of delivering the goods safely to the warehouse. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection *(culpa in eligiendo)* or supervision *(culpa in vigilando)* of its employees. To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. In this regard, Loadmasters failed.

5. ID.; ID.; THERE WAS NO CONTRACT OF AGENCY BETWEEN THE TWO COMMON CARRIERS.— [T]he Court clarifies that there exists no principal-agent relationship between Glodel and Loadmasters, as erroneously found by the CA. Article 1868 of the Civil Code provides: "By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." The elements of a contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority. Accordingly, there can be no contract of agency between the parties. Loadmasters never represented Glodel. Neither was it ever authorized to make such representation. It is a settled rule that the basis for agency is representation, that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said

acts have the same legal effect as if they were personally executed by the principal. On the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions, while on the part of the agent, there must be an intention to accept the appointment and act on it. Such mutual intent is not obtaining in this case.

6. ID.; ID.; EACH OF THE TWO COMMON CARRIERS IS LIABLE FOR THE TOTAL DAMAGE PAID BY THE INSURANCE COMPANY.— What then is the extent of the respective liabilities of Loadmasters and Glodel? Each wrongdoer is liable for the total damage suffered by R&B Insurance. Where there are several causes for the resulting damages, a party is not relieved from liability, even partially. It is sufficient that the negligence of a party is an efficient cause without which the damage would not have resulted. It is no defense to one of the concurrent tortfeasors that the damage would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasor.

7. ID.; ID.; A COMMON CARRIER WHO HAS A DEFINITE CAUSE OF ACTION AGAINST ANOTHER COMMON CARRIER MAY NOT PURSUE ITS CLAIM FOR FAILURE TO INTERPOSE A CROSS-CLAIM AGAINST THE LATTER.— Glodel has a definite cause of action against Loadmasters for breach of contract of service as the latter is primarily liable for the loss of the subject cargo. In this case, however, it cannot succeed in seeking judicial sanction against Loadmasters because the records disclose that it did not properly interpose a cross-claim against the latter. Glodel did not even pray that Loadmasters be liable for any and all claims that it may be adjudged liable in favor of R&B Insurance. Under the Rules, a compulsory counterclaim, *or a cross-claim, not set up shall be barred*. Thus, a cross-claim cannot be set up for the first time on appeal. For the consequence, Glodel has no one to blame but itself. The Court cannot come to its aid on equitable grounds. "Equity, which has been aptly described as 'a justice outside legality,' is applied only in the absence of, and never against, statutory law or judicial rules of procedure." The Court cannot be a lawyer and take the cudgels for a party who has been at fault or negligent.

APPEARANCES OF COUNSEL

Federico I. Ples and *Remigio Michael A. Ancheta II* for petitioner.

Bernardita S. Fortuno-Rarela for Glodel Brokerage Corporation.

Conrado R. Mañgahas & Associates for R & B Insurance Corporation.

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 Court assailing the August 24, 2007 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 82822, entitled "*R&B Insurance Corporation v. Glodel Brokerage Corporation and Loadmasters Customs Services, Inc.*," which held petitioner Loadmasters Customs Services, Inc. *(Loadmasters)* liable to respondent Glodel Brokerage Corporation *(Glodel)* in the amount of ₱1,896,789.62 representing the insurance indemnity which R&B Insurance Corporation *(R&B Insurance)* paid to the insured-consignee, Columbia Wire and Cable Corporation *(Columbia).*

THE FACTS:

On August 28, 2001, R&B Insurance issued Marine Policy No. MN-00105/2001 in favor of Columbia to insure the shipment of 132 bundles of electric copper cathodes against All Risks. On August 28, 2001, the cargoes were shipped on board the vessel "Richard Rey" from Isabela, Leyte, to Pier 10, North Harbor, Manila. They arrived on the same date.

Columbia engaged the services of Glodel for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants. Glodel, in turn, engaged the services of Loadmasters for the use of its delivery trucks to

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[1] *Rollo*, pp. 33-48. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justice Vicente Q. Roxas and Associate Justice Ramon R. Garcia, concurring.

transport the cargoes to Columbia's warehouses/plants in Bulacan and Valenzuela City.

The goods were loaded on board twelve (12) trucks owned by Loadmasters, driven by its employed drivers and accompanied by its employed truck helpers. Six (6) truckloads of copper cathodes were to be delivered to Balagtas, Bulacan, while the other six (6) truckloads were destined for Lawang Bato, Valenzuela City. The cargoes in six truckloads for Lawang Bato were duly delivered in Columbia's warehouses there. Of the six (6) trucks en route to Balagtas, Bulacan, however, only five (5) reached the destination. One (1) truck, loaded with 11 bundles or 232 pieces of copper cathodes, failed to deliver its cargo.

Later on, the said truck, an Isuzu with Plate No. NSD-117, was recovered but without the copper cathodes. Because of this incident, Columbia filed with R&B Insurance a claim for insurance indemnity in the amount of ₱1,903,335.39. After the requisite investigation and adjustment, R&B Insurance paid Columbia the amount of ₱1,896,789.62 as insurance indemnity.

R&B Insurance, thereafter, filed a complaint for damages against both Loadmasters and Glodel before the Regional Trial Court, Branch 14, Manila (*RTC*), docketed as Civil Case No. 02-103040. It sought reimbursement of the amount it had paid to Columbia for the loss of the subject cargo. It claimed that it had been subrogated "to the right of the consignee to recover from the party/parties who may be held legally liable for the loss."[2]

On November 19, 2003, the RTC rendered a decision[3] holding Glodel liable for damages for the loss of the subject cargo and dismissing Loadmasters' counterclaim for damages and attorney's fees against R&B Insurance. The dispositive portion of the decision reads:

WHEREFORE, all premises considered, the plaintiff having established by preponderance of evidence its claims against defendant

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[2] Petition for review on *certiorari*, p. 4; *id.* at 26.

[3] *Id.*

Glodel Brokerage Corporation, judgment is hereby rendered ordering the latter:

1. To pay plaintiff R&B Insurance Corporation the sum of ₱1,896,789.62 as actual and compensatory damages, with interest from the date of complaint until fully paid;

2. To pay plaintiff R&B Insurance Corporation the amount equivalent to 10% of the principal amount recovered as and for attorney's fees plus ₱1,500.00 per appearance in Court;

3. To pay plaintiff R&B Insurance Corporation the sum of ₱22,427.18 as litigation expenses.

WHEREAS, the defendant Loadmasters Customs Services, Inc.'s counterclaim for damages and attorney's fees against plaintiff are hereby dismissed.

With costs against defendant Glodel Brokerage Corporation.

SO ORDERED.[4]

Both R&B Insurance and Glodel appealed the RTC decision to the CA.

On August 24, 2007, the CA rendered the assailed decision which reads in part:

Considering that appellee is an agent of appellant Glodel, whatever liability the latter owes to appellant R&B Insurance Corporation as insurance indemnity must likewise be the amount it shall be paid by appellee Loadmasters.

WHEREFORE, the foregoing considered, the appeal is PARTLY GRANTED in that the appellee Loadmasters is likewise held liable to appellant Glodel in the amount of ₱1,896,789.62 representing the insurance indemnity appellant Glodel has been held liable to appellant R&B Insurance Corporation.

Appellant Glodel's appeal to absolve it from any liability is herein DISMISSED.

SO ORDERED.[5]

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[4] *Id.* at 26-27.

[5] Annex A, Petition, *id.* at 47.

Hence, Loadmasters filed the present petition for review on *certiorari* before this Court presenting the following

ISSUES

1. Can Petitioner Loadmasters be held liable to Respondent Glodel in spite of the fact that the latter respondent Glodel did not file a cross-claim against it (Loadmasters)?

2. Under the set of facts established and undisputed in the case, can petitioner Loadmasters be legally considered as an Agent of respondent Glodel?[6]

To totally exculpate itself from responsibility for the lost goods, Loadmasters argues that it cannot be considered an agent of Glodel because it never represented the latter in its dealings with the consignee. At any rate, it further contends that Glodel has no recourse against it for its (Glodel's) failure to file a cross-claim pursuant to Section 2, Rule 9 of the 1997 Rules of Civil Procedure.

Glodel, in its Comment,[7] counters that Loadmasters is liable to it under its cross-claim because the latter was grossly negligent in the transportation of the subject cargo. With respect to Loadmasters' claim that it is already estopped from filing a cross-claim, Glodel insists that it can still do so even for the first time on appeal because there is no rule that provides otherwise. Finally, Glodel argues that its relationship with Loadmasters is that of Charter wherein the transporter (Loadmasters) is only hired for the specific job of delivering the merchandise. Thus, the diligence required in this case is merely ordinary diligence or that of a good father of the family, not the extraordinary diligence required of common carriers.

R&B Insurance, for its part, claims that Glodel is deemed to have interposed a cross-claim against Loadmasters because it was not prevented from presenting evidence to prove its position even without amending its Answer. As to the relationship between

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[6] *Id*. at 28.

[7] *Id*. at 96.

Loadmasters and Glodel, it contends that a contract of agency existed between the two corporations.[8]

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities.[9] Doubtless, R&B Insurance is subrogated to the rights of the insured to the extent of the amount it paid the consignee under the marine insurance, as provided under Article 2207 of the Civil Code, which reads:

> ART. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

As subrogee of the rights and interest of the consignee, R&B Insurance has the right to seek reimbursement from either Loadmasters or Glodel or both for breach of contract and/or tort.

The issue now is who, between Glodel and Loadmasters, is liable to pay R&B Insurance for the amount of the indemnity it paid Columbia.

At the outset, it is well to resolve the issue of whether Loadmasters and Glodel are common carriers to determine their liability for the loss of the subject cargo. Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public.

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[8] *Id.* at 71-74.

[9] *Lorenzo Shipping Corporation v. Chubb and Sons, Inc.,* G.R. No. 147724, June 8, 2004, 431 SCRA 266, 275, citing *Black's Law Dictionary* (6th ed. 1990).

Based on the aforecited definition, Loadmasters is a common carrier because it is engaged in the business of transporting goods by land, through its trucking service. It is a *common carrier* as distinguished from a *private carrier* wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public.[10] The distinction is significant in the sense that "the rights and obligations of the parties to a contract of private carriage are governed principally by their stipulations, not by the law on common carriers."[11]

In the present case, there is no indication that the undertaking in the contract between Loadmasters and Glodel was private in character. There is no showing that Loadmasters solely and exclusively rendered services to Glodel.

In fact, Loadmasters *admitted* that it is a common carrier.[12]

In the same vein, Glodel is also considered a common carrier within the context of Article 1732. In its Memorandum,[13] it states that it "is a corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of customs brokering." It cannot be considered otherwise because as held by this Court in *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*,[14] a customs broker is also regarded as a common carrier, the transportation of goods being an integral part of its business.

Loadmasters and Glodel, being both common carriers, are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance

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[10] *National Steel Corporation v. Court of Appeals*, 347 Phil. 345, 361 (1997).

[11] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, 508 Phil. 656, 663 (2005), citing *National Steel Corporation v. Court of Appeals*, 347 Phil. 345, 362 (1997).

[12] Pre-Trial Order dated September 5, 2002, records, p. 136.

[13] Dated June 19, 2009, *rollo*, p. 178.

[14] 496 Phil. 437, 450 (2005), citing *Calvo v. UCPB General Insurance Co., Inc.*, 429 Phil. 244 (2002).

over the goods transported by them according to all the circumstances of such case, as required by Article 1733 of the Civil Code. When the Court speaks of extraordinary diligence, it is that extreme measure of care and caution which persons of unusual prudence and circumspection observe for securing and preserving their own property or rights.[15] This exacting standard imposed on common carriers in a contract of carriage of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for shipment.[16] Thus, in case of loss of the goods, the common carrier is presumed to have been at fault or to have acted negligently.[17] This presumption of fault or negligence, however, may be rebutted by proof that the common carrier has observed extraordinary diligence over the goods.

With respect to the time frame of this extraordinary responsibility, the Civil Code provides that the exercise of extraordinary diligence lasts from the time the goods are unconditionally placed in the possession of, and received by, the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[18]

Premises considered, the Court is of the view that both Loadmasters and Glodel are jointly and severally liable to R&B Insurance for the loss of the subject cargo. Under Article 2194 of the New Civil Code, "the responsibility of two or more persons who are liable for a quasi-delict is solidary."

Loadmasters' claim that it was never privy to the contract entered into by Glodel with the consignee Columbia or R&B Insurance as subrogee, is not a valid defense. It may not have a direct contractual relation with Columbia, but it is liable for

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[15] *National Trucking and Forwarding Corporation v. Lorenzo Shipping Corporation*, 491 Phil. 151, 156 (2005), citing *Black's Law Dictionary* (5th ed. 1979) 411.

[16] *Id*.

[17] Civil Code, Art. 1735.

[18] Civil Code, Art. 1736.

tort under the provisions of Article 2176 of the Civil Code on quasi-delicts which expressly provide:

> ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Pertinent is the ruling enunciated in the case of *Mindanao Terminal and Brokerage Service, Inc. v. Phoenix Assurance Company of New York/McGee & Co., Inc.*[19] where this Court held that a tort may arise despite the absence of a contractual relationship, to wit:

> We agree with the Court of Appeals that the complaint filed by Phoenix and McGee against Mindanao Terminal, from which the present case has arisen, states a cause of action. The present action is based on **quasi-delict**, arising from the negligent and careless loading and stowing of the cargoes belonging to Del Monte Produce. Even assuming that both Phoenix and McGee have only been subrogated in the rights of Del Monte Produce, who is not a party to the contract of service between Mindanao Terminal and Del Monte, still the insurance carriers may have a cause of action in light of the Court's consistent ruling that the act that breaks the contract **may be also a tort.** In fine, a liability for tort may arise even under a contract, where tort is that which breaches the contract. In the present case, Phoenix and McGee are **not suing for damages for injuries arising from the breach of the contract of service but from the alleged negligent manner** by which Mindanao Terminal handled the cargoes belonging to Del Monte Produce. Despite the absence of contractual relationship between Del Monte Produce and Mindanao Terminal, the allegation of negligence on the part of the defendant should be sufficient to establish a cause of action arising from quasi-delict. [Emphases supplied]

In connection therewith, Article 2180 provides:

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[19] G.R. No. 162467, May 8, 2009, 587 SCRA 429, 434, citing *Air France v. Carrascoso*, 124 Phil.722, 739 (1966); *Singson v. Bank of the Philippine Islands*, 132 Phil. 597, 600 (1968); *Mr. & Mrs. Fabre, Jr. v. Court of Appeals*, 328 Phil. 775, 785 (1996); *PSBA v. Court of Appeals*, G.R. No. 84698, February 4, 1992, 205 SCRA 729, 734.

ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

It is not disputed that the subject cargo was lost while in the custody of Loadmasters whose employees (truck driver and helper) were instrumental in the hijacking or robbery of the shipment. As employer, Loadmasters should be made answerable for the damages caused by its employees who acted within the scope of their assigned task of delivering the goods safely to the warehouse.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection *(culpa in eligiendo)* or supervision *(culpa in vigilando)* of its employees.[20] To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[21] In this regard, Loadmasters failed.

Glodel is also liable because of its failure to exercise extraordinary diligence. It failed to ensure that Loadmasters would fully comply with the undertaking to safely transport the subject cargo to the designated destination. It should have been more prudent in entrusting the goods to Loadmasters by taking precautionary measures, such as providing escorts to accompany the trucks in delivering the cargoes. Glodel should,

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[20] *Tan v. Jam Transit, Inc.*, G.R. No. 183198, November 25, 2009, 605 SCRA 659, 675, citing *Delsan Transport Lines, Inc. v. C & A Construction, Inc.*, 459 Phil. 156 (2003).

[21] *Id.*, citing *Light Rail Transit Authority v. Navidad*, 445 Phil. 31 (2003); *Metro Manila Transit Corp. v. Court of Appeals*, 435 Phil. 129 (2002).

therefore, be held liable with Loadmasters. Its defense of *force majeure* is unavailing.

At this juncture, the Court clarifies that there exists no principal-agent relationship between Glodel and Loadmasters, as erroneously found by the CA. Article 1868 of the Civil Code provides: "By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." The elements of a contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.[22]

Accordingly, there can be no contract of agency between the parties. Loadmasters never represented Glodel. Neither was it ever authorized to make such representation. It is a settled rule that the basis for agency is representation, that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said acts have the same legal effect as if they were personally executed by the principal. On the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions, while on the part of the agent, there must be an intention to accept the appointment and act on it.[23] Such mutual intent is not obtaining in this case.

What then is the extent of the respective liabilities of Loadmasters and Glodel? Each wrongdoer is liable for the total damage suffered by R&B Insurance. Where there are several causes for the resulting damages, a party is not relieved from

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[22] *Eurotech Industrial Technologies, Inc. v. Cuizon,* G.R. No. 167552, April 23, 2007, 521 SCRA 584, 593, citing *Yu Eng Cho v. Pan American World Airways, Inc.,* 385 Phil. 453, 465 (2000).

[23] *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation,* G.R. No. 163553, December 11, 2009, 608 SCRA 107, 130-131, citing *Burdador v. Luz,* 347 Phil. 654, 662 (1997); *Eurotech Industrial Technologies, Inc. v. Cuizon,* G.R. No. 167552, April 23, 2007, 521 SCRA 584, 593; *Victorias Milling Co., Inc. v. Court of Appeals,* 389 Phil. 184, 196 (2000).

liability, even partially. It is sufficient that the negligence of a party is an efficient cause without which the damage would not have resulted. It is no defense to one of the concurrent tortfeasors that the damage would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasor. As stated in the case of *Far Eastern Shipping v. Court of Appeals*,[24]

> x x x. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.
>
> There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and **either of them is responsible for the whole injury.** Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194 of the Civil Code. [Emphasis supplied]

The Court now resolves the issue of whether Glodel can collect from Loadmasters, it having failed to file a cross-claim against the latter.

Undoubtedly, Glodel has a definite cause of action against Loadmasters for breach of contract of service as the latter is primarily liable for the loss of the subject cargo. In this case, however, it cannot succeed in seeking judicial sanction against Loadmasters because the records disclose that it did not properly

[24] 357 Phil. 703, 751-752 (1998).

interpose a cross-claim against the latter. Glodel did not even pray that Loadmasters be liable for any and all claims that it may be adjudged liable in favor of R&B Insurance. Under the Rules, a compulsory counterclaim, *or a cross-claim, not set up shall be barred*.[25] Thus, a cross-claim cannot be set up for the first time on appeal.

For the consequence, Glodel has no one to blame but itself. The Court cannot come to its aid on equitable grounds. "Equity, which has been aptly described as 'a justice outside legality,' is applied only in the absence of, and never against, statutory law or judicial rules of procedure."[26] The Court cannot be a lawyer and take the cudgels for a party who has been at fault or negligent.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The August 24, 2007 Decision of the Court of Appeals is *MODIFIED* to read as follows:

WHEREFORE, judgment is rendered declaring petitioner Loadmasters Customs Services, Inc. and respondent Glodel Brokerage Corporation jointly and severally liable to respondent R&B Insurance Corporation for the insurance indemnity it paid to consignee Columbia Wire & Cable Corporation and ordering both parties to pay, jointly and severally, R&B Insurance Corporation a] the amount of ₱1,896,789.62 representing the insurance indemnity; b] the amount equivalent to ten (10%) percent thereof for attorney's fees; and c] the amount of ₱22,427.18 for litigation expenses.

The cross-claim belatedly prayed for by respondent Glodel Brokerage Corporation against petitioner Loadmasters Customs Services, Inc. is DENIED.

SO ORDERED.

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

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[25] Section 2, Rule 9 of the 1997 Rules of Civil Procedure.

[26] *Causapin v. Court of Appeals*, G.R. No. 107432, July 4, 1994, 233 SCRA 615, 625.

FIRST DIVISION

[G.R. No. 180452. January 10, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NG YIK BUN, KWOK WAI CHENG, CHANG CHAUN SHI, CHUA SHILOU HWAN, KAN SHUN MIN, and RAYMOND S. TAN,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST WAS VALID WHEN THE ACCUSED WERE CAUGHT *IN FLAGRANTE DELICTO*.— In the instant case, contrary to accused-appellants' contention, there was indeed a valid warrantless arrest *in flagrante delicto*. Consider the circumstances immediately prior to and surrounding the arrest of accused-appellants: (1) the police officers received information from an operative about an ongoing shipment of contraband; (2) the police officers, with the operative, proceeded to Villa Vicenta Resort in *Barangay* Bignay II, Sariaya, Quezon; (3) they observed the goings-on at the resort from a distance of around 50 meters; and (4) they spotted the six accused-appellants loading transparent bags containing a white substance into a white L-300 van. x x x [T]he arresting police officers had probable cause to suspect that accused-appellants were loading and transporting contraband, more so when Hwan, upon being accosted, readily mentioned that they were loading *shabu* and pointed to Tan as their leader. Thus, the arrest of accused-appellants—who were caught *in flagrante delicto* of possessing, and in the act of loading into a white L-300 van, *shabu*, a prohibited drug under RA 6425, as amended–is valid.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972 (RA 6425); ILLEGAL POSSESSION OF DRUGS; ELEMENTS, PRESENT.— Moreover, present in the instant case are all the elements of illegal possession of drugs: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. Accused-appellants were positively identified in court as the individuals caught loading and possessing illegal

drugs. They were found to be in possession of prohibited drugs without proof that they were duly authorized by law to possess them. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on the part of accused-appellants.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POLICE OFFICERS' TESTIMONIES GIVEN FULL FAITH AND CREDIT.— As no ill motive can be imputed to the prosecution's witnesses, we uphold the presumption of regularity in the performance of official duties and affirm the trial court's finding that the police officers' testimonies are deserving of full faith and credit. Appellate courts generally will not disturb the trial court's assessment of a witness' credibility unless certain material facts and circumstances have been overlooked or arbitrarily disregarded. We find no reason to deviate from this rule in the instant case.

4. ID.; ID.; ID.; DETERMINATION OF THE TRIAL COURT ACCORDED RESPECT.— [W]e hold that the findings of both the RTC and the CA must be affirmed. The trial court's determination as to the credibility of witnesses and its findings of fact should be accorded great weight and respect more so when affirmed by the appellate court. To reiterate, a look at the records shows no facts of substance and value that have been overlooked, which, if considered, might affect the outcome of the instant appeal. Deference to the trial court's findings must be made as it was in the position to easily detect whether a witness is telling the truth or not.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Gilberto Alfafara for Chua Shilou-Hwan.
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 January 16, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00485 entitled *People of the Philippines v. Ng Yik Bun, Kwok Wai Cheng, Chang Chaun Shi, Chua Shilou Hwan, Kan Shun Min and Raymond S. Tan,* which affirmed the April 1, 2004 Decision in Criminal Case No. Q-01-99437 of the Regional Trial Court (RTC), Branch 103 in Quezon City. The RTC found accused-appellants guilty beyond reasonable doubt of violating Section 16, Article III of Republic Act No. (RA) 6425 or the *Dangerous Drugs Act of 1972*.

The Facts

An Information indicted accused-appellants of the following:

That on or about the 24th day of August 2000, at Barangay Bignay II, Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there knowingly, willfully, unlawfully and feloniously transport, deliver and distribute, without authority of law, on board an L-300 Mitsubishi van, bearing Plate No. UBU 827, and have in their possession, custody, and control, without the corresponding license or prescription, twenty-five (25) heat-sealed transparent plastic bags containing Methamphetamine Hydrochloride (*shabu*), a regulated drug, each containing: 2.954 grams, 2.901 grams, 2.926 grams, 2.820 grams, 2.977 grams, 2.568 grams, 2.870 grams, 2.941 grams, 2.903 grams, 2.991 grams, 2.924 grams, 2.872 grams, 2.958 grams, 2.972 grams, 2.837 grams, 2.908 grams, 2.929 grams, 2.932 grams, 2.899 grams, 2.933 grams, 2.938 grams, 2.943 grams, 2.955 grams, 2.938 grams and 2.918 grams, respectively, with a total weight of 72.707 kilos, and one hundred forty seven (147) self-sealing transparent plastic bags likewise containing Methamphetamine Hydrochloride (*shabu*), also a regulated drug, with a total weight of 291.350 kilos, or with a grand total weight of 364.057 kilos.

That the above acts were committed by a syndicate with the use of two (2) motor vehicles, namely: L-300 Mitsubishi Van bearing Plate No. UBU 827 and a Nissan Sentra Exalta car without Plate Number.

Contrary to law.[1]

As summarized in the appealed CA decision, the facts are as follows:

On August 24, 2000, at around 9:00 p.m., Capt. Danilo Ibon of Task Force Aduana received information from an operative that there was an ongoing shipment of contraband in *Barangay* Bignay II, Sariaya, Quezon Province. Upon instructions from his superior, Major Carlo Magno Tabo, Capt. Ibon formed a team in coordination with a Philippine National Police detachment, and, along with the operative, the team then proceeded to Villa Vicenta Resort in *Barangay* Bignay II, Sariaya.

The members of the team were able to observe the goings-on at the resort from a distance of around 50 meters. They spotted six Chinese-looking men loading bags containing a white substance into a white van. Having been noticed, Capt. Ibon identified his team and asked accused-appellant Chua Shilou Hwan (Hwan) what they were loading on the van. Hwan replied that it was *shabu* and pointed, when probed further, to accused-appellant Raymond Tan as the leader. A total of 172 bags of suspected *shabu* were then confiscated. Bundles of noodles (*bihon)* were also found on the premises.

A laboratory report prepared later by Police Inspector Mary Jean Geronimo on samples of the 172 confiscated bags showed the white substance to be *shabu*.

On January 10, 2001, an Amended Information for violation of Sec. 16, Article III of RA 6425 was filed against accused-appellants, who entered a plea of not guilty upon re-arraignment.

Accused-appellants all maintained their innocence and presented the following defenses:

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[1] *Rollo,* p. 5.

(1) Accused-appellant Hwan testified that he was planning to buy cheap goods at Villa Vicenta Resort on August 24, 2000, when he saw a van full of *bihon* at the resort and inquired if it was for sale. He went to relieve himself 15 meters away from the van. A group of police officers arrested him upon his return.

(2) Accused-appellant Tan testified that he was a businessman collecting a debt in Lucena City on August 24, 2000. He was at a restaurant with his driver when three persons identified themselves as police officers and forcibly brought him inside a car. He was handcuffed, blindfolded, and badly beaten. He was later brought to a beach and was ordered to hold some bags while being photographed with five Chinese-looking men he saw for the first time. A tricycle driver, Ricky Pineda, corroborated his story by testifying that he saw Tan being forced into a white Nissan car on August 24, 2000.

(3) Accused-appellant Ng Yik Bun (Bun) testified that he arrived in the Philippines as a tourist on August 22, 2000. On August 24, 2000, he was at a beach with some companions when four armed men arrested them. He was made to pose next to some plastic bags along with other accused-appellants, whom he did not personally know. He was then charged with illegal possession of drugs at the police station. A friend of his, accused-appellant Kwok Wai Cheng (Cheng), corroborated his story.

(4) Accused-appellant Kan Shun Min (Min) testified that he arrived in the Philippines on July 1, 2000 for business and pleasure. On August 24, 2000, he checked into a beach resort. While walking there, he was suddenly accosted by four or five men who poked guns at him. He was brought to a cottage where he saw some unfamiliar Chinese-looking individuals. He likewise testified that he was made to take out white packages from a van while being photographed. His friend, accused-appellant Chang Chaun Shi (Shi), corroborated his story.

The RTC convicted accused-appellants of the crime charged. The dispositive portion of the RTC Decision reads:

ACCORDINGLY, the Court hereby renders judgment finding the six (6) accused namely Ng Yik Bun, Kwok Wai Cheng, Chang Chaun Shi, Chua Shilou Hwan, Kan Shun Min and Raymond S. Tan (some also known by other names), GUILTY beyond reasonable doubt of violating Section 16 of RA 6425, as amended and each is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay a fine of Five Million Pesos (₱5,000,000.00) each.

The *shabu* involved in this case and their accompanying paraphernalia are ordered disposed of in accordance with law, now RA 9165. The two (2) vehicles are forfeited in favor of the government.

SO ORDERED.[2]

In questioning the RTC Decision before the CA, accused-appellants Bun, Cheng, Shi, Min, and Tan raised the lone issue of: whether the trial court erred in ruling that there was a valid search and arrest despite the absence of a warrant.

On the other hand, accused-appellant Hwan sought an acquittal on the basis of the following submissions:

I

The trial court erred when it held as valid the warrantless search, seizure and subsequent arrest of the accused-appellants despite the non-concurrence of the requisite circumstances that justify a warrantless arrest as held in the case of *People vs.* [*Cuizon*].

II

The trial court violated Article III, Section 14 of the 1987 Constitution as well as Rule 115 of the Revised Rules on Criminal Procedure when it heard the case at bench on June 26, 2001 at the chemistry division of the PNP Crime Laboratory in Camp Crame, Quezon City without the presence of both the herein accused-appellant and his counsel *de parte*.

III

The trial court erred when it issued and dictated in open hearing a verbal order denying accused's formal "*Motion to Suppress Illegally*

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[2] CA *rollo*, p. 46. Penned by Judge Jaime N. Salazar.

Procured Evidence" upon a [ratiocination] that is manifestly contrary to law [and] jurisprudence set in the *Cuizon* case, *supra*.

IV

The trial court erred when with lack of the desired circumspection, it sweepingly ruled the admission in evidence the 731 exhibits listed in the prosecution's 43-page formal offer of evidence over the itemized written objections of the defense in a terse verbal order (*bereft of reason for the denial of the raised objections*) dictated in open hearing which reads: "*All the exhibits of the prosecution are hereby admitted. The court believes that as far as the evidence submitted goes, these exhibits of the prosecution consisting of several plastic bags of shabu were not yet shown to be the fruit of a poisonous plant*." x x x

V

The trial court also erred in admitting the prosecution's photographs (Exhibit "K" and "M", inclusive of their sub-markings), the photographer who took the shots not having taken the witness stand to declare, as required by the rules, the circumstances under which the photographs were taken.

VI

The trial court erred when it tried and applied the provisions of R.A. 9165, the Dangerous Drugs Act of 2002, in the instant case even though [the] crime charged took place on 24 August 2000.

VII

The trial court erred in finding conspiracy among the accused.[3]

The appellate court found accused-appellants' contentions unmeritorious as it consequently affirmed *in toto* the RTC Decision.

The CA ruled that, contrary to accused-appellants' assertion, they were first arrested before the seizure of the contraband was made. The CA held that accused-appellants were caught *in flagrante delicto* loading transparent plastic bags containing white crystalline substance into an L-300 van which, thus, justified

[3] *Id*. at 124-125.

their arrests and the seizure of the contraband. The CA agreed with the prosecution that the urgency of the situation meant that the buy-bust team had no time to secure a search warrant. Moreover, the CA also found that the warrantless seizure of the transparent plastic bags can likewise be sustained under the plain view doctrine.

The CA debunked accused-appellant Hwan's arguments *in seriatim*. *First*, the CA ruled that *People v. Cuizon*[4] was not applicable to the instant case, as, unlike in *Cuizon*, the apprehending officers immediately acted on the information they had received about an ongoing shipment of drugs.

Second, the CA also noted that accused-appellant Hwan effectively waived his right to be present during the inspection of exhibits and hearing, for the manifestation made by the prosecution that accused-appellant Hwan waived his right to be present was never raised in issue before the trial court.

And *third*, the CA found accused-appellant Hwan's other arguments untenable. It held that the trial court correctly admitted Exhibits "K" and "M" even if the photographer was not presented as a witness. The CA based its ruling on *Sison v. People*,[5] which held that photographs can be identified either by the photographer or by any other competent witness who can testify to its exactness and accuracy. It agreed with the Solicitor General that accused-appellants were correctly tried and convicted by the trial court under RA 6425 and not RA 9165, as can be gleaned from the *fallo* of the RTC Decision. The CA likewise dismissed the argument that conspiracy was not proved by the prosecution, noting that the evidence presented established that accused-appellants were performing "their respective task[s] with the objective of loading the plastic bags of *shabu* into an L-300 van."[6]

The CA disposed of the appeal as follows:

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[4] G.R. No. 109287, April 18, 1996, 256 SCRA 325.

[5] G.R. Nos. 108280-83 & 114931-33, November 16, 1995, 250 SCRA 58, 75-76.

[6] *Rollo*, p. 25.

WHEREFORE, the Decision dated April 1, 2004 of the Regional Trial Court of Quezon City, Branch 103, in Criminal Case No. Q-01-99437, is hereby AFFIRMED *in toto*.

SO ORDERED.[7]

On February 18, 2008, the Court, acting on the appeal of accused-appellants, required the parties to submit supplemental briefs if they so desired.

On March 27, 2008, accused-appellants Bun, Cheng, Shi, Min, and Tan filed their Supplemental Brief on the sole issue that:

THERE WAS NO VALID SEARCH AND ARREST DUE TO ABSENCE OF A WARRANT

On June 4, 2008, accused-appellant Hwan filed his Supplemental Brief, raising the following errors, allegedly committed by the trial court:

I

THE TRIAL COURT VIOLATED ARTICLE III, SECTION 14 OF THE 1987 CONSTITUTION AS WELL AS RULE 115 OF THE REVISED RULES ON CRIMINAL PROCEDURE WHEN IT CONDUCTED A HEARING ON JUNE 26, 2001 AT THE CHEMISTRY DIVISION OF THE PNP CRIME LABORATORY IN CAMP CRAME, QUEZON CITY WITHOUT THE PRESENCE OF BOTH THE HEREIN ACCUSED-APPELLANT AND HIS COUNSEL IN SUCH VITAL [PROCEEDINGS].

II

THE TRIAL COURT ERRED WHEN IT HELD AS VALID THE WARRANTLESS SEARCH, SEIZURE AND SUBSEQUENT ARREST OF THE HEREIN APPELLANT DESPITE THE NON-CONCURRENCE OF THE REQUISITE CIRCUMSTANCES THAT JUSTIFY A WARRANTLESS ARREST.

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[7] *Id*. at 26. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Remedios Salazar-Fernando and Jose C. Mendoza (now a member of this Court).

Essentially, accused-appellants claim that no valid *in flagrante delicto* arrest was made prior to the seizure and that the police officers placed accused-appellants under arrest even when there was no evidence that an offense was being committed. Since there was no warrant of arrest, they argue that the search sans a search warrant subsequently made on them was illegal. They contend that a seizure of any evidence as a result of an illegal search is inadmissible in any proceeding for any purpose.

Accused-appellant Hwan additionally claims that he was deliberately excluded when the trial court conducted a hearing on June 26, 2001 to identify 172 bags of *shabu* for trial purposes. He asserts that no formal notice of the hearing was sent to him or his counsel, to his prejudice.

The Court's Ruling

On the issue of warrantless arrest, it is apropos to mention what the Bill of Rights under the present Constitution provides in part:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

A settled exception to the right guaranteed in the aforequoted provision is that of an arrest made **during the commission of a crime**, which does not require a warrant. Such warrantless arrest is considered reasonable and valid under Rule 113, Sec. 5(a) of the Revised Rules on Criminal Procedure, which states:

> Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, **without a warrant, arrest a person**:
>
> (a) When, in his presence, the **person to be arrested** has committed, **is actually committing**, or is attempting to commit an offense; (Emphasis supplied.)

The foregoing proviso refers to arrest *in flagrante delicto*.[8] In the instant case, contrary to accused-appellants' contention, there was indeed a valid warrantless arrest *in flagrante delicto*. Consider the circumstances immediately prior to and surrounding the arrest of accused-appellants: (1) the police officers received information from an operative about an ongoing shipment of contraband; (2) the police officers, with the operative, proceeded to Villa Vicenta Resort in *Barangay* Bignay II, Sariaya, Quezon; (3) they observed the goings-on at the resort from a distance of around 50 meters; and (4) they spotted the six accused-appellants loading transparent bags containing a white substance into a white L-300 van. The following exchange between Capt. Ibon and the prosecutor sheds light on the participation of all six accused-appellants:

Q: Upon arriving at Villa Vicenta Resort in Brgy. Bignay II, [in] what specific area [did] you position yourselves?

A: Initially we [were] about three hundred meters away from Villa Vicenta Resort, then we walked [stealthily] so as not to [be] [spotted] until we were about fifty meters sir.

Q: So you [positioned] yourself about fifty meters away from the point of Villa Vicenta Resort?

A: From the actual location we saw about six personnel walking together loading contraband.

Q: You said you [were] about fifty meters away from these six persons who were loading contraband, is that what you mean?

A: Yes sir.

Q: In that place where you [positioned] yourself, could you tell us, what was the lighting condition in the place where you positioned yourselves?

A: It was totally dark in our place sir.

Q: How about the position of the six persons who were loading contraband?

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[8] *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135, 146; citing *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668.

A: They were well-lighted sir.

Q: Why do you say that they are well-lighted?

A: There were several [fluorescent] lamps sir.

Q: Where?

A: One search light placed near where they were loading the shipment sir.

Q: How about the other?

A: About two fluorescent lamps at the house near the six persons your honor.

COURT: Are these portable lamps:

A: Fixed lamps your honor.

Q: Where else?

A: Another at the right corner[.] There was also somewhat a multi-purpose house and it [was] well-lighted your honor.

Q: This is a resort and that multi-purpose house that you are referring to are the cottages of the resort?

A: Yes your honor.

FISCAL: You said you saw six persons who were loading goods[.] In what vehicle [were they] transferring those things?

A: Into [an] L-300 van sir.

Q: What is the color of the van?

A: White sir.

Q: What did you see that these six persons [were] loading?

A: We saw [them] holding white plastic with white substance your honor.

Q: What container [were they] loading?

A: Actually there were several checkered bags and other plastic [bags] sir.

Q: How [were] they loading these bags?

A: [Manually] your honor.

Q: Will you please describe how they [were] loading it, Mr. Witness?

A: Actually the plastic bags [some were] repacked [into] checkered [bags] while others [were] loading inside the checkered bag sir.

Q: Did they put that on their shoulder or what?

A: Holding and holding [sic] sir.

Q: Nobody carrying [it] on their back?

A: Nobody sir.

x x x x x x x x x

Q: You said you saw these six persons, will you please look around this courtroom and tell us if these six persons that you are referring to are present?

COURT: Considering that there are many persons inside this courtroom, will you please stand up and please [tap] the shoulder of these six persons?

x x x x x x x x x

INTERPRETER: Witness tapped the [shoulders] of six male persons inside the courtroom.

x x x x x x x x x

FISCAL: May we manifest your honor that when these six persons stood up when their names [were] called on the basis [of] what [was] written [on] the information [were] once tapped on their shoulder by this witness.

The last question I have [is] how long you stayed in this position watching these six persons loading those [products] in the L-300 van?

A: Ten to fifteen minutes sir.

Q: Within that period could you tell us what transpired?

A: I called Major Tabo to inform [him of] what I saw, I called Major Tabo through the hand-held radio sir.

Q: What was the reply of major Tabo with respect to your information?

A: He directed me to get closer to these six persons and find out if really the contraband is *shabu* that was first reported sir.

Q: So did you in fact go closer?

A: Yes sir.

Q: How [close] were you [to] the six persons at the time?

A: When we were closing [in] somebody noticed us and they were surprised, I immediately shouted "Freeze, don't move, we are Filipino soldiers," we further identified [ourselves] sir.

Q: What was the reaction of the six persons when you shouted those words?

A: They [froze] sir.

x x x x x x x x x

Q: When you went closer and they [froze], what happened?

A: I asked them who among them are English-speaking?

Q: What was the reply given to you?

A: Somebody replied "*tagalog lang*."

Q: Who was that person who replied "*tagalog lang*?"

A: Chua Shilou Hwan sir.

Q: Will you please [identify] for us who answered that in [T]agalog?

COURT: Please [tap] his shoulder.

A: This man sir.

COURT: Witness tapped the shoulder of a man who identified himself as Chua Shilou Hwan.

CHUA SHILOU HWAN: *Opo*.

FISCAL: After answering you [with] "*tagalog lang*," what happened?

A: I further asked them "*Ano ang dala ninyo*?"

Q: What was the reply?

A: Chua Shilou Hwan said shabu.

Q: So [what] did you do next?

A: I asked them who is their leader, sir.

Q: What was the reply?

A: He told me it was Raymond Tan, sir.

Q: Is he inside this courtroom now?

A: Yes sir.

COURT: Please tap [his] shoulder.

WITNESS: This man sir.

COURT: *Ikaw ba* Raymond Tan?

INTERPRETER: A man stood and [nodded] his head.

x x x x x x x x x

FISCAL: Now after they [froze], what did you do?

A: I inspected the contraband and I found these bags and I immediately called Major Tabo and informed [him of] the matter sir.

Q: How many bags were you able to confiscate in the scene?

A: All in all 172 your honor.

Q: That 172, one of them is the bag in front of you [which] you identified earlier?

A: Yes sir.

Q: When you saw that bag could you tell us what particular [contents] attracted you upon seeing these bags?

A: It was marked by the members (interrupted).

Q: No what attracted you?

A: Something crystalline white sir.

Q: Are you referring to all the bags?

A: All the bags sir.[9] x x x

Evidently, the arresting police officers had probable cause to suspect that accused-appellants were loading and transporting

[9] TSN, July 24, 2001, pp. 22-34.

contraband, more so when Hwan, upon being accosted, readily mentioned that they were loading *shabu* and pointed to Tan as their leader. Thus, the arrest of accused-appellants—who were caught *in flagrante delicto* of possessing, and in the act of loading into a white L-300 van, *shabu*, a prohibited drug under RA 6425, as amended—is valid.

In *People v. Alunday*, we held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene, he may effect an arrest without a warrant on the basis of Sec. 5(a), Rule 113 of the Rules of Court, as the offense is deemed committed in his presence or within his view.[10] In the instant case, it can plausibly be argued that accused-appellants were committing the offense of possessing *shabu* and were in the act of loading them in a white van when the police officers arrested them. As aptly noted by the appellate court, the crime was committed in the presence of the police officers with the contraband, inside transparent plastic containers, in plain view and duly observed by the arresting officers. And to write finis to the issue of any irregularity in their warrantless arrest, the Court notes, as it has consistently held, that accused-appellants are deemed to have waived their objections to their arrest for not raising the issue before entering their plea.[11]

Moreover, present in the instant case are all the elements of illegal possession of drugs: (1) the accused is in possession of an item or object which is identified to be a prohibited drug;

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[10] *Supra* note 8, at 147; citing *People v. Sucro*, G.R. No. 93239, March 18, 1991, 195 SCRA 388.

[11] *People v. Tidula*, G.R. No. 123273, July 16, 1998, 292 SCRA 596, 611; *People v. Montilla*, G.R. No. 123872, January 30, 1998, 285 SCRA 703; *People v. Cabiles*, G.R. No. 112035, January 16, 1998, 284 SCRA 199, 210; *People v. Mahusay*, G.R. No. 91483, November 18, 1997, 282 SCRA 80, 87; *People v. Rivera*, G.R. No. 87187, June 29, 1995, 245 SCRA 421, 430; and *People v. Lopez, Jr.*, G.R. No. 104662, June 16, 1995, 245 SCRA 95, 105.

(2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[12] Accused-appellants were positively identified in court as the individuals caught loading and possessing illegal drugs. They were found to be in possession of prohibited drugs without proof that they were duly authorized by law to possess them. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on the part of accused-appellants.[13] There is, thus, no merit to the argument of the defense that a warrant was needed to arrest accused-appellants.

Accused-appellants were not able to show that there was any truth to their allegation of a frame-up in rebutting the testimonies of the prosecution witnesses. They relied on mere denials, in contrast with the testimony of Capt. Ibon, who testified that he and his team saw accused-appellants loading plastic bags with a white crystalline substance into an L-300 van at the Villa Vicenta Resort. Accused-appellants, except for Tan, claimed that they were ordered by the police officers to act like they were loading bags onto the van. Accused-appellant Tan told a different tale and claims he was arrested inside a restaurant. But as the trial court found, the persons who could have corroborated their version of events were not presented in court. The only witness presented by Tan, a tricycle driver whose testimony corroborated Tan's alone, was not found by the trial court to be credible.

As no ill motive can be imputed to the prosecution's witnesses, we uphold the presumption of regularity in the performance of official duties and affirm the trial court's finding that the police officers' testimonies are deserving of full faith and credit. Appellate courts generally will not disturb the trial court's assessment of a witness' credibility unless certain material facts and circumstances have been overlooked or arbitrarily disregarded.[14] We find no reason to deviate from this rule in the instant case.

[12] *People v. Sy*, G.R. No. 147348, September 24, 2002, 389 SCRA 594, 604-605; citing *Manalili v. Court of Appeals*, G.R. No. 113447, October 9, 1997, 280 SCRA 400, 418.

[13] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010.

[14] *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA

On the alleged lack of notice of hearing, it is now too late for accused-appellant Hwan to claim a violation of his right to examine the witnesses against him. The records show the following exchange on June 26, 2001:

> FISCAL LUGTO:
>
> **I would like to manifes[t] that Atty. Agoot, counsel of accused Chua Shilou Hwan, waived his right to be present for today's trial for purposes of identification of the alleged *shabu*.**
>
> ATTY SAVELLANO:
>
> [Are] we made to understand that this hearing is for identification of *shabu* only?
>
> FISCAL LUGTO:
>
> Yes despite the testimony of the Forensic Chemist, this is for continuation with the direct testimony for purposes of identification which was confiscated or seized by the joint operation of the Military and the PNP at Sariaya, Quezon.
>
> For the record, this [is] for the continuation of the direct testimony of Forensic Chemist Mary Jean Geronimo.[15]

As the records confirm, accused-appellant Hwan and his counsel were not present when the forensic chemist testified. The prosecution made a manifestation to the effect that accused-appellant Hwan waived his right to be present at that hearing. Yet Hwan did not question this before the trial court. No evidence of deliberate exclusion was shown. If no notice of hearing were made upon him and his counsel, they should have brought this in issue at the trial, not at the late stage on appeal.

All told, we hold that the findings of both the RTC and the CA must be affirmed. The trial court's determination as to the credibility of witnesses and its findings of fact should be accorded great weight and respect more so when affirmed by the appellate court. To reiterate, a look at the records shows no facts of

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216, 227; citing *People v. Abaño*, G.R. No. 142728, January 23, 2002, 374 SCRA 431.

[15] TSN, June 26, 2001, p. 1.

substance and value that have been overlooked, which, if considered, might affect the outcome of the instant appeal. Deference to the trial court's findings must be made as it was in the position to easily detect whether a witness is telling the truth or not.[16]

Penalty Imposed

Accused-appellants were each sentenced by the lower court to *reclusion perpetua* and to pay a fine of PhP 5,000,000. This is within the range provided by RA 6425, as amended.[17] We, therefore, affirm the penalty imposed on accused-appellants.

WHEREFORE, the appeal is *DENIED.* The CA Decision in CA-G.R. CR-H.C. No. 00485, finding accused-appellants Ng Yik Bun, Kwok Wai Cheng, Chang Chaun Shi, Chua Shilou Hwan, Kan Shun Min, and Raymond S. Tan guilty beyond reasonable doubt of violating Sec. 16, Art. III of RA 6425, as amended, is *AFFIRMED IN TOTO.*

SO ORDERED.

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

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[16] *People v. Macabare*, G.R. No. 179941, August 25, 2009, 597 SCRA 119, 132; citing *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 394.

[17] Secs. 16 and 17 of RA 6425, as amended, provide:

Sec. 16. Possession or Use of Regulated Drugs.—The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos [PhP 500,000] to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

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:

x x x x x x x x x

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride.

FIRST DIVISION

[G.R. No. 181298. January 10, 2011]

BELLE CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND; UNUTILIZED TAX CREDITS MAY BE REFUNDED AS LONG AS THE CLAIM IS FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD.— [I]n *Calamba Steel Center, Inc.*, we allowed the refund of excess income taxes paid in 1995 since these could not be credited to taxable year 1996 due to business losses. In that case, we declared that "a tax refund may be claimed even beyond the taxable year following that in which the tax credit arises x x x provided that the claim for such a refund is made within two years after payment of said tax." In *State Land Investment Corporation*, we reiterated that "if the excess income taxes paid in a given taxable year have not been entirely used by a x x x corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years after payment of the tax." Thus, under Section 69 of the old NIRC, unutilized tax credits may be refunded as long as the claim is filed within the two-year prescriptive period.

2. ID.; ID.; THE OPTION TO CARRY-OVER THE EXCESS INCOME TAX PAYMENTS TO SUCCEEDING TAXABLE YEARS UNTIL FULLY UTILIZED IS IRREVOCABLE, HENCE, UNUTILIZED INCOME TAX PAYMENTS MAY NO LONGER BE REFUNDED ONCE THE SAID OPTION IS MADE; APPLICATION.— Under the new law, in case of overpayment of income taxes, the remedies are still the same; and the availment of one remedy still precludes the other. But unlike Section 69 of the old NIRC, the carry-over of excess income tax payments is no longer limited to the

> succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded. In the instant case, both the CTA and the CA applied Section 69 of the old NIRC in denying the claim for refund. We find, however, that the applicable provision should be Section 76 of the 1997 NIRC because at the time petitioner filed its 1997 final ITR, the old NIRC was no longer in force. x x x Accordingly, since petitioner already carried over its 1997 excess income tax payments to the succeeding taxable year 1998, it may no longer file a claim for refund of unutilized tax credits for taxable year 1997. To repeat, under the new law, once the option to carry-over excess income tax payments to the succeeding years has been made, it becomes irrevocable. Thus, applications for refund of the unutilized excess income tax payments may no longer be allowed.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Section 69 of the old National Internal Revenue Code (NIRC) allows unutilized tax credits to be refunded as long as the claim is filed within the prescriptive period. This, however, no longer holds true under Section 76 of the 1997 NIRC as the option to carry-over excess income tax payments to the succeeding taxable year is now irrevocable.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to set aside the January 25, 2007

[1] *Rollo,* pp. 9-140, with Annexes "A" to "Q", inclusive.

Decision[2] and the January 21, 2008 Resolution[3] of the Court of Appeals (CA).

Factual Antecedents

Petitioner Belle Corporation is a domestic corporation engaged in the real estate and property business.[4]

On May 30, 1997, petitioner filed with the Bureau of Internal Revenue (BIR) its Income Tax Return (ITR) for the first quarter of 1997, showing a gross income of ₱741,607,495.00, a deduction of ₱65,381,054.00, a net taxable income of ₱676,226,441.00 and an income tax due of ₱236,679,254.00, which petitioner paid on even date through PCI Bank, Tektite Tower Branch, an Authorized Agent Bank of the BIR.[5]

On August 14, 1997, petitioner filed with the BIR its second quarter ITR, declaring an overpayment of income taxes in the amount of ₱66,634,290.00. The computation of which is reproduced below:

Gross Income	₱ 833,186,319.00
Less: Deductions	347,343,565.00
Taxable Income	₱ 485,842,754.00
Tax Rate	x 35%
Tax Due	₱ 170,044,964.00
Less: Tax Credits/Payments	
(a) Prior Year's Excess Tax Credit	-
(b) 1st Quarter Payment	₱236,679,254.00
(c) Creditable Withholding Tax	-
	(₱ 66,634,290.00)[6]

[2] *Id.* at 42-51; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Martin S. Villarama, Jr. (Now Supreme Court Justice), and Mariflor P. Punzalan Castillo.

[3] *Id.* at 65-68.

[4] *Id.* at 101.

[5] *Id.* at 101-102.

[6] CTA Division *rollo,* p. 2.

In view of the overpayment, no taxes were paid for the second and third quarters of 1997.[7] Petitioner's ITR for the taxable year ending December 31, 1997 thereby reflected an overpayment of income taxes in the amount of ₱132,043,528.00, computed as follows:

Gross Income	₱ 1,182,473,910.00
Less: Deductions	879,485,278.00
Taxable Income	₱ 302,988,362.00
Tax Rate	x 35%
Tax Due	₱ 106,046,021.00
Less: Tax Credits/Payments	
(a) Prior Year's Excess Tax Credit –	
(b)1st Quarter Payment	₱ 236,679,254.00
(c)CreditableWithholdingTax (1,410,295.00)	(238,089,549.00)
REFUNDABLE AMOUNT	(₱ 132,043,528.00)[8]

Instead of claiming the amount as a tax refund, petitioner decided to apply it as a tax credit to the succeeding taxable year by marking the tax credit option box in its 1997 ITR.[9]

For the taxable year 1998, petitioner's amended ITR showed an overpayment of ₱106,447,318.00, computed as follows:

Gross Income		₱ 1,279,810,489.00
Less: Deduction		1,346,553,546.00
Taxable Income (Lost)		(₱ 66,743,057.00)
Tax Rate		34%
Tax Due (Regular Income Tax)	–	NIL
Minimum Corporate Income Tax		₱ 25,596,210.00
Tax Due		25,596,210.00
Less: Tax Credits/Payments		
(a) Prior year's excess Tax Credits		(₱ 132,041,528.00)
(b) Quarterly payment	–	
(c) Creditable tax withheld	–	
Tax Payable/Overpayment		(₱ 106,447,318.00)[10]

[7] *Id.* at 2.

[8] *Rollo*, pp. 102-103.

[9] *Id.* at 103.

[10] *Id.*

On April 12, 2000, petitioner filed with the BIR an administrative claim for refund of its unutilized excess income tax payments for the taxable year 1997 in the amount of ₱106,447,318.00.[11]

Notwithstanding the filing of the administrative claim for refund, petitioner carried over the amount of ₱106,447,318.00 to the taxable year 1999 and applied a portion thereof to its 1999 Minimum Corporate Income Tax (MCIT) liability, as evidenced by its 1999 ITR.[12] Thus:

Gross Income	₱ 708,888,638.00
Less: Deduction	1,328,101,776.00
Taxable Income	(₱ 619,213,138.00)
Tax Due	-
Minimum Corporate Income Tax	₱ 14,185,874.00
Less: Tax Credits/Payments	
(a) Prior year's excess Credit	₱ 106,447,318.00
(b) Tax Payments for the 1st & 3rd Qtrs. 0	
(c) Creditable tax withheld 0	
	₱ 106,447,318.00
TAX PAYABLE/REFUNDABLE	(₱ 92,261,444.00)[13]

Proceedings before the Court of Tax Appeals (CTA)

On April 14, 2000, due to the inaction of the respondent Commissioner of Internal Revenue (CIR) and in order to toll the running of the two-year prescriptive period, petitioner appealed its claim for refund of unutilized excess income tax payments for the taxable year 1997 in the amount of ₱106,447,318.00 with the CTA *via* a Petition for Review,[14] docketed as CTA Case No. 6070.

In answer thereto, respondent interposed that:

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[11] *Id*.

[12] CTA Division *rollo,* p. 281.

[13] *Rollo,* p. 107.

[14] *Id.* at 103.

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

5. Petitioner failed miserably to show that the total amount of ₱106,447,318.00 claimed as overpaid or excess income tax is refundable;

6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the tax Code;

9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.[15]

To prove entitlement to the refund, petitioner submitted, among others, the following documents: its ITR for the first quarter of taxable year 1997 *(Exhibit "B")*,[16] its tentative ITRs for taxable years 1997 *(Exhibit "D")*[17] and 1998 *(Exhibit "H")*,[18] its final ITRs for taxable years 1997 *(Exhibit "E")*,[19] 1998 *(Exhibit "I")*[20] and 1999 *(Exhibit "J")*,[21] its Letter Claim for Refund filed with the BIR *(Exhibit "K")*[22] and the Official Receipt issued by PCI Bank showing the income tax payment made by petitioner in the amount of ₱236,679,254.00 for the first quarter of 1997 *(Exhibit "C")*.[23]

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[15] CTA Division *rollo,* pp. 127-128.

[16] *Id.* at 178.

[17] *Id.* at 180-190.

[18] *Id.* at 223-249.

[19] *Id.* at 191-218.

[20] *Id.* at 250-280.

[21] *Id.* at 281-320.

[22] *Id.* at 321-327.

[23] *Id.* at 179.

On April 10, 2001, the CTA rendered a Decision[24] denying petitioner's claim for refund. It found:

[T]hat all the allegations made by the Petitioner as well as the figures accompanying Petitioner's claim are substantiated by documentary evidence but noticed some flaws in Petitioner's application of the pertinent laws involved.

It bears stressing that **the applicable provision in the case at bar is Section 69 of the old Tax Code and not Section 76 of the 1997 Tax Code**. Settled is the rule that under Section 69 of the old Tax Code, the carrying forward of any excess/overpaid income tax for a given taxable year is limited only up to the succeeding taxable year.

A painstaking scrutiny of Petitioner's income tax returns would show that Petitioner carried over its 1997 refundable tax of ₱132,043,528.00 to the succeeding year of 1998 yielding an overpayment of ₱106,447,318.00 (Exhibit I-1) after deducting therefrom the minimum Corporate Income tax of ₱25,596,210.00. **However, Petitioner even went further to the taxable year 1999 and applied the Prior Year's (1998) Excess Credit of ₱106,447,318.00 to its income tax liability.**

True enough, upon verification of Petitioner's 1999 Corporate Annual Income Tax Return (Exh. I), **this Court found that the whole amount of ₱106,447,318.00 representing its prior year's excess credit (subject of this claim) was carried forward to its 1999 income tax liability,** details of the 1999 Income Tax Return are shown below as follows:

Gross Income		₱ 708,888,638.00
Less: Deduction		1,328,101,776.00
Taxable Income		(₱619,213,138.00)
Tax Due		-
Minimum Corporate Income Tax	₱	14,185,874.00
Less: Tax Credits/Payments		
(a) Prior year's excess Credit	₱ 106,447,318.00	
(b) Tax Payments for the 1st & 3rd Qtrs.	0	
(c) Creditable tax withheld	0	₱ 106,447,318.00
TAX PAYABLE/REFUNDABLE		(₱ 92,261,444.00)

[24] *Rollo*, pp. 101-109; penned by Associate Judge Amancio Q. Saga and concurred in by Presiding Judge Ernesto D. Acosta.

It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year. (*Paseo Realty and Dev't. Corp. vs. CIR*, CTA Case No. 4528, April 30, 1993) True enough, implicit from the provisions of Section 69 of the NIRC, as amended, (*supra*) is the fact that the refundable amount may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year. (citing *ANSCOR Hagedorn Securities Inc. vs. CIR*, CA-GR SP 38177, December 21, 1999) To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned.[25] (Emphasis supplied.)

Petitioner sought reconsideration[26] of the CTA's denial of its claim for refund, but the same was denied in a Resolution[27] dated June 5, 2001, prompting petitioner to elevate the matter to the CA *via* a Petition for Review[28] under Rule 43 of the Rules of Court.

Ruling of the Court of Appeals

On January 25, 2007, the CA, applying *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[29] denied the petition. The CA explained that the overpayment for taxable year 1997 can no longer be carried over to taxable year 1999 because excess income payments can only be credited against the income tax liabilities of the succeeding taxable year, in this case up to 1998 only and not beyond.[30] Neither can the overpayment be refunded as the remedies of automatic tax crediting and tax refund are alternative remedies.[31] Thus, the CA ruled:

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[25] *Id.* at 106-108.

[26] *Id.* at 110-120.

[27] *Id.* at 121-124.

[28] *Id.* at 125-140.

[29] 361 Phil. 916 (1999).

[30] *Rollo*, pp. 46-48.

[31] *Id.* at 48-50.

[W]hile BELLE may not have fully enjoyed the complete utilization of its option and the sum of Php106,447,318 still remained after it opted for a tax carry over of its excess payment for the taxable year 1998, but be that as it may, BELLE has only itself to blame for making such useless and damaging option, and **BELLE may no longer opt to claim for a refund considering that the remedy of refund is barred after the corporation has previously opted for the tax carry over remedy**. As a matter of fact, the CTA even made the factual findings that **BELLE committed an aberration to exhaust its unutilized overpaid income tax by carrying it over further to the taxable year 1999, which is a blatant transgression of the "succeeding taxable year limit" provided for under Section 69 of the old NIRC**.[32] (Emphasis supplied)

Hence, the *fallo* of the Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is **DENIED,** and accordingly, the herein impugned April 10, 2001 Decision and June 5, 2001 Resolution of the CTA are hereby affirmed.

SO ORDERED.[33]

Petitioner moved for reconsideration.[34] The CA, however, denied the same in a Resolution[35] dated January 21, 2008.

Issues

Aggrieved, petitioner availed of the present recourse, raising the following assignment of errors:

A. THE CA COMMITTED SERIOUS ERROR OF LAW IN APPLYING THE PBCOM CASE.

A.1. THE [DECISION IN THE] PBCOM CASE HAS ALREADY BEEN REPEALED.

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

[33] *Id*.

[34] *Id.* at 54-63.

[35] *Id.* at 65-68.

A.2. ASSUMING ARGUENDO THAT THE [DECISION IN THE] PBCOM CASE HAS NOT BEEN REPEALED, IT HAS NO APPLICATION TO BELLE.

B. THE CA COMMITTED SERIOUS ERROR OF LAW IN FINDING THAT BELLE'S REFUND CLAIM IS NOT ON ALL FOURS WITH THE CASES OF BPI FAMILY AND AB LEASING.

B.1. BELLE'S 'CARRYING-OVER' OF ITS EXCESS INCOME TAX PAID FOR 1997 TO 1999 (BEYOND THE SUBSEQUENT YEAR) IS IMMATERIAL.

B.2. BELLE'S PARTIAL USE OF ITS EXCESS INCOME TAX PAID IN 1998 (THE SUBSEQUENT YEAR) DOES NOT PRECLUDE BELLE FROM ASKING FOR A REFUND.[36]

In a nutshell, the issue boils down to whether petitioner is entitled to a refund of its excess income tax payments for the taxable year 1997 in the amount of ₱106,447,318.00.

Petitioner's Arguments

Petitioner insists that it is entitled to a refund as the ruling in *Philippine Bank of Communications v. Commissioner of Internal Revenue*[37] relied upon by the CA in denying its claim has been overturned by *BPI-Family Savings Bank, Inc. v. Court of Appeals*,[38] *AB Leasing and Finance Corporation v. Commissioner of Internal Revenue*,[39] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*,[40] and *State Land Investment Corporation v. Commissioner of Internal Revenue*.[41] In these cases, the taxpayers were allowed to claim refund

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[36] *Id.* at 17-18.

[37] *Supra* note 29.

[38] 386 Phil. 719 (2000).

[39] 453 Phil. 297 (2003).

[40] 497 Phil. 23 (2005).

[41] G.R. No. 171956, January 18, 2008, 542 SCRA 114.

of unutilized tax credits.[42] Similarly, in this case, petitioner asserts that it may still recover unutilized tax credits *via* a claim for refund.[43]

And while petitioner admits that it has committed a "blatant transgression" of the "succeeding taxable year limit" when it carried over its 1997 excess income tax payments beyond the taxable year 1998, petitioner believes that this should not result in the denial of its claim for refund but should only invalidate the application of its 1997 unutilized excess income tax payments to its 1999 income tax liabilities.[44] Hence, petitioner postulates that a claim for refund of its unutilized tax credits for the taxable year 1997 may still be made because the carry-over thereof to the taxable year 1999 produced no legal effect, and is, therefore, immaterial to the resolution of its claim for refund.[45]

Respondent's Arguments

Respondent, on the other hand, maintains that the cases of *BPI-Family Savings Bank*[46] and *AB Leasing*[47] are inapplicable as the facts obtaining therein are different from those of the present case.[48] What is controlling, therefore, is the ruling in *Philippine Bank of Communications*,[49] that tax refund and tax credit are alternative remedies; thus, "the choice of one precludes the other."[50] Respondent, therefore, submits that since petitioner has already applied its 1997 excess income tax payments to its liabilities for taxable year 1998, it is precluded from carrying over the same to taxable year 1999, or from filing a claim for refund.[51]

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[42] *Rollo,* pp. 206-209.

[43] *Id.* at 209.

[44] *Id.* at 30-32, 223-227.

[45] *Id.* at 225-227.

[46] *Supra* note 38.

[47] *Supra* note 39.

[48] *Rollo,* p. 161.

[49] *Supra* note 29 at 932.

[50] *Rollo,* pp. 158-159.

[51] *Id.* at 157.

Our Ruling

The petition has no merit.

Both the CTA and the CA erred in applying Section 69[52] of the old NIRC. The law applicable is Section 76 of the NIRC.

Unutilized excess income tax payments may be refunded within two years from the date of payment under Section 69 of the old NIRC

Under Section 69 of the old NIRC, in case of overpayment of income taxes, a corporation may either file a claim for refund or carry-over the excess payments to the succeeding taxable year. Availment of one remedy, however, precludes the other.[53]

Although these remedies are mutually exclusive, we have in several cases allowed corporations, which have previously availed of the tax credit option, to file a claim for refund of their unutilized excess income tax payments.

In *BPI-Family Savings Bank*,[54] the bank availed of the tax credit option but since it suffered a net loss the succeeding year, the tax credit could not be applied; thus, the bank filed a claim for refund to recover its excess creditable taxes. Brushing aside technicalities, we granted the claim for refund.

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[52] Section 69. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) **Be refunded the excess amount paid**, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Emphasis supplied.)

[53] *Supra* note 29.

[54] *Supra* note 38.

Likewise, in *Calamba Steel Center, Inc.*,[55] we allowed the refund of excess income taxes paid in 1995 since these could not be credited to taxable year 1996 due to business losses. In that case, we declared that "a tax refund may be claimed even beyond the taxable year following that in which the tax credit arises x x x provided that the claim for such a refund is made within two years after payment of said tax."[56]

In *State Land Investment Corporation*,[57] we reiterated that "if the excess income taxes paid in a given taxable year have not been entirely used by a x x x corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years after payment of the tax."[58]

Thus, under Section 69 of the old NIRC, unutilized tax credits may be refunded as long as the claim is filed within the two-year prescriptive period.

The option to carry over excess income tax payments is irrevocable under Section 76 of the 1997 NIRC

This rule, however, no longer applies as Section 76 of the 1997 NIRC now reads:

> Section 76. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.

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[55] *Supra* note 40 at 31.

[56] *Id*.

[57] *Supra* note 41 at 122.

[58] *Id*.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the **taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.** (Emphasis supplied)

Under the new law, in case of overpayment of income taxes, the remedies are still the same; and the availment of one remedy still precludes the other. But unlike Section 69 of the old NIRC, the carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded.

In the instant case, both the CTA and the CA applied Section 69 of the old NIRC in denying the claim for refund. We find, however, that the applicable provision should be Section 76 of the 1997 NIRC because at the time petitioner filed its 1997 final ITR, the old NIRC was no longer in force. In *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.*,[59] we explained that:

Section 76 and its companion provisions in Title II, Chapter XII **should be applied following the general rule on the prospective application of laws such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on 1 January 1998**. There is no quarrel **that at the time respondent filed its final adjustment return for 1997 on 15 April 1998, the deadline under Section 77 (B) of the 1997 NIRC (formerly Section 70(b) of the 1977 NIRC), the 1997 NIRC was already in force, having gone into effect a few months earlier on 1 January 1998. Accordingly, Section 76 is controlling.**

[59] G.R. No. 174157, October 20, 2010.

The lower courts grounded their contrary conclusion on the fact that respondent's overpayment in 1997 was based on transactions occurring before 1 January 1998. This analysis suffers from the twin defects of missing the gist of the present controversy and misconceiving the nature and purpose of Section 76. None of respondent's corporate transactions in 1997 is disputed here. Nor can it be argued that Section 76 determines the taxability of corporate *transactions*. To sustain the rulings below is to subscribe to the untenable proposition that, had Congress in the 1997 NIRC moved the deadline for the filing of final adjustment returns from 15 April to 15 March of each year, taxpayers filing returns after 15 March 1998 can excuse their tardiness by invoking the 1977 NIRC because the transactions subject of the returns took place before 1 January 1998. A keener appreciation of the nature and purpose of the varied provisions of the 1997 NIRC cautions against sanctioning this reasoning.[60]

Accordingly, since petitioner already carried over its 1997 excess income tax payments to the succeeding taxable year 1998, it may no longer file a claim for refund of unutilized tax credits for taxable year 1997.

To repeat, under the new law, once the option to carry-over excess income tax payments to the succeeding years has been made, it becomes irrevocable. Thus, applications for refund of the unutilized excess income tax payments may no longer be allowed.

WHEREFORE, the petition is hereby *DENIED*. The Decision dated January 25, 2007 and the Resolution dated January 21, 2008 of the Court of Appeals are hereby *AFFIRMED* only insofar as the denial of petitioner's claim for refund is concerned.

SO ORDERED.

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

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[60] *Id.*

SECOND DIVISION

[G.R. No. 181930. January 10, 2011]

MILAGROS SALTING, *petitioner, vs.* **JOHN VELEZ and CLARISSA R. VELEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS AND JUDGMENTS; IF A PARTY TO A CASE HAS APPEARED BY COUNSEL, SERVICE OF PLEADINGS AND JUDGMENTS SHALL BE MADE UPON HIS COUNSEL OR ONE OF THEM, UNLESS SERVICE UPON THE PARTY HIMSELF IS ORDERED BY THE COURT.— If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Thus, when the MeTC decision was sent to petitioner's counsel, such service of judgment was valid and binding upon petitioner, notwithstanding the death of her counsel. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership continues to exist lawfully, the partners are still alive, or its associates are still connected with the firm. Litigants, represented by counsel, cannot simply sit back, relax, and await the outcome of their case. It is the duty of the party-litigant to be in contact with her counsel from time to time in order to be informed of the progress of her case. It is likewise the duty of the party to inform the court of the fact of her counsel's death. Her failure to do so means that she is negligent in the protection of her cause, and she cannot pass the blame to the court which is not tasked to monitor the changes in the circumstances of the parties and their counsels.

2. ID.; ID.; JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL AND EXECUTORY, IT CAN NO LONGER BE DISTURBED, ALTERED, OR MODIFIED IN ANY RESPECT; EXCEPTIONS. — [W]e find that the March 28, 2006 MeTC decision had, indeed, become final and executory. A final and executory decision can only be annulled by a petition to annul the same on the ground of extrinsic fraud and lack of jurisdiction, or by

a petition for relief from a final order or judgment under Rule 38 of the Rules of Court. However, no petition to that effect was filed. Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered, or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER AND FORCIBLE ENTRY; SUITS INVOLVING OWNERSHIP MAY NOT BE SUCCESSFULLY PLEADED IN ABATEMENT OF THE ENFORCEMENT OF THE FINAL DECISION IN AN EJECTMENT SUIT.— In the present case, the finality of the March 28, 2006 decision with respect to possession *de facto* cannot be affected by the pendency of the annulment case where the ownership of the property is being contested. We are inclined to adhere to settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of the enforcement of the final decision in an ejectment suit.

4. ID.; ID.; ID.; PURPOSE.— Unlawful detainer and forcible entry suits under Rule 70 of the Rules of Court are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.

5.ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; CANNOT BE GRANTED IN CASE AT BAR.— [P]etitioner is not entitled to a writ of preliminary injunction to restrain the execution of the MeTC decision. Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of preliminary injunction x x x. In this case, the enforcement of the writ of execution which would evict petitioner from her residence is manifestly prejudicial to her interest. However, she possesses no legal right that merits the protection of the courts through the writ of preliminary injunction. Her right to possess the property in question has been declared inferior or inexistent in relation to respondents in the ejectment case in the MeTC decision which has become final and executory. In any event, as manifested by respondents, the March 28, 2006 MeTC decision has already been executed. Hence, there is nothing more to restrain.

APPEARANCES OF COUNSEL

Sañez and Associates for petitioner.
Ricardo Rivera for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the Court of Appeals (CA) Decision[1] dated November 29, 2007 and Resolution[2] dated February 27, 2008 in CA-G.R. SP No. 97618.

The factual and procedural antecedents leading to the instant petition are as follows:

On October 7, 2003, respondents John Velez and Clarissa Velez filed a complaint[3] for ejectment against petitioner Milagros Salting involving a property covered by Transfer Certificate of Title (TCT) No. 38079. The case was docketed as Civil Case No. 2524. On March 28, 2006, respondents obtained a favorable decision[4] when the Metropolitan Trial Court (MeTC), Branch LXXIV, of Taguig City, Metro Manila, ordered petitioner to vacate the subject parcel of land and to pay attorney's fees and costs of suit. The decision became final and executory, after which respondents filed a motion for execution which was opposed by petitioner.

Thereafter, petitioner instituted an action before the Regional Trial Court (RTC), Branch 153, for Annulment of Sale of the Property covered by TCT No. 38079, with prayer for the issuance

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 26-33.

[2] *Id.* at 35.

[3] *Id.* at 37-40.

[4] Penned by Presiding Judge Maria Paz Reyes-Yson; *id.* at 51-56.

of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against respondents, Hon. Ma. Paz Yson, Deputy Sheriff Ernesto G. Raymundo, Jr., Teresita Diokno-Villamena, and Heirs of Daniel B. Villamena (Heirs of Villamena).[5] The case was docketed as Civil Case No. 70859-TG. Petitioner claimed that she purchased the subject parcel of land from Villamena as evidenced by a notarized document known as Sale of Real Estate. She further explained that respondents were able to obtain title to the subject property through the fraudulent acts of the heirs of Villamena. Finally, she averred that the decision in Civil Case No. 2524 had not attained finality as she was not properly informed of the MeTC decision. Petitioner thus prayed that a TRO be issued, restraining respondents and all persons acting for and in their behalf from executing the MeTC decision dated March 28, 2006. She further sought the declaration of nullity of the sale by the heirs of Villamena to respondents involving the subject parcel of land, and, consequently, the cancellation of the title to the property in the name of respondents.

Finding that petitioner would suffer grave and irreparable damage if respondents would not be enjoined from executing the March 28, 2006 MeTC decision while respondents would not suffer any prejudice, the RTC, in an Order dated October 26, 2006, granted the writ of preliminary injunction applied for.[6] Aggrieved, respondents filed a special civil action for *certiorari* under Rule 65 of the Rules of Court before the CA, raising the sole issue of whether or not the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the writ of preliminary injunction against the execution of a judgment for ejectment.

In a Decision[7] dated November 29, 2007, the CA resolved the issue in the affirmative. The CA noted that the principal

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[5] *Id.* at 57-64.

[6] *Id.* at 29.

[7] *Supra* note 1.

action in Civil Case No. 70859-TG is the annulment of the deed of sale executed between respondents and the heirs of Villamena, while the subject of the ancillary remedy of preliminary injunction is the execution of the final judgment in a separate proceeding for ejectment in Civil Case No. 2524. The appellate court concluded that petitioner had no clear and unmistakable right to possession over the subject parcel of land in view of the March 28, 2006 MeTC decision. Hence, contrary to the conclusion of the RTC, the CA opined that petitioner was not entitled to the writ of preliminary injunction. The CA thus set aside the October 26, 2006 Order of the RTC.

Petitioner now comes before this Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court, claiming that:

> In rendering the assailed Decision and Resolution, the Court of Appeals has decided in a way probably not in accord with law or with the applicable decisions of the Supreme Court. (Section 6 (a), Rule 45, 1997 Rule[s] of Civil Procedure). The Court of Appeals disregarded the rule that service of decision to a deceased lawyer is invalid and that the party must be duly served by the final judgment in order that the final judgment will become final and executory. The Court of Appeals, likewise, disregarded the existence of a clear and existing right of the petitioner which should be protected by an injunctive relief and the rule that the pendency of an action assailing the right of a party to eject will justify the suspension of the proceedings of the ejectment case.[8]

Petitioner claims that she was denied her right to appeal when the March 28, 2006 MeTC decision was declared final and executory despite the fact that the copy of the decision was served on her deceased counsel. She further claims that the MeTC decision had not attained finality due to improper service of the decision. Moreover, petitioner avers that she has a clear and existing right and interest over the subject property which should be protected by injunction. Finally, petitioner argues

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[8] *Rollo*, p. 15.

that jurisprudence allows the suspension of proceedings in an ejectment case at whatever stage when warranted by the circumstances of the case.

In their Comment,[9] respondents allege that the petition is already moot and academic in view of the execution of the MeTC decision. They claim that it is not proper to restrain the execution of the MeTC decision as the case instituted before the RTC was for the annulment of the sale executed between respondents and the heirs of Villamena, and not an action for annulment of judgment or *mandamus* to compel the MeTC to entertain her belated appeal. Respondents add that the finality of the ejectment case is not a bar to the case instituted for the annulment of the sale and the eventual recovery of ownership of the subject property. The actions for ejectment and for annulment of sale are two different cases that may proceed independently, especially when the judgment in the ejectment case had attained finality, as in the instant case. Finally, respondents fault the petitioner herself for not informing the MeTC of the death of her former counsel the moment she learned of such death.

We find no merit in the petition.

We first determine the validity of the service of the March 28, 2006 MeTC decision on petitioner's counsel who, as of that date, was already deceased. If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.[10] Thus, when the MeTC decision was sent to petitioner's counsel, such service of judgment was valid and binding upon petitioner, notwithstanding the death of her counsel. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership continues to exist lawfully, the partners are still alive, or its

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[9] *Id.* at 99-118.

[10] RULES OF COURT, Rule 13, Sec. 2.

associates are still connected with the firm.[11] Litigants, represented by counsel, cannot simply sit back, relax, and await the outcome of their case.[12] It is the duty of the party-litigant to be in contact with her counsel from time to time in order to be informed of the progress of her case.[13] It is likewise the duty of the party to inform the court of the fact of her counsel's death. Her failure to do so means that she is negligent in the protection of her cause, and she cannot pass the blame to the court which is not tasked to monitor the changes in the circumstances of the parties and their counsels.

It is noteworthy that when petitioner came to know of the death of her counsel and upon obtaining the services of a new counsel, petitioner instituted another action for the annulment of the deed of sale between her and the heirs of Villamena, instead of questioning the MeTC decision through an action for annulment of judgment. Obviously, the annulment case instituted by petitioner is separate and distinct from the ejectment case filed by respondents. She cannot, therefore, obtain relief through the second case for alleged errors and injustices committed in the first case.

With the foregoing disquisition, we find that the March 28, 2006 MeTC decision had, indeed, become final and executory. A final and executory decision can only be annulled by a petition to annul the same on the ground of extrinsic fraud and lack of jurisdiction, or by a petition for relief from a final order or judgment under Rule 38 of the Rules of Court. However, no petition to that effect was filed.[14] Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered, or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further

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[11] *Amatorio v. People*, 445 Phil. 481, 490 (2003); *Bernardo v. CA*, 341 Phil. 413, 427 (1997).

[12] *Bernardo v. CA, supra,* at 428.

[13] *Id.* at 429.

[14] *Estate of Salud Jimenez v. Phil. Export Processing Zone*, 402 Phil. 271 (2001).

can be done to a final judgment except to execute it.[15]

In the present case, the finality of the March 28, 2006 decision with respect to possession *de facto* cannot be affected by the pendency of the annulment case where the ownership of the property is being contested.[16] We are inclined to adhere to settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of the enforcement of the final decision in an ejectment suit. The rationale of the rule has been explained in this wise:

> This rule is not without good reason. If the rule were otherwise, ejectment cases could easily be frustrated through the simple expedient of filing an action contesting the ownership over the property subject of the controversy. This would render nugatory the underlying philosophy of the summary remedy of ejectment which is to prevent criminal disorder and breaches of the peace and to discourage those who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in court to assert their claims.[17]

Unlawful detainer and forcible entry suits under Rule 70 of the Rules of Court are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[18]

Finally, as aptly held by the CA, petitioner is not entitled to a writ of preliminary injunction to restrain the execution of the MeTC decision. Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of preliminary injunction, *viz.*:

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[15] *Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312.

[16] *Soco v. CA*, 331 Phil. 753, 762 (1996).

[17] *Samonte v. Century Savings Bank*, G.R. No. 176413, November 25, 2009, 605 SCRA 478, 485-486.

[18] *Id.* at 486.

SEC. 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

And as clearly explained in *Ocampo v. Sison Vda. de Fernandez*[19] —

To be entitled to the injunctive writ, the applicant must show that there exists a right to be protected which is directly threatened by an act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent serious damage. The applicant's right must be clear and unmistakable. In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion. Where the applicant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.

A clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the applicant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.[20]

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[19] G.R. No. 164529, June 19, 2007, 525 SCRA 79.

[20] *Ocampo v. Sison Vda. de Fernandez, id.* at 94-95.

In this case, the enforcement of the writ of execution which would evict petitioner from her residence is manifestly prejudicial to her interest. However, she possesses no legal right that merits the protection of the courts through the writ of preliminary injunction. Her right to possess the property in question has been declared inferior or inexistent in relation to respondents in the ejectment case in the MeTC decision which has become final and executory.[21]

In any event, as manifested by respondents, the March 28, 2006 MeTC decision has already been executed. Hence, there is nothing more to restrain.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated November 29, 2007 and Resolution dated February 27, 2008 in CA-G.R. SP No. 97618 are *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182547. January 10, 2011]

CHINA BANKING CORPORATION, *petitioner, vs.* **ARMI S. ABEL,** *respondent.*

SYLLABUS

MERCANTILE LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); FORECLOSURE SALE; WRIT OF POSSESSION; ORDERS FOR THE ISSUANCE THEREOF ARE ISSUED AS

[21] *Medina v. City Sheriff, Manila,* 342 Phil. 90, 96-97 (1997).

A MATTER OF COURSE UPON THE FILING OF THE PROPER MOTION AND APPROVAL OF THE CORRESPONDING BOND.— Orders for the issuance of a writ of possession are issued as a matter of course upon the filing of the proper motion and approval of the corresponding bond since no discretion is left to the court to deny it. The RTC's issuance of such writ conformably with the express provisions of law cannot be regarded as done without jurisdiction or with grave abuse of discretion. Such issuance being ministerial, its execution by the sheriff is likewise ministerial. In truth, the bank has failed to take possession of the property after more than seven years on account of Abel's legal maneuverings.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao Alameda and Casiding for petitioner.

D E C I S I O N

ABAD, *J.*:

This case is about the trial court's grant of a petition for the issuance of a writ of possession before the possessor of the property could be heard on her opposition and its subsequent denial of her motion for reconsideration.

The Facts and the Case

In a foreclosure sale, petitioner China Banking Corporation (China Bank) acquired title[1] over respondent Armi S. Abel's property at La Vista Subdivision, Quezon City, she having failed to pay her loan. To enforce its ownership, in January 2003 China Bank filed with the Regional Trial Court (RTC) of Quezon City in LRC Case Q-16014(03) an *ex parte* petition for the issuance of a writ of possession in its favor.

[1] Transfer Certificate of Title N-241387 in the name of China Banking Corporation.

On October 2, 2003 the RTC rendered a decision, granting China Bank's petition and directing the issuance of a writ of possession over the property in its favor. Abel appealed from this decision but lost her appeal[2] in the Court of Appeals (CA). She filed a petition for review before this Court in G.R. No. 169229 but this, too, failed. She filed a motion for reconsideration and a second similar motion without success. The Court's judgment became final and executory and, eventually, the record of her case was remanded to the RTC for execution.

China Bank filed a motion for execution with the RTC, setting it for hearing on June 8, 2007. On June 7, 2007 Abel filed a motion to cancel and reset the hearing on the ground that she needed more time to comment on or oppose the bank's motion. On June 8, 2007 the RTC granted her the 10-day period she asked but "from notice."

On June 19, 2007, noting Abel's failure to file her opposition to or comment on the motion for execution, the RTC issued an Order granting China Bank's motion. After being served with the notice to vacate, Abel filed on June 21, 2007 an omnibus urgent motion for reconsideration and to admit her opposition to the bank's motion for execution. She set her urgent motion for hearing on June 29, 2007. On June 22, 2007, however, the day after receiving her motion, the RTC denied the same for lack of merit.

On June 25, 2007 the sheriff implemented the writ against Abel and placed China Bank in possession of the subject property. On even date, Abel filed a petition for *certiorari* with the CA in CA-G.R. SP No. 99413, assailing the RTC's June 19 and 22, 2007 Orders. On July 2, 2007, a Saturday, Abel took back possession of the premises on the strength of a Temporary Restraining Order (TRO) that the CA issued on June 29, 2007.

On January 3, 2008 the CA rendered a decision,[3] setting aside the assailed orders of the RTC. China Bank moved for

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[2] CA-G.R. CV 80522.

[3] *Rollo*, pp. 49-61; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

its reconsideration but the CA denied this in an April 9, 2008 Resolution.[4] The CA ruled that the RTC committed grave abuse of discretion in granting the bank's motion for execution, noting that the latter court gave Abel 10 days *from notice* of its order, not 10 days from the issuance of such order, within which to file her opposition. Parenthetically, the shorter period was what she asked for in her motion for postponement. But there was no proof, said the CA, as to when Abel had notice of the RTC's June 8, 2007 Order as to determine when the 10-day period actually began to run.

China Bank thus filed this petition for review on *certiorari* against the CA decision and resolution denying its motion for reconsideration.

The Issue Presented

The issue in this case is whether or not the CA erred in setting aside the assailed RTC's June 19 and 22, 2007 Orders on the ground of failure to observe due process respecting Abel's right to be heard on the bank's motion for execution.

The Court's Ruling

The CA erred in attributing grave abuse of discretion to the RTC. Although the RTC caused the issuance of the writ of execution before it could establish that Abel's 10 days "from notice" within which to file her opposition had lapsed, she filed with that court on June 21, 2007 an urgent motion for reconsideration with her opposition to the motion for execution attached. The Court, acting on her motion, denied it on the following day, June 22, 2007. Any perceived denial of her right to be heard on the bank's motion for execution had been cured by her motion for reconsideration and the RTC's action on the same.

True, Abel gave notice to China Bank that she would submit her motion for reconsideration for the RTC's consideration on June 29, 2007 but that notice is for the benefit of the bank, not for her, that it may be heard on the matter. She cannot complain

[4] *Id*. at 62-63.

that the court acted on her motion more promptly than she expected especially since she actually offered no legitimate reason for opposing the issuance of a writ of possession in the bank's favor.

Orders for the issuance of a writ of possession are issued as a matter of course upon the filing of the proper motion and approval of the corresponding bond since no discretion is left to the court to deny it.[5] The RTC's issuance of such writ conformably with the express provisions of law cannot be regarded as done without jurisdiction or with grave abuse of discretion. Such issuance being ministerial, its execution by the sheriff is likewise ministerial.[6] In truth, the bank has failed to take possession of the property after more than seven years on account of Abel's legal maneuverings.

ACCORDINGLY, the Court *GRANTS* the petition of China Banking Corporation, *REVERSES and SETS ASIDE* the Court of Appeals decision dated January 3, 2008 and resolution dated April 9, 2008 in CA-G.R. SP 99413, and *REINSTATES* the orders of the Regional Trial Court (Branch 220) in LRC Case Q-16014(03) dated June 19 and 22, 2007. With costs against respondent Armi S. Abel.

SO ORDERED.

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

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[5] *Spouses Camacho v. Philippine National Bank*, 415 Phil. 581, 586 (2001).

[6] *Mamerto Maniquiz Foundation, Inc. v. Pizarro*, 489 Phil. 127, 138 (2005).

THIRD DIVISION

[G.R. No. 184954. January 10, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JAY LORENA *y* LABAG,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.— In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.

2. ID.; ID.; SEIZURE AND CUSTODY OF ILLEGAL DRUGS; PROCEDURE.— [C]onsidering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to comply strictly with procedure in its seizure and custody. Section 21, paragraph 1, Article II of R.A. No. 9165 provides such procedure: "(1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]" Evident from the records of this case, however, is the fact that the members of the buy-bust team did not comply with the procedure laid down in Section 21 of R.A. No. 9165. Nothing in the testimony of Solero, Commander of Task Force Ubash,

would show that the procedure was complied with. He even admitted that he has not seen the inventory of the confiscated drugs allegedly prepared by the police officers and that he only read a little of R.A. No. 9165 x x x.

3. **ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH WILL NOT AUTOMATICALLY RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE; CONDITION.—** *People v. Pringas* teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. x x x [I]t is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and evidentiary value of the evidence seized had been preserved. It must be shown that the illegal drug presented in court is the very same specimen seized from the accused. This function is performed by the "chain of custody" requirement to erase all doubts as to the identity of the seized drugs by establishing its movement from the accused, to the police, to the forensic chemist and finally to the court.

4. **ID.; ID.; DANGEROUS DRUGS BOARD REGULATION NO. 1, SERIES OF 2002; CHAIN OF CUSTODY; DEFINED.—** Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines "chain of custody" as follows: "'Chain of Custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course

of safekeeping and use in court as evidence, and the final disposition[.]"

5. ID.; ID.; SEIZURE AND CUSTODY OF ILLEGAL DRUGS; CHAIN OF CUSTODY; AN UNBROKEN CHAIN OF CUSTODY IS INDISPENSABLE AND ESSENTIAL IN THE PROSECUTION OF DRUG CASES.— In this case, there was no compliance with the inventory and photographing of the seized dangerous drug and marked money immediately after the buy-bust operation. We have held that such non-compliance does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be justifiable grounds to warrant exception therefrom, and provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/s. While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Hence, *every link must be accounted for*. x x x Given the x x x lapses committed by the apprehending officers, the saving clause cannot apply to the case at bar. Not only did the prosecution fail to offer any justifiable ground why the procedure required by law was not complied with, it was also unable to establish the chain of custody of the *shabu* allegedly taken from appellant. The obvious gaps in the chain of custody created a reasonable doubt as to whether the specimen seized from appellant was the same specimen brought to the crime laboratories and eventually offered in court as evidence. Without adequate proof of the *corpus delicti*, appellant's conviction cannot stand.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; OBTAINS ONLY WHERE NOTHING IN THE RECORDS IS SUGGESTIVE OF THE FACT THAT THE LAW ENFORCERS INVOLVED DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY AS PROVIDED FOR IN THE LAW.— As a result of the irregularities and lapses in the chain of custody requirement which unfortunately the trial and appellate courts overlooked, the presumption of regularity in the performance of official duties cannot be used against appellant. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule

of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

The instant appeal assails the Decision[1] dated November 22, 2007 of the Court of Appeals (CA) in CA-G.R. CR–H.C. No. 01620 which affirmed with modification the August 30, 2005 judgment[2] of the Regional Trial Court (RTC), Branch 25, of Naga City, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

In an Information[3] dated July 10, 2003, appellant Jay Lorena *y* Labag was charged as follows:

That on or about February 9, 2003, at about 7:30 o'clock (sic) in the evening, at Pier Site, Sta. Rosa, Pasacao, Camarines Sur, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there, willfully, unlawfully, criminally and knowingly sell Methamphetamine Hydrocholoride, with a total weight of 0.21

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[1] *Rollo*, pp. 2-9. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[2] Records, pp. 236-241. Penned by Judge Jaime E. Contreras.

[3] *Id.* at 1.

gram[,] a dangerous drug, contained in a plastic sachet, to a poseur[-]buyer, without authority of law, and one (1) Five Hundred Peso bill with serial number MS [979614][4] was confiscated from the accused, to the damage and prejudice of the People of the Philippines.

ACTS CONTRARY TO LAW.

During pre-trial, the prosecution and defense stipulated on the following facts:

1. Identity of the accused;
2. That the arresting officers were organic members of the PNP Pasacao, Camarines Sur;
3. That the accused was within the premises of [P]ier [S]ite, Sta. Rosa, Pasacao, Camarines Sur on February 9, 2003 at around 7:30 o'clock (sic) in the evening; and
4. That the accused knew a certain Iris Mae Cleofe.[5]

When arraigned, appellant pleaded not guilty.[6] In the ensuing trial, the prosecution presented seven witnesses: P/Insp. Mauro E. Solero, SPO1 Constantino Espiritu, SPO2 Ernesto Ayen, P/Insp. Josephine Macura Clemen, P/Insp. Ma. Cristina Nobleza, Police Chief Insp. Jerry Bearis, and P/Insp. Nelson del Socorro. Taken altogether, the evidence for the prosecution tried to establish the following facts:

On February 9, 2003, around 8:00 in the morning, Iris Mae Cleofe (Iris), a civilian informant, came to the Pasacao Police Station to report appellant's alleged drug trafficking activities. Acting on said information, Pasacao Police Station Officer-in-Charge Police Chief Insp. Jerry Bearis (Bearis) directed P/Insp. Mauro E. Solero (Solero), SPO3 Tomas Llamado, SPO3 Oscar Angel, SPO2 Ernesto Ayen (Ayen) and SPO1 Constantino Espiritu (Espiritu), all members of Task Force Ubash, a unit charged with monitoring drug trafficking activities in the area, to go with Iris and conduct a surveillance upon appellant. Around

[4] *Id.* at 180.

[5] *Id.* at 43.

[6] *Id.* at 29.

5:00 in the afternoon, after their surveillance yielded a positive result, Task Force Ubash coordinated by phone with the Philippine Drug Enforcement Agency (PDEA) Office in Naga City for the conduct of the buy-bust operation which will take place that same night at the house of one Edgar Saar (Saar) located in Pier Site, Pasacao. Thereafter, Solero, Commander of Task Force Ubash, gave a briefing to the members of the buy-bust team. They were likewise instructed to synchronize their watches because at exactly 7:30 in the evening, they will enter the place immediately after Iris, the designated poseur-buyer, utters the words "*Uya na ang bayad ko*" (Here is my payment) as a signal that the transaction has been perfected.

Around 7:00 in the evening, when it was already dark, the buy-bust team arrived in the area and positioned themselves in front of the house of Saar. They were approximately five meters away hiding in the dark behind the plants but had a good view of the well-lit porch of Saar's house. Moments later, Iris arrived and entered Saar's house. She immediately proceeded with the transaction and handed over the marked ₱500-bill to appellant who was then sitting down. While handing over the money, Iris uttered the words "*O, uya na an bayad ko kaiyan ha, baad kun wara-waraon mo iyan, uya na an bayad ko ha*" (This is my payment, you might misplace it), her voice deliberately made louder for the buy-bust team to hear. Simultaneously, appellant handed over a plastic sachet containing white crystalline substance to Iris. At that point, Solero, Espiritu and Ayen rushed to the porch, arrested appellant and handcuffed him. Ayen recovered from appellant's pocket the ₱500-bill while Iris turned over the sachet of *shabu* to Espiritu. Then they brought appellant to the police station where he was detained. The sachet containing white crystalline substance was thereafter personally submitted by Bearis to the Camarines Sur Provincial Crime Laboratory, where it was tested by P/Insp. Ma. Cristina D. Nobleza.

The initial field test showed that the white crystalline substance contained in the sachet was Methamphetamine Hydrochloride or *Shabu*. Thus, it was submitted to the PNP Regional Crime Laboratory Office 5 for confirmatory testing by P/Insp. Josephine

Macura Clemen, a forensic chemist. There, the specimen likewise tested positive for Methamphetamine Hydrochloride.

The defense, for its part, presented an entirely different version. Testifying as sole witness for the defense, appellant tried to establish the following facts:

During the first week of February 2003, appellant, a resident of San Felipe, Naga City, went to Pasacao to find a job. While in Pasacao, he stayed in the house of his friend Saar, in Pier Site.

On February 9, 2003, around 7:00 in the evening, while appellant was lying on a hammock near Saar's residence, he saw Iris enter the yard and go into Saar's house. A little later, she went out of the house so appellant asked her who she was looking for. Iris replied that she was looking for one Bongbong Ditsuso. Appellant told Iris to just wait for Bongbong inside the house. In the meantime, he went to the kitchen to cook rice. A little while later, he returned to the living room to talk to Iris. While they were talking, several men barged in and Iris suddenly gave him something which he later found out to be crumpled money when it fell on the floor. The men then handcuffed him after punching him and hitting him with a Caliber .45 in the nape. Afterwards, they boarded him on an owner-type jeep and brought him to the police station where he was detained.

On August 30, 2005, the RTC promulgated its judgment finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentencing him to life imprisonment. The *fallo* reads:

> WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding accused JAY LORENA *y* Labag, guilty beyond reasonable doubt for Violation of Sec. 5, … [Article] II of R.A. 9165. This court hereby sentences him to suffer the penalty of **life imprisonment**.
>
> Since the accused has been undergoing preventive detention during the pendency of the trial of this case, let the same be credited in the service of his sentence.

SO ORDERED.[7]

The trial court found the prosecution evidence credible and sufficient to prove appellant's culpability beyond reasonable doubt. It held that even if the prosecution failed to present the poseur-buyer by reason of her death, her failure to testify was not fatal to the prosecution's evidence since prosecution witnesses Solero, Espiritu and Ayen were able to observe the transaction between Iris and appellant, and the *shabu* and buy-bust money recovered from him were presented as evidence to prove the sale. The trial court also ruled that the police officers are presumed to have performed their duties in a regular manner in the absence of evidence that they were motivated by spite, ill will, or other evil motive. The trial court did not give credence to appellant's defense of denial, frame-up and maltreatment. It held that his claim cannot prevail over the positive identification made by credible prosecution witnesses and in light of the presumption of regularity in the performance of duties of law enforcers.

Appellant appealed to the CA. In his brief, appellant alleged that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY [OF] VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 [DESPITE] THE FAILURE OF THE PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.[8]

On November 22, 2007, the CA rendered a decision affirming with modification the RTC decision and disposing as follows:

WHEREFORE, judgment is hereby rendered AFFIRMING WITH MODIFICATION the Judgment of the Regional Trial Court of Naga City, Branch 25. Appellant Jay Lorena *y* Labag is found GUILTY beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentencing him to suffer the penalty of life imprisonment **and to pay a fine of ₱500,000.00.**

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[7] *Id.* at 241.

[8] CA *rollo*, p. 65.

Since the accused has been undergoing preventive detention during the pendency of the trial of this case, let the same be credited in the service of his sentence.

SO ORDERED.[9]

Aggrieved, appellant filed the instant appeal.

On December 15, 2008, the Court directed the parties to file their respective supplemental briefs if they so desire.[10] The Office of the Solicitor General manifested[11] that it is dispensing with the filing of a supplemental brief as it finds no new issues to raise before this Court. Appellant, on the other hand, in addition to the lone assignment of errors he raised before the CA, raised the following errors in his Supplemental Brief:

I

THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO PROVE THE BUY-BUST TEAM'S COMPLIANCE WITH THE PROVISIONS OF SECTION 21, R.A. NO. 9165.

II

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED–APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[12]

Appellant questions the validity of his warrantless arrest, contending that none of the circumstances provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure, as amended, which justify a warrantless arrest is present. He likewise points out that the non-presentation of the poseur-buyer coupled with the inconsistencies in the testimonies of the prosecution witnesses and their testimony to the effect that they did not see the sale itself, taint the credibility of the buy-

[9] *Rollo*, p. 8.

[10] *Id.* at 15.

[11] *Id.* at 17-18.

[12] *Id.* at 24.

bust operation. He adds that the lower court misapplied the presumption of regularity in the performance of official function, especially since the arresting officers failed to comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs as mandated by Section 21, R.A. No. 9165.

We reverse appellant's conviction.

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.[13]

Further, considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to comply strictly with procedure in its seizure and custody.[14] Section 21, paragraph 1, Article II of R.A. No. 9165 provides such procedure:

> (1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied.)

Evident from the records of this case, however, is the fact that the members of the buy-bust team did not comply with the

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[13] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, p. 7, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266.

[14] *People v. Kamad*, G.R. No.174198, January 19, 2010, 610 SCRA 295, 304-305.

procedure laid down in Section 21 of R.A. No. 9165. Nothing in the testimony of Solero, Commander of Task Force Ubash, would show that the procedure was complied with. He even admitted that he has not seen the inventory of the confiscated drugs allegedly prepared by the police officers and that he only read a little of R.A. No. 9165:

Q Now, Mr. Witness, did you prepare an inventory insofar as the apprehension of the *shabu* allegedly taken from the suspect?

A That is the work of the Investigator, sir, we were just after the buy-bust operation.

Q Was there any inventory prepared insofar as the operation is concerned?

A Yes, sir.

Q Where is that inventory?

A At the Investigation Section, sir.

Q Are you sure that there was indeed an inventory prepared?

A Yes, sir.

Q So, you are telling this court that the *shabu* that was allegedly taken from Jay Lorena was endorsed to the Investigation Section?

A To the desk officer on duty first for the recording.

Q Do you know what is investigation, Mr. Witness?

A The details, the money involved including the suspect.

Q This case was filed in the year 2003 and I suppose you are already aware of Rep. Act No. 9165 or the Comprehensive Dangerous Drugs Act?

A Yes, sir.

Q And the persons who prepare the inventory are the persons who apprehended, are you aware of that?

A Yes sir, but the desk officer is also a member of the police station.

Q So, you turned over the *shabu* to the desk officer?

A Yes sir, including the suspect.

Q And to your own knowledge, there was an inventory prepared by the desk officer?

A The Investigation Section, sir.

Q And in that inventory, Insp. Del Socorro signed?

A No, sir.

Q Or the local elected official signed that inventory?

A I did not see the inventory, sir.

Q So, you are talking about a particular document which you have not seen?

A But I know it was inventoried.

Q Now, during the supposed buy-bust operation, upon apprehending Jay Lorena and the *shabu* that your group allegedly taken from him, was there any photograph taken?

A None, sir.

Q Was there any police officer from the Pasacao Police Station or even the Chief of Police himself instructed your group about the requirements prescribed under Rep. Act No. 9165?

A None, sir.

Q But personally you are aware of Rep. Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act?

A Yes, sir.

Q Have you read that?

A A little.[15]

Nonetheless, *People v. Pringas*[16] teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as

[15] TSN, January 12, 2004, pp. 17-19.

[16] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

the same would be utilized in the determination of the guilt or innocence of the accused.[17] We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[18] As provided in Section 21, Article II of the Implementing Rules of R.A. No. 9165:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**[.]

x x x (Emphasis and underscoring supplied.)

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[17] *Id.* at 842-843.

[18] *People v. Pagaduan*, *supra* note 13 at 10-11.

Even so, for the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and evidentiary value of the evidence seized had been preserved.[19] It must be shown that the illegal drug presented in court is the very same specimen seized from the accused. This function is performed by the "chain of custody" requirement to erase all doubts as to the identity of the seized drugs by establishing its movement from the accused, to the police, to the forensic chemist and finally to the court.[20] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines "chain of custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.][21]

In this case, there was no compliance with the inventory and photographing of the seized dangerous drug and marked money immediately after the buy-bust operation. We have held that such non-compliance does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be justifiable grounds to warrant exception therefrom, and provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/s.[22] While a

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[19] *People v. Almorfe*, G.R. No. 181831, March 29, 2010, 617 SCRA 52, 60, citing *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[20] *People v. Almorfe*, *id.* at 60-61, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[21] See *People v. Denoman*, G.R. No. 171732, August 14, 2000, 596 SCRA 257, 271.

[22] *People v. Almorfe*, *supra* note 19 at 59, citing Sec. 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165.

perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Hence, *every link must be accounted for*.[23]

Prosecution witnesses Solero, Ayen and Espiritu were united in testifying that after the consummation of the transaction and immediately upon appellant's apprehension, Iris turned over the plastic sachet to Espiritu. It was likewise clear that Espiritu turned over to Solero the specimen allegedly seized from appellant at the police station.

However, as to the subsequent handling of said specimen at the police station until it was presented in court, the prosecution failed to clearly account for each link in the chain due to the vagueness and patent inconsistencies in the testimonies of the prosecution witnesses.

Solero testified that after he got hold of the specimen, the same was turned over to the desk officer whose name he cannot remember.[24] During his direct examination, he promised that he will find out who the desk officer was during that particular day.[25] He however failed to name the said desk officer when he came back on another hearing date for his cross examination and still referred to him or her as "the desk officer on duty."[26] And when asked what their office did to the specimen, he declared that what he knows is that it was brought to the provincial crime laboratory for testing but cannot remember who brought it to the provincial crime laboratory.[27]

Bearis, on the other hand, testified that it was he who brought the specimen to the provincial crime laboratory and when asked from whom he got the specimen, he stated that it was Solero

[23] *Id.* at 61-62, citing *Malillin v. People*, *supra* note 20 at 633.

[24] TSN, January 9, 2004, pp. 14-15.

[25] *Id.* at 15.

[26] TSN, January 12, 2004, p. 17.

[27] TSN, January 9, 2004, p. 15.

who handed it over to him (Bearis).[28] He identified in court that it was the same specimen he brought to the provincial crime laboratory since it had the marking "MES," presumably corresponding to the initials of Solero, and claimed that it was marked in his presence.[29] There was no evidence to show, however, if Solero indeed made said marking in the presence of Bearis since there was no mention of this when Solero testified. We find Solero's failure to mention the supposed marking as consistent with his claim that he turned over the specimen to the unidentified desk officer and not to Bearis. It is thus unclear whether after Solero, the next person who came into possession of the specimen was the unidentified desk officer **OR** Bearis, given the latter's testimony that he directly got the same from Solero.

Also unaccounted for is the transfer of the specimen from the provincial crime laboratory to the regional crime laboratory. Nobleza, who received the specimen from Bearis and conducted the initial field test on it, testified that after the examination and preparing the result, she turned over the same to the evidence custodian, SPO3 Augusto Basagre.[30] Clemen, the chemist who conducted the confirmatory test at the regional crime laboratory, testified that she received the specimen from one P/Insp. Alfredo Lopez,[31] Deputy Provincial Officer of the Provincial Crime Laboratory, the signatory of the memorandum for request for laboratory examination.[32] The prosecution failed to present evidence to show how the specimen was transferred from Basagre to Lopez.

Given the foregoing lapses committed by the apprehending officers, the saving clause cannot apply to the case at bar. Not only did the prosecution fail to offer any justifiable ground why the procedure required by law was not complied with, it was

[28] TSN, June 8, 2004, pp. 14-15.

[29] *Id.* at 13.

[30] *Id.* at 5.

[31] Lauta in the TSN.

[32] TSN, May 6, 2004, p. 5.

also unable to establish the chain of custody of the *shabu* allegedly taken from appellant. The obvious gaps in the chain of custody created a reasonable doubt as to whether the specimen seized from appellant was the same specimen brought to the crime laboratories and eventually offered in court as evidence. Without adequate proof of the *corpus delicti*, appellant's conviction cannot stand.

As a result of the irregularities and lapses in the chain of custody requirement which unfortunately the trial and appellate courts overlooked, the presumption of regularity in the performance of official duties cannot be used against appellant. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[33]

WHEREFORE, we hereby *REVERSE* and *SET ASIDE* the November 22, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01620. Appellant *JAY LORENA y LABAG* is *ACQUITTED* of the crime charged and ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause/s.

The Director of the Bureau of Corrections is *DIRECTED* to *IMPLEMENT* this Decision with deliberate dispatch and to report to this Court the action taken hereon within five (5) days from receipt hereof.

With costs *de oficio*.

SO ORDERED.

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

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[33] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 156.

THIRD DIVISION

[G.R. No. 188314. January 10, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **KHADDAFY JANJALANI, GAMAL B. BAHARAN *a.k.a.* Tapay, ANGELO TRINIDAD *a.k.a.* Abu Khalil, GAPPAL BANNAH ASALI *a.k.a.* Maidan or Negro, JAINAL SALI *a.k.a.* Abu Solaiman, ROHMAT ABDURROHIM *a.k.a.* Jackie or Zaky, and other JOHN and JANE DOES,** *accused.* **GAMAL B. BAHARAN *a.k.a.* Tapay, ANGELO TRINIDAD *a.k.a.* Abu Khalil, and ROHMAT ABDURROHIM *a.k.a.* Abu Jackie or Zaky,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA OF GUILTY TO CAPITAL OFFENSE; REQUIREMENT FOR THE COURT TO CONDUCT A SEARCHING INQUIRY INTO THE VOLUNTARINESS AND FULL COMPREHENSION OF THE CONSEQUENCES OF THE PLEA; ELUCIDATED AND EMPHASIZED. — As early as in *People v. Apduhan,* the Supreme Court has ruled that "all trial judges … must refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty, he understands fully the meaning of his plea and the import of an inevitable conviction." Thus, trial court judges are required to observe the following procedure under Section 3, Rule 116 of the Rules of Court: **SEC. 3.** *Plea of guilty to capital offense; reception of evidence.* — When the accused pleads guilty to a capital offense, the **court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea** and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. The requirement to conduct a searching inquiry applies more so in cases of re-arraignment. In *People v. Galvez*, the Court noted that since accused-appellant's original plea was "not guilty," the trial court should have exerted careful effort

in inquiring into why he changed his plea to "guilty." According to the Court: The stringent procedure governing the reception of a plea of guilt, especially in a case involving the death penalty, is imposed upon the trial judge in order to leave no room for doubt on the possibility that the accused might have misunderstood the nature of the charge and the consequences of the plea. Likewise, the requirement to conduct a searching inquiry should not be deemed satisfied in cases in which it was the defense counsel who explained the consequences of a "guilty" plea to the accused, as it appears in this case. In *People v. Alborida*, this Court found that there was still an improvident plea of guilty, even if the accused had already signified in open court that his counsel had explained the consequences of the guilty plea; that he understood the explanation of his counsel; that the accused understood that the penalty of death would still be meted out to him; and that he had not been intimidated, bribed, or threatened. We have reiterated in a long line of cases that the conduct of a searching inquiry remains the duty of judges, as they are mandated by the rules to satisfy themselves that the accused had not been under coercion or duress; mistaken impressions; or a misunderstanding of the significance, effects, and consequences of their guilty plea. This requirement is stringent and mandatory.

2. ID.; ID.; ID.; ID.; ID.; RE-ARRAIGNMENT NOT WARRANTED DESPITE QUESTION ON THE SUFFICIENCY OF SEARCHING INQUIRY ON THE PLEA OF GUILT, THE PLEA BEING NOT THE SOLE BASIS OF THE CONDEMNATORY JUDGMENT UNDER CONSIDERATION. — [W]e are not unmindful of the context under which the re-arraignment was conducted or of the factual milieu surrounding the finding of guilt against the accused. The Court observes that accused Baharan and Trinidad previously pled guilty to another charge – *multiple murder* – based on the same act relied upon in the *multiple frustrated murder* charge. The Court further notes that prior to the change of plea to one of guilt, accused Baharan and Trinidad made two other confessions of guilt – one through an extrajudicial confession (exclusive television interviews, as stipulated by both accused during pretrial), and the other via judicial admission (pretrial stipulation). Considering the foregoing circumstances, we deem it unnecessary to rule on the sufficiency of the "searching inquiry" in this instance. Remanding the case for re-arraignment is not warranted, as the accused's plea of guilt

was not the sole basis of the condemnatory judgment under consideration.

3. ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE IMMATERIAL WHERE CONVICTION BASED ON INDEPENDENT EVIDENCE PROVING GUILT. — In *People v. Oden*, the Court declared that even if the requirement of conducting a searching inquiry was not complied with, "[t]he manner by which the plea of guilt is made … loses much of great significance where the conviction can be based on independent evidence proving the commission by the person accused of the offense charged." Thus, in *People v. Nadera*, the Court stated: **Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained**, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged. x x x The guilt of the accused Baharan and Trinidad was sufficiently established by the corroborating testimonies, coupled with their respective judicial admissions (pretrial stipulations) and extrajudicial confessions (exclusive television interviews, as they both stipulated during pretrial) that they were indeed the perpetrators of the Valentine's Day bombing. Accordingly, the Court upholds the findings of guilt made by the trial court as affirmed by the Court of Appeals.

4. CRIMINAL LAW; PERSONS CRIMINALLY LIABLE; PERSON WHO GAVE TRAINING TO MAKE AND UTILIZE BOMBS UNLAWFULLY IS A PRINCIPAL BY INDUCEMENT. — In the light of the foregoing evidence, the Court upholds the finding of guilt against Rohmat. Article 17 of the Revised Penal Code reads: Art. 17. *Principals*. — The following are considered principals: Those who take a direct part in the execution of the act. Those who directly force or induce others to commit it. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished. Accused Rohmat is criminally responsible under the second paragraph, or the provision on "principal by inducement." The instructions and training he had given Asali on how to make bombs – coupled with their careful planning and persistent attempts to bomb different areas in Metro Manila and Rohmat's confirmation that Trinidad would be getting TNT from Asali

as part of their mission – prove the finding that Rohmat's co-inducement was the determining cause of the commission of the crime. Such "command or advice [was] of such nature that, without it, the crime would not have materialized." Further, the inducement was "so influential in producing the criminal act that without it, the act would not have been performed." In *People v. Sanchez, et al.*, the Court ruled that, notwithstanding the fact that Mayor Sanchez was not at the crime scene, evidence proved that he was the mastermind of the criminal act or the principal by inducement. Thus, because Mayor Sanchez was a co-principal and co-conspirator, and because the act of one conspirator is the act of all, the mayor was rendered liable for all the resulting crimes. The same finding must be applied to the case at bar.

5. ID.; CONSPIRACY; WHEN PRESENT. — In *People v. Geronimo*, the Court pronounced that it would be justified in concluding that the defendants therein were engaged in a conspiracy "when the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object; and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments."

6. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; ADMISSION BY CONSPIRATOR; NOT APPLICABLE TO TESTIMONY AT TRIAL WHERE THE PARTY ADVERSELY AFFECTED HAS THE OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT. — Accused contend that the testimony of Asali is inadmissible pursuant to Sec. 30, Rule 130 of the Rules of Court. It is true that under the rule, statements made by a conspirator against a co-conspirator are admissible only when made during the existence of the conspiracy. However, as the Court ruled in *People v. Buntag*, if the declarant repeats the statement in court, his extrajudicial confession becomes a judicial admission, making the testimony admissible as to both conspirators. Thus, in *People v. Palijon*, the Court held the following: … [W]e must make a distinction between extrajudicial and judicial confessions. An extrajudicial confession may be given in evidence against the confessant but not against his co-accused as they are deprived of the opportunity to cross-examine him. A judicial confession is

admissible against the declarant's co-accused since the latter are afforded opportunity to cross-examine the former. **Section 30, Rule 130 of the Rules of Court applies only to extrajudicial acts or admissions and not to testimony at trial where the party adversely affected has the opportunity to cross-examine the declarant**. Mercene's admission implicating his co-accused was given on the witness stand. It is admissible in evidence against appellant Palijon. Moreover, where several accused are tried together for the same offense, the testimony of a co-accused implicating his co-accused is competent evidence against the latter.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

SERENO, *J.*:

Before the Court is an appeal from the Decision of the Court of Appeals (CA) dated 30 June 2008, which affirmed the Decision of the Regional Trial Court of Makati City in Criminal Case Nos. 05-476 and 05-4777 dated 18 October 2005. The latter Decision convicted the three accused-appellants – namely, Gamal B. Baharan *a.k.a.* Tapay, Angelo Trinidad *a.k.a.* Abu Khalil, and Rohmat Abdurrohim *a.k.a.* Abu Jackie or Zaky – of the complex crime of multiple murder and multiple frustrated murder, and sentenced them to suffer the penalty of death by lethal injection. The CA modified the sentence to *reclusion perpetua* as required by Republic Act No. 9346 (Act Abolishing the Imposition of Death Penalty).

Statement of Facts

The pertinent facts, as determined by the trial court, are as follows:

On 14 February 2005, an RRCG bus was plying its usual southbound route, from its Navotas bus terminal towards its Alabang bus terminal via Epifanio de los Santos Avenue (EDSA). Around 6:30 to 7:30 in the evening, while they were about to move out of the Guadalupe-EDSA southbound bus stop, the bus conductor noticed two men running after the bus. The two insisted on getting on the bus, so the conductor obliged and let them in.

According to Elmer Andales, the bus conductor, he immediately became wary of the two men, because, even if they got on the bus together, the two sat away from each other – one sat two seats behind the driver, while the other sat at the back of the bus. At the time, there were only 15 passengers inside the bus. He also noticed that the eyes of one of the men were reddish. When he approached the person near the driver and asked him whether he was paying for two passengers, the latter looked dumb struck by the question. He then stuttered and said he was paying for two and gave PhP20. Andales grew more concerned when the other man seated at the back also paid for both passengers. At this point, Andales said he became more certain that the two were up to no good, and that there might be a holdup.

Afterwards, Andales said he became more suspicious because both men kept on asking him if the bus was going to stop at Ayala Avenue. The witness also noticed that the man at the back appeared to be slouching, with his legs stretched out in front of him and his arms hanging out and hidden from view as if he was tinkering with something. When Andales would get near the man, the latter would glare at him. Andales admitted, however, that he did not report the suspicious characters to the police.

As soon as the bus reached the stoplight at the corner of Ayala Avenue and EDSA, the two men insisted on getting off the bus. According to Andales, the bus driver initially did not want to let them off the bus, because a Makati ordinance prohibited unloading anywhere except at designated bus stops. Eventually, the bus driver gave in and allowed the two passengers to alight.

The two immediately got off the bus and ran towards Ayala Avenue. Moments after, Andales felt an explosion. He then saw fire quickly engulfing the bus. He ran out of the bus towards a nearby mall. After a while, he went back to where the bus was. He saw their bus passengers either lying on the ground or looking traumatized. A few hours after, he made a statement before the Makati Police Station narrating the whole incident.

The prosecution presented documents furnished by the Department of Justice, confirming that shortly before the explosion, the spokesperson of the Abu Sayyaf Group – Abu Solaiman – announced over radio station DZBB that the group had a Valentine's Day "gift" for former President Gloria Macapagal-Arroyo. After the bombing, he again went on radio and warned of more bomb attacks.

As stipulated during pretrial, accused Trinidad gave ABS-CBN News Network an exclusive interview some time after the incident, confessing his participation in the Valentine's Day bombing incident. In another exclusive interview on the network, accused Baharan likewise admitted his role in the bombing incident. Finally, accused Asali gave a television interview, confessing that he had supplied the explosive devices for the 14 February 2005 bombing. The bus conductor identified the accused Baharan and Trinidad, and confirmed that they were the two men who had entered the RRCG bus on the evening of 14 February.

Members of the Abu Sayyaf Group – namely Khaddafy Janjalani, Gamal B. Baharan, Angelo Trinidad, Gappal Bannah Asali, Jainal Asali, Rohmat Abdurrohim *a.k.a.* Abu Jackie or Zaky, and other "John" and "Jane Does" – were then charged with multiple murder and multiple frustrated murder. Only Baharan, Trinidad, Asali, and Rohmat were arrested, while the other accused remain at-large.

On their arraignment for the **multiple murder** charge (Crim. Case No. 05-476), Baharan, Trinidad, and Asali all entered a plea of **guilty**. On the other hand, upon arraignment for the **multiple frustrated murder** charge (Crim. Case No. 05-477), accused Asali pled **guilty**. Accused Trinidad and Baharan pled

not guilty. Rohmat pled **not guilty** to both charges. During the pretrial hearing, the parties stipulated the following:

1.) The jurisdiction of this court over the offenses charged.

2.) That all three accused namely alias Baharan, Trinidad, and Asali admitted knowing one another before February 14, 2005.

3.) All the same three accused likewise admitted that a bomb exploded in the RRCG bus while the bus was plying the EDSA route fronting the MRT terminal which is in front of the Makati Commercial Center.

4.) Accused Asali admitted knowing the other accused alias Rohmat whom he claims taught him how to make explosive devices.

5.) The accused Trinidad also admitted knowing Rohmat before the February 14 bombing incident.

6.) The accused Baharan, Trinidad, and Asali all admitted to causing the bomb explosion inside the RRCG bus which left four people dead and more or less forty persons injured.

7.) Both Baharan and Trinidad agreed to stipulate that within the period March 20-24 each gave separate interviews to the ABS-CBN news network admitting their participation in the commission of the said crimes, subject of these cases.

8.) Accused Trinidad and Baharan also admitted to pleading guilty to these crimes, because they were guilt-stricken after seeing a man carrying a child in the first bus that they had entered.

9.) Accused Asali likewise admitted that in the middle of March 2005 he gave a television news interview in which he admitted that he supplied the explosive devices which resulted in this explosion inside the RRCG bus and which resulted in the filing of these charges.

10.) Finally, accused Baharan, Trinidad, and Asali admitted that they are members of the Abu Sayyaf.[1]

In the light of the pretrial stipulations, the trial court asked whether accused Baharan and Trinidad were amenable to changing their "not guilty" pleas to the charge of **multiple frustrated murder,** considering that they pled "guilty" to the heavier charge

[1] Omnibus Decision of the Trial Court at 6, CA *rollo* at 97.

of **multiple murder**, creating an apparent inconsistency in their pleas. Defense counsel conferred with accused Baharan and Trinidad and explained to them the consequences of the pleas. The two accused acknowledged the inconsistencies and manifested their readiness for re-arraignment. After the Information was read to them, Baharan and Trinidad pled guilty to the charge of *multiple frustrated murder*.[2]

After being discharged as state witness, accused Asali testified that while under training with the Abu Sayyaf in 2004, Rohmat, *a.k.a* Abu Jackie or Zaky, and two other persons taught him how to make bombs and explosives. The trainees were told that they were to wage battles against the government in the city, and that their first mission was to plant bombs in malls, the Light Railway Transit (LRT), and other parts of Metro Manila.

As found by the trial court, Asali, after his training, was required by the Abu Sayyaf leadership, specifically Abu Solaiman and Rohmat, to secure eight kilos of TNT, a soldering gun, aluminum powder, a tester, and Christmas lights, all of which he knew would be used to make a bomb. He then recalled that sometime in November to December 2004, Trinidad asked him for a total of 4 kilos of TNT – that is, 2 kilos on two separate occasions. Rohmat allegedly called Asali to confirm that Trinidad would get TNT from Asali and use it for their first mission. The TNT was allegedly placed in two buses sometime in December 2004, but neither one of them exploded.

Asali then testified that the night before the Valentine's Day bombing, Trinidad and Baharan got another two kilos of TNT from him. Late in the evening of 14 February, he received a call from Abu Solaiman. The latter told Asali not to leave home or go to crowded areas, since the TNT taken by Baharan and Trinidad had already been exploded in Makati. Thirty minutes later, Trinidad called Asali, repeating the warning of Abu Solaiman. The next day, Asali allegedly received a call from accused Rohmat, congratulating the former on the success of the mission.[3]

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[2] TSN, 18 April 2005, at 3-17.

[3] CA *rollo* at 29.

According to Asali, Abu Zaky specifically said, "*Sa wakas nag success din yung tinuro ko sayo*."

Assignment of Errors

Accused-appellants raise the following assignment of errors:

I. The trial court gravely erred in accepting accused-appellants' plea of guilt despite insufficiency of searching inquiry into the voluntariness and full comprehension of the consequences of the said plea.

II. The trial court gravely erred in finding that the guilt of accused-appellants for the crimes charged had been proven beyond reasonable doubt.[4]

First Assignment of Error

Accused-appellants Baharan and Trinidad argue that the trial court did not conduct a searching inquiry after they had changed their plea from "not guilty" to "guilty." The transcript of stenographic notes during the 18 April 2005 re-arraignment before the Makati Regional Trial Court is reproduced below:

COURT : Anyway, I think what we should have to do, considering the stipulations that were agreed upon during the last hearing, is to address this matter of pleas of not guilty entered for the frustrated murder charges by the two accused, Mr. Trinidad and Mr. Baharan, because if you will recall they entered pleas of guilty to the *multiple murder charges*, but then earlier pleas of not guilty for the *frustrated multiple murder charges* remain… [I]s that not inconsistent considering the stipulations that were entered into during the initial pretrial of this case? [If] you will recall, they admitted to have caused the bomb explosion that led to the death of at least four people and injury of about forty other persons and so under the circumstances, Atty Peña, have you discussed this matter with your clients?

. . . . . .

[4] Brief for the Accused-Appellants at 1-2, CA *rollo* at 73-74.

ATTY. PEÑA: Then we should be given enough time to talk with them. I haven't conferred with them about this with regard to the *multiple murder case*.

… … …

COURT : Okay. So let us proceed now. Atty. Peña, can you assist the two accused because if they are interested in withdrawing their [pleas], I want to hear it from your lips.

ATTY. PEÑA: Yes, your Honor.

(At this juncture, Atty. Peña confers with the two accused, namely Trinidad and Baharan)

I have talked to them, your Honor, and I have explained to them the consequence of their pleas, your Honor, and that the plea of guilt to the *murder* case and plea of not guilty to the *frustrated multiple murder* actually are inconsistent with their pleas.

COURT : With matters that they stipulated upon?

ATTY. PEÑA: Yes, your Honor. So, they are now, since they already plead guilt to the murder case, then they are now changing their pleas, your Honor, from not guilty to the one of guilt. They are now ready, your Honor, for re-arraignment.

… … …

INTERPRETER: (Read again that portion [of the information] and translated it in Filipino in a clearer way and asked both accused what their pleas are).

Your Honor, both accused are entering separate pleas of guilt to the crime charged.

COURT : All right. So after the information was re-read to the accused, they have withdrawn their pleas of not guilty and changed it to the pleas of guilty to the charge of *frustrated murder*. Thank you. Are there any matters you need to address at pretrial now? If there are none, then I will terminate pretrial and accommodate…[5]

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[5] TSN, 18 April 2005, at 3-4, 14-15.

As early as in *People v. Apduhan,* the Supreme Court has ruled that "all trial judges … must refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty, he understands fully the meaning of his plea and the import of an inevitable conviction."[6] Thus, trial court judges are required to observe the following procedure under Section 3, Rule 116 of the Rules of Court:

> **SEC. 3.** *Plea of guilty to capital offense; reception of evidence.* — When the accused pleads guilty to a capital offense, the **court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea** and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. (Emphasis supplied)

The requirement to conduct a searching inquiry applies more so in cases of re-arraignment. In *People v. Galvez,* the Court noted that since accused-appellant's original plea was "not guilty," the trial court should have exerted careful effort in inquiring into why he changed his plea to "guilty."[7] According to the Court:

> The stringent procedure governing the reception of a plea of guilt, especially in a case involving the death penalty, is imposed upon the trial judge in order to leave no room for doubt on the possibility that the accused might have misunderstood the nature of the charge and the consequences of the plea.[8]

Likewise, the requirement to conduct a searching inquiry should not be deemed satisfied in cases in which it was the defense counsel who explained the consequences of a "guilty" plea to the accused, as it appears in this case. In *People v. Alborida*,

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[6] *People v. Apduhan,* G.R. No. L-19491, 30 August 1968, 24 SCRA 798.

[7] *People v. Galvez,* G.R. No. 135053, 6 March 2002, 378 SCRA 389; see also *People v. Chua*, G.R. No. 137841, 1 October 2001, 366 SCRA 283.

[8] *People v. Galvez,* G.R. No. 135053, 6 March 2002, 378 SCRA 389, citing *People v. Magat,* 332 SCRA 517, 526 (2000).

this Court found that there was still an improvident plea of guilty, even if the accused had already signified in open court that his counsel had explained the consequences of the guilty plea; that he understood the explanation of his counsel; that the accused understood that the penalty of death would still be meted out to him; and that he had not been intimidated, bribed, or threatened.[9]

We have reiterated in a long line of cases that the conduct of a searching inquiry remains the duty of judges, as they are mandated by the rules to satisfy themselves that the accused had not been under coercion or duress; mistaken impressions; or a misunderstanding of the significance, effects, and consequences of their guilty plea.[10] This requirement is stringent and mandatory.[11]

Nevertheless, we are not unmindful of the context under which the re-arraignment was conducted or of the factual milieu surrounding the finding of guilt against the accused. The Court observes that accused Baharan and Trinidad previously pled guilty to another charge – *multiple murder* – based on the same act relied upon in the *multiple frustrated murder* charge. The Court further notes that prior to the change of plea to one of guilt, accused Baharan and Trinidad made two other confessions of guilt – one through an extrajudicial confession (exclusive television interviews, as stipulated by both accused during pretrial), and the other via judicial admission (pretrial stipulation). Considering the foregoing circumstances, we deem it unnecessary to rule on the sufficiency of the "searching inquiry" in this instance. Remanding the case for re-arraignment is not warranted, as the accused's plea of guilt was not the sole basis of the condemnatory judgment under consideration.[12]

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[9] *People v. Alborida*, G.R. No. 136382, 25 June 2001, 359 SCRA 495.

[10] *People v. Dayot*, G.R. No. 88281, 20 July 1990, 187 SCRA 637; *People v. Alborida*, G.R. No. 136382, 25 June 2001, 359 SCRA 495, citing *People v. Sevilleno*, 305 SCRA 519 (1999).

[11] *People v. Galvez*, G.R. No. 135053, 6 March 2002, 378 SCRA 389.

[12] *People v. Alborida*, G.R. No. 136382, 25 June 2001, 359 SCRA 495.

Second Assignment of Error

In *People v. Oden*, the Court declared that even if the requirement of conducting a searching inquiry was not complied with, "[t]he manner by which the plea of guilt is made … loses much of great significance where the conviction can be based on independent evidence proving the commission by the person accused of the offense charged."[13] Thus, in *People v. Nadera*, the Court stated:

> **Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained**, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.[14] (Emphasis supplied.)

In their second assignment of error, accused-appellants assert that guilt was not proven beyond reasonable doubt. They pointed out that the testimony of the conductor was merely circumstantial, while that of Asali as to the conspiracy was insufficient.

Insofar as accused-appellants Baharan and Trinidad are concerned, the evidence for the prosecution, in addition to that which can be drawn from the stipulation of facts, primarily consisted of the testimonies of the bus conductor, Elmer Andales, and of the accused-turned-state-witness, Asali. Andales positively identified accused Baharan and Trinidad as the two men who had acted suspiciously while inside the bus; who had insisted on getting off the bus in violation of a Makati ordinance; and who had scampered away from the bus moments before the bomb exploded. On the other hand, Asali testified that he had given accused Baharan and Trinidad the TNT used in the bombing incident in Makati City. The guilt of the accused Baharan and Trinidad was sufficiently established by these corroborating testimonies, coupled with their respective judicial admissions

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[13] *People v. Oden*, G.R. Nos. 155511-22, 14 April 2004, 427 SCRA 634, citing *People v. Galas*, 354 SCRA 722 (2001).

[14] *People v. Nadera*, G.R. Nos. 131384-87, 2 February 2000, 324 SCRA 490.

(pretrial stipulations) and extrajudicial confessions (exclusive television interviews, as they both stipulated during pretrial) that they were indeed the perpetrators of the Valentine's Day bombing.[15] Accordingly, the Court upholds the findings of guilt made by the trial court as affirmed by the Court of Appeals.

Anent accused Rohmat, the evidence for the prosecution consisted of the testimony of accused-turned-state-witness Asali. Below is a reproduction of the transcript of stenographic notes on the state prosecutor's direct examination of state-witness Asali during the 26 May 2005 trial:

Q: You stated that Zaky trained you and Trinidad. Under what circumstances did he train you, Mr. Witness, to assemble those explosives, you and Trinidad?

A: Abu Zaky, Abu Solaiman, Khadaffy Janjalani, the three of them, that Angelo Trinidad and myself be the one to be trained to make an explosive, sir.

Q: Mr. witness, how long that training, or how long did it take that training?

A: If I am not mistaken, we were thought to make bomb about one month and two weeks.

… … …

Q: Now, speaking of that mission, Mr. witness, while you were still in training at Mr. Cararao, is there any mission that you undertook, if any, with respect to that mission?

… … …

A: Our first mission was to plant a bomb in the malls, LRT, and other parts of Metro Manila, sir.[16]

The witness then testified that he kept eight kilos of TNT for accused Baharan and Trinidad.

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[15] *Alano v. CA*, G.R. No. 111244, 15 December 1997, 283 SCRA 269, citing *People v. Hernandez*, 260 SCRA 25 (1996).

[16] TSN, 26 May 2005, at 24-36.

Q: Now, going back to the bomb. Mr. witness, did you know what happened to the 2 kilos of bomb that Trinidad and Tapay took from you sometime in November 2004?

A: That was the explosive that he planted in the G-liner, which did not explode.

Q: How did you know, Mr. witness?

A: He was the one who told me, Mr. Angelo Trinidad, sir.

… … …

Q: What happened next, Mr. witness, when the bomb did not explode, as told to you by Trinidad?

A: On December 29, Angelo Trinidad got 2 more kilos of TNT bombs.

… … …

Q: Did Trinidad tell you why he needed another amount of explosive on that date, December 29, 2004? Will you kindly tell us the reason why?

… … …

A: He told me that Abu Solaiman instructed me to get the TNT so that he could detonate a bomb.

… … …

Q: Were there any other person, besides Abu Solaiman, who called you up, with respect to the taking of the explosives from you?

A: There is, sir… Abu Zaky, sir, called up also.

Q: What did Abu Zaky tell you when he called you up?

A: He told me that "this is your first mission."

Q: Please enlighten the Honorable Court. What is that mission you are referring to?

A: That is the first mission where we can show our anger towards the Christians.

… … …

Q: The second time that he got a bomb from you, Mr. witness, do you know if the bomb explode?

A: I did not know what happened to the next 2 kilos taken by Angelo Trinidad from me until after I was caught, because I was told by the policeman that interviewed me after I was arrested that the 2 kilos were planted in a bus, which also did not explode.

Q: So besides these two incidents, were there any other incidents that Angelo Trinidad and Tapay get an explosive for you, Mr. witness?

… … …

A: If I am not mistaken, sir, on February 13, 2005 at 6:30 p.m.

Q: Who got from you the explosive Mr. witness?

A: It's Angelo Trinidad and Tapay, sir.

… … …

Q: How many explosives did they get from you, Mr. witness, at that time?

A: They got 2 kilos TNT bomb, sir.

Q: Did they tell you, Mr. witness, where are they going to use that explosive?

A: No, sir.

Q: Do you know, Mr. witness, what happened to the third batch of explosives, which were taken from you by Trinidad and Tapay?

… … …

A: That is the bomb that exploded in Makati, sir.

Q: Why did you know, Mr. witness?

A: Because I was called in the evening of February 14 by Abu Solaiman. He told me not to leave the house because the explosive that were taken by Tapay and Angelo Trinidad exploded.

… … …

Q: Was there any other call during that time, Mr. Witness?

… … …

A: I was told by Angelo Trinidad not to leave the house because the explosive that he took exploded already, sir.

Q: How sure were you, Mr. witness, at that time, that indeed, the bomb exploded at Makati, beside the call of Abu Solaiman and Trinidad?

A: It was told by Abu Solaiman that the bombing in Makati should coincide with the bombing in General Santos.

... ...

A: He told it to me, sir… I cannot remember the date anymore, but I know it was sometime in February 2005.

Q: Any other call, Mr. witness, from Abu Solaiman and Trinidad after the bombing exploded in Makati, any other call?

… … …

A: There is, sir… The call came from Abu Zaky.

Q: What did Abu Zaky tell you, Mr. witness?

A: He just greeted us congratulations, because we have a successful mission.

… … …

A: He told me that *"sa wakas, nag* success *din yung tinuro ko sayo."*

… … …

Q: By the way, Mr. witness, I would just like to clarify this. You stated that Abu Zaky called you up the following day, that was February 15, and congratulating you for the success of the mission. My question to you, Mr. witness, if you know what is the relation of that mission, wherein you were congratulated by Abu Zaky, to the mission, which have been indoctrinated to you, while you were in Mt. Cararao, Mr. witness?

A: They are connected, sir.

Q: Connected in what sense, Mr. witness?

A: Because when we were undergoing training, we were told that the Abu Sayyaf should not wage war to the forest, but also wage our battles in the city.

Q: Wage the battle against who, Mr. witness?

A: The government, sir.[17]

What can be culled from the testimony of Asali is that the Abu Sayyaf Group was determined to sow terror in Metro Manila, so that they could show their "anger towards the Christians."[18] It can also be seen that Rohmat, together with Janjalani and Abu Solaiman, had carefully planned the Valentine's Day bombing incident, months before it happened. Rohmat had trained Asali and Trinidad to make bombs and explosives. While in training, Asali and others were told that their mission was to plant bombs in malls, the LRT, and other parts of Metro Manila. According to Asali, Rohmat called him on 29 December 2004 to confirm that Trinidad would get two kilos of TNT from Asali, as they were "about to commence" their "first mission."[19] They made two separate attempts to bomb a bus in Metro Manila, but to no avail. The day before the Valentine's Day bombing, Trinidad got another two kilos of TNT from Asali. On Valentine's Day, the Abu Sayyaf Group announced that they had a gift for the former President, Gloria Macapagal-Arroyo. On their third try, their plan finally succeeded. Right after the bomb exploded, the Abu Sayyaf Group declared that there would be more bombings in the future. Asali then received a call from Rohmat, praising the former: "*Sa wakas nag success din yung tinuro ko sayo*."[20]

In the light of the foregoing evidence, the Court upholds the finding of guilt against Rohmat. Article 17 of the Revised Penal Code reads:

Art. 17. *Principals*. — The following are considered principals:

1. Those who take a direct part in the execution of the act
2. Those who directly force or induce others to commit it

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[17] *Id.* at 24-51.

[18] *Id.* at 36.

[19] *Id.* at 24-51.

[20] *Id.* at 49.

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished

Accused Rohmat is criminally responsible under the second paragraph, or the provision on "principal by inducement." The instructions and training he had given Asali on how to make bombs – coupled with their careful planning and persistent attempts to bomb different areas in Metro Manila and Rohmat's confirmation that Trinidad would be getting TNT from Asali as part of their mission – prove the finding that Rohmat's co-inducement was the determining cause of the commission of the crime.[21] Such "command or advice [was] of such nature that, without it, the crime would not have materialized."[22]

Further, the inducement was "so influential in producing the criminal act that without it, the act would not have been performed."[23] In *People v. Sanchez, et al.*, the Court ruled that, notwithstanding the fact that Mayor Sanchez was not at the crime scene, evidence proved that he was the mastermind of the criminal act or the principal by inducement. Thus, because Mayor Sanchez was a co-principal and co-conspirator, and because the act of one conspirator is the act of all, the mayor was rendered liable for all the resulting crimes.[24] The same finding must be applied to the case at bar.

The Court also affirms the finding of the existence of conspiracy involving accused Baharan, Trinidad, and Rohmat. Conspiracy was clearly established from the "collective acts of the accused-appellants before, during and after the commission of the crime." As correctly declared by the trial court in its Omnibus Decision:

Asali's clear and categorical testimony, which remains unrebutted on its major points, coupled with the judicial admissions freely and

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[21] See generally *U.S. v. Indanan*, 24 Phil. 203 (1913); *People v. Kiichi Omine*, 61 Phil. 609 (1935).

[22] *People v. Cruz*, G.R. No. 74048, 14 November 1990, 191 SCRA 377, 385.

[23] LUIS B. REYES, *THE REVISED PENAL CODE: CRIMINAL LAW* – BOOK ONE, 529 (2008).

[24] *People v. Sanchez, et al.*, G.R. No. 131116, 27 August 1999, 313 SCRA 254.

voluntarily given by the two other accused, are sufficient to prove the existence of a conspiracy hatched between and among the four accused, all members of the terrorist group Abu Sayyaf, to wreak chaos and mayhem in the metropolis by indiscriminately killing and injuring civilian victims by utilizing bombs and other similar destructive explosive devices.

While said conspiracy involving the four malefactors has not been expressly admitted by accused Baharan, Angelo Trinidad, and Rohmat, more specifically with respect to the latter's participation in the commission of the crimes, nonetheless it has been established by virtue of the aforementioned evidence, which established the existence of the conspiracy itself and the indispensable participation of accused Rohmat in seeing to it that the conspirators' criminal design would be realized.

It is well-established that conspiracy may be inferred from the acts of the accused, which clearly manifests a concurrence of wills, a common intent or design to commit a crime (*People v. Lenantud*, 352 SCRA 544). Hence, where acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident and all the perpetrators will be held liable as principals (*People v. Ellado*, 353 SCRA 643).[25]

In *People v. Geronimo*, the Court pronounced that it would be justified in concluding that the defendants therein were engaged in a conspiracy "when the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object; and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments."[26]

Accused contend that the testimony of Asali is inadmissible pursuant to Sec. 30, Rule 130 of the Rules of Court. It is true

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[25] Omnibus Decision of the Trial Court at 6, CA *rollo* at 123.

[26] *People v. Geronimo*, G.R. No. L-35700, 15 October 1973, 53 SCRA 246, 254, citing *People v. Cabrera*, 43 Phil. 64, 66 (1922); *People v. Carbonell*, 48 Phil. 868 (1926).

that under the rule, statements made by a conspirator against a co-conspirator are admissible only when made during the existence of the conspiracy. However, as the Court ruled in *People v. Buntag*, if the declarant repeats the statement in court, his extrajudicial confession becomes a judicial admission, making the testimony admissible as to both conspirators.[27] Thus, in *People v. Palijon*, the Court held the following:

> … [W]e must make a distinction between extrajudicial and judicial confessions. An extrajudicial confession may be given in evidence against the confessant but not against his co-accused as they are deprived of the opportunity to cross-examine him. A judicial confession is admissible against the declarant's co-accused since the latter are afforded opportunity to cross-examine the former. **Section 30, Rule 130 of the Rules of Court applies only to extrajudicial acts or admissions and not to testimony at trial where the party adversely affected has the opportunity to cross-examine the declarant**. Mercene's admission implicating his co-accused was given on the witness stand. It is admissible in evidence against appellant Palijon. Moreover, where several accused are tried together for the same offense, the testimony of a co-accused implicating his co-accused is competent evidence against the latter.[28]

WHEREFORE, the Petition is *DENIED*. The Decision of the Regional Trial Court of Makati, as affirmed with modification by the Court of Appeals, is hereby *AFFIRMED*.

SO ORDERED.

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

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[27] *People v. Buntag*, G.R. No. 123070, 14 April 2004, 427 SCRA 180; see also *People v. Palijon*, 343 SCRA 486 (2000).

[28] *People v. Palijon*, G.R. No. 123545, 18 October 2000, 343 SCRA 486, citing *People v. Flores*, 195 SCRA 295, 308 (1991); *People v. Ponce*, 197 SCRA 746, 755 (1991).

SECOND DIVISION

[G.R. No. 188792. January 10, 2011]

SPOUSES GEORGE R. TAN and SUSAN L. TAN, *petitioners, vs.* **BANCO DE ORO UNIBANK, INC.,** *respondent.*

[G.R. Nos. 190677-78. January 10, 2011]

GEORGE R. TAN and SUSAN L. TAN, *petitioners, vs.* **BANCO DE ORO UNIVERSAL BANK,** *respondent.*

[G.R. Nos. 190699-700. January 10, 2011]

BANCO DE ORO UNIBANK, INC., *petitioner, vs.* **GEORGE R. TAN and SUSAN L. TAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; CONSOLIDATED PETITIONS IN CASE AT BAR DISMISSED IN FAVOR OF A COMPROMISE AGREEMENT EXECUTED BY THE PARTIES, APPROVED BY THE RTC. — Parties to the case, spouses Tan and BDO filed a Joint Manifestation and Motion to Dismiss, alleging that they have come to an agreement for the amicable resolution of their respective claims to avoid the inconvenience of litigation. Attached to the motion are the Compromise Agreement executed by the parties and a copy of the RTC decision approving the agreement. x x x In a decision dated September 15, 2010, the RTC approved the compromise agreement. Having been sealed with court approval, the compromise agreement shall govern the respective rights and obligations of the parties. In view of the foregoing, the dismissal of the consolidated petitions is in order.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices for Spouses George & Susan Tan.

Villaraza Cruz Marcelo & Angcangco for Banco de Oro Universal Bank.

R E S O L U T I O N

NACHURA, *J.*:

These consolidated petitions assail the Court of Appeals (CA) September 18, 2009 Decision[1] and December 16, 2009 Resolution[2] in CA-G.R. SP No. 98307 and CA-G.R. SP No. 101421; and its March 12, 2009 Decision[3] and July 15, 2009 Resolution[4] in CA-G.R. SP No. 102799.

In CA-G.R. SP No. 98307 and CA-G.R. SP No. 101421, the appellate court dissolved the writ of preliminary injunction issued by the Regional Trial Court (RTC) of Quezon City, Branch 81, in Civil Case No. Q-07-59545, restraining the foreclosure of the real estate mortgage constituted by Spouses George R. Tan and Susan L. Tan (hereafter referred to as Spouses Tan) in favor of Banco De Oro Unibank, Inc. (BDO). The CA concluded that the issuance of the writ was unfounded and unsubstantiated. In CA-G.R. SP No. 102799, the CA found that the bond set by the RTC was grossly insufficient to cover all the damages which BDO might sustain by reason of the injunction if the court should finally decide that Spouses Tan were not entitled to the writ. It thus remanded the case to the RTC for the determination of the proper injunction bond which should not be less than ₱32 Million.

After the filing of the Reply to BDO's Comment in G.R. No. 188792 and while awaiting BDO's Comment on the petition

[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Myrna Dimaranan-Vidal and Antonio L. Villamor, concurring; *rollo* (G.R. Nos. 190699-700), pp. 56-87.

[2] *Id.* at 89-94.

[3] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Ramon M. Bato, Jr., concurring; *rollo* (G.R. No. 188792), pp. 29-45.

[4] *Id.* at 83-85.

in G.R. Nos. 190677-78 and Spouses Tan's Comment on the petition in G.R. Nos. 190699-700, BDO moved for extension of time to file the appropriate pleading in view of the settlement of the consolidated cases.[5]

On December 16, 2010, Spouses Tan and BDO filed a Joint Manifestation and Motion to Dismiss,[6] alleging that they have come to an agreement for the amicable resolution of their respective claims to avoid the inconvenience of litigation. Attached to the motion are the Compromise Agreement executed by the parties and a copy of the RTC decision approving the agreement. The Compromise Agreement reads:

COMPROMISE AGREEMENT

This Agreement, which shall supplement *Memorandum of Agreement* dated 27 May 2010, is made and executed this _____ day of _____ 2010, by and between:

SPOUSES GEORGE R. TAN AND SUSAN L. TAN, Filipinos, of legal age, residing at 42 Ifugao St., La Vista Subd., Brgy. Pansol, Quezon City, hereinafter referred to as "Spouses Tan";

- and -

BANCO DE ORO UNIBANK, INC., a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 10/F BDO Corporate Center South Tower, Makati Avenue corner H.V. Dela Costa St., Makati City, represented herein by its Senior Vice President, Melanie S. Belen, and Vice President, Emily D. Samoy, as evidenced by the Special Power of Attorney indicating their authority, a copy of which is attached hereto as Annex "A", hereinafter referred to as the "Bank";

(herein after referred to singly as a "Party," and collectively as "Parties").

WITNESSETH: That

Spouses Tan obtained various loans and other credit accommodations from the Bank in the total principal amount of Fifty

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[5] *Rollo* (G.R. Nos. 190699-700), pp. 757-759.

[6] *Id*. at 771-773.

Nine Million Nine Hundred Eighty Four Thousand Six Hundred Twenty Four and 19/100 Pesos (₱59,984,624.19). As security for the loans and other credit accommodations, Spouses Tan executed a *Real Estate Mortgage* and *Amended Real Estate Mortgage* on 15 January 2004 and 02 February 2004, respectively, covering a parcel of land located at 42 Ifugao Street, La Vista Subdivision, Quezon City, covered by Transfer Certificate of Title ("TCT") No. 13600, registered in the name of George Sin Gee Tan married to Susan Lim Tan (the "Property").

Sometime in 2006, Spouses Tan defaulted in the payment of their loan obligations. Hence, the Bank initiated foreclosure proceedings on the foregoing *Real Estate Mortgage*. At the auction sale on 03 December 2009, the Bank emerged as highest bidder and was issued *Certificate of Sale* dated 04 December 2009.

Spouses Tan filed a complaint for annulment of mortgage with the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-07-59545 (the "Case"), pending before Branch 81 (the "Court").

In order to put an end to the protracted litigation, the Bank has accepted the proposal of Spouses Tan and entered into and executed *Memorandum of Agreement* dated 27 May 2010 (the "MOA").

Further to the MOA, and as a supplement thereto, and pursuant to the Court's *Order* given in open court on 07 July 2010, the parties have agreed to execute this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree to the following terms and conditions:

1. The Bank shall allow Spouses Tan to redeem the Property for a total redemption price of SIXTY MILLION PESOS (₱60,000,000.00), subject to the following terms:

    a. THIRTY MILLION PESOS (₱30,000,000.00), payable in five (5) years beginning June 2010, or until June 2015 (the "Term"). Spouses Tan shall pay Two Hundred Fifty Thousand Pesos (₱250,000.00) a month, for sixty (60) months, with a balloon payment in the amount of Fifteen Million Pesos (₱15,000,000.00) at the end of the Term.

    b. For and in consideration of the amount of THIRTY MILLION PESOS (₱30,000,000.00), Spouses Tan shall

cede, transfer and convey to and in favor of the Bank, all its rights, possession, title and interests in a parcel of land in Roxas City covered by TCT No. T-16024, registered in the name of Spouses Tan (the "Roxas Property").

2. On December 2010, or upon expiration of the redemption period, Spouses Tan shall allow the Bank to consolidate title over the Property.

3. Upon consolidation of title in the Bank's name, the Bank and Spouses Tan shall execute a Contract to Sell covering the Property in accordance with the terms under Section 1.

4. Upon full payment of the amount under Section 1 (a), and the cession, transfer and conveyance to the Bank of the Roxas Property pursuant to Section 1 (b), the parties agree that Spouses Tan's personal loan obligations with the Bank, including Spouses Tan's personal loan obligations with then Equitable PCI Bank, shall be deemed fully settled.

5. After execution and signing, the parties shall file this Agreement with the Court for approval.

The parties hereby agree to move for the approval of this Agreement before the Court. However, the obligations under this Agreement shall be immediately enforceable even prior to the approval of this Agreement.

6. Parties agree to move for the dismissal of the Case, within fifteen (15) days from execution of all documents necessary to implement this Agreement.

7. All expenses, fees, and taxes in connection with: (a) the cession, transfer and conveyance to the Bank of the Roxas Property; and (b) the consolidation of title of the Property in the Bank's name, shall be for the account of the Bank.

8. Upon failure of Spouses Tan to comply with any of the terms and conditions under this Agreement, the Bank shall be entitled, without necessity of any demand or notice:

   a. To take immediate possession of the Property. Spouses Tan agree to peacefully surrender and immediately vacate the Property.

   b. To file the necessary motion or pleading with the Court to implement this Agreement, and/or enforce its rights under law and equity.

9. Parties hereby mutually and irrevocably waive all claims, counterclaims, demands, and causes of action, which they raised, or could have raised, against each other, including future claims of whatever kind, in connection with the Case and the Property.

10. The parties confirm that the terms and conditions contained in this Agreement have been mutually agreed upon, without any act of force, fraud or undue intimidation. The parties further confirm that they have consulted their respective legal counsel, and that they understand the legal consequences of this Agreement. Accordingly, the parties hereby agree to abide by the terms and conditions hereof, which have the force and effect of a lawful right and a demandable obligation.

11. In the event that any one or more of the provisions of this Agreement be later declared invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

12. The parties hereto intend for this Agreement to supplement the MOA. All terms and conditions of the MOA shall remain in full force and effect and remain unmodified except as specifically set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.

BANCO DE ORO UNIBANK, INC.
By:

Sgd.	Sgd.
MELANIE S. BELEN	GEORGE R. TAN
Sgd.	Sgd.
EMILY D. SAMOY	SUSAN L. TAN[7]

In a decision[8] dated September 15, 2010, the RTC approved the compromise agreement. Having been sealed with court approval, the compromise agreement shall govern the respective

[7] *Id*. at 760-762.

[8] *Rollo* (G.R. Nos. 190677-78), pp. 150-153.

rights and obligations of the parties. In view of the foregoing, the dismissal of the consolidated petitions is in order.

WHEREFORE, premises considered, the Joint Manifestation and Motion to Dismiss is hereby *GRANTED*. Consequently, the consolidated petitions are *DISMISSED*. The cases are considered *CLOSED* and *TERMINATED*.

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro,*[**] *Peralta,* and *Bersamin,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 190122. January 10, 2011]

SPOUSES ISAGANI and DIOSDADA CASTRO, *petitioners, vs.* **SPOUSES REGINO SE and VIOLETA DELA CRUZ, SPOUSES EDUARDO and CHARITO PEREZ and MARCELINO TOLENTINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; JUDICIAL DISCRETION THEREIN BY THE COURT MUST NOT BE INTERFERED WITH EXCEPT WHEN THERE IS MANIFEST ABUSE. — For an injunctive writ to

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[*] In lieu of Associate Justice Antonio T. Carpio per Raffle dated October 13, 2010.

[**] In lieu of Associate Justice Jose Catral Mendoza per Raffle dated October 13, 2010.

[***] In lieu of Associate Justice Roberto A. Abad per Raffle dated March 8, 2010.

issue, a clear showing of extreme urgency to prevent irreparable injury and a clear and unmistakable right to it must be proven by the party seeking it. The primary objective of a preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard. [T]he rule is well-entrenched that the issuance of the writ of preliminary injunction rests upon the sound discretion of the trial court. It bears reiterating that Section 4 of Rule 58 gives generous latitude to the trial courts in this regard for the reason that conflicting claims in an application for a provisional writ more often than not involve a factual determination which is not the function of appellate courts. Hence, the **exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse,** which is wanting in the present case. Indeed, the rule is well-entrenched that for grave abuse of discretion to exist as a valid ground for the nullification of an injunctive writ, there must be a capricious and whimsical exercise of judgment, equivalent to lack or excess of jurisdiction. Or the power must be exercised in an arbitrary manner by reason of passion or personal hostility, and it must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.

2. ID.; ID.; REPLEVIN; WRIT OF POSSESSION ISSUED AGAINST PARTIES WHO BOUGHT AND TOOK POSSESSION OF SUBJECT PROPERTY LONG BEFORE FORECLOSURE OF ITS MORTGAGE TO WHICH THEY DID NOT TAKE PART, IS GRAVE ABUSE OF DISCRETION; CASE AT BAR. — Respondent Spouses dela Cruz had, long *before* the foreclosure of the mortgage, bought and took possession of the subject property, and had in fact cancelled the seller-respondent Spouses Perez' Tax declaration (TD) and had one issued in their name. By petitioners' seeking *ex parte* the issuance to them on February 1999 of a writ of possession over the property, which was granted and the writ enforced against respondent Spouses de la Cruz, they disturbed the *status quo ante litem*. The trial court did not thus commit grave abuse of discretion when it issued the writ of preliminary *mandatory* injunction in favor of Spouses de la Cruz. For the enforcement of the writ of possession against respondent Spouses dela Cruz, who did not take part in the foreclosure proceedings, would amount to taking of real property without the benefit of a proper judicial

intervention. The procedural shortcut which petitioners is impermissible. Even Article 433 of the Civil Code instructs that "Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property." The contemplated judicial process is not through an *ex-parte* petition as what petitioners availed of, but a process wherein a third party, Spouses dela Cruz herein, is given an opportunity to be heard. The jurisdictional foundation for the issuance of a writ of injunction rests not only in the existence of a cause of action and in the probability of irreparable injury, among other considerations, but also in the prevention of multiplicity of suits. Since petitioners failed to show that the appellate court erred in upholding the trial court's exercise of its discretion in issuing the writ of preliminary *mandatory* injunction, the challenged Decision stands. Parenthetically, the issuance of the challenged writ does not render petitioners' case closed. Whether there existed a conspiracy between both sets of respondent spouses to defraud petitioners can be only be determined after the principal action is tried on the merits during which the parties are afforded the opportunity to present evidence in support of their respective claims.

APPEARANCES OF COUNSEL

Karaan & Karaan Law Office for petitioners.
Mauricio Law Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

For the Court's consideration is the propriety of the issuance of a writ of preliminary *mandatory* injunction in favor of respondent Spouses Regino Se and Violeta dela Cruz (Spouses dela Cruz).

Respondent Spouses Eduardo and Charito Perez (Spouses Perez) obtained a ₱250,000 loan from Spouses Isagani and Diosdada Castro (petitioners) on November 15, 1996, to secure which they executed a real estate mortgage in petitioners' favor

covering an unregistered 417 square meter parcel of land, located in San Isidro, Hagonoy, Bulacan, covered by Tax Declaration (TD) No. 01844 (the property).

Respondent Spouses Perez having failed to settle their loan, petitioners extrajudicially foreclosed the mortgage and, as the highest bidder at the public auction, bought the property on February 4, 1999. It turned out that *before* the foreclosure or sometime in 1997 respondent Spouses Perez, contrary to a provision of the real estate mortgage, sold the property to respondent Spouses dela Cruz who had in fact caused the cancellation of TD No. 01844 by TD No. 01892 in their name on August 15, 1997.

Petitioners thus filed on April 8, 1999 a complaint against herein two sets of respondent Spouses, for annulment of Deed of Sale and TD No. 01892[1] and damages before the Malolos Regional Trial Court (RTC). Respondent Marcelino Tolentino, Municipal Assessor of Hagonoy, Bulacan was impleaded as defendant. The complaint was raffled to Branch 7 of the RTC.

By respondent Spouses dela Cruz' allegation, before buying the property, they inspected it and found no improvements thereon that would put them on guard against the integrity of the TD of the sellers-Spouses Perez which TD, contrary to petitioners' claim, bore no annotation of the mortgage. They had in fact constructed a house on the property in the course of which they were approached by petitioners who informed them of an existing mortgage thereover, but as petitioners did not present any document to prove it, they paid no heed to the information.

During the pendency of petitioners' complaint against respondents spouses, petitioners filed an *ex-parte* motion before Branch 16 of the RTC for the issuance of a writ of possession over the property by virtue of the foreclosure of the mortgage of the sale to them of the property.[2] Petitioners' motion was

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[1] Tax Declaration No. 01844 in the name of Spouses Perez was cancelled by Tax Declaration No. 01892, registered in the names of respondents.

[2] *Vide* CA *rollo*, pp. 62-63. Petitioners filed a petition for the issuance of a writ of possession on December 7, 2000, during the pendency of the instant case.

granted and a writ of possession dated August 2, 2001 was issued and enforced against respondent Spouses dela Cruz who were evicted from the property.

On December 7, 2002, petitioners amended, with leave of court, their complaint, alleging that, *inter alia*, respondent Spouses Perez failed to redeem the mortgage within the reglementary period.

In their Answer to the Amended Complaint, respondent Spouses dela Cruz prayed for the issuance of a writ of preliminary *mandatory* injunction to restore them to physical possession of the property, which prayer Branch 7 of the RTC granted by Order of October 29, 2004 in this wise:

> . . . It is not disputed that the Sps. Isagani Castro and Diosdada Castro, herein plaintiffs, were placed in possession of the subject property by virtue of a writ of possession issued by Branch 16 of the Court. This writ of possession commanded the sheriff to require the spouses Eduardo Perez and Charito Lopez and all persons claiming rights under them to vacate subject property and surrender possession thereof to spouses Castro. At that time, the Spouses Regino Se and Violeta dela Cruz were in possession of the property as owners thereof, having already purchased the same from the Sps. Castro. Their evidence of ownership is Tax Declaration No. 01892 of the Office of the Municipal Assessor of Hagonoy, Bulacan, the property being still an unregistered property. They were not claiming rights under the spouses Perez. They were and still are the owners in their own right. Hence, the writ of possession issued was improperly implemented and under Art. 539 of the Civil Code, they must be restored to said possession by the means established by the laws and the Rules of Court. The writ of preliminary mandatory injunction prayed for is undeniably one of the means established by the laws and the Rules of Court.[3] (underscoring supplied)

Petitioners' motion for reconsideration of the trial court's Order of October 29, 2004 was denied by Order of March 5, 2007, hence, they filed a petition for *certiorari* before the Court of Appeals. Finding no grave abuse of discretion in the issuance

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[3] *Id*. at 80.

of the Order, the appellate court denied petitioners' petition, by Decision of September 14, 2009.[4]

Hence, the present petition.

The trial court anchored its assailed Order granting the writ of preliminary mandatory injunction on Article 539 of the Civil Code. The Article reads:

> Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein, he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.
>
> x x x x x x x x x

Undoubtedly, respondent Spouses dela Cruz actually took possession of the property *before* the real estate mortgage covering it was foreclosed, and had in fact cancelled the TD in Spouses Perez' name and had one issued in their name. It appears, however, that petitioners did not inform Branch 16, RTC of the previous sale of the property to *third parties*, herein respondent Spouses dela Cruz, and the latter's actual possession thereof.

For an injunctive writ to issue, a clear showing of extreme urgency to prevent irreparable injury and a clear and unmistakable right to it must be proven by the party seeking it. The primary objective of a preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard.[5]

> [T]he rule is well-entrenched that the issuance of the writ of preliminary injunction rests upon the sound discretion of the trial court. It bears reiterating that Section 4 of Rule 58 gives generous latitude to the trial courts in this regard for the reason that conflicting claims in an application for a provisional writ more often than

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[4] Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Mario L. Guarina, III and Mariflor P. Punzalan Castillo, *rollo*, pp. 153-165.

[5] *Dolmar Realty Estate Development Corp. v. Court of Appeals*, G.R. No. 172990, February 27, 2008, 547 SCRA 114-115.

not involve a factual determination which is not the function of appellate courts. Hence, the **exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse,** which is wanting in the present case.[6] (emphasis and underscoring supplied)

Indeed, the rule is well-entrenched that for grave abuse of discretion to exist as a valid ground for the nullification of an injunctive writ, there must be a capricious and whimsical exercise of judgment, equivalent to lack or excess of jurisdiction. Or the power must be exercised in an arbitrary manner by reason of passion or personal hostility, and it must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.[7]

Recall that respondent Spouses dela Cruz had long *before* the foreclosure of the mortgage or sometime in 1997 bought and took possession of the property, and had in fact cancelled the seller-respondent Spouses Perez' TD and had one issued in their name. By petitioners' seeking *ex parte* the issuance to them on February 1999 of a writ of possession over the property, which was granted and the writ enforced against respondent Spouses de la Cruz, they disturbed the *status quo ante litem*. The trial court did not thus commit grave abuse of discretion when it issued the writ of preliminary *mandatory* injunction in favor of Spouses dela Cruz.

For the enforcement of the writ of possession against respondent Spouses dela Cruz, who did not take part in the foreclosure proceedings, would amount to taking of real property without the benefit of a proper judicial intervention. The procedural shortcut which petitioners is impermissible. Even Article 433 of the Civil Code instructs that "Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of

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[6] *Land Bank of the Philippines v. Continental Watchman Agency, Incorporated,* G.R. No. 136114, January 22, 2004, 420 SCRA 624, 625.

[7] *People v. Romualdez,* G.R. No. 166510, July 23, 2008, 559 SCRA 492, 494.

the property." The contemplated judicial process is not through an *ex-parte* petition as what petitioners availed of, but a process wherein a third party, Spouses dela Cruz herein, is given an opportunity to be heard.[8]

The jurisdictional foundation for the issuance of a writ of injunction rests not only in the existence of a cause of action and in the probability of irreparable injury, among other considerations, but also in the prevention of multiplicity of suits.

Since petitioners failed to show that the appellate court erred in upholding the trial court's exercise of its discretion in issuing the writ of preliminary *mandatory* injunction, the challenged Decision stands.

Parenthetically, the issuance of the challenged writ does not render petitioners' case closed. Whether there existed a conspiracy between both sets of respondent spouses to defraud petitioners can be only be determined after the principal action is tried on the merits during which the parties are afforded the opportunity to present evidence in support of their respective claims.[9]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[8] *Villanueva v. Cherdan Lending Investors Corporation*, G.R. No. 177881, October 13, 2010.

[9] *Philippine National Bank v. RJ Ventures Realty & Development Corporation and Rajah Broadcasting Network, Inc.*, G.R. No. 164548, September 27, 2006, 503 SCRA 639.

SECOND DIVISION

[G.R. No. 190889. January 10, 2011]

ELENITA C. FAJARDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. POLITICAL LAW; BILL OF RIGHTS; SEARCH AND SEIZURE; CIRCUMSTANCES WHEN EVIDENCE OBTAINED THROUGH WARRANTLESS SEARCH AND SEIZURE MAY BE ADMISSIBLE, CITED. — No less than our Constitution recognizes the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. This right is encapsulated in Article III, Section 2, of the Constitution, which states: Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Complementing this provision is the exclusionary rule embodied in Section 3(2) of the same article – (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible under any of the following circumstances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of custom laws; (4) seizure of evidence in plain view; and (5) when the accused himself waives his right against unreasonable searches and seizures.

2. ID.; ID.; ID.; ID.; PLAIN VIEW DOCTRINE; REQUISITES FOR THE APPLICATION THEREOF. — Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject

to seizure and may be presented as evidence. It applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.

3. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; WHEN COMMITTED; NOT PRESENT IN CASE AT BAR. — Certainly, illegal possession of firearms, or, in this case, part of a firearm, is committed when the holder thereof: (1) possesses a firearm or a part thereof (2) lacks the authority or license to possess the firearm. We find that petitioner was neither in physical nor constructive possession of the subject receivers. The testimony of SPO2 Nava clearly bared that he only saw Valerio on top of the house when the receivers were thrown. None of the witnesses saw petitioner holding the receivers, before or during their disposal. At the very least, petitioner's possession of the receivers was merely incidental because Valerio, the one in actual physical possession, was seen at the rooftop of petitioner's house. Absent any evidence pointing to petitioner's participation, knowledge or consent in Valerio's actions, she cannot be held liable for illegal possession of the receivers.

4. ID.; ID.; MERE SPECULATION AND PROBABILITIES CANNOT SUBSTITUTE FOR PROOF REQUIRED TO ESTABLISH THE GUILT OF AN ACCUSED BEYOND REASONABLE DOUBT; APPLICATION IN CASE AT BAR. — Petitioner's apparent liability for illegal possession of part of a firearm can only proceed from the assumption that one of the thrown receivers matches the gun seen tucked in the waistband of her shorts earlier that night. Unfortunately, the prosecution failed to convert such assumption into concrete evidence. Mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. The rule is

the same whether the offenses are punishable under the Revised Penal Code, which are *mala in se*, or in crimes, which are *malum prohibitum* by virtue of special law. The quantum of proof required by law was not adequately met in this case in so far as petitioner is concerned. The gun allegedly seen tucked in petitioner's waistband was not identified with sufficient particularity; as such, it is impossible to match the same with any of the seized receivers. Moreover, SPO1 Tan categorically stated that he saw Valerio holding two guns when he and the rest of the PISOG arrived in petitioner's house. It is not unlikely then that the receivers later on discarded were components of the two (2) pistols seen with Valerio. These findings also debunk the allegation in the information that petitioner conspired with Valerio in committing illegal possession of part of a firearm. There is no evidence indubitably proving that petitioner participated in the decision to commit the criminal act committed by Valerio. Hence, this Court is constrained to acquit petitioner on the ground of reasonable doubt. The constitutional presumption of innocence in her favor was not adequately overcome by the evidence adduced by the prosecution.

5. ID.; ID.; REQUISITES APPLIED BY ANALOGY FOR ILLEGAL POSSESSION OF PART OF A FIREARM; CASE AT BAR. — In illegal possession of a firearm, two (2) things must be shown to exist: (a) the existence of the subject firearm; and (b) the fact that the accused who possessed the same does not have the corresponding license for it. By analogy then, a successful conviction for illegal possession of part of a firearm must yield these requisites: (a) the existence of the part of the firearm; and (b) the accused who possessed the same does not have the license for the firearm to which the seized part/component corresponds. In the instant case, the prosecution proved beyond reasonable doubt the elements of the crime. The subject receivers — one with the markings "United States Property" and the other bearing Serial No. 763025 - were duly presented to the court as Exhibits E and E-1, respectively. They were also identified by SPO2 Nava as the firearm parts he retrieved after Valerio discarded them. His testimony was corroborated by DYKR radio announcer Vega, who witnessed the recovery of the receivers. Anent the lack of authority, SPO1 Tan testified that, upon verification, it was ascertained that Valerio is not a duly licensed/registered firearm holder of any type, kind, or caliber of firearms. To substantiate his statement,

he submitted a certification to that effect and identified the same in court. The testimony of SPO1 Tan, or the certification, would suffice to prove beyond reasonable doubt the second element.

APPEARANCES OF COUNSEL

Estrella S. Mijares-Briones for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the February 10, 2009 Decision[1] of the Court of Appeals (CA), which affirmed with modification the August 29, 2006 decision[2] of the Regional Trial Court (RTC), Branch 5, Kalibo, Aklan, finding petitioner guilty of violating Presidential Decree (P.D.) No. 1866, as amended.

The facts:

Petitioner, Elenita Fajardo, and one Zaldy Valerio (Valerio) were charged with violation of P.D. No. 1866, as amended, before the RTC, Branch 5, Kalibo, Aklan, committed as follows:

That on or about the 28th day of August, 2002, in the morning, in Barangay Andagao, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without authority of law, permit or license, did then and there, knowingly, willfully, unlawfully and feloniously have in their possession, custody and control **two (2) receivers of caliber .45 pistol, [M]odel [No.] M1911A1 US with SN 763025 and Model [No.] M1911A1 US with defaced serial number**, **two (2) pieces short magazine of M16 Armalite rifle, thirty-five (35)**

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[1] Penned by Executive Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Florito S. Macalino, concurring; *rollo*, pp. 71-84.

[2] *Id.* at 32-69.

pieces live M16 ammunition 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition, which items were confiscated and recovered from their possession during a search conducted by members of the Provincial Intelligence Special Operation Group, Aklan Police Provincial Office, Kalibo, Aklan, by virtue of Search Warrant No. 01 (9) 03 issued by OIC Executive Judge Dean Telan of the Regional Trial Court of Aklan.[3]

When arraigned on March 25, 2004, both pleaded not guilty to the offense charged.[4] During pre-trial, they agreed to the following stipulation of facts:

1. The search warrant subject of this case exists;
2. Accused Elenita Fajardo is the same person subject of the search warrant in this case who is a resident of Sampaguita Road, Park Homes, Andagao, Kalibo, Aklan;
3. Accused Zaldy Valerio was in the house of Elenita Fajardo in the evening of August 27, 2002 but does not live therein;
4. Both accused were not duly licensed firearm holders;
5. The search warrant was served in the house of accused Elenita Fajardo in the morning of August 28, 2002; and
6. The accused Elenita Fajardo and Valerio were not arrested immediately upon the arrival of the military personnel despite the fact that the latter allegedly saw them in possession of a firearm in the evening of August 27, 2002.[5]

As culled from the similar factual findings of the RTC and the CA,[6] these are the chain of events that led to the filing of the information:

In the evening of August 27, 2002, members of the Provincial Intelligence Special Operations Group (PISOG) were instructed

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[3] Information; CA *rollo*, pp. 6-7. (Emphasis supplied.)

[4] *Supra* note 2, at 33.

[5] *Id.*

[6] *Supra* notes 1 and 2.

by Provincial Director Police Superintendent Edgardo Mendoza (P/Supt. Mendoza) to respond to the complaint of concerned citizens residing on Ilang-Ilang and Sampaguita Roads, Park Homes III Subdivision, Barangay Andagao, Kalibo, Aklan, that armed men drinking liquor at the residence of petitioner were indiscriminately firing guns.

Along with the members of the Aklan Police Provincial Office, the elements of the PISOG proceeded to the area. Upon arrival thereat, they noticed that several persons scampered and ran in different directions. The responding team saw Valerio holding two .45 caliber pistols. He fired shots at the policemen before entering the house of petitioner.

Petitioner was seen tucking a .45 caliber handgun between her waist and the waistband of her shorts, after which, she entered the house and locked the main door.

To prevent any violent commotion, the policemen desisted from entering petitioner's house but, in order to deter Valerio from evading apprehension, they cordoned the perimeter of the house as they waited for further instructions from P/Supt. Mendoza. A few minutes later, petitioner went out of the house and negotiated for the pull-out of the police troops. No agreement materialized.

At around 2:00 a.m. and 4:00 a.m. of August 28, 2002, Senior Police Officer 2 Clemencio Nava (SPO2 Nava), who was posted at the back portion of the house, saw Valerio emerge twice on top of the house and throw something. The discarded objects landed near the wall of petitioner's house and inside the compound of a neighboring residence. SPO2 Nava, together with SPO1 Teodoro Neron and Jerome T. Vega (Vega), radio announcer/ reporter of RMN DYKR, as witness, recovered the discarded objects, which turned out to be two (2) receivers of .45 caliber pistol, model no. M1911A1 US, with serial number (SN) 763025, and model no. M1911A1 US, with a defaced serial number. The recovered items were then surrendered to SPO1 Nathaniel A. Tan (SPO1 Tan), Group Investigator, who utilized them in applying for and obtaining a search warrant.

The warrant was served on petitioner at 9:30 a.m. Together with a *barangay* captain, *barangay kagawad*, and members of the media, as witnesses, the police team proceeded to search petitioner's house. The team found and was able to confiscate the following:

1. Two (2) pieces of Short Magazine of M16 Armalite Rifle;

2. Thirty five (35) pieces of live M16 ammos 5.56 Caliber; and

3. Fourteen (14) pieces of live ammos of Caliber 45 pistol.

Since petitioner and Valerio failed to present any documents showing their authority to possess the confiscated firearms and the two recovered receivers, a criminal information for violation of P.D. No. 1866, as amended by Republic Act (R.A.) No. 8294, was filed against them.

For their exoneration, petitioner and Valerio argued that the issuance of the search warrant was defective because the allegation contained in the application filed and signed by SPO1 Tan was not based on his personal knowledge. They quoted this pertinent portion of the application:

> That this application was founded on confidential information received by the Provincial Director, Police Supt. Edgardo Mendoza.[7]

They further asserted that the execution of the search warrant was infirm since petitioner, who was inside the house at the time of the search, was not asked to accompany the policemen as they explored the place, but was instead ordered to remain in the living room (sala).

Petitioner disowned the confiscated items. She refused to sign the inventory/receipt prepared by the raiding team, because the items allegedly belonged to her brother, Benito Fajardo, a staff sergeant of the Philippine Army.

Petitioner denied that she had a .45 caliber pistol tucked in her waistband when the raiding team arrived. She averred that

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[7] CA *rollo*, pp. 60-90; see also Exhibits 2 & 2a, records, Vol. I, p. 37.

such situation was implausible because she was wearing garterized shorts and a spaghetti-strapped hanging blouse.[8]

Ruling of the RTC

The RTC rejected the defenses advanced by accused, holding that the same were already denied in the Orders dated December 31, 2002 and April 20, 2005, respectively denying the *Motion to Quash Search Warrant* and *Demurrer to Evidence.* The said Orders were not appealed and have thus attained finality. The RTC also ruled that petitioner and Valerio were estopped from assailing the legality of their arrest since they participated in the trial by presenting evidence for their defense. Likewise, by applying for bail, they have effectively waived such irregularities and defects.

In finding the accused liable for illegal possession of firearms, the RTC explained:

> Zaldy Valerio, the bodyguard of Elenita Fajardo, is a former soldier, having served with the Philippine Army prior to his separation from his service for going on absence without leave (AWOL). With his military background, it is safe to conclude that Zaldy Valerio is familiar with and knowledgeable about different types of firearms and ammunitions. As a former soldier, undoubtedly, he can assemble and disassemble firearms.
>
> It must not be de-emphasize[d] that the residence of Elenita Fajardo is definitely not an armory or arsenal which are the usual depositories for firearms, explosives and ammunition. Granting arguendo that those firearms and ammunition were left behind by Benito Fajardo, a member of the Philippine army, the fact remains that it is a government property. If it is so, the residence of Elenita Fajardo is not the proper place to store those items. The logical explanation is that those items are stolen property.
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> x x x x x x x x x
>
> The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to

[8] *Supra* note 2, at 49-63.

one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law[,] the proprietary concept of the possession can have no bearing whatsoever.

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x x x. [I]n order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

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To convict an accused for illegal possession of firearms and explosive under P.D. 1866, as amended, two (2) essential elements must be indubitably established, *viz*.: (a) the existence of the subject firearm ammunition or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused has no license or permit to own or possess the firearm, ammunition or explosive which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive (Exhibit G).

The judicial admission of the accused that they do not have permit or license on the two (2) receivers of caliber .45 pistol, model M1911A1 US with SN 763025 and model M1911A1 of M16 Armalite rifle, thirty-five (35) pieces live M16 ammunition, 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition confiscated and recovered from their possession during the search conducted by members of the PISOG, Aklan Police Provincial Office by virtue of Search Warrant No. 01 (9) 03 fall under Section 4 of Rule 129 of the Revised Rules of Court.[9]

Consequently, petitioner and Valerio were convicted of illegal possession of firearms and explosives, punishable under paragraph 2, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, which provides:

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[9] *Id.* at 64-68.

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

Both were sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to twelve (12) years of *prision mayor,* and to pay a fine of ₱30,000.00.

On September 1, 2006, only petitioner filed a Motion for Reconsideration, which was denied in an Order dated October 25, 2006. Petitioner then filed a Notice of Appeal with the CA.

Ruling of the CA

The CA concurred with the factual findings of the RTC, but disagreed with its conclusions of law, and held that the search warrant was void based on the following observations:

> [A]t the time of applying for a search warrant, SPO1 Nathaniel A. Tan did not have personal knowledge of the fact that appellants had no license to possess firearms as required by law. For one, he failed to make a categorical statement on that point during the application. Also, he failed to attach to the application a certification to that effect from the Firearms and Explosives Office of the Philippine National Police. x x x, this certification is the best evidence obtainable to prove that appellant indeed has no license or permit to possess a firearm. There was also no explanation given why said certification was not presented, or even deemed no longer necessary, during the application for the warrant. Such vital evidence was simply ignored.[10]

Resultantly, all firearms and explosives seized inside petitioner's residence were declared inadmissible in evidence. However, the 2 receivers recovered by the policemen outside the house of petitioner before the warrant was served were admitted as evidence, pursuant to the plain view doctrine.

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[10] *Supra* note 1, at 78-79.

Accordingly, petitioner and Valerio were convicted of illegal possession of a part of a firearm, punishable under paragraph 1, Section 1 of P.D. No. 1866, as amended. They were sentenced to an indeterminate penalty of three (3) years, six (6) months, and twenty-one (21) days to five (5) years, four (4) months, and twenty (20) days of *prision correccional*, and ordered to pay a ₱20,000.00 fine.

Petitioner moved for reconsideration,[11] but the motion was denied in the CA Resolution dated December 3, 2009.[12] Hence, the present recourse.

At the onset, it must be emphasized that the information filed against petitioner and Valerio charged duplicitous offenses contrary to Section 13 of Rule 110 of the Rules of Criminal Procedure, *viz.*:

> Sec. 13. *Duplicity of offense*. – A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses.

A reading of the information clearly shows that possession of the enumerated articles confiscated from Valerio and petitioner are punishable under separate provisions of Section 1, P.D. No. 1866, as amended by R.A. No. 8294.[13] Illegal possession of two (2) pieces of short magazine of M16 Armalite rifle, thirty-five (35) pieces of live M16 ammunition 5.56 caliber, and fourteen (14) pieces of live caliber .45 ammunition is punishable under paragraph 2 of the said section, *viz.*:

> The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000.00) shall be imposed if the firearm is classified as **high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, 41, .44, .45** and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic

[11] *Rollo*, pp. 85-90.

[12] *Id.* at 92-93.

[13] Approved on June 6, 1997.

and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.[14]

On the other hand, illegal possession of the two (2) receivers of a .45 caliber pistol, model no. M1911A1 US, with SN 763025, and Model M1911A1 US, with a defaced serial number, is penalized under paragraph 1, which states:

Sec. 1. *Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition.* – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, **part of firearm**, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided,* That no other crime was committed.[15]

This is the necessary consequence of the amendment introduced by R.A. No. 8294, which categorized the kinds of firearms proscribed from being possessed without a license, according to their firing power and caliber. R.A. No. 8294 likewise mandated different penalties for illegal possession of firearm according to the above classification, unlike in the old P.D. No. 1866 which set a standard penalty for the illegal possession of any kind of firearm. Section 1 of the old law reads:

Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms of Ammunition. – The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. (Emphasis ours.)

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[14] Emphasis supplied.

[15] Emphasis supplied.

By virtue of such changes, an information for illegal possession of firearm should now particularly refer to the paragraph of Section 1 under which the seized firearm is classified, and should there be numerous guns confiscated, each must be sorted and then grouped according to the categories stated in Section 1 of R.A. No. 8294, amending P.D. No. 1866. It will no longer suffice to lump all of the seized firearms in one information, and state Section 1, P.D. No. 1866 as the violated provision, as in the instant case,[16] because different penalties are imposed by the law, depending on the caliber of the weapon. To do so would result in duplicitous charges.

Ordinarily, an information that charges multiple offenses merits a quashal, but petitioner and Valerio failed to raise this issue during arraignment. Their failure constitutes a waiver, and they could be convicted of as many offenses as there were charged in the information.[17] This accords propriety to the diverse convictions handed down by the courts *a quo*.

Further, the charge of illegal possession of firearms and ammunition under paragraph 2, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, including the validity of the search warrant that led to their confiscation, is now beyond the province of our review since, by virtue of the CA's Decision, petitioner and Valerio have been effectively acquitted from the said charges. The present review is consequently only with regard to the conviction for illegal possession of a part of a firearm.

The Issues

Petitioner insists on an acquittal and avers that the discovery of the two (2) receivers does not come within the purview of the plain view doctrine. She argues that no valid intrusion was

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[16] In fact, the signing prosecutor did not even cite Section 1; see Information, *supra* note 3.

[17] The purpose of the rule against duplicity of offense, embodied in Sec. 13, Rule 110 of the Rules of Court, is to give the defendant the necessary knowledge of the charge so that he may not be confused in his defense. (F. Regalado, *REMEDIAL LAW COMPENDIUM*, Volume II [8th ed., 2000], citing *People v. Ferrer*, 101 Phil. 234, 270 [1957]).

attendant and that no evidence was adduced to prove that she was with Valerio when he threw the receivers. Likewise absent is a positive showing that any of the two receivers recovered by the policemen matched the .45 caliber pistol allegedly seen tucked in the waistband of her shorts when the police elements arrived. Neither is there any proof that petitioner had knowledge of or consented to the alleged throwing of the receivers.

Our Ruling

We find merit in the petition.

First, we rule on the admissibility of the receivers. We hold that the receivers were seized in plain view, hence, admissible.

No less than our Constitution recognizes the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. This right is encapsulated in Article III, Section 2, of the Constitution, which states:

> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Complementing this provision is the exclusionary rule embodied in Section 3(2) of the same article –

> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible under any of the following circumstances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of custom laws; (4) seizure of evidence in plain view; and (5) when the

accused himself waives his right against unreasonable searches and seizures.[18]

Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.[19] It applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.[20]

Tested against these standards, we find that the seizure of the two receivers of the .45 caliber pistol outside petitioner's house falls within the purview of the plain view doctrine.

First, the presence of SPO2 Nava at the back of the house and of the other law enforcers around the premises was justified by the fact that petitioner and Valerio were earlier seen respectively holding .45 caliber pistols before they ran inside the structure and sought refuge. The attendant circumstances and the evasive actions of petitioner and Valerio when the law enforcers arrived engendered a reasonable ground for the latter to believe that a crime was being committed. There was thus sufficient probable cause for the policemen to cordon off the house as they waited for daybreak to apply for a search warrant.

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[18] *People v. Go*, 457 Phil. 885, 926 (2003), citing *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 704-705.

[19] *People v. Go*, *supra*, at 928, citing *People v. Musa*, 217 SCRA 597, 610 (1993) and *Harris v. United States*, 390 U.S. 192, 72 L. ed. 231 (1927).

[20] *People v. Doria*, *supra* note 18, at 711.

Secondly, from where he was situated, SPO2 Nava clearly saw, on two different instances, Valerio emerge on top of the subject dwelling and throw suspicious objects. Lastly, considering the earlier sighting of Valerio holding a pistol, SPO2 Nava had reasonable ground to believe that the things thrown might be contraband items, or evidence of the offense they were then suspected of committing. Indeed, when subsequently recovered, they turned out to be two (2) receivers of .45 caliber pistol.

The pertinent portions of SPO2 Nava's testimony are elucidating:

Q When you arrived in that place, you saw policemen?

A Yes, sir.

Q What were they doing?

A They were cordoning the house.

Q You said that you asked your assistant team leader Deluso about that incident. What did he tell you?

A Deluso told me that a person ran inside the house carrying with him a gun.

Q And this house you are referring to is the house which you mentioned is the police officers were surrounding?

A Yes, sir.

Q Now, how long did you stay in that place, Mr. Witness?

A I stayed there when I arrived at past 10:00 o'clock up to 12:00 o'clock the following day.

Q At about 2:00 o'clock in the early morning of August 28, 2002, can you recall where were you?

A Yes, sir.

Q Where were you?

A I was at the back of the house that is being cordoned by the police.

Q While you were at the back of this house, do you recall any unusual incident?

A Yes, sir.

Q Can you tell the Honorable Court what was that incident?

A Yes, sir. A person went out at the top of the house and threw something.

Q And did you see the person who threw something out of this house?

A Yes, sir.

x x x x x x x x x

Q Can you tell the Honorable Court who was that person who threw that something outside the house?

A It was Zaldy Valerio.

COURT: (to witness)

Q Before the incident, you know this person Zaldy Valerio?

A Yes, sir.

Q Why do you know him?

A Because we were formerly members of the Armed Forces of the Philippines.

x x x x x x x x x

PROS. PERALTA:

Q When you saw something thrown out at the top of the house, did you do something if any?

A I shouted to seek cover.

x x x x x x x x x

Q So, what else did you do if any after you shouted, "take cover?"

A I took hold of a flashlight after five minutes and focused the beam of the flashlight on the place where something was thrown.

Q What did you see if any?

A I saw there the lower [part] of the receiver of cal. 45.

x x x x x x x x x

Q Mr. Witness, at around 4:00 o'clock that early morning of August 28, 2002, do you recall another unusual incident?

A Yes, sir.

Q And can you tell us what was that incident?

A I saw a person throwing something there and the one that was thrown fell on top of the roof of another house.

Q And you saw that person who again threw something from the rooftop of the house?

A Yes, sir.

Q Did you recognize him?

A Yes, sir.

Q Who was that person?

A Zaldy Valerio again.

x x x x x x x x x

Q Where were you when you saw this Zaldy Valerio thr[o]w something out of the house?

A I was on the road in front of the house.

Q Where was Zaldy Valerio when you saw him thr[o]w something out of the house?

A He was on top of the house.

x x x x x x x x x

Q Later on, were you able to know what was that something thrown out?

A Yes, sir.

Q What was that?

A Another lower receiver of a cal. 45.

x x x x x x x x x

Q And what did he tell you?

A It [was] on the wall of another house and it [could] be seen right away.

x x x x x x x x x

Q What did you do if any?

A We waited for the owner of the house to wake up.

x x x x x x x x x

Q Who opened the fence for you?

A It was a lady who is the owner of the house.

Q When you entered the premises of the house of the lady, what did you find?

A We saw the lower receiver of this .45 cal. (sic)[21]

The ensuing recovery of the receivers may have been deliberate; nonetheless, their initial discovery was indubitably inadvertent. It is not crucial that at initial sighting the seized contraband be identified and known to be so. The law merely requires that the law enforcer observes that the seized item may be evidence of a crime, contraband, or otherwise subject to seizure.

Hence, as correctly declared by the CA, the two receivers were admissible as evidence. The liability for their possession, however, should fall only on Valerio and not on petitioner.

The foregoing disquisition notwithstanding, we find that petitioner is not liable for illegal possession of part of a firearm.

In dissecting how and when liability for illegal possession of firearms attaches, the following disquisitions in *People v. De Gracia*[22] are instructive:

> The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatsoever.
>
> But is the mere fact of physical or constructive possession sufficient to convict a person for unlawful possession of firearms or must there be an intent to possess to constitute a violation of the law? This query assumes significance since the offense of illegal possession of firearms

[21] TSN, August 25, 2004, pp. 5-14.

[22] G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716.

is a *malum prohibitum* punished by a special law, in which case good faith and absence of criminal intent are not valid defenses.

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.

In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession, without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused. Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon, such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the *animus possidendi* is absent, there is no offense committed.[23]

Certainly, illegal possession of firearms, or, in this case, part of a firearm, is committed when the holder thereof:

(1) possesses a firearm or a part thereof

(2) lacks the authority or license to possess the firearm.[24]

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[23] *Id.* at 725-727. (Citations omitted.)

[24] See *People v. Dela Rosa*, G.R. No. 84857, January 16, 1998, 284 SCRA 158, 167, citing *People v. Caling*, G.R. No. 94784, May 8, 1992, 208 SCRA 827.

We find that petitioner was neither in physical nor constructive possession of the subject receivers. The testimony of SPO2 Nava clearly bared that he only saw Valerio on top of the house when the receivers were thrown. None of the witnesses saw petitioner holding the receivers, before or during their disposal.

At the very least, petitioner's possession of the receivers was merely incidental because Valerio, the one in actual physical possession, was seen at the rooftop of petitioner's house. Absent any evidence pointing to petitioner's participation, knowledge or consent in Valerio's actions, she cannot be held liable for illegal possession of the receivers.

Petitioner's apparent liability for illegal possession of part of a firearm can only proceed from the assumption that one of the thrown receivers matches the gun seen tucked in the waistband of her shorts earlier that night. Unfortunately, the prosecution failed to convert such assumption into concrete evidence.

Mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. The rule is the same whether the offenses are punishable under the Revised Penal Code, which are *mala in se*, or in crimes, which are *malum prohibitum* by virtue of special law.[25] The quantum of proof required by law was not adequately met in this case in so far as petitioner is concerned.

The gun allegedly seen tucked in petitioner's waistband was not identified with sufficient particularity; as such, it is impossible to match the same with any of the seized receivers. Moreover, SPO1 Tan categorically stated that he saw Valerio holding two guns when he and the rest of the PISOG arrived in petitioner's house. It is not unlikely then that the receivers later on discarded were components of the two (2) pistols seen with Valerio.

These findings also debunk the allegation in the information that petitioner conspired with Valerio in committing illegal possession of part of a firearm. There is no evidence indubitably proving that petitioner participated in the decision to commit the criminal act committed by Valerio.

[25] *People v. Dela Rosa, id.* at 172.

Hence, this Court is constrained to acquit petitioner on the ground of reasonable doubt. The constitutional presumption of innocence in her favor was not adequately overcome by the evidence adduced by the prosecution.

The CA correctly convicted Valerio with illegal possession of part of a firearm.

In illegal possession of a firearm, two (2) things must be shown to exist: (a) the existence of the subject firearm; and (b) the fact that the accused who possessed the same does not have the corresponding license for it.[26]

By analogy then, a successful conviction for illegal possession of part of a firearm must yield these requisites:

(a) the existence of the part of the firearm; and

(b) the accused who possessed the same does not have the license for the firearm to which the seized part/component corresponds.

In the instant case, the prosecution proved beyond reasonable doubt the elements of the crime. The subject receivers — one with the markings "United States Property" and the other bearing Serial No. 763025 — were duly presented to the court as Exhibits E and E-1, respectively. They were also identified by SPO2 Nava as the firearm parts he retrieved after Valerio discarded them.[27]

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[26] See *Teofilo Evangelista v. The People of the Philippines*, G.R. No. 163267, May 5, 2010; *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 738; *Advincula v. Court of Appeals*, 397 Phil. 641, 649 (2000).

[27] Q Now, when you saw this lower receiver of the cal. 45, what did you do if any?
A I called some uniformed men and asked them to guard the place.
Q You did not right away pick it up?
A No, sir, because we waited for some media persons for them to see what was thrown.
Q Were (sic) the media people eventually arrived?
A Yes, sir.
Q Were they able to see this lower receiver of cal. 45?
A Yes, sir.
x x x x x x x x x

His testimony was corroborated by DYKR radio announcer Vega, who witnessed the recovery of the receivers.[28]

Q Were you the one who actually picked up this lower receiver of the cal. 45?
A Yes, sir, I picked it with the help of a wire.
Q If that lower receiver of cal. 45 including the wire in picking it up is shown to you, will you be able to identify them?
A Yes, sir.
Q I am showing to you a receiver of the cal. 45 already marked as Exhibit E, please go over the same and tell if this is the same lower receiver of cal. 45 including the wire?
A Yes, sir.
x x x x x x x x x
Q You said that Zaldy Valerio threw something out of the house towards the direction of another house. Can you remember having said so?
A Yes, sir.
x x x x x x x x x
Q And you cannot enter this if the owner of the house will not open the gate for you?
A Yes, sir.
Q And so, were you able to enter this house?
A They let us in because they opened the fence.
x x x x x x x x x
Q When you entered the premises of the house of the lady, what did you find?
A We saw the lower receiver of this .45 cal.
Q If that lower receiver of cal. 45 will be shown to you, will you be able to identify the same?
A Yes, sir.
Q I am showing to you this lower receiver of the cal. 45 already marked as Exhibit E-1, is that the same lower receiver of cal. 45 which you saw in the early morning of August 28, 2002?
A Yes, sir.
Q What did you do with that lower receiver?
A I picked it up and when I have picked it up, turned it over to our investigator.
Q Can you tell us how did you pick up that lower receiver?
A Through the use of a wire.
Q Was there any media people present when you picked up this lower receiver of the cal. 45?
A Many. (TSN, August 25, 2004, pp. 8-14)

[28] TSN, August 18, 2004, pp. 21-30.

Anent the lack of authority, SPO1 Tan testified that, upon verification, it was ascertained that Valerio is not a duly licensed/ registered firearm holder of any type, kind, or caliber of firearms.[29] To substantiate his statement, he submitted a certification[30] to that effect and identified the same in court.[31] The testimony of SPO1 Tan, or the certification, would suffice to prove beyond reasonable doubt the second element.[32]

WHEREFORE, premises considered, the February 10, 2009 Decision of the Court of Appeals is hereby *REVERSED* with respect to petitioner Elenita Fajardo *y* Castro, who is hereby *ACQUITTED* on the ground that her guilt was not proved beyond reasonable doubt.

SO ORDERED.

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

EN BANC

[A.M. OCA IPI No. 08-127-CA-J. January 11, 2011]

RE: LETTER-COMPLAINT OF ATTY. ARIEL SAMSON C. CAYETUNA, *ET AL.*, ALL EMPLOYEES OF ASSOCIATE JUSTICE MICHAEL P. ELBINIAS against ASSOCIATE JUSTICE MICHAEL P. ELBINIAS, CA-Mindanao Station.

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[29] TSN, August 4, 2004, pp. 16-17.

[30] Exhibit G; records, Volume I, p. 8.

[31] TSN, August 4, 2004, p. 16.

[32] *Valeroso v. People*, G.R. No. 164815, February 22, 2008, 546 SCRA 450, 468-469.

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; THREE WAYS BY WHICH ADMINISTRATIVE PROCEEDINGS AGAINST A JUDGE MAY BE INSTITUTED; NOT SATISFIED IN CASE AT BAR. — Both the letter-complaints of April 30, 2008 and June 18, 2008 are unverified, while the June 3, 2010 Omnibus Reply and Manifestation of complainants is not under oath. It must be noted that most of the complainants are lawyers, and are presumed and ought to know the formal requirement of verification for administrative complaints as stated under Section 1, Rule 140. x x x The rule provides three ways by which administrative proceedings against judges may be instituted: (1) ***motu proprio*** by the Supreme Court; (2) upon **verified complaint** with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an **anonymous complaint** supported by public records of indubitable integrity. Indeed, complainants not only failed to execute a verified complaint but also never submitted their affidavits showing personal knowledge of the allegations embodied in their letter-complaints. x x x The formal *faux pas* of complainants could have been remedied by the submission under oath of their subsequent pleadings, particularly the Omnibus Reply, where they traversed the points and defenses raised by respondent *vis-à-vis* their allegations. And they could have appended thereto their respective affidavits attesting to their personal knowledge of the facts of their material allegations. But, as it is, complainants chose not to place their Omnibus Reply under oath, much less submitted their affidavits. Verily, after receiving copies of respondent's Comment and Supplemental Comment, they had ample opportunity but chose not to correct the deficiencies of their complaints while submitting the instant case for resolution based on the pleadings filed sans their affidavits.

2. ID.; ID.; UNDUE DELAY OR INACTION ON AN APPLICATION OF A PROVISIONAL REMEDY SUCH AS TEMPORARY RESTRAINING ORDER (TRO) CANNOT BE IMPUTED AGAINST A JUDGE ABSENT ANY SHOWING THAT THE GRANT THEREOF IS PROPER; RATIONALE. — On his alleged failure to timely act on an application for a TRO, it bears

stressing that Justice Elbinias, in his Comment, asserts what he calls an "undue interest and irregular involvement." While respondent does not deny the fact that no TRO was issued, such is not equivalent to an admission of wrongdoing. Verily, the issuance of any provisional remedy, such as a TRO in the alleged case, is addressed to the sound discretion of the court upon certain conditions as provided by law that are amply shown by the applicant. Consequently, undue delay or inaction on an application of a provisional remedy, like a TRO, cannot be imputed to the judge or court where there is no showing that the grant thereof is proper and well nigh dictated by an indubitable right of a party-applicant that needs protection. Anent the allegation of undue delay in the resolution of motions for reconsideration, we agree with respondent that said allegation is general and lacks specificity. Complainants merely made a general allegation of undue delay without particulars as to specific cases, the motions for reconsideration of which have been set for resolution after the adverse parties have filed their comments thereto and have not been resolved beyond the 90-day period. On the alleged inaction on cases with TRO, complainants failed to show that the issuance of a TRO in a particular case is paramount to the provisional protection of a party's right *in esse*.

3. ID.; ADMINISTRATIVE PROCEEDINGS; THE BURDEN OF PROOF THAT RESPONDENT COMMITTED THE ACTS COMPLAINED OF RESTS ON THE COMPLAINANT. — It is well-settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. In the instant case, complainants have not shown, much less submitted, substantial evidence supporting their allegations.

4. POLITICAL LAW; PUBLIC OFFICERS AND EMPLOYEES; CONFIDENTIAL EMPLOYEES; A CONFIDENTIAL EMPLOYEE WORKS AT THE PLEASURE OF THE APPOINTING AUTHORITY; CLARIFIED IN CASE AT BAR. — Anent the untimely and peremptory termination of complainant Atty. Cayetuna, we find it to be a misunderstanding between respondent and his most senior lawyer which has been blown out of proportion. A cursory perusal of the drafts prepared by Atty. Cayetuna of the letter-reply to Algabre would readily show that the explanation is factual in nature and in no way

pejorative to CA Associate Justice Lim. Thus, there is really no basis for Atty. Cayetuna's misgiving about signing said letter-reply. And it is uncalled for Atty. Cayetuna to write a formal letter to respondent about his refusal to do so. It must be borne in mind that complainants, as primarily confidential employees, need the trust of their immediate superior, Justice Elbinias. In *Philippine Amusement and Gaming Corporation v. Angara*, this Court reiterated the principle behind and the element of trust in the employment to a primarily confidential position. x x x Thus, there is no quibble that when the relation between respondent CA Associate Justice Elbinias and his lawyers has deteriorated to the extent that there is no longer intimacy between them that insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state, then the confidential employment is no longer tenable. The right of respondent to change the confidential employees in his office cannot be disputed.

R E S O L U T I O N

VELASCO, JR., *J.*:

The Case

Complainants Attys. Ariel Samson C. Cayetuna, Cathy D. Cardino, Cynthia Y. Jamero, Grace L. Yulo, Ken Rinehart V. Sur, Roderick Roxas (driver), and Alfonso Abugho (utility worker) were confidential employees assigned in the Office of Associate Justice Michael P. Elbinias, Court of Appeals (CA) – Mindanao Station in Cagayan de Oro City, Misamis Oriental. They filed with this Court an unverified letter-complaint[1] dated April 30, 2008 charging Justice Elbinias with *Gross Inefficiency; Bribe Solicitation; Drinking Liquor in Office Premises; Personal Use of Government Property and Resources; Falsification of a Favored Employee's Daily Time Record; Disrespect Towards fellow Justices; Oppression through Intemperate, Oppressive and Threatening Language; and Grave Abuse of Authority.*

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

Complainants prayed for (1) the dismissal from service of Justice Elbinias; (2) his preventive suspension pending investigation of the instant administrative complaint; (3) the provision of "security" to them from his retaliation and reprisal on account of this complaint; and (4) the acceptance by the Court of their enclosed resignation letters[2] without the prior approval of Justice Elbinias for fear that they would be peremptorily terminated by him instead.

Moreover, Atty. Cayetuna wrote then Chief Justice Reynato S. Puno a confidential letter[3] dated April 30, 2008, narrating how he was instantly terminated by Justice Elbinias on April 24, 2008 due to his refusal to sign a letter-reply to a litigant, and asking for help in order to receive his salary for the second half of April 2008 and Representation and Transportation Allowance (RATA) for April 2008 which were not given to him when these emoluments were released to the CA employees in the CA – Mindanao Station on April 25, 2008 ostensibly because of his having been terminated the day before. Likewise, on April 28, 2008, he was informed by the CA Cashier that he would no longer receive the Emergency Economic Assistance (EEA) and the midyear bonus on account of his termination.

The Facts

The instant case precipitated from a letter-complaint, dated February 6, 2008, filed by a litigant (petitioner in CA-G.R. SP No. 01580, entitled *Algabre v. RTC, Branch 15, Davao City*, which was raffled to Justice Elbinias as *ponente*) before the Presidential Action Center (PAC) of the Office of the President requesting assistance for the resolution of the case which has been pending before the CA – Mindanao Station for almost a year since its filing on March 6, 2007. The letter-complaint was referred by the PAC to Deputy Court Administrator (DCA) Reuben P. Dela Cruz, in-charge for Regions IX-XII, for appropriate action.

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[2] *Id.* at 35-40, all dated April 30, 2008.

[3] *Id.* at 41-44.

Consequently, on April 8, 2008, then DCA Jose P. Perez[4] indorsed the letter-complaint to the CA – Mindanao Station for appropriate action. On April 21, 2008, Justice Elbinias received a copy of said letter-complaint thru an Indorsement dated April 18, 2008 from CA Executive Justice Romulo V. Borja.

Justice Elbinias assigned Atty. Cayetuna to draft the letter-reply explaining what transpired with the case which had already been decided on February 28, 2008. Justice Elbinias, however, asked Atty. Cayetuna to sign the letter-reply and he would simply note it. This was not palatable to Atty. Cayetuna who balked at signing the letter-reply. On April 24, 2008, he wrote[5] Justice

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[4] Now a member of this Court.

[5] *Rollo*, p. 32. Atty. Cayetuna's letter reads in full, thus:

April 24, 2008

HON. JUSTICE MICHAEL P. ELBINIAS
Court of Appeals-Mindanao Station
Cagayan de Oro City

Dear Justice,

I am writing you this letter in connection with the letter dated February 6, 2008 of petitioner Rolando Algabre in CA G.R. No. SP 01580 asking for assistance from the Presidential Action Center (OP), which letter was in turn, endorsed to the Office of the Court Administrator (OCA), Supreme Court of the Philippines, to intervene and make the appropriate/urgent action on their Petition which is still pending with your office despite the lapse of eleven (11) months from its filing on March 6, 2007.

Your action, is to write a reply to petitioner and furnish the OCA with a copy thereof. Per instruction, you made me write an explanation to petitioner the circumstances which caused the delay in the deliberation of the Report/draft Decision and securing the signature of Justice Lim for concurrence. I explained with you my reluctance to affix my signature as the writer of the letter reply, which in a way put the good Justice Lim in bad light, but still you insisted to put my name on the said letter.

Now that the letter is made, edited and polished (by your Honor), with its entire tenor substantially different from my draft letter, it is of my conscience and moral call that I cannot make, write nor sign a letter that tends to discredit, malign and put anybody, a co-office worker, or a Justice at that, in bad light. It is against my conscience, my moral and legal principles I have learned as a lawyer and, as a Roman Catholic Christian.

Elbinias explaining why he could not, in conscience, sign it. This earned the ire of Justice Elbinias who peremptorily terminated Atty. Cayetuna's employment with the CA through a letter[6] dated April 24, 2008 to Ruby Jane B. Rivera, Personnel Officer of the CA – Mindanao Station.

The very next day, or on April 25, 2008, when the RATA for the lawyers and the salaries of the CA employees in the CA – Mindanao Station were released, Atty. Cayetuna did not receive his salary for the second half of April 2008 and RATA for that month on account of his termination. Likewise, he was informed on April 28, 2008 that he would no longer receive his EEA and midyear bonus. These are the subjects of Atty. Cayetuna's April 30, 2008 letter to then Chief Justice Puno.

The other complainants, in solidarity with Atty. Cayetuna, filed the instant unverified letter-complaint.

In the meantime, acting on the requested acceptance of their resignation letters, then CA Presiding Justice Conrado A. Vasquez, Jr. issued a recommendation[7] on May 6, 2008 for the approval of the resignations of complainants to then Chief Justice Puno. The resignations were duly approved on May 7, 2008. The approved resignations, however, inadvertently excluded that of Atty. Cynthia Y. Jamero. Thus, on May 8, 2008, CA Presiding Justice Vasquez, Jr. likewise recommended[8] for approval Atty. Jamero's resignation, which was approved on May 9, 2008.

> I respect you and acknowledge your ascendancy over me. Despite my utmost loyalty as your subordinate, however, I cannot intelligently write such letter in my own free will and sign it for you which I honestly belief that will subject me to disciplinary, if not criminal liability.
>
> I deal this as a serious matter and I hope you will understand my predicament.
>
> Thank you very much,
>
> Respectfully yours,
>
> (SGD) Atty. Samson Ariel C. Cayetuna
> Court Attorney V-CT

[6] *Id.* at 53.

[7] *Id.* at 308.

[8] *Id.* at 310.

On July 3, 2008, complainants sent another unverified letter-complaint[9] dated June 18, 2008 thanking the Court for the speedy acceptance of their resignation letters. Therein, they additionally alleged Justice Elbinias' belligerent attitude when—upon receipt on May 8, 2008 of the Court's approval and acceptance of complainants' resignation letters, which inadvertently excluded Atty. Jamero's—Justice Elbinias wrote a letter to the Personnel Officer of the CA – Mindanao Station terminating Atty. Jamero's employment but antedating it May 7, 2008. Moreover, complainants raised another grievance against Justice Elbinias who, allegedly under flimsy reasons, refused to sign their clearances. Finally, they imputed malevolent intent on Justice Elbinias who allegedly—although not confirmed—gave a list of their names to then newly appointed CA Associate Justice Ayson in connection with the applications of some of them. In fine, they reiterated their plea for the preventive suspension of Justice Elbinias pending resolution of the instant case to prevent him from using his position to further harass them.

In his Comment[10] dated July 13, 2008, Justice Elbinias vehemently denied the charges. While admitting telling complainants that he would fire them, he said this was on account of the poor, inefficient and sloppy draft work of the complainants-lawyers, and the unsatisfactory performance of complainants driver and utility worker. He attributed the concerted efforts of complainants to preempt their dismissal by filing the instant complaint as also an attempt to put him in a bad light. On the issue of the firing of Atty. Cayetuna allegedly on his refusal to sign the letter-reply to Mr. Algabre, Justice Elbinias asserted that the mention of CA Associate Justice Lim therein was factual as shown in Atty. Cayetuna's drafts and did not put Justice Lim in a bad light. Moreover, he maintained that he never forced Atty. Cayetuna to sign the letter-reply, but the latter "set him up" by raising such an issue and writing an "insincere" written objection about it. And having lost confidence in Atty. Cayetuna, he had no option but to fire him.

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[9] *Id.* at 74-75.

[10] *Id.* at 80-109.

Additionally, on September 15, 2008, after getting a copy of complainants' June 18, 2008 letter-complaint, Justice Elbinias filed his Supplemental Comment.[11] Therein, he asserted the need to do an inventory of records and cases before he would sign their clearances, since complainants' sudden abandonment of his office left it in disarray with records difficult to locate. He maintained that he was reorganizing his office and the inventory was still not finished on June 18, 2008 when complainants wrote their additional letter-complaint. He also accused complainants of collective theft for the loss of some documents from his chamber.

Meanwhile, on July 24, 2009, all the current employees assigned in the Office of Justice Elbinias in the CA – Mindanao Station sent the Court a letter[12] of support for Justice Elbinias dated July 13, 2009.

Also, on account of Justice Elbinias' transfer to the CA in Manila, the Young Men's Christian Association (YMCA) of Misamis Oriental, Inc. issued Board Resolution No. 133-S-2009[13] on August 7, 2009, expressing appreciation for Justice Elbinias' integrity and dedication as a CA Associate Justice. Similarly, the City Council of Cagayan de Oro City issued Resolution No. 9776-2009[14] on August 18, 2009, commending Justice Elbinias for his integrity and dedication in serving the citizenry as Associate Justice of the CA.

On March 2, 2010, through a Resolution[15] of even date, we required the parties to manifest whether they would submit the case for resolution based on the pleadings.

On March 22, 2010, Justice Elbinias filed his Manifestation[16] to submit the instant case for resolution based on the basis of

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[11] *Id.* at 142-147.

[12] *Id.* at 228-229.

[13] *Id.* at 179-181.

[14] *Id.* at 187-188.

[15] *Id.* at 232.

[16] *Id.* at 234-236.

the pleadings. Complainants, however, filed on April 15, 2010 a letter[17] requesting for copies of the pleadings filed by Justice Elbinias, which was duly granted.[18]

On June 4, 2010, complainants filed their Omnibus Reply and Manifestation,[19] dated June 3, 2010, to Justice Elbinias' comments and duly submitted the instant case for resolution based on the pleadings filed. They argued that their unverified complaints were properly treated by the Court as anonymous complaints, since respondent justice admitted the material allegations therein relative to the DTR of Leofer Andoy, failure to timely act on cases with Temporary Restraining Order (TRO), the "undertakings" they submitted as per respondent's instructions, non-signing of their clearances and deterring Justice Ayson from hiring some of them. Moreover, they asserted that Atty. Cayetuna's drafts could not have been stolen by the author thereof, and that they did not violate Republic Act No. (RA) 3019 in divulging confidential information to unauthorized persons as then Chief Justice Puno could not be considered an unauthorized person.

Besides, complainants stressed, no liability under Articles 363 (planting of evidence), 364 (blemish reputation of another), 353 (public and malicious imputation of a crime, *etc*.) and 183 (perjury) of the Revised Penal Code can be attributed to them, since their letter-complaints were filed with utmost circumspection and confidentiality. To debunk their alleged inefficiency and assert the contrary of respondent's allegation that they preempted their inevitable termination by filing the instant complaints, they submitted their respective but similar performance ratings of "Very Satisfactory," together with the comparative Judicial Data Statistics from the Information and Statistical Data Division of the CA, which tended to show that the output data on case disposition of Justice Elbinias did not substantially change before

[17] *Id.* at 243.

[18] *Id.* at 244-245, Resolution dated April 27, 2010.

[19] *Id.* at 252-276, Omnibus Reply [To Respondent Justice Michael P. Elbinias' Comment dated 13 July 2008, 10 September 2008, and to his Manifestation dated March 2010] and Manifestation [In Compliance with the Court's Resolution dated 27 April 2010, received on 25 May 2010], dated June 3, 2010.

and after they resigned from his office. They contended that all these prove that their alleged inefficiency had no factual basis. Finally, they maintained that they had already contemplated resigning way before the incidents involving Atty. Cayetuna and Abugho happened because of, they reiterate, his demeaning and terrorizing actuations against them.

On July 16, 2010, Justice Elbinias filed his Rejoinder.[20] He assailed complainants' Omnibus Reply and Manifestation for again being conveniently not under oath, concluding their allegations to be insincere and untruthful. He countered and debunked the assertions and allegations of complainants. He strongly posited that complainants misled or mischaracterized facts by falsely asserting his alleged admission of their allegations in his Comment and Supplemental Comment.

Our Ruling

After an assiduous study of the parties' allegations and counter-allegations, with due consideration of the documents they submitted to bolster their respective positions, the Court is constrained to dismiss the instant case for being unsubstantiated.

Both the letter-complaints of April 30, 2008 and June 18, 2008 are unverified, while the June 3, 2010 Omnibus Reply and Manifestation of complainants is not under oath. It must be noted that most of the complainants are lawyers, and are presumed and ought to know the formal requirement of verification for administrative complaints as stated under Section 1, Rule 140:

SECTION 1. *How instituted*.—Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the *Sandiganbayan* may be instituted *motu proprio* by the Supreme Court or upon a **verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate their allegations**, or upon an **anonymous complaint, supported by public records of indubitable integrity**. The complaint shall be in writing and shall state clearly and concisely the acts and omissions

[20] *Id.* at 484-506, dated July 13, 2010.

constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct. (Emphasis supplied.)

The above rule provides three ways by which administrative proceedings against judges may be instituted: (1) ***motu proprio*** by the Supreme Court; (2) upon **verified complaint** with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an **anonymous complaint** supported by public records of indubitable integrity.[21]

Indeed, complainants not only failed to execute a verified complaint but also never submitted their affidavits showing personal knowledge of the allegations embodied in their letter-complaints. To cover this procedural deficiency, they assert that the Court properly recognized their letter-complaints as an anonymous complaint, relying on *Sinsuat v. Hidalgo*.[22]

In *Sinsuat*, the Court took cognizance of the unverified motion and subsequent letters of complainants submitted to the Office of the Court Administrator as an anonymous complaint, since therein respondent Judge Hidalgo admitted complainants' material allegations and "the motion and letters sufficiently averred the specific acts upon which respondent's alleged administrative liability was anchored. And the averments are verifiable from the records of the trial court and the CA's Decision."[23] In short, the unverified complaint was properly considered as an anonymous complaint, since the material allegations were not only admitted by respondent judge but are also verifiable from public records of indubitable integrity, *i.e.*, records of the trial court, as aptly found by the CA.

This is not the case in this instant. Complainants' reliance on *Sinsuat* is misplaced. For one, even a passing perusal of the Comment and Supplemental Comment does not show respondent

[21] *Sinsuat v. Hidalgo*, A.M. No. RTJ-08-2133, August 6, 2008, 561 SCRA 38, 46.

[22] *Id.*

[23] *Id.* at 47.

Justice Elbinias admitting the allegations in the letter-complaints. For another, the averments and material allegations of complainants are neither verifiable from public records of indubitable integrity nor supported or substantiated by other competent evidence submitted by complainants.

The formal *faux pas* of complainants could have been remedied by the submission under oath of their subsequent pleadings, particularly the Omnibus Reply, where they traversed the points and defenses raised by respondent *vis-à-vis* their allegations. And they could have appended thereto their respective affidavits attesting to their personal knowledge of the facts of their material allegations. But, as it is, complainants chose not to place their Omnibus Reply under oath, much less submitted their affidavits. Verily, after receiving copies of respondent's Comment and Supplemental Comment, they had ample opportunity but chose not to correct the deficiencies of their complaints while submitting the instant case for resolution based on the pleadings filed sans their affidavits.

Complainants assert that Justice Elbinias admitted the material allegations in their letter-complaints, to wit: (1) that, aware of Andoy's absences in February 2008 which were not reflected in his (Andoy's) Daily Time Record (DTR), Justice Elbinias nonetheless signed said DTR; (2) that respondent did not deny failing to timely act on the application for TRO in the cited cases in their complaint; (3) that respondent's lawyers (complainants) submitted their "undertakings" as per his instructions; and (4) that he did not sign complainants' clearances on account of office inventory of records and for lack of follow-up by complainants.

These assertions are belied by respondent's comment and supplemental comment.

Justice Elbinias denies being fully aware of Andoy's absences when he signed the latter's DTRs. He points out that he was not aware whether Andoy filed leaves for his absences in December 2007, and whether Andoy declared or not his absences in February 2008, since he signs all the DTRs of his office staff which are submitted together. Thus, he maintains that if Andoy did not

mark as absent the days he was absent or whether he filed leaves for his absences, respondent charges it to inadvertence on his part for having signed Andoy's DTRs which was done in good faith. Indeed, without copies of the subject DTRs of Andoy as duly signed by respondent and the logbook of their office reflecting the time of the employees' arrival and departure, we cannot ascribe any liability on respondent.

On his alleged failure to timely act on an application for a TRO, it bears stressing that Justice Elbinias, in his Comment, asserts what he calls an "undue interest and irregular involvement."[24] While respondent does not deny the fact that no TRO was issued, such is not equivalent to an admission of wrongdoing. Verily, the issuance of any provisional remedy, such as a TRO in the alleged case, is addressed to the sound discretion of the court upon certain conditions as provided by law that are amply shown by the applicant. Consequently, undue delay or inaction on an application of a provisional remedy, like a TRO, cannot be imputed to the judge or court where there is no showing that the grant thereof is proper and well nigh dictated by an indubitable right of a party-applicant that needs protection. Anent the allegation of undue delay in the resolution of motions for reconsideration, we agree with respondent that said allegation is general and lacks specificity. Complainants merely made a general allegation of undue delay without particulars as to specific cases, the motions for reconsideration of which have been set for resolution after the adverse parties have filed their comments thereto and have not been resolved beyond the 90-day period. On the alleged inaction on cases with TRO, complainants failed to show that the issuance of a TRO in a particular case is paramount to the provisional protection of a party's right *in esse*.

The "undertakings" embodied in the application letters[25] of complainant-Attys. Jamero, Sur, Cardino and Yulo submitted by Justice Elbinias in his Comment duly show the nature of confidential employees. Complainants contend that these were

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[24] *Rollo*, p. 96.

[25] *Id.* at 123-125, dated April 18/19, 2007.

accomplished and submitted by them upon the instructions of respondent. We find it incredulous that the "undertakings" were made by complainant-lawyers at the behest of respondent. It stands to reason that an applicant, among others, submits an application letter. The application letters submitted by complainants to Justice Elbinias could not have been under the latter's instruction and control. Consequently, the application letters, without more, were certainly from complainants and could not have been under the direction of respondent.

The fact that Justice Elbinias did not sign the clearances of complainants is sufficiently explained in his Supplemental Comment that he was reorganizing his office and doing an inventory of the *rollo*s of the cases assigned to him. Besides, as aptly pointed out by respondent, complainants were not unduly prejudiced by his delay in signing their clearances for they were able to receive their benefits and were even rehired in the CA Mindanao – Station despite the lack of clearances, for such were not needed for their reemployment as shown by the letter[26] of CA Presiding Justice Vasquez, Jr. to respondent dated September 5, 2008.

Even granting *arguendo* and considering the letter-complaints as anonymous complaints, still these cannot prosper as stated earlier because the averments and material allegations of complainants are neither verifiable from public records of indubitable integrity nor supported or substantiated by other competent evidence submitted by complainants.

In *Anonymous Complaint against Pershing T. Yared, Sheriff III, Municipal Trial Court in Cities, Canlaon City*, this Court reiterated the rule pertaining to anonymous complaints, thus:

> At the outset, the Court stresses that an anonymous complaints is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always justify its outright dismissal for being baseless or unfounded for such complaint may be easily verified and may, without much

[26] *Id.* at 294-295.

difficulty, be **substantiated and established by other competent evidence**.[27] (Emphasis supplied.)

In the instant case, the charges of *Gross Inefficiency; Bribe Solicitation; Drinking Liquor in Office Premises; Personal Use of Government Property and Resources; Falsification of a Favored Employee's Daily Time Record; Disrespect Towards fellow Justices; Oppression through Intemperate, Oppressive and Threatening Language; and Grave Abuse of Authority* are neither supported by public records nor substantiated by competent evidence.

Public records do not support any of the allegations. The incident involving Engr. Rowell T. Magalang, Administrative Officer, Maintenance and Utility Unit of the CA Mindanao – Station merely shows a misunderstanding between respondent and the engineer concerned.[28] As regards those of complainants Roxas and Abugho relative to their unauthorized absence on March 19, 2008, it is embodied in the letter[29] of even date by Justice Elbinias to the Personnel Officer of the CA Mindanao – Station, Ruby Jane B. Rivera, which evidently shows what it is. Complainants allege the nastiness of respondent in marking absent Abugho and Roxas that day even if they were present, only on account of their going out of the office for a few minutes to buy food. Respondent counters that both were absent and not around when he looked for them on March 19, 2008, as he would not have informed the CA Personnel Officer if it were not so. Since the utility worker and the driver are expected to be at the office during office hours, then it is logical that if they were not around, then they could not be present.

It is well-settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.[30] In the instant case, complainants have

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[27] A.M. No. P-05-2015, June 28, 2005, 461 SCRA 347, 354-355; citing *Anonymous v. Geverola*, A.M. No. P-97-1254, September 18, 1997, 279 SCRA 279.

[28] *Rollo*, pp. 17-24.

[29] *Id.* at 16.

[30] *Rivera v. Mendoza*, A.M. No. RTJ-06-2013 [OCA-IPI No. 06-2509-

not shown, much less submitted, substantial evidence supporting their allegations.

Anent the untimely and peremptory termination of complainant Atty. Cayetuna, we find it to be a misunderstanding between respondent and his most senior lawyer which has been blown out of proportion.

A cursory perusal of the drafts[31] prepared by Atty. Cayetuna of the letter-reply to Algabre would readily show that the explanation is factual in nature and in no way pejorative to CA Associate Justice Lim. Thus, there is really no basis for Atty. Cayetuna's misgiving about signing said letter-reply. And it is uncalled for Atty. Cayetuna to write a formal letter to respondent about his refusal to do so.

It must be borne in mind that complainants, as primarily confidential employees, need the trust of their immediate superior, Justice Elbinias. In *Philippine Amusement and Gaming Corporation v. Angara*,[32] this Court reiterated the principle behind and the element of trust in the employment to a primarily confidential position. We cited *De los Santos vs. Mallare*, thus:

> Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.[33]

Moreover, it has been said that confidential employees work at the pleasure of the appointing authority. Thus, there is no quibble that when the relation between respondent CA Associate Justice Elbinias and his lawyers has deteriorated to the extent

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RTJ], August 4, 2006, 497 SCRA 608, 613, citing *Barcena v. Gingoyon*, A.M. No. RTJ-03-1794, October 25, 2005, 474 SCRA 65, 74.

[31] *Rollo*, pp. 25-31.

[32] G.R. No. 142937, November 15, 2005, 475 SCRA 41.

[33] 87 Phil. 289, 298 (1950).

that there is no longer intimacy between them that insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state, then the confidential employment is no longer tenable. The right of respondent to change the confidential employees in his office cannot be disputed.

Even if the allegations have not been substantially proved, still it is incumbent for Justice Elbinias to reflect on how the conflict between him and his staff came about. While we take notice of the letter of support from other employees in the CA Mindanao – Station, and the Resolutions from the YMCA and the City Council of Cagayan de Oro City commending him, we hope that Justice Elbinias learns from this experience to better and improve the management and supervision of his staff.

WHEREFORE, premises considered, the instant administrative complaint is hereby *DISMISSED.*

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 8620. January 12, 2011]

JESSIE R. DE LEON, *complainant, vs.* **ATTY. EDUARDO G. CASTELO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; THE LAWYER'S OATH ORDAINS

ETHICAL NORMS THAT BIND ALL ATTORNEYS TO ACT WITH THE HIGHEST STANDARDS OF HONESTY, INTEGRITY, AND TRUSTWORTHINESS; EXPLAINED. — All attorneys in the Philippines, including the respondent, have sworn to the vows embodied in the following *Lawyer's Oath*. x x x The *Code of Professional Responsibility* echoes the *Lawyer's Oath*. x x x The foregoing ordain ethical norms that bind all attorneys, as officers of the Court, to act with the highest standards of honesty, integrity, and trustworthiness. All attorneys are thereby enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients. Being also servants of the Law, attorneys are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others. The least they can do in that regard is to refrain from engaging in any form or manner of unlawful conduct (which broadly includes any act or omission contrary to law, but does not necessarily imply the element of criminality even if it is broad enough to include such element).

2. ID.; ID.; TRUTHFULNESS AND HONESTY HAVE THE HIGHEST VALUE; SUSTAINED. — To all attorneys, truthfulness and honesty have the highest value, for, as the Court has said in *Young v. Batuegas*: A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will "do no falsehood nor consent to the doing of any in court" and he shall "conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients." He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth. Their being officers of the Court extends to attorneys not only the presumption of regularity in the discharge of their duties, but also the immunity from liability to others for as long as the

performance of their obligations to their clients does not depart from their character as servants of the Law and as officers of the Court.

3. ID.; ID.; GOOD FAITH MUST ALWAYS MOTIVATE ANY COMPLAINT AGAINST A MEMBER OF THE BAR; RATIONALE; NOT PRESENT IN CASE AT BAR. — According to Justice Cardozo, "xxx the fair fame of a lawyer, however innocent of wrong, is at the mercy of the tongue of ignorance or malice. Reputation in such a calling is a plant of tender growth, and its bloom, once lost, is not easily restored." A lawyer's reputation is, indeed, a very fragile object. The Court, whose officer every lawyer is, must shield such fragility from mindless assault by the unscrupulous and the malicious. It can do so, firstly, by quickly cutting down any patently frivolous complaint against a lawyer; and, secondly, by demanding good faith from whoever brings any accusation of unethical conduct. A Bar that is insulated from intimidation and harassment is encouraged to be courageous and fearless, which can then best contribute to the efficient delivery and proper administration of justice. The complainant initiated his complaint possibly for the sake of harassing the respondent, either to vex him for taking the cudgels for his clients in connection with Civil Case No. 4674MN, or to get even for an imagined wrong in relation to the subject matter of the pending action, or to accomplish some other dark purpose. The worthlessness of the accusation – apparent from the beginning – has impelled us into resolving the complaint sooner than later.

APPEARANCES OF COUNSEL

Jaime S. Linsangan for complainant.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case, which Jessie R. De Leon initiated on April 29, 2010, concerns respondent attorney's alleged dishonesty and falsification committed in the pleadings he filed

in behalf of the defendants in the civil action in which De Leon intervened.

Antecedents

On January 2, 2006, the Government brought suit for the purpose of correcting the transfer certificates of title (TCTs) covering two parcels of land located in Malabon City then registered in the names of defendants Spouses Lim Hio and Dolores Chu due to their encroaching on a public *callejon* and on a portion of the Malabon-Navotas River shoreline to the extent, respectively, of an area of 45 square meters and of about 600 square meters. The suit, entitled *Republic of the Philippines, represented by the Regional Executive Director, Department of Environment and Natural Resources v. Spouses Lim Hio and Dolores Chu, Gorgonia Flores, and the Registrar of Deeds of Malabon City*, was docketed as Civil Case No. 4674MN of the Regional Trial Court (RTC), Branch 74, in Malabon City.[1]

De Leon, having joined Civil Case No. 4674MN as a voluntary intervenor two years later (April 21, 2008), now accuses the respondent, the counsel of record of the defendants in Civil Case No. 4674MN, with the serious administrative offenses of dishonesty and falsification warranting his disbarment or suspension as an attorney. The respondent's sin was allegedly committed by his filing for defendants Spouses Lim Hio and Dolores Chu of various pleadings (that is, *answer with counterclaim and cross-claim* in relation to the main *complaint;* and *answer to the complaint in intervention with counterclaim and cross-claim*) despite said spouses being already deceased at the time of filing.[2]

De Leon avers that the respondent committed dishonesty and falsification as follows:

xxx in causing it (to) appear that persons (spouses Lim Hio and Dolores Chu) have participated in an act or proceeding (the making

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[1] *Rollo*, pp. 8-21.

[2] *Id.*, pp. 1-7.

and filing of the Answers) when they did not in fact so participate; in fact, they could not have so participated because they were already dead as of that time, which is punishable under Article 172, in relation to Article 171, paragraph 2, of the Revised Penal Code.

Respondent also committed the crime of Use of Falsified Documents, by submitting the said falsified Answers in the judicial proceedings, Civil Case No. 4674MN;

Respondent also made a mockery of the aforesaid judicial proceedings by representing dead persons therein who, he falsely made to appear, as contesting the complaints, counter-suing and cross-suing the adverse parties.

12. That, as a consequence of the above criminal acts, complainant respectfully submits that respondent likewise violated:

(a) His Lawyer's Oath:

x x x x x x x x x

(b) The Code of Professional Responsibility:[3]

x x x x x x x x x

On June 23, 2010, the Court directed the respondent to comment on De Leon's administrative complaint.[4]

In due course, or on August 2, 2010,[5] the respondent rendered the following explanations in his *comment*, to wit:

1. The persons who had engaged him as attorney to represent the Lim family in Civil Case No. 4674MN were William and Leonardo Lim, the children of Spouses Lim Hio and Dolores Chu;

2. Upon his (Atty. Castelo) initial queries relevant to the material allegations of the Government's *complaint* in Civil Case No. 4674MN, William Lim, the representative of the Lim Family, informed him:

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

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

[5] *Id.*, pp. 63-76.

a. That the Lim family had acquired the properties from Georgina Flores;

b. That William and Leonardo Lim were already actively managing the family business, and now co-owned the properties by virtue of the *deed of absolute sale* their parents, Spouses Lim Hio and Dolores Chu, had executed in their favor; and

c. That because of the execution of the *deed of absolute sale*, William and Leonardo Lim had since honestly assumed that their parents had already caused the transfer of the TCTs to their names.

3. Considering that William and Leonardo Lim themselves were the ones who had engaged his services, he (Atty. Castelo) consequently truthfully stated in the motion seeking an extension to file responsive pleading dated February 3, 2006 the fact that it was "the family of the defendants" that had engaged him, and that he had then advised "the children of the defendants" to seek the assistance as well of a licensed geodetic surveyor and engineer;

4. He (Atty. Castelo) prepared the initial pleadings based on his honest belief that Spouses Lim Hio and Dolores Chu were then still living. Had he known that they were already deceased, he would have most welcomed the information and would have moved to substitute Leonardo and William Lim as defendants for that reason;

5. He (Atty. Castelo) had no intention to commit either a falsehood or a falsification, for he in fact submitted the death certificates of Spouses Lim Hio and Dolores Chu in order to apprise the trial court of that fact; and

6. The Office of the Prosecutor for Malabon City even dismissed the criminal complaint for falsification brought against him (Atty. Castelo) through the resolution dated February 11, 2010. The same office denied the complainant's *motion for reconsideration* on May 17, 2010.

On September 3, 2010, the complainant submitted a *reply*,[6] whereby he asserted that the respondent's claim in his *comment* that he had represented the Lim family was a deception, because the subject of the *complaint* against the respondent was his filing of the *answers* in behalf of Spouses Lim Hio and Dolores Chu despite their being already deceased at the time of the filing. The complainant regarded as baseless the justifications of the Office of the City Prosecutor for Malabon City in dismissing the criminal complaint against the respondent and in denying his *motion for reconsideration*.

The Court usually first refers administrative complaints against members of the Philippine Bar to the Integrated Bar of the Philippines (IBP) for investigation and appropriate recommendations. For the present case, however, we forego the prior referral of the complaint to the IBP, in view of the facts being uncomplicated and based on the pleadings in Civil Case No. 4674MN. Thus, we decide the complaint on its merits.

Ruling

We find that the respondent, as attorney, did not commit any falsehood or falsification in his pleadings in Civil Case No. 4674MN. Accordingly, we dismiss the patently frivolous complaint.

I

Attorney's Obligation to tell the truth

All attorneys in the Philippines, including the respondent, have sworn to the vows embodied in following *Lawyer's Oath*,[7] *viz*:

> I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will

[6] *Id.*, pp. 137-153.

[7] Form No. 28, attached to the *Rules of Court*.

conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

The *Code of Professional Responsibility* echoes the *Lawyer's Oath*, providing:[8]

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

The foregoing ordain ethical norms that bind all attorneys, as officers of the Court, to act with the highest standards of honesty, integrity, and trustworthiness. All attorneys are thereby enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients. Being also servants of the Law, attorneys are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others.[9] The least they can do in that regard is to refrain from engaging in any form or manner of unlawful conduct (which broadly includes any act or omission contrary to law, but does not necessarily imply the element of criminality even if it is broad enough to include such element).[10]

[8] *Macias v. Selda*, A.C. No. 6442, October 21, 2004, 441 SCRA 65.

[9] Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct*, 2001 Edition.

[10] *In Re:Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial*

To all attorneys, truthfulness and honesty have the highest value, for, as the Court has said in *Young v. Batuegas*:[11]

> A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will "do no falsehood nor consent to the doing of any in court" and he shall "conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients." He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth.

Their being officers of the Court extends to attorneys not only the presumption of regularity in the discharge of their duties, but also the immunity from liability to others for as long as the performance of their obligations to their clients does not depart from their character as servants of the Law and as officers of the Court. In particular, the statements they make in behalf of their clients that are relevant, pertinent, or material to the subject of inquiry are absolutely privileged regardless of their defamatory tenor. Such cloak of privilege is necessary and essential in ensuring the unhindered service to their clients' causes and in protecting the clients' confidences. With the cloak of privilege, they can freely and courageously speak for their clients, verbally or in writing, in the course of judicial and quasi-judicial proceedings, without running the risk of incurring criminal prosecution or actions for damages.[12]

Nonetheless, even if they enjoy a number of privileges by reason of their office and in recognition of the vital role they play in the administration of justice, attorneys hold the privilege

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Court, Oras, Eastern Samar, A. M. No. P-06-2177, April 13, 2007, 521 SCRA 25.

[11] A.C. No. 5379, May 9, 2003, 403 SCRA 123.

[12] Agpalo, *Legal and Judicial Ethics*, Eighth Edition (2009), pp. 8-9.

and right to practice law before judicial, quasi-judicial, or administrative tribunals or offices only during good behavior.[13]

II
Respondent did not violate the *Lawyer's Oath* and the *Code of Professional Responsibility*

On April 17, 2006, the respondent filed an *answer with counterclaim and cross-claim* in behalf of Spouses Lim Hio and Dolores Chu, the persons whom the Government as plaintiff *named* as defendants in Civil Case No. 4674MN.[14] He alleged therein that:

> 2. The allegations in paragraph 2 of the complaint are ADMITTED. **Moreover, it is hereby made known that defendants spouses Lim Hio and Dolores Chu had already sold the two (2) parcels of land, together with the building and improvements thereon, covered by Transfer Certificate of Title No. (148805) 139876 issued by the Register of Deeds of Rizal, to Leonardo C. Lim and William C. Lim, of Rms. 501 – 502 Dolores Bldg., Plaza del Conde, Binondo, Manila. Hence, Leonardo Lim and William Lim are their successors-in-interest and are the present lawful owners thereof.**
>
> **In order to properly and fully protect their rights, ownership and interests, Leonardo C. Lim and William C. Lim shall hereby represent the defendants-spouses Lim Hio and Dolores Chu as substitute/representative parties in this action. In this manner, a complete and expeditious resolution of the issues raised in this case can be reached without undue delay.** A photo copy of the Deed of Absolute Sale over the subject property, executed by herein defendants-spouses Lim Hio and Dolores Chu in favor of said Leonardo C. Lim and William C. Lim, is hereto attached as Annex "1" hereof.
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> 21. There is improper joinder of parties in the complaint. Consequently, answering defendants are thus unduly compelled to

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[13] *Id*., p. 8.

[14] *Rollo*, pp. 22-33 (Note that the cross-claim was against Georgina Flores, the transferor/predecessor-in-interest of Spouses Lim Hio and Dolores Chu).

litigate in a suit regarding matters and facts as to which they have no knowledge of nor any involvement or participation in.

22. Plaintiff is barred by the principle of estoppel in bringing this suit, as it was the one who, by its governmental authority, issued the titles to the subject property.

This action is barred by the principles of prescription and laches for plaintiff's unreasonable delay in brining this suit, particularly against defendant Flores, from whom herein answering defendants acquired the subject property in good faith and for value. If truly plaintiff has a clear and valid cause of action on the subject property, it should not have waited thirty (30) years to bring suit.

Two years later, or on April 21, 2008, De Leon filed his *complaint in intervention* in Civil Case No. 4674MN.[15] He expressly named therein as defendants *vis-à-vis* his intervention not only the Spouses Lim Hio and Dolores Chu, the original defendants, but also their sons Leonardo Lim, married to Sally Khoo, and William Lim, married to Sally Lee, the same persons whom the respondent had already alleged in the *answer, supra*, to be the transferees and *current* owners of the parcels of land.[16]

The following portions of De Leon's *complaint in intervention* in Civil Case No. 4674MN are relevant, *viz*:

2. **Defendant spouses Lim Hio and Dolores Chu, are Filipino citizens with addresses at 504 Plaza del Conde, Manila and at 46 C. Arellano St., San Agustin, Malabon City, where they may be served with summons and other court processes**;

3. **Defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee are all of legal age and with postal address at Rms. 501-502 Dolores Bldg., Plaza del Conde, Binondo, Manila, alleged purchasers of the property in question from defendant spouses Lim Hio and Dolores Chu**;

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[15] *Id.*, pp. 34-42.

[16] The Registrar of Deeds of Malabon City was also named by the complainant as a defendant to his *complaint in intervention*.

4. Defendants Registrar of Deeds of Malabon City holds office in Malabon City, where he may be served with summons and other court processes. He is charged with the duty, among others, of registering decrees of Land Registration in Malabon City under the Land Registration Act;

x x x x x x x x x

7. That intervenor Jessie de Leon, is the owner of a parcel of land located in Malabon City described in TCT no. M-15183 of the Register of Deeds of Malabon City, photocopy of which is attached to this Complaint as Annex "G", and copy of the location plan of the aforementioned property is attached to this complaint as Annex "H" and is made an integral part hereof;

8. That there are now more or less at least 40 squatters on intervenor's property, most of them employees of defendant spouses Lim Hio and Dolores Chu and defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee who had gained access to intervenor's property and built their houses without benefit of any building permits from the government who had made their access to intervenor's property thru a two panel metal gate more or less 10 meters wide and with an armed guard by the gate and with permission from defendant spouses Lim Hio and Dolores Chu and/or and defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee illegally entered intervenor's property thru a wooden ladder to go over a 12 foot wall now separating intervenor's property from the former esquinita which is now part of defendant spouses Lim Hio and Dolores Chu's and defendant spouses Leonardo Lim and Sally Khoo's and defendant spouses William Lim and Sally Lee's property and this illegally allowed his employees as well as their relatives and friends thereof to illegally enter intervenor's property through the ladders defendant spouses Lim Hio and Dolores Chu installed in their wall and also allowed said employees and relatives as well as friends to build houses and shacks without the benefit of any building permit as well as permit to occupy said illegal buildings;

9. That the enlargement of the properties of spouses Lim Hio and Dolores Chu had resulted in the closure of street lot no. 3 as described in TCT no. 143828, spouses Lim Hio and Dolores Chu having titled the street lot no. 3 and placed a wall at its opening on C. Arellano street, thus closing any exit or egress or entrance to intervenor's property as could be seen from Annex "H" hereof and

thus preventing intervenor from entering into his property resulted in preventing intervenor from fully enjoying all the beneficial benefits from his property;

10. **That defendant spouses Lim Hio and Dolores Chu and later on defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee are the only people who could give permission to allow third parties to enter intervenor's property and their control over intervenor's property is enforced through his armed guard thus exercising illegal beneficial rights over intervenor's property at intervenor's loss and expense, thus depriving intervenor of legitimate income from rents as well as legitimate access to intervenor's property and the worst is preventing the Filipino people from enjoying the Malabon Navotas River and enjoying the right of access to the natural fruits and products of the Malabon Navotas River and instead it is defendant spouses Lim Hio and Dolores Chu and defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee using the public property exclusively to enrich their pockets**;

xxx x x x xxx

13. **That defendant spouses Lim Hio and Dolores Chu and defendant spouses Leonardo Lim and Sally Khoo and defendant spouses William Lim and Sally Lee were confederating, working and helping one another in their actions to inhibit intervenor Jessie de Leon to gain access and beneficial benefit from his property**;

On July 10, 2008, the respondent, representing *all* the defendants named in De Leon's *complaint in intervention*, responded in an *answer to the complaint in intervention with counterclaim and cross-claim*,[17] stating that "spouses Lim Hio and Dolores Chu xxx are now both deceased," to wit:

xxx x x x xxx

2. The allegations in paragraphs 2 and 3 of the Complaint are ADMITTED, with the qualification that **defendants-spouses Leonardo Lim and Sally Khoo Lim, William Lim and Sally Lee Lim are the registered and lawful owners of the subject property covered**

[17] *Rollo*, pp. 43-54.

by Transfer Certificate of Title No. M-35929, issued by the Register of Deeds for Malabon City, having long ago acquired the same from the defendants-spouses Lim Hio and Dolores Chu, who are now both deceased. Copy of the TCT No. M-35929 is attached hereto as Annexes "1" and "1-A". The same title has already been previously submitted to this Honorable Court on December 13, 2006.

x x x x x x x x x

The respondent subsequently submitted to the RTC a so-called *clarification and submission*,[18] in which he again adverted to the deaths of Spouses Lim Hio and Dolores Chu, as follows:

1. On March 19, 2009, herein movants-defendants Lim filed before this Honorable Court a Motion for Substitution of Defendants in the Principal Complaint of the plaintiff Republic of the Philippines, represented by the DENR;

2. **The Motion for Substitution is grounded on the fact that the two (2) parcels of land, with the improvements thereon, which are the subject matter of the instant case, had long been sold and transferred by the principal defendants-spouses Lim Hio and Dolores Chu to herein complaint-in-intervention defendants Leonardo C. Lim and William C. Lim, by way of a Deed of Absolute Sale**, a copy of which is attached to said Motion as Annex "1" thereof.

3. **Quite plainly, the original principal defendants Lim Hio and Dolores Chu, having sold and conveyed the subject property, have totally lost any title, claim or legal interest on the property. It is on this factual ground that this Motion for Substitution is based and certainly not on the wrong position of Intervenor de Leon that the same is based on the death of defendants Lim Hio and Dolores Chu**.

4. **Under the foregoing circumstances and facts, the demise of defendants Lim Hio and Dolores Chu no longer has any significant relevance to the instant Motion**. To, however, show the fact of their death, photo copy of their respective death certificates are attached hereto as Annexes "1" and "2" hereof.

5. The Motion for substitution of Defendants in the Principal Complaint dated March 18, 2009 shows in detail why there is the

[18] *Id.*, pp. 56-61.

clear, legal and imperative need to now substitute herein movants-defendants Lim for defendants Lim Hio and Dolores Chu in the said principal complaint.

6. Simply put, movants-defendants Lim have become the indispensable defendants in the principal complaint of plaintiff DENR, being now the registered and lawful owners of the subject property and the real parties-in-interest in this case. Without them, no final determination can be had in the Principal complaint.

7. Significantly, the property of intervenor Jessie de Leon, which is the subject of his complaint-in-intervention, is identically, if not similarly, situated as that of herein movants-defendants Lim, and likewise, may as well be a proper subject of the Principal Complaint of plaintiff DENR.

8. Even the plaintiff DENR, itself, concedes the fact that herein movants-defendants Lim should be substituted as defendants in the principal complaint as contained in their Manifestation dated June 3, 2009, which has been filed in this case.

WHEREFORE, herein movants-defendants Lim most respectfully submit their Motion for substitution of Defendants in the Principal Complaint and pray that the same be granted.

x x x x x x x x x

Did the respondent violate the letter and spirit of the *Lawyer's Oath* and the *Code of Professional Responsibility* in making the averments in the aforequoted pleadings of the defendants?

A plain reading indicates that the respondent did not misrepresent that Spouses Lim Hio and Dolores Chu were still living. On the contrary, the respondent directly stated in the *answer to the complaint in intervention with counterclaim and cross-claim, supra,* and in the *clarification and submission, supra,* that the Spouses Lim Hio and Dolores Chu were *already deceased*.

Even granting, for the sake of argument, that any of the respondent's pleadings might have created any impression that the Spouses Lim Hio and Dolores Chu were still living, we still cannot hold the respondent guilty of any dishonesty or falsification. For one, the respondent was acting in the interest of the actual owners of the properties when he filed the *answer with*

counterclaim and cross-claim on April 17, 2006. As such, his pleadings were privileged and would not occasion any action against him as an attorney. Secondly, having made clear at the start that the Spouses Lim Hio and Dolores Chu were no longer the actual owners of the affected properties due to the transfer of ownership even prior to the institution of the action, and that the actual owners (*i.e.*, Leonardo and William Lim) needed to be substituted in lieu of said spouses, whether the Spouses Lim Hio and Dolores Chu were still living or already deceased as of the filing of the pleadings became immaterial. And, lastly, De Leon could not disclaim knowledge that the Spouses Lim Hio and Dolores Chu were no longer living. His joining in the action as a *voluntary* intervenor charged him with notice of *all* the *other* persons interested in the litigation. He also had an actual awareness of such other persons, as his own *complaint in intervention, supra,* bear out in its specific allegations against Leonardo Lim and William Lim, and their respective spouses. Thus, he could not validly insist that the respondent committed any dishonesty or falsification in relation to him or to any other party.

III
Good faith must always motivate any complaint against a Member of the Bar

According to Justice Cardozo,[19] "xxx the fair fame of a lawyer, however innocent of wrong, is at the mercy of the tongue of ignorance or malice. Reputation in such a calling is a plant of tender growth, and its bloom, once lost, is not easily restored."

A lawyer's reputation is, indeed, a very fragile object. The Court, whose officer every lawyer is, must shield such fragility from mindless assault by the unscrupulous and the malicious. It can do so, firstly, by quickly cutting down any patently frivolous complaint against a lawyer; and, secondly, by demanding good faith from whoever brings any accusation of unethical conduct. A Bar that is insulated from intimidation and harassment is

[19] *People of the State of New York ex rel. Alexander Karlin v. Charles W. Culkin, as Sheriff of the County of New York,* 248 N.Y. 465, 162 N.E. 487, 60 A.L.R. 851.

encouraged to be courageous and fearless, which can then best contribute to the efficient delivery and proper administration of justice.

The complainant initiated his complaint possibly for the sake of harassing the respondent, either to vex him for taking the cudgels for his clients in connection with Civil Case No. 4674MN, or to get even for an imagined wrong in relation to the subject matter of the pending action, or to accomplish some other dark purpose. The worthlessness of the accusation – apparent from the beginning – has impelled us into resolving the complaint sooner than later.

WHEREFORE, we dismiss the complaint for disbarment or suspension filed against Atty. Eduardo G. Castelo for utter lack of merit.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. 08-4-253-RTC. January 12, 2011]

IN RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 45, URDANETA CITY, PANGASINAN, AND REPORT ON THE INCIDENT AT BRANCH 49, SAME COURT.

SYLLABUS

1. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; THE EFFICIENT HANDLING AND PHYSICAL INVENTORY OF CASES IS IMPORTANT AND NECESSARY IN THE

ADMINISTRATION OF JUSTICE; RATIONALE. — All judges discharge administrative responsibilities in addition to their adjudicative responsibilities. They should do so by maintaining professional competence in court management and by facilitating the performance of the administrative functions of other judges and court personnel. An orderly and efficient case management system is no doubt essential in the expeditious disposition of judicial caseloads, because only thereby can the judges, branch clerks of courts, and the clerks-in-charge of the civil and criminal dockets ensure that the court records, which will be the bases for rendering the judgments and dispositions, and the review of the judgments and dispositions on appeal, if any, are intact, complete, updated, and current. Such a system necessarily includes the regular and continuing physical inventory of cases to enable the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order. In contrast, mismanaged or incomplete records, and the lack of periodic inventory definitely cause unwanted delays in litigations and inflict unnecessary expenses on the parties and the State. Although the presiding judge and his or her staff share the duty of taking a continuing and regular inventory of cases, the responsibility primarily resides in the presiding judge. The continuity and regularity of the inventory are designed to invest the judge and the court staff with the actual knowledge of the movements, number, and ages of the cases in the docket of their court, a knowledge essential to the efficient management of caseload. The judge should not forget that he or she is duty-bound to perform efficiently, fairly, and with reasonable promptness all his or her judicial duties, including the delivery of reserved decisions. Thus, the judge must devise an efficient recording and filing system for his or her court that enables him or her to quickly monitor cases and to manage the speedy and timely disposition of the cases.

2. ID.; ID.; EFFICIENT AND SYSTEMATIC MANAGEMENT OF CASELOAD IS THE INSEPARABLE TWIN TO THE RESPONSIBILITY OF JUSTLY AND SPEEDILY DECIDING THE ASSIGNED CASES; NON-COMPLIANCE IN CASE AT BAR. — Judge Costales uncharacteristically

ignored that he discharged judicial and administrative duties as the Presiding Judge of Branch 45. He seemingly forgot that his responsibility of efficiently and systematically managing his caseload was the inseparable twin to his responsibility of justly and speedily deciding the cases assigned to his court. He should have remembered all too easily that he had assumed *both* responsibilities upon entering into office as Presiding Judge, and that he was bound to competently and capably discharge them from then on until his compulsory retirement. His failure to discharge them properly by organizing and supervising his court personnel with the end in view of bringing them to the prompt dispatch of the court's business in anticipation of his forced retirement reflected his inefficiency and breached his obligation to observe at all times the high standards of public service and fidelity. In this regard, Judge Costales could not deflect the blame to Atty. Pascua as his Branch Clerk of Court. The responsibility of organizing and coordinating the court personnel to ensure the prompt and efficient performance of the court's business was direct and primary for him as the judge. Truly, the duty to devise an efficient recording and filing system that would have enabled himself and his personnel to monitor the flow of cases and to manage their speedy and timely disposition pertained to him first and foremost. Moreover, he should know that his subordinates were not the guardians of his responsibilities as the judge. Being in legal contemplation the head of his branch, he was the master of his own domain who should be ready and willing to take the responsibility for the mistakes of his subjects, as well as to be ultimately responsible for order and efficiency in his court. He could not hide behind the inefficiency or the incompetence of any of his subordinates.

3. ID.; CLERK OF COURT; HIS DUTY AS CUSTODIAN OF RECORDS CARRIES WITH IT A SWORN OBLIGATION TO SAFELY KEEP ALL OF THEM; FAILURE IN CASE AT BAR. — Atty. Pascua bore the responsibility for the non-issuance of summonses or *alias* summonses in some cases, for the failure to indicate the dates of receipt of case records by Branch 45, for the failure to receive evidence *ex parte* despite

the orders to that effect, for the failure to prepare and submit (or cause the submission of) the monthly inventories, and for the failure to report and update the records of the cases of the branch. Such omissions involved matters that he should have routinely and regularly performed. His duty as the Branch Clerk of Court of Branch 45 required him to receive and file all pleadings and other papers properly presented to the branch, endorsing on each such paper the time when it was filed. Atty. Pascua was equally accountable with Judge Costales for the inefficient handling of the court records of Branch 45. His being the Branch Clerk of Court made him the custodian of such records (*i.e.*, pleadings, papers, files, exhibits, and the public properties pertaining to the branch and committed to his charge) with the sworn obligation of safely keeping all of them. Like his Presiding Judge, he carried on his shoulders the burden to see to the orderly and proper keeping and management of the court records, by which he was required to exercise close supervision of the court personnel directly charged with the handling of court records. His position of Branch Clerk of Court rendered him an essential and ranking officer of the judicial system performing delicate administrative functions vital to the prompt and proper administration of justice. Alas, he failed to so perform.

4. ID.; DISCIPLINE OF JUDGES; LESS SERIOUS CHARGES; SANCTIONS; APPLICATION IN CASE AT BAR. — [T]he character and magnitude of the omissions indicated that Judge Costales and Atty. Pascua had been inefficient over a long period of time and had failed to devise and put in place any proper system of records management in that length of time. They were really guilty of violating Supreme Court rules, directives, and circulars, a violation that Section 9, Rule 140, of the *Rules of Court* treats as a less serious charge. x x x Section 3, Canon 2 of the *New Code of Judicial Conduct for the Philippine Judiciary* directs a judge to take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware. This imperative duty becomes the more urgent when the act or omission the court personnel has

supposedly committed is in the nature of a grave offense, like the bundy-cards incident involved herein. It would have been surely demanded in the best interest of the public service, if not of the court itself, that the act or omission reported by the judicial audit team to Judge Costales as the Acting Executive Judge be investigated and properly dealt with promptly. The explanation of Judge Costales of having no more time and space to look into the bundy-cards incident was implausible. Having been informed of the anomaly on September 19, 2007, he had at least two months prior to November 21, 2007, his retirement date, within which to carry out his investigation, and to render a report thereon. That length of time was ample, if only he had acted promptly to investigate the incident. x x x For disobeying or ignoring the directive to investigate the bundy-cards incident, Judge Costales was guilty of insubordination, an omission that constituted simple misconduct, classified under Section 9, no. 4, Rule 140, of the *Rules of Court, supra,* as a less serious charge, and is thus punished with a fine of ₱12,000.00, conformably with Section 11, Rule 140, *Rules of Court, supra.*

D E C I S I O N

BERSAMIN, *J.*:

The Court, through the Office of the Court Administrator (OCA), routinely conducts an audit of the caseload and performance of a retiring trial judge. The Court will unhesitatingly impose appropriate sanctions despite the intervening retirement of the judge or member of the staff should the audit establish any inefficiency on the part of the retiring trial judge or of any member of the staff.

Here, we sanction a judge of the Regional Trial Court (RTC) and his Branch Clerk of Court, despite the former's intervening retirement, for the inefficient management of their court records and caseload. The sanction should serve as a timely reminder yet again to all incumbent trial judges and court personnel to handle court records and to manage caseloads efficiently and systematically, or else they suffer the appropriate sanctions.

ANTECEDENTS

A.
Findings on Caseload and Docket Inventory of Branch 45

On September 18-19, 2007, the OCA conducted a judicial audit of the caseload of Branch 45 of the Regional Trial Court (RTC Branch 45) in Urdaneta City in view of the compulsory retirement of Presiding Judge Joven F. Costales (Judge Costales) by November 21, 2007.

As its preliminary findings,[1] the judicial audit team reported that RTC Branch 45's caseload totaled 465 cases (*i.e.*, 197 civil cases and 268 criminal cases), of which:

(a) 16 were submitted for decision or resolution but still unresolved;

(b) 14 included unresolved incidents;

(c) 11 had no action taken since their filing;

(d) Three were criminal cases awaiting compliance relative to the last incidents;

(e) 39 underwent no further hearings or actions;

(f) Seven were civil cases awaiting *ex parte* reception of evidence; and

(g) 14 were criminal cases with unserved warrants or *alias* warrants of arrest.

Further, the judicial audit team concluded that the docket inventory of RTC Branch 45 was inaccurate, because:

(a) The docket inventory contained numerous typographical errors that led to the confusion about whether some cases were reported or not;

(b) The form prescribed in Administrative Circular No. 10-94 dated June 29, 1994 was not adopted;

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[1] *Rollo*, pp. 29-33.

(c) Some case records had no dates of receipt; and

(d) In Criminal Case No. U-13095, Branch 45 issued an order dated July 27, 2007 resetting the trial notwithstanding that one of the accused had not been arraigned.[2]

On November 19, 2007, the OCA, through then Deputy Court Administrator (DCA) Jose P. Perez,[3] issued a *memorandum* to Atty. Max Pascua (Atty. Pascua), the Branch Clerk of Court of RTC Branch 45,[4] directing him thuswise:

In view of the compulsory retirement of Judge Joven F. Costales on November 21, 2007, you are DIRECTED to (a) bring these cases to the attention of your pairing/acting judge for his/her guidance and appropriate action; and (b) inform this Office, within ten (10) days from notice, if there were any changes in the status of the listed cases in Annex "A" attaching thereto certified true copies of the orders/decisions.

Further, you are DIRECTED to (a) COMMENT, within ten (10) days from notice, on the following findings: civil cases for reception of evidence *ex-parte* listed under Table 10; inaccurate Docket Inventory Report described in letter H.2; and case records with no date of receipt; and (b) henceforth ADOPT THE PRESCRIBED FORM under Administrative Circular No. 10-94 dated June 29, 1994 re: Submission of Semestral Docket Inventory Report.

In partial compliance with the *memorandum*, Atty. Pascua replied by letter dated January 4, 2008 (accompanied by a report on the status of criminal and civil cases and on other matters),[5] explaining:

Regarding the inaccurate Docket Inventory and the typographical errors in criminal cases records as observed by the audit team (letter H-2 of the memorandum), rest assured Your Honor that undersigned

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[2] *Id.,* p. 33.

[3] Later the Court Administrator, and presently a Member of the Court.

[4] *Rollo,* p. 28.

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

is arranging things in its (*sic*) proper order and have instructed the civil and criminal records clerk-in-charge regarding the matter, including the adoption of the prescribed form under Adm. Circular No. 10-94 in submission of Semestral Docket Inventory Report.

It appears that on January 8, 2008,[6] the OCA informed Judge Costales that (*a*) the clearance necessary for the approval of his claim for compulsory retirement benefits could not issue pending his compliance with the *memorandum* dated November 19, 2007; and (*b*) his request for the release of his retirement benefits, less the amount that might answer for any liability, was still under evaluation by the Court.

In his letter dated January 8, 2008,[7] Judge Costales wrote to the OCA, *viz*:

> This is in connection with your letter dated November 19, 2007 which the undersigned received on November 20, 2007, directing him to conduct an investigation regarding the irregularity in the punching of Bundy clock of the employees of RTC, Branch 49, Urdaneta City, Pangasinan and to submit his report within ten (10) days thereof.
>
> I am awfully sorry for failing to comply the same (*sic*) on the following grounds:
>
> 1. I received said memorandum only on November 20, 2007, the date of my compulsory retirement.
>
> 2. That a week before my retirement on November 21, 2007, I was too busy reading and signing decisions and resolutions of motions in order that at the time of my retirement all cases submitted for decision are decided and all motions for resolutions are resolved, which I was able to do so.
>
> 3. That during my last day of the service, November 20, 2007, I instructed my Branch Clerk of Court, Atty. Max Pascua to write your Honor to inform you that as much as I am already retired after November 21, 2007, the Executive Judge should be the one to conduct such investigation. However, I only learned yesterday that the Branch

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[6] *Id.*, p. 13.

[7] *Id.*, pp. 16-17.

Clerk of Court was unable to do what I directed him to do by writing you on the matter.

4. Anent my comments on the findings of the Audit Team regarding the cases pending before Branch 45, I have also ordered Atty. Pascua to make the necessary reply, comment and/or explanations on the matter, as I am no longer in the Judiciary after November 21, 2007. Nonetheless, I was told by Atty. Pascua that he would submit said comments, reply and/or explanations by next week.

5. That I have not gone to Branch 45 Office since I retired last November 21, 2007, and I was of the notion and belief that Atty. Pascua had written you on the matter.

On the above reasons, as I am no longer connected with the Judiciary, my failure to comply with the said memorandum dated November 10, 2007 earlier is reasonable and well-founded.

Again, I would like to reiterate my apology for what happened.

Thank you, Sir!

Judge Costales sent to the OCA another letter dated January 26, 2008,[8] as follows:

The undersigned received last January 23, 2008 the following:

1. Memorandum dated November 19, 2007 directing me to submit my report and recommendation relative to the irregularity in the punching of Bundy clock at RTC, Branch 49 when I was the Acting Executive Judge of the RTC, Urdaneta City, Pangasinan.
2. A letter dated November 19, 2007 directing me to give my comment on the findings of the Judicial Audit Team conducted in my sala, RTC, Branch 45.
3. Annex "A", re findings of the Audit Team.
4. Memorandum dated November 19, 2007, addressed to Atty. Max Pascua, Branch Clerk of Court of RTC, Branch 45, Urdaneta City, Pangasinan.

Anent No. 1, Please be informed that I sent to Your Honor a letter last January 8, 2008, explaining my failure to submit my comments

[8] *Id.*, pp. 14-15.

on the matter, a copy of which is hereto attached and marked as Annex "A".

With regards (sic) to No. 2, my explanation is also contained in my letter dated January 8, 2008. Nonetheless, if I am directed to personally submit my comment, I would like then to state that on Tables 1 and 2: A. CASES SUBMITTED FOR DECISION on Civil and Criminal Cases, I have already decided all said cases, a Certification issued by the Branch Clerk of Court Atty. Max Pascua, marked as Annex "B" is hereto attached. Likewise, a copy of the letter-comment of Atty. Pascua marked as Annex "C" is hereto attached. In said comments, Annex "C", of Atty. Pascua, all the comments and/or explanations on the findings of the Audit Team from Table 1 to Table 11 are sufficiently indicated therein. I am adopting thereof, the comments and/or explanations of Atty. Pascua as my comments and/or explanation on the matter.

I hope Your Honor, that the above comments and/or explanations on my part would suffice on the matter/s I am directed to do.

Your Honor, it is indeed regrettable, that up to this time or more two months since I retired after rendering continuous or almost 40 years of Government service, I have not yet received a single centavo of the Retirement Benefits I am supposed to receive. It is true that an Administrative Case was filed against me, however, a Letter of Retention in order that I can also receive the benefits accorded to me was also submitted by me. I hope that the resolution/decision of my administrative case be resolved/decided by the Honorable Supreme Court at the soonest.

In the interest of justice, I should be given my Retirement Benefits as soon as possible. I am earnestly requesting Your Honor, to please help me on the matter for the early release of my Retirement Benefits.

Thank you very much, Your Honor!

B.
Failure of Judge Costales to investigate and to report on bundy clock incident

In addition to being the Presiding Judge of RTC Branch 45, Judge Costales served as the acting Executive Judge in the absence of the Executive Judge. In that capacity, he discharged duties, among them the investigation of administrative complaints brought

against court personnel within his administrative area; and the submission of his findings and recommendations to the Court.[9]

On September 19, 2007, in the course of the judicial audit of Branch 45, Fernando S. Agbulos, Jr. (Agbulos, Jr.), team leader of the judicial audit, visited RTC Branch 49 to remind the Branch Clerk of Court on the monthly report of cases to be submitted to the OCA. After finding only two employees actually present in Branch 49, he inspected the bundy cards and discovered that all of the court personnel of Branch 49 except two – Helen Lim and Rowena Espinosa – had punched in on that day. He immediately referred his discovery (bundy-cards incident) to the attention of Judge Costales as acting Executive Judge.

When nothing was heard from Judge Costales about his action on the bundy-cards incident, the OCA issued to him a *memorandum* on November 19, 2007 to remind him that his report on the incident was already overdue, and to direct him to submit his report within ten days from notice. However, Judge Costales still did not comply with the directive of the OCA.

Later on, Judge Costales explained through his aforecited letter dated January 8, 2008 that he had instructed Atty. Pascua upon his receipt of the *memorandum* on November 20, 2007 to advise the OCA of his forthcoming retirement, but that Atty. Pascua had failed to so inform the OCA; that in the week prior to his retirement on November 21, 2007, he had been too busy reading and signing decisions and resolutions to conduct the investigation of the bundy-cards incident; and that his intervening retirement had left to the new Executive Judge the duty to investigate and report on the bundy-cards incident.

C.
OCA's Final Findings and Recommendations

In their *memorandum* dated April 22, 2008 for the Chief Justice,[10] Court Administrator Zenaida N. Elepaño and DCA Perez rendered the following findings, namely:

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[9] See Administrative Order No. 6 enacted on June 30, 1975.

[10] *Rollo*, pp. 1-12.

(*a*) Some case records bore no dates of receipt by Branch 45;

(*b*) Several case records did not contain the latest court actions/court processes taken;

(*c*) No action was taken in some cases since their filing;

(*d*) The case record of Criminal Case No. U-12848 was not immediately transmitted to the Office of the Prosecutor, although the transmittal had been ordered as early as January 19, 2005;

(*e*) Some cases were not set for further hearing, or had no further actions taken on them;

(*f*) The issuance of summonses and *alias* summonses by the Branch Clerk of Court was delayed despite the corresponding orders by the judge;

(*g*) No actions were taken on cases set for *ex parte* reception of evidence; and

(*h*) Criminal Case No. U-13095 was set for trial with respect to one of the accused who had not been arraigned.

Court Administrator Elepaño and DCA Perez further found that despite his submission of the report on the status of cases on January 4, 2008 and February 18, 2008, Atty. Pascua did not furnish to the OCA copies of the orders and relevant papers showing the status of four criminal cases (*i.e.*, Criminal Case No. U-15010, Criminal Case No. U-15183, Criminal Case No. U-13095, and Criminal Case No. U-14936) and two civil cases (*i.e.*, Civil Case No. U-2377 and Civil Case No. U-8793).

Anent the bundy-cards incident in RTC Branch 49, Court Administrator. Elepaño and DCA Perez stated as follows:[11]

On September 19, 2007, the second day of this judicial audit, Mr. Fernando S. Agbulos, Jr., team member, went to Branch 49, same court, to remind the Clerk of Court of the Monthly Reports of Cases due for submission to the Office of the Court Administrator. He was surprised to see only two (2) employees inside the office. An inspection of the bundy cards would show, however, that only Ms.

[11] *Id.*, pp. 10-11.

Helen Q. Lim and Ms. Rowena Espinosa did not punch in their cards on the said day. The team immediately reported the incident and referred the same to Judge Costales, then Acting Executive Judge of RTC, Urdaneta City, for his investigation, report and recommendation.

On November 19, 2007, this Office reminded Judge Costales of his overdue report on the investigation conducted in September 2007. Thus:

> "In the course of the judicial audit conducted in your court on September 19, 2007, the audit team discovered an appearance of irregularity in the punching of bundy cards at Branch 49, same court. This was immediately referred to you, in your then capacity as Acting Executive Judge, for investigation.
>
> In view thereof, you are hereby DIRECTED, within ten (10) days from notice, to submit your report and recommendation thereon."

No response was received from his end. After his retirement on November 21, 2007, he wrote:

> "I am awfully sorry for failing to comply xxx on the following grounds:
>
> 1. I received said memorandum only on November 20, 2007, the date of my compulsory retirement;
>
> 2. That a week before my retirement on November 21, 2007, I instructed my Branch Clerk of Court, Atty. Max Pascua to write your Honor to inform you that as much as I am already retired after November 21, 2007, the Executive Judge should be the one to conduct such investigation. However, I only learned yesterday that the Branch Clerk of Court was unable to do what I directed him to do by writing you on the matter.
>
> 3. xxx
>
> xxx
>
> On the above reasons (sic), as I am no longer connected with the Judiciary, my failure to comply with the said memorandum dated November 10, 2007 earlier is reasonable and well-founded."

The explanation is unmeritorious. The assignment was given to him long before his retirement. The Memorandum dated November 19, 2007, even if received on November 20, 2007, a day before his compulsory retirement (contrary to his statement that his compulsory retirement was on November 20, 2007), is a mere reminder.

In a long line of cases, the Court has consistently ruled that failure to comply with the directives of the Court is tantamount to insubordination. In the case at bar, Judge Costales failed to comply with the Memorandum dated November 19, 2007 directing him to submit his report and recommendation on the investigation conducted in September 2007.

Accordingly, Court Administrator Elepaño and DCA Perez recommended that:

1. Retired Judge Joven F. Costales, Regional Trial Court, Branch 45, Urdaneta City be HELD ADMINISTRATIVELY LIABLE for the omissions brought about by records and caseflow mismanagement and insubordination in connection with the non-submission of his report and recommendation on the investigation on the irregularities in the punching of bundy cards at Branch 49, same court;

2. Atty. Max G. Pascua, Branch Clerk of Court, same court, Judge Costales be likewise HELD ADMINISTRATIVELY LIABLE for the omissions brought about by records and caseflow mismanagement and his failure to submit all the requirements in connection with the evaluation of the findings during the judicial audit;

3. Judge Costales and Atty. Pascua be FINED in the amount of Five Thousand Pesos (₱5,000.00) each;

4. Atty. Pascua be DIRECTED to DEVICE (sic) an efficient system of record management to ensure that all pending cases are included in the calendar of hearing and that the actual status of each case is reflected in each case record, with a STERN WARNING that similar infraction in the future shall be dealt with more severely; and

4. Atty. Pascua be DIRECTED to APPRISE, within ten (10) days from notice, the Acting Presiding Judge of Branch 45 of the status of the following cases by furnishing the judge copies of the latest Orders or court processes in (a) Criminal Cases Nos. U-15010, U-15183, U-13095 (transmittal letter to the Office of the Prosecutor) and U-14936 and Civil Cases Nos. U-2377 and U-8793; and (b)

Criminal Case No. U-13095 insofar as the arraignment of accused J. Suetus is concerned; and

5. The Executive Judge, Regional Trial Court, Urdaneta City, Pangasinan be DIRECTED to ENSURE that no irregularities in the punching of bundy cards in her station could, henceforth, be contrived.

RULING

We adopt the well-substantiated findings of Court Administrator Elepaño and DCA Perez, but we impose higher penalties on Judge Costales and Atty. Pascua.

A.
Efficient Handling and Physical Inventory of Cases, Important and Necessary in the Administration of Justice

All judges discharge administrative responsibilities in addition to their adjudicative responsibilities. They should do so by maintaining professional competence in court management and by facilitating the performance of the administrative functions of other judges and court personnel.[12]

An orderly and efficient case management system is no doubt essential in the expeditious disposition of judicial caseloads, because only thereby can the judges, branch clerks of courts, and the clerks-in-charge of the civil and criminal dockets ensure that the court records, which will be the bases for rendering the judgments and dispositions, and the review of the judgments and dispositions on appeal, if any, are intact, complete, updated, and current. Such a system necessarily includes the regular and continuing physical inventory of cases to enable the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order.[13] In contrast, mismanaged or incomplete records, and the lack of periodic inventory definitely cause unwanted delays in litigations and inflict unnecessary expenses on the parties and the State.

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[12] Rule 3.08, *Code of Judicial Conduct*.

[13] *Juan v. Arias,* Adm. Matter No. P-310, August 23, 1976, 72 SCRA 404.

Although the presiding judge and his or her staff share the duty of taking a continuing and regular inventory of cases, the responsibility primarily resides in the presiding judge. The continuity and regularity of the inventory are designed to invest the judge and the court staff with the actual knowledge of the movements, number, and ages of the cases in the docket of their court, a knowledge essential to the efficient management of caseload. The judge should not forget that he or she is duty-bound to perform efficiently, fairly, and with reasonable promptness all his or her judicial duties, including the delivery of reserved decisions.[14] Thus, the judge must devise an efficient recording and filing system for his or her court that enables him or her to quickly monitor cases and to manage the speedy and timely disposition of the cases.[15]

B.
Inefficiency and Mismanagement of Records of Branch 45

The OCA uncovered the mismanagement of the records of Branch 45 of the RTC in Urdaneta City, while still presided by Judge Costales, with Atty. Pascua as the Branch Clerk of Court. The mismanagement included the following, to wit: (*a*) some case records bore no dates of receipt by the branch; (*b*) several case records did not contain the latest court actions and court processes taken; (*c*) action had not been taken in some cases from the time of their filing; (*d*) the case record of Criminal Case No. U-12848 had not been immediately transmitted to the Office of the Prosecutor, despite the transmittal having been ordered as early as January 19, 2005; (*e*) some cases had not been set for further hearing, or had had no further actions taken on them; (*f*) the issuances of summonses and *alias* summonses by the Branch Clerk of Court had been delayed despite the corresponding orders for that purpose; (*g*) action had not been taken on cases set for *ex parte* reception of evidence;

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[14] Section 5, Canon 6, *New Code of Judicial Conduct for the Philippine Judiciary*.

[15] *Kara-an v. Lindo*, A.M. No. MTJ-07-1674, April 19, 2007, 521 SCRA 423, 435.

and (*h*) Criminal Case No. U-13095 had been set for trial with respect to one of the accused who had not been arraigned.

Aside from the foregoing findings being based on the actual records of Branch 45 of the RTC in Urdaneta City, we note that neither Judge Costales nor Atty. Pascua have refuted the findings of the OCA. Hence, we declare both of them to be administratively liable and subject to appropriate sanctions.

1.
Judge Costales

The sins of Judge Costales consisted of omissions. To start with, he failed to act on some cases from the time of their receipt at Branch 45 until the period of the audit. And, secondly, he did not properly supervise the court personnel, as borne by the records of some cases either not containing the latest court actions and court processes taken, or not showing the actions taken from the time of their filing, or not being set for further hearing or action, or revealing the delayed issuances of summonses and *alias* summonses despite the corresponding orders towards that end, or by inaction on cases set for *ex parte* reception of evidence.

Judge Costales uncharacteristically ignored that he discharged judicial and administrative duties as the Presiding Judge of Branch 45. He seemingly forgot that his responsibility of efficiently and systematically managing his caseload was the inseparable twin to his responsibility of justly and speedily deciding the cases assigned to his court. He should have remembered all too easily that he had assumed *both* responsibilities upon entering into office as Presiding Judge, and that he was bound to competently and capably discharge them from then on until his compulsory retirement. His failure to discharge them properly by organizing and supervising his court personnel with the end in view of bringing them to the prompt dispatch of the court's business in anticipation of his forced retirement reflected his inefficiency and breached his obligation to observe at all times the high standards of public service and fidelity.[16]

[16] Rule 3.09, *Code of Judicial Conduct*.

In this regard, Judge Costales could not deflect the blame to Atty. Pascua as his Branch Clerk of Court. The responsibility of organizing and coordinating the court personnel to ensure the prompt and efficient performance of the court's business was direct and primary for him as the judge. Truly, the duty to devise an efficient recording and filing system that would have enabled himself and his personnel to monitor the flow of cases and to manage their speedy and timely disposition pertained to him first and foremost.[17] Moreover, he should know that his subordinates were not the guardians of his responsibilities as the judge.[18] Being in legal contemplation the head of his branch,[19] he was the master of his own domain who should be ready and willing to take the responsibility for the mistakes of his subjects,[20] as well as to be ultimately responsible for order and efficiency in his court. He could not hide behind the inefficiency or the incompetence of any of his subordinates.

2.
Atty. Pascua

As with Judge Costales, omissions made up Atty. Pascua's myriad faults.

Atty. Pascua bore the responsibility for the non-issuance of summonses or *alias* summonses in some cases, for the failure to indicate the dates of receipt of case records by Branch 45, for the failure to receive evidence *ex parte* despite the orders to that effect, for the failure to prepare and submit (or cause the submission of) the monthly inventories, and for the failure to report and update the records of the cases of the branch. Such omissions involved matters that he should have routinely

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[17] *Gordon v. Lilagan*, A.M. No. RTJ-00-1564, July 26, 2001, 361 SCRA 690, 699.

[18] See *Nidua v. Lazaro*, A.M. No. R-465 MTJ, June 29, 1989, 174 SCRA 581.

[19] *Re: Report on the Judicial Audit and Physical Inventory of Cases in MCTC Sara-Arjuy-Lemery, Iloilo,* A.M. No. 05-10-299-MCTC, December 14, 2005, 477 SCRA 659, 664.

[20] *Gonzalez v. Torres*, A.M. No. MTJ-06-1653, July 30, 2007, 528 SCRA 490, 500.

and regularly performed. His duty as the Branch Clerk of Court of Branch 45 required him to receive and file all pleadings and other papers properly presented to the branch, endorsing on each such paper the time when it was filed.[21]

Atty. Pascua was equally accountable with Judge Costales for the inefficient handling of the court records of Branch 45. His being the Branch Clerk of Court made him the custodian of such records (*i.e.*, pleadings, papers, files, exhibits, and the public properties pertaining to the branch and committed to his charge) with the sworn obligation of safely keeping all of them. Like his Presiding Judge, he carried on his shoulders the burden to see to the orderly and proper keeping and management of the court records, by which he was required to exercise close supervision of the court personnel directly charged with the handling of court records.[22] His position of Branch Clerk of Court rendered him an essential and ranking officer of the judicial system performing delicate administrative functions vital to the prompt and proper administration of justice.[23] Alas, he failed to so perform.

3.
Both Judge Costales and Atty. Pascua, Liable

Based on the foregoing, the OCA properly found that Judge Costales and Atty. Pascua were individually and collectively guilty of mismanagement of the case records of Branch 45, for their omissions led to their Branch's inability to dispose of many pending matters, causing the litigants concerned and even the Government to suffer needless delay and incur unnecessary expense.

However, the recommendation of the OCA to impose a fine of ₱5,000.00 on each of Judge Costales and Atty. Pascua trivializes their omissions as a light charge. We cannot concur

[21] Section 6, Rule 136, *Rules of Court*.

[22] *Makasiar v. Gomintong*, A.M. No. P-05-2061, August 19, 2005, 467 SCRA 411, 417.

[23] *Mikrostar Industrial Corporation v. Mabalot*, A.M. No. P-05-2097, December 15, 2005, 478 SCRA 6, 11-12.

with such recommendation, because the character and magnitude of the omissions indicated that Judge Costales and Atty. Pascua had been inefficient over a long period of time and had failed to devise and put in place any proper system of records management in that length of time. They were really guilty of violating Supreme Court rules, directives, and circulars, a violation that Section 9, Rule 140, of the *Rules of Court* treats as a less serious charge, *viz*:

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

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

2. Frequent and unjustified absences without leave or habitual tardiness;

3. Unauthorized practice of law;

4. Violation of Supreme Court rules, directives, and circulars;

5. Receiving additional or double compensation unless specifically authorized by law;

6. Untruthful statements in the certificate of service; and

7. Simple Misconduct.

The sanctions on a less serious charge are stated in Section 11, Rule 140, of the *Rules of Court*, to wit:

Section 11. *Sanctions.* – xxx

xxx

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

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

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

xxx

Accordingly, the fine to be imposed on Judge Costales is in the maximum of ₱20,000.00, by reason of his higher and primary

responsibility, and that on Atty. Pascua is ₱8,000.00, in view of his subordinate but non-judicial position.

C.
Insubordination further rendered Judge Costales Guilty of Simple Misconduct

The records established that Judge Costales did not investigate the bundy-cards incident in RTC Branch 49 from the time the leader of the judicial audit team had reported it to him in his capacity as the Acting Executive Judge. His inaction was even surprising and inexplicable, because the incident concerned the probable falsification of daily time records by subordinate court employees, a very serious matter that when properly established might have merited for those concerned their dismissal from the service.[24] He still needed to be prodded to investigate by the OCA, but all that he could offer thereafter by way of explaining his inaction was that his forthcoming retirement on November 21, 2007 left him no more time and space to look into the incident.

We cannot exculpate Judge Costales from insubordination.

Section 3, Canon 2 of the *New Code of Judicial Conduct for the Philippine Judiciary* directs a judge to take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware. This imperative duty becomes the more urgent when the act or omission the court personnel has supposedly committed is in the nature of a grave offense, like the bundy-cards incident involved herein. It would have been surely demanded in the best interest of the public service, if not of the court itself, that the act or omission reported by the judicial audit team to Judge Costales as the Acting Executive Judge be investigated and properly dealt with promptly.

The explanation of Judge Costales of having no more time and space to look into the bundy-cards incident was implausible.

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[24] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks, Court Interpreter, RTC, Quezon City, Branch 96,* A.M. No. P-05-2086, October 20, 2005, 473 SCRA 483, 488.

Having been informed of the anomaly on September 19, 2007, he had at least two months prior to November 21, 2007, his retirement date, within which to carry out his investigation, and to render a report thereon. That length of time was ample, if only he had acted promptly to investigate the incident.

Moreover, Judge Costales could not reasonably claim that he had not been aware of the need for him to investigate. Although it is true that he received the OCA's *memorandum* dated November 19, 2007 only on November 20, 2007, it is equally true that the *memorandum* was only a reminder to him about his investigation report and recommendation being already overdue. His inaction from the time when Agbulos, Jr. brought the incident to his official attention indicated his having ignored the need for him as an Acting Executive Judge to investigate. That he did not even bother to explain his inaction or his non-compliance with the reminder aggravated his insubordination. Indeed, the attitude he thereby displayed smacked of an uncharacteristic indifference towards his judicial office and towards the Court.

For disobeying or ignoring the directive to investigate the bundy-cards incident, Judge Costales was guilty of insubordination, an omission that constituted simple misconduct, classified under Section 9, no. 4, Rule 140, of the *Rules of Court, supra,* as a less serious charge, and is thus punished with a fine of ₱12,000.00, conformably with Section 11, Rule 140, *Rules of Court, supra*.

WHEREFORE, we find and pronounce:

1. Retired *JUDGE JOVEN F. COSTALES* and *BRANCH CLERK OF COURT ATTY. MAX G. PASCUA* guilty of the less serious charge of violation of Supreme Court rules, directives, and circulars, and are respectively ordered to pay fines of ₱20,000.00 and ₱8,000.00; and

2. Retired *JUDGE JOVEN F. COSTALES* guilty of the less serious charge of simple misconduct, and is fined in the amount of ₱12,000.00.

The fines imposed on *JUDGE COSTALES* shall be deducted from any retirement benefits due to him.

The Court directs *ATTY. MAX G. PASCUA*:

1. To devise an efficient system of record management that ensures that: (*a*) all pending case are immediately included in the calendar of hearing; and (*b*) the actual status of every case is reflected in the respective case record; and

2. To apprise the Presiding Judge of Branch 45 of the Regional Trial Court in Urdaneta City, Pangasinan within ten (10) days from notice on the status of the following cases and furnishing copies of the latest orders or court processes therein, namely: (*a*) Criminal Case Nos. U-15010, U-15183, U-13095 (transmittal letter to the Office of the Prosecutor) and Civil Case Nos. U-2377 and U-8793; and (*b*) Criminal Case No. U-13095 (regarding the arraignment of the accused).

The incumbent Executive Judge of the Regional Trial Court in Urdaneta City, Pangasinan is directed: (*a*) to immediately investigate and determine the court personnel involved in the bundy clock irregularity committed on September 19, 2007; (*b*) to report in writing on the investigation to the Office of the Court Administrator within ten (10) days from completion; and (*c*) to ensure that no similar irregularities are committed in the station.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-06-2179. January 12, 2011]
(Formerly A.M. No. 06-5-169-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MERLINDA T. CUACHON, Clerk of Court, and FE P. ALEJANO, Court Stenographer, both of the MCTC, Ilog-Candoni, Negros Occidental,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CLERK OF COURT; DUTY; A CLERK OF COURT IS GROSSLY NEGLIGENT FOR FAILURE TO PROMPTLY REMIT OR DEPOSIT CASH COLLECTIONS WITH THE LOCAL OR NEAREST LBP BRANCH IN ACCORDANCE WITH COURT ADMINISTRATIVE CIRCULARS AND ISSUANCES; CASE AT BAR. — The settled rule is that a clerk of court is grossly negligent for his or her failure to promptly remit or deposit cash collections with the local or nearest LBP Branch, in accordance with Court administrative circulars and issuances. No protestation of good faith can override the mandatory observance of court circulars which are designed to promote full accountability of government funds. Restitution of the amount of the shortages does not erase administrative liability. The irregularities committed by both respondents were direct violations of SC Circular No. 50-95. This circular mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the LBP upon receipt by the Clerk of Court **within twenty-four (24) hours**; the circular also requires that only one depository bank be maintained. In localities where there are no branches of the LBP, fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

2. ID.; ID.; COURT PERSONNEL; WHEN GUILTY OF GROSS NEGLIGENCE IN THE PERFORMANCE OF DUTY; PENALTIES. — Gross negligence in the performance of duty

is considered a grave offense for which the penalty of dismissal is imposed, even for the first offense. This Court has ordered the dismissal of clerks of court and other court personnel for failure to deposit fiduciary funds in authorized government depository banks. We cannot countenance any conduct, act or omission, committed by those involved in administering justice, that violate the norm of public accountability and diminish the faith of the people in the Judiciary. However, since both respondents have retired from the service, while Ms. Cuachon – though belatedly – restituted her shortages, we find the imposition of a fine to be the appropriate penalty in accordance with our previous rulings.

APPEARANCES OF COUNSEL

Tranquilino R. Gale for Merlinda T. Cuachon.

D E C I S I O N

BRION, *J.*:

For consideration are the findings and recommendations of the Office of the Court Administrator (*OCA*) in its Memorandum of August 26, 2008[1] on the financial audit conducted in the Municipal Circuit Trial Court (*MCTC*), Ilog-Candoni, Negros Occidental. A financial audit was conducted because of respondent Clerk of Court Merlinda T. Cuachon's (*Cuachon*) compulsory retirement on November 25, 2005. The audit covered transactions from September 1, 2000 to September 30, 2005, and included the books of account of respondent Fe P. Alejano (*Alejano*), Court Stenographer and designated Officer-in-Charge (*OIC*)–Clerk of Court from September 1, 2000 to March 15, 2001.

The Initial Report of the OCA's Financial Audit Team showed that Cuachon had incurred a shortage of ₱15,065.00 in her Fiduciary Fund collections due to the difference between undeposited collections, amounting to ₱49,065.00, and withdrawals from cash on hand, amounting to ₱35,000.00, plus

[1] *Rollo,* pp. 176-183.

an unauthorized withdrawal of ₱1,000.00 due to an overwithdrawal under Official Receipt (*OR*) No. 14847505. Cuachon made restitutions by depositing with the Land Bank of the Philippines (*LBP*), Kabankalan Branch, ₱4,065.00 and ₱11,000.00 on January 25, 2006 and February 7, 2006, respectively. On the other hand, Alejano incurred a shortage of ₱31,800.00 for undeposited collections of ₱26,800.00 and an unauthorized withdrawal of ₱5,000.00 on February 28, 2001. She, likewise, failed to account for two hundred (200) pieces of OR, with serial numbers 11653401 to 11653500 and 11654001 to 11654100.

Also noted in the Initial Report were the following irregularities committed in the administration of the court's funds: (1) collections were not properly deposited with the LBP within the month they were collected; (2) withdrawals from the Fiduciary Fund were made without supporting documents; (3) cash bond deposits were withdrawn from the undeposited collections; (4) the funds were deposited with the Municipal Treasurer's Office (*MTO*), in violation of Supreme Court (*SC*) Circular No. 50-95; (5) unwithdrawn bail bonds amounting to ₱151,986.03 (as of September 2005) were still deposited with the MTO; (6) the court's financial transactions were not recorded in the official cashbooks; and (7) actual cash on hand and the entries reflected in the cashbooks were not reconciled.

In a Memorandum dated May 12, 2006,[2] the OCA recommended that the Initial Report be docketed as an administrative complaint against respondents Cuachon and Alejano for violation of SC Circular No. 50-95, and that they be fined five thousand pesos (₱5,000.00) each for the delay in their deposit of Fiduciary Fund collections. Accordingly, the Court formally docketed the Initial Report as an administrative complaint and required the respondents to manifest their willingness to submit the case for decision based on the records and/or pleadings filed.[3]

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

[3] In a Resolution dated June 14, 2006; *id.* at 21.

In her Manifestation,[4] Cuachon acknowledged: the violations she committed caused by her poor record keeping of court transactions, resulting in her cash shortages; her delay in the deposit or remittance of collections; and her unauthorized withdrawals. She attributed her shortcomings to her unfamiliarity with accounting and bookkeeping principles, and with the Court's circulars on the proper administration of court funds. She claimed that she incurred the shortages with no intention to defraud the Court or the government. She also faulted the Office of the Clerk of Court in the MCTC, Ilog-Candoni, for not having an updated compilation of the Court's issuances that could guide her in her work, and the court's Property Division for turning a deaf ear to her repeated requests for cashbooks. Ultimately, she asked this Court to grant her leniency and to allow her to enjoy her retirement benefits in full since she had restituted her shortages by depositing the amounts of these shortages with the LBP.

After considering Cuachon's explanation, the OCA maintained its recommendation to impose a fine of ₱5,000.00, to be deposited with the Judiciary Development Fund, in order to compensate the government for the lost interest income caused by her delay in the deposit or remittance of Fiduciary Fund collections.[5] In compliance with our Resolution,[6] Cuachon expressed her willingness to submit the case for resolution based on the records and/or pleadings filed. She also asked for the early resolution of her case[7] and for the immediate release of her retirement benefits and the monetary value of her leave credits. She claimed that she needed the money to buy her diabetes and hypertension medications. The Court noted her letters and motions in its subsequent resolutions.

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[4] *Id.* at 44-45.

[5] In a Memorandum dated November 10, 2006; *id.* at 64-69.

[6] In a Resolution dated January 31, 2007; *id.* at 80.

[7] In a Motion dated October 25, 2006; Second Motion for Early Resolution dated February 9, 2007; Letter dated March 15, 2007; Urgent Motion for Resolution dated June 26, 2007; Letter dated October 5, 2007; Urgent Motion dated November 27, 2007; Letter dated March 10, 2008; Urgent Motion dated April 16, 2008; Letter dated April 21, 2008; Letter dated April 30, 2008; Letter dated August 20, 2009; and Letter dated February 2, 2010.

Alejano, on the other hand, also explained in her Letter of July 14, 2006[8] the circumstances behind her shortages and the loss or misplacement of receipts. She faulted the lack of a proper turnover of documents and cash bonds from the outgoing Clerk of Court at the time she was designated as OIC-Clerk of Court. She also alleged that the newly renovated building that housed most of their court records was infested by termites, and many court documents – including the receipts already audited by the OCA – were lost there. Accompanying Alejano's letter-explanation were additional documents that could be useful in reducing her remaining accountability, and her humble request that the Court guide her on how to resolve her problem.

In a Resolution dated July 11, 2007,[9] the Court directed Alejano: to pay and deposit her shortage of ₱12,800.00 in the Fiduciary Fund (which amount resulted from the re-computation of Alejano's accountability based on additional documents presented); to furnish the Fiscal Monitoring Division, Court Management Office, OCA, with the machine-validated deposit slip as proof of compliance thereto; and to explain why she failed to record in the cashbook and report to the Court the amount of one thousand pesos (₱1,000.00) she had collected pertaining to the unaccounted and missing OR No. 116544551 dated December 12, 2000.

In the same resolution, the Court also directed Judge Victor P. Magahud (Presiding Judge of the MCTC, Ilog-Candoni, Negros Occidental) to submit an inventory of cases with unwithdrawn cash bonds, indicating their OR numbers and the dates when they were issued by the court; to investigate the missing ORs with serial numbers 11653401 to 11653500, 11653452 to 11653500 and 11654001 to 11654100; and to submit a report and recommendation regarding these matters. The Court received Judge Magahud's Report on December 7, 2007.[10]

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[8] *Rollo*, pp. 33-34.

[9] *Id.* at 97.

[10] Dated November 19, 2007; *id.* at 138.

In a Letter dated March 28, 2008,[11] Alejano asked the Court, for clearance purposes, for a clarification of the status of her accountability. She also stated that she had tried her best to recover the necessary documents to prove that the funds were not used for her personal gain. As of November 14, 2007, Alejano's remaining accountability showed a balance of nine thousand eight hundred pesos (₱9,800.00), after the OCA considered the additional documents she had submitted.

After a careful review of the records, the OCA found both respondents guilty of simple neglect of duty for violating SC Circular No. 50-95. This circular specifies the guidelines on the proper collection and deposit of court fiduciary funds. The records showed that Cuachon and Alejano failed to deposit their collections within twenty-four (24) hours, in violation of the circular. Also, the shortages incurred by the respondents were due to their failure to account for their collections, which could have been avoided had they immediately remitted or deposited these collections with the LBP. Due to the delayed remittance of collections, the cash on hand was used to pay for other withdrawals, *i.e.*, undeposited collections were used to pay for cash bond withdrawals instead of withdrawing their cash bond equivalent from the Fiduciary Fund, thus, circumventing the system of "check and balance." Lastly, the respondents made withdrawals from the Fiduciary Fund without the necessary supporting documents. Under SC Circular No. 50-95, no withdrawals are allowed unless there is a lawful order of the court with jurisdiction over the subject matter involved.

THE COURT'S RULING

We find the OCA's recommended fine to be appropriate and in accord with jurisprudence. We disagree, however, with the OCA's finding that the respondents were only liable for simple neglect of duty. We find both respondents liable for **gross neglect of duty** for the irregularities they committed in the administration of court funds.

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[11] *Id.* at 146.

The settled rule is that a clerk of court is grossly negligent for his or her failure to promptly remit or deposit cash collections with the local or nearest LBP Branch, in accordance with Court administrative circulars and issuances.[12] No protestation of good faith can override the mandatory observance of court circulars which are designed to promote full accountability of government funds.[13] Restitution of the amount of the shortages does not erase administrative liability.[14]

The irregularities committed by both respondents were direct violations of SC Circular No. 50-95.[15] This circular mandates that all collections from bail bonds, rental deposits, and other fiduciary collections should be deposited with the LBP upon receipt by the Clerk of Court **within twenty-four (24) hours**; the circular also requires that only one depository bank be maintained. In localities where there are no branches of the LBP, fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

Gross negligence in the performance of duty is considered a grave offense for which the penalty of dismissal is imposed, even for the first offense.[16] This Court has ordered the dismissal of clerks of court and other court personnel for failure to deposit fiduciary funds in authorized government depository banks.[17] We cannot countenance any conduct, act or omission, committed by those involved in administering justice, that violate the norm

[12] *Re: Judge Demasira M. Baute,* A.M. No. 95-10-06-SCC, March 27, 1996, 255 SCRA 231; *JDF Anomaly in the RTC of Ligao, Albay,* A.M. No. 95-1-07-RTC, March 21, 1996, 255 SCRA 221; *Lirios v. Oliveros*, A.M. No. P-96-1178, February 6, 1996, 253 SCRA 258.

[13] *Re: Report on Examination of the Cash and Accounts of the Clerks of Court, RTC and MTC, Vigan, Ilocos Sur,* A.M. No. 01-1-13-RTC, April 2, 2003, 400 SCRA 387.

[14] *JDF Anomaly in the RTC of Ligao, Albay, supra* note 12.

[15] Effective November 1, 1995.

[16] Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

[17] *Rangel-Roque v. Rivota,* A.M. No. P-97-1253, February 2, 1999, 302 SCRA 509.

of public accountability and diminish the faith of the people in the Judiciary.[18] However, since both respondents have retired from the service, while Ms. Cuachon – though belatedly – restituted her shortages, we find the imposition of a fine to be the appropriate penalty in accordance with our previous rulings.[19]

WHEREFORE, premises considered, the Court finds as follows:

1. MERLINDA T. CUACHON, Clerk of Court, Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, *GUILTY* of gross neglect of duty for which she is *FINED* five thousand pesos (₱5,000.00), to be deducted from her retirement benefits.

2. FE P. ALEJANO, Court Stenographer, Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, *GUILTY* of gross neglect of duty for which she is *FINED* five thousand pesos (₱5,000.00). She is also directed to *RESTITUTE* the amount of nine thousand eight hundred pesos (₱9,800.00) as payment for her remaining accountability. Both amounts are to be deducted from her retirement benefits.

3. The Financial Management Office, Office of the Court Administrator, is directed to *RELEASE* respondent MERLINDA T. CUACHON's retirement benefits and the monetary value of her accrued leave credits, deducting therefrom five thousand pesos (₱5,000.00) as payment for the fine imposed.

4. The Financial Management Office, Office of the Court Administrator, is directed to *RELEASE* respondent FE

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[18] *Re: Report of Justice Felipe B. Kalalo,* A.M. No. 96-10-380-RTC, November 18, 1997, 282 SCRA 61.

[19] *Re: Audit Conducted on the Books of Accounts of Former Clerk of Court Mr. Wenceslao P. Tinoy, MCTC, Talakag, Bukidnon,* A.M. No. 02-5-111-MCTC, August 7, 2002, 386 SCRA 459; *Re: Financial Audit Conducted on the Book of Accounts of Clerk of Court Pacita T. Sendin, MTC, Solano, Nueva Vizcaya,* A.M. No. 01-4-119-MCTC, January 16, 2002, 373 SCRA 351.

P. ALEJANO's retirement benefits and the monetary value of her accrued leave credits, deducting therefrom five thousand pesos (₱5,000.00), as payment for the fine imposed, and nine thousand eight hundred pesos (₱9,800.00), as payment for her remaining accountability.

5. Presiding Judge VICTOR P. MAGAHUD of the Municipal Circuit Trial Court, Ilog-Candoni, Negros Occidental, is directed to *CLOSELY MONITOR* the financial transactions of the court; otherwise, he can be held equally liable for the infractions by the employees under his supervision. He is advised to *STUDY* and *IMPLEMENT* procedures that shall strengthen the court's internal control over financial transactions.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-09-2696. January 12, 2011]
(Formerly A.M. OCA IPI No. 08-2956-P)

FREDDY H. REYES, *complainant, vs.* **VIVIAN L. PABILANE, COURT INTERPRETER, MUNICIPAL TRIAL COURT, TAGKAWAYAN, QUEZON,** *respondent.*

SYLLABUS

1. POLITICAL LAW ; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT INTERPRETER; DUTY TO PREPARE AND SIGN THE MINUTES OF COURT SESSIONS; FAILURE TO REFLECT IN THE MINUTES

THE CORRECT DOCUMENTARY EVIDENCE OFFERED CONSTITUTES SIMPLE NEGLECT OF DUTY; PRESENT IN CASE AT BAR. — A court interpreter is duty-bound to prepare and sign the minutes of court sessions which is an important document, for it gives a brief summary of the events that take place thereat including a statement of the date and time of the session; the name of the judge, clerk of court, court stenographer, and court interpreter who are present; the names of the counsel for the parties who appear; the parties presenting evidence; the names of the witnesses who testified; the documentary evidence marked; and the date of the next hearing. In the present case, respondent failed to reflect in the minutes of the April 7 and August 4, 2006 hearings in Civil Case No. 1349 the correct documentary evidence offered in evidence. Such failure constitutes *simple neglect of duty*, defined as the failure to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.

2. ID.; ID.; ID.; ID.; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; IMPOSABLE PENALTY. — Simple neglect of duty is, under Section 52 (B) (1) of the Revised Uniform Rules on Administrative Cases in the Civil Service, classified as a less grave offense punishable by one month and one day to six months suspension for the first offense. Under Section 19, Rule XIV of the Omnibus Civil Service Rules and Regulations, a fine may be imposed in the alternative. Considering that this appears to be respondent's first infraction, the Court finds in order the OCA recommendation to impose on her a fine in the amount of ₱3,000.00, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Freddy H. Reyes (complainant), by Affidavit[1] of September 16, 2008, charges Vivian L. Pabilane, Court Interpreter of Branch 63 of the Regional Trial Court (RTC) of Calauag, Quezon, now detailed in the Municipal Trial Court (MTC) of Tagkawayan, Quezon, with maliciously, intentionally, deliberately and feloniously

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

failing to make an accurate record of the minutes of the proceedings in Civil Case No. 1349, a Petition for the Issuance of a Writ of Preliminary Injunction with Prayer for the Issuance of a Temporary Restraining Order filed by complainant's wife, Lany Rosas (Lany), before the Calauag RTC.

In the **April 7, 2006** Minutes of the proceedings in Civil Case No. 1349 during the presentation of evidence for the therein plaintiff-wife of complainant, respondent wrote the following:[2]

> Witness/es: Clarita Villamayor Mendoza 78 years old, a widow, retired teacher and a resident of Brgy. Pinagtalliwan, Calauag, Quezon.
>
> Marked Documentary Evidence: Exh "C" – Declaration of Real Property "I" – Kasulatan ng Sanglaan ng Lupang Minana Exh "2" – Bilihan Exh "2-B" paragraph mentioning about the Kasulatan ng Sanglaan ng Lupang Minana Exh "I-B" same paragraph as Exh "2-B" (underscoring supplied)

The transcript of Clarita Mendoza's testimony on April 7, 2006[3] showed, however, that what she testified on were Exhibits "A", "C" and "E", inclusive of sub-markings.

Complainant likewise charges respondent with deliberately failing to enter into the Minutes of the **August 4, 2006**[4] hearing the correct documentary evidence marked during his testimony as she wrote the following therein:

> Witness/es: Freddie Hugo Reyes, 65 years old, married, government pensioner and a resident of Barangay 3, Calauag, Quezon.
>
> Marked Documentary Evidence: Exh "A" – Receipt,

whereas the documentary evidence introduced consisted of Exhibits "G", "H", "I" and "J", inclusive of submarkings.[5]

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[2] *Id*. at 5.

[3] *Id*. at 6-35.

[4] *Id*. at 36.

[5] *Id*. at 37-46.

In her December 18, 2008[6] Comment to the complaint, respondent stated as follows:

x x x x x x x x x

With regards [to] the fourth paragraph of the affidavit-complaint, when an individual testifies in court, what appears in the interpreter's minutes is the witness' name, the data about him and the markings which had been caused by him, not the name of the plaintiff or the defendant for whom he testifies. In this case, though the word plaintiff does not appear in the space provided for it, still it could easily be told that this hearing was for plaintiff by simply reading the first part of the transcript of stenographic notes of the date wherein the prosecutor introduced plaintiff's witness. This would not mislead the Judge in [the] decision making because testimonies appearing on the minutes were really said by witness, Clarita Villamayor Mendoza, who as public knowledge, was then testifying on behalf of the plaintiff.

x x x x x x x x x

How could the interpreter's minutes mislead a judge in the latter's judgment as what the complainant alleges? The transcript of stenographic notes is intact and very much complete and the formal offer of evidence is also easily and readily available. The two bear all the evidence that may be needed by the judge and these are what he refers to when preparing decisions. Besides, a judge listens so attentively to every case being heard and weighs every argument and any important detail that is being presented. Let it be cited for clarity, that the interpreter's minutes is just a brief summary of what transpired during a day's session. (underscoring supplied)

By Memorandum of August 6, 2009,[7] the Office of the Court Administrator (OCA), passing on the duties of court interpreters in this wise:

x x x Among the duties of court interpreters is to prepare and sign "all Minutes of the session" (Manual for Clerks of Court). After every session, they must prepare the Minutes and attach to it the record. It will not take an hour to prepare it. The Minutes is a very important document because it gives a brief summary of the events

[6] *Id*. at 60-61.

[7] *Id*. at 69-71.

that took place at the session or hearing of a case. It is, in fact, a capsulized history of the case at a given session or a hearing, for it states the date and time of session; the names of the judge, clerk of court, court stenographer and court interpreter who were present; the names of the counsel for parties who appeared; the party presenting evidence marked; and the date of then next hearing. In criminal cases, the Minutes also includes data concerning the number of pages of the stenographic notes. (underscoring supplied),

concluded that respondent is guilty of *simple neglect of duty* for failure to enter into the minutes of the hearings of April 7, 2006 and August 4, 2006 the accurate and complete documentary evidence marked, and accordingly recommended that she be fined in the amount of ₱3,000.00.

The Court finds the recommendation of the OCA well taken.

A court interpreter is duty-bound to prepare and sign the minutes of court sessions[8] which is an important document, for it gives a brief summary of the events that take place thereat including a statement of the date and time of the session; the name of the judge, clerk of court, court stenographer, and court interpreter who are present; the names of the counsel for the parties who appear; the parties presenting evidence; the names of the witnesses who testified; the documentary evidence marked; and the date of the next hearing.[9]

In the present case, respondent failed to reflect in the minutes of the April 7 and August 4, 2006 hearings in Civil Case No. 1349 the correct documentary evidence offered in evidence. Such failure constitutes *simple neglect of duty*, defined as the failure to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.[10]

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[8] *Vide* 2002 REVISED MANUAL FOR CLERKS OF COURT.

[9] *OCA v. Perello*, A.M. No. RTJ-05-1952, December 24, 2008, 575 SCRA 394, 409 citing *Bandong v. Ching*, A.M. No. P-95-1161, August 23, 1996, 261 SCRA 10, 14.

[10] *Contreras v. Monge*, A.M. No. P-06-2264, September 29, 2009, 601 SCRA 218, 224.

Simple neglect of duty is, under Section 52 (B) (1) of the Revised Uniform Rules on Administrative Cases in the Civil Service,[11] classified as a less grave offense punishable by one month and one day to six months suspension for the first offense.

Under Section 19, Rule XIV of the Omnibus Civil Service Rules and Regulations, a fine may be imposed in the alternative.[12]

Considering that this appears to be respondent's first infraction, the Court finds in order the OCA recommendation to impose on her a fine in the amount of ₱3,000.00, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

WHEREFORE, respondent Vivian L. Pabilane, Court Interpreter of Branch 63 of the Regional Trial Court of Calauag, Quezon, presently on detail at the Municipal Trial Court of Tagkawayan, Quezon, is found *GUILTY* of Simple Neglect of Duty and is *FINED* the amount of Three Thousand (₱3,000.00) Pesos, with *WARNING* that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

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[11] CSC Resolution No. 991936, August 31, 1999.

[12] *Vide OCA v. Roque*, A.M. No. P-06-2200, February 4, 2009, 578 SCRA 21, 25; *OCA v. Montalla*, A.M. No. P-06-2269, December 20, 2006, 511 SCRA 328, 333.

THIRD DIVISION

[G.R. No. 148076. January 12, 2011]

ANTONIO M. CARANDANG, *petitioner, vs.* **HONORABLE ANIANO A. DESIERTO, OFFICE OF THE OMBUDSMAN,** *respondent.*

[G.R. No. 153161. January 12, 2011]

ANTONIO M. CARANDANG, *petitioner, vs.* **SANDIGANBAYAN (FIFTH DIVISION)**, *respondent.*

SYLLABUS

1. POLITICAL LAW; OMBUDSMAN AND SANDIGANBAYAN; THEIR RESPECTIVE JURISDICTIONS ARE EXPRESSLY DEFINED AND DELINEATED BY LAW. — It is not disputed that the Ombudsman has jurisdiction over administrative cases involving grave misconduct committed by the officials and employees of government-owned or -controlled corporations; and that the Sandiganbayan has jurisdiction to try and decide criminal actions involving violations of R.A. 3019 committed by public officials and employees, including presidents, directors and managers of government-owned or -controlled corporations. The respective jurisdictions of the respondents are expressly defined and delineated by the law.

2. ID.; ID.; ID.; PRIVATE INDIVIDUAL IS NOT SUBJECT TO THE ADMINISTRATIVE AUTHORITY OF THE OMBUDSMAN AND TO THE CRIMINAL JURISDICTION OF THE SANDIGANBAYAN; SUSTAINED. — The Ombudsman dismissed a criminal complaint for violation of R.A. 3019 filed against certain RPN officials, as the Ombudsman's resolution dated December 15, 1997 indicates, a pertinent portion of which is quoted thus: This is not to mention the fact that the other respondents, the RPN officials, are outside the jurisdiction of this Office (Office of the Ombudsman); they are employed by a private corporation registered with the Securities and Exchange Commission, **the RPN, which is not a government owned or controlled corporation** x x x Considering that the construction of a statute given by administrative agencies deserves respect,

the uniform administrative constructions of the relevant aforequoted laws defining what are government-owned or -controlled corporations as applied to RPN is highly persuasive. Lastly, the conclusion that Carandang was a public official by virtue of his having been appointed as general manager and chief operating officer of RPN by President Estrada deserves no consideration. President Estrada's intervention was merely to recommend Carandang's designation as general manager and chief operating officer of RPN to the PCGG, which then cast the vote in his favor *vis-à-vis* said positions. Under the circumstances, it was RPN's Board of Directors that appointed Carandang to his positions pursuant to RPN's By-Laws. In fine, Carandang was correct in insisting that being a private individual he was not subject to the administrative authority of the Ombudsman and to the criminal jurisdiction of the Sandiganbayan.

3. ID.; GOVERNMENT–OWNED OR–CONTROLLED CORPORATIONS; A CORPORATION IS CONSIDERED SUCH ONLY WHEN THE GOVERNMENT DIRECTLY OR INDIRECTLY OWNS OR CONTROLS AT LEAST A MAJORITY OR 51% SHARE OF THE CAPITAL STOCK. — Similarly, the law defines what are government-owned or -controlled corporations. For one, Section 2 of Presidential Decree No. 2029 (*Defining Government Owned or Controlled Corporations and Identifying Their Role in National Development*) states: Section 2. A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, **to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock.** Section 2 (13) of Executive Order No. 292 (*Administrative Code of* 1987) renders a similar definition of government-owned or -controlled corporations: Section 2. *General Terms Defined*. – Unless the specific words of the text or the context as a whole or a particular statute, shall require a different meaning: x x x (13) government-owned or controlled corporations refer to any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through

its instrumentalities either wholly, or **where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock.** It is clear, therefore, that a corporation is considered a government-owned or -controlled corporation only when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock.

4. ID.; ID.; ID.; RADIO PHILIPPINES NETWORK, INC. (RPN) DECLARED AS NEITHER A GOVERNMENT–OWNED NOR A–CONTROLLED CORPORATION. — Consequently, RPN was neither a government-owned nor a controlled corporation because of the Government's total share in RPN's capital stock being only 32.4%. Parenthetically, although it is true that the Sandiganbayan (Second Division) ordered the transfer to the PCGG of Benedicto's shares that represented 72.4% of the total issued and outstanding capital stock of RPN, such quantification of Benedicto's shareholding cannot be controlling in view of Benedicto's timely filing of a motion for reconsideration whereby he clarified and insisted that the shares ceded to the PCGG had accounted for only 32.4%, not 72.4%, of RPN's outstanding capital stock. With the extent of Benedicto's holdings in RPN remaining unresolved with finality, concluding that the Government held the majority of RPN's capital stock as to make RPN a government-owned or -controlled corporation would be bereft of any factual and legal basis. Even the PCGG and the Office of the President (OP) have recognized RPN's status as being neither a government-owned nor -controlled corporation.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Petitioner Antonio M. Carandang (Carandang) challenges the jurisdiction over him of the Ombudsman and of the Sandiganbayan on the ground that he was being held to account for acts committed

while he was serving as general manager and chief operating officer of Radio Philippines Network, Inc. (RPN), which was not a government-owned or -controlled corporation; hence, he was not a public official or employee.

In G.R. No. 148076, Carandang seeks the reversal of the decision[1] and resolution[2] promulgated by the Court of Appeals (CA) affirming the decision[3] of the Ombudsman dismissing him from the service for grave misconduct.

In G.R. No. 153161, Carandang assails on *certiorari* the resolutions dated October 17, 2001[4] and March 14, 2002[5] of the Sandiganbayan (Fifth Division) that sustained the Sandiganbayan's jurisdiction over the criminal complaint charging him with violation of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*).

Antecedents

Roberto S. Benedicto (Benedicto) was a stockholder of RPN, a private corporation duly registered with the Securities and Exchange Commission (SEC).[6] In March 1986, the Government ordered the sequestration of RPN's properties, assets, and business. On November 3, 1990, the Presidential Commission on Good Government (PCGG) entered into a compromise

[1] *Rollo* (G.R. No. 148076), pp. 34-50; penned by Associate Justice Jose L. Sabio, Jr. (retired), with Associate Justices Ma. Alicia Austria-Martinez (later Presiding Justice of the CA, and a Member of the Court, but already retired) and Hilarion L. Aquino (retired), concurring.

[2] *Id.*, pp. 52-53.

[3] *Id.*, pp. 285-297.

[4] *Rollo* (G.R. No. 153161), pp. 30-39; penned by Associate Justice Minita V. Chico-Nazario (later Presiding Justice of the Sandiganbayan, and a Member of the Court, but already retired), with Associate Justice Ma. Cristina G. Cortez-Estrada (later Presiding Justice of the Sandiganbayan, but already retired) and Associate Justice Nicodemo T. Ferrer (retired), concurring.

[5] *Id.*, pp. 40-43; penned by Associate Justice Chico-Nazario with Associate Justice Cortez-Estrada and Associate Justice Francisco H. Villaruz, Jr., concurring.

[6] *Rollo* (G.R. No. 148076), pp. 66-86.

agreement with Benedicto, whereby he ceded to the Government, through the PCGG, all his shares of stock in RPN. Consequently, upon motion of the PCGG, the Sandiganbayan (Second Division) directed the president and corporate secretary of RPN to transfer to the PCGG Benedicto's shares representing 72.4% of the total issued and outstanding capital stock of RPN.

However, Benedicto moved for a reconsideration, contending that his RPN shares ceded to the Government, through the PCGG, represented only 32.4% of RPN's outstanding capital stock, not 72.4%. Benedicto's motion for reconsideration has remained unresolved to this date.[7]

Administrative Complaint for Grave Misconduct

On July 28, 1998, Carandang assumed office as general manager and chief operating officer of RPN.[8]

On April 19, 1999, Carandang and other RPN officials were charged with grave misconduct before the Ombudsman. The charge alleged that Carandang, in his capacity as the general manager of RPN, had entered into a contract with AF Broadcasting Incorporated despite his being an incorporator, director, and stockholder of that corporation; that he had thus held financial and material interest in a contract that had required the approval of his office; and that the transaction was prohibited under Section 7 (a) and Section 9 of Republic Act No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*), thereby rendering him administratively liable for grave misconduct.

Carandang sought the dismissal of the administrative charge on the ground that the Ombudsman had no jurisdiction over him because RPN was not a government-owned or -controlled corporation.[9]

On May 7, 1999, the Ombudsman suspended Carandang from his positions in RPN.

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[7] *Rollo* (G.R. No. 153161), pp. 68-69.

[8] *Id.*, p. 182.

[9] *Rollo* (G.R. No. 148076), pp. 150 and 170-190.

On September 8, 1999, Carandang manifested that he was no longer interested and had no further claim to his positions in RPN. He was subsequently replaced by Edgar San Luis.[10]

In its decision dated January 26, 2000,[11] the Ombudsman found Carandang guilty of grave misconduct and ordered his dismissal from the service.

Carandang moved for reconsideration on two grounds: (*a*) that the Ombudsman had no jurisdiction over him because RPN was not a government-owned or -controlled corporation; and (*b*) that he had no financial and material interest in the contract that required the approval of his office.[12]

The Ombudsman denied Carandang's motion for reconsideration on March 15, 2000.[13]

On appeal (CA G.R. SP No. 58204),[14] the CA affirmed the decision of the Ombudsman on February 12, 2001, stating:

> The threshold question to be resolved in the present case is whether or not the Office of the Ombudsman has jurisdiction over the herein petitioner.
>
> It is therefore of paramount importance to consider the definitions of the following basic terms, to wit: A public office "is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the state to be exercised by him for the benefit of the public." (*San Andres, Catanduanes vs. Court of Appeals*, 284 SCRA 276: Chapter I, Section 1, Mechem, *A Treatise on Law of Public Offices and Officers*). The individual so invested is called the public officer which "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or

[10] CA *rollo*, pp. 397 and 629-630.

[11] *Supra*, note 3.

[12] *Rollo* (G.R. No. 148076), pp. 298-304.

[13] *Id.*, pp. 305-308.

[14] *Rollo* (G.R. No. 148076), pp. 309–324.

unclassified or exemption service receiving compensation, even nominal, from the government as defined in xxx [Sec. 2 (a) of Republic Act No. 3019 as amended]." (Sec. 2 (b) of Republic Act No. 3019 as amended. Unless the powers conferred are of this nature, the individual is not a public officer.

With these time-honored definitions and the substantial findings of the Ombudsman, We are constrained to conclude that, indeed, the herein petitioner (Antonio M. Carandang) is a public officer. Precisely, since he (Antonio M. Carandang) was appointed by then President Joseph Ejercito Estrada as general manager and chief operating officer of RPN-9 (page 127 of the *Rollo*). As a presidential appointee, the petitioner derives his authority from the Philippine Government. It is *luce clarius* that the function of the herein petitioner (as a presidential appointee), relates to public duty, *i.e*., to represent the interest of the Philippine Government in RPN-9 and not purely personal matter, thus, the matter transcends the petitioner's personal pique or pride.

x x x

Having declared earlier that the herein petitioner is a public officer, it follows therefore that, that jurisdiction over him is lodged in the Office of the Ombudsman.

It is worth remembering that as protector of the people, the Ombudsman has the power, function and duty 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. (Section 13 of Republic Act No. 6770).

x x x

Accordingly, the Office of the Ombudsman is, therefore, clothed with the proper armor when it assumed jurisdiction over the case filed against the herein petitioner. x x x

x x x

It appears that RPN-9 is a private corporation established to install, operate and manage radio broadcasting and/or television stations in the Philippines (pages 59-79 of the *Rollo*). On March 2, 1986, when RPN-9 was sequestered by the Government on ground that the same was considered as an illegally obtained property (page 3 of the Petition for Review; page 2 of the Respondent's Comment; pages 10 and 302 of the *Rollo*), RPN-9 has shed-off its private status. In other words, there can be no gainsaying that as of the date of its sequestration by the Government, RPN-9, while retaining its own corporate existence, became a government-owned or controlled corporation within the Constitutional precept.

Be it noted that a government-owned or controlled corporation "refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether government or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock; Provided, That government-owned or controlled corporations may be further categorized by the department of Budget, the Civil Service, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." (Section 2 [13], Executive Order No. 292).

Contrary to the claim of the petitioner, this Court is of the view and so holds that RPN-9 perfectly falls under the foregoing definition. For one, "the government's interest to RPN-9 amounts to 72.4% of RPN's capital stock with an uncontested portion of 32.4% and a contested or litigated portion of 40%." (page 3 of the Petition for Review; pages 8-9 of the Respondent's Comment). On this score, it ought to be pointed out that while the forty percent (40%) of the seventy two point four percent (72.4%) is still contested and litigated, until the matter becomes formally settled, the government, for all interests and purposes still has the right over said portion, for the law is on its side. Hence, We can safely say that for the moment, RPN-9 is a government owned and controlled corporation. Another thing, RPN 9, though predominantly tackles proprietary functions—those intended for private advantage and benefit, still, it is irrefutable that RPN-9 also performs governmental roles in the interest of health,

safety and for the advancement of public good and welfare, affecting the public in general.

x x x

Coming now to the last assignment of error- While it may be considered in substance that the "latest GIS clearly shows that petitioner was no longer a stockholder of record of AF Broadcasting Corporation at the time of his assumption of Office in RPN 9 x x x" (Petitioner's Reply [to Comment]; page 317 of the *Rollo*), still severing ties from AF Broadcasting Corporation does not convince this Court fully well to reverse the finding of the Ombudsman that Antonio Carandang "appears to be liable for Grave Misconduct" (page 10 of the Assailed Decision; page 36 of the *Rollo*). Note that, as a former stockholder of AF Broadcasting Corporation, it is improbable that the herein petitioner was completely oblivious of the developments therein and unaware of the contracts it (AF Broadcasting Corporation) entered into. By reason of his past (Antonio Carandang) association with the officers of the AF Broadcasting Corporation, it is unbelievable that herein petitioner could simply have ignored the contract entered into between RPN-9 and AF Broadcasting Corporation and not at all felt to reap the benefits thereof. Technically, it is true that herein petitioner did not directly act on behalf of AF Broadcasting Corporation, however, We doubt that he (herein petitioner) had no financial and/or material interest in that particular transaction requiring the approval of his office—a fact that could not have eluded Our attention.

x x x

WHEREFORE, premises considered and pursuant to applicable laws and jurisprudence on the matter, the present Petition for Review is hereby DENIED for lack of merit. The assailed decision (dated January 26, 2000) of the Office of the Ombudsman in OMB-ADM-0-99-0349 is hereby AFFIRMED *in toto*. No pronouncement as to costs.

SO ORDERED.[15]

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[15] *Supra*, note 1, pp. 43-49.

After the denial of his motion for reconsideration,[16] Carandang commenced G.R. No. 148076.

Violation of Section 3 (*g*), Republic Act No. 3019

On January 17, 2000, the Ombudsman formally charged Carandang in the Sandiganbayan with a violation of Section 3 (*g*) of RA 3019 by alleging in the following information, [17] *viz*:

> That sometime on September 8, 1998 or thereabouts, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, accused ANTONIO M. CARANDANG, a high ranking officer (HRO) being then the General Manager of Radio Philippines Network, Inc. (RPN-9), then a government owned and controlled corporation, did then and there willfully, unlawfully and criminally give unwarranted benefits to On Target Media Concept, Inc. (OTMCI) through manifest partiality and gross inexcusable negligence and caused the government undue injury, by pre-terminating the existing block time contract between RPN 9 and OTMCI for the telecast of "*Isumbong Mo Kay Tulfo*" which assured the government an income of Sixty Four Thousand and Nine Pesos (₱ 64,009.00) per telecast and substituting the same with a more onerous co-production agreement without any prior study as to the profitability thereof, by which agreement RPN-9 assumed the additional obligation of taking part in the promotions, sales and proper marketing of the program, with the end result in that in a period of five (5) months RPN-9 was able to realize an income of only Seventy One Thousand One Hundred Eighty Five Pesos (₱ 71,185.00), and further, by waiving RPN-9's collectible from OTMCI for August 1-30, 1998 in the amount of Three Hundred Twenty Thousand and Forty Five Pesos (₱ 320,045.00).

Carandang moved to quash the information,[18] arguing that Sandiganbayan had no jurisdiction because he was not a public official due to RPN not being a government-owned or -controlled corporation.

The Sandiganbayan denied Carandang's motion to quash on October 17, 2001.[19]

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[16] *Supra*, note 2.

[17] *Rollo* (G.R. No. 153161), pp. 89-90.

[18] *Id.*, pp. 94-100.

[19] *Supra*, note 8.

After the denial by the Sandiganbayan of his motion for reconsideration,[20] Carandang initiated G.R. No. 153161.[21]

On May 27, 2002, Carandang moved to defer his arraignment and pre-trial, citing the pendency of G.R. No. 153161.[22]

On July 29, 2002, the Court directed the parties in G.R. No. 153161 to maintain the *status quo* until further orders.[23]

On November 20, 2006, G.R. No. 148076 was consolidated with G.R. No. 153161.[24]

Issue

Carandang insists that he was not a public official considering that RPN was not a government-owned or -controlled corporation; and that, consequently, the Ombudsman and the Sandiganbayan had no jurisdiction over him. He prays that the administrative and criminal complaints filed against him should be dismissed. Accordingly, decisive is whether or not RPN was a government-owned or -controlled corporation.

Ruling

We find the petitions to be meritorious.

It is not disputed that the Ombudsman has jurisdiction over administrative cases involving grave misconduct committed by the officials and employees of government-owned or -controlled corporations; and that the Sandiganbayan has jurisdiction to try and decide criminal actions involving violations of R.A. 3019 committed by public officials and employees, including presidents, directors and managers of government-owned or -controlled corporations. The respective jurisdictions of the respondents are expressly defined and delineated by the law.[25]

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[20] *Supra*, note 9.

[21] *Supra*, note 7.

[22] *Rollo* (G.R. No. 153161), pp. 133-138.

[23] *Id.*, pp. 140-141.

[24] *Id.*, p. 219.

[25] Article XI, Sections 12 and 13 of the 1987 Constitution; Republic Act

Similarly, the law defines what are government-owned or -controlled corporations. For one, Section 2 of Presidential Decree No. 2029 (*Defining Government Owned or Controlled Corporations and Identifying Their Role in National Development*) states:

> Section 2. A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, **to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock**.

Section 2 (13) of Executive Order No. 292 (*Administrative Code of* 1987)[26] renders a similar definition of government-owned or -controlled corporations:

> Section 2. *General Terms Defined.* – Unless the specific words of the text or the context as a whole or a particular statute, shall require a different meaning:
>
> x x x x x x x x x
>
> (13) government-owned or controlled corporations refer to any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or **where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock**.

No. 6770, otherwise known as *The Ombudsman Act of* 1989; Article XI, Section 4 of the 1987 Constitution, in relation to Article XIII, Section 5 of the 1973 Constitution (See *People v. Sandiganbayan*, G.R. Nos. 147706-07, February 16, 2005, 451 SCRA 413); Section 4 (a) (1) (g), Republic Act No. 8249 (approved on February 5, 1997), entitled *An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes*.

[26] Enacted on July 25, 1987.

It is clear, therefore, that a corporation is considered a government-owned or -controlled corporation only when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock. Applying this statutory criterion, the Court ruled in *Leyson, Jr. v. Office of the Ombudsman*:[27]

> But these jurisprudential rules invoked by petitioner in support of his claim that the CIIF companies are government owned and/or controlled corporations are incomplete without resorting to the definition of "government owned or controlled corporation" contained in par. (13), Sec.2, Introductory Provisions of the Administrative Code of 1987, *i.e.,* any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or where applicable as in the case of stock corporations to the extent of at least fifty-one (51) percent of its capital stock. The definition mentions three (3) requisites, namely, first, any agency organized as a stock or non-stock corporation; second, vested with functions relating to public needs whether governmental or proprietary in nature; and, third, owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) of its capital stock.
>
> In the present case, all three (3) corporations comprising the CIIF companies were organized as stock corporations. **The UCPB-CIIF owns 44.10% of the shares of LEGASPI OIL, xxx. Obviously, the below 51% shares of stock in LEGASPI OIL removes this firm from the definition of a government owned or controlled corporation**. x x x The Court thus concludes that the CIIF are, as found by public respondent, private corporations not within the scope of its jurisdiction.[28]

Consequently, RPN was neither a government-owned nor a controlled corporation because of the Government's total share in RPN's capital stock being only 32.4%.

Parenthetically, although it is true that the Sandiganbayan (Second Division) ordered the transfer to the PCGG of Benedicto's

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[27] G.R. No. 134990, April 27, 2000, 331 SCRA 227, 235-236.

[28] Bold underscoring supplied for emphasis.

shares that represented 72.4% of the total issued and outstanding capital stock of RPN, such quantification of Benedicto's shareholding cannot be controlling in view of Benedicto's timely filing of a motion for reconsideration whereby he clarified and insisted that the shares ceded to the PCGG had accounted for only 32.4%, not 72.4%, of RPN's outstanding capital stock. With the extent of Benedicto's holdings in RPN remaining unresolved with finality, concluding that the Government held the majority of RPN's capital stock as to make RPN a government-owned or -controlled corporation would be bereft of any factual and legal basis.

Even the PCGG and the Office of the President (OP) have recognized RPN's status as being neither a government-owned nor -controlled corporation.

In its Opinion/Clarification dated August 18, 1999, the PCGG communicated to San Luis as the president and general manager of RPN regarding a case involving RPN and Carandang:[29]

MR. EDGAR S. SAN LUIS
President & General Manager
Radio Philippines Network, Inc.
Broadcast City, Capitol Hills
Diliman, Quezon City

Sir:

This refers to your letter dated August 4, 1999, seeking "PCGG's position on the following:

"1. Whether RPN-9 is a GOCC x x x or a private corporation outside the scope of OGCC and COA's control given 32% Government ownership x x x.

x x x

It appears that under the RP-Benedicto Compromise Agreement dated November 3, 1990 – validity of which has been sustained by the Supreme Court in G.R. No. 96087, March 31, 1992, (*Guingona, Jr. vs. PCGG*, 207 SCRA 659) – Benedicto ceded all his rights, interest and/or participation, if he has any, in RPN-9, among others,

[29] *Rollo* (G.R. No. 153161), pp. 66-72.

to the government which rights, interest and/or participation per PCGG's understanding, include 9,494,327.50 shares of stock, *i.e*, about 72.4% of the total issued and outstanding capital stock of RPN-9.

Accordingly, the Sandiganbayan (Second Division), on motion of the government through PCGG, ordered the president and corporate secretary of the RPN-9 to "effect the immediate cancellation and transfer of the 9,494,327.50 shares corresponding to Benedicto's proprietary interest in RPN-9 to the Republic of the Philippines c/o PCGG" (Sandiganbayan's Resolution of February 3, 1998 in Civil Case No. 0034, *RP vs. Roberto Benedicto, et. al.*) Benedicto, however, filed a motion for reconsideration of said Resolution, contending that the number of RPN-9 shares ceded by him embraces only his personal holdings and those of his immediate family and nominees totaling 4,161,207.5 shares but excluding the RPN-9 shares in the name of Far East Managers and Investors, Inc. ("FEMIE"), which is about 40%, as they are corporate properties/assets of FEMIE and not his personal holdings. Said motion for reconsideration is still pending resolution by the Sandiganbayan.

x x x

We agree with your x x x view that RPN-9 is not a government owned or controlled corporation within the contemplation of the Administrative Code of 1987, for admittedly, RPN-9 was organized for private needs and profits, and not for public needs and was not specifically vested with functions relating to public needs.

Neither could RPN-9 be considered a "government-owned or controlled corporation" under Presidential Decree (PD) No. 2029 dated February 4, 1986, which defines said terms as follows:

> "Sec. 2. *Definition*. – A government owned- or controlled corporation is a stock or non-stock corporation, whether performing governmental or proprietary functions which is directly chartered by special law or organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;

> *Provided*, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall **not** be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation."

A government-owned or controlled corporation is either "parent" corporation, *i.e.*, one "created by special law" (Sec. 3 (a), PD 2029) or a "subsidiary" corporation**,** *i.e*, one created pursuant to law where at least a majority of the outstanding voting capital stock of which is owned by parent government corporation and/or other government-owned subsidiaries. (Sec. 3 (b), PD 2029).

RPN-9 may not likewise be considered as an "acquired asset corporation" which is one organized under the general corporation law (1) under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or (2) as a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time" (Sec 3 c, PD 2029), for the following reasons:

1. as noted above, the uncontested (not litigated) RPN-9 shares of the government is only 32.4% (not a majority) of its capital stock;

2. said 32.4% shares of stock, together with the contested/ litigated 40%, were not conveyed to a government corporation or the government "in satisfaction of debts

incurred with government financial institution, whether by foreclosure or otherwise;

3. RPN-9 was not organized as a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith.

It should be parenthetically noted that the 32.4% or 72.4% shares of stocks were turned over to the government by virtue of a compromise agreement between the government and Benedicto in Civil Case No. 0034 which is "a civil action against Defendants Roberto S. Benedicto, Ferdinand E. Marcos, Imelda R. Marcos" and others, to recover from them ill-gotten wealth" (Amended Complaint, Aug. 12, 1987, Civil Case No. 0034, p. 2.) As the case between the government and Benedicto, his family and nominees was compromised, no judicial pronouncement was made as to the character or nature of the assets and properties turned over by Benedicto to the government – whether they are ill-gotten wealth or not.[30]

The PCGG's Opinion/Clarification was affirmed by the OP itself on February 10, 2000:[31]

February 10, 2000

Mr. Edgar S. San Luis
President and General Manager
Radio Philippines Network Inc.
Broadcasting City, Capitol Hills, Diliman
Quezon City

Dear President San Luis,

x x x

Relative thereto, please be informed that **we affirm the PCGG's opinion that RPNI is not a government-owned and/or controlled corporation (GOCC).** Section 2 (13), Introductory Provisions of the Administrative Code of 1987 defines a GOCC as an agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in

[30] Emphasis and underscoring supplied..

[31] *Rollo* (G.R. No. 148076), p. 358.

nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock. **As government ownership over RPNI is only 32.4% of its capital stock, pending the final judicial determination of the true and legal ownership of RPNI, the corporation is deemed private.**[32]

Even earlier, a similar construction impelled the Ombudsman to dismiss a criminal complaint for violation of R.A. 3019 filed against certain RPN officials, as the Ombudsman's resolution dated December 15, 1997 indicates,[33] a pertinent portion of which is quoted thus:

> This is not to mention the fact that the other respondents, the RPN officials, are outside the jurisdiction of this Office (Office of the Ombudsman); they are employed by a private corporation registered with the Securities and Exchange Commission, **the RPN, which is not a government owned or controlled corporation** x x x[34]

Considering that the construction of a statute given by administrative agencies deserves respect,[35] the uniform administrative constructions of the relevant aforequoted laws defining what are government-owned or -controlled corporations as applied to RPN is highly persuasive.

Lastly, the conclusion that Carandang was a public official by virtue of his having been appointed as general manager and chief operating officer of RPN by President Estrada deserves no consideration. President Estrada's intervention was merely to recommend Carandang's designation as general manager and chief operating officer of RPN to the PCGG, which then cast

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[32] Emphasis supplied.

[33] *Rollo* (G.R. No. 148076), pp. 634-638.

[34] Emphasis supplied.

[35] *Philippine Amusement and Gaming Corporation (PAGCOR) v. Philippine Gaming Jurisdiction, Incorporated (PEJI)*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 667; *Alfonso v. Office of the President*,

the vote in his favor *vis-à-vis* said positions.[36] Under the circumstances, it was RPN's Board of Directors that appointed Carandang to his positions pursuant to RPN's By-Laws.[37]

In fine, Carandang was correct in insisting that being a private individual he was not subject to the administrative authority of the Ombudsman and to the criminal jurisdiction of the Sandiganbayan.[38]

WHEREFORE, we grant the petitions in G.R. No. 148076 and G.R. No. 153161.

We reverse and set aside the decision promulgated on February 12, 2001 by the Court of Appeals in C.A.-G.R. SP No. 58204, and dismiss the administrative charge for grave misconduct against the petitioner.

We annul and set aside the resolutions dated October 17, 2001 and March 14, 2002, as well as the order dated March 15, 2002, all issued by the Sandiganbayan (Fifth Division) in Criminal Case No. 25802, and dismiss Criminal Case No. 25802 as against the petitioner.

SO ORDERED.

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

G.R. No. 150091, April 2, 2007, 520 SCRA 64, 75; *Delos Santos v. Court of Appeals*, G.R. No. 147912, April 26, 2006, 488 SCRA 351, 359.

[36] *Rollo* (G.R. No. 148076), p. 99.

[37] *Rollo* (G.R. No. 153161), pp. 56 and 182.

[38] *Azarcon v. Sandiganbayan*, G.R. No. 116033, February 26, 1997, 268 SCRA 747.

SECOND DIVISION

[G.R. No. 167291. January 12, 2011]

PRINCE TRANSPORT, INC. and MR. RENATO CLAROS, *petitioners, vs.* **DIOSDADO GARCIA, LUISITO GARCIA, RODANTE ROMERO, REX BARTOLOME, FELICIANO GASCO, JR., DANILO ROJO, EDGAR SANFUEGO, AMADO GALANTO, EUTIQUIO LUGTU, JOEL GRAMATICA, MIEL CERVANTES, TERESITA CABAÑES, ROE DELA CRUZ, RICHELO BALIDOY, VILMA PORRAS, MIGUELITO SALCEDO, CRISTINA GARCIA, MARIO NAZARENO, DINDO TORRES, ESMAEL RAMBOYONG, ROBETO[*] MANO, ROGELIO BAGAWISAN, ARIEL SANCHEZ, EUSTAQUIO VILLAREAL, NELSON MONTERO, GLORIA ORANTE, HARRY TOCA, PABLITO MACASAET and RONALD GACITA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; POWER OF THE COURT OF APPEALS TO REVIEW NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISIONS IS SUSTAINED IN STRICT OBSERVANCE OF THE DOCTRINE OF HIERARCHY OF COURTS. — The power of the CA to review NLRC decisions *via* a petition for *certiorari* under Rule 65 of the Rules of Court has been settled as early as this Court's decision in *St. Martin Funeral Homes v. NLRC.* In said case, the Court held that the proper vehicle for such review is a special civil action for *certiorari* under Rule 65 of the said Rules, and that the case should be filed with the CA in strict observance of the doctrine of hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, the CA — pursuant to the exercise of its original jurisdiction over petitions for *certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. Section 9 clearly states: x x x The Court of

[*] Referred to as Roberto in some parts of the SC and CA *rollo*.

Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

2. ID.; APPEALS; FACTUAL FINDINGS OF THE LABOR OFFICIALS WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY BY THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; APPLICATION IN CASE AT BAR. — Equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC. In this case, the NLRC sustained the factual findings of the Labor Arbiter. Thus, these findings are generally binding on the appellate court, unless there was a showing that they were arrived at arbitrarily or in disregard of the evidence on record. In respondents' petition for *certiorari* with the CA, these factual findings were reexamined and reversed by the appellate court on the ground that they were not in accord with credible evidence presented in this case. To determine if the CA's reexamination of factual findings and reversal of the NLRC decision are proper and with sufficient basis, it is incumbent upon this Court to make its own evaluation of the evidence on record.

3. ID.; CIVIL PROCEDURE; PLEADINGS; CERTIFICATE OF NON-FORUM SHOPPING; THE RULES DOES NOT PROHIBIT SUBSTANTIAL COMPLIANCE THEREWITH UNDER JUSTIFIABLE CIRCUMSTANCES CONSIDERING THAT

ALTHOUGH IT IS OBLIGATORY, IT IS NOT JURISDICTIONAL. — While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient, the Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not, however, prohibit substantial compliance therewith under justifiable circumstances, considering especially that although it is obligatory, it is not jurisdictional. In a number of cases, the Court has consistently held that when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules. In the present case, there is no question that respondents share a common interest and invoke a common cause of action. Hence, the signature of respondent Garcia is a sufficient compliance with the rule governing certificates of non-forum shopping. In the first place, some of the respondents actually executed a Special Power of Attorney authorizing Garcia as their attorney-in-fact in filing a petition for *certiorari* with the CA.

4. ID.; ID.; ID.; WHEN REQUIRED TO BE VERIFIED; MAY BE GIVEN DUE COURSE EVEN WITHOUT THE VERIFICATION IF THE CIRCUMSTANCES WARRANT THE SUSPENSION OF THE RULES IN THE INTEREST OF JUSTICE. — With respect to the absence of some of the workers' signatures in the verification, the verification requirement is deemed substantially complied with when some of the parties who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition had signed the same. Such verification is deemed a sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, and not merely speculative. Moreover, respondents' Partial Appeal shows that the appeal stipulated as complainants-appellants "Rizal Beato, *et al*.," meaning that there were more than one appellant who were all workers of petitioners. In any case, the settled rule is that a pleading which

is required by the Rules of Court to be verified, may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice. Indeed, the absence of a verification is not jurisdictional, but only a formal defect, which does not of itself justify a court in refusing to allow and act on a case. Hence, the failure of some of the respondents to sign the verification attached to their Memorandum of Appeal filed with the NLRC is not fatal to their cause of action.

5. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE CORPORATE VEIL; WHEN PROPER; APPLICATION IN CASE AT BAR. — A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy. Thus, the Court agrees with the observations of the CA, to wit: As correctly pointed out by petitioners, if Lubas were truly a separate entity, how come that it was Prince Transport who made the decision to transfer its employees to the former? Besides, Prince Transport never regarded Lubas Transport as a separate entity. In the aforesaid letter, it referred to said entity as "Lubas operations." Moreover, in said letter, it did not transfer the employees; it "assigned" them. Lastly, the existing funds and 201 file of the employees were turned over not to a new company but a "new management."

6. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; EVEN WITHOUT THE PRAYER FOR A SPECIFIC REMEDY, PROPER RELIEF MAY BE GRANTED BY THE COURT IF THE FACTS ALLEGED IN THE COMPLAINT AND THE EVIDENCE INTRODUCED SO WARRANT. — In any case, Section 2 (c), Rule 7 of the Rules of Court provides that a pleading shall specify the relief sought, but may add a general prayer for such further or other reliefs as may be deemed just

and equitable. Under this rule, a court can grant the relief warranted by the allegation and the proof even if it is not specifically sought by the injured party; the inclusion of a general prayer may justify the grant of a remedy different from or together with the specific remedy sought, if the facts alleged in the complaint and the evidence introduced so warrant. Moreover, in *BPI Family Bank v. Buenaventura*, this Court ruled that the general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for. In the instant case, aside from their specific prayer for reinstatement, respondents, in their separate complaints, prayed for such reliefs which are deemed just and equitable.

7. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE (ULP); DEFINED; PRESENT IN CASE AT BAR. — As to whether petitioners are guilty of unfair labor practice, the Court finds no cogent reason to depart from the findings of the CA that respondents' transfer of work assignments to Lubas was designed by petitioners as a subterfuge to foil the former's right to organize themselves into a union. Under Article 248 (a) and (e) of the Labor Code, an employer is guilty of unfair labor practice if it interferes with, restrains or coerces its employees in the exercise of their right to self-organization or if it discriminates in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Indeed, evidence of petitioners' unfair labor practice is shown by the established fact that, after respondents' transfer to Lubas, petitioners left them high and dry insofar as the operations of Lubas was concerned. The Court finds no error in the findings and conclusion of the CA that petitioners "withheld the necessary financial and logistic support such as spare parts, and repair and maintenance of the

transferred buses until only two units remained in running condition." This left respondents virtually jobless.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioners.
Jose Manolito C. Cahila for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court praying for the annulment of the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated December 20, 2004 and February 24, 2005, respectively, in CA-G.R. SP No. 80953. The assailed Decision reversed and set aside the Resolutions dated May 30, 2003[3] and September 26, 2003[4] of the National Labor Relations Commission (NLRC) in *CA No. 029059-01*, while the disputed Resolution denied petitioners' Motion for Reconsideration.

The present petition arose from various complaints filed by herein respondents charging petitioners with illegal dismissal, unfair labor practice and illegal deductions and praying for the award of premium pay for holiday and rest day, holiday pay, service leave pay, 13th month pay, moral and exemplary damages and attorney's fees.

Respondents alleged in their respective position papers and other related pleadings that they were employees of Prince Transport, Inc. (PTI), a company engaged in the business of transporting passengers by land; respondents were hired either

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz, concurring; *rollo*, pp. 44-49.

[2] *Id*. at 61-62.

[3] *Id*. at 85-98.

[4] *Id*. at 100-102.

as drivers, conductors, mechanics or inspectors, except for respondent Diosdado Garcia (Garcia), who was assigned as Operations Manager; in addition to their regular monthly income, respondents also received commissions equivalent to 8 to 10% of their wages; sometime in October 1997, the said commissions were reduced to 7 to 9%; this led respondents and other employees of PTI to hold a series of meetings to discuss the protection of their interests as employees; these meetings led petitioner Renato Claros, who is the president of PTI, to suspect that respondents are about to form a union; he made known to Garcia his objection to the formation of a union; in December 1997, PTI employees requested for a cash advance, but the same was denied by management which resulted in demoralization on the employees' ranks; later, PTI acceded to the request of some, but not all, of the employees; the foregoing circumstances led respondents to form a union for their mutual aid and protection; in order to block the continued formation of the union, PTI caused the transfer of all union members and sympathizers to one of its sub-companies, Lubas Transport (Lubas); despite such transfer, the schedule of drivers and conductors, as well as their company identification cards, were issued by PTI; the daily time records, tickets and reports of the respondents were also filed at the PTI office; and, all claims for salaries were transacted at the same office; later, the business of Lubas deteriorated because of the refusal of PTI to maintain and repair the units being used therein, which resulted in the virtual stoppage of its operations and respondents' loss of employment.

Petitioners, on the other hand, denied the material allegations of the complaints contending that herein respondents were no longer their employees, since they all transferred to Lubas at their own request; petitioners have nothing to do with the management and operations of Lubas as well as the control and supervision of the latter's employees; petitioners were not aware of the existence of any union in their company and came to know of the same only in June 1998 when they were served a copy of the summons in the petition for certification election filed by the union; that before the union was registered on April 15, 1998, the complaint subject of the present petition

was already filed; that the real motive in the filing of the complaints was because PTI asked respondents to vacate the bunkhouse where they (respondents) and their respective families were staying because PTI wanted to renovate the same.

Subsequently, the complaints filed by respondents were consolidated.

On October 25, 2000, the Labor Arbiter rendered a Decision,[5] the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

1. Dismissing the complaints for Unfair Labor Practice, non-payment of holiday pay and holiday premium, service incentive leave pay and 13th month pay;

2. Dismissing the complaint for illegal dismissal against the respondents Prince Transport, Inc. and/or Prince Transport Phils. Corporation, Roberto Buenaventura, Rory Bayona, Ailee Avenue, Nerissa Uy, Mario Feranil and Peter Buentiempo;

3. Declaring that the complainants named below are illegally dismissed by Lubas Transport; ordering said Lubas Transport to pay backwages and separation pay in lieu of reinstatement in the following amount:

Complainants	Backwages	Separation Pay
(1) Diosdado Garcia	₱222,348.70	₱79,456.00
(2) Feliciano Gasco, Jr.	203,350.00	54,600.00
(3) Pablito Macasaet	145,250.00	13,000.00
(4) Esmael Ramboyong	221,500.00	30,000.00
(5) Joel Gramatica	221,500.00	60,000.00
(6) Amado Galanto	130,725.00	29,250.00
(7) Miel Cervantes	265,800.00	60,000.00
(8) Roberto Mano	221,500.00	50,000.00
(9) Roe dela Cruz	265,800.00	60,000.00
(10) Richelo Balidoy	130,725.00	29,250.00
(11) Vilma Porras	221,500.00	70,000.00
(12) Miguelito Salcedo	265,800.00	60,000.00
(13) Cristina Garcia	130,725.00	35,100.00
(14) Luisito Garcia	145,250.00	19,500.00

[5] *Id*. at 210-233.

(15) Rogelio Bagawisan	265,800.00	60,000.00
(16) Rodante H. Romero	221,500.00	60,000.00
(17) Dindo Torres	265,800.00	50,000.00
(18) Edgar Sanfuego	221,500.00	40,000.00
(19) Ronald Gacita	221,500.00	40,000.00
(20) Harry Toca	174,300.00	23,400.00
(21) Amado Galanto	130,725.00	17,550.00
(22) Teresita Cabañes	130,725.00	17,550.00
(23) Rex Bartolome	301,500.00	30,000.00
(24) Mario Nazareno	221,500.00	30,000.00
(25) Eustaquio Villareal	145,250.00	19,500.00
(26) Ariel Sanchez	265,800.00	60,000.00
(27) Gloria Orante	263,100.00	60,000.00
(28) Nelson Montero	264,600.00	60,000.00
(29) Rizal Beato	295,000.00	40,000.00
(30) Eutiquio Lugtu	354,000.00	48,000.00
(31) Warlito Dickensomn	295,000.00	40,000.00
(32) Edgardo Belda	354,000.00	84,000.00
(33) Tita Go	295,000.00	70,000.00
(34) Alex Lodor	295,000.00	50,000.00
(35) Glenda Arguilles	295,000.00	40,000.00
(36) Erwin Luces	354,000.00	48,000.00
(37) Jesse Celle	354,000.00	48,000.00
(38) Roy Adorable	295,000.00	40,000.00
(39) Marlon Bangcoro	295,000.00	40,000.00
(40) Edgardo Bangcoro	354,000.00	36,000.00

4. Ordering Lubas Transport to pay attorney's fees equivalent to ten (10%) of the total monetary award; and

6. Ordering the dismissal of the claim for moral and exemplary damages for lack merit.

SO ORDERED.[6]

The Labor Arbiter ruled that petitioners are not guilty of unfair labor practice in the absence of evidence to show that they violated respondents' right to self-organization. The Labor Arbiter also held that Lubas is the respondents' employer and that it (Lubas) is an entity which is separate, distinct and

[6] *Id*. at 230-233.

independent from PTI. Nonetheless, the Labor Arbiter found that Lubas is guilty of illegally dismissing respondents from their employment.

Respondents filed a Partial Appeal with the NLRC praying, among others, that PTI should also be held equally liable as Lubas.

In a Resolution dated May 30, 2003, the NLRC modified the Decision of the Labor Arbiter and disposed as follows:

> WHEREFORE, premises considered, the appeal is hereby **PARTIALLY GRANTED**. Accordingly, the Decision appealed from is **SUSTAINED** subject to the modification that Complainant-Appellant Edgardo Belda deserves refund of his boundary-hulog in the amount of ₱446,862.00; and that Complainants-Appellants Danilo Rojo and Danilo Laurel should be included in the computation of Complainants-Appellants claim as follows:
>
> | Complainants | Backwages | Separation Pay |
> |---|---|---|
> | 41. Danilo Rojo | ₱355,560.00 | ₱48,000.00 |
> | 42. Danilo Laurel | ₱357,960.00 | ₱72,000.00 |
>
> As regards all other aspects, the Decision appealed from is **SUSTAINED**.
>
> SO ORDERED.[7]

Respondents filed a Motion for Reconsideration, but the NLRC denied it in its Resolution[8] dated September 26, 2003.

Respondents then filed a special civil action for *certiorari* with the CA assailing the Decision and Resolution of the NLRC.

On December 20, 2004, the CA rendered the herein assailed Decision which granted respondents' petition. The CA ruled that petitioners are guilty of unfair labor practice; that Lubas is a mere instrumentality, agent conduit or adjunct of PTI; and that petitioners' act of transferring respondents' employment to Lubas is indicative of their intent to frustrate the efforts of

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[7] *Id.* at 97-98.

[8] *Id.* at 100-102.

respondents to organize themselves into a union. Accordingly, the CA disposed of the case as follows:

> WHEREFORE, the Petition for *Certiorari* is hereby GRANTED. Accordingly, the subject decision is hereby REVERSED and SET ASIDE and another one ENTERED finding the respondents guilty of unfair labor practice and ordering them to reinstate the petitioners to their former positions without loss of seniority rights and with full backwages.
>
> With respect to the portion ordering the inclusion of Danilo Rojo and Danilo Laurel in the computation of petitioner's claim for backwages and with respect to the portion ordering the refund of Edgardo Belda's boundary-hulog in the amount of ₱446,862.00, the NLRC decision is affirmed and maintained.
>
> SO ORDERED.[9]

Petitioners filed a Motion for Reconsideration, but the CA denied it *via* its Resolution[10] dated February 24, 2005.

Hence, the instant petition for review on *certiorari* based on the following grounds:

A

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING DUE COURSE TO THE RESPONDENTS' PETITION FOR *CERTIORARI*

1. THE COURT OF APPEALS SHOULD HAVE RESPECTED THE FINDINGS OF THE LABOR ARBITER AND AFFIRMED BY THE NLRC

2. ONLY ONE PETITIONER EXECUTED AND VERIFIED THE PETITION

3. THE COURT OF APPEALS SHOULD NOT HAVE GIVEN DUE COURSE TO THE PETITION WITH RESPECT TO RESPONDENTS REX BARTOLOME, FELICIANO GASCO, DANILO ROJO, EUTIQUIO LUGTU, AND NELSON MONTERO AS THEY FAILED TO FILE AN APPEAL TO THE NLRC

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[9] *Id*. at 318.

[10] *Id*. at 61-62.

B

THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT PETITIONERS PRINCE TRANSPORT, INC. AND MR. RENATO CLAROS AND LUBAS TRANSPORT ARE ONE AND THE SAME CORPORATION AND THUS, LIABLE *IN SOLIDUM* TO RESPONDENTS.

C

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ORDERING THE REINSTATEMENT OF RESPONDENTS TO THEIR PREVIOUS POSITION WHEN IT IS NOT ONE OF THE ISSUES RAISED IN RESPONDENTS' PETITION FOR *CERTIORARI*.[11]

Petitioners assert that factual findings of agencies exercising quasi-judicial functions like the NLRC are accorded not only respect but even finality; that the CA should have outrightly dismissed the petition filed before it because in *certiorari* proceedings under Rule 65 of the Rules of Court it is not within the province of the CA to evaluate the sufficiency of evidence upon which the NLRC based its determination, the inquiry being limited essentially to whether or not said tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion. Petitioners assert that the CA can only pass upon the factual findings of the NLRC if they are not supported by evidence on record, or if the impugned judgment is based on misapprehension of facts — which circumstances are not present in this case. Petitioners also emphasize that the NLRC and the Labor Arbiter concurred in their factual findings which were based on substantial evidence and, therefore, should have been accorded great weight and respect by the CA.

Respondents, on the other hand, aver that the CA neither exceeded its jurisdiction nor committed error in re-evaluating the NLRC's factual findings since such findings are not in accord with the evidence on record and the applicable law or jurisprudence.

The Court agrees with respondents.

[11] *Id*. at 23-24.

The power of the CA to review NLRC decisions *via* a petition for *certiorari* under Rule 65 of the Rules of Court has been settled as early as this Court's decision in *St. Martin Funeral Homes v. NLRC*.[12] In said case, the Court held that the proper vehicle for such review is a special civil action for *certiorari* under Rule 65 of the said Rules, and that the case should be filed with the CA in strict observance of the doctrine of hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, the CA — pursuant to the exercise of its original jurisdiction over petitions for *certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[13] Section 9 clearly states:

x x x x x x x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

However, equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[14] But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined

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[12] 356 Phil. 811 (1998).

[13] *PICOP Resources Incorporated (PRI) v. Anacleto Tañeca, et al.*, G.R. No. 160828, August 9, 2010; *Maralit v. Philippine National Bank*, G.R. No. 163788, August 24, 2009, 596 SCRA 662, 682-683; *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185, 197.

[14] *Philippine Veterans Bank v. National Labor Relations Commission*, G.R. No. 188882, March 30, 2010.

by the courts.[15] The CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence.[16] It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[17]

In this case, the NLRC sustained the factual findings of the Labor Arbiter. Thus, these findings are generally binding on the appellate court, unless there was a showing that they were arrived at arbitrarily or in disregard of the evidence on record. In respondents' petition for *certiorari* with the CA, these factual findings were reexamined and reversed by the appellate court on the ground that they were not in accord with credible evidence presented in this case. To determine if the CA's reexamination of factual findings and reversal of the NLRC decision are proper and with sufficient basis, it is incumbent upon this Court to make its own evaluation of the evidence on record.[18]

After a thorough review of the records at hand, the Court finds that the CA did not commit error in arriving at its own findings and conclusions for reasons to be discussed hereunder.

Firstly, petitioners posit that the petition filed with the CA is fatally defective, because the attached verification and certificate against forum shopping was signed only by respondent Garcia.

The Court does not agree.

While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient, the Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice,

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[15] *Faeldonia v. Tong Yak Groceries*, G.R. No. 182499, October 2, 2009, 602 SCRA 677, 684.

[16] *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[17] *Id*.

[18] *Triumph International (Phils.), Inc. v. Apostol*, *supra* note 13, at 198.

should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.[19] Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[20] It does not, however, prohibit substantial compliance therewith under justifiable circumstances, considering especially that although it is obligatory, it is not jurisdictional.[21]

In a number of cases, the Court has consistently held that when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.[22] In the present case, there is no question that respondents share a common interest and invoke a common cause of action. Hence, the signature of respondent Garcia is a sufficient compliance with the rule governing certificates of non-forum shopping. In the first place, some of the respondents actually executed a Special Power of Attorney authorizing Garcia as their attorney-in-fact in filing a petition for *certiorari* with the CA.[23]

The Court, likewise, does not agree with petitioners' argument that the CA should not have given due course to the petition filed before it with respect to some of the respondents, considering that these respondents did not sign the verification attached to the Memorandum of Partial Appeal earlier filed with the NLRC. Petitioners assert that the decision of the Labor Arbiter has become final and executory with respect to these respondents

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[19] *Juaban v. Espina*, G.R. No. 170049, March 14, 2008, 548 SCRA 588, 603, citing *Cua v. Vargas*, 506 SCRA 374, 389-390 (2006); *Pacquing v. Coca-Cola, Philippines, Inc.*, G.R. No. 157966, January 31, 2008, 543 SCRA 344, 353.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] See Special Power of Attorney, CA *rollo*, p. 22.

and, as a consequence, they are barred from filing a petition for *certiorari* with the CA.

With respect to the absence of some of the workers' signatures in the verification, the verification requirement is deemed substantially complied with when some of the parties who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition had signed the same. Such verification is deemed a sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, and not merely speculative. Moreover, respondents' Partial Appeal shows that the appeal stipulated as complainants-appellants "Rizal Beato, *et al.*," meaning that there were more than one appellant who were all workers of petitioners.

In any case, the settled rule is that a pleading which is required by the Rules of Court to be verified, may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice.[24] Indeed, the absence of a verification is not jurisdictional, but only a formal defect, which does not of itself justify a court in refusing to allow and act on a case.[25] Hence, the failure of some of the respondents to sign the verification attached to their Memorandum of Appeal filed with the NLRC is not fatal to their cause of action.

Petitioners also contend that the CA erred in applying the doctrine of piercing the corporate veil with respect to Lubas, because the said doctrine is applicable only to corporations and Lubas is not a corporation but a single proprietorship; that Lubas had been found by the Labor Arbiter and the NLRC to have a personality which is separate and distinct from that of PTI;

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[24] *Heirs of the Late Jose De Luzuriaga v. Republic*, G.R. Nos. 168848 & 169019, June 30, 2009, 591 SCRA 299, 313; *Woodridge School v. Pe Benito*, G.R. No. 160240, October 29, 2008, 570 SCRA 164, 175; *Linton Commercial Co., Inc. v. Hellera*, G.R. No. 163147, October 10, 2007, 535 SCRA 434, 446.

[25] *Spic N' Span Services Corp. v. Paje*, G.R. No. 174084, August 25, 2010; *Sari-Sari Group of Companies, Inc. v. Piglas Kamao (Sari-Sari Chapter)*, G.R. No. 164624, August 11, 2008, 561 SCRA 569, 579-580.

that PTI had no hand in the management and operation as well as control and supervision of the employees of Lubas.

The Court is not persuaded.

On the contrary, the Court agrees with the CA that Lubas is a mere agent, conduit or adjunct of PTI. A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same.[26] In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.

Thus, the Court agrees with the observations of the CA, to wit:

> As correctly pointed out by petitioners, if Lubas were truly a separate entity, how come that it was Prince Transport who made the decision to transfer its employees to the former? Besides, Prince Transport never regarded Lubas Transport as a separate entity. In the aforesaid letter, it referred to said entity as "Lubas operations." Moreover, in said letter, it did not transfer the employees; it "assigned" them. Lastly, the existing funds and 201 file of the employees were turned over not to a new company but a "new management."[27]

The Court also agrees with respondents that if Lubas is indeed an entity separate and independent from PTI why is it that the latter decides which employees shall work in the former?

What is telling is the fact that in a memorandum issued by PTI, dated January 22, 1998, petitioner company admitted that

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[26] *Pantranco Employees Association (PEA-PTGWO) v. NLRC*, G.R. Nos. 170689 and 170705, March 17, 2009, 581 SCRA 598, 613-614.

[27] *Rollo*, p. 55.

Lubas is one of its sub-companies.[28] In addition, PTI, in its letters to its employees who were transferred to Lubas, referred to the latter as its "New City Operations Bus."[29]

Moreover, petitioners failed to refute the contention of respondents that despite the latter's transfer to Lubas their daily time records, reports, daily income remittances of conductors, schedule of drivers and conductors were all made, performed, filed and kept at the office of PTI. In fact, respondents' identification cards bear the name of PTI.

It may not be amiss to point out at this juncture that in two separate illegal dismissal cases involving different groups of employees transferred by PTI to other companies, the Labor Arbiter handling the cases found that these companies and PTI are one and the same entity; thus, making them solidarily liable for the payment of backwages and other money claims awarded to the complainants therein.[30]

Petitioners likewise aver that the CA erred and committed grave abuse of discretion when it ordered petitioners to reinstate respondents to their former positions, considering that the issue of reinstatement was never brought up before it and respondents never questioned the award of separation pay to them.

The Court is not persuaded.

It is clear from the complaints filed by respondents that they are seeking reinstatement.[31]

In any case, Section 2 (c), Rule 7 of the Rules of Court provides that a pleading shall specify the relief sought, but may add a general prayer for such further or other reliefs as may be deemed just and equitable. Under this rule, a court can grant the relief warranted by the allegation and the proof even if it is

[28] CA *rollo*, p. 69.

[29] *Id.* at 87-121.

[30] See Decisions in NLRC-NCR Case Nos. 00-01-00438-01, 00-03-01882-01, 00-04-02108-01, 00-04-04129-01 and NLRC-NCR Case No. 00-04-02129-2001, *id.* at 193-256.

[31] See Amended Complaints, *id.* at 45-68; 122-136.

not specifically sought by the injured party; the inclusion of a general prayer may justify the grant of a remedy different from or together with the specific remedy sought, if the facts alleged in the complaint and the evidence introduced so warrant.[32]

Moreover, in *BPI Family Bank v. Buenaventura*,[33] this Court ruled that the general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.[34] In the instant case, aside from their specific prayer for reinstatement, respondents, in their separate complaints, prayed for such reliefs which are deemed just and equitable.

As to whether petitioners are guilty of unfair labor practice, the Court finds no cogent reason to depart from the findings of the CA that respondents' transfer of work assignments to Lubas was designed by petitioners as a subterfuge to foil the former's right to organize themselves into a union. Under Article 248 (a) and (e) of the Labor Code, an employer is guilty of unfair labor practice if it interferes with, restrains or coerces its employees in the exercise of their right to self-organization or if it discriminates in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization.

Indeed, evidence of petitioners' unfair labor practice is shown by the established fact that, after respondents' transfer to Lubas, petitioners left them high and dry insofar as the operations of

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[32] *Philippine Charter Insurance Corporation v. Philippine National Construction Corporation*, G.R. No. 185066, October 2, 2009, 602 SCRA 723, 735-736.

[33] 508 Phil. 423, 436 (2005).

[34] *Gutierrez v. Valiente*, G.R. No. 166802, July 4, 2008, 557 SCRA 211, 226.

Lubas was concerned. The Court finds no error in the findings and conclusion of the CA that petitioners "withheld the necessary financial and logistic support such as spare parts, and repair and maintenance of the transferred buses until only two units remained in running condition." This left respondents virtually jobless.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals, dated December 20, 2004 and February 24, 2005, respectively, in CA-G.R. SP No. 80953, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Sereno,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 168646. January 12, 2011]

LUZON DEVELOPMENT BANK, *petitioner, vs.* **ANGELES CATHERINE ENRIQUEZ,** *respondent.*

[G.R. No. 168666. January 12, 2011]

DELTA DEVELOPMENT and MANAGEMENT SERVICES, INC., *petitioner, vs.* **ANGELES CATHERINE ENRIQUEZ and LUZON DEVELOPMENT BANK,** *respondents.*

[**] Designated as an additional member in lieu ofAssociate Justice Jose Catral Mendoza, per raffle dated January 10, 2011.

SYLLABUS

1. CIVIL LAW; CONTRACTS; PRESIDENTIAL DECREE NO. 957 (THE SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE); SECTION 18 THEREOF (NO MORTGAGE ON ANY UNIT OR LOT SHALL BE MADE BY THE OWNER OR DEVELOPER WITHOUT PRIOR WRITTEN APPROVAL BY THE HOUSING AND LAND USE REGULATORY BOARD (HLURB); A MORTGAGE CONTRACT EXECUTED IN BREACH OF THE SECTION 18 OF PD NO. 957 IS NULL AND VOID; RATIONALE. — As the HLURB Arbiter and Board of Commissioners both found, DELTA violated Section 18 of PD 957 in mortgaging the properties in Delta Homes I (including Lot 4) to the BANK without prior clearance from the HLURB. This point need not be belabored since the parties have chosen not to appeal the administrative fine imposed on DELTA for violation of Section 18. This violation of Section 18 renders the mortgage executed by DELTA void. We have held before that "a mortgage contract executed in breach of Section 18 of [PD 957] is null and void." Considering that "PD 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices," we have construed Section 18 thereof as "prohibitory and acts committed contrary to it are void." Because of the nullity of the mortgage, neither DELTA nor the BANK could assert any right arising therefrom. The BANK's loan of ₱8 million to DELTA has effectively become unsecured due to the nullity of the mortgage.

2. ID.; ID.; ID.; CONTRACT TO SELL; DEFINED AND CONSTRUED; PRESENT IN CASE AT BAR. — A contract to sell is one where the prospective seller *reserves* the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. "In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer." It does not, by itself, transfer ownership to the buyer. In the instant case,

there is nothing in the provisions of the contract entered into by DELTA and Enriquez that would exempt it from the general definition of a contract to sell. The terms thereof provide for the reservation of DELTA's ownership until full payment of the purchase price; such that DELTA even reserved the right to unilaterally void the contract should Enriquez fail to pay three successive monthly amortizations.

3. ID.; ID.; ID.; ID.; REGISTRATION THEREOF IS REQUIRED; PURPOSE, EXPLAINED. — Since the Contract to Sell did not transfer ownership of Lot 4 to Enriquez, said ownership remained with DELTA. DELTA could then validly transfer such ownership (as it did) to another person (the BANK). However, the transferee BANK is bound by the Contract to Sell and has to respect Enriquez' rights thereunder. This is because the Contract to Sell, involving a subdivision lot, is covered and protected by PD 957. One of the protections afforded by PD 957 to buyers such as Enriquez is the right to have her contract to sell registered with the Register of Deeds in order to make it binding on third parties. Thus, Section 17 of PD 957 provides: Section 17. *Registration.* All contracts to sell, deeds of sale, and other similar *instruments relative to the sale or conveyance of the subdivision lots and condominium units*, whether or not the purchase price is paid in full, shall be *registered by the seller in the Office of the Register of Deeds* of the province or city where the property is situated. x x x The purpose of registration is to protect the buyers from any future unscrupulous transactions involving the object of the sale or contract to sell, whether the purchase price therefor has been fully paid or not. Registration of the sale or contract to sell makes it binding on third parties; it serves as a notice to the whole world that the property is subject to the prior right of the buyer of the property (under a contract to sell or an absolute sale), and anyone who wishes to deal with the said property will be held bound by such prior right.

4. ID.; ID.; ID.; ID.; NON-REGISTRATION THEREOF WILL NOT RELIEVE THE BANK OF ITS OBLIGATION TO RESPECT THE CONTRACT TO SELL; SUSTAINED; APPLICATION IN CASE AT BAR. — While DELTA, in the instant case, failed to register Enriquez' Contract to Sell with the Register of Deeds, this failure will not prejudice Enriquez or relieve the BANK from its obligation to respect Enriquez' Contract to Sell. Despite

the non-registration, the BANK cannot be considered, under the circumstances, an innocent purchaser for value of Lot 4 when it accepted the latter (together with other assigned properties) as payment for DELTA's obligation. The BANK was well aware that the assigned properties, including Lot 4, were subdivision lots and therefore within the purview of PD 957. It knew that the loaned amounts were to be used for the development of DELTA's subdivision project, for this was indicated in the corresponding promissory notes. The technical description of Lot 4 indicates its location, which can easily be determined as included within the subdivision development. Under these circumstances, the BANK knew or should have known of the possibility and risk that the assigned properties were already covered by existing contracts to sell in favor of subdivision lot buyers. x x x Bound by the terms of the Contract to Sell, the BANK is obliged to respect the same and honor the payments already made by Enriquez for the purchase price of Lot 4. Thus, the BANK can only collect the balance of the purchase price from Enriquez and has the obligation, upon full payment, to deliver to Enriquez a clean title over the subject property.

5. ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; *DACION EN PAGO*; CONSTRUED; PRESENT IN CASE AT BAR. — Like in all contracts, the intention of the parties to the dation in payment is paramount and controlling. The contractual intention determines whether the property subject of the dation will be considered as the full equivalent of the debt and will therefore serve as full satisfaction for the debt. "The dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, *unless the parties by agreement, express or implied, or by their silence, consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.*" x x x A *dacion en pago* is governed by the law of sales. Contracts of sale come with warranties, either express (if explicitly stipulated by the parties) or implied (under Article 1547 *et seq*. of the Civil Code). In this case, however, the BANK does not even point to any breach of warranty by DELTA in connection with the Dation in Payment. To be sure, the Dation in Payment has *no express warranties* relating to existing contracts to sell over the assigned

properties. As to the *implied warranty* in case of eviction, it is waivable and cannot be invoked if the buyer knew of the risks or danger of eviction and assumed its consequences. As we have noted earlier, the BANK, in accepting the assigned properties as full payment of DELTA's "total obligation," has assumed the risk that some of the assigned properties are covered by contracts to sell which must be honored under PD 957.

APPEARANCES OF COUNSEL

Rizalina R. Licuanan for Luzon Development Bank.
De Leon & De Leon Law Office for Delta Development and Management Services, Inc.
Egmedio J. Castillon, Jr. for Angeles Catherine Enriquez.

D E C I S I O N

DEL CASTILLO, *J.*:

The protection afforded to a subdivision lot buyer under Presidential Decree (PD) No. 957 or The Subdivision and Condominium Buyer's Protective Decree will not be defeated by someone who is not an innocent purchaser for value. The lofty aspirations of PD 957 should be read in every provision of the statute, in every contract that undermines its objects, in every transaction which threatens its fruition. "For a statute derives its vitality from the purpose for which it is enacted and to construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law."[1]

These cases involve the separate appeals of Luzon Development Bank[2] (BANK) and Delta Development and Management Services, Inc.[3] (DELTA) from the November 30, 2004 Decision of the Court of Appeals (CA), as well as

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[1] *Pilipinas Kao, Inc. v. Court of Appeals,* 423 Phil. 834, 858 (2001).

[2] *Rollo* of G.R. No. 168646, pp. 3-27.

[3] *Rollo* of G.R. No. 168666, pp. 3-16.

its June 22, 2005 Resolution in CA-G.R. SP No. 81280. The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, the Decision dated June 17, 2003 and Resolution dated November 24, 2003 are AFFIRMED with [m]odification in so far as Delta Development and Management Services, Inc. is liable and directed to pay petitioner Luzon Development Bank the value of the subject lot subject matter of the Contract to Sell between Delta Development and Management Services, Inc. and the private respondent [Catherine Angeles Enriquez].
>
> SO ORDERED.[4]

Factual Antecedents

The BANK is a domestic financial corporation that extends loans to subdivision developers/owners.[5]

Petitioner DELTA is a domestic corporation engaged in the business of developing and selling real estate properties, particularly Delta Homes I in Cavite. DELTA is owned by Ricardo De Leon (De Leon),[6] who is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-637183[7] of the Registry of Deeds of the Province of Cavite, which corresponds to Lot 4 of Delta Homes I. Said Lot 4 is the subject matter of these cases.

On July 3, 1995, De Leon and his spouse obtained a ₱4 million loan from the BANK for the express purpose of developing Delta Homes I.[8] To secure the loan, the spouses De Leon executed in favor of the BANK a real estate mortgage (REM)

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[4] CA Decision, pp. 9-10; *id.* at 125-126.

[5] Petition in G.R. No. 168646, p. 3; *rollo* of G.R. No. 168646, p. 5.

[6] *Id.* at 3-4; *id.* at 5-6.

[7] *Id.* at 60.

[8] The loan contract itself was not attached to the parties' pleadings; only the promissory notes covering the said loan were attached. The promissory notes contained the condition that the loan proceeds shall be used only for the purpose of subdivision development, particularly the development of Delta Homes I, Aniban, Bacoor, Cavite (CA *rollo*, pp. 50-55).

on several of their properties,[9] including Lot 4. Subsequently, this REM was amended[10] by increasing the amount of the secured loan from ₱4 million to ₱8 million. Both the REM and the amendment were annotated on TCT No. T-637183.[11]

DELTA then obtained a Certificate of Registration[12] and a License to Sell[13] from the Housing and Land Use Regulatory Board (HLURB).

Sometime in 1997, DELTA executed a Contract to Sell with respondent Angeles Catherine Enriquez (Enriquez)[14] over the house and lot in Lot 4 for the purchase price of ₱614,950.00. Enriquez made a downpayment of ₱114,950.00. The Contract to Sell contained the following provisions:

That the vendee/s offered to buy and the Owner agreed to sell the above-described property subject to the following terms and conditions to wit:

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[9] *Id.* at 57-59.

[10] *Id.* at 70. The amendment to the real estate mortgage was dated November 8, 1995.

[11] *Rollo* of G.R. No. 168646, p. 60.

[12] CA *rollo*, p. 81. Pertinent portions of the registration certificate dated September 22, 1995 read as follows:

BE IT KNOWN:

That DELTA HOMES I x x x is hereby REGISTERED pursuant to Section 21 of BP 220 and its rules and regulations.

THAT any misrepresentation or material falsehood made in connection with the application for this registration or the forgery or falsification of any of the supporting documents thereof and other legal grounds provided by law shall be a valid cause for the revocation of this Registration.

x x x x x x x x x

AND THAT the project owner(s), RICARDO S. DE LEON and the developer(s) DELTA DEVELOPMENT AND MANAGEMENT SERVICES, INC. take the solidary responsibilities of complying with the law and the rules and regulations for the issuance for this CERTIFICATE and the License to Sell, if any.

[13] *Id.* at 82. The License to Sell was dated September 19, 1995.

[14] *Rollo* of G.R. No. 168646, pp. 61-64.

x x x x x x x x x

6. That the (sic) warning shall be served upon the Vendee/s for failure to pay x x x Provided, however, that for failure to pay three (3) successive monthly installment payments, the Owner may consider this Contract to Sell null and void *ab initio* without further proceedings or court action and all payments shall be forfeited in favor of the Owner as liquidated damages and expenses for documentations. x x x

That upon full payment of the total consideration if payable in cash, the Owner shall execute a final deed of sale in favor of the Vendee/s. However, if the term of the contract is for a certain period of time, only upon full payment of the total consideration that a final deed of sale shall be executed by the Owner in favor of the Vendee/s.[15]

When DELTA defaulted on its loan obligation, the BANK, instead of foreclosing the REM, agreed to a dation in payment or a *dacion en pago*. The Deed of Assignment in Payment of Debt was executed on September 30, 1998 and stated that DELTA "assigns, transfers, and conveys and sets over [to] the assignee that real estate with the building and improvements existing thereon x x x in payment of the total obligation owing to [the Bank] x x x."[16] Unknown to Enriquez, among the properties assigned to the BANK was the house and lot of Lot 4,[17] which is the subject of her Contract to Sell with DELTA. The records do not bear out and the parties are silent on whether the BANK was able to transfer title to its name. It appears, however, that the *dacion en pago* was not annotated on the TCT of Lot 4.[18]

On November 18, 1999, Enriquez filed a complaint against DELTA and the BANK before the Region IV Office of the HLURB[19]

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[15] *Id.* at 61-62.

[16] CA *rollo*, pp. 71-80.

[17] *Id.* at 76.

[18] *Rollo* of G.R. No. 168646, p. 60.

[19] Docketed as R-106-111899-117-5; *id.* at 65-70.

alleging that DELTA violated the terms of its License to Sell by: (a) selling the house and lots for a price exceeding that prescribed in Batas Pambansa (BP) Bilang 220;[20] and (b) failing to get a clearance for the mortgage from the HLURB. Enriquez sought a full refund of the ₱301,063.42 that she had already paid to DELTA, award of damages, and the imposition of administrative fines on DELTA and the BANK.

In his June 1, 2000 Decision,[21] HLURB Arbiter Atty. Raymundo A. Foronda upheld the validity of the purchase price, but ordered DELTA to accept payment of the balance of ₱108,013.36 from Enriquez, and (upon such payment) to deliver to Enriquez the title to the house and lot *free from liens and encumbrances*. The dispositive portion reads:

> WHEREFORE, premises considered, a decision is hereby rendered as follows:
>
> 1. Ordering [DELTA] to accept complainant[']s payments in the amount of ₱108,013.36 representing her balance based on the maximum selling price of ₱375,000.00;
>
> 2. Upon full payment, ordering Delta to deliver the title in favor of the complainant free from any liens and encumbrances;
>
> 3. Ordering [DELTA] to pay complainant the amount of ₱50,000.00 as and by way of moral damages;
>
> 4. Ordering [DELTA] to pay complainant the amount of ₱50,000.00 as and by way of exemplary damages;
>
> 5. Ordering [DELTA] to pay complainant ₱10,000.00 as costs of suit; and

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[20] An Act Authorizing the Ministry of Human Settlements to Establish and Promulgate Different Levels of Standards and Technical Requirements for Economic and Socialized Housing Projects in Urban and Rural Areas from those provided under Presidential Decrees Numbered Nine Hundred Fifty-Seven, Twelve Hundred Sixteen, Ten Hundred Ninety-Six and Eleven Hundred Eighty-Five.

[21] HLURB Decision, p. 1; CA *rollo*, p. 26. A copy of the HLURB Arbiter's decision itself was not included in the available records of the case.

6. Respondent DELTA to pay administrative fine of ₱10,000.00[22] for violation of Section 18 of P.D. 957[23] and another ₱10,000.00 for violation of Section 22 of P.D. 957.[24]

SO ORDERED.[25]

DELTA appealed the arbiter's Decision to the HLURB Board of Commissioners.[26] DELTA questioned the imposition of an administrative fine for its alleged violation of Section 18 of PD 957. It argued that clearance was not required for mortgages that were constituted on a subdivision project prior to registration. According to DELTA, it did not violate the terms of its license because it did not obtain a new mortgage over the subdivision project. It likewise assailed the award of moral and exemplary

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[22] Section 38. *Administrative Fines.* The [HLURB] may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the [HLURB] and enforceable through writs of execution in accordance with the provisions of the Rules of Court. (PD 957, as amended)

[23] Section 18. *Mortgages.* No mortgage on any unit or lot shall be made by the owner or developer without **prior written approval** of the [HLURB]. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto. [Emphasis supplied.]

[24] Section 22. *Alteration of Plans.* No owner or developer shall change or alter the roads, open spaces, infastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the [HLURB] and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

[25] CA *rollo*, p. 26.

[26] *Id.* The appeal was docketed as HLURB Case No. REM-A-000918-183.

damages to Enriquez on the ground that the latter has no cause of action.[27]

Ruling of the Board of Commissioners (Board)[28]

The Board held that all developers should obtain a clearance for mortgage from the HLURB, regardless of the date when the mortgage was secured, because the law does not distinguish. Having violated this legal requirement, DELTA was held liable to pay the administrative fine.

The Board upheld the validity of the contract to sell between DELTA and Enriquez despite the alleged violation of the price ceilings in BP 220. The Board held that DELTA and Enriquez were presumed to have had a meeting of the minds on the object of the sale and the purchase price. Absent any circumstance vitiating Enriquez' consent, she was presumed to have willingly and voluntarily agreed to the higher purchase price; hence, she was bound by the terms of the contract.

The Board, however, deleted the arbiter's award of damages to Enriquez on the ground that the latter was not free from liability herself, given that she was remiss in her monthly amortizations to DELTA.

The dispositive portion of the Board's Decision reads:

> Wherefore, in view of the foregoing, the Office below's decision dated June 01, 2000 is hereby modified to read as follows:
>
> 1. Ordering [Enriquez] to pay [DELTA] the amount due from the time she suspended payment up to filing of the complaint with 12% interest thereon per annum; thereafter the provisions of the Contract to Sell shall apply until full payment is made;
>
> 2. Ordering [DELTA] to pay an [a]dministrative [f]ine of ₱10,000.00 for violation of its license to sell and for violation of Section 18 of P.D. 957.

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[27] *Id.* at 27.

[28] *Id.* at 26-28. Decided by Deinrado Simon D. Dimalibot (HUDCC Deputy Secretary General), Francisco L. Dagñalan (Commissioner), and Elias F. Fernandez, Jr. (DILG representative).

So ordered. Quezon City.[29]

Enriquez moved for a reconsideration of the Board's Decision[30] upholding the contractual purchase price. She maintained that the price for Lot 4 should not exceed the price ceiling provided in BP 220.[31]

Finding Enriquez's arguments as having already been passed upon in the decision, the Board denied reconsideration. The board, however, modified its decision, with respect to the period for the imposition of interest payments. The Board's resolution[32] reads:

WHEREFORE, premises considered, to [sic] directive No. 1 of the dispositive portion of the decision of our decision [sic] is MODIFIED as follows:

1. Ordering complainant to pay respondent DELTA the amount due from the time she suspended (sic) at 12% interest per annum, reckoned from finality of this decision[,] thereafter the provisions of the Contract to Sell shall apply until full payment is made.

In all other respects, the decision is AFFIRMED.

SO ORDERED.[33]

Both Enriquez and the BANK appealed to the Office of the President (OP).[34] The BANK disagreed with the ruling upholding Enriquez's Contract to Sell; and insisted on its ownership over Lot 4. It argued that it has become impossible for DELTA to comply with the terms of the contract to sell and to deliver Lot 4's title to Enriquez given that DELTA had already relinquished

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[29] *Id.* at 28.

[30] *Id.* at 46.

[31] *Id.* at 47.

[32] *Id.* at 46-48.

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

[34] *Id.* at 23. The case was docketed as OP Case No. 02-E-234. The decision was signed by Undersecretary Enrique D. Perez, by authority of the President.

all its rights to Lot 4 in favor of the BANK[35] via the dation in payment.

Meanwhile, Enriquez insisted that the Board erred in not applying the ceiling price as prescribed in BP 220.[36]

Ruling of the Office of the President[37]

The OP adopted by reference the findings of fact and conclusions of law of the HLURB Decisions, which it affirmed *in toto.*

Enriquez filed a motion for reconsideration, insisting that she was entitled to a reduction of the purchase price, in order to conform to the provisions of BP 220.[38] The motion was denied for lack of merit.[39]

Only the BANK appealed the OP's Decision to the CA.[40] The BANK reiterated that DELTA can no longer deliver Lot 4 to Enriquez because DELTA had sold the same to the BANK by virtue of the *dacion en pago*.[41] As an alternative argument, in case the appellate court should find that DELTA retained ownership over Lot 4 and could convey the same to Enriquez, the BANK prayed that its REM over Lot 4 be respected such

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[35] CA Decision, p. 5; *id.* at 121.

[36] *Id.*; *id.*

[37] CA *rollo*, p. 23.

[38] CA Decision, p. 6; CA *rollo*, p. 122.

[39] CA *rollo*, p. 25. The Resolution was signed by Senior Deputy Executive Secretary Waldo Q. Flores, by authority of the President.

[40] *Id.* at 2-22. The petition was initially dismissed in the CA's January 29, 2004 Resolution for failure of the petition to state the material dates and to attach a proof of the signatory's authority to sign the verification against forum-shopping (*Id.* at 85-86). Upon the Bank's motion for reconsideration (*Id.* at 87-108), the petition was reinstated and given due course in the CA's May 25, 2004 Resolution (*Id.* at 110-111).

[41] Petition in CA-G.R. SP No. 81280, pp. 11-14; *id.* at 12-15.

that DELTA would have to redeem it first before it could convey the same to Enriquez in accordance with Section 25[42] of PD 957.[43]

The BANK likewise sought an award of exemplary damages and attorney's fees in its favor because of the baseless suit filed by Enriquez against it.[44]

Ruling of the Court of Appeals[45]

The CA ruled against the validity of the *dacion en pago* executed in favor of the BANK on the ground that DELTA had earlier *relinquished* its ownership over Lot 4 in favor of Enriquez via the Contract to Sell.[46]

Since the *dacion en pago* is invalid with respect to Lot 4, the appellate court held that DELTA remained indebted to the BANK to the extent of Lot 4's value. Thus, the CA ordered DELTA to pay the corresponding value of Lot 4 to the BANK.[47]

The CA also rejected the BANK's argument that, before DELTA can deliver the title to Lot 4 to Enriquez, DELTA should first redeem the mortgaged property from the BANK.

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[42] Section 25. *Issuance of Title.* The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

[43] Petition in CA-G.R. SP No. 81280, pp. 14-16; CA *rollo*, pp. 15-17.

[44] *Id.* at 16-18; *id.* at 17-19.

[45] CA *rollo*, pp. 117-126; penned by Associate Justice Bienvenido L Reyes and concurred in by Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente.

[46] CA Decision, pp. 7-8; CA *rollo*, pp. 123-124.

[47] *Id.* at 8; *id.* at 124.

The CA held that the BANK does not have a first lien on Lot 4 because its real estate mortgage over the same had already been extinguished by the *dacion en pago.* Without a mortgage, the BANK cannot require DELTA to redeem Lot 4 prior to delivery of title to Enriquez.[48]

The CA denied the BANK's prayer for the award of exemplary damages and attorney's fees for lack of factual and legal basis.[49]

Both DELTA[50] and the BANK[51] moved for a reconsideration of the CA's Decision, but both were denied.[52]

Hence, these separate petitions of the BANK and DELTA.

Petitioner Delta's arguments[53]

DELTA assails the CA Decision for holding that DELTA conveyed its ownership over Lot 4 to Enriquez via the Contract to Sell. DELTA points out that the Contract to Sell contained a condition that ownership shall only be transferred to Enriquez upon the latter's full payment of the purchase price to DELTA. Since Enriquez has yet to comply with this suspensive condition, ownership is retained by DELTA.[54] As the owner of Lot 4, DELTA had every right to enter into a dation in payment to extinguish its loan obligation to the BANK. The BANK's acceptance of the assignment, *without any reservation or exception*, resulted in the extinguishment of the entire loan obligation; hence, DELTA has no more obligation to pay the value of Enriquez' house and lot to the BANK.[55]

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[48] *Id.* at 8-9; *id.* at 124-125.

[49] *Id.* at 9; *id.* at 125.

[50] CA *rollo*, pp. 127-134.

[51] *Id.* at 135-144.

[52] *Id.* at 156-158.

[53] Delta's Memorandum in G.R. No. 168646, pp. 113-122; Delta's Memorandum in G.R. No. 168666, pp. 98-107.

[54] *Id.* at 116-118; *id.* at 101-103.

[55] *Id.* at 118-199; *id.* at 103-104.

DELTA prays for the reinstatement of the OP Decision.

The BANK's arguments[56]

Echoing the argument of DELTA, the BANK argues that the Contract to Sell did not involve a conveyance of DELTA's ownership over Lot 4 to Enriquez. The Contract to Sell expressly provides that DELTA retained ownership over Lot 4 until Enriquez paid the full purchase price. Since Enriquez has not yet made such full payment, DELTA retained ownership over Lot 4 and could validly convey the same to the BANK *via dacion en pago*.[57]

Should the *dacion en pago* over Lot 4 be invalidated and the property ordered to be delivered to Enriquez, the BANK contends that DELTA should pay the corresponding value of Lot 4 to the BANK. It maintains that the loan obligation extinguished by the *dacion en pago* only extends to the value of the properties delivered; if Lot 4 cannot be delivered to the BANK, then the loan obligation of DELTA remains to the extent of Lot 4's value.[58]

The BANK prays to be declared the rightful owner of the subject house and lot and asks for an award of exemplary damages and attorney's fees.

Enriquez' waiver

Enriquez did not file comments[59] or memoranda in both cases; instead, she manifested that she will just await the outcome of the case.[60]

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[56] Memorandum in G.R. No. 168646, pp. 165-195; Memorandum in G.R. No. 168666, pp. 146-176.

[57] Bank's Memorandum in G.R. No. 168646, pp. 178-186; Bank's Memorandum in G.R. No. 168666, pp. 159-167.

[58] *Id.* at 190-192; *id.* at 171-173.

[59] Compliance and Comment in G.R. No. 168646, pp. 77-78; Compliance and Comment in G.R. No. 168666, pp. 65-66.

[60] Manifestation in G.R. No. 168646, p. 193; Manifestation in G.R. No. 168666, p. 177.

Issues

The following are the issues raised by the two petitions:

1. Whether the Contract to Sell conveys ownership;

2. Whether the *dacion en pago* extinguished the loan obligation, such that DELTA has no more obligations to the BANK;

3. Whether the BANK is entitled to damages and attorney's fees for being compelled to litigate; and

4. What is the effect of Enriquez' failure to appeal the OP's Decision regarding her obligation to pay the balance on the purchase price.

Our Ruling

Mortgage contract void

As the HLURB Arbiter and Board of Commissioners both found, DELTA violated Section 18 of PD 957 in mortgaging the properties in Delta Homes I (including Lot 4) to the BANK without prior clearance from the HLURB. This point need not be belabored since the parties have chosen not to appeal the administrative fine imposed on DELTA for violation of Section 18.

This violation of Section 18 renders the mortgage executed by DELTA void. We have held before that "a mortgage contract executed in breach of Section 18 of [PD 957] is null and void."[61] Considering that "PD 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices," we have construed Section 18 thereof as "prohibitory and acts committed contrary to it are void."[62]

Because of the nullity of the mortgage, neither DELTA nor the BANK could assert any right arising therefrom. The BANK's loan of ₱8 million to DELTA has effectively become unsecured

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[61] *Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc.*, G.R. Nos. 175181-175182, 175354 &175387-175388, September 14, 2007, 533 SCRA 516, 526.

[62] *Id.*

due to the nullity of the mortgage. The said loan, however, was eventually settled by the two contracting parties via a dation in payment. In the appealed Decision, the CA invalidated this dation in payment on the ground that DELTA, by previously entering into a Contract to Sell, had already conveyed its ownership over Lot 4 to Enriquez and could no longer convey the same to the BANK. This is error, prescinding from a wrong understanding of the nature of a contract to sell.

Contract to sell does not transfer ownership

Both parties are correct in arguing that the Contract to Sell executed by DELTA in favor of Enriquez did not transfer ownership over Lot 4 to Enriquez. A contract to sell is one where the prospective seller *reserves* the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. "In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer."[63] It does not, by itself, transfer ownership to the buyer.[64]

In the instant case, there is nothing in the provisions of the contract entered into by DELTA and Enriquez that would exempt it from the general definition of a contract to sell. The terms thereof provide for the reservation of DELTA's ownership until full payment of the purchase price; such that DELTA even reserved the right to unilaterally void the contract should Enriquez fail to pay three successive monthly amortizations.

Since the Contract to Sell did not transfer ownership of Lot 4 to Enriquez, said ownership remained with DELTA. DELTA

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[63] *Coronel v. Court of Appeals,* 331 Phil. 294, 309 (1996); *Spouses Ramos v. Spouses Heruela,* 509 Phil. 658, 664-667 (2005).

[64] See *China Banking Corporation v. Lozada,* G.R. No. 164919, July 4, 2008, 557 SCRA 177, 204.

could then validly transfer such ownership (as it did) to another person (the BANK). However, the transferee BANK is bound by the Contract to Sell and has to respect Enriquez' rights thereunder. This is because the Contract to Sell, involving a subdivision lot, is covered and protected by PD 957. One of the protections afforded by PD 957 to buyers such as Enriquez is the right to have her contract to sell registered with the Register of Deeds in order to make it binding on third parties. Thus, Section 17 of PD 957 provides:

> Section 17. *Registration.* All contracts to sell, deeds of sale, and other similar *instruments relative to the sale or conveyance of the subdivision lots and condominium units*, whether or not the purchase price is paid in full, shall be *registered by the seller in the Office of the Register of Deeds* of the province or city where the property is situated.
>
> x x x (Emphasis supplied.)

The purpose of registration is to protect the buyers from any future unscrupulous transactions involving the object of the sale or contract to sell, whether the purchase price therefor has been fully paid or not. Registration of the sale or contract to sell makes it binding on third parties; it serves as a notice to the whole world that the property is subject to the prior right of the buyer of the property (under a contract to sell or an absolute sale), and anyone who wishes to deal with the said property will be held bound by such prior right.

While DELTA, in the instant case, failed to register Enriquez' Contract to Sell with the Register of Deeds, this failure will not prejudice Enriquez or relieve the BANK from its obligation to respect Enriquez' Contract to Sell. Despite the non-registration, the BANK cannot be considered, under the circumstances, an innocent purchaser for value of Lot 4 when it accepted the latter (together with other assigned properties) as payment for DELTA's obligation. The BANK was well aware that the assigned properties, including Lot 4, were subdivision lots and therefore within the purview of PD 957. It knew that the loaned amounts were to be used for the development of DELTA's subdivision project, for this was indicated in the corresponding

promissory notes. The technical description of Lot 4 indicates its location, which can easily be determined as included within the subdivision development. Under these circumstances, the BANK knew or should have known of the possibility and risk that the assigned properties were already covered by existing contracts to sell in favor of subdivision lot buyers. As observed by the Court in another case involving a bank regarding a subdivision lot that was already subject of a contract to sell with a third party:

> [The Bank] should have considered that it was dealing with a property subject of a real estate development project. A reasonable person, particularly a financial institution x x x, should have been aware that, to finance the project, funds other than those obtained from the loan could have been used to serve the purpose, albeit partially. Hence, there was a need to verify whether any part of the property was already intended to be the subject of any other contract involving buyers or potential buyers. In granting the loan, [the Bank] should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers x x x. Wanting in care and prudence, the [Bank] cannot be deemed to be an innocent mortgagee. x x x[65]

Further, as an entity engaged in the banking business, the BANK is required to observe more care and prudence when dealing with registered properties. The Court cannot accept that the BANK was unaware of the Contract to Sell existing in favor of Enriquez. In *Keppel Bank Philippines, Inc. v. Adao*,[66] we held that a bank dealing with a property that is already subject of a contract to sell and is protected by the provisions of PD 957, is bound by the contract to sell (even if the contract to sell in that case was not registered). In the Court's words:

> It is true that persons dealing with registered property can rely solely on the certificate of title and need not go beyond it. However, x x x, this rule does not apply to banks. Banks are required to exercise more care and prudence than private individuals in dealing even with registered properties for their business is affected with public interest.

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[65] *Development Bank of the Philippines v. Capulong,* G.R. No. 181790, January 30, 2009, 577 SCRA 582, 587-588.

[66] 510 Phil. 158 (2005).

As master of its business, petitioner should have sent its representatives to check the assigned properties before signing the compromise agreement and it would have discovered that respondent was already occupying one of the condominium units and that a contract to sell existed between [the vendee] and [the developer]. In our view, petitioner was not a purchaser in good faith and we are constrained to rule that petitioner is bound by the contract to sell.[67]

Bound by the terms of the Contract to Sell, the BANK is obliged to respect the same and honor the payments already made by Enriquez for the purchase price of Lot 4. Thus, the BANK can only collect the balance of the purchase price from Enriquez and has the obligation, upon full payment, to deliver to Enriquez a clean title over the subject property.[68]

Dacion en pago extinguished the loan obligation

The BANK then posits that, if title to Lot 4 is ordered delivered to Enriquez, DELTA has the obligation to pay the BANK the corresponding value of Lot 4. According to the BANK, the dation in payment extinguished the loan only to the extent of the value of the thing delivered. Since Lot 4 would have no value to the BANK if it will be delivered to Enriquez, DELTA would remain indebted to that extent.

We are not persuaded. Like in all contracts, the intention of the parties to the dation in payment is paramount and controlling. The contractual intention determines whether the property subject of the dation will be considered as the full equivalent of the debt and will therefore serve as full satisfaction for the debt. "The dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, *unless the parties by agreement, express or implied, or by their silence, consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.*"[69]

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[67] *Id.* at 165-166.

[68] See *Home Bankers Savings & Trust Co. v. Court of Appeals*, 496 Phil. 637, 655 (2005).

[69] Tolentino, *Commentaries on the Civil Code* (1987), Vol. IV, p. 294, citing Manresa.

In the case at bar, the *Dacion en Pago* executed by DELTA and the BANK indicates a clear intention by the parties that the assigned properties would serve as full payment for DELTA's entire obligation:

KNOW ALL MEN BY THESE PRESENTS:

This instrument, made and executed by and between:

x x x x x x x x x

THAT, the ASSIGNOR acknowledges to be justly indebted to the ASSIGNEE in the sum of ELEVEN MILLION EIGHT HUNDRED SEVENTY-EIGHT THOUSAND EIGHT HUNDRED PESOS (₱11,878,800.00), Philippine Currency as of August 25, 1998. Therefore, by virtue of this instrument, ASSIGNOR hereby ASSIGNS, TRANSFERS, and CONVEYS AND SETS OVER [TO] the ASSIGNEE that real estate with the building and improvements existing thereon, more particularly described as follows:

x x x x x x x x x

of which the ASSIGNOR is the registered owner being evidenced by TCT No. x x x issued by the Registry of Deeds of Trece Martires City.

THAT, the ASSIGNEE does hereby accept this ASSIGNMENT IN PAYMENT OF THE TOTAL OBLIGATION owing to him by the ASSIGNOR as above-stated;[70]

Without any reservation or condition, the *Dacion* stated that the assigned properties served as full payment of DELTA's "total obligation" to the BANK. The BANK accepted said properties as equivalent of the loaned amount and as full satisfaction of DELTA's debt. The BANK cannot complain if, as it turned out, some of those assigned properties (such as Lot 4) are covered by existing contracts to sell. As noted earlier, the BANK knew that the assigned properties were subdivision lots and covered by PD 957. It was aware of the nature of DELTA's business, of the location of the assigned properties within DELTA's subdivision development, and the possibility that some of the properties may be subjects of existing contracts

[70] CA *rollo*, pp. 71-79.

to sell which enjoy protection under PD 957. Banks dealing with subdivision properties are expected to conduct a thorough due diligence review to discover the status of the properties they deal with. It may thus be said that the BANK, in accepting the assigned properties as full payment of DELTA's "total obligation," has assumed the risk that some of the assigned properties (such as Lot 4) are covered by contracts to sell which it is bound to honor under PD 957.

A *dacion en pago* is governed by the law of sales.[71] Contracts of sale come with warranties, either express (if explicitly stipulated by the parties) or implied (under Article 1547 *et seq*. of the Civil Code). In this case, however, the BANK does not even point to any breach of warranty by DELTA in connection with the Dation in Payment. To be sure, the Dation in Payment has *no express warranties* relating to existing contracts to sell over the assigned properties. As to the *implied warranty* in case of eviction, it is waivable[72] and cannot be invoked if the buyer knew of the risks or danger of eviction and assumed its consequences.[73] As we have noted earlier, the BANK, in accepting the assigned properties as full payment of DELTA's "total obligation," has assumed the risk that some of the assigned properties are covered by contracts to sell which must be honored under PD 957.

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[71] Article 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

[72] Article 1548. Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall answer for the eviction even though nothing has been said in the contract on the subject.

The contracting parties, however, may increase, diminish, or suppress this legal obligation of the vendor. (Civil Code)

[73] *Andaya v. Manansala*, 107 Phil. 1151, 1154-1155 (1960); *J.M. Tuason & Co., Inc. v. Court of Appeals*, 183 Phil. 105, 113-114 (1979).

Award of damages

There is nothing on record that warrants the award of exemplary damages[74] as well as attorney's fees[75] in favor of the BANK.

Balance to be paid by Enriquez

As already mentioned, the Contract to Sell in favor of Enriquez must be respected by the BANK. Upon Enriquez' full payment of the balance of the purchase price, the BANK is bound to deliver the title over Lot 4 to her. As to the amount of the balance which Enriquez must pay, we adopt the OP's ruling thereon

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[74] Article 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Article 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated. (Civil Code)

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

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third person or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Civil Code)

which sustained the amount stipulated in the Contract to Sell. We will not review Enriquez' initial claims about the supposed violation of the price ceiling in BP 220, since this issue was no longer pursued by the parties, not even by Enriquez, who chose not to file the required pleadings[76] before the Court. The parties were informed in the Court's September 5, 2007 Resolution that issues that are not included in their memoranda shall be deemed waived or abandoned. Since Enriquez did not file a memorandum in either petition, she is deemed to have waived the said issue.

WHEREFORE, premises considered, the appealed November 30, 2004 Decision of the Court of Appeals, as well as its June 22, 2005 Resolution in CA-G.R. SP No. 81280 are hereby *AFFIRMED with the MODIFICATIONS* that Delta Development and Management Services, Inc. is *NOT LIABLE TO PAY* Luzon Development Bank the value of the subject lot; and respondent Angeles Catherine Enriquez is ordered to *PAY* the balance of the purchase price and the interests accruing thereon, as decreed by the Court of Appeals, to the Luzon Development Bank, instead of Delta Development and Management Services, Inc., within thirty (30) days from finality of this Decision. The Luzon Development Bank is ordered to *DELIVER a CLEAN TITLE* to Angeles Catherine Enriquez upon the latter's full payment of the balance of the purchase price and the accrued interests.

SO ORDERED.

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

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[76] Enriquez made a reservation in her comment to the two petitions, in this wise:

3. It may be recalled that respondent Enriquez was not able to succeed in her position to pay a lesser amount on the consideration of [sic] buying a house and lot. She did not pursue anymore her case but the petitioners herein raised matters which would directly affect them. By way of comment therefore to the said petitions, respondent Enriquez asserts that she will take appropriate remedies after this Honorable Court resolves the issues raised by the petitioners Luzon Development Bank and Delta Development and Management Services, Inc. against each other. **But she insists that she is liable to pay to either of the petitioners based on lesser amount she previously claimed.** (*Rollo* of G.R. No. 168646, p. 78; *rollo* of G.R. No. 168666, p. 66)

SECOND DIVISION

[G.R. No. 172508. January 12, 2011]

HEIRS OF SANTIAGO C. DIVINAGRACIA, *petitioner, vs.* **HON. J. CEDRICK O. RUIZ, Presiding Judge, Branch 39, Regional Trial Court, Iloilo City; GERRY D. SUMACULUB, as Clerk of Court of the Regional Trial Court; BOMBO RADYO HOLDINGS, INC., and ROGELIO M. FLORETE, SR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; PROCEDURAL LAWS DO NOT FALL UNDER THE GENERAL RULE AGAINST RETROACTIVE OPERATION OF STATUTES. —** Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court's award of exemplary damages and attorney's fees in favor of private respondents is not immediately executory.

2. **CIVIL LAW; DAMAGES; THE EXECUTION OF ANY AWARD FOR MORAL AND EXEMPLARY DAMAGES IS DEPENDENT ON THE OUTCOME OF THE MAIN CASE; SUSTAINED. —** The determination of the propriety of the grant of damages must be determined in the main case and not in herein petition which assails the propriety of the grant of the writ of execution by the RTC as held by this Court in *Radio Communications of the Philippines, Inc. v. Lantin,* to wit: **x x x The execution of any award for moral and exemplary damages is dependent on the outcome of the main case.** Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral

and exemplary damages, as well as the exact amounts, remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignment of errors on appeal.** It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar, Regalado Aujero & Divinagracia Law Offices, and *Monte Clar Sibi & Trinidad Law Offices* for petitioners.

Gregorio Rubias for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the October 5, 2005 Decision[2] and April 21, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86435. Said CA Decision dismissed the petition for *certiorari* seeking the nullification of the September 8, 2004 Resolution and September 15, 2004 Writ of Execution, respectively issued by the Presiding Judge and Clerk of Court of Branch 39 of the Regional Trial Court (RTC) of Iloilo City in Corporate Case No. 00-26557.

The facts of the case are as follows:

On February 25, 1999, Santiago Divinagracia (Divinagracia), in his capacity as a stockholder, filed a derivative suit on behalf

[1] *Rollo,* pp. 3-45.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas, concurring; *id.* at 46-53.

[3] *Id.* at 55-56.

of People's Broadcasting Service Incorporated (PBS) assailing a management contract entered into by PBS and Bombo Radyo Holdings Incorporated (Bombo Radyo) and Rogelio Florete, Sr. (Florete). Said suit was docketed as SEC Case No. IEO-99-00084. In response to the derivative suit, Bombo Radyo and Florete filed a counterclaim against Divinagracia claiming that the suit filed by him was unfounded and intended only to harass and molest them.

Pursuant to Section 5.2[4] of Republic Act No. 8799, the derivative suit was transferred to Branch 39 of the RTC of Iloilo City sitting as a special commercial court. The derivative suit was then re-docketed as Corporate Case No. 00-26557 and governed by the Interim Rules of Procedure Governing Intra-Corporate Controversies. During the pendency of the case, however, Divinagracia died and was, thus, substituted by his heirs.

On July 28, 2004, the RTC rendered a Decision[5] dismissing the derivative suit filed by Divinagracia and granting the counterclaims of Bombo Radyo and Florete, to wit:

> WHEREFORE, in view of the foregoing disquisitions, the instant petition ought to be, as it is hereby DISMISSED for lack of merit.
>
> The Counterclaim of respondents Bombo Radyo Holdings, Inc. (BRHI) and Rogelio Florete Sr. is given due course and granted and the Heirs of Santiago Divinagracia, namely:

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[4] The Securities Regulation Code.

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/ rehabilitation cases filed as of 30 June 2000 until finally disposed.

[5] Penned by Presiding Judge J. Cedrick O. Ruiz; *rollo*, pp. 57-76.

NAME	RESIDENCE
1. Ma. Elena R. Divinagracia	23 Delgado St., Iloilo City
2. Elsa R. Divinagracia	1st Street, Paradise Village Banilad, Cebu City
3. Ruth Marie R. Divinagracia	Unit 4-C, Torre de Salcedo St., Legaspi Village, Makati City
4. Liane Grace R. Divinagracia	23 Delgado St., Iloilo City
5. Ricardo R. Divinagracia	16 Fajardo St., Jaro, Iloilo City
6. Ma. Fe Emily R. Divinagracia	23 Delgado St., Iloilo City

are hereby ordered, jointly and severally, to pay each of the respondents Bombo Radyo Holdings, Inc. and Rogelio Florete Sr. the following, to wit:

1. The sum of Five Hundred Thousand Pesos (₱500,000.00) as moral damages;
2. The sum of Two Hundred Thousand Pesos as and for exemplary damages;
3. The sum of One Hundred Thousand Pesos as and for attorney's fees; and
4. The costs of suit.

SO ORDERED.[6]

On August 11, 2004, the Heirs of Divinagracia filed a Notice of Appeal[7] with the RTC.

On August 12, 2004, Bombo Radyo and Florete filed with the RTC a Motion for Immediate Execution.[8] The same was granted by the RTC in a Resolution[9] dated September 8, 2004. Accordingly, on September 15, 2005, the RTC Clerk of Court issued a Writ of Execution.[10]

Aggrieved by the issuance of the Writ of Execution, the Heirs of Divinagracia filed a petition for *certiorari*[11] with the CA.

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[6] *Rollo*, pp. 75-76.

[7] *Id.* at 77.

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

[9] *Id.* at 81-87.

[10] *Id.* at 88-90.

[11] CA *rollo*, pp. 2-13.

They argued that the issuance of the writ of execution by the RTC was improper, considering that they had already appealed the decision to the CA. Also, the Heirs of Divinagracia contended that the RTC erred in granting the writ of execution for a counterclaim consisting of moral damages, exemplary damages and attorneys fees despite the fact that said damages under the counterclaim consisted of an ordinary action and was not an intra-corporate controversy.[12]

On October 5, 2005, the CA issued a Decision dismissing the petition for *certiorari*, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed resolution issued by the respondent judge on September 8, 2004 in Corporate Case No. 00-26557.
>
> SO ORDERED.[13]

The CA ruled that Section 4 of Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies was very explicit in providing that "all decisions rendered in intra-corporate controversies shall be immediately executory." Thus, the CA held that the RTC did not err when it granted Bombo Radyo and Florete's motion for immediate execution on the grant of moral damages, exemplary damages and attorney's fees. Furthermore, the CA also ruled that since the Heirs of Divinagracia had already filed a notice of appeal, such act barred them from availing of the remedy of *certiorari*.

The Heirs of Divinagracia filed a Motion for Reconsideration,[14] which was, however, denied by the CA in a Resolution[15] dated April 21, 2006.

Hence, herein petition, with the Heirs of Divinagracia raising the following issues for this Court's consideration, to wit:

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[12] *Id.* at 7.

[13] *Rollo*, p. 52.

[14] *Id.* at 208-229.

[15] *Id.* at 55-56.

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE TRIAL COURT'S ORDER ALLOWING IMMEDIATE EXECUTION SINCE SAID ORDER CLASHES WITH THE SUPPLETORY APPLICATION OF THE RULES OF COURT PROVIDED FOR IN SECTION 2, RULE 1 OF THE INTERIM RULES, AND DISREGARDS RELEVANT JURISPRUDENCE REGARDING THE EXECUTION OF COUNTERCLAIMS UNDER THE RULES OF COURT.

II.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO RULE THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED PERTINENT AND WELL-ENTRENCHED JURISPRUDENCE STATING THAT A SEPARATE PETITION FOR *CERTIORARI* MAY PROSPER WHERE THE APPEAL DOES NOT APPEAR TO BE A PLAIN, SPEEDY AND ADEQUATE REMEDY UNDER LAW.

III.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT THE PRESENT PETITION FOR *CERTIORARI* WAS PROPER AND JUSTIFIED BECAUSE IT WAS MEANT TO PREVENT: (A) IRREPARABLE DAMAGE AND INJURY TO PETITIONER HEIRS FROM THE TRIAL COURT JUDGE'S CAPRICIOUS, ARBITRARY, AND WHIMSICAL EXERCISE OF HIS JUDGMENT; (B) THE DANGER OF CLEAR FAILURE OF JUSTICE; AND (C) BECAUSE THEIR APPEAL IS INADEQUATE TO RELIEVE THEM FROM THE INJURIOUS EFFECTS OF THE TRIAL COURT'S JUDGMENT.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT IT WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR THE TRIAL COURT TO INSIST UPON THE EXECUTION OF A MANIFESTLY UNJUST AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

V.

THE HONORABLE COURT OF APPEALS FAILED TO

APPRECIATE THAT THE TRIAL COURT, IN ALLOWING THE IMMEDIATE EXECUTION OF THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AGAINST THE PROPERTIES OF THE PETITIONER HEIRS, BLATANTLY DISREGARDED THE PROVISIONS OF THE CIVIL CODE ON SUCCESSION AND RULE 88 OF THE RULES OF COURT ON PAYMENT OF DEBTS OF THE ESTATE.[16]

The petition is meritorious.

At the crux of the controversy is the determination of whether or not moral damages, exemplary damages, and attorney's fees, awarded as a result of a counterclaim in an intra-corporate case, are immediately executory despite the pendency of the appeal in the main case.

The issue is not novel as the same has been resolved in another petition filed before this Court by the Heirs of Divinagracia in G.R No. 172023.

G.R. No. 172023

The controversy therein originated from Corporate Case No. 02-27050, which involved a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares filed by Divinagracia who claimed he was a stockholder of CBS Development Corporation, Inc. (CBSDC). Said action was also filed before the same RTC of the present petition.

In G.R. No. 172023, Divinagracia, as a stockholder of CBSDC, opposed a proposal to authorize Florete, in his capacity as President of CBSDC, to mortgage all, or substantially all, of CBSDC's real properties to secure a loan obtained by Newsounds Broadcasting Network, Inc., Consolidated Broadcasting System, and People's Broadcasting Services, Inc. However, majority of the stockholders approved the grant of authority to Florete and the Board. As a result, Divinagracia, as a dissenting stockholder wrote a letter exercising his appraisal right under Section 81 of the Corporation Code. CBSDC's Board of Directors approved Divinagracia's exercise of his appraisal right.

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

Thereafter, Divinagracia surrendered his stock certificates. The Board, however, deferred action on Divinagracia's request, an act to which Divinagracia protested to. Later, the corporate secretary informed Divinagracia that his shares were declared delinquent and that they were to be sold in public auction.

Consequently, on February 6, 2002, Divinagracia filed before the RTC of Iloilo a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares.

On February 12, 2002, the public auction pushed through and the shares of Divinagracia were sold to Diamel Incorporated (Diamel) as the highest bidder.

CBSDC and Diamel filed their answer to Divinagracia's petition at the same time interposing their compulsory counterclaim. Divinagracia, however, died and was substituted by his heirs.

The RTC ruled in favor of CBSDC and Diamel, and granted their compulsory counterclaim. Consequently, the Heirs of Divinagracia were ordered by the RTC to pay exemplary damages and attorney's fees to CBSDC and Diamel. The Heirs of Divinagracia filed a Notice of Appeal.

Thereafter, CBSDC and Diamel filed a Motion for Immediate Execution which was granted by the RTC. This prompted the Heirs of Divinagracia to file a petition for *certiorari* before the CA, which was docketed as CA-G.R. CEB SP No. 00040. In said petition, the Heirs of Divinagracia questioned the immediate execution of the grant of exemplary damages and attorney's fees, despite their having already filed a Notice of Appeal.

In a Decision dated October 6, 2005, the CA dismissed the petition filed by the Heirs of Divinagracia holding that Section 4, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies provides that "all decisions rendered in intra-corporate controversies shall immediately be executory." The Heirs of Divinagracia then appealed to this Court where the case was docketed as G.R. No. 172023.

On July 7, 2010, this Court's Second Division rendered a Decision[17] ruling in favor of the Heirs of Divinagracia, the pertinent portions of which are hereby reproduced to wit:

> From the filing of the intra-corporate dispute on 6 February 2002 until the promulgation of the challenged Court of Appeals' decision and resolution on 6 December 2005 and 22 February 2006, respectively, the governing rule, specifically Section 4, Rule 1 of the Interim Rules, provided that:
>
> > All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.
>
> On 19 September 2006, while the present case remained pending before this Court, the Court *en banc* issued a Resolution in A.M. No. 01-2-04-SC titled **"Re: Amendment of Section 4, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies by Clarifying that Decisions Issued Pursuant to Said Rule are Immediately Executory Except the Awards for Moral Damages, Exemplary Damages and Attorney's Fees, if any."** The Court resolved to amend specifically Section 4, Rule 1 of the Interim Rules, to wit:
>
> > Acting on the Resolution dated September 5, 2006 of the Committee on the Revision of Rules of Court, the Court Resolved to AMEND Section 4, Rule 1 of The Interim Rules of Procedure Governing Intra-Corporate Controversies as follows:
> >
> > x x x
> >
> > SEC. 4. Executory nature of decisions and orders.— All decisions and orders issued under these Rules shall immediately be executory EXCEPT THE AWARDS FOR MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES, IF ANY. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

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[17] Penned by Senior Associate Justice Antonio T. Carpio, with Associate Justices Roberto A. Abad, Martin S. Villarama, Jr., Jose Portugal Perez and Jose Catral Mendoza, concurring.

The amended provision expressly exempts awards for moral damages, exemplary damages, and attorney's fees from the rule that decisions and orders in cases covered by the *Interim Rules* are immediately executory. As can be gleaned from the title of A.M. No. 01-2-04-SC, the amendment of Section 4, Rule 1 of the Interim Rules was crafted precisely to clarify the previous rule that decisions on intra-corporate disputes are immediately executory, by specifically providing for an exception. Thus, the prevailing rule now categorically provides that awards for moral damages, exemplary damages, and attorney's fees in intra-corporate controversies are ***not*** immediately executory.

Indisputably, the amendment of Section 4, Rule 1 of the Interim Rules is procedural in character. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court's award of exemplary damages and attorney's fees in favor of private respondents is not immediately executory.[18]

Based on the foregoing disquisitions, the conclusion is certain in that the award of moral damages, exemplary damages and attorney's fees, awarded as an incident to an intra-corporate case, are exempt from the rule on immediate execution.

This Court is not unmindful of the fact that the Heirs of Divinagracia also argued in herein petition that the grant of moral damages, exemplary damages and attorney's fees was without basis. This Court is, however, not inclined to grant such relief in view of the fact that records show that the Heirs of Divinagracia had already filed a Notice of Appeal to Civil Case No. 26557 which questioned the dismissal of the derivative suit filed by Divinagracia. The determination of the propriety of the grant of damages must, therefore, be determined in the main case and not in herein petition which assails the propriety

[18] Emphasis in the original.

of the grant of the writ of execution by the RTC as held by this Court in *Radio Communications of the Philippines, Inc. v. Lantin,*[19] to wit:

> x x x **The execution of any award for moral and exemplary damages is dependent on the outcome of the main case.** Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages, as well as the exact amounts, remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignment of errors on appeal**. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.[20]

WHEREFORE, premises considered, the petition is *GRANTED*. The October 5, 2005 Decision and April 21, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 86435 are hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

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[19] Nos. 59311 & 59320, January 31, 1985, 134 SCRA 395.

[20] *Id.* at 400-401. (Emphasis supplied).

SECOND DIVISION

[G.R. No. 175330. January 12, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODOLFO CAPITLE and ARTURO NAGARES,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; WHEN ADMISSIBLE; PRESENT IN CASE AT BAR. — Based on the records, Nagares' extrajudicial confession was voluntarily given, and thus admissible. As found by the Court of Appeals, (1) there is no evidence of compulsion or duress or violence on the person of Nagares; (2) Nagares did not complain to the officers administering the oath during the taking of his sworn statement; (3) he did not file any criminal or administrative complaint against his alleged malefactors for maltreatment; (4) no marks of violence were observed on his body; and (5) he did not have himself examined by a physician to support his claim. Moreover, appellant's confession is replete with details, which makes it highly improbable that it was not voluntarily given. Likewise negating Nagares' claim of a coerced confession are the photographs taken during the signing, thumbmarking, and swearing of the extrajudicial confession. All the pictures depicted a "cordial and pleasant atmosphere" devoid of any sign of torture, threat, duress or tension on Nagares' person. In fact, the photographs showed Nagares smiling. Further, the records show that Nagares was duly assisted by an effective and independent counsel during the custodial investigation in the NBI. As found by the Court of Appeals, after Nagares was informed of his constitutional rights, he was asked by Atty. Esmeralda E. Galang whether he accepts her as counsel. During the trial, Atty. Galang testified on the extent of her assistance. According to her, she thoroughly explained to Nagares his constitutional rights, advised him not to answer matters he did not know, and if he did not want to answer any question, he may inform Atty. Galang who would be the one to relay his refusal to the NBI agents. She was also present during the entire investigation. Moreover, Nagares' extrajudicial confession was

corroborated by evidence of *corpus delicti*. *Corpus delicti* has been defined as the body, foundation, or substance of a crime. Here, the fact of death and the criminal agency had been sufficiently established by the death certificate (Exhibit "F") and the medico-legal report (Exhibit "C") the veracity of which had been affirmed on the witness stand by the examining physician. Based on the foregoing, there is clearly no basis for Nagares' plea that his extrajudicial confession should have been excluded from the evidence because it was obtained in violation of his rights under Section 12 of Article III of the Constitution.

2. ID.; ID.; CREDIBILITY OF WITNESSES; EVALUATION BY THE TRIAL COURT IS GENERALLY ACCORDED GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL. — Apart from Nagares' valid extrajudicial confession, the positive identification made by Ruiz Constantino strengthened the prosecution's case. x x x Appellants' attempt to discredit Constantino must fail since there was no showing of any improper motive on Constantino's part that would induce him to testify falsely against Nagares. Further, settled is the rule that the trial court's evaluation of the credibility of witnesses is generally accorded great weight and will not be disturbed on appeal since the trial court was in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial.

3. ID.; ID.; ALIBI AND DENIAL, AS DEFENSES; INHERENTLY WEAK AND CANNOT PREVAIL OVER THE POSITION IDENTIFICATION BY THE EYEWITNESSES. — Well-entrenched is the rule that alibi, which is inherently weak, cannot prevail over the positive identification made by the eyewitnesses at the crime scene. Here, Constantino positively identified Nagares as one of the perpetrators of the crime overthrowing the latter's alibi and denial. More importantly, Nagares miserably failed to establish the physical impossibility for him to be at the crime scene at the time of the commission of the felony. Nagares testified that on that fateful day, he was sleeping in his sister's house on F. Asedillo Street, Katipunan, Pasig City. He also claimed that on that day he was treated at Rizal Medical Center. It was not shown that it was impossible for Nagares to reach and be at the crime scene whether he was coming from

his sister's residence or from the hospital. Further, the defense failed to present any hospital record substantiating Nagares' claim.

4. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT; CASE AT BAR. — As correctly observed by the Court of Appeals, there was no direct evidence linking Capitle to the crime charged, only circumstantial evidence. Section 4, Rule 133 of the Revised Rules on Evidence provides: Section 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Hence, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused. Based on Paat's testimony, there is sufficient circumstantial evidence justifying Capitle's conviction. There is more than one circumstance: (1) the victim was gunned down at the corner of Orambo Drive and St. Jude St., Mandaluyong City; (2) Paat heard several gunshots coming from that area; (3) Paat saw four men, including Nagares and Capitle, coming from the corner of Orambo Drive and St. Jude St. and running away towards Shaw Blvd.; (4) the four men, including Nagares and Capitle, were all carrying guns; and (5) prosecution witness Constantino saw Nagares, together with several other men, shot the victim. To the unprejudiced mind, the foregoing circumstances, when analyzed and taken together, leads to no other conclusion except that of appellants' culpability for the victim's death.

5. CRIMINAL LAW; CIVIL LIABILITY; DAMAGES WHICH MAY BE AWARDED WHEN DEATH OCCURS DUE TO CRIME; MODIFICATIONS MADE IN CASE AT BAR; RATIONALE. — When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the victim's death; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. We sustain the award of ₱50,000 civil indemnity, which is mandatory and granted to the victim's heirs without need of proof other than the commission of the crime. For lack of factual basis, we delete the award of actual or compensatory damages. The party seeking

actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor. No such documents were offered as evidence in this case. Nevertheless, we award ₱25,000 as temperate damages when no evidence of burial or funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the victim's heirs suffered pecuniary loss although the exact amount was not proved. While we sustain the award of moral damages, which does not require allegation and proof other than the victim's death, we reduce the amount from ₱100,000 to ₱50,000 pursuant to prevailing jurisprudence. Since the qualifying circumstance of treachery was proved in this case, the award of exemplary damages is proper. However, we reduce the amount of exemplary damages from ₱50,000 to ₱30,000 consistent with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Argue Law Firm for appellants.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is an appeal from the 27 January 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01479. The Court of Appeals affirmed the 28 April 2000 Decision[2] of the Regional Trial Court, National Capital Judicial Region, Pasig, Branch 267, in Criminal Case No. 105733, convicting appellants Rodolfo Capitle and Arturo Nagares for the crime of murder.

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[1] *Rollo*, pp. 3-19. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. De Leon, concurring.

[2] CA *rollo*, pp. 36-57. Penned by Judge Florito S. Macalino.

The Facts

The Court of Appeals summarized the facts of the case as follows:

The historical backdrop shows that at around 7:40 a.m. of August 6, 1993, at Orambo Drive, Orambo, Pasig City, Barangay Chairman Avelino Pagalunan was gunned down by four (4) men who thereafter ran towards Shaw Blvd. The incident was witnessed by Ruiz Constantino and Solomon Molino who were seated six (6) arms length away and conversing on the flower pots planted with bougainvilla lined along Orambo Drive corner St. Jude Street, Orambo, Pasig City. Barangay Chairman Avelino Pagalunan was thereafter brought to Medical City Hospital where he expired due to multiple gunshot wounds in the body, in the neck and in the head. The most fatal wound was the one sustained in the head.

On that same day, at around 10:30 a.m., Solomon Molino, a Barangay Kagawad, gave his statement to the District Central Investigation Branch, Eastern Police District Command relating the incident he saw but failed to identify the assailants.

On September 29, 1993, Arturo Nagares was apprehended by the Pasig Police on account of his conviction in another case for Frustrated Homicide. He was later to be taken custody by the National Bureau of Investigation at its detention center along Taft Avenue where the next day, on September 30, 1993, Ruiz Constantino gave his statement identifying Arturo Nagares *y* De Leon from the four (4) pictures presented to him as one of the three (3) armed assailants of Barangay Captain Pagalunan on August 6, 1993.

Arturo Nagares was likewise identified from the four (4) pictures shown to another witness, Rodolfo Paat, who claims to be at Orambo Drive corner Shaw Blvd., Pasig City, when he heard several gun shots with people shouting "*nagbabarilan, nagbabarilan.*" Moments later, from the corner of St. Jude St. and Orambo Drive, he saw four (4) men each carrying guns running from Orambo Drive towards Shaw Blvd. and boarded a jeep going to Mandaluyong, Metro Manila.

The third witness to give a statement to the NBI on same day was Solomon Molino who likewise identified Arturo Nagares from the four (4) pictures laid before him.

On October 19, 1993, while under detention at the NBI, Arturo Nagares executed an extrajudicial confession to the killing of Barangay

Chairman Avelino Pagalunan before Atty. Orlando V. Dizon, Chief, SOG, NBI. Assisting him in the confession was practicing lawyer, Atty. Esmeralda E. Galang, who was at the NBI following up the implementation of a warrant of arrest in one of the cases she was handling. In Nagares' extrajudicial confession, he implicated Vice Mayor Anching De Guzman as the mastermind, and Rodolfo Capitle *a.k.a.* Putol, Elymar Santos and a John Doe as his cohorts in the killing of the Barangay Chairman.

On January 21, 1994, witness Solomon Molino executed his third affidavit before the NBI and identified Ramil Marquina in a police line-up as one of those who fired at Pagalunan.

Then again, on March 21, 1994, the same Solomon Molino gave a written statement before the Pasig Police identifying Rodolfo Capitle, who was earlier arrested by the police by virtue of a warrant of arrest issued by Judge Milagros V. Caguioa of the Pasig Court for Frustrated Homicide.

On March 26, 1994, witness Rodolfo Paat executed another statement before the NBI identifying Rodolfo Capitle from the 20 pictures shown him as one of those armed men he saw on August 6, 1993 running from Orambo Drive to Shaw Blvd.

On April 4, 1994, a criminal charge sheet for Murder was filed against Rodolfo Capitle and Arturo Nagares.

On September 29, 1994, the Information was amended to include Ramil Marquina as one of the accused, together with Rodolfo Capitle and Arturo Nagares. The Amended Information reads:

> The undersigned 2nd Asst. Provincial Prosecutor accuses RODOLFO CAPITLE, ARTURO NAGARES and RAMIL MARQUINA of the crime of MURDER, committed as follows:
>
> That on or about the 6th day of August 1993 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, with intent to kill, evident premeditation, treachery, and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shot Brgy. Chairman Avelino Pagalunan on the vital parts of his body, thereby inflicting upon the latter mortal and fatal gunshot wounds which caused his death.

CONTRARY TO LAW.

On April 17, 1997, all three (3) accused were properly arraigned. Assisted by their respective counsels, they entered a "not guilty" plea. After the case was set for pre-trial conference, trial on the merits followed.

During the trial, prosecution witness Ruiz Constantino testified and identified accused Arturo Nagares as one of those he saw shooting the victim, Barangay Chairman Avelino Pagalunan, but could not identify the rest of the assailants. Another witness for the People, Solomon Molino, with whom Constantino was conversing at the time, claimed to have witnessed the shooting incident and even prepared a sketch as to the respective positions of the victim, the assailants and where they were seated. Nevertheless, he found it hard to identify the gun wielders.

The third eyewitness, Rodofo Paat, who claims that during the incident he was at the end of the tricycle line along Orambo Drive between Shaw Blvd. and St. Peter St. when he heard gunshots coming from Orambo Drive corner St. Jude St. about 80 meters away from where he was. Upon hearing the gunshots, people in the vicinity scampered for cover but he stayed put and saw four (4) persons with guns emerged from the smoke running towards Shaw Blvd. He later on identified two (2) of them in open court as accused Arturo Nagares and Rodolfo Capitle.

Accused Arturo Nagares offered alibi as a defense. He was sleeping at the house of his sister Gaudelia Mercado at 92 F. Asedillo St., Bagong Katipunan, Pasig City, as he was suffering from fever due to boil ("*pigsa*") at the right leg, he said. This testimony found corroboration from his sister, Gaudelia, and even narrated she accompanied Arturo to the Rizal Medical Center where he was treated and given medication by a certain Dr. Ong. As to the extrajudicial confession, Nagares claimed that he was violated, forced, coerced and tortured into admitting the crime, and to sign the already prepared extrajudicial confession.

For his part, accused Rodolfo Capitle as well put forth the defense of alibi insisting that on the day of the shooting, he was at their house at Bambang, Pasig, with his wife and children cleaning and feeding the hogs. Afterwards, he continued, he took a bath and rested for the rest of the day. His wife substantiated his testimony. Rodolfo went on saying that on March 18, 1994, he was arrested and detained

at the Pasig Police Headquarters for another crime. On March 23, 1994, the NBI took custody of him at the NBI Headquarters along Taft Avenue. While at the NBI Headquarters, he complained of having been tortured by placing a plastic bag on his face, boxed on the chest and abdomen, electrocuted and was forced to admit to the killing of the *Barangay* Captain but was able to refuse, nonetheless.

x x x x x x x x x[3]

The Ruling of the Trial Court

After trial, the trial court rendered a Decision dated 28 April 2000 finding appellants guilty as charged, while acquitting Ramil Marquina. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds accused ARTURO NAGARES and RODOLFO CAPITLE GUILTY beyond reasonable doubt of the felony of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended and each accused is hereby sentenced to suffer the penalty of *reclusion perpetua*. Upon the other hand, considering that the Court failed to prove the guilt of the accused RAMIL MARQUINA beyond reasonable doubt, the aforesaid accused is hereby ACQUITTED of the crime charged.

Accordingly, the Court orders accused Nagares and Capitle to pay jointly *in solidum* the widow of the victim, Merlie Pagalunan, the following amounts, to wit:

1. PhP 50,000.00 as indemnity;
2. PhP 100,000.00 as moral damages;
3. PhP 50,000.00 as exemplary damages;
4. PhP 50,000.00 representing actual and compensatory damages;
5. PhP 30,000.00 as attorney's fees;
6. And costs.

The Jail Warden of the Pasig City Jail where accused Rodolfo Capitle is presently detained during the pendency of this case, is accordingly ordered to immediately transfer the person of the aforesaid accused to the National Bilibid Prisons (NBP) of the Bureau of Corrections in Muntinlupa City, Metro Manila, as he is now considered an insular prisoner. Let therefore the corresponding Order/s of Commitment (Mittimus) be issued pursuant to Circular

[3] *Rollo*, pp. 3-8.

No. 4-92-A, dated April 20, 1992 and Circular No. 66-97 dated October 14, 1997 of the Office of the Court Administrator of the Supreme Court.

In the meantime, the Director of the National Bilibid Prisons (NBP) where accused Arturo Nagares is already serving sentence for another crime, is hereby informed of the latter's conviction in the present case for his appropriate action and guidance.

Costs *de oficio*.

SO ORDERED.[4]

In convicting appellants, the trial court found that two out of three eyewitnesses, in the persons of Ruiz Constantino and Rodolfo Paat, positively identified appellants as among the perpetrators of the crime. The trial court discarded appellants' alibis and denial as such cannot prevail over the positive identification made by the prosecution witnesses. The trial court likewise rejected appellants' claims of "frame-up" and torture as unsubstantiated.

The trial court found no violation of appellant Nagares' constitutional rights insofar as his confession is concerned. Nagares' *Sinumpaang Salaysay* is presumed to be voluntary and Nagares failed to overthrow such presumption. Further, there was sufficient evidence that Nagares was assisted by an independent and effective counsel during the custodial investigation, belying Nagares' allegations.

The Ruling of the Court of Appeals

On appeal, the Court of Appeals affirmed the trial court's decision, disposing of the case as follows:

IN VIEW OF ALL THE FOREGOING, finding no reversible error in the appealed judgment, the same is hereby AFFIRMED *in toto*. Costs *de officio* (sic).

SO ORDERED.[5]

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[4] CA *rollo*, pp. 56-57.

[5] *Rollo*, p. 18.

In affirming the conviction of appellants, the Court of Appeals found the extrajudicial confession executed by Nagares admissible since it was (1) voluntary; (2) made with the assistance of a competent and independent counsel; (3) express; and (4) in writing. The Court of Appeals pointed out that the specific information stated in the impugned confession "not only categorically detailed [Nagares'] participation in the crime, it likewise show[ed] badges and traits of voluntariness of the confession."

The Court of Appeals concurred with the trial court that Nagares was duly assisted by an independent counsel during the custodial investigation. According to the Court of Appeals, "the photographs during the custodial investigation, and execution of the 6-page 70 questions and answers extrajudicial confession are at war against the presence of uncivilized practice of extracting confession by coercion."

As regards Capitle, the Court of Appeals held that "an extrajudicial confession is binding only on the person making it (Nagares) and is not admissible against his co-accused (Capitle)." Hence, there was no direct evidence linking Capitle to the crime. Nevertheless, the Court of Appeals found sufficient circumstantial evidence warranting Capitle's conviction for the crime charged.

The Issues

Appellants raise the following issues:

1. WHETHER THE CONSTITUTIONAL RIGHTS OF APPELLANTS WERE VIOLATED THEREBY RENDERING THE EVIDENCE PURPORTEDLY OBTAINED THROUGH SAID VIOLATION AS NULL AND VOID.

2. WHETHER THE PROSECUTION WAS ABLE TO ESTABLISH THE GUILT OF APPELLANTS BEYOND REASONABLE DOUBT.[6]

The Ruling of this Court

We sustain the appellants' conviction.

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[6] CA *rollo*, p. 95.

Nagares' extrajudicial confession is admissible in evidence

Nagares challenges the admissibility of his extrajudicial confession, claiming that it was made under duress and that he was not assisted by an independent counsel during the custodial investigation. Nagares maintains such flaws in the investigation violated his right guaranteed under Section 12, Article III of the Constitution. This provision reads:

> Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Based on the records, Nagares' extrajudicial confession was voluntarily given, and thus admissible. As found by the Court of Appeals, (1) there is no evidence of compulsion or duress or violence on the person of Nagares; (2) Nagares did not complain to the officers administering the oath during the taking of his sworn statement; (3) he did not file any criminal or administrative complaint against his alleged malefactors for maltreatment; (4) no marks of violence were observed on his body; and (5) he did not have himself examined by a physician to support his claim. Moreover, appellant's confession is replete with details, which makes it highly improbable that it was not voluntarily given.

Likewise negating Nagares' claim of a coerced confession are the photographs taken during the signing, thumbmarking,

and swearing of the extrajudicial confession. All the pictures depicted a "cordial and pleasant atmosphere" devoid of any sign of torture, threat, duress or tension on Nagares' person. In fact, the photographs showed Nagares smiling.

Further, the records show that Nagares was duly assisted by an effective and independent counsel during the custodial investigation in the NBI. As found by the Court of Appeals, after Nagares was informed of his constitutional rights, he was asked by Atty. Esmeralda E. Galang whether he accepts her as counsel.[7] During the trial, Atty. Galang testified on the extent of her assistance. According to her, she thoroughly explained to Nagares his constitutional rights, advised him not to answer matters he did not know, and if he did not want to answer any question, he may inform Atty. Galang who would be the one to relay his refusal to the NBI agents. She was also present during the entire investigation.

Moreover, Nagares' extrajudicial confession was corroborated by evidence of *corpus delicti*.[8] *Corpus delicti* has been defined as the body, foundation, or substance of a crime.[9] Here, the

[7] See Records, p. 572. Nagares' sworn statement, dated 19 October 1993, given to the police investigators pertinently reads:

02 T: *Nais naming ipaalam sa iyo na ikaw ay may karapatang hindi kumibo at ang lahat ng iyong sasabihin ay maaaring gamitin laban sa iyo sa isang kriminal, sibil o administratibong pag-uusig. Naiintindihan mo ba ito*?

S: *Opo*.

03 T: *Nais din naming ipaalam sa iyo na ikaw ay may karapatang kumuha ng isang abogado na iyong mapipili. At kung hindi mo kayang kumuha ng iyong sariling abogado, kami ay hihirang ng isa para sa iyo na tutulong sa iyo sa pagsisiyasat na ito. Naiintindihan mo ba ito?*

S: *Opo*.

04 T: *Ngayon, matapos mo malaman ang iyong mga karapatan sa ilalim ng ating Saligang Batas, ikaw ba ay nakahandang magbigay ng isang malaya at kusang-loob na salaysay sa tulong ni* ATTY. ESMERALDA GALANG *na narito ngayon upang ipaliwanag sa iyo ang iyong mga karapatan sa ilalim ng ating Saligang Batas at tulungan ka sa iyong mga sagot dito sa iyong salaysay?*

S: *Opo*.

[8] Section 3, Rule 133 of the Rules of Court.

[9] *People v. Tuniaco*, G.R. No. 185710, 19 January 2010, 610 SCRA 350, 355.

fact of death and the criminal agency had been sufficiently established by the death certificate (Exhibit "F") and the medico-legal report (Exhibit "C") the veracity of which had been affirmed on the witness stand by the examining physician.[10]

Based on the foregoing, there is clearly no basis for Nagares' plea that his extrajudicial confession should have been excluded from the evidence because it was obtained in violation of his rights under Section 12 of Article III of the Constitution.

Nagares was positively identified as one of the victim's assailants

Apart from Nagares' valid extrajudicial confession, the positive identification made by Ruiz Constantino strengthened the prosecution's case. During the trial, Constantino identified Nagares as one of the victims' assailants, to wit:

ATTY. BLANES:

Q You said you will be able to remember the face of those who shot Avelino Pagalunan, now, if you see them again, will you be able to identify them?

A Yes, sir.

Q If they are inside the courtroom, will you be able to identify them?

A Yes, sir.

Q Will you please point those who shot Avelino Pagalunan.

INTERPRETER

(witness pointing to a man in the first row wearing orange polo shirt and when asked he answered by the name of Arturo Nagares)[11]

x x x x x x x x x

COURT:

You said that you saw the three (3) person who were shooting the victim and you have identified one of the

[10] See *People v. Bacor*, 366 Phil. 197, 220 (1999).

[11] TSN, 5 June 1995, p. 7.

assailants a certain Arturo Nagares are the two (2) others inside the Courtroom?

A I cannot exactly say because my attention at that time was only with Arturo Nagares.[12]

Appellants' attempt to discredit Constantino must fail since there was no showing of any improper motive on Constantino's part that would induce him to testify falsely against Nagares.[13] Further, settled is the rule that the trial court's evaluation of the credibility of witnesses is generally accorded great weight and will not be disturbed on appeal since the trial court was in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial.[14]

Nagares' alibi and denial deserve scant consideration. Well-entrenched is the rule that alibi, which is inherently weak, cannot prevail over the positive identification made by the eyewitnesses at the crime scene.[15] Here, Constantino positively identified Nagares as one of the perpetrators of the crime overthrowing the latter's alibi and denial. More importantly, Nagares miserably failed to establish the physical impossibility for him to be at the crime scene at the time of the commission of the felony. Nagares testified that on that fateful day, he was sleeping in his sister's house on F. Asedillo Street, Katipunan, Pasig City. He also claimed that on that day he was treated at Rizal Medical Center. It was not shown that it was impossible for Nagares to reach and be at the crime scene whether he was coming from his sister's residence or from the hospital. Further, the defense failed to present any hospital record substantiating Nagares' claim.

Capitle is guilty beyond reasonable doubt of murder based on circumstantial evidence

To further establish appellants' guilt, prosecution witness Paat testified, thus:

[12] *Id.* at 32-33.

[13] *People v. Caraang*, 463 Phil. 715, 749 (2003).

[14] *People v. Jadap*, G.R. No. 177983, 30 March 2010, 617 SCRA 179, 187; *People v. Garcia*, G.R. No. 177740, 5 April 2010, 617 SCRA 318, 331.

[15] *Arceno v. People*, 326 Phil. 576, 594 (1996); *People v. Torrefiel*, 326 Phil. 388, 396 (1996); *People v. Caritativo*, 326 Phil. 1, 8 (1996).

Q: What was that incident that took place?

A: I heard successive gun shots.

Q: Now in relation to where you were from what direction did you hear this successive gun shots?

A: At the corner of St. Jude and Oranbo (sic) Drive, sir.

Q: What did you notice, if any at the corner of Oranbo (sic) Drive and St. Jude?

A: I saw 4 men coming from the smoke.

Q: More or less, Mr. Witness, could you estimate the distance from where you were to the corner of Oranbo (sic) Drive & St. Jude?

A: More or less 80 meters.

Q: Now, you said, you saw men coming from the corner of Oranbo (sic) Drive and St. Jude where there was smoke, how many men more or less?

A: 4 men, sir.

Q: Where, where they headed to and when you had seen these 4 men coming from that direction?

A: On their way going to Shaw Blvd.

Q: Did you notice if they were holding something?

x x x x x x x x x

A: I saw each one of them holding a gun.[16]

x x x x x x x x x

Q: Now of these 4 men running and holding caliber 45 did you recognize any of them?

A: Yes, sir.

Q: If those whom you recognized is or are inside this court room, will you be able to point to them?

A: Yes, sir.

Q: Will you please point to them, Mr. Witness?

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[16] TSN, 24 July 1995, pp. 6-9.

INTERPRETER: Witness pointing to two (2) male persons, one (1) the right wearing an orange polo who when asked his name answered Arturo Nagares and a man beside him wearing yellow t-shirt who when asked his name answered Rodolfo Capitle.[17]

x x x x x x x x x

Q: How at that time, you take a look at the alleged persons, four (4) persons whom you allegedly saw holding a gun?

A: More or less one (1) minute.

Q: Could you make an estimate if it is less than one (1) minute.

ATTY. BLANES:
He said more or less your Honor, from the corner of Oranbo (sic) Drive and he said more or less.

Q: Is it less than one (1) minute?
A: More or less one (1) minute.

Q: And that they were running?
A: Yes sir. Almost on the jogging phase.[18]

As correctly observed by the Court of Appeals, there was no direct evidence linking Capitle to the crime charged, only circumstantial evidence.

Section 4, Rule 133 of the Revised Rules on Evidence provides:

Section 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Hence, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.[19]

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

[18] TSN, 31 July 1995, p. 44.

[19] *Bastian v. Court of Appeals*, G.R. No. 160811, 18 April 2008, 552 SCRA 43, 55.

Based on Paat's testimony, there is sufficient circumstantial evidence justifying Capitle's conviction. There is more than one circumstance: (1) the victim was gunned down at the corner of Orambo Drive and St. Jude St., Mandaluyong City; (2) Paat heard several gunshots coming from that area; (3) Paat saw four men, including Nagares and Capitle, coming from the corner of Orambo Drive and St. Jude St. and running away towards Shaw Blvd.; (4) the four men, including Nagares and Capitle, were all carrying guns; and (5) prosecution witness Constantino saw Nagares, together with several other men, shot the victim. To the unprejudiced mind, the foregoing circumstances, when analyzed and taken together, leads to no other conclusion except that of appellants' culpability for the victim's death.[20]

Modification in the award of damages

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the victim's death; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[21]

We sustain the award of ₱50,000 civil indemnity, which is mandatory and granted to the victim's heirs without need of proof other than the commission of the crime.[22]

For lack of factual basis, we delete the award of actual or compensatory damages. The party seeking actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[23] No such documents were offered as evidence in this case. Nevertheless, we award ₱25,000 as temperate damages when no evidence of burial or funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the victim's heirs suffered pecuniary loss although the exact amount was not proved.[24]

[20] *People v. Nanas,* 415 Phil. 683, 699 (2001).

[21] *People v. Domingo*, G.R. No. 184343, 2 March 2009, 580 SCRA 436, 456.

[22] *Id*.

[23] *Id*.

[24] *Id.* at 456-457.

While we sustain the award of moral damages, which does not require allegation and proof other than the victim's death, we reduce the amount from ₱100,000 to ₱50,000 pursuant to prevailing jurisprudence.[25]

Since the qualifying circumstance of treachery was proved in this case, the award of exemplary damages is proper. However, we reduce the amount of exemplary damages from ₱50,000 to ₱30,000 consistent with prevailing jurisprudence.[26]

The award of ₱30,000 attorney's fees lacks factual and legal basis and thus must be deleted.

WHEREFORE, we *DISMISS* the appeal and *AFFIRM with MODIFICATION* the 27 January 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01479. We award temperate damages in the amount of ₱25,000. The amounts of moral damages and exemplary damages are reduced to ₱50,000 and ₱30,000, respectively. The award of actual damages and attorney's fees is deleted.

SO ORDERED.

Peralta, Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

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[25] *Id.* at 457.

[26] *People v. Gutierrez,* G.R. No. 188602, 4 February 2010, 611 SCRA 633, 647.

[*] Designated additional member per Raffle dated 15 June 2009.

SECOND DIVISION

[G.R. No. 175891. January 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **RESINS, INCORPORATED,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE OF NOTICE; THE BURDEN OF PROVING NOTICE RESTS UPON THE PARTY ASSERTING ITS EXISTENCE. — When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.

2. ID.; ID.; ID.; ID.; RECEIPTS FOR REGISTERED LETTERS AND RETURN RECEIPTS DO NOT PROVE THEMSELVES, THEY MUST BE PROPERLY AUTHENTICATED IN ORDER TO SERVE AS PROOF OF RECEIPT OF THE LETTERS. — OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail ***and*** that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that "*it is the registry receipt issued by the mailing office and the affidavit of the person mailing*, which proves service made through registered mail." Absent one or the other, or worse both, there is no proof of service. Mere certification of the RTC Clerk of Court is

insufficient because the Clerk of Court may not be the person who did the mailing. The certification in this case is also not under oath. There must be an affidavit of the person who actually did the mailing.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Teogenes X. Velez for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 175891 is a petition for review[1] assailing the Decision[2] promulgated on 25 May 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 78516. The appellate court denied the petition filed by the Republic of the Philippines (Republic) through the Office of the Solicitor General (OSG). The appellate court found no grave abuse of discretion on the part of the Regional Trial Court of Misamis Oriental, Branch 20, Cagayan de Oro City (RTC) in rendering its 17 March 1993[3] Judgment and 17 January 1994[4] Amended Judgment, as well as in issuing its 7 July 1999[5] and 28 May 2003[6] Orders in Land Registration Case No. N-91-012, LRA Record No. N-62407. The RTC allowed the Land Registration Authority (LRA) to issue a Decree of Registration in favor of Resins, Incorporated (Resins, Inc.) over eight lots in Jasaan, Misamis Oriental after the RTC's Judgment[7] dated 17 March 1993 became final and executory.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 82-99. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Romulo V. Borja and Ramon R. Garcia, concurring.

[3] *Id.* at 124-128. Penned by Judge Alejandro M. Velez.

[4] *Id*. at 129-133. Penned by Judge Alejandro M. Velez.

[5] *Id.* at 143. Penned by Judge Anthony E. Santos.

[6] *Id*. at 157-158. Penned by Judge Gregorio D. Pantanosas, Jr.

[7] *Id*. at 124-128.

The Facts

The appellate court narrated the facts as follows:

On 17 October 1991, [Resins, Inc.] filed x x x Land Registration Case [No. N-91-012] before the [RTC] for judicial confirmation of title over eight (8) parcels of land situated in the Municipality of Jasaan, Misamis Oriental. The initial hearing for said case was originally set on 4 February 1992. Prior to said date of hearing, the [LRA] filed with the [RTC] a report recommending that an Order be issued to [Resins, Inc.] directing it to submit the names and complete postal addresses of the adjoining lot owners, and that after complying with the said Order, the initial hearing be reset "on a date consistent with LRC Circular No. 353."

Pursuant to the LRA recommendation, the application for original registration of titles was amended. Thereupon, the [RTC] issued an Order dated 17 January 1992 setting the initial hearing on 30 April 1992.

On 10 February 1992, the OSG entered its appearance as counsel of the Republic x x x. In its notice of appearance, the [OSG] manifested thus:

> The City Prosecutor of Cagayan de Oro City has been authorized to appear in this case and, therefore, should also be furnished notices of hearings, orders, resolutions, decisions, processes. However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal or other actions which appear to compromise the interests of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.

On 27 February 1992, the OSG received the notice of initial hearing of the application. The notice of the initial hearing was also served on the Regional Executive Director of the Department of Environment and Natural Resources, the Secretary of the Department of Public Works and Highways, the Director of the Bureau of Mines, the Director of the Bureau of Fisheries and Aquatic Resources, the Secretary of the Department of Agrarian Reform, the Director of the Forest Management Bureau, the Provincial Governor, the Provincial Fiscal, the Provincial Treasurer, the Provincial Engineer, the Public Works and Highways District Engineer, the Community Environment and Natural Resources Officer, Land Management

Sector, the Municipal Mayor, the Municipal Council of Jasaan, Misamis Oriental, the adjoining lot owners, and to all whom it may concern.

The notice of initial hearing was published in the 16 March 1992 issue of the *Official Gazette* and the 11 March 1992 issue of the *Golden Chronicle* pursuant to Section 23 of *Presidential Decree No. 1529*. On 19 March 1992, the City Sheriff posted the notice on the parcels of land sought to be registered, at the municipality building, and in conspicuous places in the Municipality of Jasaan, Misamis Oriental.

During the initial hearing on 30 April 1992, the [RTC] issued an Order of general default against the whole world except against [the Republic] who had filed its opposition to the application and one RENATO BAUTISTA who intimated to the [RTC] that he would file his opposition.

Subsequent hearings were conducted on the following dates: 16 July 1992, 23 July 1992, 15 September 1992, and 16 December 1992.

On 08 January 1993, [Resins, Inc.] filed *Applicant's Formal Offer of Documentary Evidence*.

On 04 February 1993, the [RTC] issued an Order which states:

> Considering the fact that all the exhibits of the applicant Resins, Incorporated were duly identified and attested to by the witnesses for the applicant and considering the fact that no opposition was filed by the government to the said exhibits, all the exhibits of the applicant from Exhibits "A" to "N", inclusive, are hereby admitted as part of the testimonies of the witnesses for the applicant.
>
> SO ORDERED.[8]

The Regional Trial Court's Ruling

On 17 March 1993, the RTC rendered its Judgment[9] in favor of Resins, Inc. The dispositive portion reads:

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[8] *Id.* at 83-86.

[9] *Id.* at 124-128.

In [v]iew of the [f]oregoing, judgment is hereby rendered finding applicant Resins Incorporated, as owner in fee simple of all the lots sought to be registered – Lot 980, Cad-367, Lot 1371, Cad-367, Lot 1372, Cad-367, Lot 1373, Cad-367, Lot 1417, Cad-367, Lot 3462, Cad-267, Lot 3463, Cad-367, and Lot 3465, Cad-367, all of Jasaan Cadastre and having registerable [sic] titles thereto, hereby decreeing that Lot Nos. 980, 1371, 1372, 1373, 1417, 3462, 3463, and 3465 be registered in the name of Resins Incorporated, a corporation organized pursuant to the laws of the Philippines with its main office located at Jasaan, Misamis Oriental, in accordance with the technical descriptions correspondingly marked as Exhibits A-2, B-2, C-2, D-2, E-2, F-2, G-2, and H-2.

SO ORDERED.[10]

Despite the favorable judgment, Resins, Inc., was unable to have the lots registered in its name because of typographical errors in the RTC's 17 March 1993 Judgment. On 6 January 1994, Resins, Inc. moved to correct the typographical errors and alleged:

1. That on March 17, 1993, the [RTC] rendered judgment approving the above-captioned application;

2. That up to the present no decree of registration has been issued and upon inquiry from the [LRA] [Resins, Inc.] learned that the reason is because [sic] there are two (2) typographical errors in the judgment, to wit:

a. Lot No. 3464 appearing on page 2, subpar[.] (g), line 1 should be Lot 3463 because par. 1 on the application shows that the 7th lot applied for is Lot 3463;

b. That material omissions were made on page 4, line 31 as follow[s]:

ORIGINAL WORDINGS:

"poses per Tax Dec. Nos. 858391 and 09352 marked Cad-367, Jasaan"

which should read as follows after supplying the omissions:

[10] *Id.* at 128.

"poses per Tax Dec. Nos. 858391 and 09352 marked Exhs. E-3 and E-6, that Lot 3463, Cad-367, Jasaan"[11]

The RTC issued an Amended Judgment[12] on 17 January 1994. However, only the error on page 2 was corrected and the error on page 4 remained. Upon yet another motion of Resins, Inc., the RTC issued another Amended Judgment on 16 March 1994 which corrected both errors. The OSG received a copy of the Amended Judgment on 2 May 1994, and filed a notice of appeal on 12 May 1994. Resins, Inc. filed a second motion to order the LRA to issue a decree of registration in its favor.

On 7 July 1999, the RTC issued an Order[13] granting Resins, Inc.'s motion. The Order reads, thus:

Submitted before this court is the "Second Motion to Order the LRA to Issue a Decree of Registration, *etc*." dated May 10, 1999 and filed on June 14, 1999 praying that

"1. The appeal filed by the [OSG] on May 12, 1994 or more than one (1) year from receipt of the original judgment, be ordered dismissed;

"2. Another order be issued directing the LRA to issue a decree of registration for the eight (8) lots enumerated in par. 1 hereof, based on the Amended Judgment dated March 16, 1994 and for other reliefs due under the premises."

Despite notice to the Solicitor General[,] he or his representative did not appear in the hearing of June 18, 1999, nor did he file an opposition to the motion.

The Court finds the motion meritorious. The motion is granted. Hence, the [OSG]'s appeal of May 12, 1999 is dismissed. The Land Registration Authority (LRA) is hereby directed to issue a decree of registration in favor of [Resins, Inc.] for Lots 986, 1371, 1372, 1373, 1417, 3462, 3463, and 3465, CAD-367 of the Jasaan Cadastre after the judgment dated March 17, 1993 became final and executory.

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[11] *Id.* at 87.

[12] *Id.* at 129-133.

[13] *Id.* at 143.

SO ORDERED.

The Republic filed a Motion for Reconsideration[14] of the 7 July 1999 Order. The Republic alleged that the OSG was never furnished a copy of the alleged original decision. The Republic cited Resins, Inc.'s Motion to Dismiss Appeal,[15] which stated "[t]hat the original judgment of this case was issued on March 19, 1993, copy of which was furnished to the Office of the Solicitor General c/o the City Prosecutor who was delegated to represent the former during the proceedings." Therefore, the 17 March 1993 Judgment never acquired finality with respect to the Republic.

Resins, Inc. filed an Opposition to the Motion for Reconsideration[16] on 19 August 1999. Resins, Inc. stated that the OSG was furnished a copy of the 17 March 1993 decision. The OSG received the decision on 6 April 1993, as certified by the RTC Clerk of Court,[17] and as evidenced by post office return slips.[18]

On 28 May 2003, the RTC issued yet another Order.[19] Said Order reads, thus:

> For resolution is the motion for reconsideration filed by the oppositor Republic of the Philippines represented by the Office of the Solicitor General of the order dismissing the notice of appeal filed by the said oppositor alleging that the Republic was never furnished copy of the judgment dated March 17, 1993 and that an amended order of the decision is entirely new which supersedes the original decision.
>
> The motion was vehemently opposed by the applicant alleging that the Cagayan de Oro City Prosecutor received copy of the said

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[14] *Id.* at 144-149.

[15] *Id.* at 137-138.

[16] *Id.* at 150.

[17] *Id.* at 151.

[18] *Id.* at 152.

[19] *Id.* at 157-158.

judgment on March 29, 1993 while the Office of the Solicitor General, the Land Registration Authority, and the Bureau of Lands received copy of the judgment on April 6, 1993.

The records of the case shows [sic] that indeed these offices received the copy of the judgment as mentioned in the opposition per return slips attached to the records. Since there is no appeal filed within 30 days from receipt of the judgment, the judgment of this Court therefore has already become final and executory.

Anent the issue that the amended judgment supersedes the original judgment and as correctly pointed out by the applicant, the amendment pertains to harmless clerical errors in pages 2 and 4 of the original judgment but the dispositive portion confirming applicant's ownership over the lots was not changed.

The Republic then filed a Petition for *Certiorari* and Prohibition[20] with prayer for temporary restraining order and/or writ of preliminary injunction. The Republic sought to nullify, set aside, and prevent the implementation of the RTC's Orders dated 7 July 1999 and 28 May 2003; as well as to nullify and set aside the Judgment dated 17 March 1993 and the Amended Judgment dated 17 January 1994. The Republic claimed that the entries in the logbook of the OSG's Docket Division do not indicate that the 17 March 1993 Judgment was ever received by the OSG and actually transmitted to the lawyers assigned to represent the Republic in the present case.

The Ruling of the Court of Appeals

On 25 May 2006, the CA rendered its Decision[21] and denied the Republic's petition. The CA saw no grave abuse of discretion in the RTC's dismissal of the Republic's appeal, which appeal was based on the OSG's alleged non-receipt of its copy of the original Judgment.

The CA found that the records of the case show that the OSG indeed received its copy of the original Judgment on 6 April 1993 as the return slip clearly indicated the date of service

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

[21] *Rollo,* pp. 82-99.

on the OSG. The OSG did not file an appeal within the reglementary period; hence, the RTC ruled that the Judgment is already final and executory. The CA also rejected the OSG's desire for examination of entries in the OSG's logbook as well as the affidavit of its bookbinder. The CA ruled that evaluation of evidentiary matters is beyond the province of a writ of *certiorari*. Moreover, even if the evidence were considered, the same should still be rejected because the OSG failed to show that the bookbinder had authority to record and keep legal custody of the logbook. Finally, the CA ruled that the only issue in a petition for *certiorari* is lack or excess or grave abuse of discretion. Thus, the OSG's contention that the State cannot be put in estoppel by the mistakes of its agents is misplaced.

The Issues

The Republic enumerated the following grounds to support its Petition:

I. The Court of Appeals gravely erred in not holding that the RTC of Misamis Oriental, Branch 20 acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed [the Republic's] notice of appeal (in its Order dated July 7, 1999) and subsequently denied [the Republic's] motion for reconsideration of such dismissal (in its Order dated May 28, 2003) because of the clear showing that the OSG, as [the Republic's] statutory counsel, was not actually notified of and/or had not received a copy of the original Judgment dated March 17, 2003 in Land Registration Case No. N-91-912.

II. The Court of Appeals has gravely erred in not holding that the RTC of Misamis Oriental, Branch 20 acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the July 7, 1999 and May 28, 2003 Orders which unduly deprived petitioner of its opportunity to interpose an appeal from the original Judgment dated March 17, 1993 and/or Amended Judgment dated January 17, 1994 in the subject land registration case which found respondent-applicant Resins Incorporated to have registrable title to all the eight (8) lots applied for despite lack of clear factual and legal basis to support the conclusion that "applicant and his predecessor-in-interest had openly, continuosly [sic], adversely and

uninterruptedly been in possession of the lots as owned for about 40 years prior to filing of the application.[22]

The Court's Ruling

The petition is meritorious. We rule that Resins, Inc. failed to prove that the Republic, via the OSG, indeed received the 17 March 1993 Judgment.

At the time of the promulgation of the trial court's judgment, the applicable rules were those of the Revised Rules of Court. Pertinent portions of these sections are quoted below:

Sec. 5. *Service by registered or ordinary mail.*— If service is not made personally, service by registered mail shall be required if registry service exists in the locality; otherwise service may be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his attorney at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.[23]

Sec. 7. *Service of judgments, final orders or resolutions.* — Judgments, final orders or resolutions shall be served either personally or registered mail. x x x[24]

Sec. 8. *Completeness of service.* — x x x Service by registered mail is complete upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.[25]

Sec. 10. *Proof of service.* — x x x If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 5 of this rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in

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[22] *Id.* at 36-37.

[23] Now Section 7, Rule 13 of the 1997 Rules of Civil Procedure.

[24] Now Section 9, Rule 13 of the 1997 Rules of Civil Procedure.

[25] Now Section 10, Rule 13 of the 1997 Rules of Civil Procedure.

lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to the addressee.[26]

When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence.[27] In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.[28]

The OSG insists that it did not actually receive a copy of the 17 March 1993 Judgment. The OSG received a certified copy of the 17 March 1993 Judgment only after its 24 June 2003 written request to the Assistant City Prosecutor of Cagayan de Oro. The OSG presented a certified photocopy of the page of the OSG's Docket Division Log Book listing the orders, pleadings, and other papers received by the OSG pertaining to the present case. The last document on the case received by the OSG before the receipt of the Amended Judgment on 2 May 1994 was an Order dated 26 December 1992 and received on 13 January 1993. There was no record of the Judgment dated 17 March 1993. Because of this non-receipt, the Republic was deprived of the opportunity to appeal or to ask for reconsideration of the judgment. The OSG filed a notice of appeal on 12 May 1994, only after its receipt of the Amended Judgment.

Resins, Inc., on the other hand, asserts that the certification of the RTC Clerk of Court and photocopies of the return slips from the post office are sufficient to prove that the OSG indeed received the 17 March 1993 Judgment.

Resins, Inc.'s argument must fail.

OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was

[26] Now Section 13, Rule 13 of the 1997 Rules of Civil Procedure.

[27] *Government of the Philippines v. Aballe,* G.R. No. 147212, 24 March 2006, 485 SCRA 308, 317.

[28] *Petition for Habeas Corpus of Benjamin Vergara v. Judge Gedorio, Jr.*, 450 Phil. 623, 634 (2003). See also note 26.

sent through registered mail ***and*** that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters.[29] Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that "*it is the registry receipt issued by the mailing office and the affidavit of the person mailing*, which proves service made through registered mail."[30] Absent one or the other, or worse both, there is no proof of service.[31]

Mere certification of the RTC Clerk of Court is insufficient because the Clerk of Court may not be the person who did the mailing. The certification in this case is also not under oath. There must be an affidavit of the person who actually did the mailing. In the present case, the certification of the Clerk of Court states:

C E R T I F I C A T I O N

This certifies that the original carbon copy of the Judgment of the above-entitled case appearing on pages 484-488 dated March 17, 1993 was received by the Office of the Solicitor-General on April 6, 1993 as per return slip. A copy of which is attached herewith.

Posted on this 13th day of August, 1999 in the city of Cagayan de Oro.

TAUMATURGO U. MACABINLAR
Clerk of Court V[32]

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[29] *Ting v. Court of Appeals*, 398 Phil. 481, 493 (2000) citing *Central Trust Co. v. City of Des Moines*, 218 NW 580 (1928).

[30] *Supra* note 27, at 318. Emphasis in the original.

[31] *Cruz v. Court of Appeals*, 436 Phil. 641, 652 (2002).

[32] *Rollo*, p. 151.

It is clear that the certification does not state that the Clerk of Court did the mailing. Mere photocopies of the return slips are also insufficient. The original copies of the registry receipt or, in lieu thereof, the unclaimed notice and a certification from the postmaster of the issuance of notice, should be presented. Indeed, we declared in *Delgado v. Hon. P.C. Ceniza, et al.* that:

> We find that the service of the judgment rendered in the case suffers from two defects, namely, **there is no affidavit of the clerk of court**, the person mailing, and there is no registry return card, or a certified or sworn copy of the notice given by the postmaster to the addressee.[33] (Emphasis supplied)

While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. When the service of the judgment is questioned, such as in the present case, there is a need to present ***both the registry receipt issued by the mailing office and the affidavit of the person mailing***. Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do.

WHEREFORE, we *GRANT* the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 78516 promulgated on 25 May 2006 is *REVERSED* and *SET ASIDE*. The Regional Trial Court of Misamis Oriental, Branch 20, Cagayan de Oro City is directed to hear the appeal of the Republic of the Philippines in Land Registration Case No. N-91-012, LRA Record No. N-62407.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.,* concur.

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[33] 101 Phil. 740, 743 (1957).

[*] Designated additional member per Raffle dated 21 June 2010.

SECOND DIVISION

[G.R. No. 176019. January 12, 2011]

BPI FAMILY SAVINGS BANK, INC., *petitioner, vs.* **GOLDEN POWER DIESEL SALES CENTER, INC. and RENATO C. TAN**, *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; AS A RULE, A PURCHASER IN A PUBLIC AUCTION SALE OF FORECLOSED PROPERTY IS ENTITLED TO A WRIT OF POSSESSION; SUSTAINED. — In extrajudicial foreclosures of real estate mortgages, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, as amended. x x x In *China Banking Corporation v. Lozada*, we ruled: It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. **Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.**

2. ID.; ID.; ID.; ID.; ID.; EXCEPTION; WHERE THIRD PARTY IS HOLDING FORECLOSED PROPERTY ADVERSELY TO JUDGMENT OBLIGOR; CASE AT BAR NOT A CASE OF. — There is, however, an exception. Section 33, Rule 39 of the Rules of Court provides: Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*. — x x x Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire

all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor.** Therefore, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the judgment obligor, the issuance by the trial court of a writ of possession in favor of the purchaser of said real property ceases to be ministerial and may no longer be done *ex parte*. The procedure is for the trial court to order a hearing to determine the nature of the adverse possession. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party *adversely to the judgment obligor*. x x x It is clear that respondents acquired possession over the properties pursuant to the Deed of Sale which provides that for ₱15,000,000 CEDEC will "sell, transfer and convey" to respondents the properties "free from all liens and encumbrances excepting the mortgage as may be subsisting in favor of the BPI FAMILY SAVINGS BANK." Moreover, the Deed of Sale provides that respondents bind themselves to assume "the payment of the unpaid balance of the mortgage indebtedness of the VENDOR (CEDEC) amounting to ₱7,889,472.48, as of July 31, 1998, in favor of the aforementioned mortgagee (BPI Family) by the mortgage instruments and does hereby further agree to be bound by the precise terms and conditions therein contained." x x x Respondents cannot assert that their right of possession is adverse to that of CEDEC when they have no independent right of possession other than what they acquired from CEDEC. Since respondents are not holding the properties adversely to CEDEC, being the latter's successors-in-interest, there was no reason for the trial court to order the suspension of the implementation of the writ of possession.

3. ID.; ID.; ID.; ID.; ID.; A PENDING ACTION FOR ANNULMENT OF MORTGAGE OR FORECLOSURE SALE DOES NOT STAY THE ISSUANCE OF THE WRIT OF POSSESSION, WITHOUT PREJUDICE TO THE OUTCOME OF THE CIVIL CASE; CASE AT BAR. — Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed,

does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case. In this case, the trial court erred in issuing its 7 March 2003 Order suspending the implementation of the *alias* writ of possession. Despite the pendency of Civil Case No. 99-0360, the trial court should not have ordered the sheriff to suspend the implementation of the writ of possession. BPI Family, as purchaser in the foreclosure sale, is entitled to a writ of possession without prejudice to the outcome of Civil Case No. 99-0360.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley Law Offices for petitioner.

Pajares Asual & Adaci for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 13 March 2006 Decision[2] and 19 December 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 78626. In its 13 March 2006 Decision, the Court of Appeals denied petitioner BPI Family Savings Bank, Inc.'s (BPI Family) petition for *mandamus* and *certiorari*. In its 19 December 2006 Resolution, the Court of Appeals denied BPI Family's motion for reconsideration.

The Facts

On 26 October 1994, CEDEC Transport, Inc. (CEDEC) mortgaged two parcels of land covered by Transfer Certificate of Title (TCT) Nos. 134327 and 134328 situated in Malibay,

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 8-17. Penned by Associate Justice Noel G. Tijam, with Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo, concurring.

[3] *Id.* at 19.

Pasay City, including all the improvements thereon (properties), in favor of BPI Family to secure a loan of ₱6,570,000. On the same day, the mortgage was duly annotated on the titles under Entry No. 94-2878. On 5 April and 27 November 1995, CEDEC obtained from BPI Family additional loans of ₱2,160,000 and ₱1,140,000, respectively, and again mortgaged the same properties. These latter mortgages were duly annotated on the titles under Entry Nos. 95-6861 and 95-11041, respectively, on the same day the loans were obtained.

Despite demand, CEDEC defaulted in its mortgage obligations. On 12 October 1998, BPI Family filed with the *ex-officio* sheriff of the Regional Trial Court of Pasay City (RTC) a verified petition for extrajudicial foreclosure of real estate mortgage over the properties under Act No. 3135, as amended.[4]

On 10 December 1998, after due notice and publication, the sheriff sold the properties at public auction. BPI Family, as the highest bidder, acquired the properties for ₱13,793,705.31. On 14 May 1999, the Certificate of Sheriff's Sale, dated 24 February 1999, was duly annotated on the titles covering the properties.

On 15 May 1999, the one-year redemption period expired without CEDEC redeeming the properties. Thus, the titles to the properties were consolidated in the name of BPI Family. On 13 September 2000, the Registry of Deeds of Pasay City issued new titles, TCT Nos. 142935 and 142936, in the name of BPI Family.

However, despite several demand letters, CEDEC refused to vacate the properties and to surrender possession to BPI Family. On 31 January 2002, BPI Family filed an *Ex-Parte* Petition for Writ of Possession over the properties with Branch 114 of the Regional Trial Court of Pasay City (trial court). In its 27 June 2002 Decision, the trial court granted BPI Family's petition.[5] On 12 July 2002, the trial court issued the Writ of Possession.

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[4] An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To The Real Estate Mortgages. Approved on 6 March 1924.

[5] *Rollo,* pp. 58-61.

On 29 July 2002, respondents Golden Power Diesel Sales Center, Inc. and Renato C. Tan[6] (respondents) filed a Motion to Hold Implementation of the Writ of Possession.[7] Respondents alleged that they are in possession of the properties which they acquired from CEDEC on 10 September 1998 pursuant to the Deed of Absolute Sale with Assumption of Mortgage (Deed of Sale).[8] Respondents argued that they are third persons claiming rights adverse to CEDEC, the judgment obligor and they cannot be deprived of possession over the properties. Respondents also disclosed that they filed a complaint before Branch 111 of the Regional Trial Court of Pasay City, docketed as Civil Case No. 99-0360, for the cancellation of the Sheriff's Certificate of Sale and an order to direct BPI Family to honor and accept the Deed of Absolute Sale between CEDEC and respondents.[9]

On 12 September 2002, the trial court denied respondents' motion.[10] Thereafter, the trial court issued an *alias* writ of possession which was served upon CEDEC and all other persons claiming rights under them.

However, the writ of possession expired without being implemented. On 22 January 2003, BPI Family filed an Urgent *Ex-Parte* Motion to Order the Honorable Branch Clerk of Court to Issue *Alias* Writ of Possession. In an Order dated 27 January 2003, the trial court granted BPI Family's motion.

Before the *alias* writ could be implemented, respondent Renato C. Tan filed with the trial court an Affidavit of Third Party Claim[11]

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[6] Respondent Renato C. Tan is the President and Chief Executive Officer of Golden Power.

[7] *Rollo*, pp. 62-64.

[8] *Id.* at 133-135.

[9] *Id.* at 65-77. Entitled "*Golden Power Diesel Sales Center, Inc. and Renato C. Tan v. BPI Family Savings Bank, Inc., Elvira A. Lim, CEDEC Transport Corporation, Pepito S. Celestino as Clerk of Court of the Regional Trial Court of Pasay City and as Ex-officio Sheriff, and Deputy Sheriff Severino DC Balubar, Jr.*"

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

[11] *Id.* at 85-88.

on the properties. Instead of implementing the writ, the sheriff referred the matter to the trial court for resolution.

On 11 February 2003, BPI Family filed an Urgent Motion to Compel Honorable Sheriff and/or his Deputy to Enforce Writ of Possession and to Break Open the properties. In its 7 March 2003 Resolution, the trial court denied BPI Family's motion and ordered the sheriff to suspend the implementation of the *alias* writ of possession.[12] According to the trial court, "the order granting the *alias* writ of possession should not affect third persons holding adverse rights to the judgment obligor." The trial court admitted that in issuing the first writ of possession it failed to take into consideration respondents' complaint before Branch 111 claiming ownership of the property. The trial court also noted that respondents were in actual possession of the properties and had been updating the payment of CEDEC's loan balances with BPI Family. Thus, the trial court found it necessary to amend its 12 September 2002 Order and suspend the implementation of the writ of possession until Civil Case No. 99-0360 is resolved.

BPI Family filed a motion for reconsideration. In its 20 June 2003 Resolution, the trial court denied the motion.[13]

BPI Family then filed a petition for *mandamus* and *certiorari* with application for a temporary restraining order or preliminary injunction before the Court of Appeals. BPI Family argued that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered the suspension of the implementation of the *alias* writ of possession. According to BPI Family, it was the ministerial duty of the trial court to grant the writ of possession in its favor considering that it was now the owner of the properties and that once issued, the writ should be implemented without delay.

The Court of Appeals dismissed BPI Family's petition. The dispositive portion of the 13 March 2006 Decision reads:

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[12] *Id.* at 89-93.

[13] *Id.* at 94-98.

WHEREFORE, the instant *Petition for Writ of Mandamus and Writ of Certiorari with Application for a TRO and/or Preliminary Injunction* is hereby *DENIED*. The twin *Resolutions* dated March 7, 2003 and June 20, 2003, both issued by the public respondent in LRC Case No. 02-0003, ordering the sheriff to suspend the implementation of the *Alias Writ of Possession* issued in favor of the petitioner, and denying its *Urgent Omnibus Motion* thereof, respectively, are hereby ***AFFIRMED***.

SO ORDERED.[14]

BPI Family filed a motion for reconsideration. In its 19 December 2006 Resolution, the Court of Appeals denied the motion.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the trial court did not commit grave abuse of discretion in suspending the implementation of the *alias* writ of possession because respondents were in actual possession of the properties and are claiming rights adverse to CEDEC, the judgment obligor. According to the Court of Appeals, the principle that the implementation of the writ of possession is a mere ministerial function of the trial court is not without exception. The Court of Appeals held that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor or mortgagor.

The Issues

BPI Family raises the following issues:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE FINDING OF THE HONORABLE REGIONAL TRIAL COURT THAT DESPITE THE FACT THAT PRIVATE RESPONDENTS MERELY STEPPED INTO THE SHOES OF

[14] *Id.* at 17.

MORTGAGOR CEDEC, BEING THE VENDEE OF THE PROPERTIES IN QUESTION, THEY ARE CATEGORIZED AS THIRD PERSONS IN POSSESSION THEREOF WHO ARE CLAIMING A RIGHT ADVERSE TO THAT OF THE DEBTOR/MORTGAGOR CEDEC.

B.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE AFOREMENTIONED TWIN ORDERS SUSPENDING THE IMPLEMENTATION OF THE WRIT OF POSSESSION ON THE GROUND THAT THE ANNULMENT CASE FILED BY PRIVATE RESPONDENTS IS STILL PENDING DESPITE THE ESTABLISHED RULING THAT PENDENCY OF A CASE QUESTIONING THE LEGALITY OF A MORTGAGE OR AUCTION SALE CANNOT BE A GROUND FOR THE NON-ISSUANCE AND/OR NON-IMPLEMENTATION OF A WRIT OF POSSESSION.[15]

The Ruling of the Court

The petition is meritorious.

BPI Family argues that respondents cannot be considered "a third party who is claiming a right adverse to that of the debtor or mortgagor" because respondents, as vendee, merely stepped into the shoes of CEDEC, the vendor and judgment obligor. According to BPI Family, respondents are mere extensions or successors-in-interest of CEDEC. BPI Family also argues that the pendency of an action questioning the validity of a mortgage or auction sale cannot be a ground to oppose the implementation of a writ of possession.

On the other hand, respondents insist that they are third persons who claim rights over the properties adverse to CEDEC. Respondents argue that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the judgment obligor.

[15] *Id.* at 32.

In extrajudicial foreclosures of real estate mortgages, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, as amended, which provides:

> SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (Regional Trial Court) of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

This procedure may also be availed of by the purchaser seeking possession of the foreclosed property bought at the public auction sale after the redemption period has expired without redemption having been made.[16]

In *China Banking Corporation v. Lozada*,[17] we ruled:

> It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can

[16] *China Banking Corporation v. Lozada*, G.R. No. 164919, 4 July 2008, 557 SCRA 177, citing *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595 (1967).

[17] *Id.*

demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. **Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court**.[18] (Emphasis supplied)

Thus, the general rule is that a purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession and, upon an *ex parte* petition of the purchaser, it is ministerial upon the trial court to issue the writ of possession in favor of the purchaser.

There is, however, an exception. Section 33, Rule 39 of the Rules of Court provides:

> Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — x x x
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor**. (Emphasis supplied)

Therefore, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the judgment obligor, the issuance by the trial court of a writ of possession in favor of the purchaser of said real property ceases to be ministerial and may no longer be done *ex parte*.[19] The procedure is for the trial court to order a hearing to determine the nature of the

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[18] *Id.* at 196.

[19] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002), citing *Barican v. Intermediate Appellate Court*, 245 Phil. 316 (1988).

adverse possession.[20] For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party *adversely to the judgment obligor*.

In this case, BPI Family invokes the general rule that they are entitled to a writ of possession because respondents are mere successors-in-interest of CEDEC and do not possess the properties adversely to CEDEC. Respondents, on the other hand, assert the exception and insist that they hold the properties adversely to CEDEC and that their possession is a sufficient obstacle to the *ex parte* issuance of a writ of possession in favor of BPI Family.

Respondents' argument fails to persuade the Court. It is clear that respondents acquired possession over the properties pursuant to the Deed of Sale which provides that for ₱15,000,000 CEDEC will "sell, transfer and convey" to respondents the properties "free from all liens and encumbrances excepting the mortgage as may be subsisting in favor of the BPI FAMILY SAVINGS BANK."[21] Moreover, the Deed of Sale provides that respondents bind themselves to assume "the payment of the unpaid balance of the mortgage indebtedness of the VENDOR (CEDEC) amounting to ₱7,889,472.48, as of July 31, 1998, in favor of the aforementioned mortgagee (BPI Family) by the mortgage instruments and does hereby further agree to be bound by the precise terms and conditions therein contained."[22]

In *Roxas v. Buan*,[23] we ruled:

> It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of ₱100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes.

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[20] *Unchuan v. Court of Appeals*, 244 Phil. 733 (1988).

[21] *Rollo*, p. 135.

[22] *Id.*

[23] 249 Phil. 41 (1988).

Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption. Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin.[24]

In this case, respondents' possession of the properties was premised on the sale to them by CEDEC for the amount of ₱15,000,000. Therefore, respondents hold title to and possess the properties as CEDEC's transferees and any right they have over the properties is derived from CEDEC. As transferees of CEDEC, respondents merely stepped into CEDEC's shoes and are necessarily bound to acknowledge and respect the mortgage CEDEC had earlier executed in favor of BPI Family.[25] Respondents are the successors-in-interest of CEDEC and thus, respondents' occupancy over the properties cannot be considered adverse to CEDEC.

Moreover, in *China Bank v. Lozada*,[26] we discussed the meaning of "a third party who is actually holding the property adversely to the judgment obligor." We stated:

> The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.[27]

In this case, respondents cannot claim that their right to possession over the properties is analogous to any of these. Respondents cannot assert that their right of possession is

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[24] *Id.* at 47-48. Citations omitted.

[25] *Spouses Paderes v. Court of Appeals*, 502 Phil. 76 (2005).

[26] *Supra* note 16.

[27] *Id.* at 202-204. Citations omitted.

adverse to that of CEDEC when they have no independent right of possession other than what they acquired from CEDEC. Since respondents are not holding the properties adversely to CEDEC, being the latter's successors-in-interest, there was no reason for the trial court to order the suspension of the implementation of the writ of possession.

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.[28] The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure.[29] The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[30]

In this case, the trial court erred in issuing its 7 March 2003 Order suspending the implementation of the *alias* writ of possession. Despite the pendency of Civil Case No. 99-0360, the trial court should not have ordered the sheriff to suspend the implementation of the writ of possession. BPI Family, as purchaser in the foreclosure sale, is entitled to a writ of possession without prejudice to the outcome of Civil Case No. 99-0360.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 13 March 2006 Decision and the 19 December 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 78626. We *SET ASIDE* the 7 March and 20 June 2003 Resolutions of the Regional Trial Court, Branch 114, Pasay City. We *ORDER* the sheriff to proceed with the implementation of the writ of possession without prejudice to the outcome of Civil Case No. 99-0360.

SO ORDERED.

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

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[28] *Fernandez v. Espinoza*, G.R. No. 156421, 14 April 2008, 551 SCRA 136; *Idolor v. Court of Appeals*, 490 Phil. 808 (2005); *Samson v. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 759.

[29] *Idolor v. Court of Appeals, supra*.

[30] *Spouses Ong v. Court of Appeals*, 388 Phil. 857 (2000).

SECOND DIVISION

(G.R. No. 178296. January 12, 2011)

THE HERITAGE HOTEL MANILA, acting through its owner, GRAND PLAZA HOTEL CORPORATION, *petitioner, vs.* **NATIONAL UNION OF WORKERS IN THE HOTEL, RESTAURANT AND ALLIED INDUSTRIES-HERITAGE HOTEL MANILA SUPERVISORS CHAPTER (NUWHRAIN-HHMSC),** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; BUREAU OF LABOR RELATIONS (BLR); JURISDICTION TO REVIEW THE DECISION OF THE REGIONAL DIRECTOR; EXPLAINED. — Jurisdiction to review the decision of the Regional Director lies with the BLR. This is clearly provided in the Implementing Rules of the Labor Code and enunciated by the Court in *Abbott*. But as pointed out by the CA, the present case involves a peculiar circumstance that was not present or covered by the ruling in *Abbott.* In this case, the BLR Director inhibited himself from the case because he was a former counsel of respondent. Who, then, shall resolve the case in his place? In *Abbott*, the appeal from the Regional Director's decision was directly filed with the Office of the DOLE Secretary, and we ruled that the latter has no appellate jurisdiction. In the instant case, the appeal was filed by petitioner with the BLR, which, undisputedly, acquired jurisdiction over the case. Once jurisdiction is acquired by the court, it remains with it until the full termination of the case. Thus, jurisdiction remained with the BLR despite the BLR Director's inhibition. When the DOLE Secretary resolved the appeal, she merely stepped into the shoes of the BLR Director and performed a function that the latter could not himself perform. She did so pursuant to her power of supervision and control over the BLR.

2. POLITICAL LAW; ADMINISTRATIVE LAW; POWER OF SUPERVISION AND CONTROL; CONSTRUED. — Expounding on the extent of the power of control, the Court, in *Araneta, et al. v. Hon. M. Gatmaitan, et al.*, pronounced

that, if a certain power or authority is vested by law upon the Department Secretary, then such power or authority may be exercised directly by the President, who exercises supervision and control over the departments. This principle was incorporated in the Administrative Code of 1987, which defines "supervision and control" as including the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate. Applying the foregoing to the present case, it is clear that the DOLE Secretary, as the person exercising the power of supervision and control over the BLR, has the authority to directly exercise the quasi-judicial function entrusted by law to the BLR Director. It is true that the power of control and supervision does not give the Department Secretary unbridled authority to take over the functions of his or her subordinate. Such authority is subject to certain guidelines which are stated in Book IV, Chapter 8, Section 39(1)(a) of the Administrative Code of 1987. However, in the present case, the DOLE Secretary's act of taking over the function of the BLR Director was warranted and necessitated by the latter's inhibition from the case and the objective to "maintain the integrity of the decision, as well as the Bureau itself."

3. ID.; ID.; ESSENCE OF DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; ELUCIDATED. — Well-settled is the rule that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. Petitioner had the opportunity to question the BLR Director's inhibition and the DOLE Secretary's taking cognizance of the case when it filed a motion for reconsideration of the latter's decision. It would be well to state that a critical component of due process is a hearing before an impartial and disinterested tribunal, for all the elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge. It was precisely to ensure a fair trial that moved the BLR Director to inhibit himself from the case and the DOLE Secretary to take over his function.

4. LABOR AND SOCIAL LEGISLATION; LABOR ORGANIZATIONS; CANCELLATION OF CERTIFICATE OF REGISTRATION; FAILURE TO SUBMIT ANNUAL

FINANCIAL REPORT; WITH THE SUBMISSION OF THE REQUIRED DOCUMENTS, THOUGH BELATEDLY, THE PURPOSE OF THE LAW HAS BEEN ACHIEVED. — Articles 238 and 239 of the Labor Code read: ART. 238. *CANCELLATION OF REGISTRATION; APPEAL* The certificate of registration of any legitimate labor organization, whether national or local, shall be canceled by the Bureau **if it has reason to believe**, after due hearing, that the said labor organization **no longer meets one or more of the requirements** herein prescribed. ART. 239. *GROUNDS FOR CANCELLATION OF UNION REGISTRATION*. The following **shall constitute grounds** for cancellation of union registration: x x x (d) Failure to submit the annual financial report to the Bureau within thirty (30) days after the closing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself; x x x x (i) Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau. These provisions give the Regional Director ample discretion in dealing with a petition for cancellation of a union's registration, particularly, determining whether the union still meets the requirements prescribed by law. It is sufficient to give the Regional Director license to treat the late filing of required documents as sufficient compliance with the requirements of the law. After all, the law requires the labor organization to submit the annual financial report and list of members in order to verify if it is still viable and financially sustainable as an organization so as to protect the employer and employees from fraudulent or fly-by-night unions. With the submission of the required documents by respondent, the purpose of the law has been achieved, though belatedly.

5. ID.; ID.; ID.; IN DENYING THE PETITION FOR CANCELLATION OF THE CERTIFICATE OF REGISTRATION, THE REGIONAL DIRECTOR AND THE DOLE SECRETARY DID NOT COMMIT ABUSE OF DISCRETION; RATIONALE. — We cannot ascribe abuse of discretion to the Regional Director and the DOLE Secretary in denying the petition for cancellation of respondent's registration. The union members and, in fact, all the employees belonging to the appropriate bargaining unit should not be deprived of a bargaining agent, merely because of the negligence of the union officers who were responsible for the submission of the documents to the BLR. Labor authorities should, indeed, act with circumspection in treating petitions

for cancellation of union registration, lest they be accused of interfering with union activities. In resolving the petition, consideration must be taken of the fundamental rights guaranteed by Article XIII, Section 3 of the Constitution, *i.e.*, the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities. Labor authorities should bear in mind that registration confers upon a union the status of legitimacy and the concomitant right and privileges granted by law to a legitimate labor organization, particularly the right to participate in or ask for certification election in a bargaining unit. Thus, the cancellation of a certificate of registration is the equivalent of snuffing out the *life* of a labor organization. For without such registration, it loses — as a rule — its rights under the Labor Code.

6. ID.; ID.; ID.; WORKERS' RIGHT TO SELF-ORGANIZATION STRENGTHENED BY AMENDMENTS IN THE LABOR CODE PROVISIONS ON CANCELLATION OF UNION REGISTRATION AND ON REPORTORIAL REQUIREMENTS. — It is worth mentioning that the Labor Code's provisions on cancellation of union registration and on reportorial requirements have been recently amended by Republic Act (R.A.) No. 9481, *An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines*, which lapsed into law on May 25, 2007 and became effective on June 14, 2007. The amendment sought to strengthen the workers' right to self-organization and enhance the Philippines' compliance with its international obligations as embodied in the International Labour Organization (ILO) Convention No. 87, pertaining to the non-dissolution of workers' organizations by administrative authority.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Levy Edwin C. Ang for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated May 30, 2005 and Resolution dated June 4, 2007. The assailed Decision affirmed the dismissal of a petition for cancellation of union registration filed by petitioner, Grand Plaza Hotel Corporation, owner of Heritage Hotel Manila, against respondent, National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC), a labor organization of the supervisory employees of Heritage Hotel Manila.

The case stemmed from the following antecedents:

On October 11, 1995, respondent filed with the Department of Labor and Employment-National Capital Region (DOLE-NCR) a petition for certification election.[2] The Med-Arbiter granted the petition on February 14, 1996 and ordered the holding of a certification election.[3] On appeal, the DOLE Secretary, in a Resolution dated August 15, 1996, affirmed the Med-Arbiter's order and remanded the case to the Med-Arbiter for the holding of a preelection conference on February 26, 1997. Petitioner filed a motion for reconsideration, but it was denied on September 23, 1996.

The preelection conference was not held as initially scheduled; it was held a year later, or on February 20, 1998. Petitioner moved to archive or to dismiss the petition due to alleged repeated non-appearance of respondent. The latter agreed to suspend proceedings until further notice. The preelection conference resumed on January 29, 2000.

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[1] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring; *rollo*, pp. 38-54.

[2] *Id.* at 62-64.

[3] *Id.* at 133.

Subsequently, petitioner discovered that respondent had failed to submit to the Bureau of Labor Relations (BLR) its annual financial report for several years and the list of its members since it filed its registration papers in 1995. Consequently, on May 19, 2000, petitioner filed a Petition for Cancellation of Registration of respondent, on the ground of the non-submission of the said documents. Petitioner prayed that respondent's Certificate of Creation of Local/Chapter be cancelled and its name be deleted from the list of legitimate labor organizations. It further requested the suspension of the certification election proceedings.[4]

On June 1, 2000, petitioner reiterated its request by filing a Motion to Dismiss or Suspend the [Certification Election] Proceedings,[5] arguing that the dismissal or suspension of the proceedings is warranted, considering that the legitimacy of respondent is seriously being challenged in the petition for cancellation of registration. Petitioner maintained that the resolution of the issue of whether respondent is a legitimate labor organization is crucial to the issue of whether it may exercise rights of a legitimate labor organization, which include the right to be certified as the bargaining agent of the covered employees.

Nevertheless, the certification election pushed through on June 23, 2000. Respondent emerged as the winner.[6]

On June 28, 2000, petitioner filed a Protest with Motion to Defer Certification of Election Results and Winner,[7] stating that the certification election held on June 23, 2000 was an exercise in futility because, once respondent's registration is cancelled, it would no longer be entitled to be certified as the exclusive bargaining agent of the supervisory employees. Petitioner also claimed that some of respondent's members were not qualified to join the union because they were either confidential

[4] *Id.* at 67-74.

[5] *Id.* at 83-85.

[6] *Id.* at 100.

[7] *Id.* at 87-95.

employees or managerial employees. It then prayed that the certification of the election results and winner be deferred until the petition for cancellation shall have been resolved, and that respondent's members who held confidential or managerial positions be excluded from the supervisors' bargaining unit.

Meanwhile, respondent filed its Answer[8] to the petition for the cancellation of its registration. It averred that the petition was filed primarily to delay the conduct of the certification election, the respondent's certification as the exclusive bargaining representative of the supervisory employees, and the commencement of bargaining negotiations. Respondent prayed for the dismissal of the petition for the following reasons: (a) petitioner is estopped from questioning respondent's status as a legitimate labor organization as it had already recognized respondent as such during the preelection conferences; (b) petitioner is not the party-in-interest, as the union members are the ones who would be disadvantaged by the non-submission of financial reports; (c) it has already complied with the reportorial requirements, having submitted its financial statements for 1996, 1997, 1998, and 1999, its updated list of officers, and its list of members for the years 1995, 1996, 1997, 1998, and 1999; (d) the petition is already moot and academic, considering that the certification election had already been held, and the members had manifested their will to be represented by respondent.

Citing *National Union of Bank Employees v. Minister of Labor, et al.*[9] and *Samahan ng Manggagawa sa Pacific Plastic v. Hon. Laguesma*,[10] the Med-Arbiter held that the pendency of a petition for cancellation of registration is not a bar to the holding of a certification election. Thus, in an Order[11] dated January 26, 2001, the Med-Arbiter dismissed petitioner's protest, and certified respondent as the sole and exclusive bargaining agent of all supervisory employees.

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[8] *Id.* at 76-81.

[9] 196 Phil. 441 (1981).

[10] 334 Phil. 955 (1997).

[11] *Rollo,* pp. 100-103.

Petitioner subsequently appealed the said Order to the DOLE Secretary.[12] The appeal was later dismissed by DOLE Secretary Patricia A. Sto. Tomas (DOLE Secretary Sto. Tomas) in the Resolution of August 21, 2002.[13] Petitioner moved for reconsideration, but the motion was also denied.[14]

In the meantime, Regional Director Alex E. Maraan (Regional Director Maraan) of DOLE-NCR finally resolved the petition for cancellation of registration. While finding that respondent had indeed failed to file financial reports and the list of its members for several years, he, nonetheless, denied the petition, ratiocinating that freedom of association and the employees' right to self-organization are more substantive considerations. He took into account the fact that respondent won the certification election and that it had already been certified as the exclusive bargaining agent of the supervisory employees. In view of the foregoing, Regional Director Maraan—while emphasizing that the non-compliance with the law is not viewed with favor—considered the belated submission of the annual financial reports and the list of members as sufficient compliance thereof and considered them as having been submitted on time. The dispositive portion of the decision[15] dated December 29, 2001 reads:

> WHEREFORE, premises considered, the instant petition to delist the National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter from the roll of legitimate labor organizations is hereby ***DENIED***.
>
> SO ORDERED.[16]

Aggrieved, petitioner appealed the decision to the BLR.[17] BLR Director Hans Leo Cacdac inhibited himself from the case because he had been a former counsel of respondent.

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[12] *Id.* at 104-110.

[13] *Id.* at 133-136.

[14] *Id.* at 158.

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

[16] *Id.* at 118.

[17] *Id.* at 119-130.

In view of Director Cacdac's inhibition, DOLE Secretary Sto. Tomas took cognizance of the appeal. In a resolution[18] dated February 21, 2003, she dismissed the appeal, holding that the constitutionally guaranteed freedom of association and right of workers to self-organization outweighed respondent's noncompliance with the statutory requirements to maintain its status as a legitimate labor organization.

Petitioner filed a motion for reconsideration,[19] but the motion was likewise denied in a resolution[20] dated May 30, 2003. DOLE Secretary Sto. Tomas admitted that it was the BLR which had jurisdiction over the appeal, but she pointed out that the BLR Director had voluntarily inhibited himself from the case because he used to appear as counsel for respondent. In order to maintain the integrity of the decision and of the BLR, she therefore accepted the motion to inhibit and took cognizance of the appeal.

Petitioner filed a petition for *certiorari* with the CA, raising the issue of whether the DOLE Secretary acted with grave abuse of discretion in taking cognizance of the appeal and affirming the dismissal of its petition for cancellation of respondent's registration.

In a Decision dated May 30, 2005, the CA denied the petition. The CA opined that the DOLE Secretary may legally assume jurisdiction over an appeal from the decision of the Regional Director in the event that the Director of the BLR inhibits himself from the case. According to the CA, in the absence of the BLR Director, there is no person more competent to resolve the appeal than the DOLE Secretary. The CA brushed aside the allegation of bias and partiality on the part of the DOLE Secretary, considering that such allegation was not supported by any evidence.

The CA also found that the DOLE Secretary did not commit grave abuse of discretion when she affirmed the dismissal of the petition for cancellation of respondent's registration as a

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[18] *Id.* at 187-190.

[19] *Id.* at 192-202.

[20] *Id.* at 204-205.

labor organization. Echoing the DOLE Secretary, the CA held that the requirements of registration of labor organizations are an exercise of the overriding police power of the State, designed for the protection of workers against potential abuse by the union that recruits them. These requirements, the CA opined, should not be exploited to work against the workers' constitutionally protected right to self-organization.

Petitioner filed a motion for reconsideration, invoking this Court's ruling in *Abbott Labs. Phils., Inc. v. Abbott Labs. Employees Union*,[21] which categorically declared that the DOLE Secretary has no authority to review the decision of the Regional Director in a petition for cancellation of union registration, and Section 4,[22] Rule VIII, Book V of the Omnibus Rules Implementing the Labor Code.

In its Resolution[23] dated June 4, 2007, the CA denied petitioner's motion, stating that the BLR Director's inhibition from the case was a peculiarity not present in the *Abbott* case, and that such inhibition justified the assumption of jurisdiction by the DOLE Secretary.

In this petition, petitioner argues that:

I.

The Court of Appeals seriously erred in ruling that the Labor Secretary properly assumed jurisdiction over Petitioner's appeal of the Regional Director's Decision in the Cancellation Petition x x x.

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[21] 380 Phil. 364 (2000).

[22] Sec. 4. *Action on the petition; appeals*. — The Regional or Bureau Director, as the case may be, shall have thirty (30) days from submission of the case for resolution within which to resolve the petition. The decision of the Regional or Bureau Director may be appealed to the Bureau or the Secretary, as the case may be, within ten (10) days from receipt thereof by the aggrieved party on the ground of grave abuse of discretion or any violation of these Rules.

The Bureau or the Secretary shall have fifteen (15) days from receipt of the records of the case within which to decide the appeal. The decision of the Bureau or the Secretary shall be final and executory.

[23] *Rollo*, pp. 56-59.

A. Jurisdiction is conferred only by law. The Labor Secretary had no jurisdiction to review the decision of the Regional Director in a petition for cancellation. Such jurisdiction is conferred by law to the BLR.

B. The unilateral inhibition by the BLR Director cannot justify the Labor Secretary's exercise of jurisdiction over the Appeal.

C. The Labor Secretary's assumption of jurisdiction over the Appeal without notice violated Petitioner's right to due process.

II.

The Court of Appeals gravely erred in affirming the dismissal of the Cancellation Petition despite the mandatory and unequivocal provisions of the Labor Code and its Implementing Rules.[24]

The petition has no merit.

Jurisdiction to review the decision of the Regional Director lies with the BLR. This is clearly provided in the Implementing Rules of the Labor Code and enunciated by the Court in *Abbott*. But as pointed out by the CA, the present case involves a peculiar circumstance that was not present or covered by the ruling in *Abbott*. In this case, the BLR Director inhibited himself from the case because he was a former counsel of respondent. Who, then, shall resolve the case in his place?

In *Abbott*, the appeal from the Regional Director's decision was directly filed with the Office of the DOLE Secretary, and we ruled that the latter has no appellate jurisdiction. In the instant case, the appeal was filed by petitioner with the BLR, which, undisputedly, acquired jurisdiction over the case. Once jurisdiction is acquired by the court, it remains with it until the full termination of the case.[25]

Thus, jurisdiction remained with the BLR despite the BLR Director's inhibition. When the DOLE Secretary resolved the

[24] *Id.* at 535-536.

[25] *Republic v. Asiapro Cooperative*, G.R. No. 172101, November 23, 2007, 538 SCRA 659, 670.

appeal, she merely stepped into the shoes of the BLR Director and performed a function that the latter could not himself perform. She did so pursuant to her power of supervision and control over the BLR.[26]

Expounding on the extent of the power of control, the Court, in *Araneta, et al. v. Hon. M. Gatmaitan, et al.*,[27] pronounced that, if a certain power or authority is vested by law upon the Department Secretary, then such power or authority may be exercised directly by the President, who exercises supervision and control over the departments. This principle was incorporated in the Administrative Code of 1987, which defines "supervision and control" as including the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate.[28] Applying the foregoing to the present case, it is clear that the DOLE Secretary, as the person exercising the power of supervision and control over the BLR, has the authority to directly exercise the quasi-judicial function entrusted by law to the BLR Director.

It is true that the power of control and supervision does not give the Department Secretary unbridled authority to take over the functions of his or her subordinate. Such authority is subject to certain guidelines which are stated in Book IV, Chapter 8, Section 39(1)(a) of the Administrative Code of 1987.[29] However, in the present case, the DOLE Secretary's act of taking over the function of the BLR Director was warranted and necessitated by the latter's inhibition from the case and the objective to

[26] Administrative Code of 1987, Book IV, Chapter 8, Sec. 39(1).

[27] 101 Phil. 328 (1957).

[28] Administrative Code of 1987, Book IV, Chapter 7, Sec. 38(1).

[29] Administrative Code of 1987, Book IV, Chapter 8, Sec. 39(1), paragraph (a) provides:

Sec. 39. Secretary's Authority.— (1) The Secretary shall have supervision and control over the bureaus, offices, and agencies under him, subject to the following guidelines:

(a) "Initiative and freedom of action on the part of subordinate units shall be encouraged and promoted, rather than curtailed, and reasonable opportunity to act shall be afforded those units before control is exercised."

"maintain the integrity of the decision, as well as the Bureau itself."[30]

Petitioner insists that the BLR Director's subordinates should have resolved the appeal, citing the provision under the Administrative Code of 1987 which states, "in case of the absence or disability of the head of a bureau or office, his duties shall be performed by the assistant head."[31] The provision clearly does not apply considering that the BLR Director was neither absent nor suffering from any disability; he remained as head of the BLR. Thus, to dispel any suspicion of bias, the DOLE Secretary opted to resolve the appeal herself.

Petitioner was not denied the right to due process when it was not notified in advance of the BLR Director's inhibition and the DOLE Secretary's assumption of the case. Well-settled is the rule that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[32] Petitioner had the opportunity to question the BLR Director's inhibition and the DOLE Secretary's taking cognizance of the case when it filed a motion for reconsideration of the latter's decision. It would be well to state that a critical component of due process is a hearing before an impartial and disinterested tribunal, for all the elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[33] It was precisely to ensure a fair trial that moved the BLR Director to inhibit himself from the case and the DOLE Secretary to take over his function.

Petitioner also insists that respondent's registration as a legitimate labor union should be cancelled. Petitioner posits

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[30] *Rollo,* p. 205.

[31] Administrative Code of 1987, Book IV, Chapter 6, Sec. 32.

[32] *Sarapat v. Salanga,* G.R. No. 154110, November 23, 2007, 538 SCRA 324, 332.

[33] *Busilac Builders, Inc. v. Aguilar,* A.M. No. RTJ-03-1809, October 17, 2006, 504 SCRA 585, 597.

that once it is determined that a ground enumerated in Article 239 of the Labor Code is present, cancellation of registration should follow; it becomes the ministerial duty of the Regional Director to cancel the registration of the labor organization, hence, the use of the word "shall." Petitioner points out that the Regional Director has admitted in its decision that respondent failed to submit the required documents for a number of years; therefore, cancellation of its registration should have followed as a matter of course.

We are not persuaded.

Articles 238 and 239 of the Labor Code read:

ART. 238. *CANCELLATION OF REGISTRATION; APPEAL*

The certificate of registration of any legitimate labor organization, whether national or local, shall be canceled by the Bureau **if it has reason to believe**, after due hearing, that the said labor organization **no longer meets one or more of the requirements** herein prescribed.[34]

ART. 239. *GROUNDS FOR CANCELLATION OF UNION REGISTRATION.*

The following **shall constitute grounds** for cancellation of union registration:

x x x x x x x x x

(d) Failure to submit the annual financial report to the Bureau within thirty (30) days after the closing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself;

x x x x x x x x x x x x

(i) Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau.[35]

These provisions give the Regional Director ample discretion in dealing with a petition for cancellation of a union's registration, particularly, determining whether the union still meets the

[34] Emphasis supplied.

[35] Emphasis supplied.

requirements prescribed by law. It is sufficient to give the Regional Director license to treat the late filing of required documents as sufficient compliance with the requirements of the law. After all, the law requires the labor organization to submit the annual financial report and list of members in order to verify if it is still viable and financially sustainable as an organization so as to protect the employer and employees from fraudulent or fly-by-night unions. With the submission of the required documents by respondent, the purpose of the law has been achieved, though belatedly.

We cannot ascribe abuse of discretion to the Regional Director and the DOLE Secretary in denying the petition for cancellation of respondent's registration. The union members and, in fact, all the employees belonging to the appropriate bargaining unit should not be deprived of a bargaining agent, merely because of the negligence of the union officers who were responsible for the submission of the documents to the BLR.

Labor authorities should, indeed, act with circumspection in treating petitions for cancellation of union registration, lest they be accused of interfering with union activities. In resolving the petition, consideration must be taken of the fundamental rights guaranteed by Article XIII, Section 3 of the Constitution, *i.e.*, the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities. Labor authorities should bear in mind that registration confers upon a union the status of legitimacy and the concomitant right and privileges granted by law to a legitimate labor organization, particularly the right to participate in or ask for certification election in a bargaining unit.[36] Thus, the cancellation of a certificate of registration is the equivalent of snuffing out the *life* of a labor organization. For without such registration, it loses — as a rule — its rights under the Labor Code.[37]

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[36] *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union,* G.R. No. 161690, July 23, 2008, 559 SCRA 435, 442.

[37] *Alliance of Democratic Free Labor Org. v. Laguesma,* 325 Phil. 13, 28 (1996).

It is worth mentioning that the Labor Code's provisions on cancellation of union registration and on reportorial requirements have been recently amended by Republic Act (R.A.) No. 9481, *An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines*, which lapsed into law on May 25, 2007 and became effective on June 14, 2007. The amendment sought to strengthen the workers' right to self-organization and enhance the Philippines' compliance with its international obligations as embodied in the International Labour Organization (ILO) Convention No. 87,[38] pertaining to the non-dissolution of workers' organizations by administrative authority.[39] Thus, R.A. No. 9481 amended Article 239 to read:

ART. 239. *Grounds for Cancellation of Union Registration.*— The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

R.A. No. 9481 also inserted in the Labor Code Article 242-A, which provides:

ART. 242-A. *Reportorial Requirements.*—The following are documents required to be submitted to the Bureau by the legitimate labor organization concerned:

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[38] Convention Concerning Freedom of Association and Protection of the Right to Organise.

[39] Sponsorship Speech of Senator Jinggoy Ejercito Estrada of Senate Bill No. 2466, Journal of the Senate, Session No. 25, September 19, 2006, pp. 384-385.

(a) Its constitution and by-laws, or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification of the constitution and by-laws within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;

(b) Its list of officers, minutes of the election of officers, and list of voters within thirty (30) days from election;

(c) Its annual financial report within thirty (30) days after the close of every fiscal year; and

(d) Its list of members at least once a year or whenever required by the Bureau.

Failure to comply with the above requirements shall not be a ground for cancellation of union registration but shall subject the erring officers or members to suspension, expulsion from membership, or any appropriate penalty.

ILO Convention No. 87, which we have ratified in 1953, provides that "workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority." The ILO has expressed the opinion that the cancellation of union registration by the registrar of labor unions, which in our case is the BLR, is tantamount to dissolution of the organization by administrative authority when such measure would give rise to the loss of legal personality of the union or loss of advantages necessary for it to carry out its activities, which is true in our jurisdiction. Although the ILO has allowed such measure to be taken, provided that judicial safeguards are in place, *i.e.*, the right to appeal to a judicial body, it has nonetheless reminded its members that dissolution of a union, and cancellation of registration for that matter, involve serious consequences for occupational representation. It has, therefore, deemed it preferable if such actions were to be taken only as a last resort and after exhausting other possibilities with less serious effects on the organization.[40]

The aforesaid amendments and the ILO's opinion on this matter serve to fortify our ruling in this case. We therefore

[40] Freedom of association and collective bargaining: Dissolution and suspension of organizations by administrative authority, Report III(4B), International Labour Conference, 81st Session, Geneva, 1994.

quote with approval the DOLE Secretary's rationale for denying the petition, thus:

It is undisputed that appellee failed to submit its annual financial reports and list of individual members in accordance with Article 239 of the Labor Code. However, the existence of this ground should not necessarily lead to the cancellation of union registration. Article 239 recognizes the regulatory authority of the State to exact compliance with reporting requirements. Yet there is more at stake in this case than merely monitoring union activities and requiring periodic documentation thereof.

The more substantive considerations involve the constitutionally guaranteed freedom of association and right of workers to self-organization. Also involved is the public policy to promote free trade unionism and collective bargaining as instruments of industrial peace and democracy. An overly stringent interpretation of the statute governing cancellation of union registration without regard to surrounding circumstances cannot be allowed. Otherwise, it would lead to an unconstitutional application of the statute and emasculation of public policy objectives. Worse, it can render nugatory the protection to labor and social justice clauses that pervades the Constitution and the Labor Code.

Moreover, submission of the required documents is the duty of the officers of the union. It would be unreasonable for this Office to order the cancellation of the union and penalize the entire union membership on the basis of the negligence of its officers. In *National Union of Bank Employees vs. Minister of Labor*, L-53406, 14 December 1981, 110 SCRA 296, the Supreme Court ruled:

> As aptly ruled by respondent Bureau of Labor Relations Director Noriel: "The rights of workers to self-organization finds general and specific constitutional guarantees. x x x Such constitutional guarantees should not be lightly taken much less nullified. A healthy respect for the freedom of association demands that acts imputable to officers or members be not easily visited with capital punishments against the association itself."

At any rate, we note that on 19 May 2000, appellee had submitted its financial statement for the years 1996-1999. With this submission, appellee has substantially complied with its duty to submit its financial report for the said period. To rule differently would be

to preclude the union, after having failed to meet its periodic obligations promptly, from taking appropriate measures to correct its omissions. For the record, we do not view with favor appellee's late submission. Punctuality on the part of the union and its officers could have prevented this petition.[41]

WHEREFORE, premises considered, the Court of Appeals Decision dated May 30, 2005 and Resolution dated June 4, 2007 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179419. January 12, 2011]

DURBAN APARTMENTS CORPORATION, doing business under the name and style of City Garden Hotel, *petitioner, vs.* **PIONEER INSURANCE AND SURETY CORPORATION,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, ARE ACCORDED THE HIGHEST DEGREE OF RESPECT AND ARE CONSIDERED CONCLUSIVE BETWEEN THE PARTIES; EXCEPTIONS; NO APPLICATION IN CASE AT BAR.— We are in complete accord with the common ruling of the lower

[41] *Rollo,* p. 189.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated January 12, 2011.

courts that petitioner was in default for failure to appear at the pre-trial conference and to file a pre-trial brief, and thus, correctly allowed respondent to present evidence *ex-parte*. Likewise, the lower courts did not err in holding petitioner liable for the loss of See's vehicle. Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises, or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. None of the foregoing exceptions permitting a reversal of the assailed decision exists in this instance.

2. ID.; ID.; PRE-TRIAL; APPEARANCE OF PARTIES AND THEIR COUNSEL AT THE PRE-TRIAL CONFERENCE AND THE FILING OF A CORRESPONDING PRE-TRIAL BRIEF ARE MANDATORY; CASE AT BAR.— Rule 18 of the Rules of Court leaves no room for equivocation; appearance of parties and their counsel at the pre-trial conference, along with the filing of a corresponding pre-trial brief, is mandatory, nay, their duty. Thus, Section 4 and Section 6 thereof provide: SEC. 4. *Appearance of parties*.–It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. SEC. 6. *Pre-trial brief*.–The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial,

their respective pre-trial briefs which shall contain, among others: x x x Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. Contrary to the foregoing rules, petitioner and its counsel of record were not present at the scheduled pre-trial conference. Worse, they did not file a pre-trial brief. Their non-appearance cannot be excused as Section 4, in relation to Section 6, allows only two exceptions: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. x x x The appearance of Atty. Mejia at the pre-trial conference, without a pre-trial brief and with only his bare allegation that he is counsel for petitioner, was correctly rejected by the trial court. Accordingly, the trial court, as affirmed by the appellate court, did not err in allowing respondent to present evidence *ex-parte*.

3. ID.; ID.; ID.; EFFECT OF FAILURE TO APPEAR AT PRE-TRIAL; A PARTY'S PRECLUSION FROM PRESENTING EVIDENCE DURING TRIAL DOES NOT AUTOMATICALLY RESULT IN A JUDGMENT IN FAVOR OF THE OTHER PARTY.— We are not unmindful that defendant's (petitioner's) preclusion from presenting evidence during trial does not automatically result in a judgment in favor of plaintiff (respondent). The plaintiff must still substantiate the allegations in its complaint. Otherwise, it would be inutile to continue with the plaintiff's presentation of evidence each time the defendant is declared in default.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DEPOSIT; CONTRACT OF DEPOSIT, ESTABLISHED IN CASE AT BAR.— Plainly, from the facts found by the lower courts, the insured See deposited his vehicle for safekeeping with petitioner, through the latter's employee, Justimbaste. In turn, Justimbaste issued a claim stub to See. Thus, the contract of deposit was perfected from See's delivery, when he handed over to Justimbaste the keys to his vehicle, which Justimbaste received with the obligation of safely keeping and returning it. Ultimately, petitioner is liable for the loss of See's vehicle.

5. ID.; DAMAGES; ATTORNEY'S FEES; WHEN MAY BE AWARDED; REDUCTION OF THE AWARD OF ATTORNEY'S FEES, PROPER.— While it is a sound policy not to set a premium on the right to litigate, we find that respondent is entitled to reasonable attorney's fees. Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect its interest, or when the court deems it just and equitable. In this case, petitioner refused to answer for the loss of See's vehicle, which was deposited with it for safekeeping. This refusal constrained respondent, the insurer of See, and subrogated to the latter's right, to litigate and incur expenses. However, we reduce the award of ₱120,000.00 to ₱60,000.00 in view of the simplicity of the issues involved in this case.

APPEARANCES OF COUNSEL

Emiliano T. De Asis for petitioner.
June C. Reyes for respondent.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 86869, which affirmed the decision[2] of the Regional Trial Court (RTC), Branch 66, Makati City, in Civil Case No. 03-857, holding petitioner Durban Apartments Corporation solely liable to respondent Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's (See's) vehicle.

The facts, as found by the CA, are simple.

On July 22, 2003, [respondent] Pioneer Insurance and Surety Corporation x x x, by right of subrogation, filed [with the RTC of Makati City] a Complaint for Recovery of Damages against [petitioner]

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; *rollo*, pp. 93-109.

[2] Penned by Pairing Judge Rommel O. Baybay; *id*. at 33-35.

Durban Apartments Corporation, doing business under the name and style of City Garden Hotel, and [defendant before the RTC] Vicente Justimbaste x x x. [Respondent averred] that: it is the insurer for loss and damage of Jeffrey S. See's [the insured's] 2001 Suzuki Grand Vitara x x x with Plate No. XBH-510 under Policy No. MC-CV-HO-01-0003846-00-D in the amount of ₱1,175,000.00; on April 30, 2002, See arrived and checked in at the City Garden Hotel in Makati corner Kalayaan Avenues, Makati City before midnight, and its parking attendant, defendant x x x Justimbaste got the key to said Vitara from See to park it[. O]n May 1, 2002, at about 1:00 o'clock in the morning, See was awakened in his room by [a] telephone call from the Hotel Chief Security Officer who informed him that his Vitara was carnapped while it was parked unattended at the parking area of Equitable PCI Bank along Makati Avenue between the hours of 12:00 [a.m.] and 1:00 [a.m.]; See went to see the Hotel Chief Security Officer, thereafter reported the incident to the Operations Division of the Makati City Police Anti-Carnapping Unit, and a flash alarm was issued; the Makati City Police Anti-Carnapping Unit investigated Hotel Security Officer, Ernesto T. Horlador, Jr. x x x and defendant x x x Justimbaste; See gave his Sinumpaang Salaysay to the police investigator, and filed a Complaint Sheet with the PNP Traffic Management Group in Camp Crame, Quezon City; the Vitara has not yet been recovered since July 23, 2002 as evidenced by a Certification of Non- Recovery issued by the PNP TMG; it paid the ₱1,163,250.00 money claim of See and mortgagee ABN AMRO Savings Bank, Inc. as indemnity for the loss of the Vitara; the Vitara was lost due to the negligence of [petitioner] Durban Apartments and [defendant] Justimbaste because it was discovered during the investigation that this was the second time that a similar incident of carnapping happened in the valet parking service of [petitioner] Durban Apartments and no necessary precautions were taken to prevent its repetition; [petitioner] Durban Apartments was wanting in due diligence in the selection and supervision of its employees particularly defendant x x x Justimbaste; and defendant x x x Justimbaste and [petitioner] Durban Apartments failed and refused to pay its valid, just, and lawful claim despite written demands.

Upon service of Summons, [petitioner] Durban Apartments and [defendant] Justimbaste filed their Answer with Compulsory Counterclaim alleging that: See did not check in at its hotel, on the contrary, he was a guest of a certain Ching Montero x x x; defendant x x x Justimbaste did not get the ignition key of See's Vitara, on the contrary, it was See who requested a parking attendant to park the

Vitara at any available parking space, and it was parked at the Equitable Bank parking area, which was within See's view, while he and Montero were waiting in front of the hotel; they made a written denial of the demand of [respondent] Pioneer Insurance for want of legal basis; valet parking services are provided by the hotel for the convenience of its customers looking for a parking space near the hotel premises; it is a special privilege that it gave to Montero and See; it does not include responsibility for any losses or damages to motor vehicles and its accessories in the parking area; and the same holds true even if it was See himself who parked his Vitara within the premises of the hotel as evidenced by the valet parking customer's claim stub issued to him; the carnapper was able to open the Vitara without using the key given earlier to the parking attendant and subsequently turned over to See after the Vitara was stolen; defendant x x x Justimbaste saw the Vitara speeding away from the place where it was parked; he tried to run after it, and blocked its possible path but to no avail; and See was duly and immediately informed of the carnapping of his Vitara; the matter was reported to the nearest police precinct; and defendant x x x Justimbaste, and Horlador submitted themselves to police investigation.

During the pre-trial conference on November 28, 2003, counsel for [respondent] Pioneer Insurance was present. Atty. Monina Lee x x x, counsel of record of [petitioner] Durban Apartments and Justimbaste was absent, instead, a certain Atty. Nestor Mejia appeared for [petitioner] Durban Apartments and Justimbaste, but did not file their pre-trial brief.

On November 5, 2004, the lower court granted the motion of [respondent] Pioneer Insurance, despite the opposition of [petitioner] Durban Apartments and Justimbaste, and allowed [respondent] Pioneer Insurance to present its evidence *ex parte* before the Branch Clerk of Court.

See testified that: on April 30, 2002, at about 11:30 in the evening, he drove his Vitara and stopped in front of City Garden Hotel in Makati Avenue, Makati City; a parking attendant, whom he had later known to be defendant x x x Justimbaste, approached and asked for his ignition key, told him that the latter would park the Vitara for him in front of the hotel, and issued him a valet parking customer's claim stub; he and Montero, thereafter, checked in at the said hotel; on May 1, 2002, at around 1:00 in the morning, the Hotel Security Officer whom he later knew to be Horlador called his attention to the fact that his Vitara was carnapped while it was parked at the

parking lot of Equitable PCI Bank which is in front of the hotel; his Vitara was insured with [respondent] Pioneer Insurance; he together with Horlador and defendant x x x Justimbaste went to Precinct 19 of the Makati City Police to report the carnapping incident, and a police officer came accompanied them to the Anti-Carnapping Unit of the said station for investigation, taking of their sworn statements, and flashing of a voice alarm; he likewise reported the said incident in PNP TMG in Camp Crame where another alarm was issued; he filed his claim with [respondent] Pioneer Insurance, and a representative of the latter, who is also an adjuster of Vesper Insurance Adjusters-Appraisers [Vesper], investigated the incident; and [respondent] Pioneer Insurance required him to sign a Release of Claim and Subrogation Receipt, and finally paid him the sum of ₱1,163,250.00 for his claim.

Ricardo F. Red testified that: he is a claims evaluator of [petitioner] Pioneer Insurance tasked, among others, with the receipt of claims and documents from the insured, investigation of the said claim, inspection of damages, taking of pictures of insured unit, and monitoring of the processing of the claim until its payment; he monitored the processing of See's claim when the latter reported the incident to [respondent] Pioneer Insurance; [respondent] Pioneer Insurance assigned the case to Vesper who verified See's report, conducted an investigation, obtained the necessary documents for the processing of the claim, and tendered a settlement check to See; they evaluated the case upon receipt of the subrogation documents and the adjuster's report, and eventually recommended for its settlement for the sum of ₱1,163,250.00 which was accepted by See; the matter was referred and forwarded to their counsel, R.B. Sarajan & Associates, who prepared and sent demand letters to [petitioner] Durban Apartments and [defendant] Justimbaste, who did not pay [respondent] Pioneer Insurance notwithstanding their receipt of the demand letters; and the services of R.B. Sarajan & Associates were engaged, for ₱100,000.00 as attorney's fees plus ₱3,000.00 per court appearance, to prosecute the claims of [respondent] Pioneer Insurance against [petitioner] Durban Apartments and Justimbaste before the lower court.

Ferdinand Cacnio testified that: he is an adjuster of Vesper; [respondent] Pioneer Insurance assigned to Vesper the investigation of See's case, and he was the one actually assigned to investigate it; he conducted his investigation of the matter by interviewing See, going to the City Garden Hotel, required subrogation documents

from See, and verified the authenticity of the same; he learned that it is the standard procedure of the said hotel as regards its valet parking service to assist their guests as soon as they get to the lobby entrance, park the cars for their guests, and place the ignition keys in their safety key box; considering that the hotel has only twelve (12) available parking slots, it has an agreement with Equitable PCI Bank permitting the hotel to use the parking space of the bank at night; he also learned that a Hyundai Starex van was carnapped at the said place barely a month before the occurrence of this incident because Liberty Insurance assigned the said incident to Vespers, and Horlador and defendant x x x Justimbaste admitted the occurrence of the same in their sworn statements before the Anti-Carnapping Unit of the Makati City Police; upon verification with the PNP TMG [Unit] in Camp Crame, he learned that See's Vitara has not yet been recovered; upon evaluation, Vesper recommended to [respondent] Pioneer Insurance to settle See's claim for ₱1,045,750.00; See contested the recommendation of Vesper by reasoning out that the 10% depreciation should not be applied in this case considering the fact that the Vitara was used for barely eight (8) months prior to its loss; and [respondent] Pioneer Insurance acceded to See's contention, tendered the sum of ₱1,163,250.00 as settlement, the former accepted it, and signed a release of claim and subrogation receipt.

The lower court denied the Motion to Admit Pre-Trial Brief and Motion for Reconsideration field by [petitioner] Durban Apartments and Justimbaste in its Orders dated May 4, 2005 and October 20, 2005, respectively, for being devoid of merit.[3]

Thereafter, on January 27, 2006, the RTC rendered a decision, disposing, as follows:

WHEREFORE, judgment is hereby rendered ordering [petitioner Durban Apartments Corporation] to pay [respondent Pioneer Insurance and Surety Corporation] the sum of ₱1,163,250.00 with legal interest thereon from July 22, 2003 until the obligation is fully paid and attorney's fees and litigation expenses amounting to ₱120,000.00.

SO ORDERED.[4]

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[3] *Id.* at 94-101.

[4] *Id.* at 35.

On appeal, the appellate court affirmed the decision of the trial court, *viz*.:

> WHEREFORE, premises considered, the Decision dated January 27, 2006 of the RTC, Branch 66, Makati City in Civil Case No. 03-857 is hereby AFFIRMED insofar as it holds [petitioner] Durban Apartments Corporation solely liable to [respondent] Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's Suzuki Grand Vitara.
>
> SO ORDERED.[5]

Hence, this recourse by petitioner.

The issues for our resolution are:

1. Whether the lower courts erred in declaring petitioner as in default for failure to appear at the pre-trial conference and to file a pre-trial brief;

2. Corollary thereto, whether the trial court correctly allowed respondent to present evidence *ex-parte*;

3. Whether petitioner is liable to respondent for attorney's fees in the amount of ₱120,000.00; and

4. Ultimately, whether petitioner is liable to respondent for the loss of See's vehicle.

The petition must fail.

We are in complete accord with the common ruling of the lower courts that petitioner was in default for failure to appear at the pre-trial conference and to file a pre-trial brief, and thus, correctly allowed respondent to present evidence *ex-parte*. Likewise, the lower courts did not err in holding petitioner liable for the loss of See's vehicle.

Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties.[6] A review of such findings by

[5] *Id*. at 108.

[6] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R.

this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises, or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[7] None of the foregoing exceptions permitting a reversal of the assailed decision exists in this instance.

Petitioner urges us, however, that "strong [and] compelling reason[s]" such as the prevention of miscarriage of justice warrant a suspension of the rules and excuse its and its counsel's non-appearance during the pre-trial conference and their failure to file a pre-trial brief.

We are not persuaded.

Rule 18 of the Rules of Court leaves no room for equivocation; appearance of parties and their counsel at the pre-trial conference, along with the filing of a corresponding pre-trial brief, is mandatory, nay, their duty. Thus, Section 4 and Section 6 thereof provide:

> SEC. 4. *Appearance of parties*.–It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.

No. 153874, March 7, 2007, 517 SCRA 180, 186; *Sigaya v. Mayuga*, 504 Phil. 600, 611 (2005).

[7] See *Child Learning Center, Inc. v. Tagorio,* 512 Phil. 618, 623 (2005); *Ilao-Quianay v. Mapile*, 510 Phil. 736, 744-745 (2005).

SEC. 6. *Pre-trial brief*.–The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x x x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Contrary to the foregoing rules, petitioner and its counsel of record were not present at the scheduled pre-trial conference. Worse, they did not file a pre-trial brief. Their non-appearance cannot be excused as Section 4, in relation to Section 6, allows only two exceptions: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.

Petitioner is adamant and harps on the fact that November 28, 2003 was merely the first scheduled date for the pre-trial conference, and a certain Atty. Mejia appeared on its behalf. However, its assertion is belied by its own admission that, on said date, this Atty. Mejia "did not have in his possession the Special Power of Attorney issued by petitioner's Board of Directors."

As pointed out by the CA, petitioner, through Atty. Lee, received the notice of pre-trial on October 27, 2003, thirty-two (32) days prior to the scheduled conference. In that span of time, Atty. Lee, who was charged with the duty of notifying petitioner of the scheduled pre-trial conference,[8] petitioner, and Atty. Mejia should have discussed which lawyer would appear at the pre-trial conference with petitioner, armed with the appropriate authority therefor. Sadly, petitioner failed to comply with not just one rule; it also did not proffer a reason why it

[8] RULES OF COURT, Rule 18, Sec. 3:

SEC. 3. *Notice of pre-trial*.—The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

likewise failed to file a pre-trial brief. In all, petitioner has not shown any persuasive reason why it should be exempt from abiding by the rules.

The appearance of Atty. Mejia at the pre-trial conference, without a pre-trial brief and with only his bare allegation that he is counsel for petitioner, was correctly rejected by the trial court. Accordingly, the trial court, as affirmed by the appellate court, did not err in allowing respondent to present evidence *ex-parte*.

Former Chief Justice Andres R. Narvasa's words continue to resonate, thus:

> Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.
>
> x x x x x x x x x
>
> Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference (he) may be non-suited or considered as in default." The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial. And in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative of the lawyer to have "special authority" to make such substantive agreements as only the client otherwise has

capacity to make. That "special authority" should ordinarily be in writing or at the very least be "duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative) himself." Without that special authority, the lawyer or representative cannot be deemed capacitated to appear in place of the party; hence, it will be considered that the latter has failed to put in an appearance at all, and he [must] therefore "be non-suited or considered as in default," notwithstanding his lawyer's or delegate's presence.[9]

We are not unmindful that defendant's (petitioner's) preclusion from presenting evidence during trial does not automatically result in a judgment in favor of plaintiff (respondent). The plaintiff must still substantiate the allegations in its complaint.[10] Otherwise, it would be inutile to continue with the plaintiff's presentation of evidence each time the defendant is declared in default.

In this case, respondent substantiated the allegations in its complaint, *i.e.*, a contract of necessary deposit existed between the insured See and petitioner. On this score, we find no error in the following disquisition of the appellate court:

[The] records also reveal that upon arrival at the City Garden Hotel, See gave notice to the doorman and parking attendant of the said hotel, x x x Justimbaste, about his Vitara when he entrusted its ignition key to the latter. x x x Justimbaste issued a valet parking customer claim stub to See, parked the Vitara at the Equitable PCI Bank parking area, and placed the ignition key inside a safety key box while See proceeded to the hotel lobby to check in. The Equitable PCI Bank parking area became an annex of City Garden Hotel when the management of the said bank allowed the parking of the vehicles of hotel guests thereat in the evening after banking hours.[11]

Article 1962, in relation to Article 1998, of the Civil Code defines a contract of deposit and a necessary deposit made by persons in hotels or inns:

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[9] *Development Bank of the Phils. v. CA*, 251 Phil. 390, 392-395 (1989). (Citations omitted.)

[10] See *SSS v. Hon. Chaves*, 483 Phil. 292, 302 (2004).

[11] *Rollo*, p. 105.

Art. 1962. A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract.

Art. 1998. The deposit of effects made by travelers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.

Plainly, from the facts found by the lower courts, the insured See deposited his vehicle for safekeeping with petitioner, through the latter's employee, Justimbaste. In turn, Justimbaste issued a claim stub to See. Thus, the contract of deposit was perfected from See's delivery, when he handed over to Justimbaste the keys to his vehicle, which Justimbaste received with the obligation of safely keeping and returning it. Ultimately, petitioner is liable for the loss of See's vehicle.

Lastly, petitioner assails the lower courts' award of attorney's fees to respondent in the amount of ₱120,000.00. Petitioner claims that the award is not substantiated by the evidence on record.

We disagree.

While it is a sound policy not to set a premium on the right to litigate,[12] we find that respondent is entitled to reasonable attorney's fees. Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect its interest,[13] or when the court deems it just and equitable.[14] In this case, petitioner refused to answer for the loss of See's vehicle, which was deposited with it for safekeeping. This refusal constrained

[12] *Bank of the Philippine Islands v. Casa Montessori International*, G.R. Nos. 149454 & 149507, May 28, 2004, 430 SCRA 261, 296.

[13] CIVIL CODE, Art. 2208, par. 2.

[14] CIVIL CODE, Art. 2208, par. 11.

respondent, the insurer of See, and subrogated to the latter's right, to litigate and incur expenses. However, we reduce the award of ₱120,000.00 to ₱60,000.00 in view of the simplicity of the issues involved in this case.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 86869 is *AFFIRMED* with the *MODIFICATION* that the award of attorney's fees is reduced to ₱60,000.00. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189806. January 12, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO MANLANGIT *y* TRESBALLES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS; ILLEGAL SALE OF DRUGS; ELEMENTS; SATISFIED IN CASE AT BAR.— *People v. Macatingag* prescribed the requirements for the successful prosecution of the crime of illegal sale of dangerous drugs, as follows. The elements necessary for the prosecution of illegal sale of drugs 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. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. The

pieces of evidence found in the records amply demonstrate that all the elements of the crimes charged were satisfied.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE ACCORDED RESPECT AS A RULE.— The lower courts gave credence to the prosecution witnesses' testimonies, which established the guilt of accused-appellant for the crimes charged beyond reasonable doubt. The testimonies—particularly those of the police officers involved, which both the RTC and the CA found credible—are now beyond question. As the Court ruled in *Aparis v. People*: As to the question of credibility of the police officers who served as principal witnesses for the prosecution, settled is the rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals, as in the present case.

3. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF POLICE OFFICERS' PERFORMANCE OF OFFICIAL FUNCTIONS; PREVAILS OVER SELF-SERVING AND UNCORROBORATED DENIAL.— [A]ccused-appellant's defense of denial, without substantial evidence to support it, cannot overcome the presumption of regularity of the police officers' performance of official functions. Thus, the Court ruled in *People v. Llamado*: In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. **Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of**

witnesses, shall prevail over appellant's self-serving and uncorroborated denial.

4. CRIMINAL LAW; DANGEROUS DRUGS; BUY-BUST OPERATION; VALIDITY THEREOF IS NOT AFFECTED BY THE ABSENCE OF A PRIOR SURVEILLANCE OR TEST BUY.— Contrary to accused-appellant's challenge to the validity of the buy-bust operation, the Court categorically stated in *Quinicot v. People* that a prior surveillance or test buy is not required for a valid buy-bust operation, as long as the operatives are accompanied by their informant, thus: **Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation.** There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. **In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.**

5. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; A SEARCH WARRANT IS NOT NECESSARY FOR THE VALIDITY OF THE BUY-BUST OPERATION.— [A]ccused-appellant's contention that the buy-bust team should have procured a search warrant for the validity of the buy-bust operation is misplaced. The Court had the occasion to address this issue in *People v. Doria*: We also hold that the warrantless arrest of accused-appellant Doria is not unlawful. Warrantless arrests are allowed x x x as provided by Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure, to wit: "Sec. 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; x x x Under Section 5 (a), as above-quoted, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to

commit an offense." Appellant Doria was caught in the act of committing an offense. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY OF THE SEIZED DRUG, NOT BROKEN; CASE AT BAR.— Here, accused-appellant does not question the unbroken chain of evidence. His only contention is that the buy-bust team did not inventory and photograph the specimen on site and in the presence of accused-appellant or his counsel, a representative from the media and the Department of Justice, and any elected public official. However, as ruled by the Court in *Rosialda*, as long as the chain of custody remains unbroken, even though the procedural requirements provided for in Sec. 21 of RA 9165 was not faithfully observed, the guilt of the accused will not be affected. And as aptly ruled by the CA, the chain of custody in the instant case was not broken as established by the facts proved during trial.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the August 28, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03273, which

[1] *Rollo*, pp. 2-9. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Hakim S. Abdulwahid and Francisco P. Acosta.

affirmed *in toto* the Decision dated July 12, 2007[2] in Criminal Case Nos. 03-4735 and 03-4961 of the Regional Trial Court (RTC), Branch 64 in Makati City. The RTC found accused-appellant Francisco Manlangit *y* Tresballes guilty of drug-sale and drug-use penalized by Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

On November 25, 2003, an information was filed charging Manlangit with violating Section 5, Article II of RA 9165, as follows:

> That on or about the 24th day of November 2003, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully and feloniously sell, give away, distribute and deliver zero point zero four (0.04) gram of Methylamphetamine Hydrochloride (*shabu*), which is a dangerous drug.[3]

On December 11, 2003, another information was filed against Manlangit for breach of Sec. 15, Art. II of RA 9165, to wit:

> That sometime on or before or about the 24th day of November 2003, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to use dangerous drugs, and having been arrested and found positive for use of Methylamphetamine, after a confirmatory test, did then and there willfully, unlawfully and feloniously use Methylamphetamine, a dangerous drug in violation of the said law.[4]

During the arraignment for both cases, Manlangit pleaded not guilty. Afterwards, the cases were tried jointly.

At the trial of the case, the prosecution adduced evidence as follows:

On November 24, 2003, the Makati Anti-Drug Abuse Council (MADAC) Cluster 4 office received information from an informant

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[2] CA *rollo*, pp. 17-24. Penned by Judge Maria Cristina J. Cornejo.

[3] *Id*. at 15.

[4] *Id*. at 16.

that a certain "Negro" was selling prohibited drugs along Col. Santos Street at Brgy. South Cembo, Makati City. The MADAC thereafter coordinated with the Anti-Illegal Drugs Special Operations Task Force (AIDSTOF) and the Philippine Drug Enforcement Agency to conduct a joint MADAC-police buy-bust operation. A team was assembled composed of several members of the different offices, among which Police Officer 2 Virginio Costa was designated as the team leader, with MADAC operative Wilfredo Serrano as the poseur-buyer and Roberto Bayona as his back-up. The team prepared buy-bust money for the operation, marking two (2) one hundred peso (PhP 100) bills with the initials "AAM."

Upon arrival on Col. Santos Street, Brgy. Cembo, Makati City, the team spotted Manlangit standing in front of his house. The informant approached Manlangit and convinced the latter that Serrano wanted to purchase *shabu* from him. Manlangit asked Serrano how much *shabu* he wanted, to which Serrano replied that he wanted two hundred pesos (PhP 200) worth of *shabu*. Manlangit went inside his house and later reappeared with a plastic sachet containing a white crystalline substance. Manlangit handed over the plastic sachet to Serrano who, in turn, gave Manlangit the marked money. Then Serrano gave the pre-arranged signal of lighting a cigarette to indicate to the rest of the team that the buy-bust operation had been consummated. Thus, the rest of the team approached Manlangit and proceeded to arrest him while informing him of constitutional rights and the reason for his arrest. The marked money was recovered from Manlangit's pocket. The plastic sachet was then marked with the initials "FTM" and sent to the Philippine National Police (PNP) crime laboratory in Camp Crame, Quezon City for analysis. The PNP crime laboratory identified the white crystalline substance as Methylamphetamine Hydrochloride in Chemistry Report No. D-1190-03. Manlangit was also brought to the PNP crime laboratory for a drug test, which yielded a positive result for use of Methylamphetamine Hydrochloride.[5]

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[5] *Id*. at 100-102.

Manlangit denied that such buy-bust operation was conducted and claimed that the recovered *shabu* was not from him. He claimed that he was pointed out by a certain Eli Ballesteros to Serrano and Bayona. Thereafter, he was allegedly detained at the Barangay Hall of Brgy. Pitogo. There, he was allegedly interrogated by Serrano as to the location of the *shabu* and its proceeds, as well as the identity of the drug pushers in the area. He also claimed that whenever he answered that he did not know what Serrano was talking about, he was boxed in the chest. Later on, he said that he was brought to Camp Crame for drug testing.[6]

On July 12, 2007, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1) In Criminal Case No. 03-4735, finding accused Francisco Manlangit *y* Tresballes GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Art II, RA 9165 (drug-sale) and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. Said accused shall be given credit for the period of his preventive detention.

2) In Criminal Case No. 03-4735,[7] finding accused Francisco Manlangit *y* Tresballes GUILTY BEYOND REASONABLE DOUBT of Violation of Section 15, Art II, RA 9165 (drug-use), and sentencing him to undergo rehabilitation for at least six (6) months in a government rehabilitation Center under the auspices of the Bureau of Correction subject to the provisions of Article VIII, RA 9165.

It is further ordered that the plastic sachet containing *shabu*, subject of Criminal Case No. 03-4735, be transmitted to the Philippine Drug Enforcement Agency (PDEA) for the latter's appropriate action.

SO ORDERED.[8]

From such Decision, Manlangit interposed an appeal with the CA.

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[6] *Id*. at 102.

[7] Should be Criminal Case No. 03-4961.

[8] CA *rollo*, pp. 23-24.

In his Brief, accused-appellant Manlangit claimed that the prosecution failed to prove his guilt beyond reasonable doubt. To support such contention, accused-appellant claimed that there was no buy-bust operation conducted. He pointed out that he was not in the list of suspected drug pushers of MADAC or of the AIDSTOF. He further emphasized that the buy-bust operation was conducted without first conducting a surveillance or test buy to determine the veracity of the report made by the informant. He assailed the fact that despite knowledge of his identity and location, the buy-bust team failed to secure even a search warrant.

Accused-appellant also raised the issue that the buy-bust team failed to comply with the procedure for the custody and control of seized prohibited drugs under Sec. 21 of RA 9165. He argued that the presumption of regularity in the performance of official function was overturned by the officers' failure to follow the required procedure in the conduct of a buy-bust operation, as well as the procedure in the proper disposition, custody, and control of the subject specimen.

On August 28, 2009, the CA rendered the decision which affirmed the RTC's Decision dated July 12, 2007. It ruled that contrary to accused-appellant's contention, prior surveillance is not a prerequisite for the validity of a buy-bust operation. The case was a valid example of a warrantless arrest, accused-appellant having been caught *in flagrante delicto*. The CA further stated that accused-appellant's unsubstantiated allegations are insufficient to show that the witnesses for the prosecution were actuated by improper motive, in this case the members of the buy-bust team; thus, their testimonies are entitled to full faith and credit. After examining the testimonies of the witnesses, the CA found them credible and found no reason to disturb the RTC's findings. Finally, the CA found that chain of evidence was not broken.

Hence, the instant appeal.

In a Manifestation (In lieu of Supplemental Brief) dated February 22, 2010, accused-appellant expressed his desire not to file a supplemental brief and reiterated the same arguments already presented before the trial and appellate courts.

The Issues

The issues, as raised in the Brief for the Accused-Appellant dated September 29, 2008, are:

1. The Court *a quo* gravely erred in convicting the accused-appellant despite the prosecution's failure to prove his built beyond reasonable doubt.[9]

2. The Court *a quo* gravely erred in finding that the procedure for the custody and control of prohibited drugs was complied with.[10]

The Ruling of the Court

The appeal is bereft of merit.

First Issue:
Accused-appellant's guilt was proved beyond reasonable doubt

The first paragraph of Sec. 5 of RA 9165 punishes the act of selling dangerous drugs. It provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*—**The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell**, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport **any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.** (Emphasis supplied.)

While Sec. 15, RA 9165 states:

Section 15. *Use of Dangerous Drugs.*—**A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act.** If

[9] *Id*. at 40.

[10] *Id*. at 46.

apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (Emphasis supplied.)

People v. Macatingag[11] prescribed the requirements for the successful prosecution of the crime of illegal sale of dangerous drugs, as follows.

The elements necessary for the prosecution of illegal sale of drugs 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. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

The pieces of evidence found in the records amply demonstrate that all the elements of the crimes charged were satisfied. The lower courts gave credence to the prosecution witnesses' testimonies, which established the guilt of accused-appellant for the crimes charged beyond reasonable doubt. The testimonies––particularly those of the police officers involved, which both the RTC and the CA found credible—are now beyond question. As the Court ruled in *Aparis v. People*:[12]

As to the question of credibility of the police officers who served as principal witnesses for the prosecution, settled is the rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative,

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[11] G.R. No. 181037, January 19, 2009, 576 SCRA 354, 361-362.

[12] G.R. No. 169195, February 17, 2010.

arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals, as in the present case.

Moreover, accused-appellant's defense of denial, without substantial evidence to support it, cannot overcome the presumption of regularity of the police officers' performance of official functions. Thus, the Court ruled in *People v. Llamado*:[13]

> In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. **Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial.** (Emphasis supplied.)

Contrary to accused-appellant's challenge to the validity of the buy-bust operation, the Court categorically stated in *Quinicot v. People* that a prior surveillance or test buy is not required for a valid buy-bust operation, as long as the operatives are accompanied by their informant, thus:

> **Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation.** There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. **In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen**

[13] G.R. No. 185278, March 13, 2009, 581 SCRA 544, 552; citing *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513.

need not have conducted any prior surveillance before they undertook the buy-bust operation.[14] (Emphasis supplied.)

Furthermore, accused-appellant's contention that the buy-bust team should have procured a search warrant for the validity of the buy-bust operation is misplaced. The Court had the occasion to address this issue in *People v. Doria*:[15]

> We also hold that the warrantless arrest of accused-appellant Doria is not unlawful. Warrantless arrests are allowed in three instances as provided by Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure, to wit:
>
> "Sec. 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."
>
> Under Section 5 (a), as above-quoted, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." Appellant Doria was caught in the act of committing an offense. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.

The Court reiterated such ruling in *People v. Agulay*:[16]

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[14] G.R. No. 179700, June 22, 2009, 590 SCRA 458, 470.

[15] G.R. No. 125299, January 22, 1999, 301 SCRA 668, 704.

[16] G.R. No. 181747, September 26, 2008, 566 SCRA 571, 593-594.

Accused-appellant contends his arrest was illegal, making the sachets of *shabu* allegedly recovered from him inadmissible in evidence. Accused-appellant's claim is devoid of merit for it is a well-established rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court, to wit:

> Section 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.

Second Issue:
The chain of custody of the seized drug was unbroken

Accused-appellant contends that the arresting officers did not comply with the requirements for the handling of seized dangerous drugs as provided for under Sec. 21(1) of RA 9165:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were

> confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; (Emphasis supplied.)

In particular, accused-appellant argues that:

> While the marking of the specimen was done in the place of incident by MADAC operative Soriano, the inventory of the item was done at Cluster 4. There was no photograph made of the plastic sachet in the presence of the accused, media, any elected local official, or the DOJ representatives, in clear violation of Section 21, R.A. No. 9165.[17]

Based on such alleged failure of the buy-bust team to comply with the procedural requirements of Sec. 21, RA 9165, accused-appellant posits that he should, therefore, be acquitted. Such reasoning is flawed.

In *People v. Rosialda*,[18] the Court addressed the issue of chain of custody of dangerous drugs, citing *People v. Rivera*, as follows:

> Anent the second element, Rosialda raises the issue that there is a violation of Sec. 21, Art. II of RA 9165, particularly the requirement that the alleged dangerous drugs seized by the apprehending officers be photographed "in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel." Rosialda argues that such failure to comply with the provision of the law is fatal to his conviction.
>
> This contention is untenable.
>
> The Court made the following enlightening disquisition on this matter in *People v. Rivera*:
>
> > The procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21, paragraph 1, Article II of Republic Act No. 9165 which stipulates:

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[17] CA *rollo,* pp. 46-47.

[18] G.R. No. 188330, August 25, 2010; citing *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879.

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

The same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

> (a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further, that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. Indeed, the implementing rules offer some flexibility when a proviso added that 'non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.' The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.

> This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial. Be that as it may, **this Court has explained in *People v. Del Monte* that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.** The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very *corpus delicti* of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.
>
> **To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.** (Emphasis supplied.)

Here, accused-appellant does not question the unbroken chain of evidence. His only contention is that the buy-bust team did not inventory and photograph the specimen on site and in the presence of accused-appellant or his counsel, a representative from the media and the Department of Justice, and any elected public official. However, as ruled by the Court in *Rosialda,* as long as the chain of custody remains unbroken, even though the procedural requirements provided for in Sec. 21 of RA 9165 was not faithfully observed, the guilt of the accused will not be affected.

And as aptly ruled by the CA, the chain of custody in the instant case was not broken as established by the facts proved during trial, thus:

> Lastly, the contention of appellant, that the police officers failed to comply with the provisions of paragraph 1, Section 21 of R.A. No. 9165 for the proper procedure in the custody and disposition of the seized drugs, is untenable. Record shows that Serrano marked

the confiscated sachet of *shabu* in the presence of appellant at the place of incident and was turned over properly to the investigating officer together with the marked buy-bust money. Afterwards, the confiscated plastic sachet suspected to be containing "*shabu*" was brought to the forensic chemist for examination. Likewise, the members of the buy-bust team executed their "*Pinagsanib na Salaysay sa Pag-aresto*" immediately after the arrest and at the trial, Serrano positively identified the seized drugs. Indeed, the prosecution evidence had established the unbroken chain of custody of the seized drugs from the buy-bust team, to the investigating officer and to the forensic chemist. Thus, there is no doubt that the prohibited drug presented before the court a quo was the one seized from appellant and that indeed, he committed the crimes imputed against him.

WHEREFORE, the appeal is *DENIED.* The CA's August 28, 2009 Decision in CA-G.R. CR-H.C. No. 03273 is hereby *AFFIRMED IN TOTO.*

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190521. January 12, 2011]

LETICIA TAN, MYRNA MEDINA, MARILOU SPOONER, ROSALINDA TAN, and MARY JANE TAN, MARY LYN TAN, CELEDONIO TAN, JR., MARY JOY TAN, and MARK ALLAN TAN, represented herein by their mother, LETICIA TAN, *petitioners, vs.* **OMC CARRIERS, INC. and BONIFACIO ARAMBALA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* FACTUAL QUESTIONS CANNOT BE RAISED; EXCEPTION.— We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages, an essentially factual question, because Section 1, Rule 45 of the Rules of Court, expressly states that – Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** In light, however of the RTC's and the CA's conflicting findings on the kind and amount of damages suffered which must be compensated, we are compelled to consider the case as one of the recognized exceptions. We look into the parties' presented evidence to resolve this appeal.

2. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO RECOVER ACTUAL DAMAGES THERE MUST BE PLEADING AND PROOF OF ACTUAL DAMAGES SUFFERED; CASE AT BAR.— Our basic law tells us that to recover damages there must be pleading and proof of actual damages suffered. As we explained in *Viron Transportation Co., Inc. v. Delos Santos*: Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts. The petitioners do not deny that they did not submit any receipt to support their claim for actual damages to prove the monetary value of the damage caused to the house and tailoring shop when the truck rammed into them. Thus, no actual damages for the destruction to petitioner Leticia Tan's house and tailoring shop can be awarded.

3. ID.; ID.; TEMPERATE DAMAGES; WHEN MAY BE AWARDED IN LIEU OF ACTUAL DAMAGES; CASE AT BAR.— [A]bsent competent proof on the actual damages suffered, a party still

has the option of claiming temperate damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss. x x x The photographs the petitioners presented as evidence show the extent of the damage done to the house, the tailoring shop and the petitioners' appliances and equipment. Irrefutably, this damage was directly attributable to Arambala's gross negligence in handling OMC's truck. Unfortunately, these photographs are not enough to establish the amount of the loss with certainty. From the attendant circumstances and given the property destroyed, we find the amount of ₱200,000.00 as a fair and sufficient award by way of temperate damages.

4. ID.; ID.; LOSS OF EARNING CAPACITY; DOCUMENTARY EVIDENCE SHOULD BE PRESENTED TO SUBSTANTIATE THE CLAIM FOR LOSS OF EARNING CAPACITY; EXCEPTIONS; NO APPLICATION IN CASE AT BAR.— As a rule, documentary evidence should be presented to substantiate the claim for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. According to the petitioners, prior to his death, Celedonio was a self-employed tailor who earned approximately ₱156,000.00 a year, or ₱13,000.00 a month. At the time of his death in 1995, the prevailing daily minimum wage was ₱145.00, or ₱3,770.00 per month, provided the wage earner had only one rest day per week. Even if we take judicial notice of the fact that a small tailoring shop normally does not issue receipts to its customers, and would probably not have any documentary evidence of the income it earns, Celedonio's alleged monthly income of ₱13,000.00 greatly exceeded the prevailing monthly minimum wage; thus, the exception set forth above does not apply.

5. ID.; ID.; TEMPERATE DAMAGES; AWARDED IN LIEU OF ACTUAL DAMAGES FOR LOSS OF EARNING CAPACITY WHERE EARNING CAPACITY IS PLAINLY ESTABLISHED

BUT NO EVIDENCE WAS PRESENTED TO SUPPORT THE ALLEGATION OF THE INJURED PARTY'S ACTUAL INCOME; CASE AT BAR.— In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income. x x x In the present case, the income-earning capacity of the deceased was never disputed. Petitioners Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan and Mark Allan Tan were all minors at the time the petition was filed on February 4, 2010, and they all relied mainly on the income earned by their father from his tailoring activities for their sustenance and support. Under these facts and taking into account the unrebutted annual earnings of the deceased, we hold that the petitioners are entitled to temperate damages in the amount of ₱300,000.00 [or roughly, the gross income for two (2) years] to compensate for damages for loss of the earning capacity of the deceased.

6. ID.; ID.; EXEMPLARY DAMAGES; WHEN MAY BE GRANTED; REDUCTION OF EXEMPLARY DAMAGES, PROPER IN CASE AT BAR.— Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence. Celedonio Tan's death and the destruction of the petitioners' home and tailoring shop were unquestionably caused by the respondents' gross negligence. The law allows the grant of exemplary damages in cases such as this to serve as a warning to the pubic and as a deterrent against the repetition of this kind of deleterious actions. The grant, however, should be tempered, as it is not intended to enrich one party or to impoverish another. From this perspective, we find the CA's reduction of the exemplary damages awarded to the petitioners from ₱500,000.00 to ₱200,000.00 to be proper.

7. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF IS PROPER IN VIEW OF THE AWARD OF EXEMPLARY DAMAGES.— In view of the award of exemplary damages, we find it also proper to award the petitioners attorney's fees, in consonance with Article 2208(1) of the Civil Code. We find the award of attorney's fees, equivalent to 10% of the total

amount adjudged the petitioners, to be just and reasonable under the circumstances.

8. ID.; OBLIGATIONS AND CONTRACTS; INTERESTS; LEGAL INTEREST ON THE AMOUNTS AWARDED, IMPOSED; BASIS.— [W]e impose legal interest on the amounts awarded, in keeping with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, which held that: I. When an obligation, regardless of its source, *i.e*., law, contracts, quasi-contracts, *delicts* or ***quasi-delicts*** is breached, the contravenor can be held liable for damages.The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages. 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: x x x 2. **When an obligation, not constituting a loan or forbearance of money, is breached**, an interest on the amount of damages awarded may be imposed **at the *discretion of the court* at the rate of 6% *per annum*.** No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, **the interest shall begin to run only from the date the judgment of the court is made** (at which time the quantification of damages may be deemed to have been reasonably ascertained). **The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.** 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. Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from May 14, 2003, when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.
Virgilio M. Pablo for respondents.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration[1] – filed by Leticia Tan, Myrna Medina, Marilou Spooner, Rosalinda Tan, Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan, and Mark Allan Tan (*petitioners*), all heirs of the late Celedonio Tan – asking us to reverse and set aside our Resolution of February 17, 2010.[2] We denied in this Resolution their petition for review on *certiorari* for failing to show any reversible error in the assailed Court of Appeals (*CA*) decision of June 22, 2009[3] sufficient to warrant the exercise of our discretionary appellate jurisdiction.

The CA decision, in turn, affirmed with modification the decision of the Regional Trial Court (*RTC*) of Muntinlupa City in Civil Case No. 96-186, finding the respondents – OMC Carriers, Inc. (*OMC*) and Bonifacio Arambala – guilty of gross negligence and awarding damages to the petitioners.

THE FACTS

On September 27, 1996, the petitioners filed a complaint for damages with the RTC against OMC and Bonifacio Arambala.[4] The complaint states that on November 24, 1995, at around

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[1] *Rollo*, pp. 251-261.

[2] *Id.* at 242.

[3] *Id.* at 43-55; Penned by Associate Justice Pampio Abarintos, with Associate Justices Amelita Tolentino and Antonio Villamor, concurring.

[4] *Id.* at 70-78.

6:15 a.m., Arambala was driving a truck[5] with a trailer[6] owned by OMC, along Meralco Road, Sucat, Muntinlupa City. When Arambala noticed that the truck had suddenly lost its brakes, he told his companion to jump out. Soon thereafter, he also jumped out and abandoned the truck. Driverless, the truck rammed into the house and tailoring shop owned by petitioner Leticia Tan and her husband Celedonio Tan, instantly killing Celedonio who was standing at the doorway of the house at the time.[7]

The petitioners alleged that the collision occurred due to OMC's gross negligence in not properly maintaining the truck, and to Arambala's recklessness when he abandoned the moving truck. Thus, they claimed that the respondents should be held jointly and severally liable for the actual damages that they suffered, which include the damage to their properties, the funeral expenses they incurred for Celedonio Tan's burial, as well as the loss of his earning capacity. The petitioners also asked for moral and exemplary damages, and attorney's fees.[8]

The respondents denied any liability for the collision, essentially claiming that the damage to the petitioners was caused by a fortuitous event, since the truck skidded due to the slippery condition of the road caused by spilled motor oil.[9]

THE RTC DECISION

After trial, the RTC found OMC and Arambala jointly and severally liable to the petitioners for damages.[10] Relying on the doctrine of *res ipsa loquitur*, the RTC held that it was unusual for a truck to suddenly lose its brakes; the fact that the truck rammed into the petitioners' house raised the presumption

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[5] With plate number PRS-885.

[6] With plate number CZA 233.

[7] *Rollo*, p. 58.

[8] *Id*. at 70-78.

[9] *Id*. at 86-87.

[10] Decision dated May 14, 2003.

of negligence on the part of the respondents. These, the respondents failed to refute.[11]

The RTC did not agree with the respondents' claim of a fortuitous event, pointing out that even with oil on the road, Arambala did not slow down or take any precautionary measure to prevent the truck from skidding off the road. The alleged oil on the road did not also explain why the truck lost its brakes. Had OMC done a more rigid inspection of the truck before its use, the defective brake could have been discovered. The RTC, thus, held OMC jointly and severally liable with Arambala for the damage caused to the petitioners, based on the principle of vicarious liability embodied in Article 2180[12] of the Civil Code.[13]

The dispositive portion of the decision stated:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering:

1. The defendants to pay the plaintiffs jointly and severally the amount of ₱50,000.00 for the death of Celedonio Tan;
2. The defendants to pay the plaintiffs jointly and severally the amount of ₱500,000.00 for the loss of earning capacity of Celedonio Tan, plus interest thereon from the date of death of Celedonio Tan;
3. The defendants to pay the plaintiff Leticia Tan jointly and severally the amount of ₱355,895.00 as actual damages;
4. The defendants to pay the plaintiffs jointly and severally the amount of ₱500,000.00 as moral damages;
5. The defendants to pay the plaintiffs jointly and severally the amount of ₱500,000.00 as exemplary damages; and

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[11] *Rollo,* pp. 59-60.

[12] Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[13] *Rollo,* p. 60.

6. The defendants to pay the plaintiffs jointly and solidarily the amount of ₱500,000.00 as attorney's fees.

Costs against the defendants.

SO ORDERED.[14]

THE COURT OF APPEALS DECISION

On appeal, the CA affirmed the RTC's findings on the issues of the respondents' negligence and liability for damages. However, the CA modified the damages awarded to the petitioners by reducing the actual damages award from ₱355,895.00 to ₱72,295.00. The CA observed that only the latter amount was duly supported by official receipts.[15]

The CA also deleted the RTC's award for loss of earning capacity. The CA explained that the petitioners failed to substantiate Celedonio Tan's claimed earning capacity with reasonable certainty; no documentary evidence was ever presented on this point. Instead, the RTC merely relied on Leticia Tan's testimony regarding Celedonio Tan's income. The CA characterized this testimony as self-serving.[16]

The CA further reduced the exemplary damages from ₱500,000.00 to ₱200,000.00, and deleted the award of attorney's fees because the RTC merely included the award in the dispositive portion of the decision without discussing its legal basis.[17]

THE PETITION

In the petition for review on *certiorari* before us,[18] the petitioners assert that the CA erred when it modified the RTC's awarded damages. The petitioners submit the reasons outlined below.

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[14] *Id.* at 60-61.

[15] *Id.* at 52.

[16] *Id.* at 53-54.

[17] *Id.* at 54-55.

[18] *Id.* at 26-39.

First, the CA erred when it reduced the RTC's award of actual damages from ₱355,895.00 to ₱72,295.00. The petitioners claim that they sought compensation for the damage done to petitioner Leticia Tan's house, tailoring shop, sewing machines, as well as other household appliances. Since the damages primarily refer to the value of their destroyed property, and not the cost of repairing or replacing them, the value cannot be evidenced by receipts. Accordingly, the RTC correctly relied on petitioner Leticia Tan's testimony and the documentary evidence presented, consisting of pictures of the damaged property, to prove their right to recover actual damages for the destroyed property.

Second, the petitioners are entitled to actual damages for the loss of Celedonio Tan's earning capacity. While they admit that they did not submit any documentary evidence to substantiate this claim, the petitioners point out that Celedonio Tan was undisputably a self-employed tailor who owned a small tailor shop; in his line of work, no documentary evidence is available.

Third, the petitioners maintain that they are entitled to exemplary damages in the amount of ₱500,000.00 because the RTC and the CA consistently found that the collision was caused by the respondents' gross negligence. Moreover, the respondents acted with bad faith when they fabricated the "oil slick on the road" story to avoid paying damages to the petitioners. As observed by the CA, the Traffic Accident Investigation Report did not mention any motor oil on the road at the time of the accident. SPO4 Armando Alambro, the Investigation Officer, likewise testified that there was no oil on the road at the time of the accident. For the public good and to serve as an example, the respondents should be made to pay ₱500,000.00 as exemplary damages.

Lastly, the petitioners are entitled to attorney's fees based on Article 2208 of the Civil Code which provides, among others, that attorney's fees can be recovered when exemplary damages are awarded, and when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

We initially denied the petition in our Resolution of February 17, 2010, for the petitioners' failure to show any reversible

error in the CA decision sufficient to warrant the exercise of our discretionary appellate jurisdiction. In our Resolution of August 11, 2010, we reinstated the petition on the basis of the petitioners' motion for reconsideration.

OUR RULING

Finding merit in the petitioners' arguments, we **partly grant** the petition.

Procedural Issue

As both the RTC and the CA found that the respondents' gross negligence led to the death of Celedonio Tan, as well as to the destruction of the petitioners' home and tailoring shop, we see no reason to disturb this factual finding. We, thus, concentrate on the sole issue of what damages the petitioners are entitled to.

We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages, an essentially factual question, because Section 1, Rule 45 of the Rules of Court, expressly states that –

> Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.**

In light, however of the RTC's and the CA's conflicting findings on the kind and amount of damages suffered which must be compensated, we are compelled to consider the case as one of the recognized exceptions.[19] We look into the parties' presented evidence to resolve this appeal.

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[19] The recognized exceptions to this rule are: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) when the inference made is manifestly mistaken; (3) when 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 went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) **when the findings of fact of the Court**

Temperate damages in lieu of actual damages

We begin by discussing the petitioners' claim for actual damages arising from the damage inflicted on petitioner Leticia Tan's house and tailoring shop, taking into account the sewing machines and various household appliances affected. Our basic law tells us that to recover damages there must be pleading and proof of actual damages suffered.[20] As we explained in *Viron Transportation Co., Inc. v. Delos Santos*:[21]

> Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.[22]

The petitioners do not deny that they did not submit any receipt to support their claim for actual damages to prove the monetary value of the damage caused to the house and tailoring shop when the truck rammed into them. Thus, no actual damages for the destruction to petitioner Leticia Tan's house and tailoring shop can be awarded.

Nonetheless, absent competent proof on the actual damages suffered, a party still has the option of claiming temperate

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of Appeals are contrary to those of the trial court; (8); when said 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 petitioner's 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. (*Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 [1998]).

[20] *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[21] G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519, citing *Marina Properties Corporation v. Court of Appeals*, G.R. No. 125447, August 14, 1998, 294 SCRA 273.

[22] *Id.* at 519.

damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss.[23] As defined in Article 2224 of the Civil Code:

> Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

In *Canada v. All Commodities Marketing Corporation*,[24] we disallowed the award of actual damages arising from breach of contract, where the respondent merely alleged that it was entitled to actual damages and failed to adduce proof to support its plea. In its place, we awarded temperate damages, in recognition of the pecuniary loss suffered.

The photographs the petitioners presented as evidence show the extent of the damage done to the house, the tailoring shop and the petitioners' appliances and equipment.[25] Irrefutably, this damage was directly attributable to Arambala's gross negligence in handling OMC's truck. Unfortunately, these photographs are not enough to establish the amount of the loss with certainty. From the attendant circumstances and given the property destroyed,[26] we find the amount of ₱200,000.00 as a fair and sufficient award by way of temperate damages.

Temperate damages in lieu of loss of earning capacity

Similarly, the CA was correct in disallowing the award of actual damages for loss of earning capacity. Damages for loss

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[23] *Premiere Development Bank v. Court of Appeals*, G.R. No. 159352, April 14, 2004, 427 SCRA 686, 699.

[24] *Supra* note 20.

[25] *Rollo*, pp. 203-231.

[26] Consisting of the petitioners' home, the tailoring shop, sewing machines and appliances.

of earning capacity are awarded pursuant to Article 2206 of the Civil Code, which states that:

> Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
>
> (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death[.]

As a rule, documentary evidence should be presented to substantiate the claim for loss of earning capacity.[27] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[28]

According to the petitioners, prior to his death, Celedonio was a self-employed tailor who earned approximately ₱156,000.00 a year, or ₱13,000.00 a month. At the time of his death in 1995, the prevailing daily minimum wage was ₱145.00,[29] or ₱3,770.00 per month, provided the wage earner had only one rest day per week. Even if we take judicial notice of the fact that a small tailoring shop normally does not issue receipts to its customers, and would probably not have any documentary evidence of the income it earns, Celedonio's alleged monthly income of ₱13,000.00 greatly exceeded the prevailing monthly

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[27] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010.

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

[29] Based on Wage Order No. NCR-03, series of 1993, and the Rules Implementing Wage Order No. NCR-03.

minimum wage; thus, the exception set forth above does not apply.

In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.

In *Pleno v. Court of Appeals*,[30] we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiff's income was not sufficiently proven.

We did the same in *People v. Singh*,[31] and *People v. Almedilla*,[32] granting temperate damages in place of actual damages for the failure of the prosecution to present sufficient evidence of the deceased's income.

Similarly, in *Victory Liner, Inc. v. Gammad*,[33] we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs ₱500,000.00 as temperate damages.

In the present case, the income-earning capacity of the deceased was never disputed. Petitioners Mary Jane Tan, Mary Lyn Tan, Celedonio Tan, Jr., Mary Joy Tan and Mark Allan Tan were all minors at the time the petition was filed on February 4, 2010,[34] and they all relied mainly on the income earned by their father from his tailoring activities for their sustenance and support. Under these facts and taking into account the unrebutted annual earnings of the deceased, we hold that the petitioners are entitled to temperate damages in the amount of

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[30] G.R. No. 56505, May 9, 1988, 161 SCRA 208, 224-225.

[31] 412 Phil. 842, 859 (2001).

[32] G.R. No. 150590, August 21, 2003, 409 SCRA 428, 433.

[33] G.R. No. 159636, November 25, 2004, 444 SCRA 355.

[34] As alleged in their petition for review on *certiorari*, an allegation which the respondents did not dispute in their Comment dated October 5, 2010.

₱300,000.00 [or roughly, the gross income for two (2) years] to compensate for damages for loss of the earning capacity of the deceased.

Reduction of exemplary damages proper

Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[35] In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence.[36]

Celedonio Tan's death and the destruction of the petitioners' home and tailoring shop were unquestionably caused by the respondents' gross negligence. The law allows the grant of exemplary damages in cases such as this to serve as a warning to the pubic and as a deterrent against the repetition of this kind of deleterious actions.[37] The grant, however, should be tempered, as it is not intended to enrich one party or to impoverish another. From this perspective, we find the CA's reduction of the exemplary damages awarded to the petitioners from ₱500,000.00 to ₱200,000.00 to be proper.

Attorney's fees in order

In view of the award of exemplary damages, we find it also proper to award the petitioners attorney's fees, in consonance with Article 2208(1) of the Civil Code.[38] We find the award of attorney's fees, equivalent to 10% of the total amount adjudged the petitioners, to be just and reasonable under the circumstances.

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[35] CIVIL CODE, Article 2229.

[36] CIVIL CODE, Article 2231.

[37] *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 75, citing *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.*, G.R. No. 136914, January 25, 2002, 374 SCRA 653.

[38] CIVIL CODE, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: (1) When exemplary damages are awarded.

Interests due

Finally, we impose legal interest on the amounts awarded, in keeping with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[39] which held that:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, *delicts* or ***quasi-delicts*** is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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 ascertained). **The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.**

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[39] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

> 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.

Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from May 14, 2003, when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

WHEREFORE, premises considered, we *PARTIALLY GRANT* the petition. The June 22, 2009 decision of the Court of Appeals in CA-G.R. CV. No. 84733, which modified the decision of the Regional Trial Court of Muntinlupa City, Branch 256, in Civil Case No. 96-186, is *AFFIRMED* with *MODIFICATION*. As modified, respondents OMC Carriers, Inc. and Bonifacio Arambala are ordered to jointly and severally pay the petitioners the following:

(1) ₱50,000.00 as indemnity for the death of Celedonio Tan;

(2) ₱72,295.00 as actual damages for funeral expenses;

(3) ₱200,000.00 as temperate damages for the damage done to petitioner Leticia's house, tailoring shop, household appliances and shop equipment;

(4) ₱300,000.00 as damages for the loss of Celedonio Tan's earning capacity;

(5) ₱500,000.00 as moral damages;

(6) ₱200,000.00 as exemplary damages; and

(7) 10% of the total amount as attorney's fees; and costs of suit.

In addition, the total amount adjudged shall earn interest at the rate of 6% per annum from May 14, 2003, and at the rate of 12% per annum, from the finality of this Resolution on the balance and interest due, until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190640. January 12, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUIS PAJARIN *y* DELA CRUZ and EFREN PALLAYA *y* TUVIERA,** *appellants.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT); IMPLEMENTING RULES AND REGULATIONS; FAILURE OF THE POLICE TO COMPLY WITH THE PROCEDURE WOULD NOT RENDER VOID THE SEIZURE OF THE PROHIBITED SUBSTANCE FOR AS LONG AS JUSTIFIABLE REASON WAS GIVEN THEREFOR AND IT WAS SHOWN THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS HAD NOT BEEN COMPROMISED; CASE AT BAR.— The Court has held in numerous cases that the failure of the police to comply with the procedure laid down in R.A. 9165 would not render void the seizure of the prohibited substance for as long as the apprehending officers give justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the confiscated items had not been compromised. Here, the prosecution failed to show that the substances allegedly seized from the accused were the same substances presented in court to prove their guilt. Usually, the seized article changes hands from the police officer who takes it from the accused, to the supervising officer at their station, to the messenger who brings them to the police

crime laboratory, and then to the court where it is adduced as evidence. Since custody and possession change over time, it has been held indispensable that the officer who seized the article places it in a plastic container unless it is already in one, seals it if yet unsealed, and puts his marking on the cover. In this way there is assurance, upon inspection, that the substance reaches the laboratory in the same condition it was seized from the accused.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

ABAD, *J.*:

This case is about the need for the prosecution and all law enforcement agencies involved in illegal drugs operations to ensure proper observance of the rules governing entrapment of peddlers of prohibited substances.

The Facts and the Case

The City Prosecutor of Manila charged the accused Luis Pajarin and Efren Pallaya before the Regional Trial Court (RTC) of Manila in Criminal Cases 05-237756 and 05-237757 with violation of Section 5 in relation to Sections 26 and 11 (3) in relation to Section 13, respectively, of Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The prosecution presented PO2 Nestor Lehetemas, member of the buy-bust team and PO2 James Nolan Ibañez, the *poseur*-buyer. They testified that on June 1, 2005 at around 10:00 p.m., an informant arrived at their Station Anti-Illegal Drugs (SAID) with the report that drugs would be sold on P. Ocampo and Dominga Streets the next day at around 5:00 pm. As the *poseur*-buyer, PO2 Ibañez marked a ₱500.00 bill with SAID on top of its serial number.

On June 2, 2005 the buy-bust team went to the site of the operation on board a Tamaraw FX which they parked near Dominga Street. The informant pointed to the two accused, Luis Pajarin and Efren Pallaya. They stood 10 to 20 steps away beside a red scooter. PO2 Ibañez and the informant approached them. After the informant introduced PO2 Ibañez as an interested buyer, the police officer bought *shabu* from the two, using the marked ₱500.00 bill. Pajarin opened the compartment of the red scooter and took from it one heat-sealed transparent plastic sachet containing a white crystalline substance. When Pallaya asked for the money, PO2 Ibañez handed it to him. Then Pajarin gave one plastic sachet containing the suspected *shabu* to the officer, who raised his right hand as a pre-arranged signal. PO2 Ibañez' companions immediately rushed to the group. PO2 Ibañez grabbed Pallaya. Pajarin tried to escape but PO2 Lehetemas got hold of him.

The police searched the red scooter's compartment and recovered another plastic sachet containing the same substance. They then brought the accused to their station. The arresting officers turned over the seized suspected *shabu* to PO3 Roel Young who marked the plastic sachet seized from the scooter with the letters "*ETP*," and the sachet Pajarin handed over with the letters "*LDCP*." Chemistry Report D-369-05 showed that upon examination of the submitted specimen, the same yielded positive result for *Methylamphetamine hydrochloride*, a regulated drug.

The defense had a completely different version. Pajarin said that at around 2:00 p.m. of June 2, 2005 he was at Pallaya's house, repairing the latter's motor pump. As he left the house and got into the street, someone hit his helmet, grabbed him, and dragged him into a Tamaraw FX. They then brought him back to Pallaya's house where four police officers got in and brought Pallaya out with them after about three minutes. The officers brought the two accused to the police station where they were investigated. PO2 Ibañez showed Pajarin a plastic sachet which he supposedly recovered from Pajarin's scooter. Pajarin denied owning the sachet. It was a police officer who drove the scooter to the police station.

For his part, Pallaya testified that on June 2, 2005 he was taking a bath at the fourth floor of his four-storey house when he heard knocking at the door. When he opened it, he was surprised to see four men there, claiming to be police officers. They broke open the doors of the house from the ground to the third floor. The officers ordered him to dress up and forced him to go with them. Pallaya asked for a warrant of arrest or a search warrant but he got no response from them. They made him board a Tamaraw FX where Pajarin sat. They then brought the accused to the police station.

On March 31, 2008 the RTC found both accused guilty of the crime charged and imposed on them the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case 05-237756. In Criminal Case 05-237757, the RTC sentenced Pajarin to suffer 12 years and 1 day to 17 years and 4 months of imprisonment and to pay a fine of ₱300,000.00. The RTC absolved Pallaya of this second offense.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-H.C. 03291, the latter rendered a decision dated September 30, 2009, affirming the RTC decision, hence the present appeal to this Court.

The Issues Presented

Accused Pajarin and Pallaya raise two issues:

1. Whether or not the CA erred in not excluding the evidence of the seized *shabu* on the ground that the prosecution failed to prove their integrity by establishing the chain of custody of the same until they got to the trial court; and

2. Whether or not for this reason the CA erred in affirming their conviction.

The Rulings of the Court

Appellants chiefly argue that the police officers involved in the buy-bust operation failed to comply with Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. 9165, which requires them to take immediate inventory of and photograph the seized item in the presence of the accused or

his representative or responsible third persons mentioned but always taking care that the integrity and evidentiary value of the seized articles are preserved.

The Court has held in numerous cases that the failure of the police to comply with the procedure laid down in R.A. 9165 would not render void the seizure of the prohibited substance for as long as the apprehending officers give justifiable reason for their imperfect conduct[1] and show that the integrity and evidentiary value of the confiscated items had not been compromised.[2]

Here, the prosecution failed to show that the substances allegedly seized from the accused were the same substances presented in court to prove their guilt. Usually, the seized article changes hands from the police officer who takes it from the accused, to the supervising officer at their station, to the messenger who brings them to the police crime laboratory, and then to the court where it is adduced as evidence. Since custody and possession change over time, it has been held indispensable that the officer who seized the article places it in a plastic container unless it is already in one, seals it if yet unsealed, and puts his marking on the cover. In this way there is assurance, upon inspection, that the substance reaches the laboratory in the same condition it was seized from the accused.[3]

Here, the police officers did not mark the sealed plastic sachets to show that they were the same things they took from the accused. Rather, the marking on the items were done by the station investigator who would have no way of knowing that the substances were really seized from the accused. The marking of captured items immediately after they are seized from the accused is the starting point in the custodial link. This step is vital because succeeding handlers of the specimens will use the

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[1] *People v. Habana*, G.R. No. 188900, March 5, 2010.

[2] *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 700, citing *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

[3] *People v. Habana, supra* note 1.

markings as reference. Failure to place such markings paves the way for swapping, planting, and contamination of the evidence.[4] These lapses seriously cast doubt on the authenticity of the *corpus delicti,* warranting acquittal on reasonable doubt.[5]

Further, as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. Here, the record fails to show this.

It is a serious concern that quite often the failure of the police to observe the rules governing buy-bust operations results in acquittals. Drug enforcement agencies should continually train their officers and agents to observe these rules and transfer out those who would not. The prosecutors conducting preliminary investigation should not file in court drugs cases where the sworn statements of the police officers, the report of the chemical analyst, and the object evidence do not show compliance with the same. And trial courts should order the case dismissed and the accused released from detention if on examination the supporting documents are wanting in this respect. They should not waste their precious time to useless exercise where the police and the prosecution fail to observe the rule of law especially in so serious offenses.

WHEREFORE, the Court *REVERSES and SETS ASIDE* the decision of the Court of Appeals dated September 30, 2009 in CA-G.R. CR-H.C. No. 03291 as well as the decision of the Regional Trial Court of Manila, Branch 2, in Criminal Cases 05-237756 and 05-237757, and *ACQUITS* the accused-appellants Luis Pajarin and Efren Pallaya on the ground of reasonable doubt.

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[4] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[5] *People v. Laxa*, 414 Phil. 156, 170 (2001).

The Court orders their immediate *RELEASE* from custody unless they are being held for some other lawful cause.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 191721. January 12, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO DOLORIDO *y* ESTRADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— In order for self-defense to be successfully invoked, the following essential elements must be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.

2. ID.; ID.; ID.; ID; UNLAWFUL AGGRESSION; ELUCIDATED; ABSENT IN CASE AT BAR.— A person who invokes self-defense has the burden of proof of proving **all** the elements. However, the most important among all the elements is the element of unlawful aggression. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. As this Court said in *People v. Catbagan*, "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense." In this case, we agree with the trial court that the accused-

appellant failed to prove the existence of unlawful aggression. x x x Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life." Such is absent in the instant case.

3. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself." In the case at bar, it was clearly shown that Estose was deprived of any means to ward off the sudden and unexpected attack by accused-appellant. The evidence showed that accused-appellant hid behind a coconut tree and when Estose passed by the tree, completely unaware of any danger, accused-appellant immediately hacked him with a bolo. Estose could only attempt to parry the blows with his bare hands and as a result, he got wounded. Furthermore, when Estose tried to retreat, stumbling in the process, accused-appellant even took advantage of this and stabbed him resulting in his death. Evidently, the means employed by accused-appellant assured himself of no risk at all arising from the defense which the deceased might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. Without a doubt, treachery attended the killing.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON IS BINDING AND CONCLUSIVE.— [T]his Court finds no reason to disturb the findings of the trial court when it gave credence to the testimony of the prosecution witnesses. It is well-entrenched in our jurisprudence "x x x that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination." This rule is even more binding and conclusive when affirmed by the appellate court.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; MURDER; ELEMENTS; ESTABLISHED IN CASE AT BAR.— [A]ll the elements of the crime of murder, as defined in paragraph 1 of Art. 248 of the RPC, were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide. Verily, in criminal cases such as the one on hand, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction. We find that the prosecution has discharged its burden of proving the guilt of accused-appellant for the crime of murder with moral certainty.

6. CIVIL LAW; DAMAGES; DAMAGES AWARDED WHEN DEATH OCCURS DUE TO A CRIME; DISCUSSED.— This Court has held in *People v. Beltran, Jr.* that "[w]hen death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." Hence, in line with our ruling in *People v. Sanchez*, when the imposable penalty for the crime is *reclusion perpetua*, the damages to be imposed are: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. These are the amounts proper in this case because of the appreciation of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset it. As to the award of temperate damages in the amount of PhP 25,000, such is proper "in homicide or

murder cases when no evidence of burial and funeral expenses is presented in the trial court." Under Art. 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. Therefore, we sustain the award of the trial court of PhP 25,000 for temperate damages. Finally, interest at the rate of six (6) percent should likewise be added to the damages awarded.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the November 27, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00575-MIN entitled *People of the Philippines v. Rogelio Dolorido y Estrada*, which affirmed the September 14, 2007 Decision[2] in Criminal Case No. 5027 of the Regional Trial Court (RTC), Branch 27 in Tandag, Surigao del Sur. The RTC found accused-appellant Rogelio Dolorido *y* Estrada guilty of murder.

The Facts

The charge against Dolorido stemmed from the following Information:

That on the 9th day of May 2006 at around 8:30 o'clock in the morning, more or less, at Barangay Cagdapao, Municipality of Tago, Province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo with evident premeditation and treachery and with intent to

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[1] *Rollo*, pp. 3-18. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Ruben C. Ayson and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 33-40. Penned by Judge Ermelindo G. Andal.

kill, did then and there, willfully, unlawfully, and feloniously, attack, assault and hack one, DANIEL ESTOSE, causing his instantaneous death, to the damage and prejudice of the heirs of the deceased as follows:

₱70,000.00	-	as life indemnity
₱10,000.00	-	as moral damage
₱10,000.00	-	exemplary damages

CONTRARY TO LAW.[3]

On November 15, 2006, Dolorido was arraigned, and he pleaded "not guilty" to the crime charged.

During the pre-trial conference on January 18, 2007, Dolorido admitted that he killed the deceased-victim Daniel Estose but invoked self-defense. Likewise, the prosecution and the defense stipulated that the Joint Affidavit of Aniolito Avila and Adrian Avila (the Avilas) would constitute as their direct testimony, subject to cross-examination by the defense; and the Counter Affidavit of the Accused and the Affidavit of Mario Jariol would also constitute as their direct testimony, subject to cross examination by the prosecution.

During the trial, the prosecution offered the testimonies of the Avilas and Loreta Estose. On the other hand, the defense presented, as its sole witness, accused-appellant Dolorido.

The Prosecution's Version of Facts

The Avilas were hired laborers of the victim, Estose, tasked to harvest the coconuts in the latter's farm in Cagdapao, Tago, Surigao del Sur.[4]

On May 9, 2006, while the Avilas were walking towards the coconut plantation at around 8:30 in the morning, they saw Dolorido standing near the coconut drier of Estose, appearing very angry. After some time, Dolorido proceeded to Rustica

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[3] Records, p. 3.

[4] TSN, February 22, 2007, p. 5.

Dolorido's coconut drier located a hundred meters away and hid behind a coconut tree.[5]

Moments later, they saw Estose on his way to his own coconut drier. When Estose passed by Rustica Dolorido's coconut drier, they saw Dolorido suddenly hack Estose twice, resulting in wounds on his arms. When Estose tried to retreat, he fell down and it was then that Dolorido stabbed him on the left portion of his chest, which caused his death. Dolorido suddenly left the place.

Afraid of Dolorido's wrath, the Avilas did not immediately proceed to the scene of the crime. It was only after 20 or so minutes that they felt it was safe to approach Estose. When they were near, they saw Estose was already dead.[6] They then waited for Estose's wife and the police.

Version of the Defense

Dolorido's defense, on the other hand, consisted of the story of self-defense:

On the day of the death of the victim, Dolorido asked Estose why he was gathering Dolorido's harvested coconuts. Estose just replied, "So, what about it?" and tried to unsheathe his bolo from its scabbard.[7] Upon seeing this, Dolorido drew his own bolo and stabbed Estose. When Estose tried to wrestle for the bolo, he sustained some wounds. Afterwards, while Dolorido was pointing the bolo at Estose, the latter suddenly lunged at Dolorido, causing Estose to hit the bolo with his own chest which resulted in his death.[8] He denied the prosecutor's claim that he hid behind a coconut tree and waited for Estose to come. Thereafter, Dolorido, accompanied by one Mario Jariol, voluntarily surrendered to the Tago Police Station.

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[5] Records, p. 39.

[6] *Id.*

[7] *Id.* at 15.

[8] *Id.*

Rulings of the Trial and Appellate Courts

After trial, the RTC convicted accused Dolorido. The dispositive portion of its September 14, 2007 Decision reads:

> WHEREFORE, finding accused **Rogelio Dolorido *y* Estrada *GUILTY*** beyond reasonable doubt of the crime of ***MURDER*** qualified by treachery, and appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, the Court hereby sentences him to suffer the penalty of ***Reclusion Perpetua***, to pay the heirs of deceased-victim Daniel Estose *y* Langres the sum of ***₱50,000.00*** as ***civil indemnity, P50,000*** as ***moral damages*** and ***₱25,000.00*** as ***temperate damages***; and to pay the cost.
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> x x x x x x x x x
>
> SO ORDERED.[9]

On November 27, 2009, the CA affirmed *in toto* the judgment of the RTC.[10]

The Issues

Accused-appellant assigns the following errors:

I.

The court *a quo* gravely erred in not appreciating self-defense interposed by accused.

II.

The court *a quo* gravely erred in convicting the accused-appellant of murder despite the failure of the prosecution to prove the elements of treachery.

III.

The court *a quo* gravely erred in awarding damages despite failure of the prosecution to present evidence to support their claim.

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[9] CA *rollo*, p. 40.

[10] *Rollo*, p. 18.

The Court's Ruling

The appeal has no merit.

Self-defense is absent

In his *Brief*, accused-appellant argues that the trial court failed to consider the circumstance of unlawful aggression on the part of the victim. He contends that he only acted in self-defense, and this is the reason why he voluntarily surrendered to the authorities.

We do not agree.

In order for self-defense to be successfully invoked, the following essential elements must be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[11]

A person who invokes self-defense has the burden of proof of proving **all** the elements.[12] However, the most important among all the elements is the element of unlawful aggression. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. As this Court said in *People v. Catbagan*,[13] "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."

In this case, we agree with the trial court that the accused-appellant failed to prove the existence of unlawful aggression. But he maintains that Estose provoked him when the latter started to unsheathe his bolo from his scabbard. Nevertheless,

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[11] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 657; *People v. Plazo*, G.R. No. 120547, January 29, 2001, 350 SCRA 433, 442-443.

[12] *People v. Almazan*, G.R. Nos. 138943-44, September 17, 2001, 365 SCRA 373, 382.

[13] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

as aptly found by the trial court, his testimony is too incredible to be believed, *viz*:

> Accused's plea failed to impress the Court. To be sure, his story on how the deceased was killed is too incredible to inspire belief. According to him, it was the deceased who first unsheathed his bolo but did not succeed in his attempt to fully unsheathe it because he (Accused) hacked him. Thereafter, the deceased tried to wrest Accused's bolo but was injured instead. If the deceased failed to unsheathe his bolo because Accused was able to hack him, how could the deceased then have attempted to dispossess the Accused of the latter's bolo? The truth, of course, is that the Accused waylaid the deceased, as testified to by the prosecution witnesses.[14] x x x

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[15] In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury.[16] It "presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action."[17] It is present "only when the one attacked faces real and immediate threat to one's life."[18] Such is absent in the instant case.

Moreover, against the positive declarations of the prosecution witnesses who testified that accused-appellant hacked Estose twice and subsequently stabbed him without any provocation, accused-appellant's self-serving and uncorroborated assertion deserves scant consideration.

Indeed, it is a well-settled rule that "a plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful

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[14] CA *rollo*, p. 39.

[15] *People v. Basadre*, G.R. No. 131851, February 22, 2001, 352 SCRA 573, 583.

[16] *People v. Catbagan*, *supra* note 13, at 557.

[17] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 478.

[18] *Id*.

in itself."[19] Moreover, "[a]bsent any showing that the prosecution witnesses were moved by improper motive to testify against the appellant, their testimonies are entitled to full faith and credit."[20]

Therefore, absent any unlawful aggression from the victim, accused-appellant cannot successfully invoke the defense of self-defense.

Treachery is evident

In addition, accused-appellant argues that the trial court should not have appreciated treachery as a qualifying circumstance. He argues that it was impossible for the two prosecution witnesses to see the inception and the actual attack of accused-appellant to the victim because both were busy gathering coconuts. Also, they were 50 meters away from where the actual stabbing occurred, in rolling hills with tall and short shrubs between the witnesses and the place where the actual stabbing occurred.

We disagree.

Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[21] The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter

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[19] *People v. Aburque*, G.R. No. 181085, October 23, 2009, 604 SCRA 384, 394; citing *Del Rosario v. People*, G.R. No. 141749, April 17, 2001, 356 SCRA 627, 634.

[20] *People v. Aburque, id.*

[21] *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 238.

of any chance to defend himself and thereby ensuring its commission without risk of himself."[22]

In the case at bar, it was clearly shown that Estose was deprived of any means to ward off the sudden and unexpected attack by accused-appellant. The evidence showed that accused-appellant hid behind a coconut tree and when Estose passed by the tree, completely unaware of any danger, accused-appellant immediately hacked him with a bolo. Estose could only attempt to parry the blows with his bare hands and as a result, he got wounded. Furthermore, when Estose tried to retreat, stumbling in the process, accused-appellant even took advantage of this and stabbed him resulting in his death. Evidently, the means employed by accused-appellant assured himself of no risk at all arising from the defense which the deceased might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[23] Without a doubt, treachery attended the killing.

Thus, this Court finds no reason to disturb the findings of the trial court when it gave credence to the testimony of the prosecution witnesses. It is well-entrenched in our jurisprudence "x x x that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination."[24] This rule is even more binding and conclusive when affirmed by the appellate court.[25]

In conclusion, all the elements of the crime of murder, as defined in paragraph 1 of Art. 248 of the RPC, were successfully proved: (1) that a person was killed; (2) that the accused killed

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[22] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.

[23] *People v. Honor*, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 558.

[24] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47, 60. See also *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.

[25] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230.

that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[26]

Verily, in criminal cases such as the one on hand, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[27] We find that the prosecution has discharged its burden of proving the guilt of accused-appellant for the crime of murder with moral certainty.

Award of Damages

This Court has held in *People v. Beltran, Jr.* that "[w]hen death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."[28]

Hence, in line with our ruling in *People v. Sanchez*,[29] when the imposable penalty for the crime is *reclusion perpetua*, the damages to be imposed are: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. These are the amounts proper in this case because of the appreciation of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset it.

As to the award of temperate damages in the amount of PhP 25,000, such is proper "in homicide or murder cases when no evidence of burial and funeral expenses is presented in the trial court."[30] Under Art. 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was

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[26] *People v. Sameniano*, G.R. No. 183703, January 20, 2009, 576 SCRA 840, 850.

[27] RULES OF COURT, Rule 133, Sec. 2.

[28] G.R. No. 168051, September 27, 2006, 503 SCRA 715, 740.

[29] G.R. No. 131116, August 27, 1999, 313 SCRA 254, 271-272.

[30] *People v. Dacillo*, G.R. No. 149368, April 14, 2004, 427 SCRA 528, 538.

not proved.[31] Therefore, we sustain the award of the trial court of PhP 25,000 for temperate damages.

Finally, interest at the rate of six (6) percent should likewise be added to the damages awarded.[32]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00575-MIN finding accused-appellant Rogelio Dolorido *y* Estrada guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. In addition to the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 25,000 as temperate damages, accused-appellant is likewise sentenced to pay the heirs of the victim the amount of PhP 30,000 as exemplary damages. Interest at the rate of six percent (6%) per annum on the civil indemnity and moral, temperate, and exemplary damages from the finality of this decision until fully paid shall likewise be paid by accused-appellant to the heirs of Daniel Estose.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-10-2255. January 17, 2011]
(Formerly OCA IPI No. 10-3335-RTJ)

SPOUSES DEMOCRITO and OLIVIA LAGO, *complainants, vs.* **JUDGE GODOFREDO B. ABUL, JR., REGIONAL TRIAL COURT, BRANCH 43, GINGOOG CITY,** *respondent.*

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[31] *People v. Surongon*, G.R. No. 173478, July 12, 2007, 527 SCRA 577, 588.

[32] See *People v. Tabongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; *EX PARTE* 72-HOUR TEMPORARY RESTRAINING ORDER (TRO), WHEN MAY BE ISSUED; REQUIREMENTS.— [O]n the matter of the issuance of an *ex parte* 72-hour TRO, an executive judge of a multiple-sala court (applicable to respondent judge), or the presiding judge of a single-sala court, is empowered to issue the same in matters of extreme emergency, in order to prevent grave injustice and irreparable injury to the applicant. However, it is also an unequivocal provision that, after the issuance of the 72-hour TRO, the executive judge of a multiple-sala court is bound to comply with Section 4(c) of the same rule with respect to the service of summons and the documents to be served therewith.

2. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; COMMITTED IN CASE AT BAR.— The records of this case clearly show that respondent judge failed to cause the raffle of Civil Case No. 2009-905, since RTC, Gingoog City, is a multiple-sala court, or to cause the notification and service of summons to complainants after he issued the 72-hour TRO. Respondent judge's July 7, 2009 Order was explicit when the civil case was set for summary hearing on July 14, 2009, purportedly to determine whether or not the TRO issued could be extended for another period. Thus, it is manifest that respondent judge had directly assumed jurisdiction over the civil action and all together disregarded the mandatory requirements of Section 4(c), Rule 58, relative to the raffle in the presence of the parties, and service of summons. This is gross error. x x x What is more appalling is that respondent judge extended the 72-hour TRO, which had already and obviously expired, into a full 20-day TRO. An already expired TRO can no longer be extended. x x x Moreover, respondent judge committed another blunder when he ordered the issuance of a writ of preliminary injunction without the required hearing and without prior notice to the defendants, herein complainants. Again, Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. x x x Verily, the absence of the hearing required by the Rules of Court is

downright reprehensible and, thus, should not be countenanced. The requirement of a hearing is so fundamental that failure to comply with it not only amounts to gross ignorance of rules and procedure, but also to an outright denial of due process to the party denied such a hearing. Undoubtedly, the acts and omissions of respondent judge warrant sanction from this Court.

3. ID.; ID.; ID.; ELUCIDATED.— Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and 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 is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice. In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times.

4. ID.; ID.; ID.; CLASSIFIED AS A SERIOUS OFFENSE; PENALTY IN CASE AT BAR.— Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure as a serious offense for which the imposable sanction ranges from dismissal from the service to suspension from office, and a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Under the premises, this Court finds it appropriate to impose on respondent judge the penalty of a fine in the amount of ₱25,000.00.

D E C I S I O N

NACHURA, *J.*:

The case arose from an amended complaint[1] dated December 29, 2009, filed by Spouses Democrito C. Lago and Olivia R. Lago (complainants), charging Judge Godofredo B. Abul, Jr. (respondent judge) of the Regional Trial Court (RTC), Branch 43, Gingoog City, with acts and omissions violative of the Standards of Conduct Prescribed for Judges by Law, the Rules of Court, and the Code of Judicial Conduct.

Complainants were the defendants in a civil action for Preliminary Injunction, Easement of Road Right of Way, and Attorney's Fees, with prayer for a Temporary Restraining Order (TRO), filed on July 2, 2009 by Christina M. Obico (Obico) before the RTC, Gingoog City, Misamis Oriental, and docketed as Civil Case No. 2009-905. The action was spawned by the alleged threats of complainants to close the access road leading to Obico's property, where the latter's milkfish (*bangus*) farm is located. Obico claimed that, if the access road leading to her property was closed, she would be prevented from harvesting her milkfish, causing massive fish kills, and leading to heavy financial losses on her part.

Complainants assert that the civil complaint was never raffled, and that no notice of raffle was ever served upon them, yet the case went directly to Branch 43, where respondent judge is the acting presiding judge. He is also the acting executive judge of RTC, Gingoog City. Complainants claim that this is violative of Section 4(c), Rule 58 of the Rules of Court.

On July 7, 2009, respondent judge issued an Order[2] directing the issuance of a TRO "effective seventy two (72) hours from date of issue," without requiring Obico to put up a bond. Complainants allege that at that time, they were not yet in receipt of the summons and copy of the complaint, as well as Obico's

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[1] *Rollo*, pp. 1-3.

[2] *Id.* at 7.

affidavit and bond. Complainants claim that this is violative of Section 4(c) and (d) of Rule 58 of the Rules of Court.

On July 14, 2009, respondent judge issued an Order[3] extending the 72-hour TRO, which had already expired, "for another period provided that the total period should not exceed twenty days." Again, respondent judge failed to require Obico to put up a bond even as complainants assert that it is already of judicial notice that a TRO under the amended new rules has been elevated to the level of an injunction.

In his Resolution[4] dated August 11, 2009, respondent judge ordered, among others, the issuance of the writ of preliminary injunction conditioned upon the application of a bond by Obico in the amount of ₱100,000.00. Complainants argue, however, that said directive was violative of Section 5, Rule 58 of the Rules of Court since they were not required "to show cause, at a specific time and place, why the injunction should not be granted."

Due to these acts of respondent judge, complainants filed a motion for inhibition[5] from further hearing the case, since they perceive that respondent judge was bereft of the cold neutrality of an impartial judge. The motion was denied by respondent judge in his Resolution[6] dated October 28, 2009. Complainants thus consider respondent judge's non-inhibition as violative of the Code of Judicial Conduct, as it denied them due process and equal protection of the law.

On November 11, 2009, respondent judge issued an Order[7] upon Obico's motion, directing the reduction of the bond from ₱100,000.00 to ₱50,000.00.

Complainants then filed a Motion to Hold in Abeyance Further Proceedings[8] on the ground of the pendency of their appeal

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

[4] *Id.* at 10-15.

[5] *Id.* at 17-20.

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

[7] *Id.* at 16.

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

before the Supreme Court of the Order denying the motion for inhibition. However, at the December 15, 2009 setting for pre-trial of the civil case, respondent judge issued an Order[9] denying the motion to hold in abeyance further proceedings. Respondent judge also allowed Obico to present evidence *ex parte* on January 26, 2010 for failure of complainants to appear during the pre-trial.[10]

In his Comment[11] dated February 11, 2010, respondent judge clarifies that, as of the time of the filing of the civil complaint, Branches 27 and 43 of the RTC, Gingoog City, had no regular presiding judges. Branch 27 was temporarily presided over by Judge Rustico Paderanga, the regular presiding judge of RTC, Camiguin Province, while Branch 43 was presided over by respondent judge, who is the regular judge of RTC, Branch 4, Butuan City.

Respondent judge claims that he had faithfully observed the provisions of Rule 58 of the Rules of Court, with respect to Civil Case No. 2009-905. He explains that, as the acting executive judge of RTC, Gingoog City, he took cognizance of the civil case, convinced that it had to be acted upon immediately. Thus, the issuance of the 72-hour TRO on July 7, 2009 was by virtue of his sound discretion based on the civil complaint and its annexes.

Respondent judge said that he explained in his July 14, 2009 Order that he extended the 72-hour TRO to 20 days in this wise—

> Considering that the TRO previously granted was only for seventy-two hours, the same can be extended for another period provided that the total period should not exceed twenty days. In order to prevent plaintiff from incurring serious damage and heavy financial losses on her part, this court is inclined to grant the extension of the Temporary Restraining Order for another period not exceeding

[9] *Id*. at 29.

[10] Per Order of the same date; *id*. at 47-50.

[11] *Id*. at 32-36.

twenty (20) days inclusive of the seventy two (72) hour period already granted previously by this court.[12]

With respect to the July 14, 2009 hearing for the TRO, respondent judge claims that it was justified since he, as a mere acting presiding (and executive) judge of RTC, Gingoog City, conducts hearings in that sala only on Tuesdays and Wednesdays because he has to travel about 144 kilometers from Butuan City, where he is actually stationed. In the same July 14, 2009 Order, respondent judge asserts that the conduct of the summary hearings on days other than Tuesdays and Wednesdays would cause undue prejudice to the other cases already scheduled way ahead of the subject civil action, thus, the sheer improbability of being accommodated.

Respondent judge asseverates that the writ of injunction was issued only after a serious consideration of all the factual and legal circumstances of the case. On the other hand, he insists that the denial of the motion for inhibition was due to its lack of factual and legal basis.

After due investigation of this administrative case, the Office of the Court Administrator (OCA) issued its Report dated September 13, 2010, recommending that this case be re-docketed as a regular administrative matter, and, based on its finding that respondent judge was grossly ignorant of the law and rules of procedure, recommended that he be meted a fine in the amount of ₱25,000.00, with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely.

The OCA found respondent judge to have been grossly and deliberately ignorant of the law and procedure for violation of Rule 58 of the Rules of Court, specifically by means of the following acts: (1) when the civil complaint with prayer for the issuance of a TRO was filed on July 2, 2009, respondent judge assumed jurisdiction thereon and, without the mandated raffle and notification and service of summons to the adverse party, issued a 72-hour TRO on July 7, 2009; (2) when respondent

[12] *Id.* at 8.

judge set the case for summary hearing on July 14, 2009, purportedly to determine whether the TRO could be extended for another period, when the hearing should be set within 72 hours from the issuance of the TRO; (3) when he eventually granted an extension of an already expired TRO to a full 20-day period; and (4) when he issued a writ of preliminary injunction in favor of Obico without prior notice to herein complainants and without the required hearing.

We find the recommendations of the OCA to be well-taken.

Sections 4 and 5 of Rule 58 of the Rules of Court on preliminary injunction, pertinent to this case, provide—

SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order*.—A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

SEC. 5. *Preliminary injunction not granted without notice; exception.*—No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to the service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order

exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ.[13]

Culled from the foregoing provisions, particularly with respect to the second paragraph of Section 5, Rule 58 of the Rules of Court, as amended, it is clear that, on the matter of the issuance of an *ex parte* 72-hour TRO, an executive judge of a multiple-sala court (applicable to respondent judge), or the presiding judge of a single-sala court, is empowered to issue the same in matters of extreme emergency, in order to prevent grave injustice and irreparable injury to the applicant. However, it is also an unequivocal provision that, after the issuance of the 72-hour TRO, the executive judge of a multiple-sala court is bound to comply with Section 4(c) of the same rule with respect to the service of summons and the documents to be served therewith.

The records of this case clearly show that respondent judge failed to cause the raffle of Civil Case No. 2009-905, since RTC, Gingoog City, is a multiple-sala court, or to cause the notification and service of summons to complainants after he issued the 72-hour TRO. Respondent judge's July 7, 2009 Order was explicit when the civil case was set for summary

[13] As amended by A.M. No. 07-7-12-SC, December 27, 2007.

hearing on July 14, 2009, purportedly to determine whether or not the TRO issued could be extended for another period. Thus, it is manifest that respondent judge had directly assumed jurisdiction over the civil action and all together disregarded the mandatory requirements of Section 4(c), Rule 58, relative to the raffle in the presence of the parties, and service of summons. This is gross error.

Even assuming that there was a valid raffle to RTC, Branch 43, Gingoog City, where respondent judge acts as the presiding magistrate, the supposed extreme urgency of the issuance of the 72-hour TRO was belied by his setting of the required summary hearing for the determination of the necessity of extending the 72-hour TRO to 20 days, one week after the issuance thereof. Indeed, Section 5, Rule 58 is explicit that such summary hearing must be conducted within the said 72-hour period. Notwithstanding the explanation of respondent judge that he could not set the required summary hearing except on Tuesdays and Wednesdays, it should be noted that July 7, 2009, the date of the issuance of the 72-hour TRO, was a Tuesday, yet respondent judge could have set the summary hearing on July 8, 2009, a Wednesday. He failed to do so on the mistaken notion that, aside from his alleged hectic schedule, he could, at any time, extend the 72-hour TRO for another period as long as the total period did not exceed 20 days.

What is more appalling is that respondent judge extended the 72-hour TRO, which had already and obviously expired, into a full 20-day TRO. An already expired TRO can no longer be extended. Respondent judge should have known that the TRO he issued in his capacity as an acting executive judge was valid for only 72 hours. Beyond such time, the TRO automatically expires, unless, before the expiration of the said period, he, supposedly in his capacity as presiding judge to whom the case was raffled, conducted the required summary hearing in order to extend the TRO's lifetime. Indubitably, a 72-hour TRO, issued by an executive judge, is a separate and distinct TRO which can stand on its own, regardless of whether it is eventually extended or not. It is not, as respondent judge attempts to

impress upon us, a mere part of the 20-day TRO issued by a presiding judge to whom the case is raffled.

Moreover, respondent judge committed another blunder when he ordered the issuance of a writ of preliminary injunction without the required hearing and without prior notice to the defendants, herein complainants. The records plainly disclose that the only hearing conducted prior to the August 11, 2009 Resolution granting the preliminary injunction was the July 14, 2009 summary hearing for the extension of the 72-hour TRO. This could be gathered from the August 11, 2009 Resolution, wherein respondent judge declared—

> During the hearing for the determination of the propriety (sic) the Temporary Restraining Order should be extended or whether the Writ of Injunction be granted, the plaintiff presented Christina M. Obico, who in essence testified that she operated fish cages at Gingoog Bay. x x x.[14]

Again, Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. The preliminary injunction prayed for by the applicant can only be heard after the trial court has ordered the issuance of the usual 20-day TRO. Within that period of 20 days, the court shall order the party sought to be enjoined to show cause at a specified time and place why the injunction should not be granted. During that same period, the court shall also determine the propriety of granting the preliminary injunction and then issue the corresponding order to that effect. In the case of respondent judge, he gravely failed to comply with what the rule requires, *i.e.*, to give complainants the opportunity to comment or object, through a full-blown hearing, to the writ of injunction prayed for. Instead, respondent judge railroaded the entire process by treating the summary hearing for the extension of the TRO as the very same hearing required for the issuance of the writ of preliminary injunction.

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[14] *Rollo*, p. 13.

Verily, the absence of the hearing required by the Rules of Court is downright reprehensible and, thus, should not be countenanced. The requirement of a hearing is so fundamental that failure to comply with it not only amounts to gross ignorance of rules and procedure, but also to an outright denial of due process to the party denied such a hearing. Undoubtedly, the acts and omissions of respondent judge warrant sanction from this Court.

Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and 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 is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[15]

In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times.[16]

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure as a serious offense for which the imposable sanction ranges from dismissal from the service to suspension from office, and a fine of more than ₱20,000.00

[15] *Amante-Descallar v. Ramas,* A.M. No. RTJ-08-2142, March 20, 2009, 582 SCRA 22, 39.

[16] *Fortune Life Insurance Company, Inc. v. Luczon, Jr.,* A.M. No. RTJ-05-1901, November 30, 2006, 509 SCRA 65, 73-74.

but not exceeding ₱40,000.00. Under the premises, this Court finds it appropriate to impose on respondent judge the penalty of a fine in the amount of ₱25,000.00.

WHEREFORE, Judge Godofredo B. Abul, Jr., of the Regional Trial Court, Branch 43, Gingoog City, is found liable for Gross Ignorance of the Law and Procedure, and is hereby meted a fine of ₱25,000.00, with a stern warning that a repetition of the same, or any similar infraction in the future, shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172378. January 17, 2011]

SILICON PHILIPPINES, INC., (Formerly INTEL PHILIPPINES MANUFACTURING, INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX ON ZERO-RATED SALES; REQUISITES.— In a claim for credit/refund of input VAT attributable to zero-rated sales, Section 112 (A) of the NIRC lays down four requisites, to wit: 1) the taxpayer must be VAT-registered; 2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; 3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and 4) the creditable input tax due or paid must be attributable to such

sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

2. ID.; ID.; ID.; ID.; PRINTING THE AUTHORITY TO PRINT (ATP) ON THE INVOICES OR RECEIPTS IS NOT REQUIRED.— It has been settled in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue* that the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund.

3. ID.; ID.; ID.; ID.; ATP MUST BE SECURED FROM THE BUREAU OF INTERNAL REVENUE (BIR) TO PROVE THAT INVOICES OR RECEIPTS ARE DULY REGISTERED.— But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC. x x x Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund.

4. ID.; ID.; ID.; ID.; FAILURE TO PRINT THE WORD "ZERO-RATED" ON THE SALES INVOICES IS FATAL.— [F]ailure to print the word "zero-rated" on the sales invoices or receipts is fatal to a claim for credit/refund of input VAT on zero-rated sales. In *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, we upheld the denial of Panasonic's claim for tax credit/refund due to the absence of the word "zero-rated" in its invoices. We explained that compliance with Section 4.108-1 of RR 7-95, requiring the printing of the word "zero rated" on the invoice covering zero-rated sales, is essential

as this regulation proceeds from the rule-making authority of the Secretary of Finance under Section 244 of the NIRC.

5. ID.; ID.; ID.; REFUNDS OR TAX CREDITS OF INPUT TAX ON CAPITAL GOODS; REQUISITES.— To claim a refund of input VAT on capital goods, Section 112 (B) of the NIRC requires that: 1. the claimant must be a VAT registered person; 2. the input taxes claimed must have been paid on capital goods; 3. the input taxes must not have been applied against any output tax liability; and 4. the administrative claim for refund must have been filed within two (2) years after the close of the taxable quarter when the importation or purchase was made.

6. ID.; REVENUE REGULATION NO. 7-95, SECTION 4.106-1; CAPITAL GOODS; DEFINED; CASE AT BAR.— Section 4.106-1 (b) of RR No. 7-95 defines capital goods as follows: "Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services. Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and the other similar items reflected in petitioner's Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from ₱15,170,082.00 to ₱9,898,867.00 is therefore in order.

APPEARANCES OF COUNSEL

Noval and Buñag Law Office for petitioner.
Alberto R. Bomediano & Wilmer B. Dekit for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The burden of proving entitlement to a refund lies with the claimant.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the September 30, 2005

Decision[1] and the April 20, 2006 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Petitioner Silicon Philippines, Inc., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components or "IC's."[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer [4] and with the Board of Investments (BOI) as a preferred pioneer enterprise.[5]

On May 21, 1999, petitioner filed with the respondent Commissioner of Internal Revenue (CIR), through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF), an application for credit/refund of unutilized input VAT for the period October 1, 1998 to December 31, 1998 in the amount of ₱31,902,507.50, broken down as follows:

	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	₱15,170,082.00
Total VAT paid on Purchases per Invoices Received During the Period for which this Application is Filed	16,732,425.50
Amount of Tax Credit/Refund Applied For ₱	31,902,507.50[6]

[1] *Rollo*, pp. 15-46; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez; with Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta, and Separate Concurring Opinion of Associate Justice Juanito C. Castañeda, Jr.

[2] *Id.* at 47-53, with Dissenting Opinion of Presiding Justice Ernesto D. Acosta.

[3] *Id.* at 187.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 188.

Proceedings before the CTA Division

On December 27, 2000, due to the inaction of the respondent, petitioner filed a Petition for Review with the CTA Division, docketed as CTA Case No. 6212. Petitioner alleged that for the 4th quarter of 1998, it generated and recorded zero-rated export sales in the amount of ₱3,027,880,818.42, paid to petitioner in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;[7] and that for the said period, petitioner paid input VAT in the total amount of ₱31,902,507.50,[8] which have not been applied to any output VAT.[9]

To this, respondent filed an Answer[10] raising the following special and affirmative defenses, to wit:

> 8. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded/credited were actually paid;
>
> 9. It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;
>
> 10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95; *Manila Electric Co. vs. Commissioner of Internal Revenue*, 67 SCRA 35);
>
> 11. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (*Asiatic Petroleum vs. Llanes*, 49 Phil. 466; *Union Garment Co. vs. Court of Tax Appeals*, 4 SCRA 304);
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> 12. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of *William Li Yao vs. Collector* (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be

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[7] *Id.* at 163.

[8] *Id.*

[9] *Id.* at 166.

[10] *Id.* at 180-182.

taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the government, which had therefor become part of the State moneys subject to expenditure and perhaps already spent or appropriated; and

13. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.[11]

On November 18, 2003, the CTA Division rendered a Decision[12] partially granting petitioner's claim for refund of unutilized input VAT on capital goods. Out of the amount of ₱15,170,082.00, only ₱9,898,867.00 was allowed to be refunded because training materials, office supplies, posters, banners, T-shirts, books, and other similar items purchased by petitioner were not considered capital goods under Section 4.106-1(b) of Revenue Regulations (RR) No. 7-95 (Consolidated Value-Added Tax Regulations).[13] With regard to petitioner's claim for credit/refund of input VAT attributable to its zero-rated export sales, the CTA Division denied the same because petitioner failed to present an Authority to Print (ATP) from the BIR;[14] neither did it print on its export sales invoices the ATP and the word "zero-rated."[15] Thus, the CTA Division disposed of the case in this wise:

WHEREFORE, in view of the foregoing the instant petition for review is hereby PARTIALLY GRANTED. Respondent is ORDERED to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the reduced amount of ₱9,898,867.00 representing input VAT on importation of capital goods. However, the claim for refund of input VAT attributable to petitioner's alleged zero-rated sales in the amount of ₱16,732,425.50 is hereby DENIED for lack of merit.

SO ORDERED.[16]

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[11] *Id.* at 181.

[12] *Id.* at 186-197.

[13] *Id.* at 195.

[14] *Id.* at 192.

[15] *Id.* at 192-193.

[16] *Id.* at 196.

Not satisfied with the Decision, petitioner moved for reconsideration.[17] It claimed that it is not required to secure an ATP since it has a "Permit to Adopt Computerized Accounting Documents such as Sales Invoice and Official Receipts" from the BIR.[18] Petitioner further argued that because all its finished products are exported to its mother company, Intel Corporation, a non-resident corporation and a non-VAT registered entity, the printing of the word "zero-rated" on its export sales invoices is not necessary.[19]

On its part, respondent filed a Motion for Partial Reconsideration[20] contending that petitioner is not entitled to a credit/refund of unutilized input VAT on capital goods because it failed to show that the goods imported/purchased are indeed capital goods as defined in Section 4.106-1 of RR No. 7-95.[21]

The CTA Division denied both motions in a Resolution[22] dated August 10, 2004. It noted that:

> [P]etitioner's request for Permit to Adopt Computerized Accounting Documents such as Sales Invoice and Official Receipt was approved on August 31, 2001 while the period involved in this case was October 31, 1998 to December 31, 1998 x x x. While it appears that petitioner was previously issued a permit by the BIR Makati Branch, such permit was only limited to the use of computerized books of account x x x. It was only on August 31, 2001 that petitioner was permitted to generate computerized sales invoices and official receipts [provided that the BIR Permit Number is printed] in the header of the document x x x.
>
> x x x x x x x x x

Thus, petitioner's contention that it is not required to show its BIR permit number on the sales invoices runs counter to the

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[17] *Id.* at 198-215 and 216-222.

[18] *Id.* at 201-202.

[19] *Id.* at 207.

[20] CTA Division *rollo*, pp. 169-172.

[21] *Id.* at 170.

[22] *Rollo,* pp. 223-239.

requirements under the said "Permit." This court also wonders why petitioner was issuing computer generated sales invoices during the period involved (October 1998 to December 1998) when it did not have an authority or permit. Therefore, we are convinced that such documents lack probative value and should be treated as inadmissible, incompetent and immaterial to prove petitioner's export sales transaction.

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ACCORDINGLY, the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by petitioner as well as the Motion for Partial Reconsideration of respondent are hereby **DENIED** for lack of merit. The pronouncement in the assailed decision is **REITERATED**.

SO ORDERED. [23]

Ruling of the CTA En Banc

Undaunted, petitioner elevated the case to the CTA *En Banc* via a Petition for Review,[24] docketed as EB Case No. 23.

On September 30, 2005, the CTA *En Banc* issued the assailed Decision[25] denying the petition for lack of merit. Pertinent portions of the Decision read:

This Court notes that petitioner raised the same issues which have already been thoroughly discussed in the assailed Decision, as well as, in the Resolution denying petitioner's Motion for Partial Reconsideration.

With regard to the first assigned error, this Court reiterates that, the requirement of [printing] the BIR permit to print on the face of the sales invoices and official receipts is a control mechanism adopted by the Bureau of Internal Revenue to safeguard the interest of the government.

This requirement is clearly mandated under Section 238 of the 1997 National Internal Revenue Code, which provides that:

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[23] *Id.* at 226-227; 229.

[24] *Id.* at 240-268.

[25] *Id.* at 15-46.

> SEC. 238. *Printing of Receipts or Sales or Commercial Invoice.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

The above mentioned provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer *(H. S. de Leon, The National Internal Revenue Code Annotated, 7th Ed., p. 901)*. And what better way to prove that the required permit to print was secured from the Bureau of Internal Revenue than to show or print the same on the face of the invoices. There can be no other valid proof of compliance with the above provision than to show the Authority to Print Permit number [printed] on the sales invoices and official receipts.

With regard to petitioner's failure to print the word "zero-rated" on the face of its export sales invoices, it must be emphasized that Section 4.108-1 of Revenue Regulations No. 7-95 specifically requires that all value-added tax registered persons shall, for every sale or lease of goods or properties or services, issue duly registered invoices which must show the word "zero-rated" [printed] on the invoices covering zero-rated sales.

It is not enough that petitioner prove[s] that it is entitled to its claim for refund by way of substantial evidence. Well settled in our jurisprudence [is] that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*. Thus, tax refunds are construed in *strictissimi juris* against the person or entity claiming the same *(Commissioner of Internal Revenue vs. Procter & Gamble Philippines Manufacturing Corporation, 204 SCRA 377; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332)*.

In this case, not only should petitioner establish that it is entitled to the claim but it must most importantly show proof of compliance with the substantiation requirements as mandated by law or regulations.

The rest of the assigned errors pertain to the alleged errors of the First Division: in finding that the petitioner failed to comply with the substantiation requirements provided by law in proving its claim for refund; in reducing the amount of petitioner's tax credit for input vat on importation of capital goods; and in denying

petitioner's claim for refund of input vat attributable to petitioner's zero-rated sales.

It is petitioner's contention that it has clearly established its right to the tax credit or refund by way of substantial evidence in the form of material and documentary evidence and it would be improper to set aside with haste the claimed input VAT on capital goods expended for training materials, office supplies, posters, banners, t-shirts, books and the like because Revenue Regulations No. 7-95 defines capital goods as to include even those goods which are indirectly used in the production or sale of taxable goods or services.

Capital goods or properties, as defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, refer "to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

Considering that the items (training materials, office supplies, posters, banners, t-shirts, books and the like) purchased by petitioner as reflected in the summary were not duly proven to have been used, directly or indirectly[,] in the production or sale of taxable goods or services, the same cannot be considered as capital goods as defined above[. Consequently,] the same may not x x x then [be] claimed as such.

WHEREFORE, in view of the foregoing, this instant Petition for Review is hereby **DENIED DUE COURSE** and hereby **DISMISSED** for lack of merit. This Court's Decision of November 18, 2003 and Resolution of August 10, 2004 are hereby **AFFIRMED** in all respects.

SO ORDERED.[26]

Petitioner sought reconsideration of the assailed Decision but the CTA *En Banc* denied the Motion[27] in a Resolution[28] dated April 20, 2006.

Issues

Hence, the instant Petition raising the following issues for resolution:

[26] *Id.* at 19-22.

[27] *Id.* at 269-297.

[28] *Id.* at 47-53.

(1) whether the CTA *En Banc* erred in denying petitioner's claim for credit/ refund of input VAT attributable to its zero-rated sales in the amount of ₱16,732,425.00 due to its failure:

   (a) to show that it secured an ATP from the BIR and to indicate the same in its export sales invoices; and

   (b) to print the word "zero-rated" in its export sales invoices.[29]

(2) whether the CTA *En Banc* erred in ruling that only the amount of ₱9,898,867.00 can be classified as input VAT paid on capital goods.[30]

Petitioner's Arguments

Petitioner posits that the denial by the CTA *En Banc* of its claim for refund of input VAT attributable to its zero-rated sales has no legal basis because the printing of the ATP and the word "zero-rated" on the export sales invoices are not required under Sections 113 and 237 of the National Internal Revenue Code (NIRC).[31] And since there is no law requiring the ATP and the word "zero-rated" to be indicated on the sales invoices,[32] the absence of such information in the sales invoices should not invalidate the petition[33] nor result in the outright denial of a claim for tax credit/refund.[34] To support its position, petitioner cites *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[35] where Intel's failure to print the ATP on the sales invoices or receipts did not result in the outright denial of its claim for tax credit/refund.[36] Although the cited case only dealt with the printing of the ATP, petitioner submits that the reasoning in that case should also apply to the printing of the

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[29] *Id.* at 80.

[30] *Id.* at 98.

[31] *Id.* at 80-82.

[32] *Id.* at 80.

[33] *Id.* at 90.

[34] *Id.* at 374.

[35] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

[36] *Id.* at 696.

word "zero-rated."[37] Hence, failure to print of the word "zero-rated" on the sales invoices should not result in the denial of a claim.

As to the claim for refund of input VAT on capital goods, petitioner insists that it has sufficiently proven through testimonial and documentary evidence that all the goods purchased were used in the production and manufacture of its finished products which were sold and exported.[38]

Respondent's Arguments

To refute petitioner's arguments, respondent asserts that the printing of the ATP on the export sales invoices, which serves as a control mechanism for the BIR, is mandated by Section 238 of the NIRC;[39] while the printing of the word "zero-rated" on the export sales invoices, which seeks to prevent purchasers of zero-rated sales or services from claiming non-existent input VAT credit/refund,[40] is required under RR No. 7-95, promulgated pursuant to Section 244 of the NIRC.[41] With regard to the unutilized input VAT on capital goods, respondent counters that petitioner failed to show that the goods it purchased/imported are capital goods as defined in Section 4.106-1 of RR No. 7-95.[42]

Our Ruling

The petition is bereft of merit.

Before us are two types of input VAT credits. One is a credit/refund of input VAT attributable to zero-rated sales under Section 112 (A) of the NIRC, and the other is a credit/refund of input VAT on capital goods pursuant to Section 112 (B) of the same Code.

[37] *Rollo,* p. 373 (unpaged).

[38] *Id.* at 98.

[39] *Id.* at 324.

[40] *Id.* at 329-330.

[41] *Id.* at 327.

[42] *Id.* at 335.

Credit/refund of input VAT on zero-rated sales

In a claim for credit/refund of input VAT attributable to zero-rated sales, Section 112 (A)[43] of the NIRC lays down four requisites, to wit:

1) the taxpayer must be VAT-registered;

2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;

3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and

4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

To prove that it is engaged in zero-rated sales, petitioner presented export sales invoices, certifications of inward remittance, export declarations, and airway bills of lading for the fourth quarter of 1998. The CTA Division, however, found the export sales invoices of no probative value in establishing petitioner's zero-rated sales for the purpose of claiming credit/refund of input VAT because petitioner failed to show that it has an ATP from the BIR and to

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[43] SECTION 112. *Refunds or Tax Credits of Input Tax*. —

(A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

indicate the ATP and the word "zero-rated" in its export sales invoices.[44] The CTA Division cited as basis Sections 113,[45] 237[46] and 238[47] of the NIRC, in relation to Section 4.108-1 of RR No. 7-95.[48]

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[44] *Rollo,* pp. 192-193.

[45] SECTION 113. *Invoicing and Accounting Requirements for VAT-Registered Persons. —*

(A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

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

(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.

(B) 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.

[46] SECTION 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales 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 in the case of sales, receipts or transfers in the amount of One Hundred Pesos (₱100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations 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; Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

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

We partly agree with the CTA.

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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.

[47] SECTION 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayer who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices are printed; and

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

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

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. the word "zero rated" [printed] on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

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

Printing the ATP on the invoices or receipts is not required

It has been settled in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[49] that the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it.[50] Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund.[51]

ATP must be secured from the BIR

But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264[52] of the NIRC.

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.

[49] *Supra* note 35.

[50] *Id.* at 687 and 693.

[51] *Id.* at 694.

[52] SECTION 264. *Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of such Receipts or Invoices and Other Violations. —*

(a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished

This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.

We rule in the affirmative.

Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of *Intel,* we emphasized that:

> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. **Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**[53] (Emphasis supplied)

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by a fine of not less than One thousand pesos (₱1,000) but not more than Fifty thousand pesos (₱50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts;

(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

[53] *Supra* note 35 at 695-696.

Failure to print the word "zero-rated" on the sales invoices is fatal to a claim for refund of input VAT

Similarly, failure to print the word "zero-rated" on the sales invoices or receipts is fatal to a claim for credit/refund of input VAT on zero-rated sales.

In *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*,[54] we upheld the denial of Panasonic's claim for tax credit/refund due to the absence of the word "zero-rated" in its invoices. We explained that compliance with Section 4.108-1 of RR 7-95, requiring the printing of the word "zero rated" on the invoice covering zero-rated sales, is essential as this regulation proceeds from the rule-making authority of the Secretary of Finance under Section 244[55] of the NIRC.

All told, the non-presentation of the ATP and the failure to indicate the word "zero-rated" in the invoices or receipts are fatal to a claim for credit/refund of input VAT on zero-rated sales. The failure to indicate the ATP in the sales invoices or receipts, on the other hand, is not. In this case, petitioner failed to present its ATP and to print the word "zero-rated" on its export sales invoices. Thus, we find no error on the part of the CTA in denying outright petitioner's claim for credit/refund of input VAT attributable to its zero-rated sales.

Credit/refund of input VAT on capital goods Capital goods are defined under Section 4.106-1(b) of RR No. 7-95

To claim a refund of input VAT on capital goods, Section 112 (B)[56] of the NIRC requires that:

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[54] G.R. No. 178090, February 8, 2010, 612 SCRA 28, 36-37.

[55] SECTION 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

[56] SECTION 112. *Refunds or Tax Credits of Input Tax.* —

1. the claimant must be a VAT registered person;
2. the input taxes claimed must have been paid on capital goods;
3. the input taxes must not have been applied against any output tax liability; and
4. the administrative claim for refund must have been filed within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Corollarily, Section 4.106-1 (b) of RR No. 7-95 defines capital goods as follows:

"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f),[57] used directly or indirectly in the production or sale of taxable goods or services.

Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and the other similar items reflected in petitioner's Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from ₱15,170,082.00 to ₱9,898,867.00 is therefore in order.

WHEREFORE, the Petition is hereby *DENIED*. The assailed Decision dated September 30, 2005 and the Resolution dated April 20, 2006 of the Court of Tax Appeals *En Banc* are hereby *AFFIRMED.*

SO ORDERED.

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

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(B) Capital Goods — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

[57] Now Section 34 (f) of the NIRC.

THIRD DIVISION

[G.R. No. 177790. January 17, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CARLOS R. VEGA, MARCOS R. VEGA, ROGELIO R. VEGA, LUBIN R. VEGA, HEIRS OF GLORIA R. VEGA, NAMELY: FRANCISCO L. YAP, MA. WINONA Y. RODRIGUEZ, MA. WENDELYN V. YAP and FRANCISCO V. YAP, JR.,** *respondents.* **ROMEA G. BUHAY-OCAMPO, FRANCISCO G. BUHAY, ARCELI G. BUHAY-RODRIGUEZ, ORLANDO G. BUHAY, SOLEDAD G. BUHAY-VASQUEZ, LOIDA G. BUHAY-SENADOSA, FLORENDO G. BUHAY, OSCAR G. BUHAY, ERLYN BUHAY-GINORGA, EVELYN BUHAY-GRANETA, and EMILIE BUHAY-DALLAS,** *respondents-intervenors.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* CONTENTS OF THE PETITION; REQUIREMENT THAT THE PETITION SHOULD BE ACCOMPANIED BY "SUCH MATERIAL PORTIONS OF THE RECORD AS WOULD SUPPORT THE PETITION" IS LEFT TO THE SOUND DISCRETION OF THE PARTY FILING THE PETITION.— [P]etitioner Republic's failure to attach a copy of respondents Vegas' Appellee's Brief to the instant Petition is *not* a fatal mistake, which merits the immediate dismissal of a Rule 45 Petition. The requirement that a petition for review on *certiorari* should be accompanied by "such material portions of the record as would support the petition" is left to the discretion of the party filing the petition. Except for the duplicate original or certified true copy of the judgment sought to be appealed from, there are no other records from the court *a quo* that must perforce be attached before the Court can take cognizance of a Rule 45 petition.

2. ID.; ID.; ID.; ID.; A QUESTION OF LAW IS RAISED WHEN PETITIONER ASKS FOR A REVIEW OF THE DECISIONS MADE BY A LOWER COURT BASED ON THE EVIDENCE PRESENTED WITHOUT DELVING INTO THEIR PROBATIVE

VALUE BUT SIMPLY ON THEIR SUFFICIENCY TO SUPPORT THE LEGAL CONCLUSIONS MADE; QUESTION OF LAW, DISTINGUISHED FROM QUESTION OF FACT.— [T]he Petition raises a question of law, and not a question of fact. Petitioner Republic simply takes issue against the conclusions made by the trial and the appellate courts regarding the nature and character of the subject parcel of land, based on the evidence presented. When petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised. In *New Rural Bank of Guimba (N.E.) Inc. v. Fermina S. Abad and Rafael Susan*, the Court reiterated the distinction between a question of law and a question of fact in this wise: We reiterate the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or **when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted**. A question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or **when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation**. Petitioner Republic is not calling for an examination of the probative value or truthfulness of the evidence presented, specifically the testimony of Mr. Gonzales. It, however, questions whether the evidence on record is sufficient to support the lower court's conclusion that the subject land is alienable and disposable. Otherwise stated, considering the evidence presented by respondents Vegas in the proceedings below, were the trial and the appellate courts justified under the law and jurisprudence in their findings on the nature and character of the subject land? Undoubtedly, this is a pure question of law, which calls for a resolution of what is the correct and applicable law to a given set of facts.

3. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); LAND REGISTRATION; REQUISITES.— [P]ursuant to, Section 14, Presidential Decree No. 1529, applicants for registration of title must prove the following: (1) that **the subject land forms part of the disposable and alienable lands of the public domain**; and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the land under a bona fide claim of ownership since 12 June 1945 or earlier. Section 14 (1) of the law requires that the property sought to be registered is already alienable and disposable at the time the application for registration is filed.

4. ID.; ID.; ID.; ID.; ID.; THAT THE SUBJECT LAND FORMS PART OF THE DISPOSABLE AND ALIENABLE LANDS OF THE PUBLIC DOMAIN; ELUCIDATED.— Unless a land is reclassified and declared alienable and disposable, occupation of the same in the concept of an owner — no matter how long — cannot ripen into ownership and result in a title; public lands not shown to have been classified as alienable and disposable lands remain part of the inalienable domain and cannot confer ownership or possessory rights. Matters of land classification or reclassification cannot be assumed; they call for proof. To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government, such as any of the following: a presidential proclamation or an executive order; other administrative actions; investigation reports of the Bureau of Lands investigator; or a legislative act or statute. The applicant may also secure a certification from the government that the lands applied for are alienable and disposable. x x x [A]s it now stands, aside from a CENRO certification, an application for original registration of title over a parcel of land must be accompanied by a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records in order to establish that the land indeed is alienable and disposable.

5. ID.; ID.; ID.; ID.; ID.; ID.; AS A GENERAL RULE, ALL APPLICANTS FOR ORIGINAL REGISTRATION MUST INCLUDE BOTH A CENRO OR PENRO CERTIFICATION AND A CERTIFIED TRUE COPY OF THE ORIGINAL

CLASSIFICATION MADE BY THE DENR SECRETARY; EXCEPTION; APPLICATION IN CASE AT BAR.— To comply with the first requisite for an application for original registration of title under the Property Registration Decree, respondents Vegas should have submitted a CENRO certification **and** a certified true copy of the original classification by the DENR Secretary that the land is alienable and disposable, together with their application. However, as pointed out by the Court of Appeals, respondents Vegas failed to submit a CENRO certification — much less an original classification by the DENR Secretary — to prove that the land is classified as alienable and disposable land of the public domain. If the stringent rule imposed in *Republic v. T.A.N. Properties, Inc*., is to be followed, the absence of these twin certifications justifies a denial of an application for registration. Significantly, however, the Court's pronouncement in *Republic v. T.A.N. Properties, Inc.,* was issued after the decisions of the trial court and the appellate court in this case. Recently, however, in *Republic v. Serrano*, the Court affirmed the findings of the trial and the appellate courts that the parcel of land subject of registration was alienable and disposable. The Court held that a DENR Regional Technical Director's certification, which is annotated on the subdivision plan submitted in evidence, constitutes **substantial compliance** with the legal requirement x x x It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. It does not in any way detract from our rulings in *Republic v. T.A.N. Properties, Inc.,* and similar cases which impose a strict requirement to prove that the public land is alienable and disposable, especially in this case when the Decisions of the lower court and the Court of Appeals were rendered prior to these rulings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose F. Manacop for respondents.
Perez Valencia & Perez for respondents-intervenors.

D E C I S I O N

SERENO, *J.*:

This is a Rule 45 Petition filed by the Republic of the Philippines (petitioner Republic), through the Office of the Solicitor General (OSG), questioning the Decision of the Court of Appeals,[1] which affirmed a lower court's grant of an application for original registration of title covering a parcel of land located in Los Baños, Laguna.

The facts of the case as culled from the records of the trial court and the appellate court are straightforward and without much contention from the parties.

On 26 May 1995, respondents Carlos R. Vega, Marcos R. Vega, Rogelio R. Vega, Lubin R. Vega and Heirs of Gloria R. Vega – namely, Francisco L. Yap, Ma. Winona Y. Rodriguez, Ma. Wendelyn V. Yap and Francisco V. Yap, Jr. (respondents Vegas) – filed an application for registration of title. The application covered a parcel of land, identified as Lot No. 6191, Cadastre 450 of Los Baños, Laguna, with a total area of six thousand nine hundred two (6,902) square meters (the subject land). The case was docketed as Land Registration Case No. 103-95-C and raffled to the Regional Trial Court of Calamba, Laguna, Branch 92.

Respondents Vegas alleged that they inherited the subject land from their mother, Maria Revilleza *Vda. de* Vega, who in turn inherited it from her father, Lorenzo Revilleza. Their mother's siblings (two brothers and a sister) died intestate, all without leaving any offspring.

On 21 June 1995, petitioner Republic filed an opposition to respondents Vegas' application for registration on the ground, *inter alia*, that the subject land or portions thereof were lands of the public domain and, as such, not subject to private appropriation.

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[1] *Rollo* at 28-40.

During the trial court hearing on the application for registration, respondents Vegas presented several exhibits in compliance with the jurisdictional requirements, as well as witnesses to prove respondents Vegas' ownership, occupation and possession of the land subject of the registration. Significant was the testimony of Mr. Rodolfo Gonzales, a Special Investigator of the Community Environment and Natural Resources Office (CENRO) of Los Baños, Laguna, under the Department of Environment and Natural Resources (DENR). He attested to having conducted an inspection of the subject land[2] and identified the corresponding Report dated 13 January 1997, which he had submitted to the Regional Executive Director, Region IV. The report stated that the area subject of the investigation was entirely within the alienable and disposable zone, and that there was no public land application filed for the same land by the applicant or by any other person.[3]

During the trial, respondents-intervenors Romea G. Buhay-Ocampo, Francisco G. Buhay, Arceli G. Buhay-Rodriguez, Orlando G. Buhay, Soledad G. Buhay-Vasquez, Loida G. Buhay-Senadosa, Florendo G. Buhay, Oscar G. Buhay, Erlyn Buhay-Ginorga, Evelyn Buhay-Grantea and Emilie Buhay-Dallas (respondents-intervenors Buhays) entered their appearance and moved to intervene in respondents Vegas' application for registration.[4] Respondents-intervenors Buhays claimed a portion of the subject land consisting of eight hundred twenty-six (826) square meters, purportedly sold by respondents Vegas' mother (Maria Revilleza *Vda. de* Vega) to the former's predecessors-in-interest — the sisters Gabriela Gilvero and Isabel Gilverio — by virtue of a "*Bilihan ng Isang Bahagi ng Lupang Katihan*" dated 14 January 1951.[5]

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[2] TSN, 24 July 2000, at 5-6.

[3] Exhibit "CC" (Report dated 13 January 1997), Regional Trial Court records at 125.

[4] Motion for Intervention dated 14 August 1998 and Opposition dated 14 April 1998 (Exhibits "7" and "8"), Regional Trial Court records, at 158-170.

[5] Exhibit "1", Regional Trial Court records, at 167-168.

They likewise formally offered in evidence Subdivision Plan Csd-04-024336-D, which indicated the portion of the subject land, which they claimed was sold to their predecessors-in-interest.[6]

In a Decision dated 18 November 2003, the trial court granted respondents Vegas' application and directed the Land Registration Authority (LRA) to issue the corresponding decree of registration in the name of respondents Vegas and respondents-intervenors Buhays' predecessors, in proportion to their claims over the subject land.

Petitioner Republic appealed the Decision of the trial court, arguing that respondents Vegas failed to prove that the subject land was alienable and disposable, since the testimony of Mr. Gonzales did not contain the date when the land was declared as such. Unpersuaded by petitioner Republic's arguments, the Court of Appeals affirmed *in toto* the earlier Decision of the trial court. Aggrieved by the ruling, petitioner filed the instant Rule 45 Petition with this Court.

Respondents Vegas, who are joined by respondents-intervenors Buhays (collectively, respondents), raise procedural issues concerning the filing of the instant Petition, which the Court shall resolve first. Briefly, respondents found, in the instant Petition, procedural deficiencies that ought to warrant its outright dismissal. These deficiencies are as follows: (a) petitioner Republic failed to include the pertinent portions of the record that would support its arguments under Rule 45, Section 4 (d) of the Rules of Court, specifically the Appellee's Brief of respondents Vegas in the appellate proceedings; and (b) it raised questions of fact, which are beyond the purview of a Rule 45 Petition.[7]

The Court is not persuaded by respondents' arguments concerning the purported defects of the Petition.

First, petitioner Republic's failure to attach a copy of respondents Vegas' Appellee's Brief to the instant Petition is *not* a fatal mistake, which merits the immediate dismissal of

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[6] Exhibit "5", Regional Trial Court records, at 418.

[7] Comment dated 03 September 2007, *rollo* at 44-55.

a Rule 45 Petition. The requirement that a petition for review on *certiorari* should be accompanied by "such material portions of the record as would support the petition" is left to the discretion of the party filing the petition.[8] Except for the duplicate original or certified true copy of the judgment sought to be appealed from,[9] there are no other records from the court *a quo* that must perforce be attached before the Court can take cognizance of a Rule 45 petition.

Respondents cannot fault petitioner Republic for excluding pleadings, documents or records in the lower court, which to their mind would assist this Court in deciding whether the Decision appealed from is sound. Petitioner Republic is left to its own estimation of the case in deciding which records would support its Petition and should thus be attached thereto. In any event, respondents are not prevented from attaching to their pleadings pertinent portions of the records that they deem necessary for the Court's evaluation of the case, as was done by respondents Vegas in this case when they attached their Appellee's Brief to their Comment. In the end, it is the Court, in finally resolving the merits of the suit that will ultimately decide whether the material portions of the records attached are sufficient to support the Petition.

Second, the Petition raises a question of law, and not a question of fact. Petitioner Republic simply takes issue against the conclusions made by the trial and the appellate courts regarding the nature and character of the subject parcel of land, based on the evidence presented. When petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised.

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[8] Rule 45, Sec. 4 (d) of the Rules of Court.

[9] "The petition shall … (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; …" (Rule 45, Sec. 1 [d] of the Rules of Court)

In *New Rural Bank of Guimba (N.E.) Inc. v. Fermina S. Abad and Rafael Susan*,[10] the Court reiterated the distinction between a question of law and a question of fact in this wise:

> We reiterate the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or **when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted**. A question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or **when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation**. (Emphasis supplied)

Petitioner Republic is not calling for an examination of the probative value or truthfulness of the evidence presented, specifically the testimony of Mr. Gonzales. It, however, questions whether the evidence on record is sufficient to support the lower court's conclusion that the subject land is alienable and disposable. Otherwise stated, considering the evidence presented by respondents Vegas in the proceedings below, were the trial and the appellate courts justified under the law and jurisprudence in their findings on the nature and character of the subject land? Undoubtedly, this is a pure question of law, which calls for a resolution of what is the correct and applicable law to a given set of facts.

Going now to the substantial merits, petitioner Republic places before the Court the question of whether, based on the evidence on record, respondents Vegas have sufficiently established that the subject land is alienable and disposable. Was it erroneous for the Court of Appeals to have affirmed the trial court's grant of registration applied for by respondents Vegas over the subject land? We find no reversible error on the part of either the trial court or the Court of Appeals.

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[10] G.R. No. 161818, 20 August 2008, 562 SCRA 503.

Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provides for the instances when a person may file for an application for registration of title over a parcel of land:

> Section 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier. x x x.

Thus, pursuant to the afore-quoted provision of law, applicants for registration of title must prove the following: (1) that **the subject land forms part of the disposable and alienable lands of the public domain**; and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the land under a bona fide claim of ownership since 12 June 1945 or earlier.[11] Section 14 (1) of the law requires that the property sought to be registered is already alienable and disposable at the time the application for registration is filed.[12]

Raising no issue with respect to respondents Vegas' open, continuous, exclusive and notorious possession of the subject

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[11] *Republic v. Hanover Worldwide Trading Corporation*, G.R. No. 172102, 02 July 2010; *Lim v. Republic*, G.R. Nos. 158630 & 162047, 04 September 2009, 598 SCRA 247; *Republic v. Heirs of Juan Fabio*, G.R. No. 159589, 23 December 2008, 575 SCRA 51; *Llanes v. Republic*, G.R. No. 177947, 27 November 2008, 572 SCRA 258; *Republic v. Diloy*, G.R. No. 174633, 26 August 2008, 563 SCRA 413; *Ong v. Republic*, G.R. No. 175746, 12 March 2008, 548 SCRA 160; *Republic v. Lao*, G.R. No. 150413, 01 July 2003, 405 SCRA 291.

[12] *Republic v. Diloy*, G.R. No. 174633, 26 August 2008, 563 SCRA 413; *Republic v. Court of Appeals*, G.R. No. 144057, 17 January 2005, 448 SCRA 442.

land in the present Petition, the Court will limit its focus on the first requisite: specifically, whether it has sufficiently been demonstrated that the subject land is alienable and disposable.

Unless a land is reclassified and declared alienable and disposable, occupation of the same in the concept of an owner — no matter how long — cannot ripen into ownership and result in a title; public lands not shown to have been classified as alienable and disposable lands remain part of the inalienable domain and cannot confer ownership or possessory rights.[13]

Matters of land classification or reclassification cannot be assumed; they call for proof.[14] To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government, such as any of the following: a presidential proclamation or an executive order; other administrative actions; investigation reports of the Bureau of Lands investigator; or a legislative act or statute.[15] The applicant may also secure a certification from the government that the lands applied for are alienable and disposable.[16]

Previously, a certification from the DENR that a lot was alienable and disposable was sufficient to establish the true

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[13] *Republic v. Heirs of Juan Fabio*, G.R. No. 159589, 23 December 2008, 575 SCRA 51; *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. Nos. 167707 & 173775, 08 October 2008, 568 SCRA 164.

[14] *Republic v. Naguiat*, G.R. No. 134209, 24 January 2006, 479 SCRA 585, citing *Director of Lands v. Funtilar*, 142 SCRA 57 (1986).

[15] *Republic v. Candymaker, Inc.*, G.R. No. 163766, 22 June 2006, 492 SCRA 272, citing *Republic v. Court of Appeals*, 440 Phil. 697, 710-711 (2002); *Tan v. Republic*, G.R. No. 177797, 04 December 2008, 573 SCRA 89; *Buenaventura v. Pascual*, G.R. No. 168819, 27 November 2008, 572 SCRA 143; *Republic v. Muñoz*, G.R. No. 151910, 15 October 2007, 536 SCRA 108.

[16] *Republic v. Tri-Plus Corporation*, G.R. No. 150000, 26 September 2006, 503 SCRA 91; *Zarate v. Director of Lands*, G.R. No. 131501, 14 July 2004, 434 SCRA 322.

nature and character of the property and enjoyed the presumption of regularity in the absence of contradictory evidence.[17]

However, in *Republic v. T.A.N. Properties, Inc.*,[18] the Supreme Court overturned the grant by the lower courts of an original application for registration over a parcel of land in Batangas and ruled that a CENRO certification is *not* enough to certify that a land is alienable and disposable:

> **Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable.** The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. **In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable**. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable. (Emphasis supplied)

Thus, as it now stands, aside from a CENRO certification, an application for original registration of title over a parcel of land must be accompanied by a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records in order to establish that the land indeed is alienable and disposable.[19]

To comply with the first requisite for an application for original registration of title under the Property Registration Decree,

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[17] *Tan v. Republic*, G.R. No. 177797, 04 December 2008, 573 SCRA 89; *Spouses Recto v. Republic*, G.R. No. 160421, 04 October 2004, 440 SCRA 79.

[18] G.R. No. 154953, 26 June 2008, 555 SCRA 477.

[19] See *Republic v. Heirs of Fabio*, *supra* note 11; *Republic v. Hanover Worldwide Trading Corporation*, G.R. No. 172102, 02 July 2010; *Republic v. Roche*, G.R. No. 175846, 06 July 2010.

respondents Vegas should have submitted a CENRO certification **and** a certified true copy of the original classification by the DENR Secretary that the land is alienable and disposable, together with their application. However, as pointed out by the Court of Appeals, respondents Vegas failed to submit a CENRO certification — much less an original classification by the DENR Secretary — to prove that the land is classified as alienable and disposable land of the public domain.[20] If the stringent rule imposed in *Republic v. T.A.N. Properties, Inc.*, is to be followed, the absence of these twin certifications justifies a denial of an application for registration. Significantly, however, the Court's pronouncement in *Republic v. T.A.N. Properties, Inc.*, was issued after the decisions of the trial court[21] and the appellate court[22] in this case.

Recently, however, in *Republic v. Serrano*,[23] the Court affirmed the findings of the trial and the appellate courts that the parcel of land subject of registration was alienable and disposable. The Court held that a DENR Regional Technical Director's certification, which is annotated on the subdivision plan submitted in evidence, constitutes **substantial compliance** with the legal requirement:

> While Cayetano failed to submit any certification which would formally attest to the alienable and disposable character of the land applied for, **the Certification by DENR Regional Technical Director Celso V. Loriega, Jr., as annotated on the subdivision plan submitted in evidence by Paulita, constitutes substantial compliance with the legal requirement. It clearly indicates that Lot 249 had been verified as belonging to the alienable and disposable area as early as July 18, 1925.**
>
> The DENR certification enjoys the presumption of regularity absent any evidence to the contrary. **It bears noting that no opposition was filed or registered by the Land Registration Authority or the DENR to contest respondents' applications on the ground that their**

[20] CA Decision, at 12; *rollo* at 39.

[21] RTC Decision dated 18 November 2003.

[22] CA Decision dated 30 April 2007; *rollo* at 28-40.

[23] G.R. No. 183063, 24 February 2010.

respective shares of the lot are inalienable. There being no substantive rights which stand to be prejudiced, the benefit of the Certification may thus be equitably extended in favor of respondents. (Emphasis supplied)

Indeed, the best proofs in registration proceedings that a land is alienable and disposable are a certification from the CENRO or Provincial Environment and Natural Resources Office (PENRO) and a certified true copy of the DENR's original classification of the land. The Court, however, has nonetheless recognized and affirmed applications for land registration on other substantial and convincing evidence duly presented without any opposition from the LRA or the DENR on the ground of substantial compliance.

Applying these precedents, the Court finds that despite the absence of a certification by the CENRO and a certified true copy of the original classification by the DENR Secretary, there has been substantial compliance with the requirement to show that the subject land is indeed alienable and disposable based on the evidence on record.

First, respondents Vegas were able to present Mr. Gonzales of the CENRO who testified that the subject land is alienable and disposable, and who identified his written report on his inspection of the subject land.

In the Report,[24] Mr. Gonzales attested under oath that (1) the "**area is entirely within the alienable and disposable zone" as classified under Project No. 15, L.C. Map No. 582, certified on 31 December 1925**;[25] (2) the land has never been forfeited in favor of the government for non-payment of taxes; (3) the land is not within a previously patented/decreed/titled property;[26] (4) there are no public land application/s filed by the applicant for the same land;[27] and (5) the land is residential/

[24] Exhibit "CC", Regional Trial Court records, at 125.

[25] Exhibit "CC-1", *id.*

[26] Exhibit "CC-2", *id.*

[27] Exhibit "CC-3", *id.*

commercial.[28] That Mr. Gonzales appeared and testified before an open court only added to the reliability of the Report, which classified the subject land as alienable and disposable public land. The Court affirms the Court of Appeals' conclusion that Mr. Gonzales' testimony and written report under oath constituted substantial evidence to support their claim as to the nature of the subject land.

Second, Subdivision Plan Csd-04-02433-6, formally offered as evidence by respondents-intervenors Buhays,[29] expressly indicates that the land is alienable and disposable. Similar to *Republic v. Serrano*, Mr. Samson G. de Leon, the officer-in-charge of the Office of the Assistant Regional Executive Director for Operations of the DENR, approved the said subdivision plan, which was annotated with the following proviso: "[T]his survey is inside **alienable and disposable area as per Project No. 15, L.C. Map No. 582, certified on Dec. 31, 1925**." Notably, Mr. De Leon's annotation pertaining to the identification of the land as alienable and disposable coincides with the investigation report of Mr. Gonzales.

Finally, upon being informed of respondents Vegas' application for original registration, the LRA never raised the issue that the land subject of registration was not alienable and disposable. In the Supplementary Report submitted during the trial court proceedings,[30] the LRA did not interpose any objection to the application on the basis of the nature of the land. It simply noted that the subject subdivision plan (Psu-51460) had also been applied for in Case No. 1469, GLRO Record No. 32505, but that there was no decree of registration issued therefor. Thus, the LRA recommended that "should the instant case be given due course, the application in Case No. 1469, GLRO Record No. 32505 with respect to plan Psu-51460 be dismissed." In addition, not only did the government fail to cross-examine Mr. Gonzales, it likewise chose not to present any countervailing

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[28] Exhibit "CC-4", *id.*

[29] Exhibit "5", Regional Trial Court records, at 418.

[30] Exhibit "AA", Regional Trial Court records, at 107-108.

evidence to support its opposition. In contrast to the other cases brought before this Court,[31] no opposition was raised by any interested government body, aside from the *pro forma* opposition filed by the OSG.

The *onus* in proving that the land is alienable and disposable still remains with the applicant in an original registration proceeding; and the government, in opposing the purported nature of the land, need not adduce evidence to prove otherwise.[32] In this case though, there was no effective opposition, except the *pro forma* opposition of the OSG, to contradict the applicant's claim as to the character of the public land as alienable and disposable. The absence of any effective opposition from the government, when coupled with respondents' other pieces of evidence on record persuades this Court to rule in favor of respondents.

In the instant Petition, petitioner Republic also assails the failure of Mr. Gonzales to testify as to when the land was declared as alienable and disposable. Indeed, his testimony in open court is bereft of any detail as to when the land was classified as alienable and disposable public land, as well as the date when he conducted the investigation. However, these matters could have been dealt with extensively during cross-examination, which petitioner Republic waived because of its repeated absences and failure to present counter evidence.[33] In any event, the Report, as well as the Subdivision Plan, readily reveals that the subject land was certified as alienable and disposable as early as 31 December 1925 and was even classified as residential and commercial in nature.

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[31] In *Republic v. Roche*, G.R. No. 175846, 06 July 2010, the Laguna Lake Development Authority also opposed Roche's application on the ground that, based on technical descriptions, her land was located below the reglamentary lake elevation of 12.50 meters and, therefore, may be deemed part of the Laguna Lake bed under Section 41 of Republic Act No. 4850. In *Republic v. Hanover, supra* note 19, the Republic was represented by the OSG and the DENR in opposing the application for registration.

[32] *Republic v. Roche*, G.R. No. 175846, 06 July 2010.

[33] Decision dated 18 November 2003, Regional Trial Court records at 442-443.

Thus, the Court finds that the evidence presented by respondents Vegas, coupled with the absence of any countervailing evidence by petitioner Republic, substantially establishes that the land applied for is alienable and disposable and is the subject of original registration proceedings under the Property Registration Decree. There was no reversible error on the part of either the trial court or the appellate court in granting the registration.

Respondents-intervenors Buhays' title to that portion of the subject land is likewise affirmed, considering that the joint claim of respondents-intervenors Buhays over the land draws its life from the same title of respondents Vegas, who in turn failed to effectively oppose the claimed sale of that portion of the land to the former's predecessors-in-interest.

It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. It does not in any way detract from our rulings in *Republic v. T.A.N. Properties, Inc.,* and similar cases which impose a strict requirement to prove that the public land is alienable and disposable, especially in this case when the Decisions of the lower court and the Court of Appeals were rendered prior to these rulings.[34] To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include **both** (1) a CENRO or PENRO certification **and** (2) a certified true copy of the original classification made by the DENR Secretary.

As an exception, however, the courts — in their sound discretion and based solely on the evidence presented on record — may approve the application, *pro hac vice*, on the ground of substantial compliance showing that there has been a positive act of government to show the nature and character of the land and an absence of effective opposition from the government. This exception shall only apply to applications for registration **currently pending** before the trial court prior to this Decision and shall be inapplicable to all future applications.

[34] As earlier stated, the RTC and CA Rulings were promulgated before *Republic v. T.A.N. Properties, Inc.*

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals' Decision dated 30 April 2007 and the trial court's Decision dated 18 November 2003 are hereby *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178741. January 17, 2011]

ROSALINO L. MARABLE, *petitioner, vs.* **MYRNA F. MARABLE,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGES; VOID MARRIAGES; ARTICLE 36 OF THE FAMILY CODE; PSYCHOLOGICAL INCAPACITY AS A GROUND; EXPLAINED.— Article 36 of the Family Code, as amended, provides: Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. The term "psychological incapacity" to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of the marriage. These are the disorders that result in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she has contracted. Psychological incapacity must refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that

concomitantly must be assumed and discharged by the parties to the marriage.

2. ID.; ID.; ID.; ID.; ID.; GUIDELINES IN THE INTERPRETATION AND APPLICATION THEREOF.— In *Republic v. Court of Appeals*, the Court laid down the guidelines in the interpretation and application of Article 36. The Court held, (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. (2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. (4) Such incapacity must also be shown to be medically or clinically permanent or incurable. (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

3. ID.; ID.; ID.; ID.; ID.; THE PSYCHOLOGICAL ILLNESS AND ITS ROOT CAUSE MUST BE PROVEN TO EXIST FROM THE INCEPTION OF THE MARRIAGE; NOT PROVEN IN CASE AT BAR.— In cases of annulment of marriage based on Article 36 of the Family Code, as amended, the psychological illness and its root cause must be proven to exist from the inception of the marriage. Here, the appellate court correctly ruled that the report of Dr. Tayag failed to explain the root cause of petitioner's alleged psychological incapacity. The evaluation of Dr. Tayag merely made a general conclusion that petitioner

is suffering from an Anti-social Personality Disorder but there was no factual basis stated for the finding that petitioner is a socially deviant person, rebellious, impulsive, self-centered and deceitful. As held in the case of *Suazo v. Suazo*, the presentation of expert proof in cases for declaration of nullity of marriage based on psychological incapacity presupposes a thorough and an in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity. Here, the evaluation of Dr. Tayag falls short of the required proof which the Court can rely on as basis to declare as void petitioner's marriage to respondent. In fact, we are baffled by Dr. Tayag's evaluation which became the trial court's basis for concluding that petitioner was psychologically incapacitated, for the report did not clearly specify the actions of petitioner which are indicative of his alleged psychological incapacity. More importantly, there was no established link between petitioner's acts to his alleged psychological incapacity. It is indispensable that the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.

4. ID.; ID.; ID.; ID.; ID.; ID.; SEXUAL INFIDELITY, BY ITSELF, IS NOT SUFFICIENT PROOF THEREOF; CONFINED TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE.— It has been held in various cases that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make petitioner **completely** unable to discharge the essential obligations of marriage. That not being the case with petitioner, his claim of psychological incapacity must fail. It bears stressing that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage. In *Santos v. Court of Appeals*, the intention of the law is to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter

insensitivity or inability to give meaning and significance to the marriage.

APPEARANCES OF COUNSEL

Carillo & Tantuan for petitioner.
Lazaro Castillo & Dela Cruz Law Offices for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated February 12, 2007 and Resolution[2] dated July 4, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86111 which reversed and set aside the Decision[3] dated January 4, 2005 of the Regional Trial Court (RTC), Branch 72, Antipolo City, in Civil Case No. 01-6302. The RTC had granted petitioner's prayer that his marriage to respondent be declared null and void on the ground that he is psychologically incapacitated to perform the essential obligations of marriage.

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

Petitioner and respondent met in 1967 while studying at Arellano University. They were classmates but initially, petitioner was not interested in respondent. He only became attracted to her after they happened to sit beside each other in a passenger bus. Petitioner courted respondent and they eventually became sweethearts even though petitioner already had a girl friend. Later, respondent discovered petitioner's other relationship and demanded more time and attention from petitioner. Petitioner alleged that he appreciated this gesture like a child longing for love, time and attention.

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[1] *Rollo*, pp. 21-31. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring.

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

[3] *Id.* at 32-35. Penned by Judge Ruth Cruz-Santos.

On December 19, 1970, petitioner and respondent eloped and were married in civil rites at Tanay, Rizal before Mayor Antonio C. Esguerra. A church wedding followed on December 30, 1970 at the Chapel of the Muntinlupa Bilibid Prison and their marriage was blessed with five children.

As the years went by, however, their marriage turned sour. Verbal and physical quarrels became common occurrences. They fought incessantly and petitioner became unhappy because of it. The frequency of their quarrels increased when their eldest daughter transferred from one school to another due to juvenile misconduct. It became worse still when their daughter had an unwanted teenage pregnancy. The exceedingly serious attention petitioner gave to his children also made things worse for them as it not only spoiled some of them, but it also became another cause for the incessant quarrelling between him and respondent.

Longing for peace, love and affection, petitioner developed a relationship with another woman. Respondent learned about the affair, and petitioner promptly terminated it. But despite the end of the short-lived affair, their quarrels aggravated. Also, their business ventures failed. Any amount of respect remaining between them was further eroded by their frequent arguments and verbal abuses infront of their friends. Petitioner felt that he was unloved, unwanted and unappreciated and this made him indifferent towards respondent. When he could not bear his lot any longer, petitioner left the family home and stayed with his sister in Antipolo City. He gave up all the properties which he and respondent had accumulated during their marriage in favor of respondent and their children. Later, he converted to Islam after dating several women.

On October 8, 2001, petitioner decided to sever his marital bonds. On said date, he filed a petition[4] for declaration of nullity of his marriage to respondent on the ground of his psychological incapacity to perform the essential responsibilities of marital life.

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[4] Records, pp. 1-6.

In his petition, petitioner averred that he came from a poor family and was already exposed to the hardships of farm life at an early age. His father, although responsible and supportive, was a compulsive gambler and womanizer. His father left their family to live with another woman with whom he had seven other children. This caused petitioner's mother and siblings to suffer immensely. Thus, petitioner became obsessed with attention and worked hard to excel so he would be noticed.

Petitioner further alleged that he supported himself through college and worked hard for the company he joined. He rose from the ranks at Advertising and Marketing Associates, Inc., and became Senior Executive Vice President and Chief Finance Officer therein. But despite his success at work, he alleged that his misery and loneliness as a child lingered as he experienced a void in his relationship with his own family.

In support of his petition, petitioner presented the Psychological Report[5] of Dr. Nedy L. Tayag, a clinical psychologist from the National Center for Mental Health. Dr. Tayag's report stated that petitioner is suffering from "Antisocial Personality Disorder," characterized by a pervasive pattern of social deviancy, rebelliousness, impulsivity, self-centeredness, deceitfulness and lack of remorse. The report also revealed that petitioner's personality disorder is rooted in deep feelings of rejection starting from the family to peers, and that his experiences have made him so self-absorbed for needed attention. It was Dr. Tayag's conclusion that petitioner is psychologically incapacitated to perform his marital obligations.

After trial, the RTC rendered a decision annulling petitioner's marriage to respondent on the ground of petitioner's psychological incapacity.

Upon appeal by the Office of the Solicitor General (OSG), the CA reversed the RTC decision as follows:

WHEREFORE, the foregoing considered, the appeal is GRANTED and the assailed Decision hereby REVERSED AND SET ASIDE.

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[5] *Id.* at 9-17.

Accordingly, the marriage between the parties is declared valid and subsisting. No costs.

SO ORDERED.[6]

The CA held that the circumstances related by petitioner are insufficient to establish the existence of petitioner's psychological incapacity. The CA noted that Dr. Tayag did not fully explain the root cause of the disorder nor did she give a concrete explanation as to how she arrived at a conclusion as to its gravity or permanence. The appellate court emphasized that the root cause of petitioner's psychological incapacity must be medically or clinically identified, sufficiently proven by experts and clearly explained in the decision. In addition, the incapacity must be proven to be existing at the time of the celebration of the marriage and shown to be medically or clinically permanent or incurable. It must also be grave enough to bring about the disability of the petitioner to assume the essential obligations of marriage.

On July 4, 2007, the CA denied petitioner's motion for reconsideration. Hence, this appeal.

Essentially, petitioner raises the sole issue of whether the CA erred in reversing the trial court's decision.

Petitioner claims that his psychological incapacity to perform his essential marital obligations was clearly proven and correctly appreciated by the trial court. Petitioner relies heavily on the psychological evaluation conducted by Dr. Tayag and quotes the latter's findings:

> Petitioner had always been hungry for love and affection starting from his family to the present affairs that he [has]. This need had afforded him to find avenues straight or not, just to fulfill this need. He used charm, deceit, lies, violence, [and] authority just so to accom[m]odate and justify his acts. Finally, he is using religions to support his claim for a much better personal and married life which is really out of context. Rebellious and impulsive as he is, emotional instability is apparent that it would be difficult for him

[6] *Rollo*, p. 31.

to harmonize with life in general and changes. Changes must come from within, it is not purely external.

Clinically, petitioner's self-absorbed ideals represent the grave, severe, and incurable nature of Antisocial Personality Disorder. Such disorder is characterized by a pervasive pattern of social deviancy, rebelliousness, impulsivity, self-centeredness, deceitfulness, and lack of remorse.

The psychological incapacity of the petitioner is attributed by jurisdictional antecedence as it existed even before the said marital union. It is also profoundly rooted, grave and incurable. The root cause of which is deep feelings of rejection starting from family to peers. This insecure feelings had made him so self-absorbed for needed attention. Carrying it until his marital life. Said psychological incapacity had deeply marred his adjustment and severed the relationship. Thus, said marriage should be declared null and void by reason of the psychological incapacity.[7]

According to petitioner, the uncontradicted psychological report of Dr. Tayag declared that his psychological incapacity is profoundly rooted and has the characteristics of juridical antecedence, gravity and incurability. Moreover, petitioner asserts that his psychological incapacity has been medically identified and sufficiently proven. The State, on the other hand, never presented another psychologist to rebut Dr. Tayag's findings. Also, petitioner maintains that the psychological evaluation would show that the marriage failed not solely because of irreconcilable differences between the spouses, but due to petitioner's personality disorder which rendered him unable to comply with his marital obligations. To the mind of petitioner, the assailed decision compelled the parties to continue to live under a "non-existent marriage."

The Republic, through the OSG, filed a Comment[8] maintaining that petitioner failed to prove his psychological incapacity. The OSG points out that Dr. Tayag failed to explain specifically how she arrived at the conclusion that petitioner suffers from an anti-social personality disorder and that it is grave and

[7] Records, pp. 16-17.

[8] *Rollo,* pp. 49-57.

incurable. In fact, contrary to his claim, it even appears that petitioner acted responsibly throughout their marriage. Despite financial difficulties, he and respondent had blissful moments together. He was a good father and provider to his children. Thus, the OSG argues that there was no reason to describe petitioner as a self-centered, remorseless, rebellious, impulsive and socially deviant person.

Additionally, the OSG contends that since the burden of proof is on petitioner to establish his psychological incapacity, the State is not required to present an expert witness where the testimony of petitioner's psychologist was insufficient and inconclusive. The OSG adds that petitioner was not able to substantiate his claim that his infidelity was due to some psychological disorder, as the real cause of petitioner's alleged incapacity appears to be his general dissatisfaction with his marriage. At most he was able to prove infidelity on his part and the existence of "irreconcilable differences" and "conflicting personalities." These, however, do not constitute psychological incapacity.

Respondent also filed her Comment[9] and Memorandum[10] stressing that psychological incapacity as a ground for annulment of marriage should contemplate downright incapacity or inability to take cognizance of and to assume the essential marital obligations, not a mere refusal, neglect or difficulty, much less ill will, on the part of the errant spouse.

The appeal has no merit.

The appellate court did not err when it reversed and set aside the findings of the RTC for lack of legal and factual bases.

Article 36 of the Family Code, as amended, provides:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with

[9] *Id.* at 68-71.

[10] *Id.* at 100-107.

the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

The term "psychological incapacity" to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of the marriage.[11] These are the disorders that result in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she has contracted.[12] Psychological incapacity must refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.[13]

In *Republic v. Court of Appeals*,[14] the Court laid down the guidelines in the interpretation and application of Article 36. The Court held,

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

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[11] *Republic v. Cabantug-Baguio*, G.R. No. 171042, June 30, 2008, 556 SCRA 711, 725.

[12] *Toring v. Toring*, G.R. No. 165321, August 3, 2010, p. 8.

[13] *Navarro, Jr. v. Cecilio-Navarro*, G.R. No. 162049, April 13, 2007, 521 SCRA 121, 128.

[14] G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209-213.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

In the instant case, petitioner completely relied on the psychological examination conducted by Dr. Tayag on him to establish his psychological incapacity. The result of the examination and the findings of Dr. Tayag however, are insufficient to establish petitioner's psychological incapacity. In cases of annulment of marriage based on Article 36 of the Family Code, as amended, the psychological illness and its root cause must be proven to exist from the inception of the marriage. Here, the appellate court correctly ruled that the report of Dr. Tayag failed to explain the root cause of petitioner's alleged psychological incapacity. The evaluation of Dr. Tayag merely made a general conclusion that petitioner is suffering from an Anti-social Personality Disorder but there was no factual basis stated for the finding that petitioner is a socially deviant person, rebellious, impulsive, self-centered and deceitful.

As held in the case of *Suazo v. Suazo*,[15] the presentation of expert proof in cases for declaration of nullity of marriage based on psychological incapacity presupposes a thorough and an in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity. Here, the evaluation of Dr. Tayag falls short of the required proof which the Court can rely on as

[15] G.R. No. 164493, March 12, 2010, 615 SCRA 154, 174.

basis to declare as void petitioner's marriage to respondent. In fact, we are baffled by Dr. Tayag's evaluation which became the trial court's basis for concluding that petitioner was psychologically incapacitated, for the report did not clearly specify the actions of petitioner which are indicative of his alleged psychological incapacity. More importantly, there was no established link between petitioner's acts to his alleged psychological incapacity. It is indispensable that the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.[16]

For sure, the spouses' frequent marital squabbles[17] and differences in handling finances and managing their business affairs, as well as their conflicts on how to raise their children, are not manifestations of psychological incapacity which may be a ground for declaring their marriage void. Petitioner even admitted that despite their financial difficulties, they had happy moments together. Also, the records would show that the petitioner acted responsibly during their marriage and in fact worked hard to provide for the needs of his family, most especially his children. Their personal differences do not reflect a personality disorder tantamount to psychological incapacity.

Petitioner tried to make it appear that his family history of having a womanizer for a father, was one of the reasons why he engaged in extra-marital affairs during his marriage. However, it appears more likely that he became unfaithful as a result of a general dissatisfaction with his marriage rather than a psychological disorder rooted in his personal history. His tendency to womanize, assuming he had such tendency, was not shown to be due to causes of a psychological nature that is grave, permanent and incurable. In fact, the records show that when respondent learned of his affair, he immediately terminated it. In short, petitioner's marital infidelity does not appear to be symptomatic of a grave psychological disorder which rendered him incapable of performing his spousal obligations. It has

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[16] *Id*.

[17] *Navarro, Jr. v. Cecilio-Navarro, supra* note 13 at 129.

been held in various cases that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity.[18] It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make petitioner **completely** unable to discharge the essential obligations of marriage.[19] That not being the case with petitioner, his claim of psychological incapacity must fail. It bears stressing that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage. In *Santos v. Court of Appeals*,[20] the intention of the law is to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[21]

All told, we find that the CA did not err in declaring the marriage of petitioner and respondent as valid and subsisting. The totality of the evidence presented is insufficient to establish petitioner's psychological incapacity to fulfill his essential marital obligations.

WHEREFORE, the appeal is *DENIED* for lack of merit. The February 12, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 86111 and its Resolution dated July 4, 2007 are hereby *AFFIRMED*.

No costs.

SO ORDERED.

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

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[18] *Villalon v. Villalon*, G.R. No. 167206, November 18, 2005, 475 SCRA 572, 582.

[19] *Id.*

[20] G.R. No. 112019, January 4, 1995, 240 SCRA 20, 33.

[21] *Aspillaga v. Aspillaga*, G.R. No. 170925, October 26, 2009, 604 SCRA 444, 449-450; *Tongol v. Tongol*, G.R. No. 157610, October 19, 2007, 537 SCRA 135, 142.

FIRST DIVISION

[G.R. No. 185163. January 17, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLO MAGNO AURE *y* ARNALDO and MELCHOR AUSTRIACO *y* AGUILA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMING THOSE OF THE TRIAL COURT, ARE BINDING ON THE SUPREME COURT, UNLESS THERE IS A CLEAR SHOWING THAT SUCH FINDINGS ARE TAINTED WITH ARBITRARINESS, CAPRICIOUSNESS, OR PALPABLE ERROR.— In deciding this appeal, this Court is guided by the legal aphorism that factual findings of the CA, affirming those of the trial court, are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error. As this Court held in *People v. Lusabio, Jr.*: All in all, we find the evidence of the prosecution to be more credible than that adduced by accused-appellant. **When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.** The reason is obvious. **Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.** Here, accused-appellants failed to show any palpable error, arbitrariness, or oversight on the findings of fact of the trial and appellate courts as to warrant a review of such findings.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold

and the payment for it. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence. In the instant case, all these were sufficiently established by the prosecution.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— As regards the charge of illegal possession of dangerous drugs under Sec. 11, Art. II of RA 9165 against accused-appellant Aure, We also find that the elements of the offense have been established by the evidence of the prosecution. The elements necessary for the prosecution of illegal possession of dangerous drugs 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. In the instant case, a brown bag was found inside the car of accused-appellant Aure. It yielded a plastic sachet of *shabu* weighing 86.23 grams wrapped in red wrapping paper, small plastic sachets, and an improvised plastic tooter. Considering that during the sale to Bilason, it was from the same bag that accused-appellant Austriaco took the sachet of *shabu*, per order of accused-appellant Aure, the owner-possessor of said bag and its contents is no other than accused-appellant Aure, who has not shown any proof that he was duly authorized by law to possess them or any evidence to rebut his *animus possidendi* of the *shabu* found in his car during the buy-bust operation.

4. REMEDIAL LAW; EVIDENCE; DENIAL; AN INHERENTLY WEAK DEFENSE.— [A]ccused-appellants' denial is self-serving and has little weight in law. A bare denial is an inherently weak defense, and has been invariably viewed by this Court with disfavor, for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165. Time and again, We have held that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt."

5. ID.; ID.; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; UPHELD IN CASE AT BAR.— In the

absence of any intent on the part of the police authorities to falsely impute such crime against the accused-appellants, the presumption of regularity in the performance of duty stands. Especially here, where an astute analysis of MADAC operative Bilason's testimony does not indicate any inconsistency, contradiction, or fabrication.

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 May 12, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02600 entitled *People of the Philippines v. Carlo Magno Aure and Melchor Austriaco*, which affirmed the September 1, 2006 Decision[2] in Criminal Case Nos. 03-3296, 03-3297, and 03-4210 of the Regional Trial Court (RTC), Branch 64 in Makati City. The RTC found accused Carlo Magno Aure (Aure) and Melchor Austriaco (Austriaco) guilty of violating Sections 5, 11, and 15, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The Information in Criminal Case No. 03-3296 charged Aure and Austriaco with violation of Sec. 5, Art. II of RA 9165. The Information reads:

That on or about the 26th day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and

[1] *Rollo*, pp. 2-12. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Vicente Q. Roxas and Myrna Dimaranan-Vidal.

[2] CA *rollo*, pp. 19-41. Penned by Judge Delia H. Panganiban.

confederating and both of them mutually helping and aiding with one another, without the necessary license or prescription and without being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver, and give away ₱6,000.00 worth of Methylamphetamine Hydrochloride (*Shabu*) weighing three point ninety-one (3.91) grams, a dangerous drug.

CONTRARY TO LAW.[3]

In Criminal Case No. 03-3297, the Information charged Aure with violation of Sec. 11, Art. II of RA 9165, as follows:

That on or about the 26th day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use regulated drugs and without any license or proper prescription, did then and there willingly, unlawfully, feloniously have in his possession, custody and control Methylamphetamine Hydrochloride (*Shabu*) weighing eighty six point twenty-three (86.23) grams, which is a dangerous drug, in violation of the aforesaid law.

CONTRARY TO LAW.[4]

And the Information in Criminal Case No. 03-4210 charged Austriaco with violation of Sec. 15, Art. II of RA 9165, as follows:

That on or about the 26th day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to use any dangerous drug, and having been arrested and found positive for the use of Methylamphetamine after a confirmatory test, did then and there willfully, unlawfully and feloniously use Methylamphetamine, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.[5]

When arraigned in Criminal Case Nos. 03-3296 and 03-3297 on September 9, 2003, Aure and Austriaco entered their negative pleas.[6]

[3] Records, p. 2.

[4] *Id.* at 4.

[5] *Rollo*, p. 6.

[6] Records, p. 29.

Meanwhile, during the arraignment on February 19, 2004, Austriaco pleaded guilty in Criminal Case No. 03-4210. The promulgation of the decision in this case was deferred pending submission by the defense counsel of a certification that he had not been convicted of the same offense.[7]

Thereafter, a consolidated trial of Criminal Case Nos. 03-3296 and 03-3297 ensued.

During trial, the prosecution presented three (3) witnesses, to wit: (1) Makati Anti-Drug Abuse Council (MADAC) operative Norman Bilason (Bilason), the designated poseur-buyer; (2) Police Officer 3 Jay Lagasca (PO3 Lagasca), the buy-bust team leader; and (3) MADAC operative Rogelio Flores (Flores), one of the back-up operatives. On the other hand, the defense presented Aure and Austriaco as its witnesses.[8]

The Prosecution's Version of Facts

At around 4:00 in the afternoon of August 26, 2003, an informant came to the Office of MADAC Cluster 2 and reported that a certain Carlo, later identified as Carlo Magno Aure, was rampantly selling illegal drugs along F. Nazario Street, *Barangay* Singkamas, Makati City.[9] Aure was reportedly armed with a handgun and was using his car in his illegal transactions.[10]

Upon being apprised of the ongoing drug peddling, the Chief of the Drug Enforcement Unit of the Makati City Police Station immediately created a group of officers which would conduct a buy-bust operation.[11] Composing this team was PO3 Lagasca, as the team leader, with operatives from both the police station's Anti-Illegal Drug Special Operation Task Force (AIDSOTF) and MADAC's Clusters 2 and 3 as members.

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[7] *Rollo*, p. 7.

[8] CA *rollo*, p. 23.

[9] *Id.* at 23-24.

[10] *Rollo*, p. 2.

[11] *Id.* at 2-3.

When a briefing was conducted, MADAC operative Bilason was assigned as the poseur-buyer to be provided with 12 marked five hundred peso (PhP 500) bills, amounting to six thousand pesos (PhP 6,000).

After marking the 12 PhP 500 bills, the team, with the informant, went to the place where Aure was reported to be conducting his trade. When they reached a point along Primo Rivera Street, about 30 meters away from F. Nazario Street, they alighted from their vehicles. MADAC operative Bilason and the informant walked towards F. Nazario Street, while the rest of the team members followed them.

Thereafter, when Bilason and the informant saw Aure and a certain "Buboy," who turned out to be Austriaco, seating inside a car parked along F. Nazario Street, they approached the latter. In the meantime, the other team members strategically positioned themselves within the area to monitor the transaction.

Bilason was introduced by the informant as a buyer of *shabu*. Aure initially expressed his apprehension that Bilason could be an operative. Nevertheless, when the informant assured him that Bilason is his friend from the province, Aure asked Bilason how much he needed. To this, Bilason replied "*Isang bolto, pare*,"[12] which meant six thousand pesos (PhP 6,000) worth of *shabu*. When demanded by Aure, Bilason handed the previously marked money to him. The latter then placed the marked money inside his right front pocket.

Afterwards, Aure secured from Austriaco a small brown bag and a plastic sachet containing white crystalline substance, suspected as *shabu*, taken from the same bag. Aure then handed over the same plastic sachet with its contents to Bilason.

After ascertaining that what Aure gave him was *shabu*, Bilason lighted his cigarette to signal to his team members that the transaction with Aure was already consummated. Immediately, PO3 Lagasca and MADAC operative Flores closed in.[13] After

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[12] TSN, November 23, 2004, p. 20.

[13] *Rollo*, p. 3.

introducing themselves as AIDSOTF and MADAC operatives, Bilason and his team members placed Aure and Austriaco under arrest, and ordered them to get out of the car.[14]

Subsequently, Bilason seized the small brown bag from Aure. When inspected, said bag yielded another plastic sachet containing substantial amount of suspected *shabu* wrapped in red wrapping paper, empty plastic sachets, and glass pipe tooter. Also seized was a .45 caliber pistol with one magazine and five live bullets found inside the car near the place where Aure was seated. Flores also recovered the marked money from Aure. The recovered items were marked by Bilason in the presence of Aure and Austriaco. PO3 Lagasca likewise explained to the two suspects the cause of their arrest and apprised them of their constitutional rights.

Eventually, Aure and Austriaco were brought to the AIDSOTF office. The examinations conducted by the Philippine National Police Crime Laboratory on the plastic sachets of suspected *shabu* and the glass pipe tooter yielded positive results for Methylamphetamine Hydrochloride.[15] This was indicated in Chemistry Report No. D-1068-03[16] issued by Police Inspector Alejandro C. de Guzman.

Version of the Defense

Aure and Austriaco interposed the defense of denial.

Aure testified that on August 26, 2003, at around 8:00 in the evening, he fetched Austriaco in Pasay City.[17] The latter was referred to him by his *compadre*[18] to repair the cabinet in the house he intended to lease on F. Nazario Street, *Barangay* Singkamas, Makati City. They proceeded to the said house in Makati City on board Aure's Toyota Celica.

[14] *Id.* at 3-4.

[15] *Id.* at 4.

[16] Records, p. 143.

[17] CA *rollo*, p. 28.

[18] A name called by men to each other, as when one is a godfather to the other's child in baptism.

At around 8:30 in the evening, while Austriaco was estimating the cost of materials to be used for the repair of the cabinet, Aure heard knocks on the door. When he opened the door, he saw 10 men in civilian clothes who immediately grabbed him and made him lie face down for about three minutes.

This group of men allegedly began to search the house and seized the money amounting to PhP 200,000 which Aure intended to use for purchasing a taxi cab, among other things. During this time, Austriaco was standing beside the cabinet near the lavatory when someone ordered, "*Kunin niyo na rin yung isa*."[19]

Thereafter, Aure was handcuffed and was subsequently brought to the office of the Drug Enforcement Unit.[20] After about five to 10 minutes, he saw Austriaco, who was also handcuffed, being brought inside the said office.[21]

Aure further testified that a plastic sachet of *shabu* was shown to him, and when he denied that the item came from him despite the arresting men's insistence that this was in his possession, he was punched by a police officer. He also averred that a certain Rogelio Flores tried to extort money from him. His wallet and license were allegedly taken from him by the persons who arrested him.

For his part, Austriaco recounted that in the evening of August 26, 2003, he was fetched by a certain Benjamin Zaide from his house in Pasay City to repair the cabinet of Aure. Together, they proceeded to the house of Benjamin Zaide, also in Pasay City, where Aure was waiting. Thereafter, they proceeded to Aure's house in Makati City.

Upon arriving at Aure's house, Austriaco immediately attended to the cabinet he was supposed to repair. A few minutes later, he heard some noise coming from the direction of the stairs of the house. Nonetheless, he went on with his work and just focused his attention on the cabinet he was estimating.[22]

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[19] "Get the other one, too."

[20] CA *rollo*, p. 29.

[21] *Id.* at 29-30.

[22] *Id.* at 30.

Austriaco further narrated that when Aure opened the door, he saw several men wearing civilian clothes enter the house and forcibly grab Aure. The latter stumbled and fell to the floor with his face down. The group of men began to search the house. Eventually, Austriaco saw Aure being brought outside of Aure's house. After two to three minutes, he was also taken out of the house and was brought to the Criminal Investigation Division.[23]

Ruling of the Trial Court

After trial, the RTC convicted Aure and Austriaco. The dispositive portion of its Decision reads:

WHEREFORE, in view of the foregoing judgment is rendered as follows:

1. In Criminal Case No. 03-3296, for Violation of Section 5, Article II of Republic Act No. 9165, the accused CARLO MAGNO AURE *y* ARNALDO and MELCHOR AUSTRIACO *y* AGUILA are found GUILTY beyond reasonable doubt of the offense charged and both are sentenced to suffer the penalty of LIFE IMPRISONMENT and each one to pay a fine of FIVE HUNDRED THOUSAND (PHP 500,000.00) PESOS.

2. In Criminal Case No. 03-3297 for Violation of Section 11, Article II Republic Act No. 9165, the accused CARLO MAGNO AURE *y* ARNALDO is found GUILTY beyond reasonable doubt of the offense charged and considering the quantity of *shabu* recovered from his possession which is 86.23 grams, is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php 500,000.00) [Pesos].

3. In Criminal Case No. 03-4210, for Violation of Section 15 Article II, Republic Act No. 9165, the accused MELCHOR AUSTRIACO *y* AGUILA having pleaded GUILTY to the charge is sentenced to undergo drug rehabilitation for at least six (6) months in a government rehabilitation center under the auspices of the Bureau of Corrections subject to the provisions of Article VIII of Republic Act No. 9165.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA), the two (2) plastic sachets of

[23] *Rollo*, p. 5.

shabu with a combined weight of 90.14 grams subject matter of Criminal Cases Nos. 03-3296 and 03-3297 for said agency's appropriate disposition.

SO ORDERED.[24]

On appeal to the CA, Aure and Austriaco questioned the trial court's decision in convicting them despite their claim that the prosecution failed to prove their guilt beyond reasonable doubt.[25]

Ruling of the Appellate Court

On May 12, 2008, the CA affirmed the judgment of the RTC. It ruled that all the elements necessary to establish the fact of sale or delivery of illegal drugs were aptly established by the prosecution, to wit:

> In the present controversy, the elements of the crimes charged were amply proven not only by the categorical and materially consistent declarations of the poseur-buyer and two other members of the buy-bust team, but also by laboratory examinations of the substance seized, drug test of one of the accused-appellants, affidavits, marked bills, and other reports which were all submitted in court. Taken collectively, these pieces of evidence bear out that the accused-appellants indeed sold a packet of white crystalline substance to MADAC operative and poseur-buyer Norman Bilason in exchange for ₱6,000 and that the substance seized eventually tested positive for *shabu*. In the prosecution of the offense of illegal sale of prohibited drugs, what is essential is the proof that the transaction or sale actually took place coupled with the presentation in court of the *corpus delicti* as evidence.[26] (Citations omitted.)

The CA held also that in the absence of proof to suggest that the arresting officers were moved by improper motives, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the self-serving claim of having

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[24] CA *rollo*, pp. 39-41.

[25] *Id.* at 57.

[26] *Rollo*, p. 11.

been framed.[27] Further, the appellate court ruled that the statutory burden of guilt beyond reasonable doubt was ably discharged by the prosecution. After all, it ratiocinated that "proof beyond reasonable doubt" does not necessarily contemplate "absolute certainty" but that degree of proof which produces conviction in an unprejudiced mind.

The *fallo* of the CA Decision reads:

> WHEREFORE, in the light of the foregoing discussion, the present appeal is hereby ***DISMISSED***. Accordingly, the decision of the court *a quo* dated 01 September 2006 is perforce ***affirmed*** in its entirety.
>
> SO ORDERED.[28]

On June 3, 2008, accused-appellants filed their Notice of Appeal.[29]

In our Resolution dated January 14, 2009,[30] We notified the parties that they may file their respective supplemental briefs if they so desired. On March 19, 2009, the People of the Philippines manifested that it was no longer filing a supplemental brief, as it believed that the *Brief for the Plaintiff-Appellee* dated November 6, 2007 had thoroughly refuted and discussed the lone issue raised by accused-appellants in the instant case.[31] Similarly, accused-appellants, on April 8, 2009, manifested that they were no longer filing a supplemental brief, as they are adopting all the arguments contained in their *Brief for the Accused-Appellants* dated June 15, 2007.[32]

The Issues

Accused-appellants contend in their *Brief for the Accused-Appellants* dated June 15, 2007[33] that:

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

[28] *Id.* at 12.

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

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

[31] *Id.* at 21-23.

[32] *Id.* at 25-27.

[33] CA *rollo*, pp. 55-70.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

Our Ruling

We sustain accused-appellants' conviction.

Proof of guilt beyond reasonable doubt adequately established by the prosecution

After a careful examination of the records of this case, We are satisfied that the prosecution's evidence established the guilt of accused-appellants beyond reasonable doubt.

In deciding this appeal, this Court is guided by the legal aphorism that factual findings of the CA, affirming those of the trial court, are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error.[34] As this Court held in *People v. Lusabio, Jr.*:[35]

> All in all, we find the evidence of the prosecution to be more credible than that adduced by accused-appellant. **When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.** The reason is obvious. **Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.** (Emphasis supplied; citations omitted.)

Here, accused-appellants failed to show any palpable error, arbitrariness, or oversight on the findings of fact of the trial and appellate courts as to warrant a review of such findings.

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[34] *People v. Belo*, G.R. No. 187075, July 5, 2010; citing *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 705.

[35] G.R. No. 186119, October 27, 2009, 604 SCRA 565, 590.

In the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.[36] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[37] In the instant case, all these were sufficiently established by the prosecution.

MADAC operative Bilason, the poseur-buyer, testified on the first element, thus:

Q: On August 26, 2003 at around 9:05 in the evening, where were you Mr. Witness?
A: I'm at F. Nazario St., Brgy. Singkamas, Makati City, sir.

Q: What were you doing in the said place?
A: We were conducting buy bust operation against a certain Carlo, sir.

Q: What was your participation in that buy bust operation that you were then conducting?
A: I was the poseur buyer.

x x x x x x x x x

Q: Could you tell us what happened to the buy bust operation that you conducted at F. Nazario St., Brgy. Singkamas, Makati City?
A: We successfully apprehended Carlo together with his companion Melchor Austriaco.

Q: If this *alias* Carlo is present in court, will you be able to identify him?
A: Yes, sir.

Q: Will you please point him out to us?
A: (The witness pointed to a man who identified himself as Carlo Magno Aure *y* Arnaldo)

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[36] *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713; citing *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770.

[37] *Id*.

Q: How about Melchor Austriaco Mr. Witness, will you please point him out to us?
A: (The witness pointed to a man who identified himself as Melchor Austriaco *y* Aguila)

x x x x x x x x x

Q: What happened Mr. Witness after the operation was coordinated with the PDEA?
A: PO3 Jay Lagasca prepared the buy bust money, sir.

Q: And how much were you supposed to buy in the buy bust operation?
A: Worth ₱6,000.00 pesos, sir.

Q: And what were you supposed to buy?
A: *Shabu*, sir.

Q: You said that PO3 Jay Lagasca prepared the buy bust money?
A: Yes, sir.

Q: Where were you when it was given to you?
A: I was present, sir, beside PO3 Jay Lagasca, sir.

Q: If the buy bust money that was given to you by PO3 Jay Lagasca will be shown to you, will you be able to identify the same?
A: Yes, sir.

Q: By the way, how much was given to you by PO3 Jay Lagasca?
A: Worth ₱6,000.00 pesos, sir.

Q: And could you tell us in what denomination were those ₱6,000.00 pesos are?
A: Twelve (12) pieces of ₱500.00 peso bills, sir.

Q: If this [sic] twelve (12) pieces of ₱500.00 peso bills given to you by PO3 Jay Lagasca to be used in that operation will be shown to you, will you be able to identify the same?
A: I am very sure, sir.

Q: I'm showing to you Mr. Witness twelve (12) pieces of ₱500.00 peso bills. Will you please go over the same and tell us what relation does that have to the money that was given to you by PO3 Jay Lagasca?

A: This is the same buy bust money that we used in the buy bust operation.

Q: x x x Why are you certain Mr. Witness that these are the same buy bust money that were given to you by PO3 Jay Lagasca?
A: Because of the marking above the serial number C2, sir.

Q: What does this marking C2 stands for?
A: Cluster 2, sir.

Q: Who placed these markings above the serial numbers of the ₱500.00 peso bills?
A: Our team leader, PO3 Jay Lagasca, sir.

Q: Where were you when these markings were placed?
A: I'm just in front of him, sir.

Q: x x x Mr. Witness, what did you do next after the ₱500.00 peso bills were given to you by PO3 Jay Lagasca?
A: After receiving the money, we proceeded to the area, sir.

Q: Who was with you when you proceeded to the area?
A: The confidential informant together with the buy bust team, sir.

x x x x x x x x x

Q: You said that while you were walking at F. Nazario Street, you saw the [sic]?
A: The informant told me that that is the accused, sir.

Q: And what was the accused doing when you saw him?
A: He was seated inside the car and beside him on the driver side is a male person.

x x x x x x x x x

Q: And what was the other male person doing at that time that you saw accused Carlo Magno Aure?
A: They were talking to each other, sir.

Q: Where was this other man at that time?
A: Beside him, sir, at the other side, sir.

Q: What happened after you saw the two men, Mr. Witness?
A: The confidential informant introduced me to the subject *alias* Carlo and told him that I am in need of *shabu*.

Q: So Mr. Witness, you said that you were introduced by the informant to accused Carlo Magno Aure?
A: Yes, sir.

Q: How were you introduced by the informant?
A: That I was in need of *shabu*, sir.

Q: And what was the reply of accused Carlo Magno Aure?
A: Carlo Magno Aure said that pare "*parang parak yata yan tol*?"

Q: And when he said "*parang parak yata yan tol*?" to whom was he addressing this statement?
A: To the informant.

Q: And what happened after he uttered those words Mr. Witness?
A: *Sumagot yung* informant "*barkada ko yan, taga probinsya*."[38]

The second element—the delivery of the thing sold and the payment for it—was satisfied through the testimony of witness Bilason:

Q: And what happened after that?
A: "*Tinanong ako ni* Carlo Magno Aure *kung magkano ang kukunin ko, sabi ko sa kanya isang bolto pare.*"

Q: When you said "*isang bolto*" what exactly do you mean?
A: According to the informant worth ₱6,000.00 pesos "*isang bolto*."

Q: And what happened after you said "*isang bolto*?"
A: He got the money from me and put it inside his right front pocket, sir.

Q: And what happened after that?
A: He ordered his companion *alias* Buboy to get the brown bag and took out one plastic sachet, sir.

Q: And what did he do with this plastic sachet?
A: *Alias* Buboy handed to Carlo Magno Aure one plastic sachet containing white crystalline substance, the suspected *shabu* and the brown bag.

Q: After the plastic sachet and the brown bag were handed to accused Carlo Magno Aure what happened next?

[38] TSN, November 23, 2004, pp. 4-19.

A: *Alias* Carlo gave me the one piece of transparent plastic sachet containing crystalline substance, the suspected *shabu*.

Q: If the male companion of Carlo Magno is inside the courtroom, will you be able to identify him?
A: Yes, sir.

Q: Will you please point him out to us.
A: (The witness pointed to a man who identified himself as Melchor Austriaco *y* Aguila)

Q: So, you are referring to accused Melchor Austriaco *y* Aguila?
A: Yes, sir.

Q: What happened next Mr. Witness after accused Carlo Magno Aure handed to you this plastic sachet?
A: When I got the plastic sachet and I was convinced that it was *shabu* then I gave the pre-arranged signal, sir.

Q: What convinced you that the sachet contained shabu?
A: Because of [sic] the appearance consist of white crystalline substance, sir.

Q: What was the pre-arranged signal that you gave?
A: By lighting my cigarette, sir.

Q: And what happened after the pre-arranged signal was given?
A: Our team leader and my back up Rogelio Flores approached us and helped me in arresting the suspect, sir.

Q: What happened Mr. Witness after you arrested the two accused?
A: I got hold of Carlo Magno and I introduced myself as MADAC operative and we asked him to go outside the vehicle, sir.

Q: And what happened after you ordered the two to get off the car?
A: *Narecover ko po yung isang* brown bag *na naglalaman ng nakabot* [sic] *na kulay pulang* birthday wrapping paper *na shabu at* glass tooter a*t saka may lamang mga* plastic *po*.

Q: Mr. Witness, if the item that you bought from the accused will be shown to you, will you be able to identify the same?
A: Yes, sir.

Q: I'm showing to you Mr. Witness several pieces of object evidence. Will you please go over these and identify the item that you bought from the accused?
A: *Sir, ito po mismo yung nabili ko kay* Carlo Magno Aure worth ₱6,000.00 pesos.

Q: x x x Why are you certain that this is the same item that you bought?
A: Because of the marking CAA 8/26/03.

Q: Who placed the markings on the sachet?
A: I was the one, sir.

Q: Where were you when you placed this marking?
A: In front of the accused, in the area where we arrested the accused.

Q: What does the initial CAA stands for?
A: Carlo Magno Aure *y* Arnaldo, sir.

Q: How did you come to know that the initial of accused Carlo Magno Aure was CAA at the time that you made this marking?
A: After arresting them and after confiscating all the items PO3 Jay Lagasca asked his name.

x x x x x x x x x

Q: By the way Mr. Witness, earlier you identified these pieces of evidence contained in this brown plastic bag. Why are you certain Mr. Witness that these are the same evidence, which you recovered from the possession of accused Carlo Magno Aure?
A: I was the one who marked that evidence that we recovered from Carlo Magno Aure, sir.

Q: What happened to the buy bust money, Mr. Witness?
A: MADAC Rogelio Flores recovered the buy bust money from the front pocket of his worn pants.

Q: From whom was it recovered?
A: From Carlo Magno Aure, sir.

Q: Where were you when MADAC Flores recovered the money?
A: I was beside him, sir.

Q: After you have arrested the two accused where did you go?

A: We [went] to the Drug Enforcement Unit of the Makati Police Station.

Q: And what happened at the Drug Enforcement Unit?
A: To give the evidence to the duty investigator PO1 Alex Inopia and PO1 Alex Inopia made a request for laboratory examination of the specimen recovered from Carlo Magno Aure and drug test as well.

Q: Who brought the two accused to the PNP Crime Laboratory for drug testing and the *shabu* for laboratory examination?
A: I was the one together with my group, sir.

Q: Did you come to know the result of the drug test conducted from the two accused?
A: I'm not aware, sir. I have not seen the result.

Q: How about the drug that were subject of these cases?
A: It gave positive result for Methlyamphetamine [sic] Hydrochloride, sir.[39]

As shown in Bilason's testimony, a buy-bust operation took place. Being the poseur-buyer, he positively identified accused-appellants as the sellers of a sachet containing a white crystalline substance for a sum of PhP 6,000. The sachet was confiscated and marked with the initials "CAA" and was subsequently taken to the crime laboratory for examination, where a chemical analysis on its contents confirmed that the substance is indeed Methylamphetamine Hydrochloride or *shabu*. Moreover, the testimonies of the other members of the buy-bust team, PO3 Lagasca and MADAC operative Flores, substantially corroborated Bilason's testimony.

As regards the charge of illegal possession of dangerous drugs under Sec. 11, Art. II of RA 9165 against accused-appellant Aure, We also find that the elements of the offense have been established by the evidence of the prosecution.

The elements necessary for the prosecution of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2)

[39] *Id.* at 20-32.

such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[40]

In the instant case, a brown bag was found inside the car of accused-appellant Aure. It yielded a plastic sachet of *shabu* weighing 86.23 grams wrapped in red wrapping paper, small plastic sachets, and an improvised plastic tooter. Considering that during the sale to Bilason, it was from the same bag that accused-appellant Austriaco took the sachet of *shabu*, per order of accused-appellant Aure, the owner-possessor of said bag and its contents is no other than accused-appellant Aure, who has not shown any proof that he was duly authorized by law to possess them or any evidence to rebut his *animus possidendi* of the *shabu* found in his car during the buy-bust operation.

Defense of denial is inherently weak

The sachet containing the dangerous drug was positively identified by MADAC operative Bilason during the trial as the very sachet with white crystalline substance sold and delivered to him by accused-appellants. Thus, accused-appellants' denial is self-serving and has little weight in law. A bare denial is an inherently weak defense,[41] and has been invariably viewed by this Court with disfavor, for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165.[42]

Time and again, We have held that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt."[43]

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[40] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390-391; citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846.

[41] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662; citing *People v. Arlee*, G.R. No. 113518, January 25, 2000, 323 SCRA 201, 214.

[42] *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[43] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA

In the absence of any intent on the part of the police authorities to falsely impute such crime against the accused-appellants, the presumption of regularity in the performance of duty stands.[44] Especially here, where an astute analysis of MADAC operative Bilason's testimony does not indicate any inconsistency, contradiction, or fabrication.

Considering the foregoing disquisitions, We uphold the presumption of regularity in the performance of official duty and find that the prosecution has discharged its burden of proving the guilt of accused-appellants beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED.* The CA Decision in CA-G.R. CR No. 02600 finding accused-appellants Carlo Magno Aure and Melchor Austriaco guilty of the crimes charged is *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

(G.R. No. 191459. January 17, 2011)

BERNADETH LONDONIO and JOAN CORCORO, *petitioners, vs.* **BIO RESEARCH, INC. and WILSON Y. ANG,** *respondents.*

317, 326; citing *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471.

[44] *People v. Cruz*, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 368.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY IF THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.— Absent any showing that the appellate court ignored, misconstrued and misapplied facts and circumstances of substance, its affirmance of the NLRC decision holding that petitioners were illegally dismissed stands. It is settled that where the Labor Arbiter, the NLRC and the Court of Appeals all concur in their factual findings and it does not appear that they acted with grave abuse of discretion or otherwise acted without jurisdiction or in excess of the same, this Court is bound by the said findings. The Labor Arbiter and the NLRC, being the most equipped and having acquired expertise in the specific matters entrusted to their jurisdiction, their findings of fact are accorded not only respect but even finality if they are supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN EMPLOYEE'S EXECUTION OF A FINAL SETTLEMENT AND RECEIPT OF AMOUNTS AGREED UPON DO NOT FORECLOSE HIS RIGHT TO PURSUE A CLAIM FOR ILLEGAL DISMISSAL.— An employee's execution of a final settlement and receipt of amounts agreed upon do not foreclose his right to pursue a claim for illegal dismissal. For, as reflected above, Joan was illegally retrenched. She is thus entitled to reinstatement without loss of seniority rights and privileges, as well as to payment of full backwages from the time of her separation until actual reinstatement, less the amount of ₱9,990.14 which she received as retrenchment pay.

3. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; CORPORATE OFFICERS, ABSENT ANY EVIDENCE THAT THEY HAVE EXCEEDED THEIR AUTHORITY, ARE NOT PERSONALLY LIABLE FOR THEIR OFFICIAL ACTS; PIERCING THE VEIL OF CORPORATE FICTION, WHEN PROPER IN ILLEGAL DISMISSAL CASES.— Respecting the appellate court's freeing Ang from liability, the same is in order.

Corporate officers, absent any evidence that they have exceeded their authority, are not personally liable for their official acts. For a corporation has, by legal fiction a personality separate and distinct from its officers, stockholders and members. In cases of illegal dismissal, this fictional veil may be pierced and its directors and officers held solidarily liable with it, where the dismissals of its employees are done with malice or in bad faith, which was not proven to be the case here.

4. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, NOT PROPER IF DISMISSAL WAS NOT MADE IN BAD FAITH.— As for the deletion by the appellate court of the award of moral and exemplary damages, the same is in order too, petitioners having failed to substantiate their claim that their dismissal was made in bad faith.

APPEARANCES OF COUNSEL

Melody Teodoro-Montoya for petitioners.
Fernandez & Associates for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Bernadeth E. Londonio (Bernadeth) and Joan T. Corcoro (Joan) were hired by respondent Bio Research Inc. (Bio Research) as graphic/visual artists on February 12 and October 19, 2004, respectively.

In a Memorandum dated April 30, 2005 which petitioners received on May 7, 2005,[1] Bio Research informed its employees including petitioners that pursuant to its plan to reduce the workforce in order to prevent losses, it would be severing their employment with the company. On May 9, 2005, Bio Research filed an Establishment Termination Report[2] with the Department

[1] Records, pp. 33-34.

[2] *Id.* at 42.

of Labor and Employment (DOLE) stating that it was retrenching 18 of its employees including petitioners due to redundancy and to prevent losses.

Bernadeth and Joan were in fact retrenched on May 26 and May 18, 2005, respectively.

Joan accepted her retrenchment pay in the sum of ₱9,990.14 and executed a Quitclaim and Waiver[3] reading:

> FOR AND IN CONSIDERATION OF THE SUM OF NINE THOUSAND NINE HUNDRED NINETY PESOS & 14/100 (₱9,990.14), as financial assistance, receipt whereof in settlement of my claims, I x x x do hereby release/discharge xxx with principal office at x x x and/or its officers, from any or all claims/liabilities by way of unpaid wages, overtime pay, separation pay, retirement benefits, 13th month, or otherwise as may be due me incident to my past employment with the said x x x. I hereby state further that I have no more claim or cause of action of whatsoever nature whether past, present or contingent, including my alleged right for continued employment with xxx, and/or any of its officers.
>
> This QUITCLAIM AND WAIVER may be used to secure dismissal of any complaint or action already filed or may be subsequently filed either by myself, my heirs and successors in interests.
>
> I have executed this QUITCLAIM AND WAIVER voluntarily and of my own freewill and I understand the legal and factual consequences.

Bernadeth refused to accept hers.

Petitioners later filed a complaint for illegal dismissal, moral and exemplary damages and attorney's fees against respondent Bio Research and its co-respondent President/CEO Wilson Y. Ang (Ang). Petitioners claimed that their dismissal was done in bad faith and tainted with malice, being retaliatory in nature, following the filing by Bernadeth of a complaint against Jose Ang, Jr. (Jose), one of Bio Research's managers, for a sexual harassment incident that occurred in his office on February 19, 2005.

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[3] *Id*. at 59-60.

In support of their claim that their dismissal was retaliatory in nature, petitioners alleged that soon after the filing by Bernadeth of the sexual harassment complaint,[4] several members of the management approached Joan, to whom Bernadeth had poured her heart out after the incident, urging her to convince her friend Bernadeth to drop the complaint, to which she (Joan) paid no heed as she expressed support for Bernadeth's cause.

Petitioners added that an administrative investigation[5] of the sexual harassment complaint was in fact conducted by Bio Research but before it could be resolved, Jose resigned on April 15, 2005.[6]

To refute Bio Research's claim that it had been incurring business losses, Joan cited the recommendation for her regularization on April 12, 2005, 18 days before she received a copy of the Memorandum of April 30, 2005.

Bio Research, disclaiming that the sexual harassment case had anything to do with its decision to terminate the services of petitioners, maintained that financial reverses prompted it to take such drastic action. It went on to stress that as Joan had already received her separation pay and had in fact signed a waiver and quitclaim in its favor, she is estopped from challenging the validity of her dismissal.

By Decision of March 31, 2006,[7] the Labor Arbiter (LA) ruled in favor of petitioners, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is entered finding that complainants were illegally dismissed by respondents in bad faith, ORDERING respondents BIO RESEARCH CORP. and/or WILSON ANG (President/Manager), to reinstate complainants to their former positions, without loss of seniority rights and benefits,

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[4] Cited as Annex "A" in petitioners' Position Paper, however, none was attached.

[5] Records, p. 70.

[6] *Id.* at 76.

[7] *Id.* at 81-91.

and pay them full backwages from date of illegal dismissal/illegal retrenchments of complainants, Bernadette Londonio on 05/26/2005, Joan Corcoro is 05/18/2005, until actually reinstated, and to pay them moral and exemplary damages in the combined amount of ₱125,000.00 each, plus to pay them 10% of the total award as attorney's fees. Complainants' full backwages, as of date of this decision is shown hereunder:

Bernadette Londonio

1) Basic	₱95,000.00	(05/26/2005-03/31/2006 10 months x ₱9,500)
2) 13th month pay	₱7,307.69	(1/12 ₱95,000.00)
3) 5 days SILP	₱1,314.16	(₱9,500.00/30=₱316.66 x 5 x .83 year)
4) COLA	₱15,208.33	(₱50.00 X 365/12 – ₱1,520.00 X 10 months)
Total FB	**₱118,830.18**	

Joan Corcoro

1) Basic	₱93,600.00	(05/18/2005 – 03/31/2006 10.4 months x ₱9,000)
2) 13th month pay	₱7,800.00	(1/12 ₱93,600.00)
3) 5 days SILP	₱1,290.00	(₱9,000.00/30 = ₱300.00 X 5 X .86 YEAR)
4) COLA	₱15,816.66	(₱50.00 X 365/12+₱1,520.00 X 10.4 Months)
Total FB	**₱118,506.66**	

In finding against Bio Research, the LA held that it failed to prove financial losses to justify its call for the retrenchment of petitioners, and to use fair and reasonable criteria to ascertain who to dismiss or retain; and that Bio Research failed to comply with the requirements of Article 283 of the Labor Code — that notice should be given to the DOLE and employees concerned at least a month before the intended retrenchment.

Finally, the LA held that since Joan's receipt of her salary for the period April 11, 2005 – April 18, 2005, the amount which was lumped with her retrenchment pay, was conditioned on her signing the quitclaim, the execution thereof was done through force, hence, not valid.

On appeal by respondents, the National Labor Relations Commission (NLRC), by Resolution of February 18, 2008,[8] *affirmed* the LA's decision. And it denied respondents' reconsideration of its decision by Resolution of May 30, 2008.

The Court of Appeals to which respondents assailed the NLRC resolutions by *certiorari*, *sustained* the *ratio decidendi* behind the NLRC decision in favor of petitioners, by Decision of May 27, 2009.[9] Specifically with respect to Joan, however, it pronounced that she could no longer question the legality of her dismissal in light of her execution of the quitclaim and waiver.

Further, the appellate court departed from the NLRC ruling holding respondent Ang solidarily liable with Bio Research for the money claims of petitioners, the latter having failed to show that Ang was impelled by malice and bad faith in dismissing them. Thus the appellate court held:

> Settled is the rule in this jurisdiction that a corporation is invested by law with a legal personality separate and distinct from those acting for and in behalf and, in general, from the people comprising it. Thus, obligations incurred by corporate officers acting as corporate agents are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred by corporate officers, but only when exceptional circumstances so warrant. For instance, in labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment if done with malice or in bad faith.[10]

Finally, the appellate court deleted the award of moral and exemplary damages.[11]

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[8] *Rollo,* pp. 137-151. The dispositive portion of the resolution reads:

> WHEREFORE, premises considered, Respondents' appeal is DISMISSED for lack of merit. The Labor Arbiter's assailed Decision in this case is hereby AFFIRMED.
>
> SO ORDERED.

[9] Penned by Associate Justice Mariflor P. Punzalan Castillo with the concurrence of Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison, *id.* at 38-55.

[10] *Rollo,* p. 50.

[11] *Id.* at 52-53.

The appellate court thus disposed:

WHEREFORE, the instant petition for *certiorari* is PARTIALLY GRANTED. The assailed Resolutions of the public respondent National Labor Relations Commission, in NLRC NCR-06-05472(05) CA No. 050702-06, are AFFIRMED with the following MODIFICATIONS: (1) petitioner Wilson Y. Ang is ABSOLVED from any liability adjudged against co-petitioner Bio Research, Inc.; (2) the awards of moral and exemplary damages in favor of the private respondents Bernadeth E. Londonio and Joan Corcoro are DELETED; and (3) the complaint for illegal dismissal insofar as private respondent Joan Corcoro is concerned is DISMISSED.

SO ORDERED.[12] (underscoring supplied)

Petitioners' Motion for Reconsideration of the appellate court's decision having been denied,[13] they filed the present petition for review on *certiorari*, contending that

. . . petitioner [Joan] is not barred to question the validity of her dismissal notwithstanding the execution of a waiver and quitclaim;

. . . they are entitled to the award of damages; and

. . . Wilson Y. Ang is solidarily liable with Bio Research.

Absent any showing that the appellate court ignored, misconstrued and misapplied facts and circumstances of substance, its affirmance of the NLRC decision holding that petitioners were illegally dismissed stands. It is settled that where the Labor Arbiter, the NLRC and the Court of Appeals all concur in their factual findings and it does not appear that they acted with grave abuse of discretion or otherwise acted without jurisdiction or in excess of the same, this Court is bound by the said findings.[14] The Labor Arbiter and the NLRC, being the most equipped and having acquired expertise in the specific matters entrusted to their jurisdiction, their findings of fact are accorded not only respect but even finality if they are supported by substantial

[12] *Id*. at 54-55.

[13] *Vide* Resolution of February 17, 2010, *id*. at 58-63.

[14] *Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission*, G.R. No. 100658, March 2, 1993, 219 SCRA 356-357.

evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[15]

Verily, in determining that petitioners were illegally retrenched, the appellate court pointed out that not only did Bio Research fail to "submit in evidence its audited financial statements to show its financial condition prior to and at the time it enforced its retrenchment program"; it also failed to show that it adopted fair and reasonable standards in ascertaining who would be retained or dismissed among it employees.[16]

It is, however, with respect to the appellate court's ruling that Joan is, on account of her execution of the waiver and quitclaim, estopped from questioning her dismissal that this Court takes exception.

An employee's execution of a final settlement and receipt of amounts agreed upon do not foreclose his right to pursue a claim for illegal dismissal.[17] For, as reflected above, Joan was illegally retrenched. She is thus entitled to reinstatement without loss of seniority rights and privileges, as well as to payment of full backwages from the time of her separation until actual reinstatement, less the amount of ₱9,990.14 which she received as retrenchment pay.

Respecting the appellate court's freeing Ang from liability, the same is in order. Corporate officers, absent any evidence that they have exceeded their authority, are not personally liable for their official acts. For a corporation has, by legal fiction a personality separate and distinct from its officers, stockholders and members. In cases of illegal dismissal, this fictional veil may be pierced and its directors and officers held solidarily liable with it, where the dismissals of its employees are done

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[15] *NEECO II v. National Labor Relations Commission*, G.R. No. 157603, June 23, 2005, 461 SCRA 169, 184-185 citing *Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission*, G.R. No. 100658, March 2, 1993, 219 SCRA 356; *Zarate, Jr. v. Olegario*, G.R. No. 90655, October 7, 1996, 263 SCRA 1.

[16] *Rollo*, pp. 47-48.

[17] *Anino v. NLRC*, G.R. No. 123226, May 21, 1998, 290 SCRA 489, 507.

with malice or in bad faith, which was not proven to be the case here.[18]

As for the deletion by the appellate court of the award of moral and exemplary damages, the same is in order too, petitioners having failed to substantiate their claim that their dismissal was made in bad faith.

WHEREFORE, the challenged Decision and Resolution of the Court of Appeals are *AFFIRMED* with the *MODIFICATION* in that petitioner Joan Corcoro is ordered reinstated to her former position, without loss of seniority rights and with full backwages from the time of the termination of her employment until reinstated less the amount of ₱9,990.14, or if reinstatement is not possible, the payment of separation pay equivalent to one half month salary for every year of service.

The Decision is, in all other respects, including the reinstatement of Bernadeth Londonio, *AFFIRMED*.

SO ORDERED.

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

EN BANC

[A.M. No. 07-6-14-CA. January 18, 2011]

RE: ANONYMOUS LETTER RELATIVE TO THE ALLEGED CORRUPTION IN THE COURT OF APPEALS, CAGAYAN DE ORO CITY.

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[18] *Rondina v. Court of Appeals, et al.*, G.R. No. 172212, July 9, 2009, 592 SCRA 346, 357 citing *Carag v. NLRC, et al.*, G.R. No. 147590, April 2, 2007, 520 SCRA 28, 56.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; REMINDS JUDGES TO PERFORM ALL JUDICIAL DUTIES, INCLUDING THE DELIVERY OF RESERVED DECISIONS, EFFICIENTLY, FAIRLY AND WITH REASONABLE PROMPTNESS; ANY UNWARRANTED DELAY SHAKES THE PEOPLE'S TRUST AND CONFIDENCE IN THE JUDICIARY; CASE AT BAR.— Section 5, Canon 6 of the New Code of Judicial Conduct reminds judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. x x x Jurisprudence has assiduously impressed upon judges their sworn duty to decide cases promptly and expeditiously, failing which the people's faith and confidence in the judiciary are eroded. While the Court gives Justice Lim the benefit of the doubt respecting his claim that he had to resolve 217 cases many of which were of older vintage, and absent any showing that the delay was motivated by malice, capriciousness or any ill-motive, he should have accorded the appealed case a measure of priority, given that it involved the welfare of government employees who were purportedly dismissed without cause. Any unwarranted delay — be it a day, a week or a month — shakes the people's trust and confidence in the judiciary. More so when it is committed by a superior court magistrate who is held to a higher station. This delay, in all likelihood, precipitated the impression that Justice Lim was "sitting" on the case pending before him. It is thus not remiss to remind Justice Lim to exercise greater discretion and vigilance in the disposition of cases of this or similar nature.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE CASES; SUITS THAT ONLY SERVE TO DISRUPT RATHER THAN PROMOTE THE ORDERLY ADMINISTRATION OF JUSTICE MUST BE REJECTED.— [T]he allegations of corruption against respondents do no lie. The tenet — that while this Court will never tolerate or condone any act, conduct or omission that would violate the norms of public accountability or diminish the people's faith in the judiciary, neither will it hesitate to reject suits that only serve to disrupt rather than promote the orderly administration of justice — bears emphatic reiteration.

D E C I S I O N

CARPIO MORALES, *J.*:

By Resolution[1] of July 10, 2007, the Court *En Banc* resolved to require Court of Appeals Associate Justices Rodrigo F. Lim, Jr. (Justice Lim) and Mario V. Lopez (Justice Lopez), and 21st Division Clerk of Court Cherry Hope Valledor-Ignes (Atty. Ignes), who are all based in Cagayan de Oro, to COMMENT on the June 10, 2007 anonymous letter addressed to then Chief Justice Reynato S. Puno requesting him to take action on alleged corruption taking place at the said Court of Appeals station.

Pertinent portions of the letter are reproduced below, *quoted verbatim*:

x x x x x x x x x

We are respectfully requesting you to take action of the corruption in the Court of Appeals, Cagayan de Oro City.

The Court of Appeals, Cagayan de Oro City, is highly politicize or shall we say "Politicize Judiciary." Wherein those with political connections and influence can always get favorable decisions or resolutions and worst, those cases whose merits are not favorable to the people in power would not be decided and left in the dust in one corner of the stockroom.

Let me cite you some examples.

In one case involving employees in the Province of Zamboanga where it has already been over two (2) years since the case was submitted for decision but until this time no decision has come out yet which is contrary to the rules of the Court of Appeals that required cases to be decided within one (1) year from the time it has been submitted for decision.

It has come to our attention that this case involves rank and file regular employees of the provincial government that were illegally dismissed by Governor Cerilles. It has already been **decided by the Civil Service Commission (CSC for brevity), *En Banc*, that their termination was illegal**. As a matter of fact they were dismissed

[1] *Rollo*, p. 11.

from their employment because they were identified to be supporters of the previous governor.

Their professional lives and the lives and future of their family and children are now uncertain because even if the CSC has already decided in their favor but **the Court of Appeals, through Justice Rodrigo Lim issued an injunction order that enjoined the implementation of the CSC decision. BUT for over two (2) years now *"INUUPUAN LANG NI* JUSTICE LIM *ANG KASO"*.**

Speculation arose that in whatever angle he will look at the case it would be difficult to reverse the decision of the CSC. Information leaked that it was the father of Gov. Cerilles who talked to Justice Lim and made some arrangements. *MAY USAPAN PALA SILA*?

Another case in point is the case of Mayor Galario, City Mayor of Valencia City, Bukidnon where the Office of the Ombudsman ordered for his suspension for two (2) months.

The Mayor filed a case to the CA-Cagayan de Oro and sought for the issuance of a TRO but to his dismay he was denied of the TRO he was seeking.

In the case of *Ombudsman vs. Laja*, G.R. No. 169241, May 2, 2006, the Honorable Supreme Court in affirming the decision of the CA Cagayan de Oro, ruled that in case where the penalty of suspension is more than one (1) month the law gives the respondent the time to appeal. The order of suspension shall only become final after the lapse of the period to appeal if no appeal is perfected. It is only then that the execution becomes final.

In the case of Mayor Galario, CA-Cagayan de Oro City shows inconsistency. He made a timely appeal and the appeal supposedly prevented his suspension from being executory but the CA-CDO did not hear his case. WHY THEY GAVE A TRO OR INJUNCTION TO THE CASE OF LAJA AND WHY THEY CAN'T GIVE THE SAME TREATMENT IN THE CASE OF MAYOR GALARIO?

The answer is simple, CORRUPTION.

It is of public knowledge in Cagayan de Oro City that the Court of Appeals through **Justice Lim solicited cash donations from Gov. Zubirri who is a political enemy of Mayor Galario**.

In all the Christmas Parties (December 2005 and 2006) of the Court of Appeals-Cagayan de Oro, **Governor Zubirri has been donating not less that ₱50,000.00 in cash**.

How could Mayor Galario get justice and fair treatment to his case when his arch enemy is one of the biggest contributor of cash to the CA-Cagayan de Oro Christmas Parties?

In the case of Mayor Galarion, the *ponente* is no other than JUSTIS [sic] LIM.

There are also many cases where the CA-Cagayan de Oro that were treated unfairly. It is always; THE PERSON WHO IS IN POWER AND HAS THE INFLUENCE DUE TO HIS POLITICAL POSITION IS ALWAYS GIVEN THE FAVOR.

PAANO NA LANG KAMI AN ORDINARYONG MAMAMAYAN LAMANG?

Many cases in the Court of Appeals, Cagayan de Oro City that were decided base on WHOM YOU KNOW. If you do not know any justice in the CA-CDO then in most instances your case will not be given priority.

There are also cases that the parties already made an amicable settlement but it take years for CA-CDO Justices to grant the settlement and dismissed the case while there are also cases that were decided earlier but not in accordance with the hierarchy or rules on priority of cases.

On[e] case where there is already an amicable settlement is handled by **Justice Lopez**. There was already a joint manifestation of all parties that economic benefits will be released but up to this time it remains unresolved. There was already an agreement by all parties but it is hard to understand why it took him so long to resolve it. It is a very simple issue to be resolved but for a long period of time it still remains unresolved by Justice Lopez.

We are also watching this Justice Lopez because he has a reputation to succumb easily to pressures especially from those who are occupying elective position.

It is also of common knowledge here among practicing lawyers that if you want to get a TRO or Injunction we should talk to a certain Atty. Cherry Ignes, Clerk of Court of the 21st Division. As we found

out she talked it out with the lawyer of the justice who is assigned to the case and request for the issuance of a TRO or Injunction.

In the case of *FERROCHROME vs. CEPALCO*, CEPALCO was issued TRO with the help of **Atty. Ignes**. We received information that one of the lawyers working for CEPALCO is the one who made the follow up through her. This lawyer is her classmate at law school.

Atty. Ignes, also made ENTRY OF JUDGMENTS in many cases even if these case were appealed to the Supreme Court. Because of her action it caused confusion to the parties of these cases. One of the cases is involving Montessori de Oro School.

These acts of Atty. Ignes degrades the judicial system. She has no place in our judiciary and she ought to be dismissed from the service.

x x x x x x x x x

We only hope that you will take action on this matter and through your desire of cleansing the judiciary you will have a judiciary that will have the support and confidence of the people. As you have said, "It is only the capital of the judiciary. If you lose this capital, you will lose the ball game.

Please understand that we are not divulging our identities in order not to affect the cases we are handling and unfair reprisal against our clients. Rest assured that from time to time we will inform your Honorable Office on whatever transgression and travesty on the judiciary and the judicial system that will be happening in our place.

More power to you and your family! (emphasis and underscoring supplied)

In her August 31, 2007 Comment,[2] **Atty. Ignes** decried her portrayal in the anonymous letter as "akin to a [T]emporary [R]estraining [O]rder fixer" in obvious reference to the TRO issued in CA-G.R. SP No. 00880, "*Cagayan de Oro Electric Power and Light Co., Inc. (CEPALCO) v. Hon. Leonardo Demecillo and Ferrochrome Phils., Inc.*"

[2] *Id.* at 19-23.

Atty. Ignes claimed that she was unaware of CEPALCO's urgent motion for resolution of its application for a TRO[3] which was filed on March 3, 2006 as she had designated her assistant, Cecilia Carbajosa, to man the office while she was away assisting Justice Teresita Dy-Liacco Flores as Clerk of Court[4] in the investigation of an administrative case, which entailed a weeklong hearing from March 6 to 10, 2006 in Davao City; and that she learned of the TRO only upon her return on March 10, 2006 when it was forwarded to her office for promulgation.

As she vouched for the integrity and honesty of her assistant, Atty. Ignes maintained that while one of the in-house counsels for CEPALCO was her classmate in law school, she was never approached by any of them regarding the case.

Disputing the charge that she had made entries of judgment in many cases even if they were pending appeal before this Court, such as the one involving Montessori de Oro School, Atty. Ignes pointed out that the anonymous writer must have been referring to CA-G.R. CV No. 79772, "*Montessori de Oro, Inc. v. [First] Malayan Leasing and Finance Corp.*," the only Montessori case which passed through her division. She explained that she acted on the motion for entry of judgment filed by First Malayan Leasing's counsel,[5] and later issued an entry of judgment,[6] on the basis of the October 24, 2005 letter[7] of this Court's Deputy Clerk of Court and Chief Judicial Records Office, Teresita Dimaisip, certifying that Montessori de Oro's Motion for Extension of Time to File Petition for Review on *Certiorari*[8] had been denied by Resolution of July 13, 2005 and that on such date no petition for review on *certiorari* had been filed with this Court.

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[3] Annex "B", *id.* at 26-30.

[4] *Vide* Annex "C", *id.* at 31.

[5] The Anastacio Law Office with offices at Unit 10G Burgundy Corporate Tower, Sen. Gil Puyat Ave., Makati City.

[6] Dated December 5, 2005, *vide* Annex "I", *rollo*, pp. 52-53.

[7] *Id.* at 50.

[8] In G.R. No. 168389; *Vide* Annex "H-3", *id.* at 45-49.

Atty. Ignes surmised that the anonymous letter may have arisen from a personal vendetta carried out by disgruntled former court employees who resented her for exposing their misdeeds in office resulting either in disciplinary action, including dismissal, against those found guilty.[9]

In his September 7, 2007 Comment,[10] **Justice Lim** branded the allegation that he had been "sitting" on the case adverted to in the letter for more than two years to be grossly inaccurate and exaggerated, he explaining that the delay was "only six . . . months and two . . . days."

> This case (CA-G.R. SP No. 86627, *Gov. Aurora E. Cerilles vs. CSC, et al.* was deemed submitted for decision on December 6, 2005 and due for resolution on or before December 6, 2006. While there was a delay in the resolution of the aforementioned case, **the delay was only six (6) months and two (2) days** (from December 6, 2006) as this case has already been decided on June 8, 2007. The delay of 6 months and 2 days (and not over 2 years as alleged) from the time the one (1) year period expired on December 6, 2006, is excusable considering that so **many cases of older vintage** dating as far back as 1998 **were resolved** by me from December 5, 2005 up to the time this case was decided on June 8, 2007. I have resolved and decided 217 cases dating back as aforestated to cases already deemed submitted for decision with the Court of Appeals in Manila before the creation of the Visayas and Mindanao Stations. These 217 cases were decided on the merits covering the period from December 6, 2005 to June 8, 2007. In other words, much time and effort were also devoted in the resolution of these cases that had long been pending before this Court in Manila.
>
> x x x[11] (emphasis and underscoring supplied)

Claiming that he does not know either Zamboanga Gov. Aurora Cerilles or her father, Justice Lim retorted that the allegation that he had made "arrangements" to favor the governor over the rank and file employees of the Zamboanga provincial

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[9] *Rollo*, pp. 22-23.

[10] *Id*. at 126-133.

[11] *Id*. at 127.

government was totally baseless as he in fact resolved the case in favor of the rank and file employees.

On the allegation that he had refused to issue a TRO or injunction in a case involving Valencia City (in Bukidnon) Mayor Galario (Galario) due to his (Justice Lim's) close ties to Bukidnon Gov. Zubiri, a purported arch enemy of the mayor, Justice Lim pointed out that he had, in fact, issued a Resolution[12] dated October 10, 2006 in CA-G.R. SP No. 01278-MIN, "*Jose M. Galario, Jr., City Mayor, Valencia City v. The Honorable Office of the Ombudsman and Ruth P. Piano,*" **granting** the TRO prayed for by the mayor. He added that it was a matter of record that Gov. Zubiri was not even a party to that case, the mayor having been charged and suspended by the Ombudsman upon the complaint of a certain Ruth Piano; and that he had no knowledge of any political rivalry between the governor and the mayor or any interest in Bukidnon politics.

On the allegation that he was soliciting cash donations for the Court of Appeals at Cagayan de Oro 2005 and 2006 Christmas parties, Justice Lim gave the following explanation:

> While it is admitted that Gov. Zubiri indeed made contributions to the Christmas Party of the Court of Appeals-Mindanao Station, such was voluntary and spontaneous on his part, without any solicitation from the Court of Appeals. It is a matter of record that the Court of Appeals-Mindanao Station celebrates the whole day its anniversary every December 7, and local government officials, among others, are invited like Gov. Oscar Moreno of the Province of Misamis Oriental. Gov. Zubiri, upon knowing that our Christmas Party would be held that evening, both Governors Zubiri and Moreno attended, and in the course of our Christmas Party, Gov. Zubiri spontaneously and out of goodwill and kindheartedness gave Fifty Thousand (~~P~~50,000.00) Pesos to be raffled off... (underlining supplied)

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[12] Penned by CA (Division of five) Associate Justice Rodrigo F. Lim, Jr. with the concurrence of Justices Ricardo R. Rosario and Mario V. Lopez; Justices Teresita Dy-Liacco Flores and Sixto Marella, Jr. dissenting, Annex "1", *rollo*, pp. 134-135.

On the part of **Justice Lopez,** in his two-page Comment[13] of August 31, 2007, **he** manifested that, contrary to the anonymous writer's allegations, he had "thoroughly scanned the dockets of all cases raffled to us and [we] find no amicable settlement submitted for our resolution or approval." He emphasized that he has earned a reputation for fairness and independence in his more than 13-year stint in the judiciary, and that in his brief stint in Mindanao, he neither fraternized with any politician nor allowed anyone to influence his judicial acts.

Where one, such as the present anonymous letter-writer, seeks the imposition of a penalty upon a judicial officer or magistrate on the ground of *corruption*, among others, it behooves him/her to establish the charge beyond reasonable doubt, for the general rules with regard to admissibility of evidence in criminal cases apply.[14] Respecting this charge of corruption against Justice Lopez and Atty. Ignes, the Court finds that the writer failed to discharge the burden.

ON THE CHARGES AGAINST JUSTICE LIM:

The Constitution mandates lower collegiate courts to decide or resolve cases or matters within 12-months from date of submission.[15] Section 5, Canon 6 of the New Code of Judicial Conduct reminds judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

As reflected above, Justice Lim admitted that the appealed case, CA-G.R. SP No. 86627, involving provincial government employees found by the CSC to have been illegally dismissed by Gov. Cerilles (per anonymous writer's claim, "they were identified supporters of the previous governor"), was due for

[13] *Id.* at 138-139.

[14] *Office of the Court Administrator v. Pascual*, A.M. No. MTJ-93-783, July 29, 1996, 259 SCRA 604, 617 citing *Raquiza v. Castañeda, Jr.*, 81 SCRA 244 (1978).

[15] Sec. 15(1), Article VIII, PHILIPPINE CONSTITUTION.

resolution on or before December 6, 2006. The Justice explained, however, that on account of his efforts to resolve 217 other cases "that had long been pending before the Court of Appeals" in Manila, he was able to decide the said case only on June 8, 2007 or more than six months beyond the reglementary period in fact in favor of the employees.

The Court takes notice that Justice Lim was appointed to the Court of Appeals on March 15, 2004, or just a little more than three (3) years before the subject anonymous letter reached the Office of the Chief Justice.

Jurisprudence has assiduously impressed upon judges their sworn duty to decide cases promptly and expeditiously, failing which the people's faith and confidence in the judiciary[16] are eroded. While the Court gives Justice Lim the benefit of the doubt respecting his claim that he had to resolve 217 cases many of which were of older vintage, and absent any showing that the delay was motivated by malice, capriciousness or any ill-motive, he should have accorded the appealed case a measure of priority, given that it involved the welfare of government employees who were purportedly dismissed without cause.

Any unwarranted delay — be it a day, a week or a month - shakes the people's trust and confidence in the judiciary.[17] More so when it is committed by a superior court magistrate who is held to a higher station. This delay, in all likelihood, precipitated the impression that Justice Lim was "sitting" on the case pending before him. It is thus not remiss to remind Justice Lim to exercise greater discretion and vigilance in the disposition of cases of this or similar nature.

The charge against Justice Lim of bias against Mayor Galario due to the Justice's purported ties to the mayor's alleged enemy, Gov. Zubiri, is belied by the Justice's issuing of a TRO in

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[16] *Re: Complaint against Justice Elvi John S. Asuncion of the Court of Appeals*, A.M. No. 06-6-8-CA, March 20, 2007, 518 SCRA 512, 528 citing *Arap v. Judge Amir Mustafa*, A.M. No. SCC-01-7, 379 SCRA 1, 5 (2002).

[17] *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920, April 26, 2006, 488 SCRA 285, 296.

favor of the mayor, as evidenced by the October 10, 2006 Resolution in CA-G.R. SP No. 01278-MIN.

On Justice Lim's admitted accepting of cash gifts from Governor Zubiri during the Christmas party of the Court of Appeals at Cagayan de Oro which were raffled to employees, the Court may take note of the customary practice of the attendance during major "events" or national holidays, of government officials and their spontaneous donating of cash to augment the merriment of the occasions. While the Court may not put Justice Lim to task on this account given the lack of evidence pointing to any ulterior motive, the Court would be remiss if it did not caution Justice Lim to be more circumspect or to exercise prudence in accepting such cash donations in the future, if only to dispel any perceptions of unwarranted or improper ties to the executive branch.

ON THE OTHER CHARGES AGAINST JUSTICE LOPEZ:

On Justice's Lopez' alleged failure to act on an amicable settlement of a case submitted for his resolution or approval, since that particular case is not mentioned, Justice Lopez' disclaimer can be credited. So does his disclaimer on his perceived reputation of "succumb(ing) easily to pressures especially from those who are occupying elective position,"[18] absent any slightest proof or indication thereof proffered by the anonymous writer.

ON THE CHARGES AGAINST ATTY. IGNES:

The documentary evidence proffered by Atty. Ignes supports her assertion that she was unaware of CEPALCO's urgent motion for resolution of its application for a TRO,[19] and that she learned of the issuance of a TRO only upon her return on March 10, 2006 when it was forwarded to her office for promulgation. That CEPALCO had not obtained a TRO in its favor *prior* to Atty. Ignes' departure for Davao City where she was from

[18] *Rollo*, p. 7.

[19] *Vide* at note 4.

March 6 to 10, 2006 is bolstered by CEPALCO's own admission that at the time it filed the said urgent motion for resolution on March 3, 2006, the appellate court had as yet not issued any injunctive relief.[20]

As for the issuance by Atty. Ignes of the December 5, 2005 Entry of Judgment in CA-G.R. CV No. 79772, "*Montessori de Oro, Inc. v. [First] Malayan Leasing and Finance Corp.*," the same appears to be regular and in conformity with established court procedures. She acted appropriately on First Malayan Leasing's motion for entry of judgment only *after* receipt of this Court's October 24, 2005 certification issued by Deputy Clerk of Court and Chief Judicial Records Office Teresita Dimaisip confirming the denial of Montessori de Oro's Motion for Extension of Time to File Petition for Review and the absence of any actual petition for review on *certiorari* filed by the same party litigant.

ALL TOLD, the allegations of corruption against respondents do no lie. The tenet — that while this Court will never tolerate or condone any act, conduct or omission that would violate the norms of public accountability or diminish the people's faith in the judiciary, neither will it hesitate to reject suits that only serve to disrupt rather than promote the orderly administration of justice — bears emphatic reiteration.[21]

WHEREFORE, for failure to substantiate the complaint for corruption—subject of the anonymous letter dated June 10, 2007 against Court of Appeals Associate Justices Rodrigo F. Lim, Jr. and Mario V. Lopez, and Division Clerk of Court (21st Division) Cherry Hope Valledor-Ignes, (Mindanao Station), Cagayan de Oro City, it is *DISMISSED.*

SO ORDERED.

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

Perez, J., no part.

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[20] *Ibid.,* p. 27.

[21] *Ang v. Asis,* A.M. No. RTJ-00-1590, January 15, 2002, 373 SCRA 91, 99.

EN BANC

[A.M. No. P-03-1730. January 18, 2011]
(Formerly OCA IPI No. 02-1469-P)

Judge PHILBERT I. ITURRALDE, MARTIN GUMARANG, VIC JUMALON, LEONARDO LUCAS, WILFREDO DEUS, CORAZON AZARRAGA and ALICE BUENAFE, *complainants, vs.* **OIC Branch Clerk of Court BABE SJ. RAMIREZ, Clerk VIOLETA P. FLORDELIZA and Sheriff IV CARLOS A. SALVADOR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SIMPLE NEGLECT OF DUTY AND CONDUCT PREJUDICIAL TO THE INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR.— As the investigator observed, Flordeliza was wrong to expect that the parties, especially the plaintiffs, should periodically follow up the status of their cases with the court. This is an unacceptable attitude on the part of court personnel, especially under the circumstances of this case when nothing more remained to be done but to serve the order. Flordeliza's excuse – that the records were still in the chambers of Judge Tiamson or that she had been busy attending to her other duties – was a lame attempt to avoid liability for her inaction. For this inaction, she committed not only simple neglect of duty, but the more serious violation of conduct prejudicial to the interest of the service.

2. ID.; ID.; ID.; ID.; NEGLIGENCE AND CONDUCT PREJUDICIAL TO THE INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR.— Ramirez, the clerk of court (officer-in-charge), is no less guilty. She has the duty, under the rules, to issue the writ of execution as there was already a court order for the purpose. The writ should have been issued as a matter of course, but it took Ramirez one month to do so. In fact, the issuance was not done at her initiative but at the insistence of Judge Iturralde and Gumarang who went to the court on

September 18, 2000 to ask for the immediate issuance of the writ. Ramirez compounded the problem by issuing a writ that was, on its face, defective, thus creating additional enforcement difficulties. x x x Like Flordeliza, Ramirez is guilty not only of negligence but also of conduct prejudicial to the interest of the service. At the very least, they placed the court in a bad light as they presented an image of a court whose personnel were bumbling and remiss in performing their duties, to the prejudice of the administration of justice. Worse, they exposed court processes to the suspicion that they can be fixed through arrangements with court personnel.

3. ID.; ID.; ID.; ID.; REQUIRED DECORUM.— Needless to say, Ramirez and Flordeliza acted in a way that could cause an erosion of public trust in the judiciary. In *Concerned Court Employee v. Atty. Vivian V. Villalon-Lapuz*, the Court held that "court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the presiding judge to the lowliest clerk, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary."

4. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CONDUCT PREJUDICIAL TO THE SERVICE; PENALTY.— Under Civil Service rules, conduct prejudicial to the service is punishable by suspension (6 months and 1 day to 1 year) for the first offense. In light of the effect of the violation on the administration of justice and the strong hint of the concerted dilatory effort, we deem it proper to impose the penalty of suspension without pay in its maximum period of one year.

5. ID.; ID.; ID.; SHERIFFS; GRAVE MISCONDUCT; COMMITTED IN CASE AT BAR.— We find Sheriff Salvador liable for grave misconduct for his refusal to implement the writ of execution in the civil case and for interposing obstacles in the enforcement of the writ on grounds not within the scope of his duty. x x x As Investigator Atienza pointed out, even assuming that Gumarang indeed voluntarily gave money to the sheriffs, Salvador should still be answerable for receiving money from litigants under terms not allowed by the Rules of Court. In *Atty. Stanley G. Zamora v. Ramon P. Villanueva*, the Court

stressed that Section 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. x x x No evidence in the case exists showing that Salvador complied with the Rules. He did not submit for the court's approval the estimated expenses for the implementation of the writ before he asked for ₱10,000.00 from the plaintiffs. He likewise failed to render an accounting and to liquidate the amount to the court. In the above cited *Zamora* case, the Court declared that any act deviating from the established procedures is misconduct that warrants disciplinary action. "Misconduct," according to the Court in *Zamora*, "is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules." In the present case, it has been shown that Salvador willfully violated established rules. He demanded ₱10,000.00 and received ₱6,000.00 from the complainants, which sum – by his own admission – was spent for food and drinks, in clear violation of the Rules. Earlier, we found that he refused to implement the *alias* writ even after its issuance and even posed obstacles to its speedy enforcement. All these point to the commission of a grave misconduct.

6. ID.; ID.; ID.; UNIFORM RULES IN THE CIVIL SERVICE; GRAVE MISCONDUCT; CLASSIFIED AS A GRAVE OFFENSE; PENALTY.— Under the Uniform Rules on Administrative Cases in the Civil Service, grave misconduct is classified as a grave offense punishable by dismissal for the first offense. Section 58 of the same Rules provides that dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government, unless otherwise provided in the decision.

APPEARANCES OF COUNSEL

Cabrillas Borja De Ungria Law Firm for complainants.
Angel H. Gatmaitan for respondents.

D E C I S I O N

PER CURIAM:

This administrative matter for grave misconduct and conduct prejudicial to the interest of the service, arose from the affidavit-complaint[1] filed on August 21, 2002 by Judge Philbert I. Iturralde (Regional Trial Court [*RTC*], Branch 58, Angeles City); Martin Gumarang, Vic Jumalon, Leonardo Lucas, Wilfredo Deus, Corazon Azarraga and Alice Buenafe, against Babe SJ. Ramirez (Legal Researcher and OIC Branch Clerk of Court), Violeta Flordeliza (clerk in charge of civil cases) and Carlos Salvador (Sheriff), all of RTC, Branch 69, Binangonan, Rizal,

The Factual Antecedents

The complainants were the plaintiffs in Civil Case No. 98-0006, entitled "*Medalva Hills Village, et al. v. FBM Construction & Agro-Industrial Corporation, Renato J. Mariñas and Felix B. Mariñas,*" for specific performance.

On November 24, 1998, Judge Paterno G. Tiamson, RTC, Branch 69, Binangonan, Rizal, rendered a judgment in the civil case based on a compromise agreement submitted by the parties.[2] On the plaintiffs' motion, the court issued an order on August 18, 2000 directing the issuance of a writ of execution. The complainants alleged that they did not receive a copy of Judge Tiamson's order granting their motion; neither did Ramirez issue the writ of execution.

On September 18, 2000, exactly a month after Judge Tiamson issued the order, Judge Iturralde and Gumarang went to the court to inquire into the status of their motion. They came upon clerk Flordeliza who appeared surprised when she saw them. She also appeared at a loss, nervous and apparently unaware of what to tell them. She seemed not to know where the records were, and acted as if she was waiting for somebody to tell her what to do. They insisted that Flordeliza look for the records. When the records were found, they discovered to

[1] *Rollo*, pp. 1-3.

[2] *Id.* at 83-85.

their dismay that the court order (with the original and all carbon copies) was still attached to the records. They claimed that at that point the defendants already had a copy of the order.

Judge Iturralde and Gumarang further alleged that when they confronted Ramirez (the OIC Branch Clerk of Court), she also appeared to be uneasy, hesitant and apprehensive on what to do as Judge Tiamson was not then around. On their insistence and in the absence of any valid reason not to act, Ramirez was compelled to issue the writ dated September 18, 2000.[3]

Salvador, the branch sheriff, unjustifiably and for unknown reasons, refused to implement the writ. After a few days, Salvador informed the complainants that the defendants had appealed to the Court of Appeals (*CA*). Upon inquiry with the CA, Judge Iturralde discovered that instead of an appeal, the defendants had filed a petition for annulment of judgment, which petition the CA dismissed. We likewise dismissed the appeal the defendants filed. The dismissal lapsed to finality.

The plaintiffs' counsel then filed a motion for the issuance of an *alias* writ of execution, which the trial court granted in an order dated June 27, 2002. Ramirez issued the *alias* writ on July 3, 2002.[4] The plaintiffs, however, found the writ to be defective as it had no case number and the two principal defendants – both natural persons – were only mentioned in the case title as "*ET AL*."[5] They believe that the defects were designed to hide the principal defendants' identities and to frustrate the garnishment and/or levy. Realizing the "devious scheme employed by the Branch Clerk of Court and to correct the same,"[6] the plaintiffs manually wrote the names of the principal defendants, "Renato J. Mariñas and Felix B. Mariñas," and also the case number.[7]

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[3] *Id.* at 4-6; Affidavit-Complaint, Annex "A".

[4] *Id.* at 8-11; Affidavit-Complaint, Annex "C".

[5] *Id.* at 8, Affidavit-Complaint, Exh. "F".

[6] *Supra* note 1, par. q.

[7] *Id.* at 8, Affidavit-Complaint, Exh. "K-1".

After the issuance of the *alias* writ, Judge Iturralde brought Salvador to the different banks in Antipolo City where the writ was served, including the Metrobank Antipolo Branch which immediately denied that the defendants had accounts with that branch. This denial was subsequently corrected by the Metrobank head office with the statement that the defendants' corporation had an account with its Antipolo Branch.

On July 29, 2002, the plaintiffs again brought Salvador to the Metrobank head office to withdraw the garnished amount. For the second time, Salvador refused to enforce the *alias* writ of execution and even challenged Judge Iturralde to file an administrative case against him. Salvador claimed that there were still issues to be resolved, at the same time admitting that the non-enforcement of the writ was upon Judge Tiamson's instructions. No temporary restraining order (*TRO*) or injunction, however, had been issued to lawfully stop the enforcement of the writ.

Judge Iturralde wondered how the defendants could have filed a petition before the CA when Flordeliza had not yet mailed copies of the court order to the parties. Judge Iturralde surmised that the delay in mailing a copy of the order to the parties was intended to give the defendants ample time to go to the CA in the hope that a TRO or injunction could be secured.

The complainants maintained that through their "several unlawful acts,"[8] Ramirez, Flordeliza and Salvador directly disobeyed or resisted a lawful order of the court, thus impeding and obstructing the administration of justice.

In a 1st Indorsement dated September 12, 2002, the Office of the Court Administrator (OCA) required Salvador,[9] Flordeliza[10] and Ramirez[11] to comment on the administrative complaint. The three respondents complied through their individual counter-

[8] *Supra* note 1, par u.

[9] *Rollo*, p. 14.

[10] *Id.* at 15.

[11] *Id.* at 16.

affidavits filed on December 3, 2002.[12] They likewise filed their respective countercharges against Judge Iturralde.

Sheriff Salvador

Salvador denied that he had refused to serve and enforce the writs subject of the complaint. He claimed that he duly performed his duties in the case, resulting in the garnishment of the accounts of defendant FBM Construction and Agro-Industrial Corporation. It was not his fault that the banks created problems for the complainants as he had no influence over them. He recalled that the only instance when he refused to accommodate Judge Iturralde's demands was when the judge asked him to sign a writ which was actually an authority prepared by the judge to withdraw money from the garnished accounts; at that time, a case was pending with the higher court to annul Judge Tiamson's orders in the civil case. He made it clear to Judge Iturralde that he would act on the case only upon clearance by Judge Tiamson. Despite his refusal to act and notwithstanding the pending case with the higher court, Judge Iturralde still managed to withdraw ₱40,000.00 from the Metrobank Makati City branch, but failed to pay the sheriff's fee of ₱11,000.00.

Salvador questioned Judge Iturralde's active involvement in the case despite being an incumbent RTC judge in Angeles City – an issue commonly known among the RTC Binangonan court employees. He insinuated that Judge Iturralde stood to gain financially from the civil case and viewed this as the reason why the judge had been appearing at the hearings. Because of the judge's court appearances, Salvador charged him with falsification of his daily time records and for conduct unbecoming a lawyer and a member of the bench, as several of the judge's appearances before the RTC, Branch 69, Binangonan, Rizal were not reflected in his leave records.

OIC Branch Clerk of Court Ramirez

Like Salvador, Ramirez denied the complainants' charges. She regarded most, if not all, of the complainants' allegations

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[12] *Id.* at 20-23 (Salvador), 24-28 (Ramirez) and 29-33 (Flordeliza).

to be false, misleading, twisted out of context, malicious, speculative and baseless. She claimed that she was demeaned by the complainants' insistent demand for her to issue a writ of execution at a time when the other party had not been notified of the court order for the issuance of the writ. She further claimed that Judge Iturralde, an incumbent RTC judge, was using his position to force her to prioritize the case he was following up, to the detriment of her other court duties.

Ramirez explained that there was no undue delay in the mailing of the court order of August 18, 2000 in the *Medalva Hills Village* case where Judge Iturralde had a financial interest and was a very active participant. As a civil case, it must give way to other cases, such as criminal cases where the accused are in detention. She, nonetheless, issued the writ on the very same day Judge Iturralde asked for it, although she bewailed the judge's high-handedness in securing the writ. On the alleged delay in the service of the court order granting the writ, she asked that judicial notice be taken of the process involved in the preparation of a court order up to its service or mailing to the parties, intimating that this process takes time to complete.

On Judge Iturralde's complaint about the defective writ she issued, Ramirez argued that the *alias* writ referred to the defendants "*ET AL.*," since that was how the plaintiffs wanted it, while the omission of the case number in the writ was due to the attendant haste in the preparation of the writ. She decried the plaintiffs' insistent demand for the writ's immediate issuance and cited this as the reason why she failed to proofread the document.

Ramirez threw back the obstruction of justice charge to Judge Iturralde, claiming that it was not she but Judge Iturralde who was impeding the administration of justice. She insisted that Judge Iturralde tried to "railroad" the civil case in his favor by using his influence as an incumbent judge. She claimed that while Judge Iturralde was attending the hearings of the civil case at their branch in Binangonan, Rizal, he was – on record – also present in his place of assignment – the RTC in Angeles City; to avoid being noticed, the judge would ask his companions to sign the minutes of hearings.

Ramirez charged Judge Iturralde of unethical conduct and conduct unbecoming a lawyer and a judge.

Clerk Flordeliza

Flordeliza joined her co-employees Ramirez and Salvador in criticizing the high-handedness Judge Iturralde exhibited in securing the execution of the judgment of the court in the civil case. She also questioned his active participation at the hearing of the case while at the same time making it appear that he was attending to his duties at the RTC, Angeles City.

Flordeliza disputed Judge Iturralde's statement that she admitted her fault in not mailing the order dated August 18, 2000 for the issuance of a writ of execution. She countered that in essence, she asked for the understanding of the judge regarding the matter saying, "*Pasensya na po kayo Judge, wag po kayong mag-alala at aasikasuhin ko po. Sige po Judge, kayo na po ang bahalang umintindi sa amin, tatapusin po namin ang hinihiling nyo.*"[13]

Denying that there was a delay in sending a copy of the order, she pointed out that Judge Iturralde himself should have understood that under the rules, lower courts have 90 days within which to rule on a motion, such as a motion for the issuance of a writ of execution. She then explained the detailed procedure on how a court order is prepared up to its final release, a process that takes into consideration the court's order of priority in the disposition of cases pursuant to directives of the Supreme Court.

Like Ramirez and Salvador, Flordeliza charged Judge Iturralde of unethical conduct and conduct unbecoming a lawyer and a judge.

Judge Iturralde's Reply

In his Reply dated November 10, 2002,[14] Judge Iturralde assailed the respondents' common general denial that the

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[13] *Id.* at 30, par. 6.

[14] *Id.* at 34-38.

complaint was "false, misleading, twisted out of context, malicious, speculative and baseless."[15] He pointed out that the respondents did not squarely answer the issues raised in the complaint.

Judge Iturralde belittled the detailed description by both Ramirez and Flordeliza of the procedure in the drafting of a court order up to its mailing to the parties, stressing that it had nothing to do with the respondents' actuations relative to the enforcement of Judge Tiamson's order for the issuance of a writ of execution.

In the case of Salvador, Judge Iturralde explained that the complaint relates to the sheriff's continued defiance of a lawful order and refusal to implement the writs despite the absence of a TRO or a contrary court order. He claimed that Salvador was lying when he insisted that "there [was] an actual case before the higher courts seeking to annul or reverse the orders of x x x Presiding Judge Tiamson,"[16] as the case had long been decided by the Supreme Court and a final entry of judgment had already been made.[17] He labelled as a lie Salvador's claim that the plaintiffs had not paid the sheriff's fees, for they had paid the corresponding fees.[18]

Judge Iturralde reiterated his misgivings about the defects in the *alias* writ Ramirez issued. He claimed that the writ's deficiencies clearly derailed and frustrated the enforcement of the *alias* writ as the defendants raised the same deficiencies in their Consolidated Motion for Reconsideration.[19]

On the delay in the service of the court order, Judge Iturralde pointed out that had the plaintiffs not made a follow-up, a copy of the order would not have been released to them. They discovered that while they were waiting for a copy of the order, the defendants had already gone to the CA.

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[15] *Id.* at 34, par. 2.

[16] *Id.* at 35, par. 1.

[17] *Id.* at 35, par. 2.

[18] *Id.*, Annex "C".

[19] *Id.*, Annex "D".

Judge Iturralde denied that he had exerted pressure on the respondents to have the court judgment enforced because he stood to gain financially from the case. He posited that this was not the respondents' concern; neither should they show bias by giving the other party the opportunity to oppose the writ. The judge argued that it was beyond the respondents' authority or competence to question the interests of a party in a case, for their functions are purely ministerial.

Judge Iturralde admitted that there were instances when he was present at the RTC in Binangonan, Rizal, but contended that the court did not conduct actual trials. The court merely conducted arbitration conferences between the parties; two of the conferences were even held at his residence.[20] While the dates mentioned in the respondents' affidavits might have coincided with the dates set by the court for the conferences, it did not follow that he had been present on these dates. He asked to be confronted with the certificates of appearance with his signatures to ascertain the truth of the respondents' assertions.

Upon the recommendation of the OCA, the Court resolved to: (1) re-docket the complaint as a regular administrative matter; and (2) refer the case to a consultant in the OCA for investigation.[21]

The Investigation, Report and Recommendation

In a letter dated September 30, 2004,[22] Investigator-Designate Narciso T. Atienza submitted his report,[23] recommending that: (1) Flordeliza and Ramirez be found guilty of negligence and be penalized with a reprimand; (2) Salvador be made liable for misconduct and be sanctioned with a fine of ₱10,000.00; and (3) the countercharge against Judge Iturralde be dismissed for lack of merit.

On the whole, Investigator Atienza found the respondents liable for the difficulties the plaintiffs (the complainants in the

[20] *Id.*, Annex "G".

[21] *Id.* at 70.

[22] *Id.* at 868.

[23] *Id.* at 780-850.

present administrative matter) suffered in the execution of the favorable judgment they had secured in the civil case.

The Court's Ruling

We agree with Investigator Atienza that respondents Ramirez, Flordeliza and Salvador deserve to be sanctioned, but we differ in the degree of the respondents' culpability and in the imposable penalties.

Ramirez and Flordeliza

The explanation by Ramirez and Flordeliza on the process in the drafting, issuance and service of a court order to the parties, insinuating that the process takes time and that Judge Iturralde had been high-handed in securing the enforcement of the decision in the plaintiff' favor, cannot erase the fact that the two court personnel were patently remiss in the performance of their duties.

The court records clearly show that the court order granting the motion for execution in the civil case had already been drafted, finalized and signed by Judge Tiamson and only had to be released. One month after its supposed issuance, its original and all the duplicate copies were still attached to the record of the case, unserved on the parties. Strangely, the defendants already had a copy of the unserved order. Had Judge Iturralde and Gumarang not made a personal inquiry into the status of the case, the order could have remained attached to the records, unserved for a longer period.

As the investigator observed, Flordeliza was wrong to expect that the parties, especially the plaintiffs, should periodically follow up the status of their cases with the court. This is an unacceptable attitude on the part of court personnel, especially under the circumstances of this case when nothing more remained to be done but to serve the order. Flordeliza's excuse – that the records were still in the chambers of Judge Tiamson or that she had been busy attending to her other duties – was a lame attempt to avoid liability for her inaction. For this inaction, she committed not only simple neglect of duty, but the more serious violation of conduct prejudicial to the interest of the service.

Ramirez, the clerk of court (officer-in-charge), is no less guilty. She has the duty, under the rules,[24] to issue the writ of execution as there was already a court order for the purpose. The writ should have been issued as a matter of course, but it took Ramirez one month to do so. In fact, the issuance was not done at her initiative but at the insistence of Judge Iturralde and Gumarang who went to the court on September 18, 2000 to ask for the immediate issuance of the writ.[25]

Ramirez compounded the problem by issuing a writ that was, on its face, defective, thus creating additional enforcement difficulties. In the original writ issued on September 18, 2000, instead of having the names of the defendants – the corporation and the defendants who are natural persons – only "*ET AL*." was typed to represent Renato J. Mariñas and Felix B. Mariñas in the civil case, thereby concealing the identities of the natural persons on whom the writ should be served.[26] Ramirez committed a worse second error when she issued the *alias* writ of execution without any case number.[27] The complainants had to correct these errors by writing the names of the defendants and the case number.[28]

Significantly, Ramirez admitted the writ's deficiencies, although she claimed that she signed the *alias* writ in a hurry and thus was not able to check its details. She offered the excuse that she had plenty of work to do, and had trusted the stenographer to look at the details.[29]

Like Flordeliza, Ramirez is guilty not only of negligence but also of conduct prejudicial to the interest of the service. At the very least, they placed the court in a bad light as they presented an image of a court whose personnel were bumbling and remiss

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[24] Rules of Court, Section 5.

[25] *Supra* note 1, par. d.

[26] *Rollo*, p. 4, Exhibit "F-1".

[27] *Supra* note 5.

[28] *Supra* note 7.

[29] *Rollo*, pp. 645-648; TSN, January 16, 2004, pp. 21-24.

in performing their duties, to the prejudice of the administration of justice. Worse, they exposed court processes to the suspicion that they can be fixed through arrangements with court personnel.

As had happened in this case, the non-service of the court order granting the motion for execution and the delayed issuance of the writ of execution stalled the execution of the judgment in the civil case and gained time for the defendants. This is a classic case of justice delayed. As Investigator Atienza correctly noted: "The defendants have conveniently made use of the negligence of respondents Violeta Flordeliza and Babe SJ. Ramirez to prevent and/or frustrate the immediate implementation of the writ of execution"[30] by going to the CA and to this Court. The writ's implementation, according to the investigator, "was delayed for almost two (2) years from September 18, 2000 up to July 3, 2002, thereby giving the defendants sufficient time to conceal and/or dissipate their assets to thwart plaintiffs' efforts to recover in full the money judgment awarded to them."[31]

Needless to say, Ramirez and Flordeliza acted in a way that could cause an erosion of public trust in the judiciary. In *Concerned Court Employee v. Atty. Vivian V. Villalon-Lapuz*,[32] the Court held that "court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the presiding judge to the lowliest clerk, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary."

Under Civil Service rules,[33] conduct prejudicial to the service is punishable by suspension (6 months and 1 day to 1 year) for the first offense. In light of the effect of the violation on the

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[30] *Id.* at 838.

[31] *Id.* at 839.

[32] A.M. No. P-07-2263, July 31, 2008, 560 SCRA 646, 652, citing *Yrastorza v. Latiza*, 462 Phil. 145 (2003).

[33] Uniform Rules on Administrative Cases in the Civil Service, Section 52 A(20).

administration of justice and the strong hint of the concerted dilatory effort, we deem it proper to impose the penalty of suspension without pay in its maximum period of one year.

Sheriff Salvador

We find Sheriff Salvador liable for grave misconduct for his refusal to implement the writ of execution in the civil case and for interposing obstacles in the enforcement of the writ on grounds not within the scope of his duty.

Based on Atienza's investigation, it appears that two groups of sheriffs served the *alias* writ of execution on the defendants in the civil case and the notices of garnishment on the banks. Salvador headed the first group, while Sheriff Joey Cariño headed the second group. The first group served the *alias* writ at FBM Construction and Agro-Industrial Corporation[34] in Antipolo City and the notices of garnishments on the banks in the city, including Metrobank. Salvador, accompanied by Gumarang, proceeded to the Register of Deeds in Marikina City and levied on the properties in the name of defendant FBM Construction and Agro-Industrial Corporation.

On July 29, 2002, plaintiffs Leonardo Lucas, Gumarang and Judge Iturralde accompanied Salvador to the Metrobank head office in Makati City to withdraw the garnished amount, but Salvador refused to sign a prepared "Sheriff's Letter of Demand,"[35] claiming that a case was still pending before the higher courts to annul Judge Tiamson's order. Later, Salvador required the plaintiffs to file a motion to withdraw garnished amount, which they did.[36] At the time the plaintiffs asked Salvador to withdraw the garnished amounts, the Court had already dismissed with finality the defendants' petition for *certiorari* in its Resolution dated April 9, 2002.

Again, as Investigator Atienza noted, Salvador erred when he refused to withdraw the garnished amount without a court

[34] *Rollo*, pp. 460-461; TSN, October 17, 2003, pp. 16-17.

[35] *Id.* at 160-161; Exhibits "P" and "P-1".

[36] *Id.* at 466-472; TSN, October 17, 2003, pp. 22-28.

order. The *alias* writ of execution issued to enforce a money judgment was a sufficient authority for the sheriff to withdraw the garnished amount and deliver the proceeds to the plaintiffs who were with the execution team.[37]

We find it obvious from Salvador's actuations that he was interposing obstacles to prevent the speedy enforcement of the *alias* writ of execution, for reasons only known to him. Thus, he first argued that there was still a pending case in the higher court. When he realized that this was untenable, he imposed the requirement that the plaintiffs secure a court order for the withdrawal of the garnished amount. The result, of course, was Salvador's failure to levy on the personal assets of the defendants who are natural persons.

In a different vein, Gumarang testified during the investigation that Salvador asked ₱10,000.00 from the plaintiffs for the expenses of his team in the implementation of the writ of execution;[38] Gumarang gave Salvador ₱6,000.00 in a white envelope inside the Bamboo Grill Restaurant when the sheriffs met on their way home to Binangonan, Rizal.[39] Salvador denied that he had asked ₱10,000.00 from Gumarang, claiming that he was surprised when Gumarang arrived at the Bamboo Grill Restaurant and gave them the money; only he and the other sheriffs knew of their rendezvous at the Bamboo Grill Restaurant.[40]

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[37] Rules of Court, Rule 39, Section 9 which provides:

Section 9. *Execution of judgments for money, how enforced* – (a) *Immediate payment on demand.* – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified check payable to the judgment obligee, x x x the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

[38] *Rollo*, pp. 520-522; TSN, October 17, 2003, pp. 29-31.

[39] *Id.* at 693; TSN, March 11, 2004, p. 16.

[40] *Id.* at 694; TSN, March 11, 2004, p. 17.

We agree with Investigator Atienza's view that Salvador's claim that Gumarang voluntarily gave Salvador the money was highly unbelievable. Gumarang clearly knew that the sheriffs were at the Bamboo Grill Restaurant at the time he delivered the money. This could only mean that Salvador had informed Gumarang beforehand of the meeting and the meeting place, belying the claim that Gumarang simply came and voluntarily gave the money to Salvador. Since the plaintiffs had not then recovered a single centavo from the defendants, Gumarang must have been there to secure the prompt implementation of the writ through payment of the demanded sum to Salvador.

As Investigator Atienza pointed out, even assuming that Gumarang indeed voluntarily gave money to the sheriffs, Salvador should still be answerable for receiving money from litigants under terms not allowed by the Rules of Court. In *Atty. Stanley G. Zamora v. Ramon P. Villanueva*,[41] the Court stressed that Section 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. Specifically, it provides:

> In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

No evidence in the case exists showing that Salvador complied with the Rules. He did not submit for the court's approval the

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[41] A.M. No. P-04-1898, July 28, 2008, 560 SCRA 32, 37.

estimated expenses for the implementation of the writ before he asked for ₱10,000.00 from the plaintiffs. He likewise failed to render an accounting and to liquidate the amount to the court. In the above cited *Zamora* case, the Court declared that any act deviating from the established procedures is misconduct that warrants disciplinary action.

"Misconduct," according to the Court in *Zamora*, "is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules."[42] In the present case, it has been shown that Salvador willfully violated established rules. He demanded ₱10,000.00 and received ₱6,000.00 from the complainants, which sum – by his own admission – was spent for food and drinks,[43] in clear violation of the Rules. Earlier, we found that he refused to implement the *alias* writ even after its issuance and even posed obstacles to its speedy enforcement. All these point to the commission of a grave misconduct.

Under the Uniform Rules on Administrative Cases in the Civil Service,[44] grave misconduct is classified as a grave offense punishable by dismissal for the first offense. Section 58 of the same Rules provides that dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government, unless otherwise provided in the decision. **Salvador deserves no less.**

As a final word in Salvador's case, it is well to reiterate our cautionary statement in *Zamora*, thus —

> By the nature of their functions, sheriffs must conduct themselves with propriety and decorum, to be above suspicion. Sheriffs are court officers and, like everyone else in the judiciary, are called upon to discharge their sworn duties with great care and diligence. They

[42] *Supra* note 41, at 39-40.

[43] *Rollo*, p. 697; TSN, March 11, 2004, p. 20.

[44] *Supra* note 33, Section 52(a)(3).

cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[45]

The countercharge

Investigator Atienza found that the respondents failed to adduce evidence supporting their countercharge against Judge Iturralde. They failed to submit the minutes of the proceedings in the RTC, Branch 69, Binangonan, Rizal, where Judge Iturralde was present when he was supposed to be in Angeles City.

Judge Iturralde explained that he was suspended from office for almost two years; after he was cleared by the Supreme Court, he was detailed at Branch 72, Antipolo City, a site not too far from Binangonan, Rizal. The respondents mentioned in their counter-affidavits the dates from 1998 to 2002 when Judge Iturralde was present during the hearings of the civil case, but they did not present any document from the RTC, Branch 58, Angeles City, that, indeed, the judge was not in his court on the dates mentioned in the countercharge.

We approve Investigator Atienza's recommendation that the countercharge be dismissed for lack of merit.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Babe SJ. Ramirez (OIC Branch Clerk of Court, Regional Trial Court, Branch 69, Binangonan, Rizal) and Violeta Flordeliza (clerk in charge of civil cases of the same court), are hereby found *LIABLE* for conduct prejudicial to the service, and are accordingly *SUSPENDED* without pay from the service, for *ONE YEAR*.
2. Carlos Salvador, Sheriff, same court, is declared *LIABLE* for grave misconduct and is *DISMISSED* from the service, with forfeiture of retirement benefits, except accrued leave credits. He is further *BARRED* from re-employment in any branch or office of the

[45] *Supra* note 41, at 39.

government, including government-owned or controlled corporations.

3. The countercharge against Judge Philbert I. Iturralde, Regional Trial Court, Branch 58, Angeles City, is *DISMISSED* for lack of merit.

SO ORDERED.

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

EN BANC

[A.M. No. P-10-2788. January 18, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CLAUDIO M. LOPEZ, Process Server, Municipal Trial Court, Sudipen, La Union,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; QUANTUM OF PROOF IN ADMINISTRATIVE CASES IS ONLY SUBSTANTIAL EVIDENCE; DISMISSAL OF THE CRIMINAL CASE AGAINST RESPONDENT IN AN ADMINISTRATIVE CASE IS NOT A GROUND FOR THE DISMISSAL OF THE ADMINISTRATIVE CASE.— As correctly pointed out by the Investigating Judge, to sustain a finding of administrative culpability, only substantial evidence is required. The present case is an administrative case, not a criminal case, against respondent. Therefore, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a

conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. We emphasize the well-settled rule that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case.

2. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GRAVE MISCONDUCT; DEFINED; DISTINGUISHED FROM SIMPLE MISCONDUCT; PENALTY.— The evidence showed that respondent is the occupant of the place where the 790.6 grams of dried marijuana fruiting tops were recovered. Respondent did not have the necessary permit or authority from the appropriate government agency to possess the same. This is a flagrant violation of the law and is considered a grave misconduct. The Court defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. An act need not be tantamount to a crime for it to be considered as grave misconduct as in fact, crimes involving moral turpitude are treated as a separate ground for dismissal under the Administrative Code. We agree with the findings and recommendation of both the Investigating Judge and the OCA that respondent committed grave misconduct which, under Section 52 (A)(3), Rule IV of the Uniform Rules on Administrative Cases, is a grave offense punishable by dismissal even for the first offense.

3. ID.; ID.; ID.; ID.; REQUIRED DECORUM.— Once again, we stress that court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice,

should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.

D E C I S I O N

PER CURIAM:

In an administrative case, the quantum of proof required is only substantial evidence. The dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case.

An Information dated 12 January 2004 was filed against respondent Claudio M. Lopez (respondent), Process Server of the Municipal Trial Court of Sudipen, La Union, for violation of Section 11 of Republic Act No. 9165 (RA 9165), otherwise known as the Dangerous Drugs Act, as follows:

> That on or about the 21st day of October 2003, in the Municipality of Sudipen, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously keep and possess in his custody and control Seven Hundred Ninety Point Six (790.6) grams of dried marijuana fruiting tops, without first securing the necessary permit or authority from the government agency.[1]

Consonant with the *En Banc* Resolution dated 12 March 1981 authorizing the Office of the Court Administrator (OCA) to initiate *motu proprio* the filing of administrative complaint against judges and/or employees of the inferior courts who have been convicted and/or charged before the Sandiganbayan

[1] *Rollo*, p. 12.

or the courts, the OCA, in its Report dated 17 February 2009,[2] recommended the filing of an administrative complaint against respondent for Grave Misconduct and Conduct Unbecoming a Government Employee. The Court, in its Resolution of 18 March 2009,[3] approved the OCA's recommendation and required respondent to comment on the complaint.

On 29 April 2009, respondent submitted a one-page answer/comment[4] alleging that a criminal case docketed as Criminal Case No. 3064 for violation of RA 9165 was pending before the Regional Trial Court, Branch 34, Balaoan, La Union (RTC-Br. 34) and that from the evidence presented, it was clear that the prosecution failed to prove its case and that the case "might" be dismissed. Respondent prayed that the instant complaint be dismissed.

On 17 June 2009, this Court issued a Resolution[5] noting respondent's answer/comment and referred the administrative matter to the OCA for designation of an investigating judge to conduct an investigation.

Judge Ferdinand A. Fe (Investigating Judge), Acting Presiding Judge of the RTC-Br. 34, was designated investigating judge to conduct the investigation and thereafter submit a report and recommendation on the administrative matter.[6]

During the investigation, respondent informed the Investigating Judge that he was adopting the demurrer to evidence he earlier filed in Criminal Case No. 3064 and offered the same as evidence in this administrative case. He claimed the prosecution failed to prove its case. But since this is an administrative case, the Investigating Judge was of the view that only substantial evidence is required and not proof beyond reasonable doubt.

From the evidence adduced by the prosecution in the criminal case, the Investigating Judge found that by virtue of a search

[2] *Id*. at 1-2.

[3] *Id*. at 17.

[4] *Id*. at 19.

[5] *Id*. at 21.

[6] *Id*. at 23.

warrant issued by the presiding judge of the Municipal Circuit Trial Court of Bannayoyo-Lidlidda-San Emilio, Ilocos Sur, police officers searched the boarding house which respondent rented. Respondent was not in his boarding house when the search team and the *barangay* officials arrived. The police officers presented the search warrant to respondent's live-in partner, Babes Cañedo (Cañedo). One block of dried marijuana fruiting tops weighing 790.6 grams wrapped in a newspaper and plastic bag was recovered inside the room and under respondent's bed. When respondent arrived, the police officers confronted him but respondent denied ownership of the dried marijuana fruiting tops. Respondent likewise refused to sign the Certification of Orderly Search but Cañedo and Barangay Captain Ronnie A. Guzman and Barangay Kagawad Charito Bayan signed the certification.

The confiscated items were brought to the Sudipen Police Station. After preliminary investigation, respondent was charged with violation of RA 9165.

In his demurrer to evidence which he adopted as evidence in this administrative case, respondent maintained that the presiding judge who issued the search warrant had no territorial jurisdiction over Sudipen, La Union, the place where it was enforced and hence, the items seized by virtue thereof were inadmissible in evidence. He likewise argued that the police officers who enforced the search warrant violated Rule 126 concerning the presence of witnesses and the accused during the search.

The Investigating Judge believed that the issues on the legality of the issuance of the search warrant and violation of Rule 126 should be threshed out in the criminal case and not in the instant administrative case. The Investigating Judge observed that since the place that was searched was the room rented by respondent, the lawful occupant is the respondent and not Erlinda Estrada, the owner of the house. Moreover, the presence of the lawful occupant may be dispensed with if there is any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

From the evidence adduced and the admission of respondent in his demurrer to evidence which he adopted in this administrative

case, the Investigating Judge concluded that respondent kept in his custody and control 790.6 grams of dried marijuana fruiting tops without first securing the necessary permit or authority from the appropriate government agency. Respondent's acts constituted flagrant violation of the law and undermined the people's faith in the judiciary.

The Investigating Judge found respondent guilty of Grave Misconduct and Conduct Unbecoming a Government Employee and recommended that respondent be dismissed from the service with forfeiture of all benefits, except accrued leave benefits and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations.

The OCA agreed with the findings and conclusions of the Investigating Judge and that the act of respondent fell short of the standards of high moral conduct which court employees are bound to maintain. The OCA likewise found respondent guilty of grave misconduct and conduct unbecoming a court employee and thus recommended that respondent be dismissed from the service.

As correctly pointed out by the Investigating Judge, to sustain a finding of administrative culpability, only substantial evidence is required. The present case is an administrative case, not a criminal case, against respondent. Therefore, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. We emphasize the well-settled rule that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case.[7]

The evidence showed that respondent is the occupant of the place where the 790.6 grams of dried marijuana fruiting

[7] *Velasco v. Judge Angeles*, A.M. No. RTJ-05-1908, 15 August 2007, 530 SCRA 204, 224-225.

tops were recovered. Respondent did not have the necessary permit or authority from the appropriate government agency to possess the same. This is a flagrant violation of the law and is considered a grave misconduct.

The Court defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[8] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[9] As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. An act need not be tantamount to a crime for it to be considered as grave misconduct as in fact, crimes involving moral turpitude are treated as a separate ground for dismissal under the Administrative Code.[10] We agree with the findings and recommendation of both the Investigating Judge and the OCA that respondent committed grave misconduct which, under Section 52 (A)(3), Rule IV of the Uniform Rules on Administrative Cases, is a grave offense punishable by dismissal even for the first offense.

Once again, we stress that court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be

[8] *Arcenio v. Pagorogon*, A.M. Nos. MTJ-89-270 and MTJ-92-637, 5 July 1993, 224 SCRA 246, 254.

[9] *Roque v. Court of Appeals*, G.R. No. 179245, 23 July 2008, 559 SCRA 660; *Civil Service Commission v. Ledesma*, 508 Phil. 569 (2005).

[10] *Vertudes v. Buenaflor*, G.R. No. 153166, 16 December 2005, 478 SCRA 210, 233-234.

in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.[11]

WHEREFORE, we *DISMISS* respondent Claudio M. Lopez, Process Server of the Muncipal Trial Court of Sudipen, La Union, from the service with *FORFEITURE* of all benefits, except accrued leave benefits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations. This decision is immediately executory.

SO ORDERED.

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

Perez, J., no part, acted as Court Administrator.

EN BANC

[A.M. No. P-10-2799. January 18, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **VICTORIO A. DION, Former Clerk of Court, Municipal Circuit Trial Court, San Fabian-San Jacinto, Pangasinan,** *respondent.*

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[11] *Office of the Court Administrator v. Juan*, 478 Phil. 823 (2004).

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; DISHONESTY AND GRAVE MISCONDUCT; RESPONDENT WILLFULLY BETRAYED THE TRUST PLACED BY THE COURT IN HIM AS CLERK OF COURT; DISMISSAL FROM SERVICE, JUSTIFIED.— The OCA recommended Dion's dismissal for dishonesty and grave misconduct and forfeiture of all benefits that may be due him, except accrued leave credits, with prejudice to re-employment in the government service including government-owned and controlled corporations. The Court is inclined to adopt the findings of the audit team and the recommendation of the OCA. He violated OCA Circular 50-95, which states that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within 24 hours by the Clerk of Court concerned, upon receipt thereof, with the Landbank of the Philippines." Likewise, he violated OCA Circular 26-97, which directed judges and clerks of court to compel collecting officials to strictly comply with the provisions of the Auditing and Accounting Manual citing Article VI, Sections 61 and 113 which required collecting officers to promptly issue official receipts for all money received by them. It is evident that Dion willfully betrayed the trust placed by the Court in him as Clerk of Court of the MCTC of San Fabian-San Jacinto, Pangasinan. Following the rulings in *OCA v. Nacuray* and in *Re: Report on the Financial Audit Conducted in the MTC of Bucay, Abra*, the Court has no alternative but to impose the penalty of dismissal on him.

R E S O L U T I O N

PER CURIAM:

This administrative case arose from a financial audit that the Fiscal Monitoring Division (FMD) of the Court Management Office (CMO) under the Office of the Court Administrator (OCA) conducted on the books of account of the Municipal Circuit Trial Court (MCTC) of San Fabian-San Jacinto, Pangasinan.

The audit team[1] discovered unreported and unremitted collections that respondent Victorio A. Dion (Dion), its former Clerk of Court, made in connection with his duties.

The record shows that on February 22, 1996 plaintiff in Civil Case 832 (SJ-96), *Rhey Osborn P. Columbres v. Gerardo R. Abarcar*, deposited ₱30,000.00 with Dion as required by the court and for which he issued a mere temporary receipt. Dion explained that the plaintiff pleaded with him not to deposit the money with the court's fiduciary fund anymore since the parties were going to settle the case and he wanted to get his money back immediately.[2]

Three years later or on January 8, 1999 the plaintiff in Civil Cases 913 and 922, *Letecia N. Herrera v. Perfecto Cerezo*, also deposited ₱30,000.00 with Dion as required by the court but Dion did not report the collection nor did he deposit the money with the court's fiduciary fund account.[3] Nine months later on October 8, 1999 Judge Madronio ordered the release of the ₱30,000.00 to plaintiff Herrera. Dion paid her on October 11, 1999 by withdrawing the amount from the fiduciary fund account.[4]

When it was discovered in a subsequent in-office audit that Dion withdrew the ₱30,000.00 from the court's fiduciary fund without previously depositing an equivalent amount, the auditor required him to explain.[5]

Dion presented a certification that he inadvertently placed the ₱30,000.00 he got from Herrera into the court's safe but was later on unable to open it.[6] He said that he was able to

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[1] Composed of Nathaniel M. Sevilla, Eduardo G. Tesea, Dennis B. Cantano, and Allan B. Carreon; See Annex "A", Report on the Financial Audit Conducted at the Municipal Circuit Trial Court, San Fabian/San Jacinto, Pangasinan.

[2] OCA Report, p. 2.

[3] *Id.*; see also Annex "A", Report of the Audit Team dated May 19, 2008, p. 6.

[4] *Id.*

[5] *Id.*

[6] *Id.*

have the safe opened only on September 18, 2001 and get the ₱30,000.00 out because he had been preoccupied with preparing for his transfer to Branch 3 of the MTCC of Dagupan City.[7] On the following day, September 19, 2001, he claimed to have dutifully issued SC Official Receipt 11477855 in Herrera's name to rectify the unreported ₱30,000.00 collection and to account for the money that he withdrew from the court's fiduciary fund.[8] Dion apparently got away with this explanation.

But later, instead of canceling and discarding the official receipt he issued in Herrera's name, the matter having been already taken up in the previous audit, Dion erased Herrera's name on it, including the case title and number. He then replaced these with details from Civil Case 832 (SJ-96), the case of *Rhey Osborn P. Columbres and Gerardo R. Abarcar*, to cover up for the ₱30,000.00 that he received on February 22, 1996 from the plaintiff in that case and remedy another deficiency in the court's fiduciary fund. The new entries made it appear, however, that he officially reported the collection on September 19, 2001 when he had by then long moved to his new assignment as Clerk of Court of the MTCC Dagupan City.[9]

On July 30, 2007 the audit team leader had a dialogue with Dion. He tried to refute the evidence presented against him, but in the end he admitted the misdeed. Later, he settled his accountability.[10]

The OCA recommended Dion's dismissal for dishonesty and grave misconduct and forfeiture of all benefits that may be due him, except accrued leave credits, with prejudice to re-employment in the government service including government-owned and controlled corporations.[11]

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[7] OCA Report, p. 3; see also Annex "A," Report of the Audit Team dated May 19, 2008, p. 6.

[8] *Id.* at 4; *id.* at 6-7.

[9] *Id.* at 4-5; *id.*

[10] *Id.* at 5; *id.* at 7.

[11] *Id.* at 5-6.

The Court is inclined to adopt the findings of the audit team and the recommendation of the OCA. He violated OCA Circular 50-95,[12] which states that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within 24 hours by the Clerk of Court concerned, upon receipt thereof, with the Landbank of the Philippines." Likewise, he violated OCA Circular 26-97,[13] which directed judges and clerks of court to compel collecting officials to strictly comply with the provisions of the Auditing and Accounting Manual citing Article VI, Sections 61 and 113 which required collecting officers to promptly issue official receipts for all money received by them.

It is evident that Dion willfully betrayed the trust placed by the Court in him as Clerk of Court of the MCTC of San Fabian-San Jacinto, Pangasinan. Following the rulings in *OCA v. Nacuray*[14] and in *Re: Report on the Financial Audit Conducted in the MTC of Bucay, Abra*,[15] the Court has no alternative but to impose the penalty of dismissal on him.

WHEREFORE, the Court *FINDS* Victorio A. Dion guilty of dishonesty and grave misconduct and *DISMISSES* him from the service effective immediately. All benefits except accrued leave credits that may ordinarily be due him are *ORDERED* forfeited with prejudice to re-employment in the government service including government-owned and controlled corporations.

SO ORDERED.

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

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[12] OCA Circular 50-95 took effect on November 1, 1995.

[13] OCA Circular 26-97 took effect on May 5, 1997.

[14] A.M. No. P-03-1739, April 7, 2006, 486 SCRA 532.

[15] A.M. No. P-06-2236, September 20, 2006, 502 SCRA 437.

EN BANC

[A.M. No. P-11-2887. January 18, 2011]
(Formerly A.M. No. 09-2-32-MTC)

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF THE MUNICIPAL TRIAL COURT, PANTABANGAN, NUEVA ECIJA.

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARISSA U. ANGELES,** Clerk of Court II, Municipal Trial Court, Pantabangan, Nueva Ecija, *respondent.*

[A.M. No. P-10-2880. January 18, 2011]
(Formerly OCA IPI No. 08-2782-P)

JUDGE ANALIE C. ALDEA-AROCENA, *complainant, vs.* **MARISSA U. ANGELES, Clerk of Court II, Municipal Trial Court, Pantabangan, Nueva Ecija,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY AND GRAVE MISCONDUCT; ESTABLISHED; RESPONDENT'S RESIGNATION IS OF NO CONSEQUENCE AS THERE IS NO SHOWING IN THE RECORDS THAT THE COURT ACCEPTED HER RESIGNATION; DISMISSAL FROM SERVICE, JUSTIFIED.— We find Judge Florendo's recommendation to be well-founded. As the judge aptly put it, Angeles failed to dispute or disprove the charges against her. We, thus, find Angeles liable for (1) failure to immediately account for the excess in the cash bond she received; (2) failure to issue appropriate receipts; (3) failure to safekeep monies received; and, (4) failure to remit/deposit cash bonds in the government depository (Land Bank of the Philippines) upon receipt. Angeles' infractions constituted dishonesty and grave misconduct for which she deserves to

be dismissed from the service. Angeles' resignation, as Judge Florendo noted, is of no consequence, as there is no showing in the records that the Court accepted her resignation. Even as Judge Florendo believed that Angeles should be dismissed from the service, she, nonetheless, recommended that Angeles be allowed to enjoy her accrued benefits in recognition of her 25 years of service in the government.

D E C I S I O N

PER CURIAM:

For resolution are the present administrative matters which were consolidated pursuant to the Court's Resolution of March 9, 2009.[1]

The Antecedents

A.M. No. P-10-2880 arose from the 1st Indorsement, dated February 19, 2008, with accompanying documents[2] of Judge Analie C. Aldea-Arocena [Municipal Trial Court (*MTC*), Pantabangan, Nueva Ecija] to Executive Judge Cicero D. Jurado of the Regional Trial Court [(*RTC*), Branch 38, San Jose City], informing him of the alleged failure of Ms. Marissa U. Angeles (Clerk of Court of the MTC, Pantabangan, Nueva Ecija) to remit/deposit cash and bail bonds and other collections of the court. A.M. No. 09-2-32-MTC, on the other hand, pertains to the Office of the Court Administrator (*OCA*) Audit Team's Report[3] on the financial examination conducted on the books of accounts of the MTC in Pantabangan, Nueva Ecija, for the period March 1, 1992 to February 28, 2008.

On November 26, 2008, the Court resolved to:

1. TREAT the 1st Indorsement dated February 19, 2008 of Judge Arocena as an administrative complaint for Grave Misconduct against Clerk of Court Angeles;

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[1] *Rollo* (A.M. No. 09-2-32-MTC), p. 52.

[2] *Rollo* (A.M. No. P-10-2880), pp. 167-170.

[3] *Rollo* (A.M. No. 09-2-32-MTC), pp. 4-10.

2. TREAT Clerk of Court Angeles' letter to Judge Arocena dated January 14, 2008 as her comment to the complaint against her;

3. REFER the complaint to Executive Judge Jurado, Jr. for investigation, report and recommendation within sixty (60) days from notice; and

4. SUSPEND Clerk of Court Angeles from office effective immediately upon receipt hereof, until further orders from this Court.[4]

Further, the Court required the Court Management Office (*CMO*) of the OCA to submit the corresponding audit report.

In the meantime, Judge Cynthia Martinez Florendo was appointed acting presiding judge of the RTC, Branch 38, San Jose City, and as Executive Judge of the RTC, San Jose City, replacing Judge Jurado who transferred to the RTC, Manila on January 16, 2008.

On March 12, 2009, pursuant to the Court's Resolution of November 26, 2008, the case records of **A.M. No. P-06-2276** (formerly OCA IPI No. 03-16-03), entitled "*Beatriz F. Villar v. Marissa U. Angeles*," were transmitted[5] to Judge Florendo, prompting her to request that she be given the authority to investigate A.M. No. P-10-2880 in her capacity as Executive Judge.

Upon the OCA's recommendation, the **Court, in its Resolution dated November 16, 2009**,[6] granted Judge Florendo's request for authority to investigate A.M. No. P-10-2880.

In the resolution[7] consolidating the two cases, the Court directed Angeles to (1) restitute the balance of the Judiciary Development Fund (JDF) shortage of ₱398.20, and submit to the OCA the machine-validated copy of the deposit slip as proof; and (2) submit valid documents that withdrawn cash bonds and undeposited cash bond collections amounting to ₱64,200.00

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[4] *Rollo* (A.M. No. P-10-2880), p. 1.

[5] *Id.* at 118.

[6] *Id.* at 85.

[7] *Supra* note 1.

and ₱64,000.00, respectively, were deposited in the Court's Fiduciary Fund (FF) savings account, or were refunded to the concerned bondsmen/litigants; otherwise, to restitute these amounts.

The Court also directed Ms. Ligaya G. Linsangan, court interpreter and former OIC clerk of court of the same court, to (1) restitute ₱3,000.00, representing withdrawals of cash bonds, by depositing the amount to the Court's FF savings account, and submit to the OCA a machine-validated deposit slip as proof; (2) submit to the OCA machine-validated copies of deposit slips of undeposited cash bond collections amounting to ₱40,000.00, otherwise, to restitute the amount; and (3) submit to the OCA valid documents (court order, acknowledgement receipt or official receipt) supporting the withdrawals made on the Court's FF savings account, amounting to ₱15,695.98.

The Court likewise directed Mrs. Nirvana P. Rubi, OIC court interpreter, to submit to the OCA valid documents supporting the withdrawals made on the FF savings account amounting to ₱11,000.00.

Finally, the Court directed Judge Arocena to ensure strict compliance with the Court's issuances, particularly on the handling of judiciary funds, to avoid repetition of the same accountability problem that involved Angeles and Linsangan.

Judge Florendo's Evaluation and Recommendation

In an "**Evaluation and Recommendation**" dated November 27, 2009,[8] Judge Florendo recommended Angeles' dismissal for dishonesty and grave misconduct. The recommendation was based on the facts outlined below.

On November 20, 2007, Marissa Uraga, the common-law wife of Ramon Tuazon, the accused in Criminal Case No. 2752, executed an affidavit stating that she deposited with Angeles ₱12,000.00 representing her husband's bail bond, only to find out later that the receipt Angeles issued was only for ₱6,000.00.[9]

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[8] *Rollo* (A.M. No. P-10-2280), pp. 274-281.

[9] *Id.* at 176.

Further, a Ms. Vivian Tuazon also executed an affidavit stating that she gave ₱500.00 to Angeles on October 28, 2006, as additional payment for the bail bond of his brother in the same case, but Angeles did not issue a receipt for the amount.[10]

By memorandum dated January 8, 2008, Judge Arocena asked Angeles to comment on the allegations contained in the two affidavits.[11] In another memorandum dated February 5, 2008, Judge Arocena directed Angeles to remit to the MTC a total of ₱13,000.00 representing (1) the bail bond in Criminal Case No. 7664 (*People of the Philippines v. Freddie Joaquin and Dario Joaquin*) under O.R. No. 12575739 for ₱10,000.00, and (2) the bail bond deposit in Criminal Case No. 2670 (*People of the Philippines v. Romeo Borja, et al.*) under O.R. No. 12575748 for ₱3,000.00, to be deposited in the Land Bank of the Philippines, Cabanatuan City.[12] In a third memorandum dated February 5, 2008, Judge Arocena directed Angeles to remit to the Court the ₱8,000 she received from one Jose Presto as partial settlement in Civil Case No. 235.[13]

On January 15, 2008, Angeles submitted her letter/comment[14] denying receipt of ₱12,000.00 from Uraga. She claimed that what she received was only the reduced bail bond of ₱6,000.00. She admitted receipt of ₱500.00 from Vivian Tuazon but explained that the amount represented the bail bond fee. She also admitted receipt of ₱8,000.00 from the defendant in Civil Case No. 235 but claimed that it was given for safekeeping until the settlement amount could be raised. She disclosed that in 2002, Court Interpreter Ligaya Linsangan replaced her as accountable officer; since then, she had never handled any money matters for the court.

Judge Florendo commenced investigation of the administrative matter on September 9, 2009. The matter was submitted for

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[10] *Id.* at 177.

[11] *Id.* at 168.

[12] *Id.* at 169.

[13] *Id.* at 170.

[14] *Id.* at 171.

resolution on November 20, 2009. On the same day, Angeles tendered her resignation.[15]

Judge Florendo's Findings

Judge Florendo's findings were clearly laid out and its pertinent portions are reproduced below.

In her Position Paper dated October 29, 2009, respondent attached as Annex "C" the Sinumpaang Salaysay of Marissa Uraga and Vivian Tuazon dated March 12, 2008 wherein they swore that:

> *2. Na pinirmahan naming (sic) ang nasabing affidavits (referring to the Affidavit they signed on November 20, 2007) nang hindi nauunawaan ang mga nilalaman xxx*
>
> *3. Na aming nauunawaan na ang ibinigay naming ₱6,000.00 (at hindi ₱12,000.00 katulad ng nasaad sa affidavit) xxx*
>
> 5. *Na amin nang pinapawalang bias (sic) ang mga nakasaad sa aming naunang Affidavit sapagkat hindi namin nauunawaan ang mga nakasaad dito xxx*
>
> 6. *Na aming pinatutunayan na walang anumang naging pagkukulang o pagkakamali si Gng. Marissa Angeles xxx.*

To strengthen her defense, respondent thru counsel presented Marissa Uraga as witness. During the examination however, testimony of said witness proved to be more of evidence for the complainant rather than for the respondent. Part of her testimony enunciates:

> Q. Miss Marissa, why did you sign this Sinumpaang Salaysay dated March 12, 2008?
>
> A. I signed the document because she returned the amount of Php6,000.00 which is the reduced bail for my husband xxx
>
> Q. And what is the Php6,000.00 you are referring to as an (sic) amount returned to you by Miss Marissa Angeles?
>
> A. It was intended for my husband's bailbond which was originally in the amount of Php12,000.00. We gave her Php12,000.00 wherein it was reduced into (sic) Php6,000.00 and the amount of Php6,000.00 was returned to me.

[15] *Supra* note 8, at 7, par. 3.

Q. When did you give this Php12,000.00?

A. (witness is trying to recall the date and said October 2007)

Q. And when was this Php6,000.00 returned to you?

A. March 12, 2008, ma'am. (page 8 of TSN dated November 16, 2009)

Vivian Tuazon was also presented by the respondent as witness. She stated the following during her examination:

Q. No. 5; *Na amin nang pinapawalang bisa ang mga nakasaad sa aming naunang Affidavit sapagkat hindi namin nauunawaan ang mga nakasaad dito* xxx

A. No sir, but we are withdrawing the said affidavit because the amount of Php6,000.00 has been returned to us xxx

Q. What is your reason why you signed this Sinumpaang Salaysay (referring to the Salaysay dated March 12, 2008).

A. My reason is since the document was that (sic) they paid us the amount of Php6,000.00 and therefore there was nothing to argue about. (page[s] 16-17 of TSN dated November 16, 2009)

Said testimonies only proved that it was in fact Php12,000.00 which was handed to the respondent as reflected in the first affidavit and the testimonies during direct examination, and not the reduced amount of Php6,000.00. It also proved that Marissa Uraga did not seek to reduce the bail fixed at Php12,000.00, otherwise, she could just have tendered the amount of Php6,000.00. Said testimony likewise show (sic) that respondent returned the Php6,000.00-excess only on March 12, 2008 or almost five (5) months after having received the same from the bondsman and on the same date the Sinumpaang Salaysay refuting the first Affidavit was executed.

Respondent took the witness stand on November 20, 2009 and with the intention of rebutting having received the amount of Php12,000.00, presented as proof the order of the late Judge Joselito R. Dela Cruz dated October 27, 2006 wherein it was stated that the accused in Criminal Case No. 2752, posted his cash bond in the amount of Php6,000.00 (Exh. "2").

Review of said order however clearly shows that the original amount written was twelve thousand pesos but the word twelve and

the number 12 [were] erased and [were] replaced by six and 6, respectively, without any initial. Said erasures heightened doubt on the mind of the Court. Even giving the respondent the benefit of the doubt that she did not cause the erasures in said Order, still, she was not able to explain why she did not call the attention of Marissa Uraga when the latter tendered the amount of Php12,000.00 when she (respondent) could just have received the amount of Php6,000.00 plus Php500.00 as bailbond fee or better yet, upon receipt of Php12,000.00, she could just handed back the amount of Php5,500.00 to Marissa Uraga.

In the instant case, respondent returned the money only on March 12, 2008, five (5) months after the deposit of Php12,000.00 was made. For her receipt of money in excess of the deposit required and for failure to return said excess immediately to the bondsman, there is clear violation of her duty as Clerk of Court, as collection officer, and as an employee of the government. Said violations constitute grave misconduct and make her unworthy of trust. "As public servant and as an officer of the court, the Clerk of Court must exhibit at all times the highest sense of honesty and integrity." (A.M. No. P-94-1031, July 1, 2003) Clearly, respondent fell short of the honesty required of her by the position she holds. Under Section 52 [,] Rule IV of the Administrative Rules of Procedure, dishonesty is a grave offense which has a corresponding penalty of dismissal for first offense.

Dishonesty which is defined by the Civil Service Commission (CSC) as "any act of which shows lack of integrity or a disposition to defraud, cheat, deceive or betray. It consists of an intent to violate the truth, in a matter of fact relevant to one's office or connected with the performance of his duties xxx" (A.M. No. P-05-1985, *Civil Service Commission vs. Santos, Ernie P. Perocho, Jr.*)[.]

In the instant case, the failure of the respondent to call the attention of Marissa Uraga regarding the excess of the amount paid is an indication of predisposition to defraud her. "The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting high standard of ethics and utmost responsibility in the public service and no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary" (*Bellosillo vs. Rivera*, 435 Phil. 1)[.]

As to the failure to issue the corresponding official receipt upon payment

Vivian Tuazon in her affidavit dated November 20, 2007 stated that the respondent did not issue receipt upon her payment of the additional Php500.00.

Likewise during Marissa Uraga's testimony[,] she stated the foregoing:

"Q. When you said Php12,000.00, were you not issued a receipt to the amount of Php12,000.00?

A. She told me there was no receipt available then." (page 9, TSN dated November 16, 2009)

Both evidence proved that respondent failed to issue official receipts for said transactions.

Likewise, respondent admitted having received Php8,000.00 from Jose Presto, one of the defendants in Civil Case No. 235 representing settlement to BSKI alleging in her letter dated January 14, 2008 that "I (respondent) received said amount for safekeeping only. It is our customary practice with then late Judge Joselito R. Dela Cruz to receive money for settlement if the defendant has insufficient amount for the settlement of his obligation." Despite having received another Memorandum on February 5, 2008 requiring her to remit said money to the Court, respondent was able to remit the same only on March 10, 2008. (Annex "D" of the Motion to Admit Addendum to Respondent's Position Paper)

There was no showing that respondent issued receipt for said deposit.

Clerks of Court, being accountable officers, are mandated to requisition receipts from proper agencies, such as the Property Division of the Office of the Court Administrator, since "issuance of temporary receipts is prohibited." (2.1.2.3b.3 of the 2002 Revised Manual for Clerks of Court) Thus, issuance of temporary receipts, more so none issuance at all as in this case, is a clear violation of said prohibition as it would create doubt on the validity of said exactions and would have an effect on the trustworthiness of the employee as well as the Court itself.

As to the failure to immediately remit to the Fiduciary Savings Account with the LBP the cash bonds deposited by the accused in Criminal Cases 2664 and 2670

On January 15, 2008, respondent acknowledged receipt of "the amount xxx ₱10,000 PESOS, bail bond deposit in Criminal Case No. 2664 xxx under date of April 25, 2005 xxx and the amount of xxx ₱3,000 PESOS xxx bail bond deposit in Criminal Case No. 2670 xxx." (*Rollo*, page 29)

And on her letter addressed to Judge Arocena, after having received Memorandum No. 2 requiring her to remit said bail bond to LBP, respondent even asked for an extension to remit said accountabilities until February 29, 2008. (*Rollo*, page 34)

Said acknowledgement and letter proved respondent's failure to deposit to LBP the said bonds immediately[,] in clear violation of circulars.

SC Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. It is mandated therein that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank." In page 392 of The 2002 Revised Manual for Clerks of Court, *i.e.* 2.1.2.2.c.1, it was mandated that "(a)ll collections from bail bonds, rental deposits and other fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank, the Land Bank of the Philippines."

In the instant case, respondent Angeles violated the foregoing guidelines issued by the Court. Clearly, there was gross neglect of duty. The records show that respondent received several bail bond deposits but failed to remit the same to the LBP. Undoubtedly, respondent committed a serious infraction in her failure to deposit on time the court's collection. Her subsequent turnover of said cash deposits will not exonerate her from liability.

"Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect at the very least constitutes misfeasance." (A.M. No. P-05-2065, April 2, 2009)

Her failure to deposit said amount is prejudicial to the Court since it was not able to earn interest income during the time the same was in respondent's possession. Likewise, failure to immediately remit the same after having been mandated to do so, creates on the mind of the Court the possibility that said money was appropriated by the respondent for her personal use.

"Such conduct raises grave doubts regarding the trustworthiness and integrity of the employee. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time." (*Ibid*)

As to failure to remit to the proper authorities monies received for safekeeping immediately upon suspension

For the sake of argument, supposing it is valid for her to safe keep monies for settlement without corresponding receipt, perusal of the records would show, despite respondent's allegation in her position paper that said money remained intact, that respondent was able to remit only said amount to the OIC Clerk of Court on March 10, 2008, or more than a month after having received Judge Arocena's mandate for her to remit the same.

This belated remittance likewise creates doubt as to the integrity and trustworthiness of the respondent.[16]

The Court's Ruling

We find Judge Florendo's recommendation to be well-founded. As the judge aptly put it, Angeles failed to dispute or disprove the charges against her. We, thus, find Angeles liable for (1) failure to immediately account for the excess in the cash bond she received; (2) failure to issue appropriate receipts; (3) failure to safekeep monies received; and, (4) failure to remit/deposit cash bonds in the government depository (Land Bank of the Philippines) upon receipt. Angeles' infractions constituted dishonesty and grave misconduct for which she deserves to be dismissed from the service.

Angeles' resignation, as Judge Florendo noted, is of no consequence, as there is no showing in the records that the Court accepted her resignation. Even as Judge Florendo believed that Angeles should be dismissed from the service, she, nonetheless, recommended that Angeles be allowed to enjoy her accrued benefits in recognition of her 25 years of service in the government.

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[16] A.M. No. P-10-2880, p. 276.

We now consider A.M. No. 09-2-32-MTC where the Court directed[17] Angeles to (1) restitute the balance of the JDF amounting to ₱398.20, and submit to the CMO-OCA a copy of the machine-validated deposit slip as proof of the restitution; and (2) submit valid documents showing that withdrawn cash bonds amounting to ₱64,200.00 and undeposited cash bonds of ₱64,000.00 were deposited in the Court's FF or were refunded to the concerned bondsmen/litigants, otherwise, to restitute said amounts.

On May 15, 2009, Angeles submitted to the OCA her memorandum of compliance with the Court's directives.[18] It was accompanied by several annexes purporting to show in detail her compliance, but the OCA does not appear to have validated the compliance. In this light, we find that compliance with the Court's directives of March 9, 2009 needs to be validated; otherwise, the proceeds of her separation benefits shall be applied to her accountabilities.

WHEREFORE, premises considered, Ms. Marissa U. Angeles, Clerk of Court II, MTC, Pantabangan, Nueva Ecija, is declared *LIABLE* for dishonesty and grave misconduct, and is *DISMISSED* from the service with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to her re-employment in any branch or service of the government, including government-owned and controlled corporations.

The Court Management Office of the Office of the Court Administrator is *DIRECTED* to validate and confirm Angeles' compliance with the Court's directives of March 9, 2009; otherwise, part or the whole of what Angeles shall receive as accrued benefits should answer for her accountabilities, if any.

SO ORDERED.

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

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

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[17] *Supra* note 1.

[18] *Rollo* (A.M. No. 09-2-32-MTC), pp. 56-71.

EN BANC

[A.M. No. RTJ-07-2062.* January 18, 2011]

IMELDA R. MARCOS, *complainant, vs.* **JUDGE FERNANDO VIL PAMINTUAN,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; WHEN THE LAW IS SO ELEMENTARY, NOT TO KNOW IT OR TO ACT AS IF ONE DOES NOT KNOW IT, CONSTITUTES GROSS IGNORANCE OF THE LAW.— It is axiomatic that when a judgment is final and executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine of immutability and inalterability of a final judgment has a two-fold purpose, to wit: ***(1)*** to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and ***(2)*** to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. It is inexcusable for Judge Pamintuan to have overlooked such basic legal principle no matter how noble his objectives were at that time. Judges owe it to the public to be well-informed, thus, they are expected to be familiar with the statutes and procedural rules at all times. When the law is so elementary, not to know it or to act as if one does not know it, constitutes gross ignorance of the law.

2. ID.; ID.; ID.; RESPONDENT MANIFESTED GROSS IGNORANCE OF THE LAW IN ISSUING THE QUESTIONED AUGUST 15, 2006 ORDER; HE FAILED TO CONFORM TO THE HIGH STANDARDS OF COMPETENCE REQUIRED OF JUDGES UNDER THE CODE OF JUDICIAL CONDUCT.— The Court agrees with the view of OCA that Judge Pamintuan manifested gross ignorance of the law in issuing the questioned August 15, 2006 Order. Verily, he failed to conform to the high standards of competence required of judges under the Code of Judicial Conduct, which provides that: Rule 1.01 - A judge should be

* Formerly OCA-I.P.I. No. 07-2607-RTJ.

the embodiment of competence, integrity, and independence. Rule 3.01 — A judge shall x x x maintain professional competence. Competence is a mark of a good judge. When a judge exhibits an utter lack of know-how with the rules or with settled jurisprudence, he erodes the public's confidence in the competence of our courts. It is highly crucial that judges be acquainted with the law and basic legal principles. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges.

3. ID.; ID.; ID.; DISMISSAL, A PROPER PENALTY, RESPONDENT JUDGE HAVING BEEN PREVIOUSLY WARNED AND PUNISHED FOR VARIOUS INFRACTIONS; CASE AT BAR.— The Court has held time and again that a judge is expected to demonstrate more than just a cursory acquaintance with statutes and procedural rules. It is essential that he be familiar with basic legal principles and be aware of well-settled doctrines. As fittingly stated in the case of *Borromeo v. Mariano,* "Our conception of good judges has been, and is, of men who has a mastery of the principles of law, who discharge their duties in accordance with law." Thus, this Court has had the occasion to hold that: When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order. After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles. In this case, the Court finds Judge Pamintuan accountable for gross ignorance of the law. He could have simply been suspended and fined, but the Court cannot take his previous infractions lightly. His violations are serious in character. Having been previously warned and punished for various infractions, Judge Pamintuan now deserves the ultimate administrative penalty — dismissal from service.

D E C I S I O N

PER CURIAM:

The judiciary cannot keep those who cannot meet the exacting standards of judicial conduct and integrity. This being so, in the performance of the functions of their office, judges must endeavor to act in a manner that puts them and their conduct above reproach and beyond suspicion. They must act with extreme care for their office indeed is burdened with a heavy load of responsibility.[1]

At bench is an administrative case filed by Imelda R. Marcos *(Marcos)* against Judge Fernando Vil Pamintuan *(Judge Pamintuan)*, Presiding Judge, Branch 3, Regional Trial Court, Baguio City *(RTC)*, for Gross Ignorance of the Law.

THE FACTS:

From the records, it appears that on November 15, 2006, Marcos filed a complaint-affidavit charging Judge Pamintuan with Gross Ignorance of the Law for reversing *motu proprio* the final and executory order of then Acting Presiding Judge Antonio Reyes *(Judge Reyes)* dated May 30, 1996 (and modified in the September 2, 1996 order), in Civil Case No. 3383-R, entitled *"Albert D. Umali, in his capacity as the exclusive administrator and as President of the Treasure Hunters Association of the Philippines v. Jose D. Roxas, et al."*

Judge Reyes dismissed Civil Case No. 3383-R in an order, dated May 30, 1996, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises and further, for failure to comply with Supreme Court Administrative Circular No. 04-94 dated April 1, 1994 on forum shopping, the petition is **DISMISSED**.
>
> It is further **ORDERED** that the Buddha statuette in the custody of this Court be immediately **RELEASED** to the children of the late Rogelio Roxas, namely, Henry Roxas and Gervic Roxas and to

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[1] See the case of *Bayaca v. Ramos*, A.M. No. MTJ-07-1676, January 29, 2009, 577 SCRA 93, 104.

decedent's brother, Jose Roxas, **IN TRUST FOR** the estate of the late Rogelio Roxas.

SO ORDERED.

The parties filed their separate motions for reconsideration of the said order but both motions were denied by the RTC for lack of merit in its June 24, 1996 Order.

On June 25, 1996, the Office of the Solicitor General *(OSG)* filed its own motion for reconsideration which was also denied in a court order dated September 2, 1996.

Ten (10) years later, in an order dated May 9, 2006, Judge Pamintuan set the case for hearing on June 29, 2006 purportedly to formally and finally release the Golden Buddha to its rightful owner. Marcos was one of the subpoenaed parties, being a person with interest in the case.

On August 15, 2006, Judge Pamintuan issued an order, the dispositive portion of which reads:

> WHEREFORE, in accordance with the final and executory Order of this Court dated September 2, 1996, the Buddha Statuette or Buddha replica is awarded to the estate of Rogelio Roxas. However, the Buddha Statuette or Buddha replica shall be under *custodia legis* until the final settlement of the estate of the late Rogelio Roxas, or upon the appointment of his estate's administrator.
>
> This Court further rules that the Golden Buddha in its custody is a fake one, or a mere replica of the original Golden Buddha which has a detachable head, which has been missing since 1971 up to the present, or for a period of thirty five (35) years by now, and has been in unlawful possession of persons who do not have title over it, nor any right at all to possess this original Golden Buddha.

Marcos averred that the act of Judge Pamintuan in reversing a final and executory order constituted gross ignorance of the law. In her complaint, citing A.M. No. 93-7-696-0, she argued that final and executory judgments of lower courts were not reviewable even by the Supreme Court. Judge Pamintuan reversed a final and executory order not upon the instance of any of the parties in Civil Case No. 3383-R but *motu proprio*.

He even failed to indicate where he obtained the information that the Golden Buddha sitting in his sala was a "mere replica." Marcos claimed that his order was in conflict with Rule 36 of the Revised Rules of Civil Procedure which provides that a judgment or final order shall state "clearly and distinctly the facts and the law on which it (his order) is based xxx."

In his Comment, Judge Pamintuan argued that Marcos could have just filed a pleading manifesting lack of interest or moving for the recall of the subpoena, but she did not. In fact, her counsel, Atty. Robert Sison, entered his appearance and actually appeared in court. With her appearance through counsel, she subjected herself to the jurisdiction of the court. She should have filed a motion for reconsideration of the August 15, 2006 Order instead of filing an administrative complaint. As she did not, Judge Pamintuan opined that her lost judicial remedies could not be substituted with the filing of this case.

Marcos, in her Reply-Affidavit, stated that she was not a party in Civil Case No. 3383-R, hence, she could not file a motion for reconsideration. She cited Section 1 of Rule 37 which provides that only the aggrieved party may file a motion for reconsideration within the period for taking an appeal.

In its Report, dated June 29, 2007, the Office of the Court Administrator *(OCA)* recommended that Judge Pamintuan be *dismissed* from the service with the additional penalty of forfeiture of all his retirement benefits and disqualification from re-employment in the government service, including government owned or controlled corporations, for Gross Ignorance of the Law and for "violation of Canon 4 of the Code of Judicial Conduct." The OCA pointed out that:

> As held, execution is the fruit and end of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Bearing this in mind, respondent issued the questioned Order dated August 15, 2006, the pertinent text of which reads:
>
> > Despite said Order which was issued almost ten (10) years ago, the estate of the late Rogelio Roxas has not taken possession of the Buddha Statuette or the Buddha replica from

> the Court, thus, this incumbent Presiding Judge, *seeing the necessity of finally disposing of the Buddha Statuette physically, and finding out the present statue of the late Rogelio Roxas, ordered the hearing on June 29, 2006. (Italics supplied)*
>
> x x x x x x x x x
>
> WHEREFORE, in accordance with the final and executory Order of this Court dated September 2, 1996, the Buddha Statuette or Buddha replica is awarded to the estate of Rogelio Roxas. However, the Buddha Statuette or Buddha replica shall be under *custodia legis* until the final settlement of the estate of the late Rogelio Roxas, or upon the appointment of his estate's administrator.

Clearly, the questioned Order conforms to the directive of the Court in its previous Order dated May 30, 1996, which provides:

> It is further ORDERED that the Buddha Statuette in custody of this Court be immediately RELEASED to the children of the late Rogelio Roxas, namely, Henry Roxas and Gervic Roxas and to the decedent's brother, Jose Roxas, IN TRUST FOR the estate of the late Rogelio Roxas.

And modified in an Order dated September 2, 1996, which reads:

> "WHEREFORE, the Motion for Reconsideration filed by the Solicitor General is DENIED. The Order of this Court on May 30, 1996 remains insofar as the Buddha statuette is awarded to the state of the late Rogelio Roxas and is at the same time MODIFIED in the sense that the Buddha statuette shall be under the *custodia legis* until the final settlement of the estate of the late Rogelio Roxas or upon the appointment of his estate's administrator."
>
> x x x x x x x x x
>
> A normal course of proceedings would have been that respondent Judge waits for the proper party to go to court to ask for the release of the Buddha statuette. x x x.
>
> However, respondent was being overzealous when he ruled that the Golden Buddha in its custody is a "fake one, or a mere replica." Notwithstanding that the same may be his' and the

> litigants' opinion during the hearing of June 29, 2006. (sic) He should have borne in mind that there were no issues nor controversies left for consideration in Civil Case No. 3383-R. It must be noted that the Order dated May 30, 1996 (and modified on September 2, 1996) has become final and executory. Hence, issues have been settled and the matter laid to rest. As repeatedly ruled by this Court, a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law. Should judgment of lower courts – which may normally be subject to review by higher tribunals – become final and executory before, or without exhaustion of all recourse of appeal, they too become inviolable, impervious to modification. They may, then, no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by Supreme Court, much less by any other official, branch or department of government.
>
> It is inexcusable for respondent Judge to have overlooked such an elementary legal principle."

Upon recommendation of the OCA, the Court, in its July 31, 2007 Resolution, preventively suspended Judge Pamintuan pending resolution of this administrative case to stop him from committing further damage to the judiciary. Judge Pamintuan moved for reconsideration and eventually filed a Motion for Early Resolution of Motion for Reconsideration and to Submit the Case for Decision.

The matter was referred again to the OCA for evaluation, report and recommendation. In its Memorandum dated November 22, 2007, the OCA recommended that "the Motion for Reconsideration filed by respondent be GRANTED and that the Order of Preventive Suspension dated July 31, 2007, be LIFTED." Thus, in its December 11, 2007 Resolution, the Court granted the Motion for Reconsideration filed by Judge Pamintuan and lifted the Order of Preventive Suspension effective immediately.

Judge Pamintuan then sent a letter requesting for his backpay and benefits covering the period of his preventive suspension

from August to December 13, 2007. In its June 3, 2008 Resolution, following the recommendation of the OCA, the Court denied said request for being premature and for lack of merit.

Now, the Court resolves the complaint against Judge Pamintuan.

After a thorough study of the case, the Court agrees with the evaluation and recommendation of the OCA.

Doubtless, the May 30, 1996 Order, which was modified on September 2, 1996, in Civil Case No. 3383-R, has long become final and executory. In his assailed August 15, 2006 Order, Judge Pamintuan made express declarations that were not embodied either in the May 30, 1996 Order or in the September 2, 1996 Order. He ruled that the Golden Buddha in the custody of the court was a "fake one, or a mere replica" of the original. This may be his opinion or the litigants' during the hearing of June 29, 2006 but Judge Pamintuan should have realized that the trial court did not rule on that point in its May 30, 1996 Order (even in its September 2, 1996 Order). Insofar as this issue is concerned, the May 30, 1996 Order pertinently reads:

> Albert Umali anchors his claim on the supposed Memorandum of Agreement between him and the late Rogelio Roxas executed on November 25, 1988. He claims that under this agreement, he and Rogelio Roxas will share in the profits of their business venture, that is, treasure hunting and claim for lost treasure.
>
> He adds, however, that the Buddha with this Court is not the genuine Buddha. According to him, he has photographs to prove the existence of the real and genuine golden Buddha. To be sure, this Court is baffled by the foregoing submission of Mr. Umali, if the subject Buddha is not the genuine golden Buddha, and therefore a fake one, it cannot be covered by the memorandum of Agreement.
>
> Be it noted that the Memorandum of Agreement speaks of treasure hunting and lost treasure which could refer to things of great value. Based on Mr. Umali's own claim the subject Buddha has no appreciable material value. It is therefore outside the scope of the Memorandum of Agreement. This being the case, what right then does Albert Umali have to demand the return of the subject Buddha to him? On this

score alone, this Court should already reject the claim of Mr. Umali over the Buddha now in this Court's custody.

x x x x x x x x x

Now, as to whether or not there is that controversial golden Buddha different from the one now in custody of this Court, there is none. X x x.

Section 6, Canon 4 of the New Code of Judicial Conduct provides:

SECTION 6. Judges, like any other citizen, are entitled to **freedom of expression**, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. [Emphases ours]

Judge Pamintuan indeed made a serious error in making such a pronouncement in the challenged order.

It is axiomatic that when a judgment is final and executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine of immutability and inalterability of a final judgment has a two-fold purpose, to wit: ***(1)*** to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and ***(2)*** to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely.[2]

It is inexcusable for Judge Pamintuan to have overlooked such basic legal principle no matter how noble his objectives were at that time. Judges owe it to the public to be well-informed, thus, they are expected to be familiar with the statutes and procedural rules at all times. When the law is so elementary, not to know it or to act as if one does not know it, constitutes gross ignorance of the law.[3]

[2] *Social Security System v. Isip*, G.R. No. 165417, April 4, 2007, 520 SCRA 310, 315.

[3] *Genil v. Rivera*, A.M. No. MTJ-06-1619, January 23, 2006, 479 SCRA 363, 373.

The Court agrees with the view of OCA that Judge Pamintuan manifested gross ignorance of the law in issuing the questioned August 15, 2006 Order. Verily, he failed to conform to the high standards of competence required of judges under the Code of Judicial Conduct, which provides that:

> Rule 1.01 — A judge should be the embodiment of competence, integrity, and independence.
>
> Rule 3.01 — A judge shall x x x maintain professional competence.

Competence is a mark of a good judge. When a judge exhibits an utter lack of know-how with the rules or with settled jurisprudence, he erodes the public's confidence in the competence of our courts. It is highly crucial that judges be acquainted with the law and basic legal principles. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges.[4]

Notably, this is **not** Judge Pamintuan's first and sole administrative case. In *The Officers and Members of the Integrated Bar of the Philippines Baguio-Benguet Chapter v. Pamintuan*,[5] Judge Pamintuan was charged with Gross Ignorance of the Law, Gross Violation of the Constitutional Rights of the Accused, Arrogance and Violation of the Canons of Judicial Ethics and was suspended for one (1) year.

In the case of *Atty. Gacayan v. Hon. Pamintuan*,[6] he was found guilty of violating Canons 2 of the Code of Judicial Conduct and Canon 3 of the Code of Judicial Ethics which amounted to grave misconduct, conduct unbecoming of an officer of the judiciary and conduct prejudicial to the best interest of the service. He was reprimanded and was sternly warned that a repetition of the foregoing or similar transgressions would be dealt with more severely. He was also meted a fine of ₱10,000.00.

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[4] *Balayon, Jr. v. Dinopol*, A.M. No. RTJ-06-1969, June 15, 2006, 490 SCRA 547, 556.

[5] 485 Phil. 473 (2004).

[6] 373 Phil. 460 (1999).

In a much recent case, *Biggel v. Pamintuan*,[7] he was charged with manifest partiality, gross misconduct, ignorance of the law, and unjust and malicious delay in the resolution of the incidents in Criminal Case No. 25383-R entitled "*People of the Philippines v. Emil Biggel*," a case for estafa. He was found guilty of violating Rule 3.05 of the Code of Judicial Conduct, which requires judges to dispose of court business promptly. The Court imposed upon him a fine in the amount of ₱20,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

As of this time, there is another administrative case *yet* to be resolved against Judge Pamintuan filed by one Peter Cosalan for gross ignorance of the law.[8] Although, this is not pertinent in the resolution of this case, it is clear from the other undisputed records that Judge Pamintuan has failed to meet the exacting standards of judicial conduct and integrity. He has shown himself unworthy of the judicial robe and place of honor reserved for guardians of justice. As held in the case of *Malabed v. Asis:*[9]

> Respondent Judge must bear in mind that membership in the judiciary circumscribes one's personal conduct and imposes upon him certain restrictions, the faithful observance of which is the price one has to pay for holding such a distinguished position. x x x His conduct must be able to withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system lest public confidence in the judiciary would be eroded by the incompetent, irresponsible and negligent conduct of judges.

The Court has held time and again that a judge is expected to demonstrate more than just a cursory acquaintance with statutes and procedural rules. It is essential that he be familiar with basic legal principles and be aware of well-settled doctrines.[10]

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[7] A.M. No. RTJ-08-2101, July 23, 2008, 559 SCRA 344.

[8] OCA IPI No. 10-3481-RTJ.

[9] A.M. No. RTJ-07-2031, August 4, 2009, 595 SCRA 23, 41.

[10] *Atty. Adalim-White v. Judge Bugtas*, 511 Phil. 615, 627 (2005).

As fittingly stated in the case of *Borromeo v. Mariano,*[11] "Our conception of good judges has been, and is, of men who has a mastery of the principles of law, who discharge their duties in accordance with law." Thus, this Court has had the occasion to hold that:

> When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order. After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles.[12]

In this case, the Court finds Judge Pamintuan accountable for gross ignorance of the law. He could have simply been suspended and fined, but the Court cannot take his previous infractions lightly. His violations are serious in character. Having been previously warned and punished for various infractions, Judge Pamintuan now deserves the ultimate administrative penalty — dismissal from service.

The Court doubts if he ever took seriously its previous warnings that a repetition of his offenses would merit a more severe sanction from this Court. His conduct in this case and his prior infractions are grossly prejudicial to the best interest of the service. As shown from the cited administrative cases filed against Judge Pamintuan, he was liable not only for gross ignorance of the law but for other equally serious transgressions. This Court should, therefore, refrain from being lenient, when doing so would give the public the impression that incompetence and repeated offenders are tolerated in the judiciary.

WHEREFORE, respondent Judge Fernando Vil Pamintuan of the Regional Trial Court of Baguio City, Branch 3, is *DISMISSED* from the service. He shall forthwith *CEASE* and

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[11] 41 Phil. 322, 333 (1921).

[12] *Atty. Macalintal v. Judge Teh*, 345 Phil. 871, 879 (1997).

DESIST from performing any official act or function appurtenant to his office upon service on him of this decision.

SO ORDERED.

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

EN BANC

[A.M. No. RTJ-09-2173. January 18, 2011]
(Formerly A.M. OCA IPI No. 09-3084-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE BENJAMIN P. ESTRADA, REGIONAL TRIAL COURT, Branch 9, MALAYBALAY CITY, BUKIDNON, and JUDGE JOSEFINA GENTILES-BACAL, RTC, Branch 10, MALAYBALAY CITY, BUKIDNON,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW; JUDGES HAVE NO AUTHORITY OF TAKING COGNIZANCE OF CASES PENDING BEFORE ANOTHER COURT; CASE AT BAR. — We find the OCA recommendation in order. There is no question about the guilt of the two judges. Their shared intention to uphold the right of the accused to liberty cannot justify their action in excess of their authority, in violation of existing regulations. The vacuum in a first level court, such as the MTCC in Malaybalay City, Bukidnon, created by the absence of a presiding judge, is not remedied by a take over of the duties of the still-to-be appointed or designated judge for the court, which exactly was what Judge Estrada and Judge Bacal

did. The remedy lies in Chapter V of the Guidelines in the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties. x x x Instead of allowing Judge Estrada and herself to act on cases pending before the MTCC, Judge Bacal, as executive judge of the RTC, Malaybalay City, should have designated a municipal judge within her area of supervision, to act on the pending cases. She took time (two months as she claimed) in making the designation, which delayed action, by itself, is a negative reflection on her performance as an executive judge.

2. ID.; ID.; ID.; RESPONDENT JUDGE HAS NO MORE AUTHORITY TO TAKE OVER CRIMINAL CASE NO. 878-08 PENDING BEFORE THE METROPOLITAN TRIAL COURT IN CITIES (MTCC), MALAYBALAY, BUKIDNON, HAVING ALREADY TAKEN HIS OATH AS REGIONAL TRIAL COURT JUDGE ON JULY 17, 2008, ALMOST A MONTH BEFORE HE ISSUED THE ORDER ON THE SAID CRIMINAL CASE. — Judge Estrada, who was the former presiding judge of the MTCC, Malaybalay City, acted only on one case, but like Judge Bacal, he had no authority to take over the case as he had already taken his oath as RTC judge on July 17, 2008, almost a month before he issued the order in Criminal Case No. 878-08, *People v. Bellman E. Durango, et al., for Attempted Homicide*. Either Judge Estrada and Judge Bacal forgot the guidelines or chose to ignore them, but whatever it was, they should suffer the consequences of their actions in violation of the guidelines. In *Mupas v. Judge Español*, the Court found respondent Judge Español guilty of gross ignorance of the law when she overrode the MTCC's action in cases pending with it under the guise of "administrative supervision." The Court stated in that case: Respondent urges that her conduct was nothing more than the zealous fulfillment of her duties as Executive Judge of the RTC, Dasmariñas, Cavite. However, it is elementary that an Executive Judge only has administrative supervision over lower courts. Her function relates only to the management of first and second level courts, within her administrative area with a view to attaining prompt and convenient dispatch of its business. Acting as such, she cannot unilaterally override the MTC's actions in cases pending with it under the guise of "administrative supervision," without running afoul of the orderly administration of justice. Only when her court's jurisdiction is appropriately invoked in an appeal or *certiorari* and other special civil actions can respondent judge, in her judicial capacity, override the lower court's judgment.

3. ID.; ID.; ID.; RESPONDENTS DID NOT ONLY OVERRIDE THE ACTION OR DECISION OF A LOWER COURT BUT ENTIRELY TOOK OVER THE JUDICIAL FUNCTION OF THE LOWER COURT. — What Judge Estrada and Judge Bacal did was worse than overriding the action or decision of a lower court. They entirely took over the judicial function of the lower court. While they might have been motivated by noble intentions in taking cognizance of the pending cases with the MTCC because they wanted to uphold the accused's right to liberty, they still cannot escape liability. However well-intentioned they might have been, they still did not have the authority to act on the cases as these were not pending before their respective salas. Their lack of authority was so patent and so self-evident; to disregard it would itself be ignorance of the law. In *Mupas*, the Court recognized that "not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, but only in cases xxx of tolerable misjudgment. Where, however, the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law." Clearly, Judge Estrada and Judge Bacal are guilty of gross ignorance of the law.

4. ID.; ID.; ID.; RECOMMENDED PENALTY MODIFIED CONSIDERING THAT RESPONDENTS' ACTIONS WERE MOTIVATED BY NOBLE INTENTIONS TO ADMINISTER JUSTICE. — Section 8(9), Rule 140 of the Rules of Court classifies ignorance of the law or procedure as a serious charge for which Section 11 imposes the following sanctions: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. We note that Judge Estrada and Judge Bacal are being made to answer administratively for the first time for action while in office. In this light and as their actions were motivated by noble intentions to administer justice, we find a fine of ₱21,000.00 in order, with a stern warning that the commission of the same or similar offense shall be dealt with more severely.

ABAD, *J.*, *dissenting opinion*:

JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW; SINCE NO TEMPORARY JUDGE HAD BEEN NAMED AND ASSUMED OFFICE, RESPONDENT EXECUTIVE JUDGE DID NOT ACT WITH "GROSS" IGNORANCE OF THE LAW PRIOR TO THE DESIGNATION OF A PAIRING JUDGE; SHE ACTED IN GOOD FAITH IN DISPOSING OF THE INCIDENTS TO AVOID VIOLATION OF THE RIGHT OF THE ACCUSED TO A SPEEDY TRIAL OR DISPOSITION OF THEIR CASES. — Judge Josefina Gentiles-Bacal, the Executive Judge, dismissed six of the criminal cases upon motion of the public prosecutor, Judge Bacal remanded two criminal cases to the City prosecutor's office considering that the accused were minors. Since no temporary judge had been named and assumed office, I believe that the executive Judge did not act with "gross" ignorance of the law prior to the designation of a pairing judge, she acted in good faith in disposing of the incidents to avoid the violation of the right of the accused to speedy trial or disposition of their cases. I believe that a finding of indiscretion rather than gross ignorance of the law would be more appropriate in the two cases. I vote for a mere reprimand or at most a fine of ₱5,000.00.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the administrative matter involving two judges of the Regional Trial Court (RTC), Malaybalay City, Bukidnon - Judge Benjamin P. Estrada of Branch 9 and Judge Josefina Gentiles-Bacal of Branch 10.

The Antecedents

The case arose from the Memorandum,[1] dated October 16, 2008, of Atty. Nicandro A. Cruz, officer-in-charge, Court Management Office, Office of the Court Administrator (OCA), addressed to then Deputy Court Administrator (DCA) Reuben P. De la Cruz, regarding "[a]nomalies in the disposition of cases

[1] *Rollo*, pp. 11-12.

in the Municipal Trial Court in Cities (MTCC), Malaybalay City, Bukidnon[.]"[2]

Atty. Cruz reported that in the course of reviewing the Monthly Report of cases from the MTCC Malaybalay City, Bukidnon, the Statistical Division of the Court Management Office, OCA, noted several orders, attached to the report, that were issued by Executive Judge Josefina Gentiles-Bacal, RTC, Malaybalay City, and Judge Benjamin P. Estrada, RTC, Branch 9, same station, dismissing the cases then pending in the MTCC.

Atty. Cruz pointed out that the MTCC, Malaybalay City had no regular presiding judge at the time the orders were issued, as Judge Estrada, the former presiding judge, had been appointed to preside over the RTC, Branch 9, Malaybalay City, on June 1, 2008. Atty. Cruz commented that Judge Estrada could no longer take cognizance of cases pending in his former sala after he took his oath on July 17, 2008; neither could Judge Bacal do the same even if she had then been the executive judge of the RTC, Malaybalay City.

The subject cases are as follows:

CRIMINAL CASE NO.	CAPTION	DATE ISSUED
878-08	*People v. Bellman E. Durango, et al.* for Attempted Homicide	August 15, 2008
848-08	*People v. Ferdy C. Domotdot* [for] Violation of City Ordinance No. 50	August 26, 2008
766-08	*People v. Hilario and John Ril Dao-on* for Slight Physical Injuries	August 26, 2008
882-08	*People v. Vicky Sotta y Ranes* for Violation of City Ordinance No. 50	August 26, 2008

[2] *Id.* at 11.

796-08	*People v. Neil Rod Lacasao* for Attempted Homicide	August 26, 2008
398-06	*People v. Olimpio A. Lagubis* for Attempted Arson	August 28, 2008
522-07	*People v. Alejandro Borbon* for Reckless Imprudence Resulting to Serious Physical Injuries	August 19, 2008
872-08	*People v. Ajimar Cacay y Tubeo* for Theft	August 8, 2008
871-08	*People v. Ajimar Cacay y Tubeo* for Concealment of Deadly Weapon	August 8, 2008

In a 1st Indorsement dated October 22, 2008,[3] DCA De la Cruz referred the matter to Judge Bacal and to Judge Estrada for comment.

Judge Estrada submitted his letter-comment on November 19, 2008,[4] in relation with his dismissal of Criminal Case No. 878-08, *People of the Philippines v. Bellman E. Durango, et al., for Attempted Homicide*, filed with the MTCC, Malaybalay City, Bukidnon, on August 14, 2008. He apologized for acting on the case. He thought that "the case has no more cause when the Office of the City Prosecutor of Malaybalay City filed a Motion to Dismiss on August 15, 2008."[5] He opined that the right of the accused to liberty must not be prejudiced or compromised in the absence of a sitting judge in the court. He claimed that "he had no intention to traverse the majesty of the law,"[6] even as he considered the incident as an "administrative matter" which he is allowed to take cognizance of. Judge Estrada promised not to commit the same infraction again.

[3] *Id.* at 10.

[4] *Id.* at 1.

[5] *Id.* par. 2.

[6] *Id.* par. 2.

Judge Bacal, on the other hand, filed her comment on December 3, 2008.[7] She specified the actions she took on the cases mentioned in the OCA report, thus:

CRIMINAL CASE NO.	CAPTION	ACTION/S TAKEN
848-08	*People v. Ferdy C. Domotdot* [for] Violation of City Ordinance No. 50	Dismissed, upon motion of the Prosecutor considering that the accused has already paid his administrative fine.
766-08	*People v. Hilario and John Ril Dao-on* for Slight Physical Injuries	Dismissed, upon motion of the Prosecutor considering that Private complainant Armando Jaroy has executed an Affidavit of Desistance.
882-08	*People v. Vicky Sotta y Ranes* for Violation of City Ordinance No. 50	Dismissed, upon motion of the Prosecutor considering that the accused has already paid his administrative fine.
796-08	*People v. Neil Rod Lacasao* for Attempted Homicide	Dismissed, upon motion of the Prosecutor considering that Private complainant Rolando Espatero, Jr. has already executed an Affidavit of Desistance.
398-06	*People v. Olimpio A. Lagubis* for Attempted Arson	Dismissed, upon motion of the Prosecutor considering that Private complainant Oliver P. Salga has executed an Affidavit of Desistance.
522-07	*People v. Alejandro Borbon* for Reckless Imprudence Resulting to Serious Physical Injuries	Dismissed, upon motion of the Prosecutor considering that Private complainant Avanne C. Macas has already executed an Affidavit of Desistance.
872-08	*People v. Ajimar Cacay y Tubeo* for Theft	Remanded to the City Prosecutor's Office considering that accused is a minor.

[7] *Id.* at 3-4.

871-08	*People vs. Ajimar Cacay y Tubeo* for Concealment of Deadly Weapon	Remanded to the City Prosecutor's Office Considering that Accused is a minor.

Judge Bacal explained that "It was her honest belief that as Executive Judge, she may exercise such other powers and prerogatives as may be necessary or incidental in the performance of her functions in relation to court administration, there being no Presiding Judge, in the Municipal Trial Court, Malaybalay City. She believes that the constitutional right to liberty of the accused shall prevail after undergoing the legal procedure in accordance with the paramount interest of the accused who are detained prisoners and minors."[8] She added that she never intended to defy the law, her purpose in deciding the cases was to uphold the right of the accused to liberty when there was no more basis, in fact and in law, to further prosecute them.

Judge Bacal pointed out that it took her two (2) months to designate a judge in the MTCC, Malaybalay City.

Upon recommendation of the OCA, the Court resolved to re-docket the case as a regular administrative matter against Judge Estrada and Judge Bacal, and to require them to manifest whether they were willing to have the case resolved on the basis of the pleadings and the records.

Judge Estrada and Judge Bacal submitted the matter for resolution, on June 15, 2009[9] and June 22, 2009,[10] respectively.

The OCA Report

On March 3, 2009, the OCA submitted its report. It found Judge Estrada and Judge Bacal guilty of gross ignorance of the law for taking cognizance of cases pending before another court — the MTCC, Malaybalay, Bukidnon. The two judges admitted the acts, although they tried to avoid liability by professing that they did not intend to violate the law and that

[8] *Id.* at 4, par. 1.

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

[10] *Id.* at 34.

they acted as they did out of their desire to uphold the right of the accused to liberty in the cases they took cognizance of.

The OCA recommended that both judges be fined ₱40,000.00 for gross ignorance of the law.

The Court's Ruling

Except for the imposable penalty, we find the OCA recommendation in order. There is no question about the guilt of the two judges. Their shared intention to uphold the right of the accused to liberty cannot justify their action in excess of their authority, in violation of existing regulations. The vacuum in a first level court, such as the MTCC in Malaybalay City, Bukidnon, created by the absence of a presiding judge, is not remedied by a take over of the duties of the still-to-be appointed or designated judge for the court, which exactly was what Judge Estrada and Judge Bacal did. The remedy lies in Chapter V of the Guidelines in the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties,[11] which provides:

"Section 1. Designation of Judges of the First Level Courts to Try Cases. (a) The Executive Judge of the RTC shall have authority to designate a municipal judge within his/her area of administrative supervision to try cases of other courts of the first level within said area of administrative supervision in case of official leave of absence, inhibition, disqualification, or preventive suspension of the municipal judge concerned, or of permanent or temporary vacancy in the position. Such designation shall be effective immediately, unless revoked by the Supreme Court.

The Executive Judge shall furnish the Office of the Court Administrator with copies of the orders of designation effected under this Section within five (5) days from the date of such designation."

Instead of allowing Judge Estrada and herself to act on cases pending before the MTCC, Judge Bacal, as executive judge of the RTC, Malaybalay City, should have designated a municipal judge within her area of supervision, to act on the pending cases. She took time (two months as she claimed) in making

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[11] A.M. No. 03-8-02-SC.

the designation, which delayed action, by itself, is a negative reflection on her performance as an executive judge.

Judge Estrada, who was the former presiding judge of the MTCC, Malaybalay City, acted only on one case, but like Judge Bacal, he had no authority to take over the case as he had already taken his oath as RTC judge on July 17, 2008, almost a month before he issued the order in Criminal Case No. 878-08, *People v. Bellman E. Durango, et al., for Attempted Homicide*.

Either Judge Estrada and Judge Bacal forgot the guidelines or chose to ignore them, but whatever it was, they should suffer the consequences of their actions in violation of the guidelines. In *Mupas v. Judge Español*,[12] the Court found respondent Judge Español guilty of gross ignorance of the law when she overrode the MTCC's action in cases pending with it under the guise of "administrative supervision." The Court stated in that case:

> Respondent urges that her conduct was nothing more than the zealous fulfillment of her duties as Executive Judge of the RTC, Dasmariñas, Cavite. However, it is elementary that an Executive Judge only has administrative supervision over lower courts. Her function relates only to the management of first and second level courts, within her administrative area with a view to attaining prompt and convenient dispatch of its business. Acting as such, she cannot unilaterally override the MTC's actions in cases pending with it under the guise of "administrative supervision," without running afoul of the orderly administration of justice. Only when her court's jurisdiction is appropriately invoked in an appeal or *certiorari* and other special civil actions can respondent judge, in her judicial capacity, override the lower court's judgment.[13]

What Judge Estrada and Judge Bacal did was worse than overriding the action or decision of a lower court. They entirely took over the judicial function of the lower court. While they might have been motivated by noble intentions in taking cognizance of the pending cases with the MTCC because they wanted to uphold the accused's right to liberty, they still cannot escape

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[12] A.M. No. RTJ-04-1850, July 14, 2004, 434 SCRA 303.

[13] *Id.* p. 310, par. 3.

liability. However well-intentioned they might have been, they still did not have the authority to act on the cases as these were not pending before their respective salas. Their lack of authority was so patent and so self-evident; to disregard it would itself be ignorance of the law. In *Mupas*, the Court recognized that "not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, but only in cases xxx of tolerable misjudgment. Where, however, the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law."[14]

Clearly, Judge Estrada and Judge Bacal are guilty of gross ignorance of the law.

Section 8(9), Rule 140 of the Rules of Court classifies ignorance of the law or procedure as a serious charge for which Section 11 imposes the following sanctions: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

We note that Judge Estrada and Judge Bacal are being made to answer administratively for the first time for action while in office. In this light and as their actions were motivated by noble intentions to administer justice, we find a fine of ₱21,000.00 in order, with a stern warning that the commission of the same or similar offense shall be dealt with more severely.[15]

WHEREFORE, premises considered, Executive Judge Josefina Gentiles-Bacal, Regional Trial Court, Branch 10,

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[14] *Id*. at 313, citing *Development Bank of the Philippines v. Llanes, Jr.*, A.M. No. MTJ-96-1105, January 14, 1997, 206 SCRA 212.

[15] *Español v. Judge Mupas*, A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13.

Malaybalay City, and Presiding Judge Benjamin P. Estrada, Regional Trial Court, Branch 9, Malaybalay City, are hereby found *GUILTY OF IGNORANCE OF THE LAW*. Accordingly, they are *FINED* ₱21,000.00, each, with a *STERN WARNING* that the commission of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

Abad, J., see dissenting opinion.

Velasco, Jr., no part due to relationship with party.

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

DISSENTING OPINION

ABAD, *J.*:

The MTCC of Malaybalay City was vacant. Several criminal cases have not been acted upon although they were ripe for dismissal. It is not clear if the accused were under detention.

Judge Benjamin P. Estrada, the former MTCC judge who was promoted as RTC judge, though that he could not act on that one case given the motion to dismiss the criminal action filed by the City prosecutor. He thought in good faith that it was an administrative matter that he could still act on.

Judge Josefina Gentiles-Bacal, the Executive Judge, dismissed six of the criminal cases upon motion of the public prosecutor. Judge Bacal remanded two criminal cases to the City Prosecutor's office considering that the accused were minors.

Since no temporary judge had been named and assumed office, I believe that the Executive Judge did not act with "gross" ignorance of the law prior to the designation of a pairing judge. She acted in good faith in disposing of the incidents to avoid the violation of the right of the accused to speedy trial or disposition of their cases.

I believe that a finding of indiscretion rather than gross ignorance of the law would be more appropriate in the two cases. I vote for a mere reprimand or at most a fine of ₱5,000.00.

EN BANC

[A.M. No. RTJ-09-2189. January 18, 2011]
(Formerly A.M. OCA IPI No. 08-2837-RTJ)

VICTORIANO SY, *complainant, vs.* **Judge OSCAR E. DINOPOL, Regional Trial Court, Branch 24, Koronadal City,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW; RESPONDENT JUDGE NOT LIABLE THEREFOR IN HIS HANDLING OF CIVIL CASE NO. 1403-24 AND MISC. CASE NO. 1440-24; CASE AT BAR.— Judge Dinopol cannot be disciplined for ignorance of the law and of procedure in his handling of Civil Case No. 1403-24 (for *Annulment and/or Declaration of Nullity of Real Estate Mortgage*) filed by Sps. Victoriano and Loreta Sy against Metrobank, as he inhibited himself from the case, nor in his handling of Misc. Case No. 1440-24 (*Petition for the Issuance of a Writ of Possession*) filed by Metrobank against Sps. Victoriano Sy, *et al.*, because of the essential nature of the proceeding itself. In issuing the writ of possession and in directing its re-implementation when it was returned unsatisfied the first time it was enforced, Judge Dinopol acted in accordance with the rules and jurisprudence on the matter. As the Court held in *Santiago v. Merchants Rural Bank of Talavera, Inc.*, the proceeding in a petition for the issuance of a writ of possession is *ex-parte* and summary in nature. It is brought for the benefit of one party only and may be granted even without notice to the mortgagor, in this case, complainant Sy. Moreover, the duty of the court to grant

a writ of possession is a ministerial function. The court does not exercise its official discretion or judgment. Judge Dinopol, before whom the petition for the issuance of a writ of possession was filed, had no discretion on whether to issue the writ of possession or not. It cannot be said, therefore, that Judge Dinopol exposed himself or exhibited bias in favor of Metrobank when he issued the writ of possession. Further, regardless of whether there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of the annulment case. Once the writ of possession is issued, the trial court has no alternative but to enforce the writ without delay.

2. ID.; ID.; ID.; RESPONDENT JUDGE COMMITTED NO IMPROPRIETY IN DIRECTING THE RE-IMPLEMENTATION OF THE WRIT OF EXECUTION IN MISC. CASE NO. 1440-24.— A stay order only affects claims filed against the assets and properties belonging to a debtor. Properties that have already been foreclosed, and those whose titles have already passed on to the winning bidder are no longer considered properties of the debtor. In such case, it is a ministerial duty on the part of the trial court to grant a possessory writ over the foreclosed properties. Clearly, Judge Dinopol was well within his authority and committed no impropriety in directing the re-implementation of the writ of execution in Misc. Case No. 1440-24.

3. ID.; ID.; CONDUCT UNBECOMING OF A JUDGE; RESPONDENT JUDGE COMMITTED SERIOUS IMPROPRIETY IN HIS OR HIS FAMILY'S FINANCIAL OR BUSINESS DEALING WITH COMPLAINANT.— We cannot say the same thing with regard to Sy's charge of *conduct unbecoming* against Judge Dinopol. The latter's denial of having committed the acts complained of flies in the face of indications in the records and documentary evidence that he obtained commodity loans from Sy in the form of building materials for the construction of his house in Koronadal City. There was also Sy's claim of cash loans to Judge Dinopol on various occasions, between December 2, 2005 and July 14, 2006, amounting to ₱121,000.00, as well as the loan of Sy's Suzuki Multi-cab to the Judge. The commodity loans were evidenced by receipts indicating delivery of construction materials to Judge Dinopol's residence. The cash loans appear

to have been covered by disbursement vouchers, and the borrowed multicab is the subject of an "acknowledgement" from Judge Dinopol's driver Rogelio Villanueva. There is substantial evidence showing that Judge Dinopol obtained the commodity loans from Sy. The judge himself admitted that he wrote Sy, on March 4, 2005, regarding the purchase of materials for his house which was then under construction, although he claimed that it was his wife who transacted with Sy and it was Sy himself who offered to deliver the materials to his residence. Judge Dinopol pleaded innocence regarding the commodity loans or even the cash loans saying that the transaction with Sy regarding the construction materials occurred when there was no case pending in his sala where Sy was a party. The above disclaimer notwithstanding, we find Judge Dinopol to have committed a serious impropriety in his or his family's financial or business dealings with Sy.

4. ID.; ID.; ID.; RESPONDENT JUDGE VIOLATED SEVERAL PROVISIONS OF THE NEW CODE OF JUDICIAL CONDUCT.— Canon 3 of the New Code of Judicial Conduct in relation to a judge's impartiality provides, *inter alia,* as follows: Sec. 2. – Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary. Sec. 3. – Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases. Judge Dinopol violated the above provisions when he received accommodations from Sy for the building materials he needed for the construction of his house. He compromised his position as a judge. Although at the time he and his family had business dealings with Sy there was no pending case involving the businessman, he should have been more circumspect in securing the construction materials. The sphere of Sy's business operations was within his territorial jurisdiction. As the OCA aptly noted, "it is neither impossible nor remote that a case might be filed in his court with complainant as a party. In such a case, his (respondent) business and financial dealings with complainant would create a doubt about his fairness and impartiality in deciding the case and would tend to corrode the respect and dignity of the court." In addition, we find that Judge Dinopol also violated Section 1 of Canon 1, Canon 2 and Canon 4 of the New Code of Judicial Conduct.

5. ID.; ID.; ID.; RESPONDENT JUDGE FAILED TO OBSERVE PROPER DECORUM WHICH COMPROMISED NOT ONLY HIS IMPARTIALITY IN HANDLING THE CASE BUT ALSO HIS INDEPENDENCE AND INTEGRITY AS A JUDGE.— Moreover, Canon 4 mandates a judge to observe and maintain proper decorum and its appearance in his public office: Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities. By his own admissions, Judge Dinopol failed to observe these ethical standards. In his Answer/Comment, Judge Dinopol admitted that he talked with Sy on several occasions to discuss Misc. Case No. 1440-24. Judge Dinopol also admitted that Sy, in at least two instances, requested him to delay the resolution of the writ of possession. Judge Dinopol's actions no doubt created the inference that at some point, he acceded to Sy's requests to delay the proceedings. This conclusion, is in fact, bolstered by Judge Dinopol's knowledge that the counsel for Metrobank was instructed to immediately secure the order for the issuance of the writ of possession. Regardless of the representations allegedly made to him by Sy, Judge Dinopol should have immediately issued the writ of possession in Metrobank's favor. From these inappropriate actions, we find that Judge Dinopol compromised not only his impartiality in handling Misc. Case No. 1440-24 but also his independence and integrity as a judge.

6. ID.; ID.; ID.; TALKING WITH LITIGANTS OUTSIDE COURT PROCEEDINGS IS HIGLY INAPPROPRIATE.— We find that Judge Dinopol committed impropriety in talking with litigants outside court proceedings. His improper conduct was further aggravated by the fact that these conversations took place in the absence of the opposing litigants and/or the opposing counsel. In *Agustin v. Mercado*, we declared that employees of the court have no business meeting with litigants or their representatives under any circumstance.

7. ID.; ID.; GROSS MISCONDUCT; RESPONDENT'S TRACK RECORD AS A JUDGE IS FAR FROM EXEMPLARY AS DEMONSTRATED BY SEVERAL CASES WHERE HE WAS PENALIZED FOR QUESTIONABLE CONDUCT.— Without a doubt, Judge Dinopol is liable for gross misconduct in office and deserves to be sanctioned under the above findings. His

track record as a judge, in this regard, is far from exemplary. **He is a repeat offender**, as demonstrated by the following cases where we penalized him for questionable conduct: *First*, in A.M. No. RTJ-06-1969 decided on June 15, 2006, Judge Dinopol was found guilty of gross ignorance of the law and was fined ₱20,000.00. *Second*, in A.M. No. RTJ-06-2020 decided on September 20, 2006, he was found guilty of gross ignorance of the law and abuse of authority, and was fined ₱20,000.00. *Third*, in A.M. No. RTJ-06-2003 decided on August 23, 2007, he was found liable for undue delay in rendering a decision or order and for violating the clear provisions of A.M. No. 01-1-07-SC, and was fined ₱11,000.00. *Fourth*, in A.M. OCA IPI No. 05-2173-RTJ decided on August 28, 2006, he was strongly admonished, even as the complainant desisted from pursuing the complaint against the judge for gross ignorance of the law, grave abuse of authority and discretion. *And more recently*, in A.M. No. RTJ-07-2052 decided on March 30, 2009, Judge Dinopol had been reminded and warned against entertaining litigants outside court premises.

APPEARANCES OF COUNSEL

Jose Frederick P. Florese and *Rutillo B. Pasok* for complainant.

D E C I S I O N

PER CURIAM:

We resolve in this Decision the Verified Complaint, dated March 11, 2008,[1] filed by Victoriano Sy against Judge Oscar E. Dinopol of the Regional Trial Court (*RTC*), Branch 24, Koronadal City, South Cotabato, for Conduct Unbecoming a Member of the Judiciary and for Gross Ignorance of the Law, in relation to Civil Case No. 1403-24, entitled *Sps. Victoriano Sy and Loreta Sy v. Metrobank, for Annulment and/or Declaration of Nullity of Real Estate Mortgage*, and Misc. Case No. 1440-24,

[1] *Rollo*, pp. 1-13.

entitled Metrobank v. Sps. Victoriano Sy, et al., for Issuance of a Writ of Possession.

The Antecedents Facts

The facts are set out in the memorandum/report, dated May 25, 2009,[2] of the Office of the Court Administrator (*OCA*), and are summarized below.

The Metropolitan Bank and Trust Company (*Metrobank*) was the mortgagee in good faith and for value of twenty-three (23) parcels of land all located in Koronadal City. The mortgagors were Marvella Plaza Hotel, Sprinter Lumber, Hardware and Auto Parts, Inc. and/or Sps. Victoriano Sy and Loreta Cabaies-Sy and/or Sps. Vicente and Antonia Mandanas.

Metrobank foreclosed the mortgage for violation of the terms and conditions of the mortgage agreement. At the public auction on August 31, 1998, the mortgaged parcels of land were sold to Metrobank as the highest bidder. Metrobank was issued a certificate of sale which was registered on September 18, 1998 with the Register of Deeds of South Cotabato. The mortgagors failed to redeem the 23 parcels of land within the redemption period.

Thereafter, Sps. Victoriano and Loreta Sy, and Sprinter Lumber, Hardware and Auto Parts, Inc. filed with the RTC, Branch 24, Koronadal City, presided over by Judge Dinopol, a complaint against Metrobank for *Annulment and/or Declaration of Nullity of Real Estate Mortgage, Extrajudicial Foreclosure Proceedings and Certificate of Sale, with Damages and Attorney's Fees and with prayer for the Issuance of a Temporary Restraining Order (TRO) and Preliminary Injunction*, docketed as Civil Case No. 1403-24.

On April 16, 2004, Judge Dinopol inhibited himself from further acting on the case[3] *on the ground that he received a call, on April 12, 2004, from a ranking officer of the*

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[2] *Id.* at 219-228.

[3] *Id.* at 25-26.

Philippine Judicial Academy, interceding in behalf of the defendant bank and an earlier call (July 2003) from a ranking personnel of the OCA, appealing in behalf of the plaintiffs. He claimed he wanted to avoid being charged with partiality either way he acted on the case.

On September 15, 2005, Metrobank filed with the RTC, South Cotabato, a *Petition for the Issuance of a Writ of Possession* over the parcels of land subject of the foreclosed mortgage against Marvella Plaza Hotel, Sprinter Lumber, Hardware and Auto Parts, Inc., and/or Sps. Victoriano and Loreta Sy, and/or Sps. Vicente and Antonia Mandanas, docketed as Misc. Case No. 1440-24,[4] and assigned to the RTC, Branch 24, Koronadal City, presided by Judge Dinopol.

On July 13, 2006, Judge Dinopol issued an Order granting the petition,[5] and issued the writ of possession on July 21, 2006.[6]

Meanwhile, or on May 22, 2006, Sprinter Lumber, Hardware and Auto Parts, Inc. filed with the RTC, Branch 8, Marawi City, a petition, entitled *In the Matter of: Petition for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan*, docketed as Corp. Case No. 1585-06.[7]

On June 26, 2006, the RTC, Branch 8, Marawi City, issued an Order[8] staying the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor. The same court subsequently approved the rehabilitation plan.

In the meantime, Sheriff Conrado B. Dapulang, Jr. proceeded to implement the writ of possession issued by Judge Dinopol, but it was returned unsatisfied in view of the stay order issued by the RTC, Branch 8, Marawi City, in Corp. Case No. 1585-06.[9]

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[4] *Id.* at 44-56.

[5] *Id.* at 175; Writ of Possession, p. 2, par. 1.

[6] *Id.* at 174-185.

[7] *Id.* at 155-164.

[8] *Id.* at 171-172.

[9] *Id.* at 193-194.

Consequently, the respondents in Misc. Case No. 1440-24 filed a Motion to Suspend Proceedings due to the issuance of the stay order and the approval of the rehabilitation plan by the Rehabilitation Court, and a motion for inhibition on grounds of bias and partiality on the part of Judge Dinopol. Judge Dinopol denied the motions in an Order dated February 11, 2008, and directed Deputy Sheriff Ricardo G. Publico to re-implement the writ of execution of July 31, 2006.[10]

Shortly thereafter, Sy filed the present administrative complaint[11]charging Judge Dinopol of gross ignorance of the law and conduct unbecoming a member of the judiciary.

Gross Ignorance of the Law

Sy alleged in his complaint that while Civil Case No. 1403-24 (in which he and his wife sought the declaration of nullity of the foreclosure proceedings against Metrobank) was pending before Judge Dinopol's sala, the judge inhibited himself from acting on the case. This notwithstanding, and to Sy's surprise, Judge Dinopol still handled Misc. Case No. 1440-24, a petition for the issuance of a writ of possession filed by Metrobank, a matter closely intertwined with Civil Case No. 1403-24. Judge Dinopol then issued an order granting Metrobank the right to possess the foreclosed properties.[12]

Sy further alleged that despite the issuance by the RTC, Branch 8, Marawi City, of a stay order[13] and the approval of the rehabilitation plan, as well as the pendency of Metrobank's petition before the Court of Appeals (*CA*) Twenty-Third Division in Cagayan De Oro City (CA–G.R. SP No. 01824) assailing the validity of the stay order, Judge Dinopol ordered that the writ of possession be implemented.[14]

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[10] *Id.* at 29-31.

[11] *Supra* note 1.

[12] *Supra* note 6.

[13] *Supra* note 8.

[14] *Supra* note 10.

Conduct Unbecoming of a Judge

Sy claimed in relation with his charge that while Civil Case No. 1403-24 was pending in Judge Dinopol's sala, *the judge asked him for commodity loans in the form of construction materials* to be used in the construction of the judge's house. The transaction was evidenced by delivery receipt no. 15178 (March 8, 2005),[15] and charge invoices no. 9817 (March 8, 2005) for ₱16,000.00,[16] no. 9826 (March 9, 2005) for ₱850.00,[17] and no. 9838 (March 10, 2005) for ₱780.00.[18]

Sy further claimed that aside from the commodity loans, *Judge Dinopol obtained cash loans* from him on various occasions between December 2, 2005 to July 14, 2006, in the total amount of ₱121,000.00, and Judge Dinopol borrowed from him his Suzuki Multi-cab and returned it after the judge was suspended in September 2007. Sy presented disbursement vouchers, official receipts and an acknowledgement to prove his claim.[19]

Judge Dinopol's Comment

In a 1st indorsement dated March 18, 2008,[20] the OCA required Judge Dinopol to comment on the complaint, which he did on April 21, 2008.[21]

Judge Dinopol denied Sy's accusations. He stressed that he inhibited himself from Civil Case No. 1403-24 on April 16, 2004 and had not acted on the case since then; nobody intervened and pleaded in behalf of Metrobank after Misc. Case No. 1440-24 was filed. He was not aware nor had he been given notice that

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[15] *Rollo*, p. 15-A; Complaint, Annex "C".

[16] *Id.*, Annex "D".

[17] *Id.* at 15, Annex "A".

[18] *Id.*, Annex "B".

[19] *Id.* at 21-24-A; Annexes "G", "H", "I", "J", "K", "L", "M", "N", & "O".

[20] *Id.* at 32.

[21] *Id.* at 33-43.

Metrobank filed a petition before the CA (CA–G.R. SP No. 01824), nor did he receive any order from the appellate tribunal enjoining him to desist from performing or acting on the incidents pending in Misc. Case No. 1440-24.

Judge Dinopol denied that he committed any breach of procedural rules that could be characterized as gross ignorance of the basic rules of civil procedures. He maintained that Sy did not allege any specific actuations of deceit, malice or intent to cause injury to Sy, and that he had acted fairly and objectively. He added that he observed the requirements of the Code of Professional Responsibility as a lawyer, relative to his handling of Misc. Case No. 1440-24.

With respect to the alleged accommodations he received from Sy at the time his house was under construction, Judge Dinopol claimed that when he obtained the commodity loans from Sy in March 2005, he had already inhibited himself from handling Civil Case No. 1403-24; he did so on April 16, 2004. He explained that Misc. Case No. 1440-24 was filed only on September 15, 2005, and was assigned to his sala on September 22, 2005. He denied that he received from Sy cash loans in the amount of ₱121,000.00. He also denied borrowing Sy's Suzuki Multi-cab and claimed that it was Rogelio Villanueva who borrowed it.

Judge Dinopol countered that it was Sy who acted with sinister design and employed deceit and cunning to frustrate the administration of justice in the cases he handled.

In a Resolution dated July 15, 2009, the Court resolved to: (1) note Sy's complaint and Judge Dinopol's answer/comment; (2) re-docket the complaint as a regular administrative matter; and (3) require the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings. The Court also noted the OCA Report dated May 25, 2009,[22] which found no basis for the charge of ignorance of the law on the part of Judge Dinopol, but found him liable for conduct unbecoming a judge.

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[22] *Supra* note 2.

The Court's Ruling

The OCA evaluation is well-founded. Judge Dinopol cannot be disciplined for ignorance of the law and of procedure in his handling of Civil Case No. 1403-24 (for *Annulment and/or Declaration of Nullity of Real Estate Mortgage*) filed by Sps. Victoriano and Loreta Sy against Metrobank, as he inhibited himself from the case, nor in his handling of Misc. Case No. 1440-24 (*Petition for the Issuance of a Writ of Possession*) filed by Metrobank against Sps. Victoriano Sy, *et al*., because of the essential nature of the proceeding itself.

In issuing the writ of possession and in directing its re-implementation when it was returned unsatisfied the first time it was enforced, Judge Dinopol acted in accordance with the rules and jurisprudence on the matter.

As the Court held in *Santiago v. Merchants Rural Bank of Talavera, Inc*.,[23] the proceeding in a petition for the issuance of a writ of possession is *ex-parte* and summary in nature. It is brought for the benefit of one party only and may be granted even without notice to the mortgagor, in this case, complainant Sy. Moreover, the duty of the court to grant a writ of possession is a ministerial function. The court does not exercise its official discretion or judgment.[24] Judge Dinopol, before whom the petition for the issuance of a writ of possession was filed, had no discretion on whether to issue the writ of possession or not. It cannot be said, therefore, that Judge Dinopol exposed himself or exhibited bias in favor of Metrobank when he issued the writ of possession.

Further, regardless of whether there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of the annulment case. Once the writ of possession is issued, the trial court has no alternative but to enforce the writ without delay.[25]

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[23] G.R. No. 147820, March 18, 2005, 453 SCRA 756.

[24] *Chailease Finance Corporation v. Ma*, G.R. No. 151941, August 15, 2003, 409 SCRA 250.

[25] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189.

From another perspective, a stay order only affects claims filed against the assets and properties belonging to a debtor. Properties that have already been foreclosed, and those whose titles have already passed on to the winning bidder are no longer considered properties of the debtor.[26] In such case, it is a ministerial duty on the part of the trial court to grant a possessory writ over the foreclosed properties.[27]

Clearly, Judge Dinopol was well within his authority and committed no impropriety in directing the re-implementation of the writ of execution in Misc. Case No. 1440-24.

On the other hand, we cannot say the same thing with regard to Sy's charge of *conduct unbecoming* against Judge Dinopol. The latter's denial of having committed the acts complained of flies in the face of indications in the records and documentary evidence that he obtained commodity loans from Sy in the form of building materials for the construction of his house in Koronadal City. There was also Sy's claim of cash loans to Judge Dinopol on various occasions, between December 2, 2005 and July 14, 2006, amounting to ₱121,000.00, as well as the loan of Sy's Suzuki Multi-cab to the Judge.

The commodity loans were evidenced by receipts[28] indicating delivery of construction materials to Judge Dinopol's residence. The cash loans appear to have been covered by disbursement vouchers,[29] and the borrowed multicab is the subject of an "acknowledgement"[30] from Judge Dinopol's driver Rogelio Villanueva.

There is substantial evidence showing that Judge Dinopol obtained the commodity loans from Sy. The judge himself admitted that he wrote Sy, on March 4, 2005, regarding the

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[26] *New Frontier Sugar Corp. v. RTC, Br. 39, Iloilo City*, G.R. No. 165001, January 31, 2007, 513 SCRA 601.

[27] *Id.* at 608.

[28] *Supra* notes 15, 17 and 18.

[29] *Supra* note 30.

[30] *Rollo*, p. 24-F.

purchase of materials for his house which was then under construction, although he claimed that it was his wife who transacted with Sy and it was Sy himself who offered to deliver the materials to his residence.[31] Judge Dinopol pleaded innocence regarding the commodity loans or even the cash loans saying that the transaction with Sy regarding the construction materials occurred when there was no case pending in his sala where Sy was a party.

The above disclaimer notwithstanding, we find Judge Dinopol to have committed a serious impropriety in his or his family's financial or business dealings with Sy.

Canon 3 of the New Code of Judicial Conduct in relation to a judge's impartiality provides, *inter alia*, as follows:

> Sec. 2. – Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary.
>
> Sec. 3. – Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

Judge Dinopol violated the above provisions when he received accommodations from Sy for the building materials he needed for the construction of his house. He compromised his position as a judge. Although at the time he and his family had business dealings with Sy there was no pending case involving the businessman, he should have been more circumspect in securing the construction materials. The sphere of Sy's business operations was within his territorial jurisdiction. As the OCA aptly noted, "it is neither impossible nor remote that a case might be filed in his court with complainant as a party. In such a case, his (respondent) business and financial dealings with complainant would create a doubt about his fairness and impartiality in deciding the case and would tend to corrode the respect and dignity of the court."[32]

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[31] *Ibid.*

[32] *Id.* at 226, par. 2.

In addition, we find that Judge Dinopol also violated Section 1 of Canon 1, Canon 2 and Canon 4 of the New Code of Judicial Conduct.

Section 1 of Canon 1 highlights the independence of a judge in performing his official duties, thus:

> SEC. 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

Canon 2 requires a judge to promote integrity in the discharge of his official functions:

> Integrity is essential not only in the proper discharge of the judicial office but also to the personal demeanor of judges.
>
> SEC. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in view of a reasonable observer.
>
> SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Moreover, Canon 4 mandates a judge to observe and maintain proper decorum and its appearance in his public office:

> Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.
>
> SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

By his own admissions, Judge Dinopol failed to observe these ethical standards. In his Answer/Comment, Judge Dinopol admitted that he talked with Sy on several occasions to discuss Misc. Case No. 1440-24.[33] Judge Dinopol also admitted that Sy, in at least two instances, requested him to delay the resolution

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[33] *Id.* at 6-8; Counter-Statement of Facts.

of the writ of possession.[34] Judge Dinopol's actions no doubt created the inference that at some point, he acceded to Sy's requests to delay the proceedings. This conclusion, is in fact, bolstered by Judge Dinopol's knowledge that the counsel for Metrobank was instructed to immediately secure the order for the issuance of the writ of possession.[35] Regardless of the representations allegedly made to him by Sy, Judge Dinopol should have immediately issued the writ of possession in Metrobank's favor.

From these inappropriate actions, we find that Judge Dinopol compromised not only his impartiality in handling Misc. Case No. 1440-24 but also his independence and integrity as a judge. His actions no doubt diminished public confidence and public trust in him as a judge. His actions gave the public the impression and the appearance that he can be influenced by extraneous factors — other than the legal arguments and the court evidence – in discharging his judicial functions.

In addition, we find that Judge Dinopol committed impropriety in talking with litigants outside court proceedings. His improper conduct was further aggravated by the fact that these conversations took place in the absence of the opposing litigants and/or the opposing counsel. In *Agustin v. Mercado*,[36] we declared that employees of the court have no business meeting with litigants or their representatives under any circumstance. In *Re: Affidavit of Frankie N. Calabines*,[37] the Court minced no words in explaining that such unethical conduct constitutes "a brazen and outrageous betrayal of public trust."[38] The Court further declared in the said case:

> x x x The Court cannot overemphasize the need for honesty and integrity on the part of all those who are in the service of the judiciary. x x x

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[34] *Ibid.*

[35] *Id.* at 7.

[36] A.M. No. P-07-2340, July 26, 2007, 528 SCRA 203.

[37] A.M. No. 04-5-20-SC, March 14, 2007, 518 SCRA 268.

[38] *Id.* at 298, par. 4.

> The image of a 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.
>
> All employees in the judiciary should be examples of responsibility, competence and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.[39]

Certainly, these responsibilities become more exacting when one occupies the position of a judge. Time and again, we have emphasized that judges are expected to conduct themselves in a manner that would enhance respect and confidence of the people in the judicial system.[40] The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the Judiciary.[41] **These standards apply not only to the decision itself, but also to the process by which the decision is made**.[42]

Without a doubt, Judge Dinopol is liable for gross misconduct in office and deserves to be sanctioned under the above findings. His track record as a judge, in this regard, is far from exemplary. **He is a repeat offender**, as demonstrated by the following cases where we penalized him for questionable conduct:

First, in A.M. No. RTJ-06-1969 decided on June 15, 2006, Judge Dinopol was found guilty of gross ignorance of the law and was fined ₱20,000.00.[43]

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[39] *Id.* at 298-299.

[40] *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* [*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*], A.M. No. 08-8-11-CA, September 9, 2008, 564 SCRA 365.

[41] *Id.* at 424.

[42] *Ibid.*

[43] *Balayon, Jr. v. Judge Dinopol*, A.M. No. RTJ-06-1969, June 15, 2006, 490 SCRA 547.

Second, in A.M. No. RTJ-06-2020 decided on September 20, 2006, he was found guilty of gross ignorance of the law and abuse of authority, and was fined ₱20,000.00.[44]

Third, in A.M. No. RTJ-06-2003 decided on August 23, 2007, he was found liable for undue delay in rendering a decision or order and for violating the clear provisions of A.M. No. 01-1-07-SC, and was fined ₱11,000.00.[45]

Fourth, in A.M. OCA IPI No. 05-2173-RTJ decided on August 28, 2006, he was strongly admonished, even as the complainant desisted from pursuing the complaint against the judge for gross ignorance of the law, grave abuse of authority and discretion.[46]

And more recently, in A.M. No. RTJ-07-2052 decided on March 30, 2009, Judge Dinopol had been reminded and warned against entertaining litigants outside court premises.[47]

Section 8, Rule 140 of the Rules of Court classifies gross misconduct constituting a violation of the Code of Judicial Conduct as a serious charge. Under Section 11 of the same Rule, the respondent found guilty of a serious charge may be meted any of the following sanctions:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or reappointment to any public office;

2. Suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

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[44] *Beltran v. Judge Dinopol*, A.M. No. RTJ-06-2020, September 20, 2006, 502 SCRA 446.

[45] *Flaviano v. Judge Dinopol*, A.M. No. RTJ-06-2003, August 23, 2007, 530 SCRA 787.

[46] *Rollo*, p. 227.

[47] *Ong v. Judge Dinopol*, A.M. No. RTJ-07-2052, March 30, 2009, 582 SCRA 487.

Considering his repeated infractions and numerous breaches of the standard ethical conduct demanded of judges, we find Judge Dinopol unfit to discharge the functions of a judge. We impose upon him the severest penalty of dismissal from the service, with forfeiture of all retirement benefits, excluding accrued leave benefits, and disqualification from reinstatement or reappointment to any public office, including government-owned or controlled corporations.[48]

Lastly, as we sanction Judge Dinopol, we remind the members of the bench that:

> [a]lthough every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the [J]udiciary. A magistrate of the law must compose himself at all times in such a manner that his conduct, official and otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[49]

WHEREFORE, premises considered, Judge Oscar E. Dinopol, Regional Trial Court, Branch 24, Koronadal City, is declared *GUILTY OF GROSS MISCONDUCT* and is hereby *DISMISSED* from the service, with *FORFEITURE* of all benefits, except accrued leave credits, if any, with prejudice to his re-employment in any branch or service of the government, including government-owned and controlled corporations.

SO ORDERED.

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

Perez, J., no part, acted on the matter as OIC, OCA.

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[48] *Verginesa-Suarez v. Judge Dilag,* A.M. No. RTJ-06-2014, March 4, 2009, 580 SCRA 491.

[49] *Casimiro v. Fernandez,* A.M. No. MTJ-04-1525, January 29, 2004, 421 SCRA 291, citing *Montemayor v. Collado*, 107 SCRA 258, 203-264 (1981).

EN BANC

[A.M. No. RTJ-09-2198.* January 18, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **FORMER JUDGE LEONARDO L. LEONIDA, OF THE REGIONAL TRIAL COURT BRANCH 27, STA. CRUZ, LAGUNA,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; FAILURE OF A JUDGE TO DECIDE A CASE WITHIN THE REGLEMENTARY PERIOD WARRANTS ADMINISTRATIVE SANCTION.— Precedents have shown that the failure of a judge to decide a case within the reglementary period warrants administrative sanction. The Court treats such cases with utmost rigor for 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 undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute. No less than Section 15 (1), Article 8 of the 1987 Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within three (3) months from the date of submission. The prescribed period is a firm mandatory rule for the efficient administration of justice and not merely one for indulgent tweaking. x x x Only in certain meritorious cases, that is, those involving difficult questions of law or complex issues, may a longer period to decide the case be allowed but only upon proper application for extension of the period has been made by the concerned judge.

2. ID.; ID.; ID.; ID.; COMMON EXCUSE OF HEAVY CASELOAD UNACCEPTABLE TO JUSTIFY FAILURE TO DECIDE CASES PROMPTLY.— Judge Leonida was clearly remiss in his duties as a judge for he did not take the above constitutional command to heart. Neither did he observe the above rules which have encapsulated the Court's strict message: "the need and the imperative" for judges to promptly and expeditiously decide cases including all incidents therein. In this case, the

* Formerly A.M. No. 09-5-232-RTC.

findings of the OCA showed that Judge Leonida failed to decide a considerable number of cases: one hundred two (102) criminal cases and forty-three (43) civil cases. Judge Leonida openly admitted his culpability in the delay of disposition of cases. His proffered explanation is unacceptable given the ample period that he had. He cannot take refuge behind the common excuse of heavy caseload to justify his failure to decide and resolve cases promptly. He could have asked the Court for a reasonable period of extension to dipose of the cases but did not.

3. ID.; ID.; ID.; ID.; ID.; RESPONDENT JUDGE'S INEFFICIENCY CONSTITUTES A VIOLATION OUT OF NEGLECT OF THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL.— Due to his inefficiency, the constitutional right of parties to a speedy trial was violated out of neglect. Instead of justice wrought by efficient and competent handling of judicial business, the lower courts handled and assisted by Judge Leonida produced unnecessary financial strain, not to mention physical and emotional anxiety, to litigants. Delay derails the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those cases in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than these, possibilities for error in fact-finding multiply rapidly between the original fact and its judicial determination as time elapses. If the facts are not fully and accurately determined, even the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.

4. ID.; ID.; ID.; ID.; DELAY IN DECIDING CASES WITHIN THE PRESCRIBED PERIOD CONSTITUTES GROSS INEFFICIENCY.— The Court has always considered a judge's delay in deciding cases within the prescribed period of three months as gross inefficiency. Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary. The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.

5. ID.; ID.; ID.; DUTY TO EXERCISE UTMOST DILIGENCE AND CARE IN HANDLING THE CASE RECORDS; VIOLATED IN CASE AT BAR.— Aside from the delay in deciding the reported cases, the audit findings likewise show that the case records/ *rollo* in Branch 27 were not chronologically arranged. Certificates of arraignment, minutes of hearings and notices of hearing were unsigned by the accused and his/her counsel, or worse, missing from the files. Judge Leonida was asked to explain the whereabouts of the case records of Criminal Case No. 12178. His bare denial however, does not overcome the fair conclusion that Section 14 of Rule 136 of the Rules of Court was not observed. The expectation directed at judges to exercise utmost diligence and care in handling the records of cases was certainly not met, or at least approximated. The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task set before them. As frontline officials of the judiciary, judges should, at all times, act with efficiency and with probity. They are duty-bound not only to be faithful to the law, but likewise to maintain professional competence. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed on them and the institution they represent.

6. ID.; ID.; ID.; ID.; THE RETIREMENT OF A JUDGE DOES NOT RELEASE HIM FROM LIABILITY INCURRED WHILE IN THE ACTIVE SERVICE.— As recommended by the OCA after a thorough judicial audit and considering the unrebutted audit reports on record, proper sanctions must be imposed. The penalty imposed for undue delay in deciding cases varies in each case: from fine, suspension, suspension and fine, and even dismissal, depending mainly on the number of cases left undecided within the reglementary period, and other factors, such as the damage suffered by the parties as a result of the delay, the health and the age of the judge. The Court agrees with the OCA that the total number of cases which Judge Leonida failed to timely decide or act on warrants a fine higher than that prescribed by the rules. In *Lugares v. Judge Gutierrez-Torres*, the defaulting judge who was found guilty of gross inefficiency for her undue delay in resolving cases submitted for decision for a number of years was dismissed from the service. In view of Judge Leonida's retirement on July 5, 2008, the only penalty that the Court can impose against him is a

fine, pursuant to the rule that the retirement of a judge does not release him from liability incurred while in the active service.

D E C I S I O N

***PER CURIAM*:**

This administrative case at bench stemmed from a judicial audit and inventory of pending cases conducted by the Office of the Court Administrator *(OCA)*, in Branch 27, Regional Trial Court, Sta. Cruz, Laguna *(Branch 27, Sta. Cruz)*, and in Branch 74, Regional Trial Court, Malabon City *(Branch 74, Malabon)*.

The audits were conducted because respondent Judge Leonardo L. Leonida *(Judge Leonida)* applied for Optional Retirement effective July 5, 2008. Judge Leonida was the presiding judge of Branch 27, Sta. Cruz, from October 1997 until his retirement and was detailed as assisting judge of Branch 74, Malabon.

On May 21, 2009, then Court Administrator Jose P. Perez issued a Memorandum[1] on the audit team's findings, among which are:

1) As of audit date, March 5 and 6, 2009, Branch 27, Sta. Cruz had a total caseload of 507 cases consisting of 280 criminal cases and 227 civil cases based on the records actually presented to, and examined by, the audit team.

2) Out of the total number of pending criminal cases, no further action was taken after varying considerable periods of time in 14 cases.[2]

3) Pending incidents and motions filed by parties in 8 criminal cases[3] were left unresolved for more than one (1) year in 3 cases, and three months in 2 cases.

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[1] *Id*. at 1-21.

[2] Case Nos. 4697, 8562, 11247, 9652, 9653, 9654, 9651, 9655, 11952, 11099, 11428, 10996, 10090, 8602.

[3] Case Nos. 12460, 12000, 7178, 11236, 13006, 7112, 7122, 11804.

4) Twenty-nine (29) criminal cases[4] submitted for decision, the earliest in 2001, were undecided.

5) Of the 227 civil cases lodged in the court, no setting for hearing and no further action was taken on 46 cases.[5]

6) Twenty-four (24) civil cases[6] have pending motions/ incidents awaiting resolution, the earliest since 2002.

7) Fifty-seven (57) civil cases[7] submitted for decision from 2000 to 2009 were undecided at the time of the audit.

8) In the course of the audit in Branch 27, Sta. Cruz, several records of criminal cases were found to be incomplete. The records were not paginated. Certificates of arraignment, minutes of hearings and notices of hearing were missing from the files.

9) The record of one case, Criminal Case No. 12178,[8] an appealed case submitted for resolution, is missing and is in the possession of Judge Leonida as per certification issued by Atty. Bernadette Platon, the Branch Clerk of Court.[9]

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[4] Case Nos. 6998, 4859, 6130, 8457, 7887, 7302, 8169, 10032, 8304, 7636, 8419, SC-6623, 7701, SC-8438, 8864, 8833, 9138, 9801, 8541, 8681, 8867, SC-10730, SC-13000, 9649, SC-10912, SC- 9059, 11084, 11907, 11802.

[5] Case Nos. 4214, SP-1783, 1687, LRC 786, SP 2110, 4078, 3616, SC- 3913, 4431, 154 (06), SC- 3941, SP 150 (06), SP Pet. 200, SP. Pet. 184, 4352, Sp Pro. 307, 4444, Sp 289, SP 213, 4683, 3934, SP 1673, SP 2059, SC-4591, SP 24, SP 37, SP 40, SP 42, SP 141, SP 253, SP 297, SC 319, SP 2284, SP 55, SC 368, SP 1749, SC-4593, 3445, 4404, 4666, SC-3844, LRC 15, LRC 16, LRC 39, SP 216, 4741.

[6] Case Nos. SC-4118, SC-4174, SC-4153, 4022, SC-4096, SP-1879, CAD 2 lot 1145 OCT 21128, 4318, SC-4519, SC-3870, SC 4668, SP 1981, SP 737, SC 4346, SC 4045, LRC 638, SC-3842, LRC 143 (06), SC- 3885, SC-4674, 4193, 3294, 4412, 4581.

[7] Case Nos. SC 3098, SC-3440, 3856, SC-3226, SC-3982, 4046, SC-4208, SC-3313, SC-3988, LRC CAD No.8, SC 4053, SC-3707, SC-3981, SC-3239, 3873, SC-4372, 4099, SC-4157, SC-4201, 4330, SC-4320, SC-4369, SC-3876, SC-2147, SC-3966, SC-4087, 3585, SC-1769, 1686, 4592, SC-4395, SC-4151, SP Pet. 373, 4038, SP 123 (05), SCA 4678, SC 4686, SC-4361, 1372, 4719, 4699, 4069, 4469, 2705, 2447, 4616, 4312, 4324, 4694, 4620, Sp-472 (08), Sp-501 (08), Sp Pet 443, SP-500-08, SC-4180, 3651, SP-528 (08).

[8] Entitled *People v. Leonila Cruz*.

[9] *Rollo*, p. 92.

Regarding Branch 74, Malabon City, the OCA also looked into the Monthly Report of Cases submitted by said branch for August-October 2008 and January-March 2008 and noted that 95 criminal cases and 18 civil cases were submitted for decision.[10] Considering that Judge Leonida applied for Optional Retirement effective July 5, 2008, he should have decided 91 of the 95 submitted criminal cases and 16 of the 18 submitted civil cases.

In sum, Judge Leonida failed to decide 102 criminal cases and 43 civil cases both in Branch 27 and Branch 74, and failed to resolve motions in ten (10) civil cases in Branch 27.

The same report bears the recommendations of the OCA that were eventually adopted by the Court in a Resolution dated July 29, 2009,[11] to wit:

(1) ***RE-DOCKET*** the judicial audit report as an administrative complaint against former Judge Leonardo L. Leonida for gross incompetence and inefficiency;

(2) ***REQUIRE*** Judge Leonida to ***MANIFEST*** whether he is willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, within ten (10) days from notice;

(3) ***DIRECT:***

(a) Hon. Jaime C. Blancaflor, Acting Presiding Judge, RTC, Branch 27, Sta. Cruz, Laguna to:

(1) ***TAKE APPROPRIATE ACTION*** on Criminal Case Nos. xxx which are without further action for a considerable length of time;

(2) ***RESOLVE*** with dispatch the pending incidents/motions in Criminal Case Nos. xxx and furnish the Court, through the OCA, a copy of the resolution/order within ten (10) days from issuance/ resolution thereof; and

(3) ***DECIDE*** with dispatch Criminal Case Nos. xxx and ***Furnish*** the Court, through the OCA, a copy of the decision within ten (10) days from its promulgation; and

(b) Atty. Bernadette Platon, Branch Clerk of Court, to:

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[10] *Id*. at 15-18.

[11] *Id*. at 159-162.

(1) ***APPRISE*** the Acting Presiding Judge, from time to time, of cases submitted for resolution/decision and those cases that require immediate action;

(2) ***ORDER*** the stitching of all orders issued, minutes taken, notices of hearing issued, certificates of arraignment in all appropriate case folders especially those jointly tried, including their chronological arrangement and pagination as well as the proofreading of all orders and notices; and

(3) ***SUBMIT*** report of compliance therewith to this Court within fifteen (15) days from notice.

On October 4, 2009, Judge Leonida filed an Urgent Motion for Extension of Time to File Manifest and Memorandum.[12] He cited the short period compounded by the typhoons and floods which ravaged Manila as his reason for requesting an additional period of twenty (20) days within which to file the same. In its October 28, 2009 Resolution, the Court noted Judge Leonida's motion.

On October 22, 2009, Judge Leonida filed a Manifest and Memorandum[13] expressing his willingness to submit the case for decision based on the pleadings. He explained that he failed to finalize and promulgate cases pending in his *sala* because of the severely clogged docket of Branch 74. With an overwhelming number of more than 1,000 cases, he calendared an average of 30 cases daily in order to "keep all the cases moving." According to Judge Leonida, "the court sessions together with the preparation/correction/review of the orders in the cases set for hearing almost ate up" his time as a judge. The fact that Branch 74, a commercial court, was still included in the raffle of regular cases exacerbated the situation. Voluminous pleadings requiring extensive dissection and research, and cases involving numerous intervenors who raised different and complex issues, made matters much more difficult that he even had to conduct hearings on applications for search and seizures until nighttime. Judge Leonida further claimed that his work encroached upon the time he had to devote to his wife and eight children. Finally, the reconstruction and review of

[12] *Id*. at 163.

[13] *Id*. at 342-343.

case records submerged in flood waters added up to his struggle to expedite the disposition of cases assigned to his court.

Anent the missing record in Branch 27, Judge Leonida alleged that the case was raffled to said branch long after he assumed the position of Assisting Judge of Branch 74; that he neither saw nor had possession of the said record; and that there was no reason for him to take the record anywhere. He pleaded for compassion and leniency from the Court, invoking his unblemished record in government service for twenty-three (23) years. He likewise offered his sincere apologies to those who were prejudiced.

In its evaluation of the charges against Judge Leonida, the OCA recommended that for his failure to resolve motions in ten **(10)** civil cases; decide eleven **(11)** criminal cases, and twenty-seven **(27)** civil cases in Branch 27, and to decide ninety-one **(91)** criminal cases and sixteen **(16)** civil cases in Branch 74, he be found guilty of gross incompetency and inefficiency, and fined the amount of **₱50,000.00** pesos to be deducted from his retirement benefits.

The recommendations of the OCA are well-taken.

Precedents have shown that the failure of a judge to decide a case within the reglementary period warrants administrative sanction. The Court treats such cases with utmost rigor for any delay in the administration of justice; no matter how brief, deprives the litigant of his right to a speedy disposition of his case.[14] Not only does it magnify the cost of seeking justice; it undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute.[15]

No less than Section 15 (1), Article 8 of the 1987 Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within three (3) months from the date of submission. The prescribed period is a firm mandatory

[14] *OCA v. Garcia-Blanco*, A.M. No. RTJ-05-1941, April 25, 2006, 488 SCRA 109, 121, citing *Bangco v. Gatdula*, 428 Phil. 598, 604 (2002).

[15] *Duque v. Garrido,* A.M. No. RTJ-06-2027, February 27, 2009, 580 SCRA 321, 327.

rule for the efficient administration of justice and not merely one for indulgent tweaking.

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 for the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.[16] In the same vein, Canon 3, Rule 3.05 of the Code of Judicial Conduct is emphatic in enjoining judges to administer justice without delay by disposing of the court's business promptly and deciding cases within the period prescribed by law.

Corollary to this, Administrative Circular No. 3-99 dated January 15, 1999, requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases, because failure to comply therewith violates the constitutional right of the parties to speedy disposition of the cases.[17] Only in certain meritorious cases, that is, those involving difficult questions of law or complex issues, may a longer period to decide the case be allowed but only upon proper application for extension of the period has been made by the concerned judge.[18]

Judge Leonida was clearly remiss in his duties as a judge for he did not take the above constitutional command to heart. Neither did he observe the above rules which have encapsulated the Court's strict message: "the need and the imperative" for judges to promptly and expeditiously decide cases including all incidents therein.[19] In this case, the findings of the OCA showed that Judge Leonida failed to decide a considerable number of cases: one hundred two (102) criminal cases and forty-three (43) civil cases. Judge

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[16] *Balajedeong v. Del Rosario,* A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13, 17, citing *Gachon v. Devera, Jr.*, G.R. No. 116695, June 20, 1997, 274 SCRA 540, 548-549.

[17] *Re: Cases Submitted for Decision Before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan,* Resolution A.M. No. RTJ-10-2226, March 22, 2010.

[18] *Lopez v. Alon,* 324 Phil. 396, 398 (1996).

[19] *Isip Jr. v. Nogoy,* 448 Phil. 210, 222 (2003).

Leonida openly admitted his culpability in the delay of disposition of cases.

His proffered explanation is unacceptable given the ample period that he had. He cannot take refuge behind the common excuse of heavy caseload to justify his failure to decide and resolve cases promptly. He could have asked the Court for a reasonable period of extension to dipose of the cases but did not.

Due to his inefficiency, the constitutional right of parties to a speedy trial was violated out of neglect. Instead of justice wrought by efficient and competent handling of judicial business, the lower courts handled and assisted by Judge Leonida produced unnecessary financial strain, not to mention physical and emotional anxiety, to litigants. Delay derails the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those cases in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than these, possibilities for error in fact-finding multiply rapidly between the original fact and its judicial determination as time elapses. If the facts are not fully and accurately determined, even the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.[20]

The Court has always considered a judge's delay in deciding cases within the prescribed period of three months as gross inefficiency.[21] Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary. The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.[22]

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[20] *Atty. Victoriano V. Orocio v. Justice Vicente Q. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, August 19, 2008, 562 SCRA 347, 357, citing *Southern Pac. Transport. Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975).

[21] *Guintu v. Judge Lucero*, 329 Phil. 704, 711 (1996).

[22] *Dee C. Chuan & Sons, Inc.*, A.M. No. RTJ-05-1917, April 16, 2009, 585 SCRA 93, 98, citing *Concerned Trial Lawyers of Manila v. Veneracion*,

Aside from the delay in deciding the reported cases, the audit findings likewise show that the case records/*rollo* in Branch 27 were not chronologically arranged. Certificates of arraignment, minutes of hearings and notices of hearing were unsigned by the accused and his/her counsel, or worse, missing from the files. Judge Leonida was asked to explain the whereabouts of the case records of Criminal Case No. 12178. His bare denial however, does not overcome the fair conclusion that Section 14 of Rule 136 of the Rules of Court[23] was not observed. The expectation directed at judges to exercise utmost diligence and care in handling the records of cases was certainly not met, or at least approximated.

The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task set before them.[24] As frontline officials of the judiciary, judges should, at all times, act with efficiency and with probity. They are duty-bound not only to be faithful to the law, but likewise to maintain professional competence. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed on them and the institution they represent.[25]

Therefore, as recommended by the OCA after a thorough judicial audit and considering the unrebutted audit reports on record, proper sanctions must be imposed. The penalty imposed for undue delay in deciding cases varies in each case: from fine, suspension, suspension and fine, and even dismissal, depending mainly on the number of cases left undecided within

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A.M. No. RTJ-05-1920, 26 April 2006, 488 SCRA 285, 296 and *Lim, Jr. v. Magallanes*, A.M. No. RTJ-05-1932, 2 April 2007, 520 SCRA 12.

[23] "No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules."

[24] *OCA v. Legaspi Jr.,* A.M. No. MTJ-06-1661, January 25, 2007, 512 SCRA 570, 583.

[25] *Re: Report on the Judicial Audit in the RTC, Br. 32, Manila*, 481 Phil. 431, 447 (2004), citing *Juan De los Santos v. Mangino*, 453 Phil. 467, 479 (2003).

the reglementary period, and other factors, such as the damage suffered by the parties as a result of the delay, the health and the age of the judge.[26]

The Court agrees with the OCA that the total number of cases which Judge Leonida failed to timely decide or act on warrants a fine higher than that prescribed by the rules. In *Lugares v. Judge Gutierrez-Torres*,[27] the defaulting judge who was found guilty of gross inefficiency for her undue delay in resolving cases submitted for decision for a number of years was dismissed from the service.

In view of Judge Leonida's retirement on July 5, 2008, the only penalty that the Court can impose against him is a fine, pursuant to the rule that the retirement of a judge does not release him from liability incurred while in the active service.

WHEREFORE, the Court finds respondent Judge Leonardo Leonida, former Presiding Judge of Branch 27, Regional Trial Court, Sta. Cruz, Laguna, and Assisting Judge in Branch 74, Regional Trial Court, Malabon City, *GUILTY* of gross incompetence and gross inefficiency for failure to decide one hundred two (102) criminal cases and forty-three (43) civil cases for which he is *FINED ₱50,000.00* to be deducted from his retirement/gratuity benefits.

Judge Jaime C. Blancaflor, Acting Presiding Judge, RTC, Branch 27, Sta. Cruz, Laguna, and Atty. Bernadette Platon, Branch Clerk of Court, are hereby ordered to report on their respective compliance with the orders of the Court contained in its July 29, 2009 Order, within ten (10) days from receipt hereof. The Court notes that, in its February 10, 2010 Resolution, Judge Blancaflor was granted a non-extendible period of sixty (60) to comply with its July 29, 2009 Order.

Judge Blancaflor is hereby ordered to cause the reconstitution of Criminal Case No. 12178 within three (3) months from receipt hereof and to report his compliance thereon within ten (10) days from completion.

[26] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City,* A.M. No. RTJ-09-2171, March 17, 2009, 581 SCRA 585, 592.

[27] A.M. No. MTJ-08-1719, November 23, 2010.

Atty. Bernadette Platon is hereby ordered to include the status of said case in her Monthly Report of Cases.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to party.

Perez, J., no part.

EN BANC

[G. R. No. 175352. January 18, 2011]

DANTE V. LIBAN, REYNALDO M. BERNARDO and SALVADOR M. VIARI, *petitioners, vs.* **RICHARD J. GORDON**, *respondent.* **PHILIPPINE NATIONAL RED CROSS**, *intervenor.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF R.A. NO. 95, AS AMENDED BY PRESIDENTIAL DECREE (P.D.) NOS. 1264 AND 1643 OR THE PHILIPPINE NATIONAL RED CROSS (PNRC) CHARTER; COURT WILL NOT TOUCH ISSUE OF UNCONSTITUTIONALITY UNLESS IT IS THE VERY *LIS MOTA*; CASE AT BAR.— As correctly pointed out in respondent's Motion, the issue of constitutionality of R.A. No. 95 was not raised by the parties, and was not among the issues defined in the body of the Decision; thus, it was not the very *lis mota* of the case. We have reiterated the rule as to when the Court will consider the issue of constitutionality in *Alvarez vs. PICOP Resources, Inc.*, thus: **This Court will**

not touch the issue of unconstitutionality unless it is the very *lis mota.* It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may [rest] its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable. Under the rule quoted above, therefore, this Court **should not** have declared void certain sections of R.A. No. 95, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the Court should have exercised judicial restraint on this matter, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, **after more than sixty (60) years of existence in this country.**

2. ID.; ID.; HUMANITARIAN ORGANIZATIONS; PHILIPPINE NATIONAL RED CROSS (PNRC); *SUI GENERIS* CHARACTER OF THE PNRC, RECOGNIZED.— A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official statutes accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis.*** The PNRC succeeded the chapter of the American Red Cross which was in existence in the Philippine since 1917. It was created by an Act of Congress after the Republic of the Philippines became an independent nation on July 6, 1946 and proclaimed on February 14, 1947 its adherence to the Convention of Geneva of July 29, 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (the "Geneva Red Cross Convention"). By that action the Philippines indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose and like other volunteer organizations established in other countries which have ratified the Geneva Conventions, to promote the health and welfare of the people in peace and war. The provisions of R.A. No. 95, as amended

by R.A. Nos. 855 and 6373, and further amended by P.D. Nos. 1264 and 1643, show the historical background and legal basis of the creation of the PNRC by legislative fiat, as a voluntary organization impressed with public interest. x x x The PNRC is one of the National Red Cross and Red Crescent Societies, which, together with the International Committee of the Red Cross (ICRC) and the IFRC and RCS, make up the International Red Cross and Red Crescent Movement (the Movement).

3. ID.; ID.; ID.; ID.; THE PNRC CHARTER DOES NOT COME WITHIN THE SPIRIT OF THE CONSTITUTIONAL PROVISION PROHIBITING CONGRESS FROM CREATING PRIVATE CORPORATIONS AS IT DOES NOT GRANT SPECIAL PRIVILEGES TO A PARTICULAR INDIVIDUAL, FAMILY OR GROUP, BUT CREATES AN ENTITY THAT STRIVES TO SERVE THE COMMON GOOD.— The PNRC Charter and its amendatory laws have not been questioned or challenged on constitutional grounds, not even in this case before the Court now. In the Decision, the Court, citing *Feliciano v. Commission on Audit*, explained that the purpose of the constitutional provision prohibiting Congress from creating private corporations was to prevent the granting of special privileges to certain individuals, families, or groups, which were denied to other groups. Based on the above discussion, it can be seen that the PNRC Charter does not come within the spirit of this constitutional provision, as it does not grant special privileges to a particular individual, family, or group, but creates an entity that strives to serve the common good. Furthermore, a strict and mechanical interpretation of Article XII, Section 16 of the 1987 Constitution will hinder the State in adopting measures that will serve the public good or national interest. It should be noted that a special law, R.A. No. 9520, the Philippine Cooperative Code of 2008, and not the general corporation code, vests corporate power and capacities upon cooperatives which are private corporations, in order to implement the State's avowed policy.

4. ID.; ID.; ID.; ID.; THE COURT MUST RECOGNIZE THE COUNTRY'S ADHERENCE TO THE GENEVA CONVENTION AND RESPECT THE UNIQUE STATUS OF THE PNRC IN CONSONANCE WITH ITS TREATY OBLIGATIONS.— In the Decision of July 15, 2009, the Court

recognized the public service rendered by the PNRC as the government's partner in the observance of its international commitments, to wit: The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation. The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service. The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929. x x x. **So must this Court recognize too the country's adherence to the Geneva Convention and respect the unique status of the PNRC in consonance with its treaty obligations.** The Geneva Convention has the force and effect of law. Under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. This constitutional provision must be reconciled and harmonized with Article XII, Section 16 of the Constitution, instead of using the latter to negate the former.

5. ID.; ID.; ID.; ID.; ID.; THE DECISION OF JULY 15, 2009 LOST SIGHT OF THE PNRC's SPECIAL STATUS UNDER INTERNATIONAL HUMANITARIAN LAW AND AS AN AUXILIARY OF THE STATE, DESIGNATED TO ASSIST IT IN DISCHARGING ITS OBLIGATIONS UNDER THE GENEVA CONVENTION.— By requiring the PNRC to organize under the Corporation Code just like any other private corporation, the Decision of July 15, 2009 lost sight of the PNRC's special status under international humanitarian law and as an auxiliary of the State, designated to assist it in discharging its obligations under the Geneva Conventions. Although the PNRC is called to be independent under its Fundamental Principles, it interprets such independence as inclusive of its duty to be the government's humanitarian partner. To be recognized in the International Committee, the PNRC must have an autonomous status, and carry out its humanitarian mission in a neutral and impartial manner. However, in accordance with the Fundamental Principle of Voluntary Service of National Societies of the Movement, the PNRC must be distinguished from private and profit-making entities. It is the

main characteristic of National Societies that they "are not inspired by the desire for financial gain but by individual commitment and devotion to a humanitarian purpose freely chosen or accepted as part of the service that National Societies through its volunteers and/or members render to the Community." The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither "be classified as an instrumentality of the State, so as not to lose its character of neutrality" as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an **auxiliary** of the State.

6. ID.; ID.; ID.; ID.; THE *SUI GENERIS* CHARACTER OF THE PNRC REQUIRES THE COURT TO APPROACH CONTROVERSIES INVOLVING THE PNRC ON A CASE-TO-CASE BASIS.— [T]he *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or –controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does **not** *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, the *sui generis* character of PNRC requires us to approach controversies involving the PNRC on a case-to-case basis. In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties.

ABAD, *J., concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; HUMANITARIAN ORGANIZATIONS; PHILIPPINE NATIONAL RED CROSS (PNRC); SINCE THE IMPETUS FOR PNRC's CREATION DRAWS FROM THE COUNTRY'S ADHERENCE TO THE

TREATIES, IT IS IN THIS CONTEXT THAT ITS ORGANIZATIONAL NATURE SHOULD BE VIEWED AND UNDERSTOOD.— Congress created the PNRC to comply with the country's commitments under the Geneva Conventions. The treaties envisioned the establishment in each country of a voluntary organization that would assist in caring for the wounded and sick of the armed forces during times of armed conflict. Upon proclaiming its adherence to the Geneva Conventions, the Republic of the Philippines forthwith created the PNRC for the purpose contemplated by the treaties. Its creation was not privately motivated, but borne of the Republic's observance of treaty obligations. The "whereas clause" of P.D. 1643 or the revised PNRC Charter lays down this basic premise: **x x x WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick of Armed Forces and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions; WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions; x x x** It is thus evident that the PNRC's creation derived primarily from the Geneva Conventions. When Congress created the PNRC, it did not intend to form either a private of government-owned corporation with the usual powers and attributes that such entities might possess. Rather, it set out to form an organization that would be responsive to the requirements of the Geneva Conventions. Section 1 of the PNRC Charter thus provides: **SECTION 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila.** As a voluntary organization tasked to assist the Republic in fulfilling its

commitments under the Geneva Conventions, the PNRC is imbued with characteristics that ordinary private or government organizations do not possess. Its charter's direct reference to the Geneva Conventions gives the PNRC a special status in relation to governments of any form, as well as a unique place in international humanitarian law. Since the impetus for the PNRC's creation draws from the country's adherence to the treaties, it is in this context that its organizational nature should be viewed and understood.

2. ID.; ID.; ID.; THE PNRC IS A *SUI GENERIS* ENTITY THAT HAS NO PRECISE LEGAL EQUIVALENT UNDER OUR STATUTES; IT ALSO HAS RIGHTS UNDER INTERNATIONAL HUMANITARIAN LAW THAT ORDINARY CHARITABLE INSTITUTIONS AND NON-GOVERNMENTAL ORGANIZATIONS (NGO's) DO NOT HAVE.— The PNRC is a National Society of the Red Cross Movement and is recognized by both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies. The PNRC is regarded as a component of the Movement with concomitant rights and obligations under international humanitarian law. Its status as a recognized National Society has imbued it with attributes that ordinary private corporations or government entities do not possess. It is a *sui generis* entity that has no precise legal equivalent under our statutes. The PNRC is not an ordinary private corporation within the meaning of the Corporation Code. As stated earlier, its creation was not privately motivated but originated from the State's obligation to comply with international law. The State organized the PNRC to assist it in discharging its commitments under the Geneva Conventions as an "auxiliary of the public authorities in the humanitarian filed." It was not established by private individuals for profit or gain, but by the State itself pursuant to the objectives of international humanitarian law. The PNRC is not an ordinary charitable organization, foundation, or non-governmental organization (NGO). As a component of the international Movement, it enjoys protection not afforded to any charitable organization or NGO under the Geneva Conventions. For instance, Articles 24 and 26 of the First Geneva Convention vests National Society personnel with the same status as the armed forces medical services in times of armed conflict, subject to certain conditions. Also, only recognized National

Societies enjoy exclusive use of the protective red cross emblem in conformity with the treaties. National Societies like the PNRC are thus **directly regulated by international humanitarian law**, unlike ordinary charitable organizations or NGOs. The PNRC also has rights and obligations under international humanitarian law that ordinary charitable organizations and NGOs do not have. Foremost of these rights is the privilege to participate as a full member in the International Conference of the Red Cross and Red Crescent, in which States also participate as members pursuant to the Geneva Conventions. States Parties and all components of the Movement attend the conference to discuss humanitarian matters **on equal footing**. No other organization has this exceptional privilege in relation to a State.

3. ID.; ID.; ID.; PNRC's ORGANIZATIONAL STATUS CANNOT BE ASSESSED INDEPENDENTLY OF THE TREATIES THAT PROMPTED ITS ESTABLISHMENT.— The PNRC is unlike ordinary charitable organizations or NGOs in many respects due to the distinct features it directly derives from international law. Although it is a local creation, it was so organized as a national Red Cross Society with direct reference to the Geneva Conventions. The PNRC was explicitly "designated as the organization which is authorized to act in matters of relief under said Convention." Consequently, its organizational status cannot be assessed independently of the treaties that prompted its establishment. The PNRC cannot also be regarded as a government corporation or instrumentality. To begin with, it is not owned or controlled by the government or part of the government machinery. The conditions for its recognition as a National Society also militate against its classification as a government entity. Article 4 (4) of the Statutes requires a National Society to "(h)ave an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement." Thus, a National Society must maintain its impartiality, neutrality, and independence. In its mission "to prevent and alleviate human suffering wherever it may be found," it must make "no discrimination as to nationality, race, religious beliefs, class or political opinions." It must enjoy the confidence of all and not take sides in hostilities or controversies of a political, racial, religious or ideological nature. It cannot be seen, therefore, as an instrument of the State or under governmental control. The Statutes require,

however, that a National Society like the PNRC "(b)e **duly recognized by the legal government** of its country on the basis of the Geneva Conventions and **of the national legislation** as a voluntary aid society, **auxiliary to the public authorities in the humanitarian field**." This signifies a partnership with government in implementing State obligations based on international humanitarian law.

4. ID.; ID.; ID.; THE PNRC IS A HYBRID ORGANIZATION THAT DOES NOT FIT THE PARAMETERS PROVIDED BY EITHER THE CORPORATION CODE OR ADMINISTRATIVE CODE BUT A *SUI GENERIS* ENTITY THAT DRAWS ITS NATURE FROM THE GENEVA CONVENTION, THE STATUTES OF THE MOVEMENT AND THE LAW CREATING IT.— The status of being an "auxiliary" of government in the humanitarian field is a precondition to a National Society's existence and recognition as a component of the Movement. In its position paper, the Federation explained that the status of auxiliary "means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State." In other words, the status confers upon the PNRC the duty to be the government's humanitarian partner while, at the same time, remaining independent and free from government intervention. As a recognized National Society, the PNRC must be autonomous, even as it assists government in the discharge of its humanitarian obligations. Notably, the PNRC Charter is also reflective of the organization's dual nature. It does not only vest the PNRC with corporate powers, but imposes upon it duties related to the performance of government functions. Under Section 1 of the charter, the PNRC is "officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions." As such, it is obligated "to provide volunteer aid to the sick and wounded of the armed forces in time of war" and "to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention." Moreover, the charter clearly established the PNRC as a National Red Cross Society pursuant to the treaties and Statutes of the Movement. It was authorized "to act in such matters between similar national societies of other governments and the governments and people and the Armed Forces of the Republic of the Philippines." The PNRC was to establish and

maintain a system of national and international relief and to apply the same in meeting natural disasters, all in the spirit of the Geneva Conventions. In the pursuit of its humanitarian tasks, the PNRC was thus granted the power of perpetual succession, the capacity to sue and be sued, and the power to hold real personal property. It was authorized to adopt a seal, but was given exclusive use of the Red Cross emblem and badge in accordance with the treaties. It may likewise adopt by-laws and regulations and do all acts necessary to carry its purposes into effect. Then PNRC is financed primarily by contributions obtained through solicitation campaigns and private donations. And yet, it is required to submit to the President of the Philippines an annual report of its activities including its financial condition, receipts and disbursements. It is allotted one annual national lottery draw and is exempt from taxes, duties, and fees on importations and purchases, as well as on donations for its disaster relief work and other services. Consequently, the PNRC cannot be classified as either a purely private or government entity. It is a hybrid organization that derives certain peculiarities from international humanitarian law. For this reason, its organizational character does not fit the parameters provided by either the Corporation Code or Administrative Code. It is a *sui generis* entity that draws its nature from the Geneva Conventions, the Statutes of the Movement and the law creating it.

5. ID.; ID.; ID.; THE CONSTITUTION DOES NOT PRECLUDE THE CREATION OF CORPORATIONS THAT MAY NEITHER BE CLASSIFIED AS PRIVATE NOR GOVERNMENTAL; IT DOES NOT FORBID CONGRESS FROM CREATING ORGANIZATIONS THAT DO NOT BELONG TO THE TWO GENERAL TYPES.— The Constitution does not preclude the creation of corporations that may neither be classified as private nor governmental. Sec. 7, Article XIV of the 1935 Constitution, which was carried over in subsequent versions of the fundamental law, does not prohibit Congress from creating other types of organizations that may not fall strictly within the terms of what is deemed a private or government corporation. The Constitution simply provides that Congress cannot create **private corporations,** except by general law, unless such corporations are owned or controlled by the government. It does not forbid Congress from creating organizations that do not belong to these two general types. In *Feliciano v. Commission on Audit*,

the Court explained that the purpose of the ban against the creation of private corporations by special charter is to prevent the grant to certain individuals, families, or groups of special privileges that are denied to other citizens. The creation of the PNRC does not traverse the purpose of the prohibition, as Congress established the PNRC to comply with State obligations under international law. The PNRC Charter is simply a manifestation of the State's adherence to the Geneva Conventions. By enacting the PNRC Charter, Congress merely implemented the will of the State to join other nations of the world in the humanitarian cause. The special status of the PNRC under international humanitarian law justifies the special manner of its creation. The State itself committed the PNRC's formation to the community of nations, and no less than an act of Congress should be deemed sufficient compliance with such an obligation. To require the PNRC to incorporate under the general law is to disregard its unique standing under international conventions. It also ignores the very basic premise for the PNRC's creation.

6. ID.; ID.; ID.; THE ISSUE OF CONSTITUTIONALITY WAS NOT RAISED BY ANY OF THE ORIGINAL PARTIES AND NEITHER WAS THE PNRC A PARTY TO THE CASE, DESPITE BEING THE ENTITY WHOSE CREATION WAS DECLARED VOID UNDER THE JULY 25, 2009 DECISION.— The main issue in this case is whether or not the office of PNRC Chairman is a government office or an office in a GOCC for purposes of the prohibition in Section 13, Article VI of the Constitution. The resolution of this question lies in the determination of whether or not the PNRC is in fact a GOCC. As explained earlier, the PNRC is not a GOCC, but a *sui generis* entity that has no legal equivalent under any of our statutes. Consequently, Senator Gordon did no forfeit his Senate seat under the constitutional prohibition. In view of the PNRC's *sui generis* character, the Court need not even dwell on the issue of whether or not the PNRC Charter was validly enacted. Congress is proscribed only from creating private corporations which, as demonstrated, the PNRC is not. The issue of constitutionality was not raised by any of the original parties and could have been avoided in the first place. Neither was the PNRC a party to the case, despite being the entity whose creation was declared void under the main decision. Finally, the *sui generis* character of the PNRC does not necessarily overturn the rulings of the Court in *Camporedondo*

and *Baluyot*. The PNRC's exceptional nature admits of the conclusions reached in those cases that the PNRC is a GOCC for the purpose of enforcement of labor laws and penal statutes. The PNRC's *sui generis* character compels us to approach controversies involving the PNRC on a case-to-case basis, bearing in mind its distinct nature, purposes and special functions. Rules that govern traditional private or public entities may thus be adjusted in relation to the PNRC and in accordance with the circumstances of each case.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; PASSING UPON THE ISSUE OF CONSTITUTIONALITY OF R.A. 95 IS INEVITABLE IN VIEW OF THE COURT'S FINDING THAT THE PHILIPPINE NATIONAL RED CROSS (PNRC) IS A PRIVATE CORPORATION CREATED BY CONGRESS THROUGH A SPECIAL CHARTER WHICH IS PROSCRIBED BY SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION.— Generally, the Court will not pass upon a constitutional question unless such question is raised by the parties. However, as explained by the Court in *Fabian v. Hon. Desierto*, the rule that a challenge on constitutional grounds must be raised by a party to the case is not an inflexible rule. In the *Fabian* case, the issue of the constitutionality of Section 27 of Republic Act No. 6770 (RA 6770) was not presented as an issue by the parties. Nevertheless, the Court ruled that Section 27 of RA 6770, which provides for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, infringes on the constitutional proscription against laws increasing the appellate jurisdiction of the Supreme Court without its advice and consent. In this case, the constitutional issue was inevitably thrust upon the Court upon its finding that the PNRC is a private corporation, whose creation by a special charter is proscribed by the Constitution. In view of the Court's finding that the PNRC is a private corporation, it was imperative for the Court to address the issue of the creation of the PNRC through a special charter. The Constitution prohibits the creation of a private corporation through a special law. The Court could not declare the PNRC a private corporation created by the special law RA 95 without running afoul of Section 16, Article XII of

the 1987 Constitution. To declare the PNRC a private corporation necessarily meant declaring RA 95 unconstitutional. To declare the PNRC, a creation of RA 95, a private corporation without declaring RA 95 unconstitutional would mean that Congress can create a private corporation through a special law. This the Court could not do.

2. ID.; ID.; THE FACT THAT THE CONSTITUTIONALITY OF R.A. 95 HAS NOT BEEN QUESTIONED FOR SIXTY (60) YEARS DOES NOT MEAN THAT IT COULD NO LONGER BE DECLARED UNCONSTITUTIONAL.— The fact that the constitutionality of RA 95 has not been questioned for more than sixty (60) years does not mean that it could no longer be declared unconstitutional. One is not estopped from assailing the validity of a law just because such law has been relied upon in the past and all that time has not been attacked as unconstitutional. Indeed, there is no prescription to declare a law unconstitutional. Thus, in the case of *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, this Court held that constitutional challenge can be made anytime: **That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later**. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same. **More importantly, the Court granted the PNRC's motion to intervene and the PNRC then filed its Motion for Partial Reconsideration, in which the PNRC argued that its charter is valid and constitutional. Thus, the PNRC, the entity that is directly affected by the issue of the constitutionality of RA 95, is in law and in fact a party to this case, raising specifically the issue that its charter is valid and constitutional.** Moreover, although the original parties did not raise as an issue the constitutionality of RA 95, they were still afforded the opportunity to be heard on this constitutional issue when they filed their respective motions for reconsideration.

3. ID.; ID.; EVEN IF THE PNRC DERIVED ITS EXISTENCE FROM PD 1264, STILL THE CONSTITUTIONAL PROHIBITION WILL APPLY; THE EXERCISE OF LEGISLATIVE POWER BY PRESIDENT MARCOS UNDER MARTIAL LAW MUST STILL BE IN ACCORDANCE WITH

THE CONSTITUTION.— Even if the PNRC derived its existence from PD 1264, still the constitutional prohibition will apply. President Marcos issued PD 1264 on 5 December 1977 during martial law period when the President assumed extensive legislative power. Such assumption of legislative power did not place President Marcos above the Constitution. President Marcos could not issue decrees or orders contrary to the provisions of the Constitution. The exercise of legislative power by President Marcos under martial law must still be in accordance with the Constitution because legislative power cannot be exercised in violation of the Constitution from which legislative power draws its existence. The limits on legislative power is explained by the Court in *Government v. Springer*, thus: Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. **In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four wall of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.**

4. ID.; ID.; THE PNRC CANNOT CLAIM THAT IT IS *SUI GENERIS* JUST BECAUSE IT IS A PRIVATE ORGANIZATION PERFORMING CERTAIN PUBLIC OR GOVERNMENTAL FUNCTIONS; THE EXPRESS CONSTITUTIONAL PROHIBITION AGAINST THE CREATION OF PRIVATE CORPORATIONS BY SPECIAL CHARTER ADMITS OF NO EXCEPTION.— All private charitable organizations are doing public service or activities that also constitute governmental functions. Hence, the PNRC cannot claim that it is *sui generis* just because it is a private organization performing certain public or governmental functions. That the PNRC is rendering public service does not exempt it from the constitutional prohibition against the creation of a private corporation through a special law since the PNRC is, admittedly, still a private organization. The express prohibition against the creation of private

corporations by special charter under Section 16, Article XII of the 1987 Constitution cannot be disregarded just because a private corporation claims to be *sui generis*. The constitutional prohibition admits of no exception.

5. ID.; ID.; HUMANITARIAN ORGANIZATIONS; THE CONDITIONS FOR RECOGNITION OF NATIONAL SOCIETIES DO NOT REQUIRE THAT THE STATE ITSELF CREATE THE NATIONAL SOCIETY THROUGH SPECIAL CHARTER; THE NATIONAL SOCIETIES ARE BOUND BY THE LAWS OF THEIR HOST COUNTRIES AND MUST SUBMIT TO THE CONSTITUTION OF THEIR RESPECTIVE HOST COUNTRIES.— The conditions for recognition of National Societies do not require that the State itself create the National Society through a special charter. The absence of such requirement is proper and necessary considering the Movement's emphasis on the importance of maintaining the independence of the National Society, free from any form of intervention from the government. However, it is required that the National Society be officially recognized by the government of its country as auxiliary to the public authorities in the humanitarian field. A decree granting official recognition to the National Society is essential in order to distinguish it from other charitable organizations in the country and to be entitled to the protection of the Geneva Conventions in the event of armed conflict. The content of the decree of recognition may vary from one country to another but it should explicitly specify: 1. That the National Society is the country's only Red Cross or Red Crescent organization; 2. That it is autonomous in relation to the State; 3. That it performs its activities in conformity with the Fundamental Principles; and 4. The conditions governing the use of the emblem. **Thus, there is no specific requirement for the creation of the National Society through a special charter.** The State does not have the obligation to create the National Society, in our case, the PNRC. What is important is that the National Society is officially recognized by the government as auxiliary to the public authorities in the humanitarian services of the government. This the Philippine government can accomplish even without creating the PNRC through a special charter. Besides, as auxiliaries in the humanitarian services of their host governments, **the National Societies are subject to the laws of their respective countries**. Thus, the National Societies are bound by the laws

of their host countries and must submit to the Constitution of their respective host countries.

6. ID.; ID.; THE CONSTITUTIONAL PROHIBITION UNDER SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION IS CLEAR, CATEGORICAL AND ABSOLUTE; THE COURT HAS NO POWER TO MAKE PNRC AN EXCEPTION TO SECTION 16, ARTICLE XII OF THE 1987 CONSTITUTION.— The Philippine Constitution prohibits Congress from creating private corporations except by general law. I agree with the PNRC that it is a private organization performing public functions. Precisely because it is a private organization, the PNRC charter – whether it be RA 95 or PD 1264 – is violative of the constitutional proscription against the creation of private corporations by special law. Nevertheless, keeping in mind the treaty obligations of the Philippines under the Geneva Conventions, the assailed Decision only held void those provisions of the PNRC charter which create PNRC as a private corporation or grant it corporate powers. The other provisions respecting the government's treaty obligations remain valid, thus: **The other provisions of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter.** The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field." This Court's paramount duty is to faithfully apply the provisions of the Constitution to the present case. The Constitutional prohibition under Section 16, Article XII of the 1987 Constitution is clear, categorical, and absolute: SEC. 16. The Congress, **shall not, except by general law**, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic

viability. Since the constitutional prohibition admits of no exception, this Court has no recourse but to apply the prohibition to the present case. This Court has no power to make PNRC an exception to Section 16, Article XII of the 1987 Constitution. The PNRC could either choose to remain unincorporated or it could adopt its own articles of incorporation and by-laws and incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

APPEARANCES OF COUNSEL

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Agabin Verzola Hermoso & Layaoen Law Offices for respondent.

Lorna Patajo-Kapunan, Rodolfo O. Reyes and Reynaldo A. Dario and *Dennis R. Manzanal* for movant–intervenor.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

This resolves the **Motion for Clarification and/or for Reconsideration**[1] filed on August 10, 2009 by respondent **Richard J. Gordon** (respondent) of the **Decision** promulgated by this Court on July 15, 2009 (the Decision), the **Motion for Partial Reconsideration**[2] filed on August 27, 2009 by movant-intervenor **Philippine National Red Cross (PNRC)**, and the latter's **Manifestation and Motion to Admit Attached Position Paper**[3] filed on December 23, 2009.

In the Decision,[4] the Court held that respondent did not forfeit his seat in the Senate when he accepted the chairmanship of the PNRC Board of Governors, as "the office of the PNRC Chairman is not a government office or an office in a

[1] *Rollo*, pp. 256-264.

[2] *Id.* at 397-418.

[3] *Id.* at 434-439.

[4] *Liban v. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68.

government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution."[5] The Decision, however, further declared void the PNRC Charter "insofar as it creates the PNRC as a private corporation" and consequently ruled that "the PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation."[6] The dispositive portion of the Decision reads as follows:

> WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. We also declare that Sections 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Charter of the Philippine National Red Cross, or Republic Act No. 95, as amended by Presidential Decree Nos. 1264 and 1643, are VOID because they create the PNRC as a private corporation or grant it corporate powers.[7]

In his **Motion for Clarification and/or for Reconsideration**, respondent raises the following grounds: (1) as the issue of constitutionality of Republic Act (R.A.) No. 95 was not raised by the parties, the Court went beyond the case in deciding such issue; and (2) as the Court decided that Petitioners did not have standing to file the instant Petition, the pronouncement of the Court on the validity of R.A. No. 95 should be considered ***obiter***.[8]

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[5] Section 13, Article VI of the Constitution reads:

> SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

[6] *Liban v. Gordon*, *supra* note 4 at 97-98.

[7] *Id.* at 98.

[8] *Rollo*, p. 256.

Respondent argues that the validity of R.A. No. 95 was a non-issue; therefore, it was unnecessary for the Court to decide on that question. Respondent cites *Laurel v. Garcia*,[9] wherein the Court said that it "will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground" and goes on to claim that since this Court, in the Decision, disposed of the petition on some other ground, *i.e.*, lack of standing of petitioners, there was no need for it to delve into the validity of R.A. No. 95, and the rest of the judgment should be deemed *obiter*.

In its **Motion for Partial Reconsideration**, PNRC prays that the Court sustain the constitutionality of its Charter on the following grounds:

A. THE ASSAILED DECISION DECLARING UNCONSTITUTIONAL REPUBLIC ACT NO. 95 AS AMENDED DEPRIVED INTERVENOR PNRC OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.

   1. INTERVENOR PNRC WAS NEVER A PARTY TO THE INSTANT CONTROVERSY.

   2. THE CONSTITUTIONALITY OF REPUBLIC ACT NO. 95, AS AMENDED WAS NEVER AN ISSUE IN THIS CASE.

B. THE CURRENT CHARTER OF PNRC IS PRESIDENTIAL DECREE NO. 1264 AND NOT REPUBLIC ACT NO. 95. PRESIDENTIAL DECREE NO. 1264 WAS NOT A CREATION OF CONGRESS.

C. PNRC'S STRUCTURE IS *SUI GENERIS*; IT IS A CLASS OF ITS OWN. WHILE IT IS PERFORMING HUMANITARIAN FUNCTIONS AS AN AUXILIARY TO GOVERNMENT, IT IS A NEUTRAL ENTITY SEPARATE AND INDEPENDENT OF GOVERNMENT CONTROL, YET IT DOES NOT QUALIFY AS STRICTLY PRIVATE IN CHARACTER.

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[9] G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797, 813.

In his **Comment and Manifestation**[10] filed on November 9, 2009, respondent manifests: (1) that he agrees with the position taken by the PNRC in its Motion for Partial Reconsideration dated August 27, 2009; and (2) as of the writing of said Comment and Manifestation, there was pending before the Congress of the Philippines a proposed bill entitled "An Act Recognizing the PNRC as an Independent, Autonomous, Non-Governmental Organization Auxiliary to the Authorities of the Republic of the Philippines in the Humanitarian Field, to be Known as The Philippine Red Cross."[11]

After a thorough study of the arguments and points raised by the respondent as well as those of movant-intervenor in their respective motions, we have reconsidered our pronouncements in our Decision dated July 15, 2009 with regard to the nature of the PNRC and the constitutionality of some provisions of the PNRC Charter, R.A. No. 95, as amended.

As correctly pointed out in respondent's Motion, the issue of constitutionality of R.A. No. 95 was not raised by the parties, and was not among the issues defined in the body of the Decision; thus, it was not the very *lis mota* of the case. We have reiterated the rule as to when the Court will consider the issue of constitutionality in *Alvarez v. PICOP Resources, Inc.*,[12] thus:

This Court will not touch the issue of unconstitutionality unless it is the very *lis mota*. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may [rest] its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable.[13]

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[10] *Rollo,* pp. 421-431.

[11] *Id.* at 421.

[12] G.R. No. 162243, November 29, 2006, 508 SCRA 498.

[13] *Id.* at 552, citing *Sotto v. Commission on Elections,* 76 Phil. 516, 522 (1946).

Under the rule quoted above, therefore, this Court **should not** have declared void certain sections of R.A. No. 95, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the Court should have exercised judicial restraint on this matter, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, **after more than sixty (60) years of existence in this country**.

Its existence as a chartered corporation remained unchallenged on ground of unconstitutionality notwithstanding that R.A. No. 95 was enacted on March 22, 1947 during the effectivity of the 1935 Constitution, which provided for a proscription against the creation of private corporations by special law, to wit:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned and controlled by the Government or any subdivision or instrumentality thereof. (Art. XIV, 1935 Constitution.)

Similar provisions are found in Article XIV, Section 4 of the 1973 Constitution and Article XII, Section 16 of the 1987 Constitution. The latter reads:

> SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Since its enactment, the PNRC Charter was amended several times, particularly on June 11, 1953, August 16, 1971, December 15, 1977, and October 1, 1979, by virtue of R.A. No. 855, R.A. No. 6373, P.D. No. 1264, and P.D. No. 1643, respectively. The passage of several laws relating to the PNRC's corporate existence notwithstanding the effectivity of the constitutional

proscription on the creation of private corporations by law, is a recognition that the PNRC is not strictly in the nature of a private corporation contemplated by the aforesaid constitutional ban.

A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official status accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis***.

The PNRC succeeded the chapter of the American Red Cross which was in existence in the Philippines since 1917. It was created by an Act of Congress after the Republic of the Philippines became an independent nation on July 6, 1946 and proclaimed on February 14, 1947 its adherence to the Convention of Geneva of July 29, 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (the "Geneva Red Cross Convention"). By that action the Philippines indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose and like other volunteer organizations established in other countries which have ratified the Geneva Conventions, to promote the health and welfare of the people in peace and in war.[14]

The provisions of R.A. No. 95, as amended by R.A. Nos. 855 and 6373, and further amended by P.D. Nos. 1264 and 1643, show the historical background and legal basis of the creation of the PNRC by legislative fiat, as a voluntary organization impressed with public interest. Pertinently R.A. No. 95, as amended by P.D. 1264, provides:

> WHEREAS, during the meeting in Geneva, Switzerland, on 22 August 1894, the nations of the world unanimously agreed to diminish within their power the evils inherent in war;
>
> WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and

[14] Whereas clause, Republic Act No. 95 (1947).

Sick of Armed Forces in the Field and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions;

WHEREAS, there existed in the Philippines since 1917 a chapter of the American National Red Cross which was terminated in view of the independence of the Philippines; and

WHEREAS, the volunteer organizations established in other countries which have ratified or adhered to the Geneva Conventions **assist in promoting the health and welfare of their people in peace and in war,** and through their mutual assistance and cooperation directly and through their international organizations promote better understanding and sympathy among the people of the world;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby decree and order that Republic Act No. 95, Charter of the Philippine National Red Cross (PNRC) as amended by Republic Acts No. 855 and 6373, be further amended as follows:

Section 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila. (Emphasis supplied.)

The significant public service rendered by the PNRC can be gleaned from Section 3 of its Charter, which provides:

Section 3. That the purposes of this Corporation shall be as follows:

(a) To provide volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Conventions to which the Republic of the Philippines proclaimed its adherence;

(b) For the purposes mentioned in the preceding sub-section, to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;

(c) To act in matters of voluntary relief and in accordance with the authorities of the armed forces as a medium of communication between people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Governments and people and the Armed Forces of the Republic of the Philippines;

(d) To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting and emergency needs caused by typhoons, flood, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;

(e) To devise and promote such other services in time of peace and in time of war as may be found desirable in improving the health, safety and welfare of the Filipino people;

(f) To devise such means as to make every citizen and/or resident of the Philippines a member of the Red Cross.

The PNRC is one of the National Red Cross and Red Crescent Societies, which, together with the International Committee of the Red Cross (ICRC) and the IFRC and RCS, make up the International Red Cross and Red Crescent Movement (the Movement). They constitute a worldwide humanitarian movement, whose mission is:

[T]o prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health

and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance.[15]

The PNRC works closely with the ICRC and has been involved in humanitarian activities in the Philippines since 1982. Among others, these activities in the country include:

1. Giving protection and assistance to civilians displaced or otherwise affected by armed clashes between the government and armed opposition groups, primarily in Mindanao;
2. Working to minimize the effects of armed hostilities and violence on the population;
3. Visiting detainees; and
4. Promoting awareness of international humanitarian law in the public and private sectors.[16]

National Societies such as the PNRC act as **auxiliaries** to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief and health and social programmes.

The International Federation of Red Cross (IFRC) and Red Crescent Societies (RCS) Position Paper,[17] submitted by the PNRC, is instructive with regard to the elements of the specific nature of the National Societies such as the PNRC, to wit:

National Societies, such as the Philippine National Red Cross and its sister Red Cross and Red Crescent Societies, have certain specificities deriving from the 1949 Geneva Convention and the Statutes of the International Red Cross and Red Crescent Movement (the Movement). They are also guided by the seven Fundamental

[15] Pamphlet entitled "The Fundamental Principles of the Red Cross and Red Crescent Movement" (April 2009), available with the ICRC, http://www.icrc.org.

[16] *Id.*

[17] *Rollo,* pp. 440-442.

Principles of the Red Cross and Red Crescent Movement: **Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.**

A National Society partakes of a *sui generis* character. It is a protected component of the Red Cross movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Power cannot require any change in the personnel or structure of a National Society. **National societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs**.

x x x x x x x x x

In addition, National Societies are not only officially recognized by their public authorities as voluntary aid societies, auxiliary to the public authorities in the humanitarian field, but also benefit from recognition at the International level. This is considered to be an element distinguishing National Societies from other organizations (mainly NGOs) and other forms of humanitarian response.

x x x. No other organization belongs to a world-wide Movement in which all Societies have equal status and share equal responsibilities and duties in helping each other. This is considered to be the essence of the Fundamental Principle of Universality.

Furthermore, the National Societies are considered to be **auxiliaries** to the public authorities in the humanitarian field. x x x.

The auxiliary status of [a] Red Cross Society **means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State**. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector.

x x x **No other organization has a duty to be its government's humanitarian partner while remaining independent.**[18] (Emphases ours.)

It is in recognition of this *sui generis* character of the PNRC that R.A. No. 95 has remained valid and effective from the time of its enactment in March 22, 1947 under the 1935 Constitution and during the effectivity of the 1973 Constitution and the 1987 Constitution.

The PNRC Charter and its amendatory laws have not been questioned or challenged on constitutional grounds, not even in this case before the Court now.

In the Decision, the Court, citing *Feliciano v. Commission on Audit*,[19] explained that the purpose of the constitutional provision prohibiting Congress from creating private corporations was to prevent the granting of special privileges to certain individuals, families, or groups, which were denied to other groups. Based on the above discussion, it can be seen that the PNRC Charter does not come within the spirit of this constitutional provision, as it does not grant special privileges to a particular individual, family, or group, but creates an entity that strives to serve the common good.

Furthermore, a strict and mechanical interpretation of Article XII, Section 16 of the 1987 Constitution will hinder the State in adopting measures that will serve the public good or national interest. It should be noted that a special law, R.A. No. 9520, the Philippine Cooperative Code of 2008, and not the general corporation code, vests corporate power and capacities upon cooperatives which are private corporations, in order to implement the State's avowed policy.

In the Decision of July 15, 2009, the Court recognized the public service rendered by the PNRC as the government's partner in the observance of its international commitments, to wit:

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[18] *Id.* at 440-441.

[19] 464 Phil. 439 (2004).

The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation. The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service.

The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929. x x x.[20] (Citations omitted.)

So must this Court recognize too the country's adherence to the Geneva Convention and respect the unique status of the PNRC in consonance with its treaty obligations. The Geneva Convention has the force and effect of law.[21] Under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land.[22] This constitutional provision must be reconciled and harmonized with Article XII, Section 16 of the Constitution, instead of using the latter to negate the former.

By requiring the PNRC to organize under the Corporation Code just like any other private corporation, the Decision of July 15, 2009 lost sight of the PNRC's special status under

[20] *Liban v. Gordon, supra* note 4 at 77.

[21] *Ebro III v. National Labor Relations Commission*, 330 Phil. 93, 101 (1996).

[22] **1935 Constitution, ARTICLE II, SECTION 3.** The Philippines renounces war as an instrument of national policy and adopts the generally accepted principles of international law as part of the law of the Nation.

1973 CONSTITUTION, ARTICLE II, SECTION 3. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

1987 CONSTITUTION, ARTICLE II, SECTION 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

international humanitarian law and as an auxiliary of the State, designated to assist it in discharging its obligations under the Geneva Conventions. Although the PNRC is called to be independent under its Fundamental Principles, it interprets such independence as inclusive of its duty to be the government's humanitarian partner. To be recognized in the International Committee, the PNRC must have an autonomous status, and carry out its humanitarian mission in a neutral and impartial manner.

However, in accordance with the Fundamental Principle of Voluntary Service of National Societies of the Movement, the PNRC must be distinguished from private and profit-making entities. It is the main characteristic of National Societies that they "are not inspired by the desire for financial gain but by individual commitment and devotion to a humanitarian purpose freely chosen or accepted as part of the service that National Societies through its volunteers and/or members render to the Community."[23]

The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither "be classified as an instrumentality of the State, so as not to lose its character of neutrality" as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an **auxiliary** of the State.[24]

Based on the above, the *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or -controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does **not** *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, the *sui generis* character of PNRC

[23] *Supra* note 15.

[24] *Rollo*, p. 433.

requires us to approach controversies involving the PNRC on a case-to-case basis.

In sum, the PNRC enjoys a special status as an important ally and auxiliary of the government in the humanitarian field in accordance with its commitments under international law. This Court cannot all of a sudden refuse to recognize its existence, especially since the issue of the constitutionality of the PNRC Charter was never raised by the parties. It bears emphasizing that the PNRC has responded to almost all national disasters since 1947, and is widely known to provide a substantial portion of the country's blood requirements. Its humanitarian work is unparalleled. The Court should not shake its existence to the core in an untimely and drastic manner that would not only have negative consequences to those who depend on it in times of disaster and armed hostilities but also have adverse effects on the image of the Philippines in the international community. **The sections of the PNRC Charter that were declared void must therefore stay.**

WHEREFORE, *premises considered*, respondent Richard J. Gordon's *Motion for Clarification and/or for Reconsideration* and movant-intervenor PNRC's *Motion for Partial Reconsideration* of the *Decision* in *G.R. No. 175352* dated July 15, 2009 are *GRANTED*. The constitutionality of R.A. No. 95, as amended, the charter of the Philippine National Red Cross, was not raised by the parties as an issue and should not have been passed upon by this Court. The structure of the PNRC is *sui generis*¸ being neither strictly private nor public in nature. R.A. No. 95 remains valid and constitutional in its entirety. The dispositive portion of the Decision should therefore be *MODIFIED* by deleting the second sentence, to now read as follows:

> WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, Bersamin, del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Abad, J., see concurring opinion.

Carpio, J., see dissenting opinion.

Carpio Morales, Brion, Mendoza, and *Sereno, JJ.*, join the dissent of *J.* Carpio.

Corona, C.J., no part.

CONCURRING OPINION

ABAD, *J.*:

On July 15, 2009 the Court rendered a decision partially voiding Republic Act 95 (R.A. 95), the charter of the Philippine National Red Cross (PNRC) as amended by Presidential Decrees 1264 and 1643 (P.D. 1264 and 1643). The Court ruled that Congress enacted the PNRC Charter in violation of Section 7, Article XIV of the 1935 Constitution, which states:

> **SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.**

The Court based its decision on a finding that the PNRC is a private corporation which Congress could not create by special law. Like any other private corporation, the PNRC can only be formed and organized under a general enabling law like the Corporation Code.

The decision stemmed from a petition that petitioners Dante Liban, *et al.* (Liban, *et al.*) filed with the Court to declare respondent Senator Richard J. Gordon (Sen. Gordon) as having forfeited his Senate seat under Section 13, Article VI of the 1987 Constitution.[1] Sen. Gordon had been elected Chairman

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[1] The provision reads:

SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision,

of the Board of Governors of the PNRC, which the Court classified in *Camporedondo v. NLRC*[2] as a government-owned and controlled corporation (GOCC). Consequently, he automatically forfeited his Senate seat for holding an incompatible office in a GOCC.

Parenthetically, in resolving the case, the Court held that Liban, *et al.* had no standing to file the petition, as it is a *quo warranto* case that could only be brought by the Government or an individual who claims entitlement to the public office. Since Liban, *et al.* did not seek the Senator's seat, they were not proper parties to bring the action.

Despite Liban, *et al.*'s lack of standing, however, the Court chose to address the merits of their petition. The main issue was: "whether the office of the PNRC Chairman is a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the Constitution."[3]

According to the Court, the PNRC is a private organization performing public functions. Congress established it in adherence to the Geneva Conventions for the purpose contemplated under the treaties. The PNRC is a member National Society of the International Red Cross and Red Crescent Movement and is guided and bound by its seven Fundamental Principles.[4] To be recognized as a National Society, the Statutes of the International Red Cross and Red Crescent Movement required that the PNRC be autonomous or independent.

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agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

[2] *Camporedondo v. National Labor Relations Commission*, 370 Phil. 901 (1999).

[3] Main Decision in G.R. No. 175352, p. 5.

[4] These principles are: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.

Due to this requirement, the PNRC must not appear to be an instrument or agency of the government for, "otherwise, it cannot merit the trust of all and cannot effectively carry out its mission."[5] It must, in case of invasion or an internal war, maintain its neutrality and independence to be able to fulfill its humanitarian tasks. It cannot choose to treat only the wounded on one side.

Moreover, the PNRC cannot be government-owned because it does not receive appropriations from Congress or possess government assets. It is funded by voluntary donations from private contributors. The government does not have control over its affairs. While the President of the Philippines appoints six of the PNRC Board of Governors, the overwhelming majority of the thirty-member board is elected by private sector members. The PNRC Chairman is not appointed by or under the control of the President of the Philippines. He is elected by the organization's governing board. These all prove that the position of PNRC Chairman is a private, not a government office.

Additionally, the Court held that the *Camporedondo* ruling relied on by Liban, *et al.* was erroneous. The Court's conclusion in that case—that the PNRC is a GOCC—is based solely on the fact that it was Congress which created PNRC under a special law. The case failed to consider, however, that the 1987 Administrative Code defines a GOCC as "any agency organized as a stock or non-stock corporation, vested with functions relating to public needs x x x, and **owned by the Government** directly or through its instrumentalities x x x."[6] Since the government did not own PNRC, it cannot be a GOCC under such definition.

The Court thus concluded that Sen. Gordon did not forfeit his Senate seat.

As stated earlier, the Court partially voided the PNRC Charter on the ground that Congress has been constitutionally prohibited from creating private corporations by special law. The Court

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[5] *Supra* note 3, at 10.

[6] Section 2(13), Introductory Provisions, 1987 Administrative Code.

declared as void those provisions of the PNRC Charter that related to its creation and those that granted it corporate powers.[7] What remained of the Charter, said the Court,[8] served "as recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement." The surviving provisions supposedly implemented the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the Movement which required a National Society to be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation."[9]

Justice Antonio Eduardo B. Nachura dissented and was joined by four other members of the Court.[10] First, he argued that Liban, *et al.* had standing to file the petition, which he characterized as one for prohibition and not *quo warranto*. The petition actually sought an injunction against a continuing violation of the Constitution and involved a constitutional issue with great impact on public interest. Thus, the petition deserved the attention of the Court in view of its seriousness, novelty, and weight as precedent.

According to Justice Nachura, since no private corporation can have a special charter under the Constitution, it follows that the PNRC is a GOCC. As held in *Camporedondo* and *Baluyot v. Holganza*,[11] the test for determining whether a corporation is a GOCC is simply whether it was created under its own charter for the exercise of a public function or by incorporation under the general corporation law. The definition of a GOCC under the 1987 Administrative Code, on the other hand, is broad enough to admit of other distinctions as to the kinds of GOCCs.

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[7] These void provisions are Sections 1 to 13 of the PNRC Charter.

[8] These include Sections 4(b) and (c), 14, 15, 16 and 17 of the PNRC Charter.

[9] *Supra* note 3, at 22-23.

[10] All in all, seven (7) members of the Court voted in favor of the main decision penned by Justice Antonio T. Carpio, while five (5) members dissented. One (1) associate justice took no part.

[11] 382 Phil. 131 (2000).

The more crucial factor to consider, said Justice Nachura, is the definition's reference to the corporation being vested with functions relating to public needs. In this regard, the PNRC Charter states that it is created as a "voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Convention x x x."[12] These obligations are undoubtedly public or governmental in character. Hence, the PNRC is engaged in the performance of the government's public functions.

Justice Nachura added that, at the very least, the PNRC should be regarded as a government instrumentality under the 1987 Administrative Code. An instrumentality "refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."[13] The PNRC's organizational attributes, said Justice Nachura, are consistent with this definition.

The dissent then cites the unsettling ripple effect which the main ruling could create on numerous Court decisions, such as those dealing with the jurisdiction of the Civil Service Commission (CSC) and the authority of the Commission on Audit (COA). It also noted the absurdity of partially invalidating the PNRC Charter as this would have the consequence of imposing obligations and providing an operational framework for a legally non-existing entity.

Justice Nachura finally warns against the PNRC's ultimate demise if it were regarded as a private corporation. Because of possible violations of the equal protection clause and penal statutes, the PNRC may no longer be extended tax exemptions and official immunity or be given any form of support by the National Government, local government units, and the Philippine Charity Sweepstakes Office (PCSO). If the PNRC is consequently

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[12] Section 1, P.D. 1643.

[13] Section 2 (10), Introductory Provisions, 1987 Administrative Code.

obliterated, the Philippines will be shirking its obligations under the Geneva Conventions.

The dissent finally concluded that Sen. Gordon forfeited his Senate seat for holding two incompatible offices.

Although the main ruling favored Sen. Gordon, he filed a motion for clarification and reconsideration of the Court's decision.[14] He said that the Court decided the case beyond what was necessary, considering that the parties never raised the constitutionality of the PNRC Charter as an issue. He invoked the rule that the Court will not pass upon a constitutional issue unless it is the very *lis mota* of the case or if it can be disposed of on some other ground. Since the Court held that Liban, *et al.* had no personality to file the petition, the Court should have simply refrained from delving into the constitutionality of the PNRC Charter. Sen. Gordon thus submits that the Court should regard the declaration of unconstitutionality of the PNRC Charter *obiter dictum*.

Liban, *et al.* also filed a motion for reconsideration of the Court's decision, essentially adopting the thesis of Justice Nachura.[15]

Subsequently, the PNRC, which was not a party to the case, sought to intervene and filed a motion for reconsideration of the Court's decision.[16] It claimed that, although the Court annulled its very existence, it did not give the PNRC the chance to defend itself and prove the validity of its creation. The PNRC pointed out that P.D. 1264 and 1643 completely repealed R.A. 95. Consequently, the PNRC no longer owed its creation to Congress but to President Marcos pursuant to his power of executive legislation. The constitutional bar is on Congress.

As for its organizational nature, the PNRC asserts that it is neither a private nor a government corporation but a *sui generis* entity, a unique being with no equivalent in corporate

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[14] *Rollo*, pp. 256-263.

[15] *Id.* at 264-285.

[16] *Id.* at 388-413.

organizations. While the PNRC performs certain public services, its neutrality and independence would be compromised if it were to be deemed as a government-owned corporation or instrumentality. Besides, it is in fact neither owned nor controlled by the government.

The PNRC also stressed that, although it has private characteristics, it was not created for profit or gain but in compliance with treaty obligations under the Geneva Conventions. As such, it is an auxiliary of government in the performance of humanitarian functions under international law.

To support its stand that it is a *sui generis* entity, the PNRC submitted a position paper[17] prepared by the International Federation of Red Cross and Red Crescent Societies (the Federation) explaining the specific nature of National Societies like the PNRC.

There is a need to examine the Court's decision in this case considering its far reaching effects. Allowing such decision to stand will create innumerable mischief that would hamper the PNRC's operations. With a void juridical personality, it cannot open a bank account, issue tax-exempt receipts for donations, or enter into contracts for delivery of rescue reliefs like blood, medicine, and food. Its officers would be exposed to suits in their personal capacities. The validity of its past transactions would be open to scrutiny and challenge. Neither the country nor the PNRC needs this.

FIRST. Congress created the PNRC to comply with the country's commitments under the Geneva Conventions. The treaties envisioned the establishment in each country of a voluntary organization that would assist in caring for the wounded and sick of the armed forces during times of armed conflict. Upon proclaiming its adherence to the Geneva Conventions, the Republic of the Philippines forthwith created the PNRC for the purpose contemplated by the treaties. Its creation was not privately motivated, but borne of the Republic's observance of treaty obligations. The "whereas clause" of P.D. 1643 or the revised PNRC Charter lays down this basic premise:

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[17] See temporary *rollo*.

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WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick of Armed Forces and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions;

x x x x x x x x x

It is thus evident that the PNRC's creation derived primarily from the Geneva Conventions. When Congress created the PNRC, it did not intend to form either a private or government-owned corporation with the usual powers and attributes that such entities might possess. Rather, it set out to form an organization that would be responsive to the requirements of the Geneva Conventions. Section 1 of the PNRC Charter thus provides:

SECTION 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila.

As a voluntary organization tasked to assist the Republic in fulfilling its commitments under the Geneva Conventions, the PNRC is imbued with characteristics that ordinary private or government organizations do not possess. Its charter's direct reference to the Geneva Conventions gives the PNRC a special status in relation to governments of any form, as well as a

unique place in international humanitarian law.[18] Since the impetus for the PNRC's creation draws from the country's adherence to the treaties, it is in this context that its organizational nature should be viewed and understood.

SECOND. The PNRC is a National Society of the Red Cross Movement and is recognized by both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies. The PNRC is regarded as a component of the Movement with concomitant rights and obligations under international humanitarian law. Its status as a recognized National Society has imbued it with attributes that ordinary private corporations or government entities do not possess. It is a *sui generis* entity that has no precise legal equivalent under our statutes.

The PNRC is not an ordinary private corporation within the meaning of the Corporation Code. As stated earlier, its creation was not privately motivated but originated from the State's obligation to comply with international law. The State organized the PNRC to assist it in discharging its commitments under the Geneva Conventions as an "auxiliary of the public authorities in the humanitarian field."[19] It was not established by private individuals for profit or gain, but by the State itself pursuant to the objectives of international humanitarian law.

The PNRC is not an ordinary charitable organization, foundation, or non-governmental organization (NGO). As a component of the international Movement, it enjoys protection not afforded to any charitable organization or NGO under the Geneva Conventions. For instance, Articles 24 and 26 of the First Geneva Convention vests National Society personnel with the same status as the armed forces medical services in times of armed conflict, subject to certain conditions. Also, only

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[18] See *The Relevance of the 50th Anniversary of the Geneva Conventions to National Red Cross and Red Crescent Societies: Reviewing the Past to Address the Future*; International Review of the Red Cross 835, pp. 649-668 by Michael A. Meyer (http./www.icrc.org/web/eng/siteen0.nsf/htmlall/57jq3j?opendocument; last visited July 12, 2010).

[19] Article 4 (3), Statutes of the Movement.

recognized National Societies enjoy exclusive use of the protective red cross emblem in conformity with the treaties.[20] National Societies like the PNRC are thus **directly regulated by international humanitarian law**, unlike ordinary charitable organizations or NGOs.

The PNRC also has rights and obligations under international humanitarian law that ordinary charitable organizations and NGOs do not have. Foremost of these rights is the privilege to participate as a full member in the International Conference of the Red Cross and Red Crescent, in which States also participate as members pursuant to the Geneva Conventions.[21] States Parties and all components of the Movement attend the conference to discuss humanitarian matters **on equal footing**.[22] No other organization has this exceptional privilege in relation to a State.

Significantly, **both** States Parties and the Movement's components adopt the Statutes of the Movement during the conference held every four (4) years.[23] The Statutes underscore the special relationship that National Societies have in relation to the State. Article 2 of the Statutes lays down reciprocal rights and obligations between States Parties to the Geneva Conventions and the National Societies, thus:

> **1. The States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.**
>
> **2. Each State shall promote the establishment on its territory of a National Society and encourage its development.**
>
> **3. The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the**

[20] Article 44 (2) of the First Geneva Convention.

[21] *Supra* note 18.

[22] See The Legal Status of National Red Cross and Red Crescent Societies by Christophe Lanord; (http://www.icrc.org/web/eng/siteen0.nsf/html/57JQT9; last visited June 25, 2010).

[23] *Supra* note 18.

Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible humanitarian activities of the States.

4. The States shall at all times respect the adherence by all components of the Movement to the Fundamental Principles.

5. The implementation of the present Statutes by the components of the Movement shall not affect the sovereignty of States, with due respect for the provisions of international humanitarian law.

As can be seen, therefore, the PNRC is unlike ordinary charitable organizations or NGOs in many respects due to the distinct features it directly derives from international law. Although it is a local creation, it was so organized as a national Red Cross Society with direct reference to the Geneva Conventions. The PNRC was explicitly "designated as the organization which is authorized to act in matters of relief under said Convention."[24] Consequently, its organizational status cannot be assessed independently of the treaties that prompted its establishment.

The PNRC cannot also be regarded as a government corporation or instrumentality. To begin with, it is not owned or controlled by the government or part of the government machinery. The conditions for its recognition as a National Society also militate against its classification as a government entity. Article 4 (4) of the Statutes requires a National Society to "(h)ave an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement."

Thus, a National Society must maintain its impartiality, neutrality, and independence. In its mission "to prevent and alleviate human suffering wherever it may be found," it must make "no discrimination as to nationality, race, religious beliefs, class or political opinions." It must enjoy the confidence of all and not take sides in hostilities or controversies of a political, racial, religious or ideological nature.[25] It cannot be seen,

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[24] Section 2, P.D. 1643.

[25] Preamble, Statutes of the Movement.

therefore, as an instrument of the State or under governmental control.

The Statutes require, however, that a National Society like the PNRC "(b)e **duly recognized by the legal government** of its country on the basis of the Geneva Conventions and **of the national legislation** as a voluntary aid society**, auxiliary to the public authorities in the humanitarian field**."[26] This signifies a partnership with government in implementing State obligations based on international humanitarian law.[27]

The status of being an "auxiliary" of government in the humanitarian field is a precondition to a National Society's existence and recognition as a component of the Movement. In its position paper, the Federation explained that the status of auxiliary "means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State." In other words, the status confers upon the PNRC the duty to be the government's humanitarian partner while, at the same time, remaining independent and free from government intervention. As a recognized National Society, the PNRC must be autonomous, even as it assists government in the discharge of its humanitarian obligations.

Notably, the PNRC Charter is also reflective of the organization's dual nature. It does not only vest the PNRC with corporate powers, but imposes upon it duties related to the performance of government functions. Under Section 1 of the charter, the PNRC is "officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions." As such, it is obligated "to

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[26] *Supra* note 19.

[27] See *National Red Cross and Red Crescent Societies as Auxiliaries to the Public Authorities in the Humanitarian Field: Conclusions from the Study Undertaken by the International Federation of Red Cross and Red Crescent Societies; Prepared by the International Federation of Red Cross and Red Crescent Societies in consultation with the International Committee of the Red Cross* (http./www.icrc.org/web/eng/siteen0.nsf/htmlall/5xrfbm?opendocument; last visited July 12, 2010).

provide volunteer aid to the sick and wounded of the armed forces in time of war" and "to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention."

Moreover, the charter clearly established the PNRC as a National Red Cross Society pursuant to the treaties and Statutes of the Movement. It was authorized "to act in such matters between similar national societies of other governments and the governments and people and the Armed Forces of the Republic of the Philippines." The PNRC was to establish and maintain a system of national and international relief and to apply the same in meeting natural disasters, all in the spirit of the Geneva Conventions.

In the pursuit of its humanitarian tasks, the PNRC was thus granted the power of perpetual succession, the capacity to sue and be sued, and the power to hold real and personal property. It was authorized to adopt a seal, but was given exclusive use of the Red Cross emblem and badge in accordance with the treaties. It may likewise adopt by-laws and regulations and do all acts necessary to carry its purposes into effect.

The PNRC is financed primarily by contributions obtained through solicitation campaigns and private donations. And yet, it is required to submit to the President of the Philippines an annual report of its activities including its financial condition, receipts and disbursements. It is allotted one annual national lottery draw and is exempt from taxes, duties, and fees on importations and purchases, as well as on donations for its disaster relief work and other services.

Consequently, the PNRC cannot be classified as either a purely private or government entity. It is a hybrid organization that derives certain peculiarities from international humanitarian law. For this reason, its organizational character does not fit the parameters provided by either the Corporation Code or Administrative Code. It is a *sui generis* entity that draws its nature from the Geneva Conventions, the Statutes of the Movement and the law creating it.

THIRD. The Constitution does not preclude the creation of corporations that may neither be classified as private nor governmental. Sec. 7, Article XIV of the 1935 Constitution, which was carried over in subsequent versions of the fundamental law, does not prohibit Congress from creating other types of organizations that may not fall strictly within the terms of what is deemed a private or government corporation. The Constitution simply provides that Congress cannot create **private corporations**, except by general law, unless such corporations are owned or controlled by the government. It does not forbid Congress from creating organizations that do not belong to these two general types.

In *Feliciano v. Commission on Audit*,[28] the Court explained that the purpose of the ban against the creation of private corporations by special charter is to prevent the grant to certain individuals, families, or groups of special privileges that are denied to other citizens. The creation of the PNRC does not traverse the purpose of the prohibition, as Congress established the PNRC to comply with State obligations under international law. The PNRC Charter is simply a manifestation of the State's adherence to the Geneva Conventions. By enacting the PNRC Charter, Congress merely implemented the will of the State to join other nations of the world in the humanitarian cause.

The special status of the PNRC under international humanitarian law justifies the special manner of its creation. The State itself committed the PNRC's formation to the community of nations, and no less than an act of Congress should be deemed sufficient compliance with such an obligation. To require the PNRC to incorporate under the general law is to disregard its unique standing under international conventions. It also ignores the very basic premise for the PNRC's creation.

FOURTH. The main issue in this case is whether or not the office of PNRC Chairman is a government office or an office in a GOCC for purposes of the prohibition in Section 13, Article VI of the Constitution. The resolution of this question

[28] 464 Phil. 439, 454 (2004).

lies in the determination of whether or not the PNRC is in fact a GOCC. As explained earlier, the PNRC is not a GOCC, but a *sui generis* entity that has no legal equivalent under any of our statutes. Consequently, Senator Gordon did not forfeit his Senate seat under the constitutional prohibition.

In view of the PNRC's *sui generis* character, the Court need not even dwell on the issue of whether or not the PNRC Charter was validly enacted. Congress is proscribed only from creating private corporations which, as demonstrated, the PNRC is not. The issue of constitutionality was not raised by any of the original parties and could have been avoided in the first place. Neither was the PNRC a party to the case, despite being the entity whose creation was declared void under the main decision.

Finally, the *sui generis* character of the PNRC does not necessarily overturn the rulings of the Court in *Camporedondo* and *Baluyot*. The PNRC's exceptional nature admits of the conclusions reached in those cases that the PNRC is a GOCC for the purpose of enforcement of labor laws and penal statutes. The PNRC's *sui generis* character compels us to approach controversies involving the PNRC on a case-to-case basis, bearing in mind its distinct nature, purposes and special functions. Rules that govern traditional private or public entities may thus be adjusted in relation to the PNRC and in accordance with the circumstances of each case.

ACCORDINGLY, I concur in the decision written for the majority by Justice Teresita J. Leonardo-de Castro.

DISSENTING OPINION

CARPIO, *J.*:

I vote to deny the motions for reconsideration filed by Respondent Richard J. Gordon (respondent Gordon) and movant-intervenor Philippine National Red Cross (PNRC).

Respondent Gordon and the PNRC seek partial reconsideration of the Court's Decision dated 15 July 2009, declaring that Republic Act No. 95 (RA 95), insofar as it creates the PNRC as a private corporation and grants it corporate powers, is void for being unconstitutional. The Decision also declared that the Office of the Chairman of the PNRC is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution, which reads:

> SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

Respondent Gordon and the PNRC are seeking reconsideration of the portion of the Decision relating to the unconstitutionality of certain provisions of RA 95.

This case originated from a petition filed by petitioners, seeking to declare respondent Gordon as having forfeited his seat in the Senate when he accepted the chairmanship of the PNRC Board of Governors.

In the assailed Decision, this Court held that the PNRC is a private organization performing public functions. The Philippine government does not own or control the PNRC and neither the President nor the head of any department, agency, commission or board appoints the PNRC Chairman. Thus, the prohibition in Section 13, Article VI of the 1987 Constitution is not applicable to the office of the PNRC Chairman, which is not a government office or an office in a government-owned or controlled corporation.

Since the PNRC is a private corporation, the creation of the PNRC through a special charter is violative of the constitutional proscription against the creation of private corporations by special

law. The creation of the PNRC by special charter on 22 March 1947 through RA 95 contravenes Section 7, Article XIV of the 1935 Constitution, as amended, which reads:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

This provision prohibiting Congress from creating private corporations, except by general law, is reiterated in the 1973[1] and 1987[2] Constitutions.

In its Motion for Partial Reconsideration, the PNRC maintains that the decision declaring unconstitutional certain provisions of RA 95 deprived the PNRC of its right to due process considering that the PNRC was not a party to the case. Furthermore, the PNRC states that the constitutionality of RA 95 was never an issue in the case. Similarly, respondent Gordon posits in his Motion for Clarification and Reconsideration that the Court should not have passed upon the constitutionality of RA 95 since such issue was not raised by the parties.

Generally, the Court will not pass upon a constitutional question unless such question is raised by the parties.[3] However, as explained by the Court in *Fabian v. Hon. Desierto*,[4] the rule

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[1] Section 4, Article XIV of the 1973 Constitution reads:

> SEC. 4. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

[2] Section 16, Article XII of the 1987 Constitution reads:

> SEC. 16. The Congress, shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

[3] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, 21 June 2007, 525 SCRA 198.

[4] 356 Phil. 787 (1998).

that a challenge on constitutional grounds must be raised by a party to the case is not an inflexible rule. In the *Fabian* case, the issue of the constitutionality of Section 27 of Republic Act No. 6770[5] (RA 6770) was not presented as an issue by the parties. Nevertheless, the Court ruled that Section 27 of RA 6770, which provides for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, infringes on the constitutional proscription against laws increasing the appellate jurisdiction of the Supreme Court without its advice and consent.

In this case, the constitutional issue was inevitably thrust upon the Court upon its finding that the PNRC is a private corporation, whose creation by a special charter is proscribed by the Constitution. In view of the Court's finding that the PNRC is a private corporation, it was imperative for the Court to address the issue of the creation of the PNRC through a special charter. The Constitution prohibits the creation of a private corporation through a special law. The Court could not declare the PNRC a private corporation created by the special law RA 95 without running afoul of Section 16, Article XII of the 1987 Constitution. To declare the PNRC a private corporation necessarily meant declaring RA 95 unconstitutional. To declare the PNRC, a creation of RA 95, a private corporation without declaring RA 95 unconstitutional would mean that Congress can create a private corporation through a special law. This the Court could not do.

The fact that the constitutionality of RA 95 has not been questioned for more than sixty (60) years does not mean that it could no longer be declared unconstitutional. One is not estopped from assailing the validity of a law just because such law has been relied upon in the past and all that time has not been attacked as unconstitutional.[6] Indeed, there is no prescription to declare a law unconstitutional. Thus, in the case of *Moldex*

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[5] Ombudsman Act of 1989.

[6] *British American Tobacco v. Camacho*, G.R. No. 163583, 20 August 2008, 562 SCRA 511.

Realty, Inc. v. Housing and Land Use Regulatory Board,[7] this Court held that constitutional challenge can be made anytime:

> **That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later**. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same. (Emphasis supplied)

More importantly, the Court granted the PNRC's motion to intervene and the PNRC then filed its Motion for Partial Reconsideration, in which the PNRC argued that its charter is valid and constitutional. Thus, the PNRC, the entity that is directly affected by the issue of the constitutionality of RA 95, is in law and in fact a party to this case, raising specifically the issue that its charter is valid and constitutional. Moreover, although the original parties did not raise as an issue the constitutionality of RA 95, they were still afforded the opportunity to be heard on this constitutional issue when they filed their respective motions for reconsideration.

In its Motion for Partial Reconsideration, the PNRC claims that the constitutional proscription against the creation of private corporations by special law is not applicable in this case since the PNRC was not created by Congress but by then President Ferdinand Marcos, who issued Presidential Decree No. 1264[8] (PD 1264) which repealed RA 95. The PNRC insists that PD 1264 repealed and superseded RA 95. The PNRC maintains that since PD 1264 was issued by President Marcos in the exercise of his legislative power during the martial law period pursuant to Proclamation 1081, then the constitutional prohibition does not apply. Respondent Gordon agrees with the position taken by the PNRC.

I disagree. Even if the PNRC derived its existence from PD 1264, still the constitutional prohibition will apply. President

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[7] G.R. No. 149719, 21 June 2007, 525 SCRA 198, 204.

[8] AMENDING REPUBLIC ACT NO. 95 (As amended by Republic Acts No. 855 and 6373). AN ACT TO INCORPORATE THE PHILIPPINE NATIONAL RED CROSS.

Marcos issued PD 1264 on 5 December 1977 during martial law period when the President assumed extensive legislative power. Such assumption of legislative power did not place President Marcos above the Constitution. President Marcos could not issue decrees or orders contrary to the provisions of the Constitution. The exercise of legislative power by President Marcos under martial law must still be in accordance with the Constitution because legislative power cannot be exercised in violation of the Constitution from which legislative power draws its existence. The limits on legislative power is explained by the Court in *Government v. Springer*,[9] thus:

> Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. **In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four wall of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.** (Emphasis supplied)

The 1973 Constitution, as amended, was in force when President Marcos issued PD 1264. Under Section 1, Article VIII of the 1973 Constitution, legislative power is vested in the National Assembly. By virtue of Amendment No. 6[10] of the 1973 Constitution, the President was granted legislative power. Thus, under Amendment No. 6, President Marcos was granted concurrent legislative authority with the interim Batasang

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[9] 50 Phil. 259, 309 (1927).

[10] Amendment No. 6 reads:

> Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instruction, which shall form part of the law of the land.

Pambansa.[11] Considering that the legislative power of the interim Batasang Pambansa and the regular National Assembly is subject to the limitations imposed by the Constitution, then more so for the emergency legislative power granted to the President during the period of martial law. In fact, the Court has declared void several Presidential Decrees or provisions thereof for being unconstitutional.

In *Demetria v. Alba*,[12] the Court declared void Paragraph 1 of Section 44 of PD 1177 for being unconstitutional since it empowers the President to indiscriminately transfer funds and unduly extends the privilege granted under Section 16(5), Article VIII of the 1973 Constitution. In *Export Processing Zone Authority v. Judge Dulay*,[13] the Court held that PD 1533 is unconstitutional because it deprives the courts of their function of determining just compensation in eminent domain cases and eliminates the courts' discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court. In subsequent cases, similar provisions on just compensation found in expropriation laws such as PD 42, 76, 464, 794, 1224, 1259, 1313, and 1517 were also declared void and unconstitutional for the same reason and for being violative of due process.[14] In *Tuason v. Register of Deeds, Caloocan City*,[15] PD 293 was declared void and unconstitutional since it allows the President to exercise judicial function and to take property without due process and without compensation. In *Manotok v. National Housing Authority*,[16] the Court held that PD 1669 and 1670, which

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[11] *Legaspi v. Minister of Finance*, No. 58289, 24 July 1982, 115 SCRA 418.

[12] 232 Phil. 222 (1987).

[13] 233 Phil. 313 (1987).

[14] *Municipality of Talisay v. Ramirez*, G.R. No. 77071, 22 March 1990, 183 SCRA 528; *Belen v. Court of Appeals*, 243 Phil. 443 (1988); *Leyva v. Intermediate Appellate Court*, 239 Phil. 47 (1987); *Sumulong v. Hon. Guerrero*, 238 Phil. 462 (1987); *Ignacio v. Judge Guerrero*, 234 Phil. 364 (1987).

[15] 241 Phil. 650 (1988).

[16] Nos. 55166 and 55167, 21 May 1987, 150 SCRA 89.

expropriated certain properties, were void and unconstitutional for violating due process of law.

In this case, PD 1264 contravenes Section 4, Article XIV of the 1973 Constitution which provides that "[t]he National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the government or any subdivision or instrumentality thereof." This same prohibition is found in Section 16, Article XII of the present Constitution. Thus, just like RA 95, PD 1264 is also void insofar as it creates the PNRC as a private corporation.

The PNRC further submits that "due to its peculiar nature, it should be considered as a **private**, neutral and separate entity independent of government control and supervision, but acting as an auxiliary to government when performing humanitarian functions, and specially created pursuant to the treaty obligations of the Philippines to the Geneva Conventions."[17] Thus, the PNRC maintains that its structure is *sui generis* and that it is not strictly private in character since it performs certain governmental functions. The PNRC posits that its argument is reinforced by the Position Paper[18] dated 7 December 2009 of the International Federation of Red Cross and Red Crescent Societies ("International Federation"), which reads in part:

A National Society partakes of a *sui generis* character. It is a protected component of the Red Cross Movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Property cannot require

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[17] PNRC's Motion for Partial Reconsideration, p. 17; *rollo*, p. 413. (Boldfacing supplied)

[18] Annex "A". The Position Paper was written by Razia Essack-Kauaria, Director of Governance Support and Global Monitoring, International Federation of Red Cross and Red Crescent Societies.

any change in the personnel or structure of a National Society. National Societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs.

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Once recognized by its Government as an independent National Society auxiliary to the public authorities in humanitarian field, a National Society, if it fulfills the ten (10) conditions for recognition, can be recognized by the International Committee of the Red Cross and be admitted as member of the International Federation of the Red Cross and Red Crescent Societies. No other organization belongs to a world-wide Movement in which all Societies have equal status and share equal responsibilities and duties in helping each other. This is considered to be the essence of the Fundamental Principle of Universality.

Furthermore, the National Societies are considered to be auxiliaries to the public authorities in the humanitarian field. The concept of National Societies auxiliary to the public authorities was reaffirmed in Resolution 3 of the 30th International Conference of the Red Cross and Red Crescent, on 26-30 November 2007. This status, as you may see, is not only a positive and distinct feature of any organization, but it is a precondition of its existence and functioning as a member of the International Red Cross and Red Crescent Movement.

The auxiliary status of Red Cross Society means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector.

This is also the essence of the Fundamental Principle of Independence. No other humanitarian organization gives such interpretation to its independence, although many claim that they are independent. **No other organization has a duty to be its government's humanitarian partner while remaining independent**.

The Movement places much importance on the Principle of Independence and the duty of the States Parties to the Geneva Conventions to respect the adherence by all the components of

the Movement to the Fundamental Principles. **Before it can be recognized by the International Committee, a National Society must have autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.**

Thus, in protecting the independence of the National Society in carrying out its humanitarian mission in a neutral and impartial manner, it is crucial that it must be free from any form of intervention from the government at the level of the internal organization of the National Society mainly its governance and management structure. (Boldfacing supplied. Underscoring in the original.)

All private charitable organizations are doing public service or activities that also constitute governmental functions.[19] Hence, the PNRC cannot claim that it is *sui generis* just because it is a private organization performing certain public or governmental functions. That the PNRC is rendering public service does not exempt it from the constitutional prohibition against the creation of a private corporation through a special law since the PNRC is, admittedly, still a private organization. The express prohibition against the creation of private corporations by special charter under Section 16, Article XII of the 1987 Constitution cannot be disregarded just because a private corporation claims to be *sui generis*. The constitutional prohibition admits of no exception.

Even the International Federation specifies the nature of the National Red Cross Society as a "**private institution and**

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[19] The following are some of the private charitable organizations in the Philippines: (1) CHILDHOPE Asia Philippines, Inc. — is registered in 1995 under the Securities and Exchange Commission and whose principal purpose is to advocate for the cause of street children [CHILDHOPE Asia Website, http://www.childhope.org.ph/about-us.html (visited 2 September 2010)]; (2) PATH Foundation Philippines, Inc. (PFPI) — is a private, charitable organization whose mission is to improve health and contribute to environmentally sustainable development, particularly in under-served areas of the Philippines. [PFPI Website, http://www.pfpi.org/about.html (visited 2 September 2010)]; (3) The Philippine Community Fund — is a registered charitable organization, whose mission is to permanently improve the quality of life for the poorest Filipino communities, through education, nutrition, health, medical and family enhancement programs, regardless of religion, race or political boundaries [The Philippine Community Fund Website, http://p-c-f.org/about_us/index.php (visited 2 September 2010)].

a public service organization." Furthermore, **it emphasizes the importance of maintaining and protecting the independence of the National Society, free from any form of intervention from the government particularly concerning its governance and management structure.** Full independence means that the National Societies are prohibited from being owned or controlled by their host government or from becoming government instrumentalities as this would undermine their independence, neutrality, and autonomy.

Indeed, the PNRC, as a member National Society of the International Red Cross and Red Crescent Movement (Movement) must meet the stringent requirement of independence, autonomy, and neutrality in order to be recognized as a National Society by the International Committee of the Red Cross (ICRC). The conditions for recognition of National Societies are enumerated in Article 4 of the Statutes of the Movement, thus:

Article 4

Conditions for Recognition of National Societies

In order to be recognized in terms of Article 5, paragraph 2 b)[20] as a National Society, the Society shall meet the following conditions:

1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.

2. Be the only National Red Cross or Red Crescent Society of the said State and be directed by a central body which shall alone be competent to represent it in its dealings with other components of the Movement.

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[20] Article 5, paragraph 2 b) states:

2. The role of the International Committee, in accordance with its Statutes, is in particular:

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b) to recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4, and to notify other National Societies of such recognition.

3. Be duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field.

4. Have an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.

5. Use a name and distinctive emblem in conformity with the Geneva Conventions and their Additional Protocols.

6. Be so organized as to be able to fulfil the tasks defined in its own statutes, including the preparation in peace time for its statutory tasks in case of armed conflict.

7. Extend its activities to the entire territory of the State.

8. Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions.

9. Adhere to the present Statutes, share in the fellowship which unites the components of the Movement and cooperate with them.

10. Respect the Fundamental Principles of the Movement and be guided in its work by the principles of international humanitarian law.[21]

The conditions for recognition of National Societies do not require that the State itself create the National Society through a special charter. The absence of such requirement is proper and necessary considering the Movement's emphasis on the importance of maintaining the independence of the National Society, free from any form of intervention from the government. However, it is required that the National Society be officially recognized by the government of its country as auxiliary to the public authorities in the humanitarian field.

A decree granting official recognition to the National Society is essential in order to distinguish it from other charitable organizations in the country and to be entitled to the protection of the Geneva Conventions in the event of armed conflict.[22]

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[21] Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, ICRC Publication, p. 9.

[22] The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, p. 18.

The content of the decree of recognition may vary from one country to another but it should explicitly specify:

1. That the National Society is the country's only Red Cross or Red Crescent organization;
2. That it is autonomous in relation to the State;
3. That it performs its activities in conformity with the Fundamental Principles; and
4. The conditions governing the use of the emblem.[23]

Thus, there is no specific requirement for the creation of the National Society through a special charter. The State does not have the obligation to create the National Society, in our case, the PNRC. What is important is that the National Society is officially recognized by the government as auxiliary to the public authorities in the humanitarian services of the government. This the Philippine government can accomplish even without creating the PNRC through a special charter.

Besides, as auxiliaries in the humanitarian services of their host governments, **the National Societies are subject to the laws of their respective countries**.[24] Thus, the National Societies are bound by the laws of their host countries and must submit to the Constitution of their respective host countries.

The Philippine Constitution prohibits Congress from creating private corporations except by general law. I agree with the PNRC that it is a private organization performing public functions. Precisely because it is a private organization, the PNRC charter – whether it be RA 95 or PD 1264 – is violative of the constitutional proscription against the creation of private corporations by special law. Nevertheless, keeping in mind the treaty obligations of the Philippines under the Geneva Conventions, the assailed Decision only held void those provisions of the PNRC charter which create PNRC as a private corporation or grant it corporate powers. The other provisions respecting the government's treaty obligations remain valid, thus:

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[23] The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, pp. 18-19.

[24] Discover the ICRC, ICRC Publication, p. 10.

The other provisions[25] **of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter.** The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of

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[25] The valid provisions are Sections 4(b) and (c), 14, 15, 16, and 17:

SEC. 4. In furtherance of the purposes mentioned in the preceding sub-paragraphs, the Philippine National Red Cross shall:

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b. Be exempt from payment of all duties, taxes, fees, and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other Red Cross services, and in its benefits and fund raising drives all provisions of law to the contrary notwithstanding.

c. Be allotted by the Philippine Charity Sweepstakes Office one lottery draw yearly for the support of its disaster relief operations in addition to its existing lottery draws for the Blood Program.

SEC. 14. It shall be unlawful for any person to solicit, collect or receive money, materials, or property of any kind by falsely representing or pretending himself to be a member, agent or representative of the Philippine National Red Cross.

SEC. 15. The use of the name Red Cross is reserved exclusively to the Philippine National Red Cross and the use of the emblem of the red Greek cross on a white ground is reserved exclusively to the Philippine National Red Cross, medical services of the Armed Forces of the Philippines and such other medical facilities or other institutions as may be authorized by the Philippine National Red Cross as provided under Article 44 of the Geneva Conventions. It shall be unlawful for any other person or entity to use the words Red Cross or Geneva Cross or to use the emblem of the red Greek cross on a white ground or any designation, sign, or insignia constituting an imitation thereof for any purpose whatsoever.

SEC. 16. As used in this Decree, the term person shall include any legal person, group, or legal entity whatsoever nature, and any person violating any section of this Article shall, upon conviction therefore be liable to a fin[e] of not less than one thousand pesos or imprisonment for a term not exceeding one year, or both, at the discretion of the court, for each and every offense. In case the violation is committed by a corporation or association, the penalty shall devolve upon the president, director or any other officer responsible for such violation.

SEC. 17. All acts or parts of acts which are inconsistent with the provisions of this Decree are hereby repealed.

the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field."[26] (Emphasis supplied)

This Court's paramount duty is to faithfully apply the provisions of the Constitution to the present case. The Constitutional prohibition under Section 16, Article XII of the 1987 Constitution is clear, categorical, and absolute:

> SEC. 16. The Congress, **shall not, except by general law**, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. (Emphasis supplied)

Since the constitutional prohibition admits of no exception, this Court has no recourse but to apply the prohibition to the present case. This Court has no power to make PNRC an exception to Section 16, Article XII of the 1987 Constitution.

The PNRC could either choose to remain unincorporated or it could adopt its own articles of incorporation and by-laws and incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

Accordingly, I vote to **DENY** the Motions for Reconsideration.

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[26] Decision dated 15 July 2009, pp. 22-23.

EN BANC

[G.R. No. 176389. January 18, 2011]

ANTONIO LEJANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 176864. January 18, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **HUBERT JEFFREY P. WEBB, ANTONIO LEJANO, MICHAEL A. GATCHALIAN, HOSPICIO FERNANDEZ, MIGUEL RODRIGUEZ, PETER ESTRADA and GERARDO BIONG,** *appellants.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST DOUBLE JEOPARDY; A JUDGMENT OF ACQUITTAL CANNOT BE RECONSIDERED BECAUSE IT PLACES THE ACCUSED UNDER DOUBLE JEOPARDY.— As a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. The Constitution provides in Section 21, Article III, that: **Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x** To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved. There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight. As the Court said in *People of the Philippines v. Sandiganbayan*: **[A]t the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual**

for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws.

2. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION AFTER AN ACQUITTAL IS POSSIBLE WHEN THE COURT GRAVELY ABUSED ITS DISCRETION, RESULTING IN LOSS OF JURISDICTION, OR WHEN A MISTRIAL HAS OCCURRED; CASE AT BAR.— Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of *certiorari* under Rule 65. Here, although complainant Vizconde invoked the exceptions, he has been unable to bring his pleas for reconsideration under such exceptions. For instance, he avers that the Court "must ensure that due process is afforded to all parties and there is no grave abuse of discretion in the treatment of witnesses and the evidence." But he has not specified the violations of due process or acts constituting grave abuse of discretion that the Court supposedly committed. His claim that "the highly questionable and suspicious evidence for the defense taints with serious doubts the validity of the decision" is, without more, a mere conclusion drawn from personal perception.

3. ID.; ID.; ID.; ID.; COMPLAINANT MADE NO ALLEGATION THAT THE COURT HELD A SHAM REVIEW OF THE DECISION OF THE COURT OF APPEALS IN ORDER TO JUSTIFY RECONSIDERATION.— Complainant Vizconde cites the decision in *Galman v. Sandiganbayan* as authority that the Court can set aside the acquittal of the accused in the present case. But the government proved in *Galman* that the prosecution was deprived of due process since the judgment of acquittal in that case was "dictated, coerced and scripted." It was a sham trial. Here, however, Vizconde does not allege that the Court

held a sham review of the decision of the CA. He has made out no case that the Court held a phony deliberation in this case such that the seven Justices who voted to acquit the accused, the four who dissented, and the four who inhibited themselves did not really go through the process.

4. ID.; ID.; ID.; ID.; ASKING THE COURT TO REVIEW THE EVIDENCE ANEW AND RENDER ANOTHER JUDGMENT BASED ON SUCH A RE-EVALUATION IS NOT CONSTITUTIONALLY ALLOWED AS IT IS MERELY A REPEATED ATTEMPT TO SECURE THE CONVICTION OF ACCUSED.— Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, *et al.*'s conviction. The judgment acquitting Webb, *et al.* is final and can no longer be disturbed.

SERENO, *J., concurring opinion:*

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; THE EVIDENCE IN CASE AT BAR TENDS TO ESTABLISH THE INNOCENCE OF APPELLANT HUBERT WEBB. — The simple fact is that the evidence tends to demonstrate that Hubert Webb is innocent. The simple fact also is that the evidence demonstrates that not only had Jessice Alfaro failed to substantiate her testimony, she had contradicted herself and had been contradicted by other more believeble evidence. The other main prosecution witnesses fare no better. This is the gist of the decision sought to be reconsidered. While this Court does not make a dispositive ruling other than a pronouncement of "guilt" or "non-guilt" on the part of the accused, the legal presumption of innocence must be applied in operative fact. It is unfortunate that statements were made that sought to dilute the legal import

of the majority Decision. A pronouncement of this Court that the accused has not been proven to be guilty beyond reasonable doubt cannot be twisted to mean that this Court does not believe in the innocence of the accused when the reasoning of the Court demonstrates such belief. A careful reading of the majority Decision, as well as the concurring opinions, is required to determine whether the accused were acquitted **solely because** there was lingering doubt as to their guilt of the crime charged or whether the accused were acquitted not only because of doubt as to their guilt but also because the evidence tends to establish their innocence. In the case of Hubert Webb, the evidence tends to establish his innocence. On the other hand, the testimony of Jessice Alfaro was wholly rejected by the majority as not believable.

2. ID.; ID.; EXAMINATION OF WITNESSES; CROSS-EXAMINATION; NOTWITHSTANDING THE RIGHT OF THE ACCUSED TO FULLY AND FREELY CONDUCT A THOROUGH CROSS-EXAMINATION, THE TRIAL COURT SET UNDUE RESTRICTIONS ON THE DEFENSE COUNSEL'S CROSS–EXAMINATION OF ALFARO, EFFECTIVELY DENYING THE ACCUSED SUCH RIGHT.— The law does not confer any favorable presumption on behalf of a witness. It is precisely due to the absence of any legal presumption that the witness is telling the truth that he/she is subjected to cross-examination to "test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." The Rules provide that "the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, **with sufficient fullness and freedom.**" A witness may be impeached "by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony." The right to cross-examine a witness is a matter of procedural due process such that the testimony or deposition of a witness given in a former case "involving the same parties and subject matter, may be given in evidence against the adverse party" **provided** the adverse party "had the opportunity to cross-examine him." Notwithstanding the right of the accused to fully and freely conduct a thorough cross–examination, the trial court set undue restrictions on the defense counsel's cross–examination of Alfaro,

effectively denying the accused such right. The length of the cross examination is not as material in the determination of the credibility of the witness as much as whether such witness was fully tested by the defense when demanded to be tested on cross-examination — for honesty by contradictory evidence of a reputation for dishonesty, for inconsistency, or for possible bias or improper motive.

3. ID.; ID.; ID.; ID.; THE TRIAL COURT, DURING THE CROSS–EXAMINATION OF ALFARO, FORECLOSED SIGNIFICANT AVENUES FOR TESTING ALFARO'S FREEDOM FROM INTEREST AND BIAS AND HER PENCHANT FOR ACCURACY AND TRUTHFULNESS. — To establish Alfaro's bias and motive for testifying in the case, the defense counsel sought to ask Alfaro about her brother, Patrick. Alfaro admitted that Patrick was a drug addict and had been arrested once by the NBI for illegal possession of drugs, but that he was presently in the United States. The theory of the defense was that Patrick's liberty was part of a deal that Alfaro had struck with the NBI in exchange for her services. When defense counsel inquired about the circumstances of Patrick's departure for the United States, the prosecution objected to the questions on the ground of irrelevance. Respondent judge sustained the objection, thus foreclosing a significant avenue for testing Alfaro's "freedom from interest or bias." The defense counsel tried to cross-examine Alfaro regarding her educational attainment as stated in her sworn statements. The defense presented her college transcript of records to prove that she only enrolled for a year and earned nine (9) academic units, contrary to her claim that she finished second year college. Notably, Alfaro misrepresented her educational attainment in both her affidavits — her 28 April 1995 Affidavit which she claimed was executed without assistance of counsel, and her subsequent 22 May 1995 Affidavit which was admittedly executed with the assistance of counsel. Apparently, Alfaro's lie under oath abour her educational attainment persisted even after being given counsel's assistance in the execution of the second affidavit, as well as more time to contemplate the matter. Unfortunately, the lower court sustained the prosecution's objection to the question on the ground of irrelevance when the line of testing could have tested Alfaro's penchant for "accuracy and truthfulness."

4. ID.; ID.; ID.; ID.; TAKEN TOGETHER WITH REPEATED INSTANCES OF UNWARRANTED EXERTION OF EFFORT TO WIPE THE RECORD CLEAN OF SOME ENTRIES THAT CAST DOUBT ON ALFARO'S CREDIBILITY, THE TRIAL COURT'S ACTIONS SHOW THAT IT HAD A BIAS TOWARDS UPHOLDING THE TRUTHFULNESS OF ALFARO'S TESTIMONY. — Ironically, notwithstanding the trial court's disallowance of the defense's attempts to impeach Alfaro's character, and the rule that "(e)vidence of the good character of a witness is not admissible until such character has been impeached," the trial court alllowed the prosecution to present Atty. Pedro Rivera to testify positively on Alfaro's character. Worse yet, the trial court disallowed the defense from presenting Atty. Rivera's earlier statement to impeach the latter's credibility; again, this was disallowed on the ground of immateriality. When a proffer of evidence was made by the defense following such disallowance, the trial court struck the proffer from the record on the ground that it was allegedly improper on cross-examination. The notion that witness Alfaro was able to withstand her cross examination appears sustainable in large part because her cross examination was so emasculated by the trial court's inordinate protection of her, which went so far as to improperly accord her the right reserved for an accused. Taken together with repeated instances of unwarranted exertion of effort to wipe the record clean of some entries that cast doubt on Alfaro's credibility, the trial court's actions show that it had a bias towards upholding the truthfulness of Alfaro's testimony.

5. ID.; ID.; DEFENSE OF ALIBI; IN REJECTING APPELLANT'S ALIBI THE TRIAL COURT USED MERE SPECULATION THAT THE ACCUSED'S FAMILY INFLUENCED THE PRODUCTION OF FALSE ENTRIES IN OFFICIAL DOCUMENTS TO DEFEAT THE LEGAL PRESUMPTION OF SAID DOCUMENT'S ACCURACY AND REGULARITY OF ISSUANCE; IN THE MIND OF THE TRIAL COURT, PURE CONJECTURE AND HOT HARD EVIDENCE WAS ALLOWED TO DEFEAT A LEGAL PRESUMPTION.— The trial court's treatment of documentary evidence also suffered from mismatched ascription — discarding legal presumptions without evidence to the contrary while giving evidentiary weight to unsubstantiated speculation. For instance, in rejecting Webb's *alibi* defense, the trial court used mere speculation that the

accused's family influenced the production of false entries in official documents to defeat the legal presumption of said document's accuracy and regularity of issuance. Notably, the United States Immigration and Naturalization Service (US INS) Certification, which confirmed that Webb was in the United States from March 1991 until October 1992, was authenticated by no less than the Office of the U.S. Attorney General and the U.S. State Department. Furthermore, this official certification of a sovereign state, having passed through formal diplomatic channels, was authenticated by the Department of Foreign Affairs. As discussed in the main decision, such official documents as the authenticated U.S. INS Certification enjoy the presumption of accuracy of the entries therein. Official documents are not infallible, but the presumption that they are accurate can only be overcome with evidence. Unfortunately, in the mind of the trial court, pure conjecture and not hard evidence was allowed to defeat a legal presumption. Clearly, the trial court's decision in this case was, in significant measure, the product of switched attributions as to who should enjoy certain rights and what should be presumed under the law. This behavior on the part of the trial court and the effect it had on the factual conclusion on the credibility of Jessica Alfaro and on the presence of Hubert Webb in the Philippines at the time of the commission of the crime cannot be upheld.

APPEARANCES OF COUNSEL

The Solicitor General for the People of the Philippines.

Vicente Millora and *Florante Arceo Bautista* for Antonio Lejano.

Jose Flaminiano for Hospicio Fernandez.

Aguirre & Aguirre Law Firm and *Ongkiko Manhit Custodio & Acorda Law Offices* for Hubert Webb.

Ramon Miguel Ongsiako for Miguel Rodriguez.

Acerey C. Pacheco for Peter Estrada.

Ricardo Valmonte for Gerardo Biong.

Francisco C. Gatchalian and *Romulo Mabanta Buenaventura Sayoc and De Los Angeles* for Michael A. Gatchalian.

R E S O L U T I O N

ABAD, *J.*:

On December 14, 2010 the Court reversed the judgment of the Court of Appeals (CA) and acquitted the accused in this case, Hubert Jeffrey P. Webb, Antonio Lejano, Michael A. Gatchalian, Hospicio Fernandez, Miguel Rodriguez, Peter Estrada, and Gerardo Biong of the charges against them on the ground of lack of proof of their guilt beyond reasonable doubt.

On December 28, 2010 complainant Lauro G. Vizconde, an immediate relative of the victims, asked the Court to reconsider its decision, claiming that it "denied the prosecution due process of law; seriously misappreciated the facts; unreasonably regarded Alfaro as lacking credibility; issued a tainted and erroneous decision; decided the case in a manner that resulted in the miscarriage of justice; or committed grave abuse in its treatment of the evidence and prosecution witnesses."[1]

But, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. The Constitution provides in Section 21, Article III, that:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x

To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved. There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.

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[1] Private Complainant's Motion for Reconsideration, p. 8.

As the Court said in *People of the Philippines v. Sandiganbayan*:[2]

[A]t the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws.[3]

Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of *certiorari* under Rule 65.[4]

Here, although complainant Vizconde invoked the exceptions, he has been unable to bring his pleas for reconsideration under such exceptions. For instance, he avers that the Court "must ensure that due process is afforded to all parties and there is no grave abuse of discretion in the treatment of witnesses and the evidence."[5] But he has not specified the violations of due process or acts constituting grave abuse of discretion that the Court supposedly committed. His claim that "the highly questionable and suspicious evidence for the defense taints

[2] G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185.

[3] *Id.* at 207.

[4] *Castro v. People*, G.R. No. 180832, July 23, 2008, 559 SCRA 676, 683-684.

[5] *Supra* note 1, at 7.

with serious doubts the validity of the decision"[6] is, without more, a mere conclusion drawn from personal perception.

Complainant Vizconde cites the decision in *Galman v. Sandiganbayan*[7] as authority that the Court can set aside the acquittal of the accused in the present case. But the government proved in *Galman* that the prosecution was deprived of due process since the judgment of acquittal in that case was "dictated, coerced and scripted."[8] It was a sham trial. Here, however, Vizconde does not allege that the Court held a sham review of the decision of the CA. He has made out no case that the Court held a phony deliberation in this case such that the seven Justices who voted to acquit the accused, the four who dissented, and the four who inhibited themselves did not really go through the process.

Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, *et al*'s conviction. The judgment acquitting Webb, *et al.* is final and can no longer be disturbed.

WHEREFORE, the Court *DENIES* for lack of merit complainant Lauro G. Vizconde's motion for reconsideration dated December 28, 2010.

For essentially the same reason, the Court *DENIES* the motions for leave to intervene of Fr. Robert P. Reyes, Sister Mary John R. Mananzan, Bishop Evangelio L. Mercado, and Dante L.A. Jimenez, representing the Volunteers Against Crime and Corruption and of former Vice President Teofisto Guingona, Jr.

No further pleadings shall be entertained in this case.

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[6] *Id*. at 12.

[7] 228 Phil. 42 (1986).

[8] *Id*. at 89.

SO ORDERED.

Carpio Morales, Peralta, Bersamin, Perez, and *Mendoza, JJ.,* concur.

Sereno, J., see concurring opinion.

Corona, C.J., Leonardo-de Castro, Brion, and *Villarama, Jr., JJ.,* vote to grant the motion for reconsideration.

Carpio, J., no part, prior inhibition.

Velasco, Jr., J., no part due to a relationship to a party.

Nachura, J., no part, filed pleading as SolGen.

Del Castillo, J., no part.

CONCURRING OPINION

SERENO, *J.*:

The Motion for Reconsideration assails the majority for failing to uphold the trial court's conclusions. The simple fact is that the evidence tends to demonstrate that Hubert Webb is innocent. The simple fact also is that the evidence demonstrates that not only had Jessice Alfaro failed to substantiate her testimony, she had contradicted herself and had been contradicted by other more believeble evidence. The other main prosecution witnesses fare no better. This is the gist of the decision sought to be reconsidered. While this Court does not make a dispositive ruling other than a pronouncement of "guilt" or "non-guilt" on the part of the accused, the legal presumption of innocence must be applied in operative fact. It is unfortunate that statements were made that sought to dilute the legal import of the majority Decision. A pronouncement of this Court that the accused has not been proven to be guilty beyond reasonable doubt cannot be twisted to mean that this Court does not believe in the innocence of the accused when the reasoning of the Court demonstrates such belief. A careful reading of the majority Decision, as well as the concurring opinions, is required to determine whether the accused were acquitted **solely because** there was lingering doubt as to their guilt of the crime charged

or whether the accused were acquitted not only because of doubt as to their guilt but also because the evidence tends to establish their innocence. In the case of Hubert Webb, the evidence tends to establish his innocence. On the other hand, the testimony of Jessice Alfaro was wholly rejected by the majority as not believable.

In his Motion for Reconsideration, private complainant asserts that this Court have respected the trial court's resolve to give full credence to the testimony of Jessice Alfaro. While as a general rule, a trial judge's findings as to the credibility of a witness are entitled to utmost respect as he has had the opportunity to observe their demeanor on the witness stand, this holds true only in the absence of bias, partiality, and grave abuse of discretion on the part of the judge.[1] The succeeding discussion demonstrates why this Court has no choice but to reject the trial court's findings.

The mistaken impression that Alfaro was a credible witness was, in significant measure, perpetrated by the trial court's inappropriate and mismatched attribution of rights to and duties of the accused *vis-a-vis* the principal witness in a criminal proceeding. As discussed in the promulgated Decision of the Court in this case, the trial court failed to recognize the accused's right to be presumed innocent. Instead, the trial court's Decision indicated a preconceived belief in the accused's guilt, and as a corollary, that witness Alfaro was telling the truth when she testified to the accused's guilt. In excessively proetecting Alfaro, the trial court improperly ascribed to her the right reserved for an accused. It also unreasonably imposed severe limitations on the extent of the right of the defense to cross-examine her.

During Alfaro's cross-examination, the defense counsel tried to impeach her credibility by asking her about her 28 April 1995 Affidavit, which markedly differs from her 22 May 1995 Affidavit. The prosecution objected and moved that the questions be expunged from the records on the basis of the inadmissibility of the evidence obtained allegedly without the assistance of

[1] *People v. Dizon*, G.R. Nos. 126044-45, 2 July 1999, 309 SCRA 669.

counsel, pursuant to Article III Section 12 (1) and (3) of the 1987 Constitution.[2] This constitutional right, however, is a right reserved solely for the accused or a "person under investigation for the commission of an offense." The prosecution's objection had no legal basis because Alfaro was clearly not the accused in the case. Alfaro was a witness who had a legal duty to "answer questions, although his (her) answer may tend to establish a claim against him (her)."[3] Notwithstanding this, the lower court sustained the prosecution's objection.

The law does not confer any favorable presumption on behalf of a witness. It is precisely due to the absence of any legal presumption that the witness is telling the truth that he/she is subjected to cross-examination to "test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue."[4] The Rules provide that "the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, **with sufficient fullness and freedom.**"[5] A witness may be impeached "by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony."[6]

The right to cross-examine a witness is a matter of procedural due process such that the testimony or deposition of a witness

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[2] "SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferebly of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x x x x x x

"(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him."

[3] Rules of Court, Rule 132, Section 3.

[4] Rules of Court, Rule 132, Section 6.

[5] Rules of Court, Rule 132, Section 6.

[6] Rules of Court, Rule 132, Section 11.

given in a former case "involving the same parties and subject matter, may be given in evidence against the adverse party" **provided** the adverse party "had the opportunity to cross-examine him."[7]

Notwithstanding the right of the accused to fully and freely conduct a thorough cross examination, the trial court set undue restrictions on the defense counsel's cross examination of Alfaro, effectively denying the accused such right. The length of the cross examination is not as material in the determination of the credibility of the witness as much as whether such witness was fully tested by the defense when demanded to be tested on cross-examination — for honesty by contradictory evidence of a reputation for dishonesty, for inconsistency, or for possible bias or improper motive.

To establish Alfaro's bias and motive for testifying in the case, the defense counsel sought to ask Alfaro about her brother, Patrick. Alfaro admitted that Patrick was a drug addict and had been arrested once by the NBI for illegal possession of drugs, but that he was presently in the United States. The theory of the defense was that Patrick's liberty was part of a deal that Alfaro had struck with the NBI in exchange for her services. When defense counsel inquired about the circumstances of Patrick's departure for the United States, the prosecution objected to the questions on the ground of irrelevance. Respondent judge sustained the objection, thus foreclosing a significant avenue for testing Alfaro's "freedom from interest or bias."

The defense counsel tried to cross-examine Alfaro regarding her educational attainment as stated in her sworn statements. The defense presented her college transcript of records to prove that she only enrolled for a year and earned nine (9) academic units, contraty to her claim that she finished second year college. Notably, Alfaro misrepresented her educational attainment in both her affidavits — her 28 April 1995 Affidavit which she claimed was executed without assistance of counsel, and her subsequent 22 May 1995 Affidavit which was admittedly

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[7] Rules of Court, Rule 132, Section 47.

executed with the assistance of counsel. Apparently, Alfaro's lie under oath abour her educational attainment persisted even after being given counsel's assistance in the execution of the second affidavit, as well as more time to contemplate the matter. Unfortunately, the lower court sustained the prosecution's objection to the question on the ground of irrelevence when the line of testing could have tested Alfaro's penchant for "accuracy and truthfulness."

Ironically, notwithstanding the trial court's disallowance of the defense's attempts to impeach Alfaro's character, and the rule that "(e)vidence of the good character of a witness is not admissible until such character has been impeached,"[8] the trial court alllowed the prosecution to present Atty. Pedro Rivera[9] to testify positively on Alfaro's character. Worse yet, the trial court disallowed the defense from presenting Atty. Rivera's earlier statement to impeach the latter's credibility; again, this was disallowed on the ground of immateriality. When a proffer of evidence[10] was made by the defense following such disallowance, the trial court struck the proffer from the record on the ground that it was allegedly improper on cross-examination.

The notion that witness Alfaro was able to withstand her cross examination appears sustainable in large part because her cross examination was so emasculated by the trial court's inordinate protection of her, which went so far as to improperly accord her the right reserved for an accused. Taken together with repeated instances of unwarranted exertion of effort to wipe the record clean of some entries that cast doubt on Alfaro's credibility,

[8] Rules of Court, Rule 132, Section 14.

[9] Notably, in the Motion for Reconsideration in Intervention filed by the Volunteers Against Crime and Curruption (VACC), Fr. Roberto Reyes, Sister Mary John Mananzan and Bishop Evangelio Mercado, they attach a copy of Atty. Pedro Rivera's Affidavit to once again resuscitate Alfaro's credibility.

[10] Rules of Court, Rule 132, Section 40 provides that "(1)f documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the same and other personal circumstances of the witness and the substance of the proposed testimony."

the trial court's actions show that it had a bias towards upholding the truthfulness of Alfaro's testimony.

The trial court's treatment of documentary evidence also suffered from mismatched ascription — discarding legal presumptions without evidence to the contrary while giving evidentiary weight to unsubstantiated speculation. For instance, in rejecting Webb's *alibi* defense, the trial court used mere speculation that the accused's family influenced the production of false entries in official documents to defeat the legal presumption of said document's accuracy and regularity of issuance. Notably, the United States Immigration and Naturalization Service (US INS) Certification, which confirmed that Webb was in the United States from March 1991 until October 1992, was authenticated by no less than the Office of the U.S. Attorney General and the U.S. State Department. Furthermore, this official certification of a sovereign state, having passed through formal diplomatic channels, was authenticated by the Department of Foreign Affairs. As discussed in the main decision, such official documents as the authenticated U.S. INS Certification enjoy the presumption of accuracy of the entries therein.[11] Official documents are not infallible, but the presumption that they are accurate can only be overcome with evidence. Unfortunately, in the mind of the trial court, pure conjecture are not hard evidence was allowed to defeat a legal presumption.

Clearly, the trial court's decision in this case was, in significant measure, the product of switched attributions as to who should enjoy certain rights and what should be presumed under the law. This behavior on the part of the trial court and the effect it had on the factual conclusion on the credibility of Jessica Alfaro and on the presence of Hubert Webb in the Philippines at the time of the commission of the crime cannot be upheld.

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[11] Citing *Antillon v. Barcelon*, 37 Phil. 148 (1917).

EN BANC

[G.R. No. 180388. January 18, 2011]

GREGORIO R. VIGILAR, SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), DPWH UNDERSECRETARIES TEODORO E. ENCARNACION and EDMUNDO E. ENCARNACION and EDMUNDO V. MIR, DPWH ASSISTANT SECRETARY JOEL L. ALTEA, DPWH REGIONAL DIRECTOR VICENTE B. LOPEZ, DPWH DISTRICT ENGINEER ANGELITO M. TWAÑO, FELIX A. DESIERTO OF THE TECHNICAL WORKING GROUP VALIDATION AND AUDITING TEAM, and LEONARDO ALVARO, ROMEO N. SUPAN, VICTORINO C. SANTOS OF THE DPWH PAMPANGA 2ND ENGINEERING DISTRICT, *petitioners, vs.* **ARNULFO D. AQUINO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND DOCTRINE OF PRIMARY JURISDICTION; DOES NOT APPLY WHERE THE ISSUES RAISED ARE PURELY OF LAW.— Petitioners claim that the Complaint filed by respondent before the Regional Trial Court was done without exhausting administrative remedies. Petitioners aver that respondent should have first filed a claim before the Commission on Audit (COA) before going to the courts. However, it has been established that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not ironclad rules. In *Republic of the Philippines v. Lacap*, this Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so

small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings. In the present case, conditions (c) and (e) are present. The government project contracted out to respondent was completed almost two decades ago. To delay the proceedings by remanding the case to the relevant government office or agency will definitely prejudice respondent. More importantly, the issues in the present case involve the validity and the enforceability of the "Contract of Agreement" entered into by the parties. These are questions purely of law and clearly beyond the expertise of the Commission on Audit or the DPWH.

2. ID.; ID.; REVISED ADMINISTRATIVE CODE OF 1987; GOVERNMENT PROJECTS; PROJECTS UNDERTAKEN IN VIOLATION OF RELEVANT LAWS, RULES AND REGULATIONS COVERING PUBLIC BIDDING, BUDGET APPROPRIATIONS AND RELEASE OF FUNDS ARE VOID BUT PUBLIC INTEREST AND EQUITY DICTATE THAT THE CONTRACTOR SHOULD BE COMPENSATED FOR SERVICES AND WORK DONE OR UNDER A *QUANTUM MERUIT* BASIS.— In ordering the payment of the obligation due respondent on a *quantum meruit* basis, the Court of Appeals correctly relied on *Royal Trust Corporation v. COA, Eslao v. COA, Melchor v. COA, EPG Construction Company v. Vigilar,* and *Department of Health v. C.V. Canchela & Associates, Architects*. All these cases involved government projects undertaken in violation of the relevant laws, rules and regulations covering public bidding, budget appropriations, and release of funds for the projects. Consistently in these cases, this Court has held that the contracts were void for failing to meet the requirements mandated by law; public interest and equity, however, dictate that the contractor should be compensated for services rendered and work done. Specifically, *C.V. Canchela & Associates* is similar to the case at bar, in that the contracts involved in both cases

failed to comply with the relevant provisions of Presidential Decree No. 1445 and the Revised Administrative Code of 1987. Nevertheless, "(t)he illegality of the subject Agreements proceeds, it bears emphasis, from an express declaration or prohibition by law, not from any intrinsic illegality. As such, the Agreements are not illegal *per se*, and the party claiming thereunder may recover what had been paid or delivered."

3. ID.; CONSTITUTIONAL LAW; PRINCIPLE OF NON-SUABILITY OF THE STATE NOT APPLICABLE IN CASE AT BAR; THE DOCTRINE OF GOVERNMENTAL IMMUNITY FROM SUIT CANNOT SERVE AS AN INSTRUMENT FOR PERPETRATING AN INJUSTICE.— The government project involved in this case, the construction of a dike, was completed way back on 9 July 1992. For almost two decades, the public and the government benefitted from the work done by respondent. Thus, the Court of Appeals was correct in applying *Eslao* to the present case. In *Eslao,* this Court stated: ... the Court finds that the contractor should be duly compensated for services rendered, which were for the benefit of the general public. **To deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another. Justice and equity demand compensation on the basis of *quantum meruit*.** Neither can petitioners escape the obligation to compensate respondent for services rendered and work done by invoking the state's immunity from suit. This Court has long established in *Ministerio v. CFI of Cebu*, and recently reiterated in *Heirs of Pidacan v. ATO*, that the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Tolentino Logronio & Dayrit Law Offices for respondent.

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] of the Court of Appeals in CA-G.R. CV No. 82268, dated 25 September 2006.

The antecedent facts are as follows:

On 19 June 1992, petitioner Angelito M. Twaño, then Officer-in-Charge (OIC)-District Engineer of the Department of Public Works and Highways (DPWH) 2nd Engineering District of Pampanga sent an Invitation to Bid to respondent Arnulfo D. Aquino, the owner of A.D. Aquino Construction and Supplies. The bidding was for the construction of a dike by bulldozing a part of the Porac River at Barangay Ascomo-Pulungmasle, Guagua, Pampanga.

Subsequently, on 7 July 1992, the project was awarded to respondent, and a "Contract of Agreement" was thereafter executed between him and concerned petitioners for the amount of PhP1,873,790.69, to cover the project cost.

By 9 July 1992, the project was duly completed by respondent, who was then issued a Certificate of Project Completion dated 16 July 1992. The certificate was signed by Romeo M. Yumul, the Project Engineer; as well as petitioner Romeo N. Supan, Chief of the Construction Section, and by petitioner Twaño.

Respondent Aquino, however, claimed that PhP1,262,696.20 was still due him, but petitioners refused to pay the amount. He thus filed a Complaint[3] for the collection of sum of money with damages before the Regional Trial Court of Guagua, Pampanga. The complaint was docketed as Civil Case No. 3137.

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[1] *Rollo* at 10-32.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok, concurring, *rollo* at 33-48.

[3] *Rollo* at 51-55.

Petitioners, for their part, set up the defense[4] that the Complaint was a suit against the state; that respondent failed to exhaust administrative remedies; and that the "Contract of Agreement" covering the project was void for violating Presidential Decree No. 1445, absent the proper appropriation and the Certificate of Availability of Funds.[5]

On 28 November 2003, the lower court ruled in favor of respondent, to wit:

> WHEREFORE, premises considered, defendant Department of Public Works and Highways is hereby ordered to pay the plaintiff Arnulfo D. Aquino the following:
>
> 1. PhP1,873,790.69, Philippine Currency, representing actual amount for the completion of the project done by the plaintiff;
> 2. PhP50,000.00 as attorney's fee and
> 3. Cost of this suit.
>
> SO ORDERED.[6]

It is to be noted that respondent was only asking for PhP1,262,696.20; the award in paragraph 1 above, however, conforms to the entire contract amount.

On appeal, the Court of Appeals reversed and set aside the Decision of the lower court and disposed as follows:

> WHEREFORE, premises considered, the appeal is GRANTED. The "CONTRACT AGREEMENT" entered into between the plaintiff-appellee's construction company, which he represented, and the government, through the Department of Public Works and Highway (DPWH) – Pampanga 2nd Engineering District, is declared null and void *ab initio.*
>
> The assailed decision of the court *a quo* is hereby REVERSED AND SET ASIDE.

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[4] Petitioners' Answer, *rollo* at 56-59.

[5] Sections 85-87, Ordaining and Instituting a Government Auditing Code of the Philippines (1978).

[6] *Rollo* at 60-64.

In line with the pronouncement in ***Department of Health vs. C.V. Canchela & Associates, Architects,***[7] the Commission on Audit (COA) is hereby ordered to determine and ascertain with dispatch, on a *quantum meruit* basis, the total obligation due to the plaintiff-appellee for his undertaking in implementing the subject contract of public works, and to allow payment thereof, subject to COA Rules and Regulations, upon the completion of the said determination.

No pronouncement as to costs.

SO ORDERED.[8]

Dissatisfied with the Decision of the Court of Appeals, petitioners are now before this Court, seeking a reversal of the appellate court's Decision and a dismissal of the Complaint in Civil Case No. G-3137. The Petition raises the following issues:

1. WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE DOCTRINE OF NON-SUABILITY OF THE STATE HAS NO APPLICATION IN THIS CASE.
2. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT FOR FAILURE OF RESPONDENT TO EXHAUST ALL ADMINISTRATIVE REMEDIES.
3. WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING THE COA TO ALLOW PAYMENT TO RESPONDENT ON A *QUANTUM MERUIT* BASIS DESPITE THE LATTER'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF PRESIDENTIAL DECREE NO. 1445.

After a judicious review of the case, the Court finds the Petition to be without merit.

Firstly, petitioners claim that the Complaint filed by respondent before the Regional Trial Court was done without exhausting administrative remedies. Petitioners aver that respondent should have first filed a claim before the Commission on Audit (COA) before going to the courts. However, it has been established

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[7] G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218.

[8] *Rollo* at 47.

that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not ironclad rules. In *Republic of the Philippines v. Lacap*,[9] this Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings. In the present case, conditions (c) and (e) are present.

The government project contracted out to respondent was completed almost two decades ago. To delay the proceedings by remanding the case to the relevant government office or agency will definitely prejudice respondent. More importantly, the issues in the present case involve the validity and the enforceability of the "Contract of Agreement" entered into by the parties. These are questions purely of law and clearly beyond the expertise of the Commission on Audit or the DPWH. In *Lacap*, this Court said:

> ... It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only *tentatively* by the administrative authorities. **The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of**

[9] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law. (Emphasis supplied.)

Secondly, in ordering the payment of the obligation due respondent on a *quantum meruit* basis, the Court of Appeals correctly relied on *Royal Trust Corporation v. COA*,[10] *Eslao v. COA*,[11] *Melchor v. COA*,[12] *EPG Construction Company v. Vigilar*,[13] and *Department of Health v. C.V. Canchela & Associates, Architects*.[14] All these cases involved government projects undertaken in violation of the relevant laws, rules and regulations covering public bidding, budget appropriations, and release of funds for the projects. Consistently in these cases, this Court has held that the contracts were void for failing to meet the requirements mandated by law; public interest and equity, however, dictate that the contractor should be compensated for services rendered and work done.

Specifically, *C.V. Canchela & Associates* is similar to the case at bar, in that the contracts involved in both cases failed to comply with the relevant provisions of Presidential Decree No. 1445 and the Revised Administrative Code of 1987. Nevertheless, "(t)he illegality of the subject Agreements proceeds, it bears emphasis, from an express declaration or prohibition by law, not from any intrinsic illegality. As such, the Agreements are not illegal *per se*, and the party claiming thereunder may recover what had been paid or delivered."[15]

The government project involved in this case, the construction of a dike, was completed way back on 9 July 1992. For almost

[10] Supreme Court Resolution *En Banc*, G.R. No. 84202, November 22, 1988, cited in *Eslao v. COA*, 195 SCRA 730.

[11] G.R. No. 89745, April 8, 1991, 195 SCRA 730.

[12] G.R. No. 95938, August 16, 1991, 200 SCRA 705.

[13] G.R. No. 131544, March 16, 2001, 354 SCRA 566.

[14] *Supra* at note 7.

[15] *DOH v. C.V. Canchela Associates, Architects*, G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218.

two decades, the public and the government benefitted from the work done by respondent. Thus, the Court of Appeals was correct in applying *Eslao* to the present case. In *Eslao,* this Court stated:

...the Court finds that the contractor should be duly compensated for services rendered, which were for the benefit of the general public. **To deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another. Justice and equity demand compensation on the basis of *quantum meruit*.** (Emphasis supplied.)

Neither can petitioners escape the obligation to compensate respondent for services rendered and work done by invoking the state's immunity from suit. This Court has long established in *Ministerio v. CFI of Cebu*,[16] and recently reiterated in *Heirs of Pidacan v. ATO*,[17] that the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen. As this Court enunciated in *EPG Construction*:[18]

To our mind, it would be the apex of injustice and highly inequitable to defeat respondent's right to be duly compensated for actual work performed and services rendered, where both the government and the public have for years received and accepted benefits from the project and reaped the fruits of respondent's honest toil and labor.

... ...

Under these circumstances, respondent may not validly invoke the *Royal Prerogative of Dishonesty* and conveniently hide under the State's cloak of invincibility against suit, considering that this principle yields to certain settled exceptions. **True enough, the rule, in any case, is not absolute for it does not say that the state may not be sued under any circumstance.**

... ...

[16] G.R. No. L-31635, August 31, 1971, 40 SCRA 464.

[17] G.R. No. 186192, August 25, 2010.

[18] G.R. No. 131544, March 16, 2001, 354 SCRA 566.

Although the *Amigable* and *Ministerio* cases generously tackled the issue of the State's immunity from suit *vis–a–vis* the payment of just compensation for expropriated property, this Court nonetheless finds the doctrine enunciated in the aforementioned cases applicable to the instant controversy, **considering that the ends of justice would be subverted if we were to uphold, in this particular instance, the State's immunity from suit**.

To be sure, this Court — as the staunch guardian of the citizens' rights and welfare — cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration thereof. Justice and equity sternly demand that the State's cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated — on the basis of *quantum meruit* — for construction done on the public works housing project. (Emphasis supplied.)

WHEREFORE, in view of the foregoing, the Petition is *DENIED* for lack of merit. The assailed Decision of the Court of Appeals in CA-G.R. No. 82268 dated 25 September 2006 is *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 182591. January 18, 2011]

MODESTO AGYAO, JR., *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; REVISED ADMINISTRATIVE CODE OF 1987 (E.O. NO. 292); CAREER EXECUTIVE SERVICE (CES); COVERS PRESIDENTIAL APPOINTEES ONLY.— The core issue to be resolved in this case is whether or not the position of Department Manager II of PEZA requires CESO or CSEE eligibility. The issue is not novel. In *Office of the Ombudsman v. Civil Service Commission* cases, *Home Insurance Guarantee Corporation v. Civil Service Commission* and *National Transmission Corporation v. Hamoy*, the Court has consistently ruled that the CES covers presidential appointees only. Corollarily, as the position of Department Manager II of the PEZA does not require appointment by the President of the Philippines, it does not fall under the CES.

2. ID.; ID.; ID.; ID.; ID.; THE POSITION OF DIRECTOR MANAGER II AT THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) IS NOT AMONG THOSE ENUMERATED POSITIONS IN THE CAREER EXECUTIVE SERVICE, MUCH LESS, A POSITION THAT REQUIRES PRESIDENTIAL APPOINTMENT.— Doubtless, the position of Director Manager II at the PEZA is not among the enumerated positions in the Career Executive Service, much less, a position that requires presidential appointment. Even the CSC admits that the position of Director Manager II does not require presidential appointment. For said reason, Agyao only needs the approval of the PEZA Director-General to validate his appointment or re-appointment. As he need not possess a CESO or CSEE eligibility, the CSC has no valid and legal basis in invalidating his appointment or re-appointment as Department Manager II.

APPEARANCES OF COUNSEL

Sanidad and Villanueva Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition for review on *certiorari* is the September 26, 2007 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 92569, which affirmed Resolution No. 05-0821 dated June 16, 2005, issued by the Civil Service Commission *(CSC)*. The CSC Resolution, in turn, affirmed the invalidation by the Civil Service Commission Field Office-Bangko Sentral Ng Pilipinas *(CSCFO-BSP)* of the appointment of petitioner Modesto Agyao, Jr. *(Agyao)* as Department Manager II of the Philippine Economic Zone Authority *(PEZA)*.

Records show that on June 16, 2004, Agyao was re-appointed as Department Manager II of PEZA. As a matter of course, the renewal of Agyao's appointment was submitted by PEZA to the CSC.

On July 16, 2004, however, Agyao's re-appointment was invalidated by the CSCFO-BSP, through a letter of Director Mercedes P. Tabao *(Director Tabao)*. The letter stated that Agyao lacked the prescribed Career Executive Service Office (CESO)/ Career Service Executive Examination (CSEE) eligibility, and there were qualified eligibles actually available for appointment. Section 2 (b), Rule III of CSC Memorandum Circular No. 40, Series of 1998, provides as follows:

> b. Temporary – issued to a person who meets the education, experience and training requirements for the position to which he is being appointed except for the appropriate eligibility but only in the absence of a qualified eligible actually available, as certified to by the Civil Service Regional Director or Field Officer. xxx

On August 31, 2004, PEZA Director-General Lilia B. De Lima *(Director-General De Lima)* sent a letter-appeal to the CSC seeking a reconsideration of its action on the appointment of Agyao.

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[1] *Rollo*, pp. 40-47. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justice Mariano C. del Castillo (now a member of this Court) and Associate Justice Romeo F. Barza, concurring and promulgated September 26, 2007.

On June 16, 2005, the CSC issued Resolution No. 05-0821[2] denying Director-General De Lima's appeal and affirming the invalidation by the CSCFO–BSP of Agyao's appointment as Department Manager II of PEZA. The CSC referred to CSC Memorandum Circular *(MC)* No. 9, Series of 2005 (Limitations on Renewal of Temporary Appointments), which clearly provides that only one renewal of a temporary third-level appointment is allowed provided that there are no qualified applicants actually available and willing to assume the position. Moreover, although Agyao's temporary appointment was renewed four (4) times, he failed to acquire the appropriate third level eligibility. In addition, CSCFO-BSP Director Tabao certified that there were qualified eligibles available for appointment to the position of Department Manager II.

On July 18, 2005, Agyao was informed by PEZA Deputy Director for Finance and Administration, Justo Porfirio LL. Yusingco, about his appointment as Division Chief III, Permanent, effective July 16, 2005.

On August 21, 2005, Agyao filed with the CSC a Letter-Motion for Reconsideration of its July 16, 2005 Resolution. The motion, however, was denied in the cited CSC Resolution No. 05-1486 dated October 17, 2005.

On appeal, the CA rendered a decision dated September 26, 2007 affirming the resolution of the CSC. It ruled, among others, that Agyao could not qualify for the position of Department Manager II because he was not a Career Civil Service Eligible *(CESE).* He could not invoke the provisions of CSC MC No. 9, Series of 2005, issued on March 22, 2005 because the invalidation of his temporary appointment was made earlier on July 16, 2004. Moreover, CSC Office Memorandum No. 05, Series of 2005, issued on August 5, 2005 as a clarification on CSC MC No. 9, Series of 2005, expressly provides that "all renewals issued on or after July 24, 2005 can no longer be renewed after they lapse."

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[2] *Id.* at 66-69.

Aggrieved, Agyao filed this petition for review before this Court raising the following

ISSUES

WHETHER OR NOT THE COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE CIVIL SERVICE COMMISSION DECLARING THE APPOINTMENT OF THE PETITIONER AS DEPARTMENT MANAGER II OF THE PEZA AS INVALID.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE POSITION OF THE PETITIONER AS DEPARTMENT MANAGER II IS NOT COVERED UNDER THE CAREER EXECUTIVE SERVICE CONSIDERING THE FACT THAT HE IS NOT A PRESIDENTIAL APPOINTEE.

Agyao argues that CSC MC No. 9, Series of 2005, is applicable to him because its provisions are favorable to him. He claims that CSC Office Memorandum No. 05, Series of 2005, which clarified CSC MC No. 9, Series of 2005, allows one renewal of temporary third level appointments issued before July 24, 2005 subject to existing rules and regulations regardless of previous renewals granted before said date. Accordingly, he insists that the renewal of his appointment was valid because it was made on June 16, 2004.

Agyao further points out that there are no qualified applicants actually available and willing to assume his position as Director Manager II at the PEZA. Director Tabao's "qualified eligibles" in her list are from different agencies of the government and that none of them has applied for the position. It is the reason why the position is still vacant.

Finally, Agyao contends that the position of Department Manager II of PEZA is not among those covered by the Career Executive Service (CES) also known as presidential appointees. The appointment to the position is made by the PEZA Director-General. Accordingly, he does not need to possess the required CESO/CSEE to continue acting as Department Manager II.

The CSC, on the other hand, argues that Agyao's temporary appointment on June 16, 2004 was properly invalidated because

he lacked the eligibility to qualify as Department Manager II. Although he was re-appointed several times to the position, he still failed to acquire third level eligibility considering that he failed in the November 2004 CSEE.

Moreover, CSC MC No. 9, Series of 2005, and CSC Office Memorandum No. 05, Series of 2005, cannot apply in Agyao's favor because they were issued after the invalidation of his fifth temporary appointment and did not provide for a retroactive application.

The CSC also regards Agyao's contention that there are no qualified applicants who are actually willing to assume the position of Department Manager II as speculative and hearsay. Actually, Director Tabao certified and furnished PEZA a list of qualified eligibles for possible appointment as Department Manager II.

Finally, the CSC argues that although the position of Department Manager II does not require a presidential appointment, it is a third level position which requires either a CESO or CSEE eligibility. The list of third level positions in the Career Executive Service enumerated in the Administrative Code of 1987, 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, is not strictly limited. Citing jurisprudence,[3] the CSC avers that the classification of a particular position in the bureaucracy is determined by the nature of the functions of the office. The third level embraces positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling, and overseeing the activities of an organization or of a unit thereof. It also requires some degree of professional, technical or scientific knowledge and experience, and application of managerial or supervisory skills necessary to carry out duties and responsibilities involving functional guidance, leadership and supervision.

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[3] *GSIS v. CSC*, G.R. No. 87146, December 11, 1991, 204 SCRA 826.

The rank of Department Manager II falls under the coverage of CES under the aforementioned CSC issuances as the same is a third level career position above the division chief level and performing executive or managerial functions. Pursuant to the merit-and-fitness rule in the Constitution, the consistent policy is to the effect that non-presidential appointees to positions with managerial and executive functions must possess third level eligibility.

In sum, the core issue to be resolved in this case is whether or not the position of Department Manager II of PEZA requires CESO or CSEE eligibility.

RULING OF THE COURT

The issue is not novel. In *Office of the Ombudsman v. Civil Service Commission* cases,[4] *Home Insurance Guarantee Corporation v. Civil Service Commission*[5] and *National Transmission Corporation v. Hamoy*,[6] the Court has consistently ruled that the CES covers presidential appointees only. Corollarily, as the position of Department Manager II of the PEZA does not require appointment by the President of the Philippines, it does not fall under the CES.

Section 8, Chapter 2, Book V, Title 1 (Subtitle A) of Executive Order No. 292, otherwise known as The Revised Administrative Code of 1987, classifies the positions in the Civil Service as follows:

Section 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 sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

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[4] G.R. No. 162215, July 30, 2007, 528 SCRA 535, 542.

[5] G.R. No. 95450, March 19, 1993, 220 SCRA 148, 154.

[6] G.R. No. 179255, April 2, 2009, 583 SCRA 410.

(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 levels; and

(c) The third level shall cover positions in the Career Executive Service.

In the *Home Insurance* case, the Court ruled that "the position of Vice-President of HIGC does not belong to the *3rd level* of the career service. Respondent Cruz has not satisfactorily shown that his former position as Vice-President in the HIGC belongs to the third level in the career service as prescribed by law. His former position as Vice President is not among those enumerated by law as falling under the third level, nor has he established that it is one of those identified by the Career Executive Service Board as of equivalent rank to those listed by law. Neither is it claimed that he was appointed by the President."

In the *Office of the Ombudsman* case, the Court wrote:

The CSC's opinion that the Director II positions in the Central Administrative Service and the Finance and Management Service 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[7] 292, otherwise known as "The Administrative Code of 1987," provides:

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:

(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

[7] Executive Order.

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 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 (emphasis supplied)

Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC* [G.R. No. 159940, 16 February 2005, 451 SCRA 570]:

From the above-quoted provision of the Administrative Code, **persons occupying positions in the CES are presidential appointees**. x x x (emphasis supplied)

Under the Constitution, the Ombudsman is the appointing authority for all officials and employees of the Office of the Ombudsman, except the Deputy Ombudsmen. Thus, a person occupying the position of Director II in the Central Administrative Service or Finance and Management Service of the Office of the Ombudsman is appointed by the Ombudsman, not by the President. As such, he is neither embraced in the CES nor does he need to possess CES eligibility.

To classify the positions of Director II in the Central Administrative Service and the Finance and Management Service of the Office of the Ombudsman 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 said position in the President, in violation of the Constitution or (2) including in the CES a position not held by a presidential appointee, contrary to the Administrative Code.

The same ruling was cited in the *National Transmission Corporation* case, where it was further written:

"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.

x x x x x x x x x

Respondent was appointed Vice-President of VisMin Operations & 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.

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 CES Rank
>
> Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an 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 held by presidential appointee, contrary to the Administrative Code.

Interestingly, on 9 April 2008, CSC Acting Chairman Cesar D. Buenaflor issued Office Memorandum No. 27, s. 2008, which states in part:

For years, the Commission has promulgated several policies and issuances identifying positions in the Career Service above Division Chief Level performing executive and managerial functions as belonging to the Third Level covered by the Career Executive Service (CES) and those outside the CES, thus, requiring third level eligibility for purposes of permanent appointment and security of tenure.

However, the issue as to whether a particular position belongs to the Third Level has been settled by jurisprudence enshrined in *Home Insurance and Guaranty Corporation v. Civil Service Commission*, G.R. No. 95450 dated March 19, 1993 and *Office of the Ombudsman (OMB) v. Civil Service Commission*; G.R. No. 162215 dated July 30, 2007, where the Honorable Supreme Court ruled citing the provision of Section 7(3) Chapter 2, Title I-A, Book V of Administrative Code of 1987, that the Third Level shall cover positions in the Career Executive Service (CES). Positions in the Career Executive Service consists 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 (CESB), all of whom are appointed by the President. 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 held by presidential appointee, contrary to the Administrative Code**.**

x x x x x x x x x

While the above-cited ruling of the Supreme Court refer to particular positions in the OMB and HIGC, it is clear, however, that the intention was to make the doctrine enunciated therein applicable to similar and comparable positions in the bureaucracy. **To reiterate, the Third Level covers only the positions in the CES as enumerated in the Administrative Code of 1987 and those identified by the CESB as of equivalent rank, all of whom are appointed by the President of the Philippines.** Consequently, the doctrine enshrined in these Supreme Court decisions has *ipso facto* nullified all resolutions, qualification standards, pronouncements and/or issuances of the Commission insofar as the requirement of third level eligibility to non-CES positions is concerned.

In view thereof, OM No. 6, series of 2008 and all other issuances of the Commission inconsistent with the afore-stated law and jurisprudence are likewise deemed repealed, superseded and abandoned. x x x (Emphasis supplied)

Thus, petitioner can no longer invoke Section 1(b) of Memorandum Circular (MC) No. 21, it being inconsistent with the afore-quoted Office Memorandum and thus deemed repealed by no less than the CSC itself.

All three cases were also cited in the recent case of *Civil Service Commission v. Court of Appeals* and *Philippine Charity Sweepstakes Office*,[8] where a similar ruling was handed down.

Doubtless, the position of Director Manager II at the PEZA is not among the enumerated positions in the Career Executive Service, much less, a position that requires presidential appointment. Even the CSC admits that the position of Director Manager II does not require presidential appointment.

For said reason, Agyao only needs the approval of the PEZA Director-General to validate his appointment or re-appointment. As he need not possess a CESO or CSEE eligibility, the CSC has no valid and legal basis in invalidating his appointment or re-appointment as Department Manager II.

WHEREFORE, the September 26, 2007 Decision of the Court of Appeals is hereby *REVERSED* and *SET ASIDE* and another one entered holding that the appointment of Modesto Agyao, Jr. as Department Manager II of PEZA was valid.

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., no part.

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[8] G.R. No. 185766, November 23, 2010.

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