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FROM

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 737

IV. CITATIONS 769

PHILIPPINE REPORTS

Page

Aguirre, Jr., etc., Judge Jose Y. –
Mansueta T. Rubin *vs.* 12
Alano, et al., Bona J. – Jose Reynaldo B. Ochosa *vs.* 512
Alejo, etc., Robert V. – Reina Edenlyne Garcia *vs.* 482
Amora, Jr., Sergio G. *vs.* Commission on Elections, et al. 467
Amora, Jr., Sergio G. *vs.* Arnielo S. Olandria 467
Aquinas School *vs.* Spouses Jose Inton and
Ma. Victoria S. Inton, et al. 625
Asian Transmission Corporation – Commissioner
of Internal Revenue *vs.* 186
Atlanta Industries, Inc. and/or Robert Chan *vs.*
Aprilito B. Sebolino, et al. 678
Atlas Consolidated Mining and Development
Corporation *vs.* Commissioner of Internal Revenue 499
Axalan, Teodora – The University of the
Immaculate Concepcion, et al. *vs.* 605
Badillo, et al., Fructosa – Nilo Padre *vs.* 52
Balao, et al., Robert P. – People of the Philippines *vs.* 563
Barangay Dasmariñas thru Barangay Captain
Ma. Encarnacion R. Legaspi *vs.* Creative Play
Corner School, et al. 285
Barriga, Dinah C. – Office of the Ombudsman *vs.* 541
Bases Conversion Development Authority, et al. –
Philippine Veterans Bank *vs.* 104
Branoco, Spouses Froilan and Leonila –
Gonzalo Villanueva, represented by his heirs *vs.* 298
Cabahug-Superales, Spouses Gualberto & Rene –
Spouses Ruben and Myrna Leynes *vs.* 25
Caong, Jr., et al., Primo E. *vs.* Avelino Regualos 595
Capuno *y* Tison, Erlinda – People of the Philippines *vs.* 226
Commission on Elections, et al. –
Sergio G. Amora, Jr. *vs.* 467
Commissioner of Internal Revenue – Atlas Consolidated
Mining and Development Corporation *vs.* 499
Commissioner of Internal Revenue – Exxonmobil Petroleum
and Chemical Holdings, Inc. – Philippine Branch *vs.* 199
Commissioner of Internal Revenue *vs.*
Asian Transmission Corporation 186

Page

Court of Appeals, et al. – Office of the Ombudsman *vs.* 541
Creative Play Corner School, et al. – Barangay Dasmariñas thru Barangay Captain Ma. Encarnacion R. Legaspi *vs.* 285
Cuanico, Jr., etc. et al., Atty. Graciano D. – Virgilio O. Gallano *vs.* 367
Dalton, Soledad *vs.* FGR Realty and Development Corporation, et al. 93
Danzas Intercontinental, Inc. – International Freeport Traders, Inc. *vs.* 617
De Jesus, et al., Hemiano – People of the Philippines *vs.* 657
Dela Rosa *y* Suello, Mark Lester – People of the Philippines *vs.* 630
Dequina *y* Dimapanan, et al., Nelida – People of the Philippines *vs.* 110
Diño, Alain M. *vs.* Ma. Caridad L. Diño 175
Diño, Ma. Caridad – Alain M. Diño *vs.* 175
Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch *vs.* Commissioner of Internal Revenue 199
FGR Realty Development Corporation, et al. – Soledad Dalton *vs.* 93
Former Tenth Division of the Court of Appeals, et al. – Spouses Ruben and Myrna Leynes *vs.* 25
Gaite, et al., Heirs of Ramon C. *vs.* The Plaza, Inc., et al. 574
Gallano, Virgilio O. *vs.* Atty. Graciano D. Cuanico, Jr., etc. et al. 367
Garcia, Reina Edenlyne *vs.* Robert V. Alejo, etc. 482
Gatus, Alexander B. *vs.* Social Security System 550
Golden Arches Development Corporation *vs.* St. Francis Square Holdings, Inc. 221
International Freeport Traders, Inc. *vs.* Danzas Intercontinental, Inc. 617
Inton, et al., Spouses Jose and Ma. Victoria S. – Aquinas School *vs.* 625
Jesalva, Benjamin *vs.* People of the Philippines 246
Leynes, Spouses Ruben and Myrna *vs.* Former Tenth Division of the Court of Appeals, et al. 25

Page

Leynes, Spouses Ruben and Myrna *vs.*
Spouses Gualberto & Rene Cabahug-Superales 25
Limsiaco, Jr., etc., Judge Manuel Q. –
Florenda V. Tobias *vs.* 1
Metropolitan Bank & Trust Company *vs.*
Spouses Edmundo Miranda and Julie Miranda 265
Miranda, Spouses Edmundo and Julie –
Metropolitan Bank & Trust Company *vs.* 265
National Labor Relations Commission, et al. –
The University of the Immaculate Concepcion, et al. *vs.* 605
National Power Corporation – Moises Tinio, Jr., et al. *vs.* 278
National Power Corporation *vs.* Moises Tinio, Jr., et al. 278
Ochosa, Jose Reynaldo B. *vs.* Bona J. Alano, et al. 512
Office of the Court Administrator *vs.*
Jose M. Ramano, etc. 361
Office of the Ombudsman *vs.* Dinah C. Barriga 541
Office of the Ombudsman *vs.* Court of Appeals, et al. 541
Olandria, Arnielo S. – Sergio G. Amora, Jr. *vs.* 467
Padre, Nilo *vs.* Fructosa Badillo, et al. 52
Palaganas, Ernesto – Manuel Miguel Palaganas et al. *vs.* 535
Palaganas, et al., Manuel Miguel *vs.* Ernesto Palaganas 535
Pambid y Cortez, Jacquiline –
People of the Philippines *vs.* 719
People of the Philippines – Benjamin Jesalva *vs.* 246
People of the Philippines *vs.* Robert P. Balao, et al. 563
Erlinda Capuno *y* Tison 226
Hemiano De Jesus, et al. 657
Mark Lester Dela Rosa *y* Suello 630
Nelida Dequina *y* Dimapanan, et al. 110
Jacquiline Pambid *y* Cortez 719
Nene Quiamanlon *y* Malog 695
Ernesto Uyboco *y* Ramos 143
Perlas, Sheriff III, Alyn C. – Corazon Tenorio,
represented by Imelda Tenorio-Ortiz *vs.* 491
Philippine Countryside Rural Bank, Inc., et al. –
Philippine Deposit Insurance Corporation (PDIC) *vs.* 313
Philippine Deposit Insurance Corporation (PDIC) *vs.*
Philippine Countryside Rural Bank, Inc., et al. 313

Page

Philippine Veterans Bank *vs*. Bases Conversion
Development Authority, et al. 104
Quiamanlon *y* Malog, Nene –
People of the Philippines *vs.* 695
Ramano, etc., Jose M. – Office of the
Court Administrator *vs.* 361
Ranchez, Irene R. – Robinsons Galleria/Robinsons
Supermarket Corporation and/or Jess Manuel *vs*. 133
Real, Renato *vs*. Sangu Philippines, Inc.
and/or Kiichi Abe 68
Regualos, Avelino – Primo E. Caong, Jr., et al. *vs.* 595
Report on the Financial Audit Conducted
on the Books of Accountof Sonia L. Dy
and Atty. Graciano D. Cuanico, Jr., Regional
Trial Court, Catarman, Northern Samar 367
Republic of the Philippines, et al. –
Cynthia E. Yambao *vs*. 346
Robinsons Galleria/Robinsons Supermarket Corporation
and/or Jess Manuel *vs*. Irene R. Ranchez 133
Rubin, Mansueta T. *vs*. Judge Jose Y. Aguirre, Jr., etc. 12
Sangu Philippines, Inc. and/or Kiichi Abe –
Renato Real *vs*. 68
Sebolino, et al., Aprilito B. – Atlanta Industries, Inc.
and/or Robert Chan *vs.* 678
Social Security System – Alexander B. Gatus *vs.* 550
St. Francis Square Holdings, Inc. –
Golden Arches Development Corporation *vs.* 221
Tenorio, represented by Imelda Tenorio-Ortiza,
Corazon *vs*. Alyn C. Perlas, Sheriff III 491
The Manufacturers Life Insurance Co. (Phils.),
Inc., et al. – Gregorio V. Tongko *vs.* 384
The Plaza, Inc., et al. – Heirs of Ramon C. Gaite, et al. *vs.* 574
The University of the Immaculate Concepcion, et al.
vs. Teodora Axalan 605
The University of the Immaculate Concepcion, et al.
vs. National Labor Relations Commission, et al. 605
Tinio, Jr., et al., Moises – National Power Corporation *vs*. 278
Tinio, Jr., et al., Moises *vs*. National Power Corporation 278
Tobias, Florenda V. *vs*. Judge Manuel Q. Limsiaco, Jr., etc. 1

Page

Tongko, Gregorio V. *vs*. The Manufacturers
Life Insurance Co. (Phils.), Inc., et al. 384
Uyboco *y* Ramos, Ernesto –
People of the Philippines *vs*. 143
Villanueva, represented by his heirs, Gonzalo *vs*.
Spouses Froilan and Leonila Branoco 298
Yambao, Cynthia E. *vs*. Republic of the Philippines, et al. 346
Yambao, Cynthia E. *vs*. Patricio E. Yambao 346
Yambao, Patricio E. – Cynthia E. Yambao *vs*. 346

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-09-1734. January 19, 2011]
(Formerly OCA I.P.I. No. 07-1933-MTJ)

FLORENDA V. TOBIAS, *complainant, vs.* **JUDGE MANUEL Q. LIMSIACO, JR., Presiding Judge, Municipal Circuit Trial Court, Valladolid-San Enrique-Pulupandan, Negros Occidental,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; THE CONDUCT OF A JUDGE MUST BE BEYOND REPROACH AND REFLECTIVE OF THE INTEGRITY OF HIS OFFICE; RESPONDENT JUDGE COMMITTED ACTS CONSTITUTING GROSS MISCONDUCT AND CONDUCT UNBECOMING A JUDGE.—** The Court agrees with the findings of Investigating Judge Guanzon that complainant failed to prove by substantial evidence her allegation that respondent offers "package deals" to prospective litigants in his court. However, the investigation revealed that respondent committed acts unbecoming of a judge, in particular, talking to a prospective litigant in his court, recommending a lawyer to the litigant, and preparing the Motion to Withdraw as Counsel of Atty. Robert Juanillo, which pleading was filed in his court and was acted upon by him. The conduct of a judge should be beyond reproach and reflective of the integrity of his office. Indeed, as stated by the OCA, the said acts of respondent violate Section 1 of Canon 2 (Integrity), Section 2 of Canon 3 (Impartiality), and Section 1 of Canon 4 (Propriety)

of the New Code of Judicial Conduct for the Philippine Judiciary. x x x The aforementioned acts of respondent constitute gross misconduct. "Misconduct" means a transgression of some established and definite rule of action, willful in character, improper or wrong behavior. "Gross" has been defined as "out of all measure, beyond allowance; flagrant; shameful; such conduct as is not to be excused." Respondent's act of preparing the Motion to Withdraw the Appearance of Atty. Juanillo as counsel of complainant is inexcusable. In so doing, respondent exhibited improper conduct that tarnished the integrity and impartiality of his court, considering that the said motion was filed in his own sala and was acted upon by him.

2. ID.; ID.; ID.; PREVIOUS INFRACTION OF RESPONDENT JUDGE CONSIDERED IN IMPOSING THE PROPER PENALTY.— Gross misconduct constituting violations of the Code of Judicial Conduct is a serious charge under Section 8, Rule 140 of the Rules of Court. Under Section 11, Rule 140 of the Rules of Court, the sanctions against a respondent guilty of a serious charge may be any of the following: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. In imposing the proper sanction against respondent, the Court takes note that respondent had been found guilty of grave misconduct in A.M. No. MTJ-03-1509 and was fined ₱20,000.00, with a warning against repetition of the same or similar act. Moreover, per verification from court records, respondent compulsorily retired from the service on May 17, 2009.

D E C I S I O N

PERALTA, *J.*:

This administrative case stemmed from the complaint filed by complainant Florenda V. Tobias against respondent Judge

Manuel Q. Limsiaco, Jr., Presiding Judge of the Fourth Municipal Circuit Trial Court (MCTC) of Valladolid-San Enrique-Pulupandan, Negros Occidental. Complainant charged respondent with corruption for allegedly offering "package deals" to litigants who plan to file cases in his court.

In her verified Complaint[1] dated June 6, 2007, complainant alleged that respondent Judge Limsiaco, Jr. offers "package deals" for cases filed in the court where he presides. She stated that sometime in June 2006, she requested her sister, Lorna V. Vollmer, to inquire from the Fourth MCTC of Valladolid-San Enrique-Pulupandan, Negros Occidental about the requirements needed in filing an ejectment case. Court Stenographer Salvacion Fegidero[2] allegedly proposed to Vollmer that for the sum of ₱30,000.00, respondent would provide the lawyer, prepare the necessary pleadings, and ensure a favorable decision in the ejectment case which they contemplated to file against the spouses Raymundo and Francisca Batalla. Fegidero allegedly required them to pay the initial amount of ₱10,000.00 and the remaining balance would be paid in the course of the proceedings. It was made clear that they would not get any judicial relief from their squatter problem unless they accepted the package deal.

Further, complainant alleged that on June 23, 2006, Lorna Vollmer, accompanied by Salvacion Fegidero, delivered the amount of ₱10,000.00 to respondent at his residence. Subsequently, an ejectment case was filed in respondent's court, entitled *Reynold V. Tobias, represented by his Attorney–in-fact Lorna V. Vollmer v. Spouses Raymundo Batalla and Francisca Batalla*, docketed as Civil Case No. 06-007-V.[3] Respondent allegedly assigned a certain Atty. Robert G. Juanillo to represent the complainant in the ejectment case. Complainant stated that respondent, however, immediately demanded for

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[1] *Rollo*, pp. 8-9.

[2] Also referred to as "Fedigero" in the Report of Investigating Judge Guanzon.

[3] *Rollo*, p. 41.

an additional payment of ₱10,000.00. She allegedly refused to give the additional amount and earned the ire of respondent. She asked her sister, Lorna Vollmer, to request Atty. Robert Juanillo to voluntarily withdraw as counsel,[4] which he did on April 16, 2007. Complainant also asked Vollmer to withdraw the case.[5] Respondent granted the Motion to Withdraw as Counsel on April 23, 2007 and the Motion to Withdraw Case on May 3, 2007.[6]

In his Comment,[7] respondent denounced the allegation that he offers "package deals" to prospective litigants as malicious, baseless and a lie. He denied that he demanded from complainant the additional payment of ₱10,000.00. He alleged that he does not know complainant and she is a total stranger to him.

Respondent attached to his Comment the Affidavit[8] dated September 29, 2007 of Atty. Robert G. Juanillo, who stated therein that he received as counsel of the complainant in the ejectment case the sum of ₱10,000.00 from complainant's sister, Lorna Vollmer. From the ₱10,000.00, he paid filing fees and miscellaneous fees in the amount of ₱3,707.00, while the remaining balance of ₱6,293.00 was paid to him for his services, consisting of the preparation and filing of the complaint for ejectment, including acceptance fee.

Respondent also attached to his Comment the Affidavit[9] dated September 29, 2007 of Court Stenographer Salvacion B. Fegidero, denying the allegation that she offered a "package deal" to complainant's sister, Lorna Vollmer. She declared that the allegations of complainant were malicious and unfair, and that complainant and her sister could have been misled by some people who lost cases in the said court.

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[4] *Id*. at 10.
[5] *Id*. at 12.
[6] *Id*. at 11 & 14, respectively.
[7] *Id*. at 36-37.
[8] *Id*. at 39-40.
[9] *Id*. at 38.

Meanwhile, the ejectment case was assigned to Judge Herminigildo S. Octaviano, Municipal Trial Court in Cities, Bago City, Negros Occidental, in view of respondent's inhibition on July 30, 2007.[10]

On February 20, 2008, the Court issued a Resolution,[11] which noted the Report of the Office of the Court Administrator (OCA) on the complaint against respondent. Due to the conflicting allegations of the parties, the OCA opined that a formal investigation was necessary to afford the parties opportunity to substantiate their respective claims and to determine the alleged participation of court employee Salvacion Fegidero. Upon recommendation of the OCA, the Court referred the complaint to Executive Judge Frances V. Guanzon, Regional Trial Court, Bago City, Negros Occidental for investigation, report and recommendation within 60 days from receipt thereof.

On May 20, 2008, the parties were summoned for a formal investigation before Investigating Judge Frances V. Guanzon. Those who appeared before the Investigating Judge were complainant Florenda V. Tobias, respondent Judge Manuel Q. Limsiaco, Jr., Court Stenographer Salvacion Fegidero and respondent's witness, Atty. Robert Juanillo. Complainant's witness, Lorna Vollmer, did not attend the investigation, because per information of complainant, Vollmer was in Germany and she was expected to be back in the country in December 2008.

In his Report dated June 2, 2008, Investigating Judge Guanzon stated that complainant testified that it was her sister, Lorna Vollmer, who informed her about the alleged "package deal" through long distance telephone call. Complainant testified that she met Salvacion Fegidero only after the filing of the instant administrative complaint and that she did not talk with her even once.[12] Complainant further claimed that she had no personal dealings with respondent or with Salvacion Fegidero, and that she met respondent only after the filing of the ejectment case.[13]

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[10] *Id*. at 49, 51.
[11] *Id*. at 67.
[12] TSN, May 20, 2008, pp. 27-28.
[13] *Id*. at 29.

Moreover, complainant testified that respondent neither personally received from her the initial payment of ₱10,000.00 for the alleged package deal nor personally asked from her for an additional payment of ₱10,000.00.[14] It was her sister, Lorna Vollmer, who told her through telephone about the demand for an additional ₱10,000.00, but she (complainant) did not send the money.[15]

Complainant testified that she was the one who went to the house of Atty. Robert Juanillo, bringing with her the Motion to Withdraw as Counsel prepared by respondent for Atty. Juanillo to sign.[16]

Respondent and Court Stenographer Salvacion Fegidero categorically denied the accusation that they had a package deal with Lorna Vollmer. Respondent testified that he met and talked with Vollmer when she went to his court to inquire about the filing of an ejectment case against the spouses Raymundo and Francisca Batalla. Respondent advised Vollmer that since there was no lawyer in Valladolid, Negros Occidental, she had to choose the nearest town lawyer as it would lessen expenses in transportation and appearance fee, and respondent mentioned the name of Atty. Robert Juanillo.[17] Moreover, respondent testified that Vollmer, together with her husband and Salvacion Fegidero, went to his house once to ask him for the direction to the house of Atty. Robert Juanillo. Respondent denied that he received the amount of ₱10,000.00 from Vollmer.[18]

Further, respondent testified that he met with complainant after the ejectment case was filed, when she went to his court and told him that she was withdrawing the services of Atty. Robert Juanillo. Respondent admitted that he prepared the motion for the withdrawal of appearance of Atty. Juanillo, since

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[14] *Id*.

[15] *Id*.

[16] *Id*. at 32-33.

[17] *Id*. at 5.

[18] *Id*.

respondent wanted to help complainant as she said it was urgent, but respondent did not charge her.[19]

Atty. Robert Juanillo testified that he received the amount of ₱10,000.00 from Lorna Vollmer at the Municipal Court of Valladolid, Negros Occidental. From the amount, he paid filing fees amounting to ₱3,707.00 to the Clerk of Court of the Municipal Circuit Court of Valladolid-Pulupandan and San Enrique, which payment was evidenced by five official receipts. Atty. Juanillo testified that the balance of ₱6,293.00 was payment for his legal services.

Court Stenographer Salvacion Fegidero denied that she was involved in the alleged package deal complained of by Florenda Tobias. She testified that she met Lorna Vollmer for the first time when Vollmer went to the court in Villadolid and asked if there was a lawyer in Valladolid, because she was intending to file an ejectment suit. She referred Vollmer to respondent Judge Limsiaco, since there was no lawyer in the Municipality of Valladolid, Negros Occidental. The courtroom of Valladolid, Negros Occidental consists only of one room where everybody holds office, including respondent. She saw respondent talk with Vollmer for 15 minutes, but she did not hear what they were talking about.[20]

Investigating Judge Guanzon found that the complainant did not have personal knowledge of the alleged "package deals" to litigants who file cases in the court of respondent. The allegations in the Complaint were all based on the information relayed to complainant though telephone by her sister, Lorna Vollmer. During the investigation, complainant admitted that respondent did not personally receive from her the amount of ₱10,000.00 as payment for the alleged package deal, and respondent did not ask from her an additional ₱10,000.00.

According to Investigating Judge Guanzon, the only person who could have shed light on the alleged offer of package deals to litigants was Lorna Vollmer, complainant's sister.

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[19] *Id.* at 38.
[20] *Id.* at 20-21.

Unfortunately, Vollmer was not present during the investigation. Per manifestation of complainant, Vollmer was then in Germany and she was expected to return to the Philippines in December 2008. Hence, the complaint of corruption was unsubstantiated.

Nevertheless, Investigating Judge Guanzon stated that although the alleged offer of package deals by respondent to litigants was unsubstantiated, it was improper for respondent to talk to prospective litigants in his court and to recommend lawyers to handle cases. Likewise, Judge Guanzon found respondent's act of preparing the Motion to Withdraw as Counsel of Atty. Robert Juanillo to be improper and unethical.

Investigating Judge Guanzon recommended the dismissal of the administrative complaint against respondent as regards the alleged offer of package deals to litigants who plan to file cases in his court. However, Judge Guanzon recommended that respondent be reprimanded for talking to a prospective litigant in his court, recommending the counsel to handle the case, and preparing the Motion to Withdraw as Counsel of Atty. Robert Juanillo, which pleading was filed in respondent's court and was acted upon by him.

In a Resolution dated August 4, 2008, the Court referred the Report of Investigating Judge Guanzon to the OCA for evaluation, report and recommendation within 30 days from notice.

The OCA found respondent's acts, consisting of (1) advising Lorna Vollmer about the ejectment case she was about to file before his court; (2) recommending Atty. Robert Juanillo as counsel of the complainant in the ejectment case; and (3) helping complainant to prepare the Motion to Withdraw as Counsel, to be violative of the rules on integrity,[21] impartiality,[22] and propriety[23]

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[21] New Code of Judicial Conduct for the Philippine Judiciary, Canon 2, Sec. 1.

[22] New Code of Judicial Conduct for the Philippine Judiciary, Canon 3, Sec. 2.

[23] New Code of Judicial Conduct for the Philippine Judiciary, Canon 4, Sec. 1.

contained in the New Code of Judicial Conduct for the Philippine Judiciary. The OCA recommended that the case be re-docketed as a regular administrative matter and that respondent be found guilty of gross misconduct constituting violations of the New Code of Judicial Conduct and be fined in the amount of ₱20,000.00.

In a Resolution dated February 25, 2009, the Court required the parties to manifest whether they were willing to submit the case for decision, on the basis of the pleadings/records already filed and submitted, within 10 days from notice.

On August 18, 2010, the Court issued a Resolution resolving to inform the parties that they are deemed to have submitted the case for resolution on the basis of the pleadings/records already filed and submitted, considering that they have not submitted their respective manifestations required in the Resolution dated February 25, 2009, despite receipt thereof on April 1, 2010.

The Court agrees with the findings of Investigating Judge Guanzon that complainant failed to prove by substantial evidence her allegation that respondent offers "package deals" to prospective litigants in his court.

However, the investigation revealed that respondent committed acts unbecoming of a judge, in particular, talking to a prospective litigant in his court, recommending a lawyer to the litigant, and preparing the Motion to Withdraw as Counsel of Atty. Robert Juanillo, which pleading was filed in his court and was acted upon by him. The conduct of a judge should be beyond reproach and reflective of the integrity of his office. Indeed, as stated by the OCA, the said acts of respondent violate Section 1 of Canon 2 (Integrity), Section 2 of Canon 3 (Impartiality), and Section 1 of Canon 4 (Propriety) of the New Code of Judicial Conduct for the Philippine Judiciary,[24] thus:

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[24] Effectivity date June 1, 2004.

CANON 2

INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

x x x x x x x x x

CANON 3

IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

x x x x x x x x x

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 of the judiciary.

CANON 4

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

The aforementioned acts of respondent constitute gross misconduct. "Misconduct" means a transgression of some established and definite rule of action, willful in character, improper or wrong behavior.[25] "Gross" has been defined as

[25] *Nuñez v. Ibay*, A.M. No. RTJ-06-1984, June 30, 2009, 591 SCRA 229, 241.

"out of all measure, beyond allowance; flagrant; shameful; such conduct as is not to be excused."[26] Respondent's act of preparing the Motion to Withdraw the Appearance of Atty. Juanillo as counsel of complainant is inexcusable. In so doing, respondent exhibited improper conduct that tarnished the integrity and impartiality of his court, considering that the said motion was filed in his own sala and was acted upon by him.

Gross misconduct constituting violations of the Code of Judicial Conduct is a serious charge under Section 8, Rule 140 of the Rules of Court.[27] Under Section 11, Rule 140 of the Rules of Court, the sanctions against a respondent guilty of a serious charge may be any of the following:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

In imposing the proper sanction against respondent, the Court takes note that respondent had been found guilty of grave misconduct in A.M. No. MTJ-03-1509[28] and was fined ₱20,000.00, with a warning against repetition of the same or similar act. Moreover, per verification from court records, respondent compulsorily retired from the service on May 17, 2009.

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[26] *Go v. Costelo, Jr.*, A.M. No. P-08-2450, June 10, 2009, 589 SCRA 54.

[27] Entitled *Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan*.

[28] *Gamboa-Mijares v. Judge Limsiaco, Jr.*, 458 Phil. 282 (2003).

WHEREFORE, respondent Judge Manuel Q. Limsiaco, Jr., former Presiding Judge of the Fourth Municipal Circuit Trial Court of Valladolid-San Enrique-Pulupandan, Negros Occidental, is found *GUILTY* of gross misconduct for which he is *FINED* in the amount of Twenty-five Thousand Pesos (₱25,000.00). The Office of the Court Administrator is *DIRECTED* to deduct the fine of ₱25,000.00 from the retirement benefits due to Judge Limsiaco, Jr.

No costs.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-11-2267. January 19, 2011]
(Formerly A.M. OCA IPI No. 03-1788-RTJ)

MANSUETA T. RUBIN, *complainant, vs.* **JUDGE JOSE Y. AGUIRRE, JR., Regional Trial Court, Branch 55, Himamaylan, Negros Occidental,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ALLEGED CLAIM OF EMPLOYING DEVIOUS SCHEMES, CLEVER MACHINATIONS, BIAS AND PARTIALITY AND CONNIVANCE BY RESPONDENT JUDGE TO EXTORT MONEY FROM THE ESTATE ARE UNSUPPORTED BY EVIDENCE.—** The complainant's claims of alleged devious schemes, clever machinations, and connivance employed by Judge Aguirre to extort money from the Estate of the Spouses Dioscoro and Emperatriz Rubin are unsupported by evidence. A perusal of the documents submitted by both parties shows

that the orders issued by Judge Aguirre to compel Mr. Feliciano Rubin to settle the money claims filed against the Estate of the Spouses Dioscoro and Emperatriz Rubin in RAB Case No. A-593-81 were lawful. The orders were issued to enforce a final and executory decision of the NLRC in the case; we even previously penalized Judge Aguirre for his failure to promptly act on the motions filed by the laborers in RAB Case No. A-593-81, for the enforcement of the final NLRC decision. In addition, the evidence on record also refutes the complainant's claim that the money claims in RAB Case No. A-593-81 had been previously settled. The records show that what Mr. Feliciano Rubin actually paid was a claim for separation pay in RAB Case No. VI-0104-82 – an illegal dismissal case; the money claims in RAB Case No. A-593-81 pertained to the payment of wage differentials. We find no evidence supporting the allegation of bias and partiality when Judge Aguirre appointed Ms. Aileen Rubin as Judicial Administratrix of the estate of her adopting parents. Notably, the propriety of the order of her appointment by Judge Aguirre was upheld, on appeal, by the CA in its Decision dated July 19, 2002 and its Resolution dated September 26, 2002, and by this Court in its Resolution of December 11, 2002.

2. **ID.; ID.; IGNORANCE OF THE LAW; THE ASSAILED ORDER, DECISION OR ACTUATION OF THE JUDGE IN THE PERFORMANCE OF OFFICIAL DUTIES MUST NOT ONLY BE ERRONEOUS BUT MUST ALSO HAVE BEEN MOTIVATED BY BAD FAITH, DISHONESTY, HATRED OR SOME OTHER LIKE MOTIVE; CASE AT BAR.—** In *Guerrero v. Villamor,* we held that a judge cannot be held liable for an erroneous decision in the absence of malice or wrongful conduct in rendering it. We also held that for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be erroneous but must be established to have been motivated by bad faith, dishonesty, hatred, or some other like motive. The complainant failed to prove any of these circumstances in this case. We find no evidence of corruption or unlawful motive on the part of Judge Aguirre when he made the said appointment. Although the appointment by Judge Aguirre of his branch clerk of court as Special Administrator for the Estate of the Spouses Dioscoro and Emperatriz Rubin was erroneous for having violated a

standing Court circular and for being contrary to existing jurisprudence, we find that the appointment was made in good faith.

3. ID.; ID.; JUDGES SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES; JUDGE'S ACT OF SENDING A LETTER, IN HIS OFFICIAL LETTERHEAD, TO THE JUDICIAL ADMINISTRATOR TO DISCUSS A MATTER PENDING BEFORE HIS OWN COURT WAS HIGHLY INAPPROPRIATE.— We find that Judge Aguirre committed an impropriety when he sent a letter, in his official letterhead, to Mr. Feliciano Rubin to discuss a matter pending before his own court. In *Agustin v. Mercado*, we declared that employees of the court have no business meeting with litigants or their representatives under any circumstance. This prohibition is more compelling when it involves a judge who, because of his position, must strictly adhere to the highest tenets of judicial conduct; a judge must be the embodiment of competence, integrity and independence. x x x Under the circumstances, Judge Aguirre's act was improper considering that he opened himself to suspicions in handling the case. His action also raised doubts about his impartiality and about his integrity in performing his judicial function. We take note that the complained act was committed before the New Code of Judicial Conduct took effect on June 1, 2004. Under the circumstances, Judge Aguirre is liable under the provisions of the Code of Judicial Conduct and the Canons of Judicial Ethics. Canon 2 of the Code of Judicial Conduct provides that "[a] judge should avoid impropriety and the appearance of impropriety in all activities." Carrying the same guiding principle is Canon 3 of the Canons of Judicial Ethics which states, "[a] judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach."

APPEARANCES OF COUNSEL

Edilberto B. Cosca for complainant.

DECISION

BRION, *J.*:

In a verified complaint, dated June 14, 2003,[1] filed before the Office of the Court Administrator (*OCA*), Mansueta T. Rubin (*complainant*) charged Judge Jose Y. Aguirre, Jr.[2] of Graft and Corruption, Betrayal of Public Trust, Grave Abuse of Authority of a Judge, Manifest Bias and Partiality, and Violation of Judicial Conduct. In her verified complaint, the complainant alleged:

II

That Complainant is the widow of the late Feliciano Rubin who was appointed as the Judicial Administrator of the Estate of the Spouses Dioscoro Rubin and Emperatriz Rubin;

III

That Complainant, during the lifetime of her husband, Feliciano Rubin, who is the aforesaid Judicial Administrator, had witnessed and experienced that her husband and their family were victims of Graft and Corruption, Grave Injustice amounting to Violation of the Constitution, Betrayal of Public Trust, Grave Misconduct, Grave Abuse of Authority, Gross Ignorance of Law, Conduct Unbecoming of a Judge or Judicial Magistrate, Manifest Bias and Partiality, and Violation of the Code of Judicial Conduct, on the part of the respondent Judge committed during the conduct of the proceedings in Special Proceeding No. 28, *Intestate Estate of the Spouses Dioscoro Rubin and Emperatriz Rubin,* and in Civil Case No. 184, an Annulment of Adoption pending before him, as follows:

A

The respondent Judge, by way of devious schemes and clever machinations extorted money from the aforesaid Estate by lending expertise in connivance with other lawyer in pursuing an alleged claim against the Estate allegedly intended for workers' wages as money claims against the Estate, in a labor case entitled "*Constancia Amar,*

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[1] *Rollo*, pp. 1-9.

[2] Now deceased.

et.(sic) al. versus Hacienda Fanny and Dioscoro Rubin," RAB Case Nos. 1092-81 and A-593-81, both consolidated and numbered as 0104-82, which was then pending and decided by Labor Arbiter Ricardo T. Octavio;

B

That the aforesaid consolidated labor cases were decided and became final and executory and the judgment was already satisfied and paid for personally by Dioscoro Rubin when he was still alive in the amount of ₱44,000.00 in the form of check which was given to Atty. Corral, counsel for the claimants, through Atty. Rogelio Necessario, counsel for Hacienda Fanny and Dioscoro Rubin x x x.

C

That respondent Judge acted with grave abuse of discretion and grave abuse of authority by ordering the aforesaid Estate to pay ₱205,125.00 upon a Motion based on a non-existing final or executory decision, which order was illegal and improper and without any notice and/or hearing accorded to the Estate through its then Judicial [Administrator] Feliciano Rubin. x x x

D

The labor case decided by Labor Arbiter Oscar Uy awarded the claimants in the amount of ₱205,125.00, which decision was appealed by Judicial Administrator Feliciano Rubin and was ordered rema[n]ded and decided by Labor Arbiter Octavio in the consolidated cases with the reduction of the award in the amount of ₱62,437.50. The judgment amount was further reduced after an audit in the amount of ₱44,000.00. x x x

E

That respondent Judge had threatened the Judicial Administrator and threatened to be cited for contempt if he will not pay the said labor claims, further threatened to sell the properties if he will not pay the said labor claims, and likewise threatened that he would order the x x x properties of the Estate to be sold at public auction if the said claim will not be paid. x x x The evident purpose of the respondent Judge was to cause harassment and anxiety against the then Judicial Administrator which made his health condition deteriorate so fast that facilitated his death.

F

That Complainant's deceased husband who was the Administrator of the said Estate was forced to pay the amount ordered by the respondent Judge which was deposited in court but which was ordered released by the same respondent Judge [b]ecause the money claim ordered to be paid by respondent Judge had already been paid and satisfied by Administrator Feliciano Rubin, naturally no recipient would claim the amount nor anybody can be found from the records of the case or that no laborer came forward to claim that he had not been paid of his money claim;

G

The respondent Judge was grossly ignorant of the law when he ordered the change of Administrator after the then Judicial Administrator Feliciano Rubin refused to follow the invalid and unlawful orders of the respondent Judge, as he ordered his Clerk of Court, Atty. Gregorio A. Lanaria to act as Special Administrator of the Estate with orders to sell the properties of the Estate to satisfy the outstanding claim or obligations of the Estate, which was part of the clever scheme of respondent Judge to extort money from the Estate x x x.

H

That respondent Judge had extended unwarranted benefit, advantage and preference to the newly appointed Judicial Administratrix of the Estate, Aileen Rubin, through his manifest bias and partiality and evident bad faith towards the late Administrator's wife, complainant herein, and the surviving heirs, especially in his conduct of the proceedings involving the Estate and the Annulment of Adoption case. Respondent Judge even appointed Aileen Rubin as Administratrix of the Estate whose legal personality is still the subject of the Annulment of Adoption case, and even pronounced that under the eyes of the law Aileen Rubin is the sole and legal heir of the aforesaid Estate – thus prejudging the cases before him even if the proceedings are still pending;

I

That respondent Judge ordered his appointed Administratrix, Aileen Rubin, to enter into the Estate, and having entered therein, she and her cohorts ransacked the premises, took out records, personal

belongings of the deceased Feliciano Rubin, then Administrator of the Estate, and his wife, the complainant herein x x x.[3]

The complainant submitted documentary evidence to support the above allegations.[4]

In his Comment, Judge Aguirre claimed that the complaint contained malicious and scurrilous allegations that smacked of harassment. The complaint was filed by the disgruntled complainant who mistakenly believed that she should be appointed as the Judicial Administratrix of the Estate of the late Spouses Dioscoro and Emperatriz Rubin, instead of Aileen Rubin, the adopted child of the deceased spouses. Judge Aguirre asserted that his appointment of Aileen Rubin as Special Administratrix was affirmed by the Court of Appeals[5] (*CA*) and by the Supreme Court.[6]

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[3] *Supra* note 1, at 2.

[4] They are: (1) Satisfaction of Judgment in the amount of ₱44,000.00 in RAB Case No. V-0104-2, Receipt dated January 20, 1987 issued by Atty. Napoleon Corral as counsel for the complainant and Receipts dated August 20, 1987 issued by Atty. Rogelio M. Necesario as counsel for Dioscoro Rubin (Annex "A" with submarkings); (2) Decision dated January 14, 1985 in RAB Case No. VI-0104-82 and Computation of Separation Pay (Annex "B"); (3) Order dated March 17, 1999 in Spec. Proc. No. 28, entitled "In the Matter of the Intestate Estate of the Deceased Spouses Dioscoro M. Rubin & Emperatriz C. Rubin, Feliciano Rubin, Judicial Administrator" (Annex "C"); (4) Order dated October 20, 1999 in Spec. Proc. No. 28 (Annex "D"); (5) Order dated May 24, 1999 in Spec. Proc. No. 28 (Annex "F"); (6) Order dated June 10, 1998 in Spec. Proc. No. 28 (Annex "G"); (7) Letters dated February 17, 1999 and May 7, 1999 of Judge Aguirre to Feliciano Rubin (Annex "H" with submarkings); and (8) Excerpt from the Police Blotter Report (Annex "J"). *Rollo*, pp. 12-33.

[5] Decision dated July 19, 2002 and Resolution dated September 26, 2002 in CA-G.R. SP No. 70136, entitled *"In the Matter of the Intestate Estate of the Deceased Sps. Dioscoro and Emperatriz Rubin, Heirs of Feliciano Rubin v. Hon. Judge Jose Y. Aguirre, Jr., Presiding Judge, RTC, Branch 55, Himamaylan, Negros Occidental."*

[6] Resolution dated December 11, 2002 in G.R. No. 155506, entitled *"In the Matter of the Intestate Estate of the deceased Spouses Dioscoro and Emperatriz Rubin, Heirs of Feliciano Rubin v. Hon. Judge Jose Y. Aguirre, Jr. and Aileen Ravina [Rubin], Judicial Administrator."*

He also asserted that the complainant had confused two labor cases.[7] Only the amount of ₱44,000.00 was paid as separation pay in RAB Case No. VI-0104-82. In RAB Case No. A-593-81, Judge Aguirre issued orders to compel Mr. Feliciano Rubin, the former Administrator of the Estate of the late Spouses Dioscoro and Emperatriz Rubin, to pay lawful and valid claims against the estate. Judge Aguirre emphasized that he had already been penalized by the Supreme Court for delaying the enforcement of the final and executory decision of the National Labor Relations Commission (*NLRC*) against the estate of the late spouses Dioscoro and Emperatriz Rubin.

Judge Aguirre submitted his own documentary evidence to corroborate his allegations.[8]

In its report, the OCA recommended that the case be docketed as a regular administrative case considering the varying positions taken by the parties, and considering, too, the failure of Judge Aguirre to explain in his Comment why he invited Mr. Feliciano Rubin to see him personally in court.

In the Resolution dated March 17, 2004,[9] the Court referred the case to Justice Josefina Guevarra-Salonga (*Investigating Justice*) for investigation, report and recommendation.

The Investigating Justice found that except for the charge of Conduct Unbecoming of a Judge and Violation of Judicial Conduct, the other charges against Judge Aguirre were "bereft

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[7] Orders dated September 7, 1998, March 17, 1999, May 24, 1999 and August 23, 1999 in Spec. Proc. No. 28, Motion for Execution of the Order and Motion to Cite the Judicial Administrator for Contempt filed by Atty. Napoleon Corral in Spec. Proc. No. 28; Order dated November 13, 1998 in Spec. Proc. No. 28; Entry of Appearance by Atty. Nilo G. Sorbito in Spec. Proc. No. 28; Manifestation filed by Atty. Nilo G. Sorbito in Spec. Proc. No. 28; Opposition to the Manifestation filed by Atty. Napoleon Corral in Spec. Proc. No. 28; Letter dated August 21, 1999 to Chief Justice Hilario Davide, Jr. by Atty. Napoleon Corral; and letter dated August 23, 1999. *Rollo*, pp. 51-70.

[8] See Notes 4, 5 and 6; and *rollo*, pp. 71-112.

[9] *Rollo*, p. 117.

of factual and legal basis."[10] The Investigating Justice found that Judge Aguirre committed an impropriety when he sent a letter to Mr. Feliciano Rubin "to discuss and to expedite a possible extra-judicial settlement of the estate of the deceased Spouses Rubin."[11] The Investigating Justice explained:

> [H]is act of sending a letter to a party litigant for a personal conference, however motivated, does not validate his action and the damning implications it may generate to the [J]udiciary this is especially so since the content of said letter can constitute as an act of fraternizing with party-litigants. It must be emphasized that in-chambers sessions without the presence of the other party and his counsel must be avoided. The prohibition is to maintain impartiality. Being a judicial front-liner who has a direct contact with the litigating parties, the respondent judge should conduct himself beyond reproach.[12]

The Investigating Justice ruled that Judge Aguirre violated Canon 2 of the Code of Judicial Conduct which states that a judge should avoid impropriety and the appearance of impropriety in all activities. The Investigating Justice recommended that Judge Aguirre be reprimanded with a stern warning that a repetition of the same or similar act shall be dealt more severely.

The Court's Ruling

We find the findings of the Investigating Justice to be well-taken.

First, the complainant's claims of alleged devious schemes, clever machinations, and connivance employed by Judge Aguirre to extort money from the Estate of the Spouses Dioscoro and Emperatriz Rubin are unsupported by evidence. A perusal of the documents submitted by both parties shows that the orders issued by Judge Aguirre to compel Mr. Feliciano Rubin to settle the money claims filed against the Estate of the Spouses Dioscoro and Emperatriz Rubin in RAB Case No. A-593-81 were lawful.

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[10] Report dated June 29, 2004, p. 12.

[11] *Ibid*.

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

The orders were issued to enforce a final and executory decision of the NLRC in the case; we even previously penalized Judge Aguirre for his failure to promptly act on the motions filed by the laborers in RAB Case No. A-593-81, for the enforcement of the final NLRC decision.[13]

In addition, the evidence on record also refutes the complainant's claim that the money claims in RAB Case No. A-593-81 had been previously settled. The records show that what Mr. Feliciano Rubin actually paid was a claim for separation pay in RAB Case No. VI-0104-82 – an illegal dismissal case; the money claims in RAB Case No. A-593-81 pertained to the payment of wage differentials.

Second, we find no evidence supporting the allegation of bias and partiality when Judge Aguirre appointed Ms. Aileen Rubin as Judicial Administratrix of the estate of her adopting parents. Notably, the propriety of the order of her appointment by Judge Aguirre was upheld, on appeal, by the CA in its Decision dated July 19, 2002[14] and its Resolution dated September 26, 2002,[15] and by this Court in its Resolution of December 11, 2002.[16]

Third, in *Guerrero v. Villamor,*[17] we held that a judge cannot be held liable for an erroneous decision in the absence of malice or wrongful conduct in rendering it. We also held that for liability

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[13] Request for Assistance Relative to Special Proceedings No. 28 Pending at [the] Regional Trial Court of Himamaylan, Negros Occidental, Branch 55, Presided by Judge Jose Y. Aguirre, Jr., Adm. Case No. RTJ-01-1624, March 26, 2001.

[14] *Rollo*, pp. 43-50; penned by CA Associate Justice (now Supreme Court Associate Justice) Martin S. Villarama, Jr., with the concurrence of CA Associate Justices (now Supreme Court Associate Justices) Conchita Carpio Morales and Mariano C. del Castillo.

[15] *Id.* at 41.

[16] *Supra* note 10, at 7.

[17] A.M. No. RTJ-90-483, September 25, 1998, 296 SCRA 88, 97, citing *Hon. Judge Adriano Villamor v. Hon. Judge Bernardo Ll. Salas & George Carlos*, 203 SCRA 540 (1991).

to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be erroneous but must be established to have been motivated by bad faith, dishonesty, hatred, or some other like motive.[18] The complainant failed to prove any of these circumstances in this case. We find no evidence of corruption or unlawful motive on the part of Judge Aguirre when he made the said appointment.

Although the appointment by Judge Aguirre of his branch clerk of court as Special Administrator for the Estate of the Spouses Dioscoro and Emperatriz Rubin was erroneous for having violated a standing Court circular and for being contrary to existing jurisprudence,[19] we find that the appointment was made in good faith. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another.[20] In this regard, Judge Aguirre's good faith is strengthened by evidence showing that the appointment of his branch clerk of court was prompted by the continued refusal of Mr. Feliciano Rubin to settle the money claims filed against the estate in RAB Case No. A-593-81. The records show that Mr. Feliciano Rubin did not obey the several orders issued by Judge Aguirre to settle the money claims, and that an administrative case was even filed against Judge Aguirre for his failure to rule on the laborers' motion in RAB Case No. A-593-81.

Despite these findings, we find that Judge Aguirre committed an impropriety when he sent a letter, in his official letterhead, to Mr. Feliciano Rubin to discuss a matter pending before his own court.

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[18] *Id.* at 98.

[19] *Balanay Jr. v. Martinez*, G.R. No. L-39247, June 27, 1975, 64 SCRA 452, 461-462.

[20] *Que v. Atty. Revilla, Jr.*, A.C. No. 7054, December 4, 2009, 607 SCRA 1, 17.

In *Agustin v. Mercado*,[21] we declared that employees of the court have no business meeting with litigants or their representatives under any circumstance. This prohibition is more compelling when it involves a judge who, because of his position, must strictly adhere to the highest tenets of judicial conduct;[22] a judge must be the embodiment of competence, integrity and independence.[23] As we explained in *Yu-Asensi v. Villanueva*:[24]

> ...[W]ithin the hierarchy of courts, trial courts stand as an important and visible symbol of government especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the Judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x it is essential that judges, like *Caesar's* wife, should be above suspicion.

Under the circumstances, Judge Aguirre's act was improper considering that he opened himself to suspicions in handling the case. His action also raised doubts about his impartiality and about his integrity in performing his judicial function.

We take note that the complained act was committed before the New Code of Judicial Conduct took effect on June 1, 2004. Under the circumstances, Judge Aguirre is liable under the provisions of the Code of Judicial Conduct and the Canons of Judicial Ethics.[25] Canon 2 of the Code of Judicial

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[21] A.M. No. P-07-2340, July 26, 2007, 528 SCRA 203, 209, citing *Re: Affidavit of Frankie N. Calabines*, 518 SCRA 268 (2007).

[22] *Avancena v. Liwanag*, A.M. No. MTJ-01-1383, July 17, 2003, 406 SCRA 300, 304.

[23] *Ibid*.

[24] A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255, 266.

[25] *Chuan & Sons, Inc. v. Peralta*, A.M. No. RTJ-05-1917 [Formerly OCA I.P.I. No. 04-2006-RTJ], April 16, 2009, 585 SCRA 93, 96.

Conduct provides that "[a] judge should avoid impropriety and the appearance of impropriety in all activities." Carrying the same guiding principle is Canon 3 of the Canons of Judicial Ethics which states, "[a] judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach."

In *Rosauro v. Kallos,*[26] we ruled that impropriety constitutes a light charge. Section 11(C) of Rule 140 of the Rules of Court[27] provides the following sanctions if the respondent is found guilty of a light charge:

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or;
2. Censure;
3. Reprimand;
4. Admonition with warning.

The Investigating Justice recommended the penalty of reprimand with stern warning. In light of Judge Aguirre's death, however, we resolve to impose a fine of ₱5,000.00 instead. Jurisprudence holds that the death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability, save for recognized exceptions.[28] None of the exceptions applies to the present case.[29]

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[26] A.M. No. RTJ-03-1796, February 10, 2006, 482 SCRA 149, 162.

[27] A.M. No. 01-8-10-SC which took effect on October 1, 2001.

[28] *Mercado v. Salcedo,* A.M. No. RTJ-03-1781, October 16, 2009, 604 SCRA 4. The recognized exceptions to this rule are: *first*, when the respondent has not been heard and continuation of the proceedings would deny him of his right to due process; *second*, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations; and *third*, when the kind of penalty imposed or imposable would render the proceedings useless.

[29] *Ibid*.

The ₱5,000.00 fine shall be taken from the amount of ₱50,000.00 which we previously retained/withheld from Judge Aguirre's retirement benefits due to the administrative cases filed against him.[30]

WHEREFORE, we find Judge Jose Y. Aguirre, Jr. guilty of impropriety, in violation of Canon 2 of the Code of Judicial Conduct and Canon 3 of the Canons of Judicial Ethics. We hereby impose a fine of ₱5,000.00 which shall be deducted from the ₱50,000.00 withheld from his retirement benefits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154462. January 19, 2011]

SPOUSES RUBEN and MYRNA LEYNES, *petitioners, vs.* **FORMER TENTH DIVISION OF THE COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 21, BANSALAN, DAVAO DEL SUR, MUNICIPAL CIRCUIT TRIAL COURT, BRANCH 1, BANSALAN, DAVAO DEL SUR, and SPOUSES GUALBERTO & RENE CABAHUG-SUPERALES,** *respondents.*

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[30] *Pancho v. Aguirre, Jr.,* A.M. No. RTJ-09-2196, April 7, 2010, citing the Resolution, dated Agust 17, 2005, in A.M. No. 12054 Ret. (*Compulsory Retirement of the late Judge Jose Y. Aguirre, Jr., [formerly Regional Trial Court Himamaylan, Negros Occidental, Branch 55]*).

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT BE USED AS A SUBSTITUTE FOR A LOST APPEAL; PETITION BEFORE THE COURT OF APPEALS IS DEFECTIVE FOR FAILURE TO INDICATE MATERIAL DATES.— The remedy of appeal to the Court of Appeals was available to the spouses Leynes, only that they failed to avail of it in time. This much is clear from the following explanation of the counsel for the spouses Leynes. x x x We reiterate the well-settled rule that *certiorari* is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive. The special civil action of *certiorari* cannot be used as a substitute for an appeal which the petitioner already lost. Furthermore, as the Court of Appeals held, the spouses Leynes' Petition for *Certiorari* in CA-G.R. SP No. 4420-UDK failed to comply with the requirement under Rule 46, Section 3 of the Rules of Court that a petition for *certiorari* should indicate material dates, such as when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received. The spouses Leynes did not refute that their Petition for *Certiorari* before the Court of Appeals did not state the date they received a copy of the RTC Resolution denying their Motion for Reconsideration. That the said Resolution was strangely dated July 9, 2001, the same date as the RTC Decision sought to be reconsidered, is immaterial. The timeliness of the filing by the spouses Leynes of their petition before the Court of Appeals is determined from the date they received the challenged RTC resolution and not the date the RTC issued the same.

2. ID.; ID.; ID.; A PARTY WHO ADOPTS AN IMPROPER REMEDY SUBJECTS HIS PETITION TO OUTRIGHT DISMISSAL.— Seeking recourse from this Court, the spouses Leynes once more filed a Petition for *Certiorari* under Rule 65 of the Rules of Court. The spouses Leynes yet again availed themselves

of the wrong remedy. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.

3. **ID.; ID.; ID.; THE TECHNICAL RULES MAY BE RELAXED IN CERTAIN EXCEPTIONAL SITUATIONS; INSTANT PETITION GIVEN DUE COURSE IN THE INTEREST OF SUBSTANTIAL JUSTICE AND EQUITY.—** We bear in mind that the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations. Where a rigid application of the rule that *certiorari* cannot be a substitute for appeal will result in a manifest failure or miscarriage of justice, it is within our power to suspend the rules or exempt a particular case from its operation. x x x Given the peculiar circumstances extant in the case at bar, the dismissal of the spouses Leynes' Petition for *Certiorari* would result in the miscarriage of justice. The spouses Leynes were unjustly declared in default by the MCTC and deprived of the opportunity to present arguments and evidence to counter the spouses Superales' Complaint. Hence, we are accepting and giving due course to the spouses Leynes' petition in the interests of substantial justice and equity.

4. **ID.; CIVIL PROCEDURE; COMPUTATION OF TIME; PETITIONERS' ANSWER WAS FILED WITHIN THE REGLEMENTARY PERIOD.—** Sections 6, Rule 70 of the 1991 Revised Rules on Summary Procedure gives a defendant 10 days from service of summons to file his/her answer. x x x In computing said 10-day period, we resort to Rule 22, Section 1 of the Rules

of Court, which reads: Section 1. *How to compute time.* In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**. We emphasized in *Bank of the Philippine Islands v. Court of Appeals*, that non-working days (Saturdays, Sundays, and legal holidays) are excluded from the counting of the period only when the last day of the period falls on such days. Rule 22 does not provide for any other circumstance in which non-working days would affect the counting of a prescribed period. The spouses Leynes were served with the summons on May 10, 2000. The last day of the 10-day period within which the spouses Leynes should have filed their answer, May 20, 2000, fell on a Saturday. The next working day was May 22, 2000, a Monday, on which the spouses Leynes did file their Answer with Counterclaim. Based on the aforequoted rules, the spouses Leynes' answer was filed within the reglementary period, and they were not in default. The MCTC should not have rendered an *ex parte* Judgment against them.

5. ID.; ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 2-99 WHICH REQUIRES CERTAIN TRIAL COURT JUDGES AND EMPLOYEES TO BE PRESENT ON SATURDAYS PRIMARILY TO ACT ON PETITIONS FOR BAIL AND OTHER MATTERS DOES NOT AFFECT THE MANNER BY WHICH PERIODS SET BY RULES OR THE COURTS ARE COMPUTED UNDER RULE 22, SECTION 1 OF THE RULES OF COURT.— Court personnel were at the MCTC on May 20, 2000, a Saturday, in compliance with the Supreme Court Administrative Circular No. 2-99, on Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness, which took effect on February 1, 1999. x x x Administrative Circular No. 2-99 should not affect the manner by which periods set by the rules or the courts are computed under Rule 22, Section 1 of the Rules of Court. Administrative Circular No. 2-99 is an administrative issuance signed by then Chief Justice Hilario G. Davide to govern the attendance of judiciary officials and employees. It cannot amend or take precedence over the Rules of Court, duly approved

by the Court *en banc* and published for the information of and compliance by the public. In fact, Administrative Circular No. 2-99 itself states that "it supersedes and modifies accordingly any previous Orders or Circulars on the matter," but not the Rules of Court. Moreover, Administrative Circular No. 2-99 requires certain trial court judges and employees to be present on Saturdays "primarily to act on petitions for bail and other urgent matters." We fail to see an answer to a complaint for forcible entry as among such urgent matters that would have required filing by the party and action by the court not a day later. In addition, Administrative Circular No. 2-99 directs the Office of the Clerk of Court to maintain a skeletal force on Saturdays. Civil Case No. 471 (2000)-B, the spouses Superales' complaint for forcible entry against the spouses Leynes, was already raffled to and pending before the MCTC-Branch 1 of Bansalan-Magsaysay, Davao del Sur; thus, the answer and other pleadings in said case should already be filed with the said Branch and not with the Office of the Clerk of Court. There is no showing that the Office of the Branch Clerk of Court was also open on May 20, 2000.

6. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; ACTION MUST BE BROUGHT WITHIN ONE YEAR FROM THE DATE OF ACTUAL ENTRY TO THE LAND; INSTANT CASE REMANDED TO THE TRIAL COURT FOR FURTHER PROCEEDINGS.—** We do not subscribe, however, to the spouses Leynes' argument that the spouses Superales' Complaint for forcible entry had already prescribed. x x x In forcible entry cases, the action must be brought within one year from the date of actual entry on the land. In paragraph 4 of their Complaint, the spouses Superales alleged that the spouses Leynes, through force, stealth, and strategy, encroached upon and occupied a portion of the spouses Superales' titled property, consisting of 76 square meters, sometime in **February 2000**. The spouses Superales already filed their Complaint for forcible entry, damages, and attorney's fees, **three months** thereafter, in **May 2000**. Even so, the MCTC rendered judgment against the spouses Leynes *ex parte*. The spouses Leynes' Answer with Counterclaim was not admitted by the MCTC and they had no opportunity to present evidence in support of their defenses. x x x These averments obviously involve factual matters which the spouses Leynes must back up with evidence.

We cannot rule on the same since this Court is not a trier of facts. Consequently, it is only prudent that the case be remanded to the MCTC for further proceedings.

APPEARANCES OF COUNSEL

Torreon De Vera-Torreon Law Firm for petitioners.
Rogelio A. Sarsaba for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the (1) Resolution[1] dated December 20, 2001 of the Court of Appeals in CA-G.R. SP No. 4420-UDK, dismissing the Petition for *Certiorari* with prayer for a temporary restraining order (TRO) and preliminary injunction of petitioners spouses Ruben and Myrna Leynes (spouses Leynes); and (2) Resolution dated May 7, 2002 of the appellate court in the same case, denying the spouses Leynes' Motion for Reconsideration.

This case originated from a Complaint[2] for forcible entry, damages, and attorney's fees filed by respondents spouses Gualberto and Rene Cabahug Superales (spouses Superales) against the spouses Leynes before the Municipal Circuit Trial Court (MCTC), Branch 1 of Bansalan-Magsaysay, Davao del Sur, and docketed as Civil Case No. 471 (2000)-B. The Complaint alleged the following material facts:

3. That the [spouses Superales] were the actual occupants and possessors, being lawful owners of that certain parcel of a residential lot within the Nebrada Subd., Bansalan, Davao del Sur, known as Lot No. 2423-B-5-K-2, Psd-11-050478, being a portion of

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[1] *Rollo*, pp. 23-24; penned by Associate Justice Renato C. Dacudao with Associate Justices Ruben T. Reyes and Mariano C. del Castillo (now Supreme Court Associate Justice), concurring.

[2] *Id.* at 45-50.

lot 2423-B-5-K, Psd-11-008104, covered by Transfer Certificate of Title No. T-41240, containing an area of Three Hundred Thirty Six (336) Square Meters, more or less, and registered in the name of Rene Cabahug Superales, in the Register of Deeds for the Province of Davao del Sur;

x x x x x x xxx

4. That sometime in February 2000, the [spouses Leynes] through force, stealth and strategy encroached upon and occupied a portion of the [spouses Superales'] titled property consisting of 76 square meters, more or less, dispossessed the [spouses Superales] and constructed therein a comfort room as an extension of their house without first obtaining the required building permit from the Municipal Engineer's Office, of Bansalan, Davao del Sur;

5. That the [spouses Superales] promptly called the attention of the [spouses Leynes] and protested their intrusion into their property but notwithstanding their protestations the [spouses Leynes] continued on their construction and occupation of a portion of the [spouses Superales'] property;

6. That the [spouses Superales] reported to the Barangay Captain of Brgy. Poblacion, Bansalan, Davao del Sur, the [spouses Leynes'] encroachment on their titled property and the illegal construction being made on a portion of their property and their complaint was docketed as Brgy. Case No. 1649;

7. That Amicable Settlement of the dispute was however, repudiated by the [spouses Leynes] when they refused to recognized the relocation survey conducted on the property of the [spouses Superales] and prevented the [spouses Superales'] surveyor from planting monuments on the boundary between the [spouses Superales] and the [spouses Leynes'] lot;

x x x x x x xxx

8. That as per relocation survey conducted, the [spouses Leynes] have encroached and occupied a total of Seventy Six (76) Square Meters, of the [spouses Superales'] titled property, thereby reducing the area of the [spouses Superales'] lot from 336 Square Meters, more or less to 260 Square Meters, more or less;

x x x xxx xxx

9. That the [spouses Superales] also complained to the Municipal Engineer's Office in order to stop the illegal construction undertaken by the [spouses Leynes], but [spouses Superales'] complaint fell on deaf ears as no action has been taken by the Municipal Engineer's Office on the said illegal construction;

x x x xxx xxx

10. That the [spouses Leynes] have unlawfully occupied and are continuously occupying illegally a portion of the [spouses Superales'] property consisting of 76 Square Meters, thereby denying the [spouses Superales] the use and enjoyment of the said property being unlawfully withheld by the [spouses Leynes];

11. That the [spouses Superales] must be promptly restored to the full and peaceful possession of the portion of 76 Square Meters, of their property taken forcibly and illegally by the [spouses Leynes], by ordering the [spouses Leynes] to remove and/or demolish their construction and improvements erected on the lot of the [spouses Superales], and should they fail or refuse to do so, [spouses Superales] be given the authority to cause the removal of the [spouses Leynes'] improvements at the expense of the [spouses Superales];

12. That in the meantime that the [spouses Leynes] are occupying a portion of the [spouses Superales'] property, [spouses Leynes] be made to pay the [spouses Superales] the amount of ₱500.00 per month as reasonable rental for the property until they shall have restored the property to the full and peaceful possession of the [spouses Superales].[3]

Summons together with a copy of the aforementioned Complaint was served on the spouses Leynes on May 10, 2000, giving them ten (10) days from receipt within which to file their answer pursuant to Section 6 of the Rules on Summary Procedure. The 10-day period for the filing of the spouses Leynes' answer prescribed on May 20, 2000, a Saturday.

The spouses Leynes filed their Answer with Counterclaim on May 22, 2000, and their Motion to Admit Belatedly Filed Answer with attached Answer with Counterclaim the day after, on May 23, 2000. The spouses Leynes explained that they were

[3] *Id.* at 45-47.

not able to file their Answer with Counterclaim on May 20, 2000, even though there were court employees on duty that Saturday, because they had to serve first a copy of said pleading on the spouses Superales' counsel, whose office was located in Davao City. Davao City is approximately one-hour ride by bus from Digos City. The spouses Leynes added that they were not even sure if the office of the spouses Superales' counsel was open on Saturdays.[4]

The spouses Superales opposed the spouses Leynes' Motion to Admit Belatedly Filed Answer contending that the answer should have been filed within 10 days from receipt of a copy of the complaint; and the spouses Leynes' motion to admit is in the nature of a motion for extension of time to file an answer, which is a prohibited pleading in summary proceedings. The spouses Superales further pointed out that the spouses Leynes' motion to admit was not set for hearing and was, thus, a *pro forma* motion which should be denied outright.

The spouses Superales subsequently filed an *Ex Parte* Motion for Judgment on May 23, 2000, in which they prayed that since the spouses Leynes failed to file their answer to the Complaint within the prescribed period, then judgment could now be rendered based on the evidence and allegations contained in the Complaint.

On May 29, 2000, the MCTC rendered its Judgment denying the spouses Leynes' Motion to Admit Belatedly Filed Answer and resolving Civil Case No. 471 (2000)-B entirely in the spouses Superales' favor. Said MCTC judgment reads:

> This treats the *ex-parte* motion for judgment filed by Atty. Rogelio E. Sarsaba, counsel for the [spouses Superales] alleging in substance that the last day of filing of answer for the [spouses Leynes] was on May 20, 2000 and [the spouses Leynes] did not file any. Be it noted on such date although it was Saturday the Court was opened and Court personnel, Benedicta Abagon and Anastacia Vale were present at that time to receive cases and motions filed in Court. On May 22, 2000 [spouses Leynes] filed [their] answer which answer was filed out of the time prescribed by law. Under Section 7 of Rule 70,

[4] *Id.* at 6.

1997 Rules of Civil Procedure, the law provides: "Should the defendants fail to answer the complaint within the period above provided, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. The Court, may in its discretion reduce the amount of damages and attorneys fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of Section 3 (c), Rule 9 if there are two or more defendants."

From the foregoing facts, the [spouses Leynes] really failed to answer the complaint within the period prescribed by law, which period under the rules cannot be extended.

WHEREFORE, the *ex-parte* motion for judgment filed by the [spouses Superales] is hereby APPROVED, AND judgment is hereby rendered ordering the [spouses Leynes]:

1. To remove their construction and/or improvements on the 76 square meters lot belonging to the [spouses Superales] and surrendered (sic) the same area promptly and peacefully to the [spouses Superales];

2. To pay the [spouses Superales] the amount of ₱500.00 per month as reasonable rentals of the 76 square meters lot occupied by the [spouses Leynes] from February 2000 until the said area shall have been delivered to the full possession and control of [the spouses Superales] in the concept of damages;

3. To pay the [spouses Superales] the sum of ₱4,000.00 as reimbursement for the cost of the survey and the relocation of [the spouses Superales'] property; and

4. To pay the [spouses Superales] the sum of ₱15,000.00 as reimbursement for attorney fees.[5]

Aggrieved, the spouses Leynes appealed the foregoing MCTC Judgment to the Regional Trial Court (RTC), Branch 21 of Bansalan, Davao del Sur. Their appeal was docketed as Civil Case No. XXI-228 (00). In its Decision dated July 9, 2001, the RTC affirmed the appealed MCTC Judgment, ruling thus:

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[5] *Id.* at 64-65.

The lower court was right when it did not allow or entertain the belatedly filed Answer with Counterclaim of the [spouses Leynes]. The "Motion to Admit Belated Answer" partakes of a motion for extension of time to file pleading which is not allowed as explicitly provided in Section 19 of the 1991 Revised Rules on Summary Procedure. Since the law on this matter is unambiguous, unequivocal, its application is imperative.

Wherefore, the judgment rendered by the Municipal Circuit Trial Court is hereby affirmed, with the sole modification that the amount of monthly rental for the Seventy-Six (76) square meter-lot be reduced from ₱500.00 to ₱200.00.[6]

The spouses Leynes filed with the RTC a Motion for Reconsideration in which they sought the recall of the Decision dated July 9, 2001 and the remand of the case to the MCTC for trial on the merits. However, the RTC, in a Resolution also "strangely" dated July 9, 2001, refused to reconsider its earlier decision. The RTC stressed that:

This case falls under the "Rules on Summary Procedure." As such, the answer should be filed within ten (10) days from the service of summons and must be served on the plaintiff.

The [spouses Leynes], in filing a "Motion to Admit Belated Answer" in effect admitted that their Answer was filed out of time. Having made that admission, they may no longer be heard to claim otherwise.

Wherefore, premises considered, the motion for reconsideration is hereby denied.[7]

On October 11, 2001, the spouses Superales filed with the RTC a Motion for Execution pursuant to Rule 70, Section 21 of the Revised Rules of Court[8] which provides for the immediate execution of the RTC judgment against the defendant

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[6] *Id.* at 67.

[7] *Id.* at 73.

[8] Sec. 21. *Immediate execution on appeal to Court of Appeals or Supreme Court*. – The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

notwithstanding further appeal of the same before the Court of Appeals or the Supreme Court. Expectedly, the spouses Leynes opposed the spouses Superales' Motion for Execution.

The spouses Leynes then filed a Petition for *Certiorari* with Prayer for the Issuance of Temporary Restraining Order and Preliminary Injunction with the Court of Appeals on November 17, 2001. The petition was docketed as CA-G.R. SP No. 4420-UDK.

In its Resolution dated December 20, 2001, the Court of Appeals dismissed the spouses Leynes' petition outright for being the wrong remedy and for failure to state the material dates. The appellate court explicated that:

> (1) It is a wrong remedy. Under the heading "Timeliness Of This Petition" [spouses Leynes] alleged that the petition is directed against "the decision of the Regional Trial Court, Branch 21 in Bansalan, Davao del Sur in the exercise of its appellate jurisdiction. This case originated from the Municipal Circuit Trial Court, Branch 1, Bansalan-Magsaysay, Davao del Sur (docketed as Civil Case No. 471 [2000]-B where, herein Respondents, Spouses Gualberto and Rene Superales filed a Complaint for Forcible Entry against Petitioners, Spouses Ruben and Myrna Leynes." If that be so, then the correct and appropriate mode of review should be appeal by way of a petition for review under Rule 42 of the 1997 Rules. Under paragraph 4 of Supreme Court Circular No. 2-90, an appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.
>
> (2) Upon the other hand, if the present petition for *certiorari* were to be regarded as the correct or appropriate remedy – (which it is not) – still it is procedurally flawed because [the spouses Leynes] violated the amendment introduced to Section 3, Rule 46 of the 1997 Rules, as amended, by Supreme Court Circular No. 39-98, effective September 11, 1998, which states as follows —
>
> Section 3. Contents and filing of petition; effect of non-compliance with requirements —

x x x x x x x x x

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, **and when notice of the denial thereof was received.**

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Here, [the spouses Leynes] did not indicate just when it was that they received the notice of the denial of the motion for reconsideration that they allegedly filed with the RTC of Bansalan, Davao del Sur, Branch 21, on August 18, 2001, the resolution whereon, denying their motion for reconsideration was allegedly "strangely" dated July 9, 2001.

WHEREFORE, the present petition must be denied due course and consequently **DISMISSED**. Needless to say, inasmuch as the prayer for a temporary restraining order and preliminary injunction is merely an adjunct to the main petition, the same must be *pro tanto* **DENIED**.[9]

On January 28, 2002, the RTC issued an Order granting the spouses Superales' Motion for Execution. The RTC observed that the Court of Appeals did not issue a TRO as prayed for by the spouses Leynes in their petition in CA-G.R. SP No. 4420-UDK. Instead, the RTC referred to the Resolution dated December 20, 2001 of the Court of Appeals dismissing outright the spouses Leynes' petition in CA-G.R. SP No. 4420-UDK.

Subsequently, the RTC issued a Writ of Execution on February 2, 2002, for the satisfaction of its Decision dated July 9, 2001.

On February 11, 2002, the spouses Leynes filed with the RTC a Manifestation with motion to hold in abeyance the enforcement of the writ of execution, considering their pending Motion for Reconsideration of the Resolution dated December 20, 2001 of the Court of Appeals in CA-G.R. SP No. 4420-

[9] *Rollo*, pp. 23-24.

UDK. In its Order dated February 15, 2002, the RTC directed the Sheriff to hold in abeyance the implementation of the Writ of Execution until said trial court has resolved the spouses Leynes' latest motion.

In a Resolution dated May 7, 2002, the Court of Appeals found no reason to modify or overturn its earlier Resolution dated December 20, 2001, which dismissed the spouses Leynes' petition in CA-G.R. SP No. 4420-UDK. The dispositive portion of said Resolution states:

> WHEREFORE, the motion for reconsideration, for lack of merit, must be as it hereby is DENIED. Accordingly, the appended Petition for *Certiorari* is ordered expunged from the records, and the enclosed Postal Money Orders (sic) Nos. J 7318284 and B 2678220, both dated 19 November 2001, in the amount of ₱500.00 and ₱1,000.00, respectively, posted at the Ateneo University, Davao City, payable to the clerk of court of this Court from a certain Ruben Leynes, are hereby ordered returned to the sender/payee.[10]

Not long thereafter, on May 13, 2002, the RTC issued an Order resolving the issue of execution of its Decision dated July 8, 2001. The RTC reasoned that:

> [I]n an ejectment case, the appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirmed decision. The only exception to that is when said appellate court grants an execution pending appeal.
>
> xxx xxx xxx
>
> Considering that this does not involve a motion for execution pending appeal, this Court (sitting as an appellate court) cannot decree its execution.[11]

Thus, the RTC decreed:

> Wherefore, this case is hereby remanded to the court of origin, that is, the Municipal Circuit Trial Court (Br. 001) Bansalan-Magsaysay with which the motion for execution shall be filed.[12]

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[10] *Id.* at 33.

[11] *Id.* at 94.

[12] *Id.*

On May 17, 2002, the spouses Leynes received a copy of the Court of Appeals Resolution dated May 7, 2002 denying their Motion for Reconsideration of the dismissal of their petition in CA-G.R. SP No. 4420-UDK. Thereafter, on July 17, 2002, the spouses Leynes filed the instant Petition for *Certiorari* charging the Court of Appeals, as well as the RTC and the MCTC, with grave abuse of discretion, particularly committed as follows:

I

IN DISMISSING [the spouses Leynes'] EARLIER PETITION, THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION CONSIDERING THAT IT DENIED THE PETITION ON A MERE TECHNICALITY WITHOUT CONSIDERING THAT THE ISSUES RAISED ARE NOVEL AND HIGHLY MERITORIOUS.

II

THE MCTC BRANCH 1 AND THE RTC BRANCH 21 BOTH COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED TO ADMIT [the spouses Leynes'] ANSWER AND RULING THAT SINCE THE LAST DAY FOR FILING [the spouses Leynes'] ANSWER FELL ON A SATURDAY, THE SAME SHOULD HAVE BEEN FILED ON THE SAID DAY SINCE THERE WERE COURT PERSONNEL ON DUTY.

III

THE MCTC BRANCH 1 AND THE RTC BRANCH 21 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECIDED TO ADMIT [the spouses Superales'] COMPLAINT FOR FORCIBLE ENTRY NOTWITHSTANDING THAT THE SAME WAS FILED MORE THAN ONE YEAR FROM ITS SUPPOSED HAPPENING.[13]

Procedural Matters

The Court of Appeals dismissed the spouses Leynes' Petition for *Certiorari* in CA-G.R. SP No. 4420-UDK for being the wrong mode of appeal and for failure to state a material date.

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

Supreme Court Circular No. 2-90 clearly lays down the proper modes of appeal to the Court of Appeals from the RTCs:

> 3. *Appeals to the Court of Appeals*. – On the other hand, appeals by *certiorari* will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:
>
> a) by writ of error (ordinary appeal) – where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or
>
> b) **by petition for review** – where the judgment was rendered by the regional trial court in the exercise of its **appellate jurisdiction**.
>
> The mode of appeal in either instance is entirely distinct from an appeal by *certiorari* to the Supreme Court.
>
> 4. *Erroneous Appeals*. – An appeal taken to either the Supreme Court or the Court of Appeals by the **wrong or inappropriate mode** shall be **dismissed**. (Emphases ours.)

The RTC decided Civil Case No. XXI-228 (00) in its appellate jurisdiction. Hence, the RTC Decision dated July 9, 2001, which affirmed the MCTC Judgment of May 29, 2000 against the spouses Leynes, and Resolution inadvertently also dated July 9, 2001, which denied the spouses Leynes' Motion for Reconsideration, should have been appealed to the Court of Appeals by means of a petition for review under Rule 42 of the Rules of Court.

The spouses Leynes, however, went before the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court. In *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*,[14] we presented the following discourse distinguishing between an appeal (whether an ordinary appeal or a petition for review) and a petition for *certiorari*, to wit:

> A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.

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[14] 479 Phil. 768 (2004).

For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

"Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

Appeal and Certiorari Distinguished

Between an appeal and a petition for *certiorari*, there are substantial distinctions which shall be explained below.

As to the Purpose. *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

> "When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*."

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are

incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact – a mistake of judgment – appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a *certiorari*, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for *certiorari* are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declare are appealable. Since the issue is jurisdiction, an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by *certiorari*, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for *certiorari* should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition

for *certiorari*, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.

Certiorari Not the Proper Remedy if Appeal Is Available

Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[15]

The remedy of appeal to the Court of Appeals was available to the spouses Leynes, only that they failed to avail of it in time. This much is clear from the following explanation of the counsel for the spouses Leynes:

10. Until the proceedings before the Regional Trial Court Branch 21, [the spouses Leynes] were represented by their former counsel of record, Atty. Christopher Abarilla. Aggrieved by the way their case was handled by their former counsel of record, [the spouses Leynes] engaged the services of the undersigned Counsel in the second week of November 2001 for the purpose of elevating their case to the Court of Appeals. **Since no other remedy under the Rules of Court was no longer available to [the spouses Leynes] because the 15-day period within which to file a *Certiorari* under Rule 42 had already lapsed, recourse under Rule 65 was instead resorted to** as there was no appeal, or any plain, speedy and adequate remedy in the ordinary course of law by which [the spouses Leynes] could question the assailed decisions of both the lower court and the RTC Branch 21.[16] (Emphasis ours.)

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[15] *Id.* at 778-783.

[16] *Rollo*, p. 7.

We reiterate the well-settled rule that *certiorari* is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. These two remedies are mutually exclusive.[17] The special civil action of *certiorari* cannot be used as a substitute for an appeal which the petitioner already lost.[18]

Furthermore, as the Court of Appeals held, the spouses Leynes' Petition for *Certiorari* in CA-G.R. SP No. 4420-UDK failed to comply with the requirement under Rule 46, Section 3 of the Rules of Court that a petition for *certiorari* should indicate material dates, such as when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received. The spouses Leynes did not refute that their Petition for *Certiorari* before the Court of Appeals did not state the date they received a copy of the RTC Resolution denying their Motion for Reconsideration. That the said Resolution was strangely dated July 9, 2001, the same date as the RTC Decision sought to be reconsidered, is immaterial. The timeliness of the filing by the spouses Leynes of their petition before the Court of Appeals is determined from the date they received the challenged RTC resolution and not the date the RTC issued the same.

Seeking recourse from this Court, the spouses Leynes once more filed a Petition for *Certiorari* under Rule 65 of the Rules of Court. The spouses Leynes yet again availed themselves of the wrong remedy.

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which

[17] *Caballes v. Court of Appeals*, 492 Phil. 410, 420 (2005).

[18] *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216.

is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[19]

Nevertheless, we bear in mind that the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations. Where a rigid application of the rule that *certiorari* cannot be a substitute for appeal will result in a manifest failure or miscarriage of justice, it is within our power to suspend the rules or exempt a particular case from its operation.[20]

We pronounced in *Tanenglian v. Lorenzo*[21] that:

> All things considered, however, we do not agree in the conclusion of the Court of Appeals dismissing petitioner's Petition based on a procedural *faux pax*. **While a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.**

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[19] *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

[20] *Tan v. Bausch and Lomb, Inc.*, G.R. No. 148420, December 15, 2005, 478 SCRA 115, 120-121.

[21] G.R. No. 173415, March 28, 2008, 550 SCRA 348.

In *Sebastian v. Morales,* we ruled that rules of procedure must be faithfully followed except only when, **for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure**, thus:

> [C]onsidering that the petitioner has presented a good cause for the proper and just determination of his case, the appellate court should have relaxed the stringent application of technical rules of procedure and yielded to consideration of substantial justice.

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[22] (Emphases ours.)

Given the peculiar circumstances extant in the case at bar, the dismissal of the spouses Leynes' Petition for *Certiorari* would result in the miscarriage of justice. The spouses Leynes were unjustly declared in default by the MCTC and deprived of the opportunity to present arguments and evidence to counter the spouses Superales' Complaint. Hence, we are accepting and giving due course to the spouses Leynes' petition in the interests of substantial justice and equity.

Reglementary Period

The MCTC rendered its Judgment dated May 29, 2000 *ex parte*, declaring the spouses Leynes in default for their failure to file their answer to the spouses Superales' Complaint within the reglementary period for doing so. According to the MCTC, the spouses Leynes only had until May 20, 2000 to file an answer;

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[22] *Id.* at 367-368.

and although May 20, 2000 was a Saturday, the court was open and court personnel Benedicta Abagon and Anastacia Vale were present at that time to receive cases and motions filed with the court.

We disagree.

Sections 6, Rule 70 of the 1991 Revised Rules on Summary Procedure gives a defendant 10 days from service of summons to file his/her answer:

> Section 6. *Answer*. — Within ten (10) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except lack of jurisdiction over the subject matter. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be served and filed within ten (10) days from service of the answer in which they are pleaded.

In computing said 10-day period, we resort to Rule 22, Section 1 of the Rules of Court, which reads:

> Section 1. *How to compute time.* In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**. (Emphases ours.)

We emphasized in *Bank of the Philippine Islands v. Court of Appeals*,[23] that non-working days (Saturdays, Sundays, and legal holidays) are excluded from the counting of the period only when the last day of the period falls on such days. Rule 22 does not provide for any other circumstance in which non-working days would affect the counting of a prescribed period.

[23] G.R. No. 142731, June 8, 2006, 490 SCRA 168.

The spouses Leynes were served with the summons on May 10, 2000. The last day of the 10-day period within which the spouses Leynes should have filed their answer, May 20, 2000, fell on a Saturday. The next working day was May 22, 2000, a Monday, on which the spouses Leynes did file their Answer with Counterclaim. Based on the aforequoted rules, the spouses Leynes' answer was filed within the reglementary period, and they were not in default. The MCTC should not have rendered an *ex parte* Judgment against them.

Court personnel were at the MCTC on May 20, 2000, a Saturday, in compliance with the Supreme Court Administrative Circular No. 2-99, on Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness, which took effect on February 1, 1999. Pertinent provisions of said circular are reproduced below:

> A. Executive Judges of the Regional Trial Courts shall assign by rotation, Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts in multiple sala stations within their respective territorial areas, to be on duty on Saturdays from 8:00 A.M. to 1:00 P.M., assisted by a skeletal force, also on rotation, **primarily to act on petitions for bail and other urgent matters**.
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> x x x x x x x x x
>
> B. **Court offices, (*e.g.*, Office of the Clerk) and units which deal directly with the public**, such as receiving, process-serving and cashier's units, shall maintain a skeletal force on Saturdays from 8:00 A.M. to noon, and from 12:30 P.M. to 4:30 P.M. Those assigned to work on Saturdays shall be notified of their assignment at least three days in advance. An employee so assigned shall have a full day-off the following week, on a day to be specified by the Justice/Judge concerned. (Manual for Clerk of Courts, Chapter II, Section A, 1) (Emphases ours.)

Administrative Circular No. 2-99 should not affect the manner by which periods set by the rules or the courts are computed under Rule 22, Section 1 of the Rules of Court. Administrative Circular No. 2-99 is an administrative issuance signed by then

Chief Justice Hilario G. Davide to govern the attendance of judiciary officials and employees. It cannot amend or take precedence over the Rules of Court, duly approved by the Court *en banc* and published for the information of and compliance by the public. In fact, Administrative Circular No. 2-99 itself states that "it supersedes and modifies accordingly any previous Orders or Circulars on the matter," but not the Rules of Court.

Moreover, Administrative Circular No. 2-99 requires certain trial court judges and employees to be present on Saturdays "primarily to act on petitions for bail and other urgent matters." We fail to see an answer to a complaint for forcible entry as among such urgent matters that would have required filing by the party and action by the court not a day later. In addition, Administrative Circular No. 2-99 directs the Office of the Clerk of Court to maintain a skeletal force on Saturdays. Civil Case No. 471 (2000)-B, the spouses Superales' complaint for forcible entry against the spouses Leynes, was already raffled to and pending before the MCTC-Branch 1 of Bansalan-Magsaysay, Davao del Sur; thus, the answer and other pleadings in said case should already be filed with the said Branch and not with the Office of the Clerk of Court. There is no showing that the Office of the Branch Clerk of Court was also open on May 20, 2000.

MCTC Jurisdiction

We do not subscribe, however, to the spouses Leynes' argument that the spouses Superales' Complaint for forcible entry had already prescribed.

Rule 70, Section 1 of the Rules of Court provides:

> Sec. 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee or other person, may,

at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis ours.)

In forcible entry cases, the action must be brought within one year from the date of actual entry on the land. In paragraph 4 of their Complaint, the spouses Superales alleged that the spouses Leynes, through force, stealth, and strategy, encroached upon and occupied a portion of the spouses Superales' titled property, consisting of 76 square meters, sometime in **February 2000**. The spouses Superales already filed their Complaint for forcible entry, damages, and attorney's fees, **three months** thereafter, in **May 2000**.

Even so, the MCTC rendered judgment against the spouses Leynes *ex parte*. The spouses Leynes' Answer with Counterclaim was not admitted by the MCTC and they had no opportunity to present evidence in support of their defenses.

The spouses Leynes averred before us that:

48. It is clear from the language of the law that [the spouses Superales'] cause of action accrued from the very moment they found in 1995 that [the spouses Leynes'] buildings allegedly intruded into their supposed property when they acquired title over the same. But for the next five years or so, [the spouses Superales] never raised a howl of protest over the alleged encroachment. Not having acted on their rights within the limits stipulated under the law, then the complaint for Forcible Entry should also be considered as belatedly filed before the MCTC Branch.

49. [The spouses Superales], however, have been very careful to allege that [the spouses Leynes'] structures were built in the year 2000 to enable them to get around the prescriptive period imposed by the Rules. But the truth is, and the same could have been very well established had a trial on the merits proceeded, the comfort rooms were built in 1985 and the bunkhouse followed two years later. [The spouses Superales] then were not yet claimants or possessors of the land they now say is theirs. In 1995 when they surreptitiously

acquired title over Jose Cabahug's property, they contested for the first time, the location of [the spouses Leynes'] buildings. Yet, after having done so, [the spouses Superales] never filed the complaint for Forcible Entry within the one (1) year period as mandated. At the onset therefore, [the spouses Superales'] cause of action was already tainted with a serious congenital infirmity which, had a trial been convened, would have necessarily resulted in the unwarranted complaint against [the spouses Leynes].[24]

These averments obviously involve factual matters which the spouses Leynes must back up with evidence. We cannot rule on the same since this Court is not a trier of facts. Consequently, it is only prudent that the case be remanded to the MCTC for further proceedings.

WHEREFORE, the Petition is *GRANTED*. The *ex parte* Judgment dated May 29, 2000 of the Municipal Circuit Trial Court, Branch 1 of Bansalan-Magsaysay, Davao del Sur, in Civil Case No. 471 (2000)-B, is *ANNULLED* and *SET ASIDE*. The case is *REMANDED* to the same court which is *DIRECTED* to admit the Answer with Counterclaim of the spouses Ruben and Myrna Leynes and accordingly conduct further proceedings.

SO ORDERED.

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

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

[*] Per Raffle dated January 10, 2011.

FIRST DIVISION

[G.R. No. 165423. January 19, 2011]

NILO PADRE, *petitioner*, *vs*. **FRUCTOSA BADILLO, FEDILA BADILLO, PRESENTACION CABALLES, EDWINA VICARIO (d) represented by MARY JOY VICARIO-ORBETA and NELSON BADILLO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION WAS TIMELY FILED IN CASE AT BAR.—** The petition for *certiorari* before the RTC was timely filed. If the pleading filed was not done personally, the date of mailing, as stamped on the envelope or the registry receipt, is considered as the date of filing. By way of registered mail, Nilo filed his petition for *certiorari* with the RTC on March 1, 2004, as indicated in the date stamped on its envelope. From the time Nilo received on December 30, 2003 the MTC's denial of his motion for reconsideration, the last day for him to file his petition with the RTC fell on February 28, 2004, a Saturday. Under the Rules, should the last day of the period to file a pleading fall on a Saturday, a Sunday, or a legal holiday, a litigant is allowed to file his or her pleading on the next working day, which in the case at bar, fell on a Monday, *i.e.*, March 1, 2004.

2. **ID.; JURISDICTION; BATAS PAMBANSA BILANG. 129; AS THE ASSESSED VALUE OF PROPERTY SUBJECT MATTER OF THE CASE IS ₱26,940.00 AND SINCE MORE THAN ONE YEAR HAD EXPIRED AFTER THE DISPOSSESSION, JURISDICTION PROPERLY BELONGS TO THE REGIONAL TRIAL COURT.—** "[W]hat determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought." In their complaint in Civil Case No. 104, some of the allegations of the Badillo family, which petitioner never opposed and are thus deemed admitted by him. x x x Under paragraph 6 of their complaint, the Badillos alleged that judgment in Civil Case No.

A-514 had become final and had been executed. Further, in paragraph 7, they alleged that in 1990, the defendants re-entered the property and despite repeated demands they refused to vacate the same. Thus, the Badillos were not at all seeking a revival of the judgment. In reality, they were asking the MTC to legally oust the occupants from their lots. The Badillo family would have been correct in seeking judicial recourse from the MTC had the case been an action for ejectment, *i.e.,* one of forcible entry under Rule 70 of the Rules of Court wherein essential facts constituting forcible entry have been averred and the suit filed within one year from the time of unlawful deprivation or withholding of possession, as the MTC has exclusive original jurisdiction over such suit. However, as the alleged dispossession occurred in 1990, the one-year period to bring a case for forcible entry had expired since the Badillos filed their suit only in December 1997. We thus construe that the remedy they availed of is the plenary action of *accion publiciana,* which may be instituted within 10 years. "It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty." Whether the case filed by the Badillo family is a real or a personal action is irrelevant. Determining whether an action is real or personal is for the purpose only of determining venue. In the case at bar, the question raised concerns jurisdiction, not venue. Although the Badillo family correctly filed a case for *accion publiciana*, they pleaded their case before the wrong court. In civil cases involving realty or interest therein not within Metro Manila, the MTC has exclusive original jurisdiction only if the assessed value of the subject property or interest therein does not exceed ₱20,000.00. As the assessed value of the property subject matter of this case is ₱26,940.00, and since more than one year had expired after the dispossession, jurisdiction properly belongs to the RTC. Hence, the MTC has no judicial authority at all to try the case in the first place. "A decision of the court without jurisdiction is null and void; hence, it could never logically become final and executory. Such a judgment may be attacked directly or collaterally."

APPEARANCES OF COUNSEL

Pura Ferrer-Calleja for petitioner.
Rolando P. Dubongco for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"A void judgment is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect."[1]

This petition for review on *certiorari* assails the Orders dated July 21 and September 20, 2004[2] issued by the Regional Trial Court (RTC) of Allen, Northern Samar, Branch 23 in Special Civil Action No. A-927, which affirmed the ruling of the Municipal Trial Court (MTC) of San Isidro, Northern Samar that it has jurisdiction to try Civil Case No. 104.

Factual Antecedents

On October 13, 1986, the RTC of Allen, Northern Samar, Branch 23, rendered judgment[3] in Civil Case No. A-514 for Ownership and Recovery of Possession with Damages in favor of therein plaintiffs Fructosa Badillo, Fedila Badillo, Edwina Badillo, Presentacion Badillo and Nelson Badillo and against therein defendants, including Consesa Padre. The dispositive portion of the said Decision reads:

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[1] *Polystyrene Manufacturing Company, Inc. v. Privatization and Management Office*, G.R. No. 171336, October 4, 2007, 534 SCRA 640, 651.

[2] RTC Records, pp. 62 and 81-82, respectively; penned by Executive Judge Salvador L. Infante.

[3] MTC Records, pp. 18-24.

WHEREFORE, on preponderance of evidence, the Court hereby renders judgment in favor of the plaintiffs and against the defendants, declaring and ordering as follows:

1. That the herein plaintiffs are the lawful owners of the five-sixth (5/6) portion of Lot No. 4080, Pls-54, registered in Original Certificate of Title No. 736, more particularly, the said five-sixth portion is described, delineated and/or indicated in the Sketch Plan which is now marked as Exhibit "B-1";

2. That the said five-sixth (5/6) portion which [is] herein adjudged as being owned by the herein plaintiffs, include the portions of land presently being occupied by defendants x x x, Concesa Padre, x x x;

3. Ordering the defendants mentioned in No. 2 hereof to vacate x x x the lots respectively occupied by them and restore to [the herein plaintiffs] the material possessions thereof;

4. Condemning and ordering each of the same defendants herein above-named to pay plaintiffs the amount of ₱100.00 per month, as monthly rental, starting from January 19, 1980, until the lots in question shall have been finally restored to the plaintiffs; and

5. Condemning and ordering the herein defendants named above to jointly and severally pay the plaintiffs the amount of ₱5,000.00 representing attorney's fees and ₱2,000.00 as litigation expenses, and to pay the costs of suit.

SO ORDERED.[4]

This Decision became final and executory on November 5, 1986.[5]

On December 29, 1997, the Badillo family filed another complaint against those who occupy their property which included some of the defendants in Civil Case No. A-514.[6] The case

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[4] *Id.* at 24.

[5] Defendants received the copy of the Decision on October 21, 1986 and did not file any appeal within the 15-day period.

[6] Defendants in Civil Case No. 104 were Leo Atiga, Nestor dela Cruz, Galileo Pilapil, Domingo Flor, Santos Corollo, Devena Obeda, Leo Siago, Iñigo Armohila, Nilo Padre, Milagros Gelle, Egol Avila, Mag Cabahug, Berong Albuera, Erning Sampayan and Berting Armohila.

was filed with the MTC of San Isidro, Northern Samar and was docketed as Civil Case No. 104.[7] As Consesa Padre had already died in 1989, her heir, Nilo Padre (Nilo), was impleaded as one of the defendants. While some of the defendants filed their respective answers, Nilo was one of those who were declared in default for failure to file their answer to the complaint.[8]

Although denominated as one for "Ownership and Possession," the Badillo family alleged in their complaint in Civil Case No. 104 *viz*:

4. That plaintiffs are the joint owners of Lot No. 4080. Pls-54, with a total area of 10,167 square meters, covered by OCT No. 736 in the name of Eutequio Badillo, deceased husband of plaintiff Fructosa Badillo and father of the rest of the other plaintiffs, covered by Tax Declaration No. 9160 and assessed at ₱26,940.00;

5. That plaintiffs in Civil Case No. A-514, entitled *Fructosa Badillo versus Celso Castillo, et. al.,* were the prevailing parties in the aforesaid case as evidenced by the hereto attached copy of the decision rendered by the Regional Trial Court in the above-entitled case and marked as Annex "A" and made integral part of this complaint;

6. That after the judgment in the above-mentioned case became final, the same was executed as evidenced by a copy of the writ of execution hereto attached as Annex "B" and made integral part hereof;

7. That despite the service of the writ of execution and vacating the properties x x x illegally occupied by the afore-mentioned defendants, [said defendants] re-entered the property in 1990 after the execution and refused to vacate the same [thereby] reasserting their claims of ownership x x x despite repeated demands;

8. That all attempts towards a peaceful settlement of the matter outside of Court to avoid a civil suit, such as referring the matter of the Brgy. Captain and the Brgy. Lupon of Brgy. Alegria, San Isidro, N. Samar were of no avail as the defendants refused to heed lawful demands of plaintiffs to x x x vacate the premises[. I]nstead, defendants

[7] MTC Records, pp. 7-10.

[8] *Id.* at 99.

claimed ownership of the property in question [and] refused to vacate the same despite repeated demands [such] that having lost all peaceful remedies, plaintiffs were constrained to file this suit. Certificate to file Action is hereby attached and marked as Annex "C" and made integral part hereof;[9] (Emphasis supplied.)

Ruling of the Municipal Trial Court

The MTC rendered judgment[10] on July 17, 2003. Interpreting the suit of the Badillo family as an action to revive the dormant judgment in Civil Case No. A-514, the court recognized the right of the plaintiffs to finally have such judgment enforced. The MTC disposed of the case as follows:

WHEREFORE, judgment is ordered reviving the previous judgment of the Regional Trial Court there being, and still, preponderance of evidence in favor of plaintiffs, as follows:

1. That the herein plaintiffs are the lawful owners of the five-sixth (5/6) portion of Lot No. 4080, Pls-54, registered in Original Certificate of Title No. 730, more particularly x x x described, delineated and/or indicated in the Sketch Plan which is now marked as Exhibit "B-1";

2. That the said five-sixth portion which is herein adjudged as being owne[d] by herein plaintiffs, includes the portions of land presently being occupied by defendants Victor Eulin, Consesa Padre, Celso Castillo, Leo Atiga, Santos Corollo, Iñego Armogela, Salustiano Millano, Milagros Gile, Pusay Enting, Galeleo Pilapil, more particularly indicated in Exhibit "B-1" and marked as Exhibits "B-3", "B-4", "B-5", "B-6", "B-7", "B-8", "B-9", "B-10", "B-11", "B-12", and "B-13", respectively;

3. Ordering the defendants mentioned in No. 2, hereof and THOSE PRESENTLY NAMED AS PARTY-DEFENDANTS IN THIS REVIVAL OF JUDGMENT AND THOSE ACTING IN PRIVITY to vacate from the lots respectively occupied by them and restore [to] the herein plaintiff x x x the material possession thereof;

4. Condemning and ordering each of the same defendants named in the previous civil case and those NAMED ANEW to jointly and

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

[10] *Id.* at 443-449.

severally pay the plaintiffs the amount of ₱5,000.00, representing attorney's fees, and ₱2,000.00 as litigation expenses;

5. CONDEMNING ALL DEFENDANTS HEREIN TO PAY EXEMPLARY DAMAGES FOR OBSTINATELY VIOLATING THE DECISION OF THE COURT JOINTLY AND SEVERALLY X X X THE AMOUNT OF ₱5,000.00, and to pay the costs of the suit.

SO ORDERED.[11]

Nilo thereafter appeared and moved to reconsider[12] the MTC judgment. He argued that the MTC is without jurisdiction over the case, opining that the action for revival of judgment is a real action and should be filed with the same court, *i.e.*, the RTC, which rendered the decision sought to be revived. Or, assuming *arguendo* that the MTC has jurisdiction over real actions, it must be noted that the subject property is assessed at ₱26,940.00, an amount beyond the ₱20,000.00 limit for the MTC to have jurisdiction over real actions, in accordance with Republic Act (RA) No. 7691.[13] Nilo also contended that the action is dismissible for a) lack of certificate of non-forum shopping in the complaint and b) prescription, the complaint for revival of judgment having been filed beyond the 10-year reglementary period[14] from the time the judgment sought to be revived became final and executory in November 1986.

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[11] *Id.* at 448-449. The Decision was rendered by Acting MTC Judge Jose A. Benesisto.

[12] *Id.* at 473-482.

[13] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for that purpose Batas Pambansa Bilang 129 otherwise known as the "Judiciary Reorganization Act of 1990."

[14] CIVIL CODE, Article 1144 and RULES OF COURT, Rule 39, Section 6.

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

The MTC denied the motion for reconsideration.[15] It held that the case is an action for revival of judgment and not an action for ownership and possession, which had already long been settled. To the MTC, the former is a personal action under Section 2, Rule 4 of the Rules of Court which may be filed, at the election of plaintiffs, either at the court of the place where they reside or where the defendants reside. The court found excusable the absence of the certification against forum shopping, justifying that the action filed before it is merely a continuation of the previous suit for ownership. Moreover, the counsel for the Badillo family, a nonagenarian, may not yet have been familiar with the rule when Civil Case No. 104 was filed. To it, this mistake should not prejudice the Badillo family who deserve to possess and enjoy their properties.

Ruling of the Regional Trial Court

By way of a special civil action for *certiorari*, Nilo elevated the case to the RTC to question the MTC's jurisdiction,[16] reiterating the same grounds he had raised before the MTC. The case was docketed as Special Civil Action No. A-927.

On July 21, 2004, however, the RTC dismissed said petition[17] on the ground that it was filed late. Moreover, the RTC upheld the MTC's jurisdiction over the case, affirming the MTC's ratiocination that an action for enforcement of a dormant judgment is a personal action, and hence may be filed either at the court of the place where plaintiffs reside or where the defendants reside.

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

[15] MTC Records, pp. 514-516.

[16] RTC Records, pp. 5-20.

[17] *Id.* at 62.

In his Motion for Reconsideration,[18] Nilo contended that his petition with the RTC was timely filed as shown by the registry receipt dated March 1, 2004,[19] stamped on the mailing envelope he used in filing said petition. He argued that this date of mailing is also the date of filing. He also contended that the RTC's Decision was bereft of any explanation as to why it ruled that the case is a personal action. He further alleged that the RTC failed to discuss the issues of prescription and non-compliance with the rule against forum shopping.

In its Order dated September 20, 2004, the RTC denied the motion for reconsideration. It said:

> Assuming that the date of posting was March 1, 2004, as shown in the registry receipts, still the 60-day reglementary period had already lapsed with December 30, 2003 as the reckoning period when petitioner received the December 9, 2003 Order of Hon. Judge Jose A. Benesisto. With the month of February, 2004 having 29 days, it is now clear that the petition was filed sixty one (61) days after; hence, there is no timeliness of the petition to speak of.
>
> Civil Case No. 104 is an ordinary action to enforce a dormant judgment filed by plaintiffs against defendants. Being an action for the enforcement of dormant judgment for damages is a personal one and should be brought in any province where the plaintiff or defendant resides, at the option of the plaintiff. As regards prescription, the present rule now is, the prescriptive period commences to run anew from the finality of the revived judgment. A revived judgment is enforceable again by motion within five years and thereafter by another action within ten years from the finality of the revived judgment. There is, therefore, no prescription or beyond the statute of limitations to speak [sic] in the instant case. Petitioner's contention must therefore fail.
>
> It is but proper and legal that the plaintiffs in Civil Case No. 514 of which they are the prevailing parties to institute for the enforcement of a dormant judgment [which right] they have failed to exercise x x x

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[18] *Id.* at 67-74.

[19] *Id.* at 76-79. The copies of the petition for the opposing counsel, the Branch Clerk of Court of the MTC, and the Office of the Solicitor General were mailed on the same day.

for more than a decade. Being an ordinary action to enforce a dormant judgment, not even testimonial evidence is necessary to enforce such judgment because the decision had long obtained its finality.

x x x x x x x x x[20]

Hence, this petition.

Petitioner's Arguments

Nilo finds the RTC's adverse ruling as wanting in sufficient explanation as to the factual and legal bases for upholding the MTC. He also highlights the failure of the Badillo family to attach to their complaint a certificate of non-forum shopping. Petitioner also argues that the date of mailing of his petition with the RTC is the date of his filing. He stressed that the filing of his petition on March 1, 2004 was well within the prescriptive period. As the 60th day from December 30, 2003 fell on a Saturday, he maintains that the Rules of Court allows him to file his petition on the next working day, which is March 1, 2004, a Monday.

As have already been raised in the courts below, Nilo mentions the following grounds for the dismissal of the action against him before the MTC:

a) The MTC lacks jurisdiction. Nilo reiterates that the prime objective of the Badillo family in Civil Case No. 104 is to recover real property, which makes it a real action. Citing the case of *Aldeguer v. Gemelo*,[21] he contends that this suit must be brought before the RTC of Allen, Northern Samar. Besides, the assessed value of the land in controversy, *i.e.*, ₱26,940.00, divests the MTC of jurisdiction.

b) Prescription. Nilo claims that the Badillo family's suit had already lapsed as they allowed 11 years to pass without resorting to any legal remedy before filing the action for revival of judgment. Although the Badillo family moved for the issuance of a writ of execution in Civil Case No. A-514, the same did not

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[20] *Id.* at 81.

[21] 68 Phil. 421 (1939).

interrupt the running of the period to have the judgment enforced by motion or by action.

Respondents' Arguments

While impliedly acknowledging that Nilo seasonably filed his petition for *certiorari* with the RTC, the Badillo family note that he should have filed an appeal before the RTC. They claim that they properly filed their case, a personal action, with the MTC of San Isidro, Northern Samar as they are allowed under Section 2, Rule 4 of the Rules of Court to elect the venue as to where to file their case.

Granting that their action is considered a revival of judgment, the Badillos claim that they filed their suit within the 10-year period. They contend that in filing Civil Case No. 104 in December 1997, the prescriptive period should not be counted from the finality of judgment in Civil Case No. A-514, but should be reckoned from August 22, 1989, when the RTC issued an Order that considered as abandoned the motion to declare the defendants in default in the contempt proceedings.

Issue

The question that should be settled is whether the RTC correctly affirmed the MTC ruling that it has jurisdiction over Civil Case No. 104.

Our Ruling

Indeed, "[t]he existence and availability of the right of appeal proscribes a resort to *certiorari*."[22] The court *a quo* could have instead dismissed Nilo's petition on the ground that this question should have been raised by way of an appeal.[23] This rule is subject to exceptions, such as "when the writs issued are null and void or when the questioned order amounts to an oppressive exercise of judicial authority."[24] As will be later on discussed, the RTC,

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[22] *Balindong v. Dacalos*, 484 Phil. 574, 579 (2004).

[23] RULES OF COURT, Rule 40.

[24] *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 189.

although it ultimately erred in its judgment, was nevertheless correct in entertaining the special civil action for *certiorari.* The exceptions we mentioned apply in the case at bar, as it turns out that petitioner's jurisdictional objection has compelling basis.

Timeliness of the petition for certiorari

The petition for *certiorari* before the RTC was timely filed. If the pleading filed was not done personally, the date of mailing, as stamped on the envelope or the registry receipt, is considered as the date of filing.[25] By way of registered mail, Nilo filed his petition for *certiorari* with the RTC on March 1, 2004, as indicated in the date stamped on its envelope. From the time Nilo received on December 30, 2003 the MTC's denial of his motion for reconsideration, the last day for him to file his petition with the RTC fell on February 28, 2004, a Saturday. Under the Rules, should the last day of the period to file a pleading fall on a Saturday, a Sunday, or a legal holiday, a litigant is allowed to file his or her pleading on the next working day,[26] which in the case at bar, fell on a Monday, *i.e.*, March 1, 2004.

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[25] RULES OF COURT, Rule 13, Section 3. *Manner of filing*. – The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

[26] RULES OF COURT, Rule 22, Section 1. *How to compute time*. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Jurisdiction over Civil Case No. 104

We shall now look into the core argument of Nilo anent the MTC's lack of jurisdiction over the case and the alleged prescription of the action.

"[W]hat determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought."[27] In their complaint in Civil Case No. 104, some of the allegations of the Badillo family, which petitioner never opposed and are thus deemed admitted by him, states:

4. That plaintiffs are the joint owners of Lot No. 4080. Pls-54, with a total area of 10,167 square meters, covered by OCT No. 736 in the name of Eutequio Badillo, deceased husband of plaintiff Fructosa Badillo and father of the rest of the other plaintiffs, covered by Tax Declaration No. 9160 and assessed at ₱26,940.00;

5. That plaintiffs in Civil Case No. A-514, entitled *Fructosa Badillo versus Celso Castillo, et al.*, were the prevailing parties in the aforesaid case as evidenced by the hereto attached copy of the decision rendered by the Regional Trial Court in the above-entitled case and marked as Annex "A" and made integral part of this complaint;

6. That after the judgment in the above-mentioned case became final, the same was executed as evidenced by a copy of the writ of execution hereto attached as Annex "B" and made integral part hereof;

7. That despite the service of the writ of execution and vacating the properties x x x illegally occupied by the afore-mentioned defendants, the latter re-entered the property in 1990 after the execution and refused to vacate the same [thereby] reasserting their claims of ownership over [the disputed properties] and refused to vacate the same despite repeated demands;

8. That all attempts towards a peaceful settlement of the matter outside of Court to avoid a civil suit, such as referring the matter of

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[27] *Munsalud v. National Housing Authority*, G.R. No. 167181, December 23, 2008, 575 SCRA 144, citing *Villena v. Payoyo*, G.R. No. 163021, April 27, 2007, 522 SCRA 592, 597.

the Brgy. Captain and the Brgy. Lupon of Brgy. Alegria, San Isidro, N. Samar were of no avail as the defendants refused to heed lawful demands of plaintiffs to x x x vacate the premises[. I]nstead, defendants claimed ownership of the property in question refused to vacate the same despite repeated demands [such] that having lost all peaceful remedies, plaintiffs were constrained to file this suit. Certificate to file Action is hereby attached and marked as Annex "C" and made integral part hereof;[28] (Emphasis supplied.)

Under paragraph 6 of their complaint, the Badillos alleged that judgment in Civil Case No. A-514 had become final and had been executed. Further, in paragraph 7, they alleged that in 1990, the defendants re-entered the property and despite repeated demands they refused to vacate the same. Thus, the Badillos were not at all seeking a revival of the judgment. In reality, they were asking the MTC to legally oust the occupants from their lots.

The Badillo family would have been correct in seeking judicial recourse from the MTC had the case been an action for ejectment, *i.e.,* one of forcible entry under Rule 70 of the Rules of Court wherein essential facts constituting forcible entry[29] have been averred and the suit filed within one year from the time of unlawful deprivation or withholding of possession, as the MTC has exclusive original jurisdiction over such suit.[30] However, as the alleged dispossession occurred in 1990, the one-year period to bring a case for forcible entry had expired since the Badillos filed their suit only in December 1997. We thus construe

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[28] MTC Records, p. 4.

[29] An averment of dispossession by means of force, intimidation, threat, strategy or stealth is necessary in the complaint for forcible entry.

[30] *Batas Pambansa Bilang*. 129, Section 33 (2). Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases – x x x

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: *Provided,* That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession; x x x.

that the remedy they availed of is the plenary action of *accion publiciana,* which may be instituted within 10 years.[31] "It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty."[32]

Whether the case filed by the Badillo family is a real or a personal action is irrelevant. Determining whether an action is real or personal is for the purpose only of determining venue. In the case at bar, the question raised concerns jurisdiction, not venue.

Although the Badillo family correctly filed a case for *accion publiciana*, they pleaded their case before the wrong court. In civil cases involving realty or interest therein not within Metro Manila, the MTC has exclusive original jurisdiction only if the assessed value of the subject property or interest therein does not exceed ₱20,000.00.[33] As the assessed value of the property subject matter of this case is ₱26,940.00, and since more than

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[31] CIVIL CODE, Article 555. A possessor may lose his possession:

x x x x x x x x x

(4) By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years.

[32] *Encarnacion v. Amigo*, G.R. No. 169793, September 15, 2006, 502 SCRA 172, 179, citing *Lopez v. David, Jr*., G.R. No. 152145, March 30, 2004, 426 SCRA 535, 543.

[33] *Supra* note 33, Section 33 (3). As amended by Republic Act No. 7691. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases –

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs x x x.

one year had expired after the dispossession, jurisdiction properly belongs to the RTC.[34] Hence, the MTC has no judicial authority at all to try the case in the first place. "A decision of the court without jurisdiction is null and void; hence, it could never logically become final and executory. Such a judgment may be attacked directly or collaterally."[35]

Based on the foregoing discussion, it is not anymore necessary to discuss the issue raised concerning the failure to include a certification of non-forum shopping.

Although we are compelled to dismiss respondents' action before the MTC, they are nonetheless not precluded from filing the necessary judicial remedy with the proper court.

WHEREFORE, the petition is *GRANTED*. The Orders dated July 21 and September 20, 2004 of the Regional Trial Court of Allen, Northern Samar, Branch 23 in Special Civil Action No. A-927 are hereby *SET ASIDE*. The Municipal Trial Court of San Isidro, Northern Samar is *DIRECTED* to dismiss Civil Case No. 104 for lack of jurisdiction.

SO ORDERED.

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

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[34] *Id.* Section 19 (2). *Jurisdiction in Civil Cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) x x x.

[35] *Laresma v. Abellana*, 484 Phil. 766, 779 (2004).

FIRST DIVISION

[G.R. No. 168757. January 19, 2011]

RENATO REAL, *petitioner, vs.* **SANGU PHILIPPINES, INC. and/ or KIICHI ABE,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; INTRA-CORPORATE CONTROVERSY; NO INTRA-CORPORATE RELATIONSHIP BETWEEN THE PARTIES; RELATIONSHIP TEST, APPLIED.—** [P]etitioner's status as a stockholder and director of respondent corporation is not disputed. What the parties disagree on is the finding of the NLRC and the CA that petitioner is a corporate officer. An examination of the complaint for illegal dismissal, however, reveals that the root of the controversy is petitioner's dismissal as Manager of respondent corporation, a position which respondents claim to be a corporate office. Hence, petitioner is involved in this case not in his capacity as a stockholder or director, but as an alleged corporate officer. In applying the relationship test, therefore, it is necessary to determine if petitioner is a corporate officer of respondent corporation so as to establish the intra-corporate relationship between the parties. And albeit respondents claim that the determination of whether petitioner is a corporate officer is a question of fact which this Court cannot pass upon in this petition for review on *certiorari*, we shall nonetheless proceed to consider the same because such question is not the main issue to be resolved in this case but is merely collateral to the core issue earlier mentioned. x x x We have however examined the records of this case and we find nothing to prove that petitioner's appointment was made pursuant to the above-quoted provision of respondent corporation's By-Laws. No copy of board resolution appointing petitioner as Manager or any other document showing that he was appointed to said position by action of the board was submitted by respondents. What we found instead were mere allegations of respondents in their various pleadings that petitioner was appointed as Manager of respondent corporation and nothing more. "The Court has stressed time and again that allegations must be proven by

sufficient evidence because mere allegation is definitely not evidence." x x x While respondents repeatedly claim that petitioner was appointed as Manager pursuant to the corporation's By-Laws, the above-quoted inconsistencies in their allegations as to how petitioner was placed in said position, coupled by the fact that they failed to produce any documentary evidence to prove that petitioner was appointed thereto by action or with approval of the board, only leads this Court to believe otherwise. It has been consistently held that "[a]n 'office' is created by the charter of the corporation and the officer is elected (or appointed) by the directors or stockholders. Clearly here, respondents failed to prove that petitioner was appointed by the board of directors. Thus, we cannot subscribe to their claim that petitioner is a corporate officer. Having said this, we find that there is no intra-corporate relationship between the parties insofar as petitioner's complaint for illegal dismissal is concerned and that same does not satisfy the relationship test.

2. **ID.; ID.; ID.; PRESENT CONTROVERSY DOES NOT RELATE TO INTRA-CORPORATE DISPUTE.—** [R]espondents terminated the services of petitioner for the following reasons: (1) his continuous absences at his post at Ogino Philippines, Inc; (2) respondents' loss of trust and confidence on petitioner; and, (3) to cut down operational expenses to reduce further losses being experienced by the corporation. Hence, petitioner filed a complaint for illegal dismissal and sought reinstatement, backwages, moral damages and attorney's fees. From these, it is not difficult to see that the reasons given by respondents for dismissing petitioner have something to do with his being a Manager of respondent corporation and nothing with his being a director or stockholder. For one, petitioner's continuous absences in his post in Ogino relates to his performance as Manager. Second, respondents' loss of trust and confidence in petitioner stemmed from his alleged acts of establishing a company engaged in the same line of business as respondent corporation's and submitting proposals to the latter's clients while he was still serving as its Manager. While we note that respondents also claim these acts as constituting acts of disloyalty of petitioner as director and stockholder, we, however, think that same is a mere afterthought on their part to make it appear that the present case involves an element of intra-

corporate controversy. This is because before the Labor Arbiter, respondents did not see such acts to be disloyal acts of a director and stockholder but rather, as constituting willful breach of the trust reposed upon petitioner as Manager. It was only after respondents invoked the Labor Arbiter's lack of jurisdiction over petitioner's complaint in the Supplemental Memorandum of Appeal filed before the NLRC that respondents started considering said acts as such. Third, in saying that they were dismissing petitioner to cut operational expenses, respondents actually want to save on the salaries and other remunerations being given to petitioner as its Manager. Thus, when petitioner sought for reinstatement, he wanted to recover his position as Manager, a position which we have, however, earlier declared to be not a corporate position. He is not trying to recover a seat in the board of directors or to any appointive or elective corporate position which has been declared vacant by the board. Certainly, what we have here is a case of termination of employment which is a labor controversy and not an intra-corporate dispute. In sum, we hold that petitioner's complaint likewise does not satisfy the nature of controversy test. With the elements of intra-corporate controversy being absent in this case, we thus hold that petitioner's complaint for illegal dismissal against respondents is not intra-corporate. Rather, it is a termination dispute and, consequently, falls under the jurisdiction of the Labor Arbiter pursuant to Section 217 of the Labor Code.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS FOR WHICH EMPLOYEE WAS TERMINATED, NOT PROVEN.—** "In an illegal dismissal case, the *onus probandi* rests on the employer to prove that [the] dismissal of an employee is for a valid cause. Here, as correctly observed by the Labor Arbiter, respondents failed to produce any convincing proof to support the grounds for which they terminated petitioner. Respondents contend that petitioner has been absent for several months, yet they failed to present any proof that petitioner was indeed absent for such a long time. Also, the fact that petitioner was still able to collect his salaries after his alleged absences casts doubts on the truthfulness of such charge. Respondents likewise allege that petitioner engaged in a heated argument with the employees of Epson, one of respondents' clients. But just like in the charge of

absenteeism, there is no showing that an investigation on the matter was done and that disciplinary action was imposed upon petitioner. At any rate, we have reviewed the records of this case and we agree with the Labor Arbiter that under the circumstances, said charges are not sufficient bases for petitioner's termination. As to the charge of breach of trust allegedly committed by petitioner when he established a new company engaged in the same line of business as respondent corporation's and submitted proposals to two of the latter's clients while he was still a Manager, we again observe that these are mere allegations without sufficient proof. To reiterate, allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.

4. **ID.; ID.; ID.; FAILURE TO COMPLY WITH THE TWIN REQUIREMENTS OF NOTICE AND HEARING MAKES THE EMPLOYEE'S DISMISSAL ILLEGAL.—** [P]etitioner's dismissal was effected without due process of law. "The twin requirements of notice and hearing constitute the essential elements of due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality. Since in this case, petitioner's dismissal was effected through a board resolution and all that petitioner received was a letter informing him of the board's decision to terminate him, the abovementioned procedure was clearly not complied with. All told, we agree with the findings of the Labor Arbiter that petitioner has been illegally dismissed.

5. **ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED EMPLOYEE.—** And, as an illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement, we affirm the Labor Arbiter's judgment ordering petitioner's reinstatement to his former position without loss of seniority rights and other privileges and awarding backwages from the time of his dismissal until actually reinstated. Considering that petitioner has to secure the services of counsel

to protect his interest and necessarily has to incur expenses, we likewise affirm the award of attorney's fees which is equivalent to 10% of the total backwages that respondents must pay petitioner in accordance with this Decision.

APPEARANCES OF COUNSEL

Reyes Tayao & Molo for petitioner.

Malaya Sanchez Francisco Añover & Añover Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The perennial question of whether a complaint for illegal dismissal is intra-corporate and thus beyond the jurisdiction of the Labor Arbiter is the core issue up for consideration in this case.

This Petition for Review on *Certiorari* assails the Decision[1] dated June 28, 2005 of the Court of Appeals (CA) in CA-G.R. SP. No. 86017 which dismissed the petition for *certiorari* filed before it.

Factual Antecedents

Petitioner Renato Real was the Manager of respondent corporation Sangu Philippines, Inc., a corporation engaged in the business of providing manpower for general services, like janitors, janitresses and other maintenance personnel, to various clients. In 2001, petitioner, together with 29 others who were either janitors, janitresses, leadmen and maintenance men, all employed by respondent corporation, filed their respective Complaints[2] for illegal dismissal against the latter and respondent

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[1] CA *rollo*, pp. 370-394; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr.

[2] *Id.* at 51-71.

Kiichi Abe, the corporation's Vice-President and General Manager. These complaints were later on consolidated.

With regard to petitioner, he was removed from his position as Manager through Board Resolution 2001-03[3] adopted by respondent corporation's Board of Directors. Petitioner complained that he was neither notified of the Board Meeting during which said board resolution was passed nor formally charged with any infraction. He just received from respondents a letter[4] dated March 26, 2001 stating that he has been terminated from service effective March 25, 2001 for the following reasons: (1) continuous absences at his post at Ogino Philippines Inc. for several months which was detrimental to the corporation's operation; (2) loss of trust and confidence; and, (3) to cut down operational expenses to reduce further losses being experienced by respondent corporation.

Respondents, on the other hand, refuted petitioner's claim of illegal dismissal by alleging that after petitioner was appointed Manager, he committed gross acts of misconduct detrimental to the company since 2000. According to them, petitioner would almost always absent himself from work without informing the corporation of his whereabouts and that he would come to the office only to collect his salaries. As he was almost always absent, petitioner neglected to supervise the employees resulting in complaints from various clients about employees' performance. In one instance, petitioner together with a few others, while apparently drunk, went to the premises of one of respondents' clients, Epson Precision (Phils.) Inc., and engaged in a heated argument with the employees therein. Because of this, respondent Abe allegedly received a complaint from Epson's Personnel Manager concerning petitioner's conduct. Respondents likewise averred that petitioner established a company engaged in the same business as respondent corporation's and even submitted proposals for janitorial services to two of the latter's clients.

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[3] *Id.* at 115-116.

[4] *Id.* at 117.

Because of all these, the Board of Directors of respondent corporation met on March 24, 2001 and adopted Board Resolution No. 2001-03 removing petitioner as Manager. Petitioner was thereafter informed of his removal through a letter dated March 26, 2001 which he, however, refused to receive.

Further, in what respondents believed to be an act of retaliation, petitioner allegedly encouraged the employees who had been placed in the manpower pool to file a complaint for illegal dismissal against respondents. Worse, he later incited those assigned in Epson Precision (Phils.) Inc., Ogino Philippines Corporation, Hitachi Cable Philippines Inc. and Philippine TRC Inc. to stage a strike on April 10 to 16, 2001. Not satisfied, petitioner together with other employees also barricaded the premises of respondent corporation. Such acts respondents posited constitute just cause for petitioner's dismissal and that same was validly effected.

Rulings of the Labor Arbiter and the National Labor Relations Commission

The Labor Arbiter in a Decision[5] dated June 5, 2003 declared petitioner and his co-complainants as having been illegally dismissed and ordered respondents to reinstate complainants to their former positions without loss of seniority rights and other privileges and to pay their full backwages from the time of their dismissal until actually reinstated and furthermore, to pay them attorney's fees. The Labor Arbiter found no convincing proof of the causes for which petitioner was terminated and noted that there was complete absence of due process in the manner of his termination.

Respondents thus appealed to the National Labor Relations Commission (NLRC) and raised therein as one of the issues the lack of jurisdiction of the Labor Arbiter over petitioner's complaint. Respondents claimed that petitioner is both a stockholder and a corporate officer of respondent corporation, hence, his action against respondents is an intra-corporate controversy over which the Labor Arbiter has no jurisdiction.

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[5] *Id.* at 162-181.

The NLRC found such contention of respondents to be meritorious. Aside from petitioner's own admission in the pleadings that he is a stockholder and at the same time occupying a managerial position, the NLRC also gave weight to the corporation's General Information Sheet[6] (GIS) dated October 27, 1999 listing petitioner as one of its stockholders, consequently his termination had to be effected through a board resolution. These, the NLRC opined, clearly established petitioner's status as a stockholder and as a corporate officer and hence, his action against respondent corporation is an intra-corporate controversy over which the Labor Arbiter has no jurisdiction. As to the other complainants, the NLRC ruled that there was no dismissal. The NLRC however, modified the appealed decision of the Labor Arbiter in a Decision[7] dated February 13, 2004, the dispositive portion of which reads:

> WHEREFORE, all foregoing premises considered, the appealed Decision dated June 5, 2003 is hereby MODIFIED. Accordingly, judgment is hereby rendered DISMISSING the complaint of Renato Real for lack of jurisdiction. As to the rest of the complainants, they are hereby ordered to immediately report back to work but without the payment of backwages.
>
> All other claims against respondents including attorney's fees are DISMISSED for lack of merit.
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> SO ORDERED.

Still joined by his co-complainants, petitioner brought the case to the CA by way of petition for *certiorari*.

Ruling of the Court of Appeals

Before the CA, petitioner imputed upon the NLRC grave abuse of discretion amounting to lack or excess of jurisdiction in declaring him a corporate officer and in holding that his action against respondents is an intra-corporate controversy and thus beyond the jurisdiction of the Labor Arbiter.

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[6] *Id.* at 237-240.

[7] *Id.* at 32-46.

While admitting that he is indeed a stockholder of respondent corporation, petitioner nevertheless disputed the declaration of the NLRC that he is a corporate officer thereof. He posited that his being a stockholder and his being a managerial employee do not *ipso facto* confer upon him the status of a corporate officer. To support this contention, petitioner called the CA's attention to the same GIS relied upon by the NLRC when it declared him to be a corporate officer. He pointed out that although said information sheet clearly indicates that he is a stockholder of respondent corporation, he is not an officer thereof as shown by the entry "N/A" or "*not applicable*" opposite his name in the officer column. Said column requires that the particular position be indicated if the person is an officer and if not, the entry "N/A." Petitioner further argued that the fact that his dismissal was effected through a board resolution does not likewise mean that he is a corporate officer. Otherwise, all that an employer has to do in order to avoid compliance with the requisites of a valid dismissal under the Labor Code is to dismiss a managerial employee through a board resolution. Moreover, he insisted that his action for illegal dismissal is not an intra-corporate controversy as same stemmed from employee-employer relationship which is well within the jurisdiction of the Labor Arbiter. This can be deduced and is bolstered by the last paragraph of the termination letter sent to him by respondents stating that he is entitled to benefits under the Labor Code, to wit:

> In this connection (his dismissal) you are entitled to separation pay and other benefits provided for **under the Labor Code of the Philippines**.[8] (Emphasis supplied)

In contrast, respondents stood firm that the action against them is an intra-corporate controversy. It cited *Tabang v. National Labor Relations Commission*[9] wherein this Court declared that "an intra-corporate controversy is one which arises between a stockholder and the corporation;" that "[t]here is no distinction, qualification, nor any exemption whatsoever;"

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[8] *Id.* at 117.

[9] 334 Phil.424, 430 (1997).

and that it is "broad and covers all kinds of controversies between stockholders and corporations." In view of this ruling and since petitioner is undisputedly a stockholder of the corporation, respondents contended that the action instituted by petitioner against them is an intra-corporate controversy cognizable only by the appropriate regional trial court. Hence, the NLRC correctly dismissed petitioner's complaint for lack of jurisdiction.

In the assailed Decision[10] dated June 28, 2005, the CA sided with respondents and affirmed the NLRC's finding that aside from being a stockholder of respondent corporation, petitioner is also a corporate officer thereof and consequently, his complaint is an intra-corporate controversy over which the labor arbiter has no jurisdiction. Said court opined that if it was true that petitioner is a mere employee, the respondent corporation would not have called a board meeting to pass a resolution for petitioner's dismissal considering that it was very tedious for the Board of Directors to convene and to adopt a resolution every time they decide to dismiss their managerial employees. To support its finding, the CA likewise cited *Tabang*. As to petitioner's co-complainants, the CA likewise affirmed the NLRC's finding that they were never dismissed from the service. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed decision and resolution of the public respondent National Labor Relations Commission in NLRC NCR CA No. 036128-03 NLRC SRAB-IV-05-6618-01-B/05-6619-02-B/05-6620-02-B/10-6637-01-B/10-6833-01-B, STANDS.

SO ORDERED.

Now alone but still undeterred, petitioner elevated the case to us through this Petition for Review on *Certiorari.*

The Parties' Arguments

Petitioner continues to insist that he is not a corporate officer. He argues that a corporate officer is one who holds an elective position as provided in the Articles of Incorporation or one who

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[10] CA *rollo*, pp. 370-394.

is appointed to such other positions by the Board of Directors as specifically authorized by its By-Laws. And, since he was neither elected nor is there any showing that he was appointed by the Board of Directors to his position as Manager, petitioner maintains that he is not a corporate officer contrary to the findings of the NLRC and the CA.

Petitioner likewise contends that his complaint for illegal dismissal against respondents is not an intra-corporate controversy. He avers that for an action or suit between a stockholder and a corporation to be considered an intra-corporate controversy, same must arise from intra-corporate relations, *i.e.*, an action involving the status of a stockholder as such. He believes that his action against the respondents does not arise from intra-corporate relations but rather from employer-employee relations. This, according to him, was even impliedly recognized by respondents as shown by the earlier quoted portion of the termination letter they sent to him.

For their part, respondents posit that what petitioner is essentially assailing before this Court is the finding of the NLRC and the CA that he is a corporate officer of respondent corporation. To the respondents, the question of whether petitioner is a corporate officer is a question of fact which, as held in a long line of jurisprudence, cannot be the subject of review under this Petition for Review on *Certiorari.* At any rate, respondents insist that petitioner who is undisputedly a stockholder of respondent corporation is likewise a corporate officer and that his action against them is an intra-corporate dispute beyond the jurisdiction of the labor tribunals. To support this, they cited several jurisprudence such as *Pearson & George (S.E. Asia), Inc. v. National Labor Relations Commission,*[11] *Philippine School of Business Administration v. Leano,*[12] *Fortune Cement Corporation v. National Labor Relations Commission*[13] and again, *Tabang v. National Labor Relations Commission.*[14]

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[11] 323 Phil. 166 (1996).

[12] 212 Phil. 716 (1984).

[13] G.R. No. 79762, January 24, 1991, 193 SCRA 258.

[14] *Supra* note 9.

Moreover, in an attempt to demolish petitioner's claim that the present controversy concerns employer-employee relations, respondents enumerated the following facts and circumstances: (1) Petitioner was an incorporator, stockholder and manager of respondent company; (2) As an incorporator, he was one of only seven incorporators of respondent corporation and one of only four Filipino members of the Board of Directors; (3) As stockholder, he has One Thousand (1,000) of the Ten Thousand Eight Hundred (10,800) common shares held by Filipino stockholders, with a par-value of One Hundred Thousand Pesos (₱100,000.00); (4) His appointment as manager was by virtue of Section 1, Article IV of respondent corporation's By-Laws; (5) As manager, he had direct management and authority over all of respondent corporation's skilled employees; (6) Petitioner has shown himself to be an incompetent manager, unable to properly supervise the employees and even causing friction with the corporation's clients by engaging in unruly behavior while in client's premises; (7) As if his incompetence was not enough, in a blatant and palpable act of disloyalty, he established another company engaged in the same line of business as respondent corporation; (8) Because of these acts of incompetence and disloyalty, respondent corporation through a Resolution adopted by its Board of Directors was finally constrained to remove petitioner as Manager and declare his office vacant; (9) After his removal, petitioner urged the employees under him to stage an unlawful strike by leading them to believe that they have been illegally dismissed from employment.[15] Apparently, respondents intended to show from this enumeration that petitioner's removal pertains to his relationship with respondent corporation, that is, his utter failure to advance its interest and the prejudice caused by his acts of disloyalty. For this reason, respondents see the action against them not as a case between an employer and an employee as what petitioner alleges, but one by an officer and at same time a major stockholder seeking to be reinstated to his former office against the corporation that declared his position vacant.

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[15] Respondent's *Comment/Opposition (To the Petition for Review)*, *rollo,* pp. 89-100.

Finally, respondents state that the fact that petitioner is being given benefits under the Labor Code as stated in his termination letter does not mean that they are recognizing the employer-employee relations between them. They explain that the benefits provided under the Labor Code were merely made by respondent corporation as the basis in determining petitioner's compensation package and that same are merely part of the perquisites of petitioner's office as a director and manager. It does not and it cannot change the intra-corporate nature of the controversy. Hence, respondents pray that this petition be dismissed for lack of merit.

Issues

From the foregoing and as earlier mentioned, the core issue to be resolved in this case is whether petitioner's complaint for illegal dismissal constitutes an intra-corporate controversy and thus, beyond the jurisdiction of the Labor Arbiter.

Our Ruling

Two-tier test in determining the existence of intra-corporate controversy

Respondents strongly rely on this Court's pronouncement in the 1997 case of *Tabang v. National Labor Relations Commission,* to wit:

> [A]n intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[16]

In view of this, respondents contend that even if petitioner challenges his being a corporate officer, the present case still constitutes an intra-corporate controversy as petitioner is undisputedly a stockholder and a director of respondent corporation.

It is worthy to note, however, that before the promulgation of the *Tabang* case, the Court provided in *Mainland*

[16] *Supra* note 9 at 430.

Construction Co., Inc. v. Movilla[17] a "better policy" in determining which between the Securities and Exchange Commission (SEC) and the Labor Arbiter has jurisdiction over termination disputes,[18] or similarly, whether they are intra-corporate or not, *viz*:

> The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of the SEC (now the Regional Trial Court[19]). ***The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is subject of their controversy***. In the absence of any one of these factors, the SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate matters as only SEC (now the Regional Trial Court[20]) can resolve in the exercise of its adjudicatory or quasi-judicial powers. (Emphasis ours)

And, while *Tabang* was promulgated later than *Mainland Construction Co., Inc.,* the "better policy" enunciated in the latter appears to have developed into a standard approach in classifying what constitutes an intra-corporate controversy. This is explained lengthily in *Reyes v. Regional Trial Court of Makati, Br. 142*,[21] to wit:

Intra-Corporate Controversy

A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether

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[17] 320 Phil. 353, 359-360 (1995).

[18] *See* C.A. Azucena Jr.'s *The Labor Code With Comments and Cases,* Volume II, 6th Edition (2007), pp. 46-49.

[19] Pursuant to Section 5.2 of Republic Act No. 8799 otherwise known as *The Securities Regulation Code*.

[20] *Id*.

[21] G.R. No. 165744, August 11, 2008, 561 SCRA 593, 609-612.

a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties. The types of relationships embraced under Section 5(b) x x x were as follows:

a) between the corporation, partnership or association and the public;
b) between the corporation, partnership or association and its stockholders, partners, members or officers;
c) between the corporation, partnership or association and the State as far as its franchise, permit or license to operate is concerned; and
d) among the stockholders, partners or associates themselves.

The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC (now the RTC), regardless of the subject matter of the dispute. This came to be known as the relationship test.

However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.,* the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status

or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution Inc. v. Court of Appeals:*

> 'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties, and (2) the nature of the question that is the subject of their controversy.
>
> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are not stockholders, members or associates, between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership, or association and the State insofar as it concerns the individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.' [Citations omitted.]

Guided by this recent jurisprudence, we thus find no merit in respondents' contention that the fact alone that petitioner is a stockholder and director of respondent corporation automatically classifies this case as an intra-corporate controversy. To reiterate, not all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other factors to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies.

What then is the nature of petitioner's Complaint for Illegal Dismissal? Is it intra-corporate and thus beyond the jurisdiction of the Labor Arbiter? We shall answer this question by using the standards set forth in the *Reyes* case.

No intra-corporate relationship between the parties

As earlier stated, petitioner's status as a stockholder and director of respondent corporation is not disputed. What the parties disagree on is the finding of the NLRC and the CA that petitioner is a corporate officer. An examination of the complaint for illegal dismissal, however, reveals that the root of the controversy is petitioner's dismissal as Manager of respondent corporation, a position which respondents claim to be a corporate office. Hence, petitioner is involved in this case not in his capacity as a stockholder or director, but as an alleged corporate officer. In applying the relationship test, therefore, it is necessary to determine if petitioner is a corporate officer of respondent corporation so as to establish the intra-corporate relationship between the parties. And albeit respondents claim that the determination of whether petitioner is a corporate officer is a question of fact which this Court cannot pass upon in this petition for review on *certiorari*, we shall nonetheless proceed to consider the same because such question is not the main issue to be resolved in this case but is merely collateral to the core issue earlier mentioned.

Petitioner negates his status as a corporate officer by pointing out that although he was removed as Manager through a board resolution, he was never elected to said position nor was he appointed thereto by the Board of Directors. While the By-Laws of respondent corporation provides that the Board may from time to time appoint such officers as it may deem necessary or proper, he avers that respondents failed to present any board resolution that he was appointed pursuant to said By-Laws. He instead alleges that he was hired as Manager of respondent corporation solely by respondent Abe. For these reasons, petitioner claims to be a mere employee of respondent corporation rather than as a corporate officer.

We find merit in petitioner's contention.

"'Corporate officers' in the context of Presidential Decree No. 902-A are those officers of the corporation who are given

that character by the Corporation Code or by the corporation's by-laws. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws."[22]

Respondents claim that petitioner was appointed Manager by virtue of Section 1, Article IV of respondent corporation's By-Laws which provides:

ARTICLE IV
OFFICER

Section 1. *Election/Appointment* – Immediately after their election, the Board of Directors shall formally organize by electing the President, Vice-President, the Secretary at said meeting.

The Board, may from time to time, appoint such other officers as it may determine to be necessary or proper. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

x x x[23] (Emphasis ours)

We have however examined the records of this case and we find nothing to prove that petitioner's appointment was made pursuant to the above-quoted provision of respondent corporation's By-Laws. No copy of board resolution appointing petitioner as Manager or any other document showing that he was appointed to said position by action of the board was submitted by respondents. What we found instead were mere

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[22] *Garcia v. Eastern Telecommunications Philippines, Inc.,* G.R. Nos. 173115 and 173163-164, April 16, 2009, 585 SCRA 450, 468.

[23] CA *rollo,* pp. 266-273.

allegations of respondents in their various pleadings[24] that petitioner was appointed as Manager of respondent corporation and nothing more. "The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence."[25]

It also does not escape our attention that respondents made the following conflicting allegations in their Memorandum on Appeal[26] filed before the NLRC which cast doubt on petitioner's status as a corporate officer, to wit:

x x x x x x x x x

24. Complainant-appellee Renato Real was appointed as the manager of respondent-appellant Sangu on November 6, 1998. Priorly [sic], he was working at Atlas Ltd. Co. at Mito-shi, Ibaraki-ken Japan. He was staying in Japan as an illegal alien for the past eleven (11) years. He had a problem with his family here in the Philippines which prompted him to surrender himself to Japan's Bureau of Immigration and was deported back to the Philippines. His former employer, Mr. Tsutomo Nogami requested Mr. Masahiko Shibata, one of respondent-appellant Sangu's Board of Directors, if complainant-appellee Renato Real could work as one of its employees here in the Philippines because he had been blacklisted at Japan's Immigration Office and could no longer go back to Japan. ***And so it was arranged that he would serve as respondent-appellant Sangu's manager, receiving a salary of ₱25,000.00***. As such, he was tasked to oversee the operations of the company. x x x (Emphasis ours)

x x x x x x x x x

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[24] Respondents' *Position Paper* filed with the Labor Arbiter, *id.* at 94-113; *Memorandum on Appeal* and *Rejoinder* filed with the NLRC, *id.* at 182-220 and 285-294; *Comment* filed with the CA, *id.* at 302-319; *Comment/Opposition (To The Petition for Review)* and Memorandum filed before this Court, *rollo,* pp. 89-100 and 169-187.

[25] *General Milling Corporation v. Casio,* G.R. No. 149552, March 10, 2010 citing *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, 507 Phil. 631, 648-649 (2005).

[26] CA *rollo*, pp. 122-220 at 191 and 212.

As earlier stated, complainant-appellee Renato Real was ***hired*** as the manager of respondent-appellant Sangu. As such, his position was reposed with full trust and confidence. x x x

While respondents repeatedly claim that petitioner was appointed as Manager pursuant to the corporation's By-Laws, the above-quoted inconsistencies in their allegations as to how petitioner was placed in said position, coupled by the fact that they failed to produce any documentary evidence to prove that petitioner was appointed thereto by action or with approval of the board, only leads this Court to believe otherwise. It has been consistently held that "[a]n 'office' is created by the charter of the corporation and the officer is elected (or appointed) by the directors or stockholders."[27] Clearly here, respondents failed to prove that petitioner was appointed by the board of directors. Thus, we cannot subscribe to their claim that petitioner is a corporate officer. Having said this, we find that there is no intra-corporate relationship between the parties insofar as petitioner's complaint for illegal dismissal is concerned and that same does not satisfy the relationship test.

Present controversy does not relate to intra-corporate dispute

We now go to the nature of controversy test. As earlier stated, respondents terminated the services of petitioner for the following reasons: (1) his continuous absences at his post at Ogino Philippines, Inc; (2) respondents' loss of trust and confidence on petitioner; and, (3) to cut down operational expenses to reduce further losses being experienced by the corporation. Hence, petitioner filed a complaint for illegal dismissal and sought reinstatement, backwages, moral damages and attorney's fees. From these, it is not difficult to see that the reasons given by respondents for dismissing petitioner have something to do with his being a Manager of respondent corporation and nothing with his being a director or stockholder. For one, petitioner's continuous absences in his post in Ogino

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[27] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 110.

relates to his performance as Manager. Second, respondents' loss of trust and confidence in petitioner stemmed from his alleged acts of establishing a company engaged in the same line of business as respondent corporation's and submitting proposals to the latter's clients while he was still serving as its Manager. While we note that respondents also claim these acts as constituting acts of disloyalty of petitioner as director and stockholder, we, however, think that same is a mere afterthought on their part to make it appear that the present case involves an element of intra-corporate controversy. This is because before the Labor Arbiter, respondents did not see such acts to be disloyal acts of a director and stockholder but rather, as constituting willful breach of the trust reposed upon petitioner as Manager.[28] It was only after respondents invoked the Labor Arbiter's lack of jurisdiction over petitioner's complaint in the Supplemental Memorandum of Appeal[29] filed before the NLRC that respondents started considering said acts as such. Third, in saying that they were dismissing petitioner to cut operational expenses, respondents actually want to save on the salaries and other remunerations being given to petitioner as its Manager. Thus, when petitioner sought for reinstatement, he wanted to recover his position as Manager, a position which we have, however, earlier declared to be not a corporate position. He is not trying to recover a seat in the board of directors or to any appointive or elective corporate position which has been declared vacant by the board. Certainly, what we have here is a case of termination of employment which is a labor controversy and not an intra-corporate dispute. In sum, we hold that petitioner's complaint likewise does not satisfy the nature of controversy test.

With the elements of intra-corporate controversy being absent in this case, we thus hold that petitioner's complaint for illegal dismissal against respondents is not intra-corporate. Rather, it is a termination dispute and, consequently, falls under the

[28] Respondents' *Position Paper,* CA *rollo,* pp. 94-113 at 109-110.

[29] *Id.* at 221-236.

jurisdiction of the Labor Arbiter pursuant to Section 217[30] of the Labor Code.

We take note of the cases cited by respondents and find them inapplicable to the case at bar. *Fortune Cement Corporation v. National Labor Relations Commission*[31] involves a member of the board of directors and at the same time a corporate officer who claims he was illegally dismissed after he was stripped of his corporate position of Executive Vice-President because of loss of trust and confidence. On the other hand, *Philippine School of Business Administration v. Leano*[32] and *Pearson & George v. National Labor Relations Commission*[33] both concern a complaint for illegal dismissal by corporate officers who were not re-elected to their respective corporate positions. The Court declared all these cases as involving

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[30] ART. 217. *Jurisdiction of the Labor Arbiters and the Commission.* (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. ***Termination disputes***;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lock-outs; and

6. Except claims for Employees Compensation, Social Security, Medicare and Maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement

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[31] *Supra* note 13.

[32] *Supra* note 12.

[33] *Supra* note 11 at 173-174.

intra-corporate controversies and thus affirmed the jurisdiction of the SEC (now the RTC)[34] over them precisely because they all relate to corporate officers and their removal or non-reelection to their respective corporate positions. Said cases are by no means similar to the present case because as discussed earlier, petitioner here is not a corporate officer.

With the foregoing, it is clear that the CA erred in affirming the decision of the NLRC which dismissed petitioner's complaint for lack of jurisdiction. In cases such as this, the Court normally remands the case to the NLRC and directs it to properly dispose of the case on the merits. "However, when there is enough basis on which a proper evaluation of the merits of petitioner's case may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case."[35] "It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of litigation. If, based on the records, the pleadings, and other evidence, the dispute can be resolved by us, we will do so to serve the ends of justice instead of remanding the case to the lower court for further proceedings."[36] We have gone over the records before us and we are convinced that we can now altogether resolve the issue of the validity of petitioner's dismissal and hence, we shall proceed to do so.

Petitioner's dismissal not in accordance with law

"In an illegal dismissal case, the *onus probandi* rests on the employer to prove that [the] dismissal of an employee is for a

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[34] Pursuant to Section 5.2 of Republic Act No. 8799 otherwise known as *The Securities Regulation Code.*

[35] *Leandro M. Alcantara v. The Philippine Commercial and International Bank*, G.R. No. 151349, October 20, 2010 citing *Somoso v. Court of Appeals*, G.R. No. 78050, October 23, 1989, 178 SCRA 654, 663; *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426.

[36] *Id.* citing *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 555.

valid cause."[37] Here, as correctly observed by the Labor Arbiter, respondents failed to produce any convincing proof to support the grounds for which they terminated petitioner. Respondents contend that petitioner has been absent for several months, yet they failed to present any proof that petitioner was indeed absent for such a long time. Also, the fact that petitioner was still able to collect his salaries after his alleged absences casts doubts on the truthfulness of such charge. Respondents likewise allege that petitioner engaged in a heated argument with the employees of Epson, one of respondents' clients. But just like in the charge of absenteeism, there is no showing that an investigation on the matter was done and that disciplinary action was imposed upon petitioner. At any rate, we have reviewed the records of this case and we agree with the Labor Arbiter that under the circumstances, said charges are not sufficient bases for petitioner's termination. As to the charge of breach of trust allegedly committed by petitioner when he established a new company engaged in the same line of business as respondent corporation's and submitted proposals to two of the latter's clients while he was still a Manager, we again observe that these are mere allegations without sufficient proof. To reiterate, allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[38]

Moreover, petitioner's dismissal was effected without due process of law. "The twin requirements of notice and hearing constitute the essential elements of due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the

[37] *Pepsi Cola Products Philippines, Inc. v. Santos*, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252.

[38] *Supra* note 25.

employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality."[39] Since in this case, petitioner's dismissal was effected through a board resolution and all that petitioner received was a letter informing him of the board's decision to terminate him, the abovementioned procedure was clearly not complied with. All told, we agree with the findings of the Labor Arbiter that petitioner has been illegally dismissed. And, as an illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement,[40] we affirm the Labor Arbiter's judgment ordering petitioner's reinstatement to his former position without loss of seniority rights and other privileges and awarding backwages from the time of his dismissal until actually reinstated. Considering that petitioner has to secure the services of counsel to protect his interest and necessarily has to incur expenses, we likewise affirm the award of attorney's fees which is equivalent to 10% of the total backwages that respondents must pay petitioner in accordance with this Decision.

WHEREFORE, the petition is hereby *GRANTED*. The assailed June 28, 2005 Decision of the Court of Appeals insofar as it affirmed the National Labor Relations Commission's dismissal of petitioner's complaint for lack of jurisdiction, is hereby *REVERSED* and *SET ASIDE*. The June 5, 2003 Decision of the Labor Arbiter with respect to petitioner Renato Real is *AFFIRMED* and this case is ordered *REMANDED* to the National Labor Relations Commission for the computation of petitioner's backwages and attorney's fees in accordance with this Decision.

SO ORDERED.

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

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[39] *Supra* note 27 at 113-114.

[40] *Golden Ace Builders v. Jose Talde,* G.R. No. 187200, May 5, 2010.

SECOND DIVISION

[G.R. No. 172577. January 19, 2011]

SOLEDAD DALTON, *petitioner, vs.* **FGR REALTY AND DEVELOPMENT CORPORATION, FELIX NG, NENITA NG, and FLORA R. DAYRIT or FLORA REGNER,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS; CONSIGNATION; REQUISITES.—** In *Insular Life Assurance Company, Ltd. v. Toyota Bel-Air, Inc.*, the Court enumerated the requisites of a valid consignation: (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) **the person interested in the performance of the obligation was given notice before consignation was made**; (4) the amount was placed at the disposal of the court; and (5) **the person interested in the performance of the obligation was given notice after the consignation was made**.
2. **ID.; ID.; ID.; ID.; GIVING NOTICE TO THE PERSON INTERESTED TO THE PERFORMANCE OF THE OBLIGATION IS MANDATORY; EFFECT OF FAILURE TO COMPLY.—** The giving of notice to the persons interested in the performance of the obligation is mandatory. Failure to notify the persons interested in the performance of the obligation will render the consignation void. In *Ramos v. Sarao*, the Court held that, "**All interested parties are to be notified of the consignation. Compliance with** [**this requisite**] **is mandatory**."
3. **REMEDIAL LAW; APPEALS; IN RULE 45 PETITIONS, QUESTIONS OF FACT ARE NOT REVIEWABLE.—** Dalton claims that the Court of Appeals erred in ruling that she failed to pay rent. The Court is not impressed. Section 1, Rule 45 of the Rules of Court states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*, the Court held that: A petition for review under Rule 45 of the Rules of Court should cover only questions of law.

Questions of fact are not reviewable. x x x Whether Dalton failed to pay rent is a question of fact. It is not reviewable.

4. ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURTS; EXCEPTIONS, NOT APPLICABLE.— The factual findings of the lower courts are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. Dalton did not show that any of these circumstances is present.

APPEARANCES OF COUNSEL

Steplaw Firm Cebu for petitioner.

Law Firm of Hermosisima Hermosisima & Hermosisima for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 9 November 2005 Decision[2] and 10 April 2006 Resolution[3] of the Court of Appeals

[1] *Rollo*, pp. 11-22.

[2] *Id.* at 24-31. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[3] *Id.* at 39-40.

in CA-G.R. CV No. 76536. The Court of Appeals affirmed the 26 February 2002 Decision[4] of the Regional Trial Court (RTC), Judicial Region 7, Branch 13, Cebu City, in Civil Case No. CEB 4218.

The Facts

Flora R. Dayrit (Dayrit) owned a 1,811-square meter parcel of land located at the corner of Rama Avenue and Velez Street in Cebu City. Petitioner Soledad Dalton (Dalton), Clemente Sasam, Romulo Villalonga, Miguela Villarente, Aniceta Fuentes, Perla Pormento, Bonifacio Cabajar, Carmencita Yuson, Angel Ponce, Pedro Regudo, Pedro Quebedo, Mary Cabanlit, Marciana Encabo and Dolores Lim (Sasam, *et al.*) leased portions of the property.

In June 1985, Dayrit sold the property to respondent FGR Realty and Development Corporation (FGR). In August 1985, Dayrit and FGR stopped accepting rental payments because they wanted to terminate the lease agreements with Dalton and Sasam, *et al.*

In a complaint[5] dated 11 September 1985, Dalton and Sasam, *et al.* consigned the rental payments with the RTC. They failed to notify Dayrit and FGR about the consignation. In motions dated 27 March 1987,[6] 10 November 1987,[7] 8 July 1988,[8] and 28 November 1994,[9] Dayrit and FGR withdrew the rental payments. In their motions, Dayrit and FGR reserved the right to question the validity of the consignation.

Dayrit, FGR and Sasam, *et al.* entered into compromise agreements dated 25 March 1997[10] and 20 June 1997.[11] In the

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[4] CA *rollo*, pp. 23-30. Penned by Judge Meinrado P. Paredes.

[5] Records, pp. 1-5.

[6] *Rollo*, pp. 47-48.

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

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

[9] *Id.* at 53-54.

[10] *Id.* at 57-58.

[11] *Id.* at 59-60.

compromise agreements, they agreed to abandon all claims against each other. Dalton did not enter into a compromise agreement with Dayrit and FGR.

The RTC's Ruling

In its 26 February 2002 Decision, the RTC dismissed the 11 September 1985 complaint and ordered Dalton to vacate the property. The RTC held that:

> Soledad Dalton built a house which she initially used as a dwelling and store space. She vacated the premises when her children got married. She transferred her residence near F. Ramos Public Market, Cebu City.
>
> She constructed the 20 feet by 20 feet floor area house sometime in 1973. The last monthly rental was ₱69.00. When defendants refused to accept rental and demanded vacation of the premises, she consignated [sic] her monthly rentals in court.
>
> x x x x x x x x x
>
> It is very clear from the facts that there was no valid consignation made.
>
> The requisites of consignation are as follows:
>
> 1. The existence of a valid debt.
> 2. Valid prior tender, unless tender is excuse [sic];
> 3. Prior notice of consignation (before deposit)
> 4. Actual consignation (deposit);
> 5. Subsequent notice of consignation;
>
> Requisite Nos. 3 and 5 are absent or were not complied with. It is very clear that there were no prior notices of consignation (before deposit) and subsequent notices of consignation (after deposit)
>
> Besides, the last deposit was made on December 21, 1988. At the time Dalton testified on December 22, 1999, she did not present evidence of payment in 1999. She had not, therefore, religiously paid her monthly obligation.
>
> By clear preponderance of evidence, defendants have established that plaintiff was no longer residing at Eskina Banawa at the time she testified in court. She vacated her house and converted it into a store or business establishment. This is buttressed by the testimony

of Rogelio Capacio, the court's appointed commissioner, who submitted a report, the full text of which reads as follows:

REPORT AND/OR OBSERVATION

"The store and/or dwelling subject to ocular inspection is stuated [sic] on the left portion of the road which is about fifty-five (55) meters from the corner of Banawa-Guadalupe Streets, when turning right heading towards the direction of Guadalupe Church, if travelling from the Capitol Building.

I observed that when we arrived at the ocular inspection site, Mrs. Soledad Dalton with the use of a key opened the lock of a closed door. She claimed that it was a part of the dwelling which she occupies and was utilized as a store. There were few saleable items inside said space."

Soledad Dalton did not take exception to the said report.

Two witnesses who were former sub-lessees testified and clearly established that Mrs. Dalton use the house for business purposes and not for dwelling.[12]

Dalton appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 9 November 2005 Decision, the Court of Appeals affirmed the RTC's 26 February 2002 Decision. The Court of Appeals held that:

After a careful review of the facts and evidence in this case, we find no basis for overturning the decision of the lower court dismissing plaintiffs-appellants' complaint, as we find that no valid consignation was made by the plaintiff-appellant.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and generally requires a prior tender of payment. In order that consignation may be effective, the debtor must show that: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated,

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[12] CA *rollo*, pp. 28-30.

or because several persons claimed to be entitled to receive the amount due or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made the person interested was notified thereof. Failure in any of these requirements is enough ground to render a consignation ineffective.

Consignation is made by depositing the proper amount to the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. All interested parties are to be notified of the consignation. It had been consistently held that compliance with these requisites is mandatory.

No error, therefore, can be attributed to the lower court when it held that the consignation made by the plaintiff-appellant was invalid for failure to meet requisites 3 and 5 of a valid consignation (*i.e.*, previous notice of the consignation given to the person interested in the performance of the obligation and, after the consignation had been made, the person interested was notified thereof).

Plaintiff-appellant failed to notify defendants-appellees of her intention to consign the amount due to them as rentals. She, however, justifies such failure by claiming that there had been substantial compliance with the said requirement of notice upon the service of the complaint on the defendants-appellees together with the summons.

We do not agree with such contention.

The prevailing rule is that substantial compliance with the requisites of a valid consignation is not enough. In *Licuanan vs. Diaz*, reiterating the ruling in *Soco vs. Militante,* the Supreme Court had the occasion to rule thus:

> "In addition, it must be stated that in the case of *Soco v. Militante* (123 SCRA 160, 166-167 [1983]), this Court ruled that the codal provisions of the Civil Code dealing with consignation (Articles 1252-1261) should be accorded mandatory construction —
>
> We do not agree with the questioned decision. We hold that the essential requisites of a valid consignation must be complied with fully and strictly in accordance with the law. Articles 1256-1261, New Civil Code. That these Articles must be accorded a

> mandatory construction is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. Substantial compliance is not enough for that would render only directory construction of the law. The use of the words "shall" and "must [sic] which are imperative, operating to impose a duty which may be enforced, positively indicated that all the essential requisites of a valid consignation must be complied with. The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual..."

Clearly then, no valid consignation was made by the plaintiff-appellant for she did not give notice to the defendants-appellees of her intention to so consign her rental payments. Without any announcement of the intention to resort to consignation first having been made to persons interested in the fulfillment of the obligation, the consignation as a means of payment is void.

As to the other issues raised by the plaintiff-appellant in her second and third assigned errors, we hold that the ruling of the lower court on such issues is supported by the evidence adduced in this case.

That plaintiff-appellant is not residing at the leased premises in Eskina Banawa and that she is using the same for business purposes, not as dwelling place, is amply supported by the testimony of two of plaintiff-appellant's sub-lessees. The Commissioner's Report submitted by Rogelio Capacio, who was commissioned by the lower court to conduct an ocular inspection of the leased premises, further lends support to the lower court's findings. On the other hand, plaintiff-appellant only has her self-serving claims that she is residing at the leased premises in Eskina Banawa to prove her continued use of the leased premises as dwelling place.

There is thus no merit to plaintiff-appellant's fourth assigned error. The lower court acted within its authority in ordering the plaintiff-appellant to vacate the leased premises. The evidence shows that plaintiff-appellant had failed to continuously pay the rentals due to the defendants-appellees. It was therefore within the powers of the lower court to grant such other relief and remedies equitable under the circumstances.

In sum, there having been no valid consignation and with the plaintiff-appellant having failed to pay the rentals due to the

defendants-appellees, no error can be attributed to the lower court in rendering its assailed decision.[13]

Hence, the present petition. Dalton raises as issues that the Court of Appeals erred in ruling that (1) the consignation was void, and (2) Dalton failed to pay rent.

The Court's Ruling

The petition is unmeritorious.

Dalton claims that, "the issue as to whether the consignation made by the petitioner is valid or not for lack of notice has already been rendered moot and academic with the withdrawal by the private respondents of the amounts consigned and deposited by the petitioner as rental of the subject premises."[14]

The Court is not impressed. First, in withdrawing the amounts consigned, Dayrit and FGR expressly reserved the right to question the validity of the consignation. In *Riesenbeck v. Court of Appeals*,[15] the Court held that:

> A *sensu contrario*, **when the creditor's acceptance of the money consigned is conditional and with reservations, he is not deemed to have waived the claims he reserved against his debtor**. Thus, when the amount consigned does not cover the entire obligation, the creditor may accept it, reserving his right to the balance (Tolentino, *Civil Code of the Phil.,* Vol. IV, 1973 Ed., p. 317, citing 3 Llerena 263). The same factual milieu obtains here because the **respondent creditor accepted with reservation the amount consigned in court by the petitioner-debtor. Therefore, the creditor is not barred from raising his other claims**, as he did in his answer with special defenses and counterclaim against petitioner-debtor.
>
> As respondent-creditor's acceptance of the amount consigned was with reservations, it did not completely extinguish the entire indebtedness of the petitioner-debtor. It is apposite to note here that **consignation is completed at the time the creditor accepts the same without objections, or, if he objects, at the time the court declares**

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[13] *Rollo*, pp. 27-30.

[14] *Id.* at 18.

[15] G.R. No. 90359, 9 June 1992, 209 SCRA 656.

that it has been validly made in accordance with law.[16] (Emphasis supplied)

Second, compliance with the requisites of a valid consignation is mandatory. Failure to comply strictly with any of the requisites will render the consignation void. Substantial compliance is not enough.

In *Insular Life Assurance Company, Ltd. v. Toyota Bel-Air, Inc.*,[17] the Court enumerated the requisites of a valid consignation: (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) **the person interested in the performance of the obligation was given notice before consignation was made**; (4) the amount was placed at the disposal of the court; and (5) **the person interested in the performance of the obligation was given notice after the consignation was made**.

Articles 1257 and 1258 of the Civil Code state, respectively:

Art. 1257. **In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation**.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

Art. 1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (Emphasis supplied)

The giving of notice to the persons interested in the performance of the obligation is mandatory. Failure to notify

[16] *Id.* at 659.

[17] G.R. No. 137884, 28 March 2008, 550 SCRA 70, 89.

the persons interested in the performance of the obligation will render the consignation void. In *Ramos v. Sarao*,[18] the Court held that, "**All interested parties are to be notified of the consignation. Compliance with** [**this requisite**] **is mandatory**."[19] In *Valdellon v. Tengco*,[20] the Court held that:

> Under Art. 1257 of our Civil Code, **in order that consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation. The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment**. In said Article 1258, **it is further stated that the consignation having been made, the interested party shall also be notified thereof**.[21] (Emphasis supplied)

In *Soco v. Militante, et al.*,[22] the Court held that:

> We hold that **the essential requisites of a valid consignation must be complied with fully and strictly in accordance with the law**, Articles 1256 to 1261, New Civil Code. That these Articles must be accorded a mandatory construction is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. **Substantial compliance is not enough for that would render only a directory construction to the law**. The use of the words "shall" and "must" which are imperative, operating to impose a duty which may be enforced, positively indicate that all the essential requisites of a valid consignation must be complied with. **The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual.**[23] (Emphasis supplied)

Dalton claims that the Court of Appeals erred in ruling that she failed to pay rent. The Court is not impressed. Section 1,

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[18] 491 Phil. 288 (2005).

[19] *Id.* at 305.

[20] 225 Phil. 279 (1986).

[21] *Id.* at 327.

[22] 208 Phil. 151 (1983).

[23] *Id.* at 153-154.

Rule 45 of the Rules of Court states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*,[24] the Court held that:

> A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.
>
> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[25]

Whether Dalton failed to pay rent is a question of fact. It is not reviewable.

The factual findings of the lower courts are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[26] Dalton did not show that any of these circumstances is present.

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[24] G.R. No. 163868, 4 June 2009, 588 SCRA 249.

[25] *Id.* at 256.

[26] *Id.* at 257.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 9 November 2005 Decision and 10 April 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 76536.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173085. January 19, 2011]

PHILIPPINE VETERANS BANK, *petitioner, vs.* **BASES CONVERSION DEVELOPMENT AUTHORITY, LAND BANK OF THE PHILIPPINES, ARMANDO SIMBILLO, CHRISTIAN MARCELO, ROLANDO DAVID, RICARDO BUCUD, PABLO SANTOS, AGRIFINA ENRIQUEZ, CONRADO ESPELETA, CATGERUBE CASTRO, CARLITO MERCADO and ALFREDO SUAREZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION PROCEEDINGS; THE COURT HAS AUTHORITY TO HEAR AND ADJUDICATE CONFLICTING CLAIMS OVER THE OWNERSHIP OF THE LAND INVOLVED; WHEN RULE NOT APPLICABLE; REASONS.—** PVB's point regarding the authority of the court in expropriation cases to hear and adjudicate conflicting claims over the ownership of the lands involved in such cases is valid. But such rule obviously cannot apply to PVB for the following reasons: 1. At the time PVB tried to intervene in the expropriation cases, its conflict with the farmer beneficiaries who held CLOAs, EPs, or TCTs emanating from such titles were already pending before Angeles City RTC Branch 62, a co-equal branch of the same court. Branch 58 had no authority to pre-empt Branch

62 of its power to hear and adjudicate claims that were already pending before it. 2. Of course, subsequently, after the CA dismissed PVB's petition on January 26, 2006, the latter filed a motion for reconsideration, pointing out that it had in the meantime already withdrawn the actions it filed with Branch 62 after learning from the decision of the Supreme Court in *Department of Agrarian Reform v. Cuenca*, that jurisdiction over cases involving the annulment of CLOAs and EPs were vested by Republic Act 6657 in the DARAB.

2. **ID.; ID.; ID.; REMEDY OF A PARTY WHOSE MOTION FOR INTERVENTION IN AN EXPROPRIATION CASE WAS DISMISSED BY THE COURT.—** PVB's remedy was to secure an order from Branch 58 to have the proceeds of the expropriation deposited with that branch in the meantime, pending adjudication of the issues of ownership of the expropriated lands by the DARAB. Section 9 above empowers the court to order payment to itself of the proceeds of the expropriation whenever questions of ownership are yet to be settled. There is no reason why this rule should not be applied even where the settlement of such questions is to be made by another tribunal.

APPEARANCES OF COUNSEL

Untalan Navarro Rebanal Tan Law Offices for petitioner.
Merwyn Paul D. Rostrata and *Evira Estanislao* for BCDA.
Legal Services Group (LBP) for Land Bank of the Philippines.

D E C I S I O N

ABAD, *J.*:

This case is about the authority of the court in an expropriation case to adjudicate questions of ownership of the subject properties where such questions involve the determination of the validity of the issuance to the defendants of Certificates of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), questions that fall within the jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB).

The Facts and the Case

In late 2003 respondent Bases Conversion Development Authority (BCDA), a government corporation, filed several expropriation actions before the various branches of the Regional Trial Court (RTC) of Angeles City, for acquisition of lands needed for the construction of the Subic-Clark-Tarlac Expressway Project. Ten of these cases were raffled to Branch 58 of the court[1] and it is these that are the concern of the present petition.

The defendants in Branch 58 cases were respondents Armando Simbillo, Christian Marcelo, Rolando David, Ricardo Bucud, Pablo Santos, Agrifina Enriquez, Conrado Espeleta, Catgerube Castro, Carlito Mercado, and Alfredo Suarez. They were the registered owners of the expropriated lands that they acquired as beneficiaries of the comprehensive agrarian reform program. Another defendant was Land Bank of the Philippines, the mortgagee of the lands by virtue of the loans it extended for their acquisition. The lands in these cases were located in Porac and Floridablanca, Pampanga.

On learning of the expropriation cases before Branch 58, petitioner Philippine Veterans Bank (PVB) filed motions to intervene in all the cases with attached complaints-in-intervention, a remedy that it adopted in similar cases with the other branches. PVB alleged that the covered properties actually belonged to Belmonte Agro-Industrial Development Corp. which mortgaged the lands to PVB in 1976. PVB had since foreclosed on the mortgages and bought the same at public auction in 1982. Unfortunately, the bank had been unable to consolidate ownership in its name.

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[1] SCA 11214 entitled "*BCDA v. Alfredo Suarez, et al*."; SCA 11229 entitled "*BCDA v. Heirs of Enriquez, et al*."; SCA 11230 entitled "*BCDA v. Cristian Marcelo, et al*."; SCA 11232 entitled "*BCDA v. Catherine Castro, et al*."; SCA 11237 entitled "*BCDA v. Pablo Santos, et al*."; SCA 11260 entitled "*BCDA v. Ricardo Bucud, et al*."; SCA 11262 entitled "*BCDA v. Rolando David*"; SCA 11263 entitled "*BCDA v. Armando Simbillo, et al*."; SCA 11264 entitled "*BCDA v. Conrado Espeleta*"; and SCA 11291 entitled "*BCDA v. Carlito Mercado, et al.*"

But, in its order of August 18, 2004,[2] Branch 58 denied PVB's motion for intervention on the ground that the intervention amounts to a third-party complaint that is not allowed in expropriation cases and that the intervention would delay the proceedings in the cases before it. Besides, said Branch 58, PVB had a pending action for annulment of the titles issued to the individual defendants and this was pending before Branch 62 of the court.

PVB filed its motion for reconsideration but Branch 58 denied the same, prompting the bank to file a petition for *certiorari* with the Court of Appeals (CA).[3] On January 26, 2006 the CA rendered a decision, dismissing the petition for lack of merit.[4] It also denied in a resolution dated June 2, 2006[5] PVB's motion for reconsideration.

Meanwhile, on April 3, 2006 Branch 58 issued separate decisions in all 10 cases before it, granting the expropriation of the subject properties. The court noted the uncertainty as to the ownership of such properties but took no action to grant BCDA's prayer in its complaint that it determine the question of ownership of the same pursuant to Section 9, Rule 67 of the Revised Rules of Civil Procedure.[6]

The Issue Presented

The issue presented in this case is whether or not the CA erred in holding that PVB was not entitled to intervene in the expropriation cases before Branch 58 of the Angeles City RTC.

The Court's Ruling

PVB maintains that in deciding the case, the RTC and the CA ignored Section 9, Rule 67 of the 1997 Rules of Civil

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[2] *Rollo*, pp. 43-46.

[3] Docketed as CA-G.R. SP 88144.

[4] *Rollo*, pp. 35-40; penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[5] *Id*. at 42.

[6] *Id*. at 99, 104, 110, 116, 122, 127 and 132.

Procedure, which authorizes the court adjudicating the expropriation case to hear and decide conflicting claims regarding the ownership of the properties involved while the compensation for the expropriated property is in the meantime deposited with the court. Section 9 provides:

Sec. 9. *Uncertain ownership; conflicting claims*. – If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

PVB's point regarding the authority of the court in expropriation cases to hear and adjudicate conflicting claims over the ownership of the lands involved in such cases is valid. But such rule obviously cannot apply to PVB for the following reasons:

1. At the time PVB tried to intervene in the expropriation cases, its conflict with the farmer beneficiaries who held CLOAs, EPs, or TCTs emanating from such titles were already pending before Angeles City RTC Branch 62, a co-equal branch of the same court. Branch 58 had no authority to pre-empt Branch 62 of its power to hear and adjudicate claims that were already pending before it.

2. Of course, subsequently, after the CA dismissed PVB's petition on January 26, 2006, the latter filed a motion for reconsideration, pointing out that it had in the meantime already withdrawn the actions it filed with Branch 62 after learning from the decision of the Supreme Court in *Department of Agrarian Reform v. Cuenca*,[7] that jurisdiction over cases

[7] 482 Phil. 208, 216 (2004).

involving the annulment of CLOAs and EPs were vested by Republic Act 6657 in the DARAB.[8]

PVB now points out that, since there was no longer any impediment in RTC Branch 58 taking cognizance of its motion for intervention and adjudicating the parties' conflicting claims over the expropriated properties, the CA was in error in not reconsidering its decision.

But PVB's withdrawal of its actions from Branch 62 cannot give Branch 58 comfort. As PVB itself insists, jurisdiction over the annulment of the individual defendants' CLOAs and EPs (which titles if annulled would leave PVB's titles to the lands unchallenged) lies with the DARAB. Branch 58 would still have no power to adjudicate the issues of ownership presented by the PVB's intervention.

Actually, PVB's remedy was to secure an order from Branch 58 to have the proceeds of the expropriation deposited with that branch in the meantime, pending adjudication of the issues of ownership of the expropriated lands by the DARAB. Section 9 above empowers the court to order payment to itself of the proceeds of the expropriation whenever questions of ownership are yet to be settled. There is no reason why this rule should not be applied even where the settlement of such questions is to be made by another tribunal.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Appeals dated January 26, 2006 and its resolution dated June 2, 2006 in CA-G.R. SP 88144.

SO ORDERED.

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

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[8] See also *Philippine Veterans Bank v. Court of Appeals*, 501 Phil. 24, 34 (2005); *Dao-ayan v. Department of Agrarian Reform Adjudication Board*, G.R. No. 172109, August 29, 2007, 531 SCRA 620, 628.

FIRST DIVISION

[G.R. No. 177570. January 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELIDA DEQUINA *Y* DIMAPANAN, JOSELITO JUNDOC *Y* JAPITANA & NORA JINGABO *Y* CRUZ,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.—** Well-settled is the rule that the findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate court. Since credibility is a matter that is peculiarly within the province of the trial judge, who had the first hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense at the time of their testimony, we have no reason to disregard the findings of the lower court, as affirmed by the Court of Appeals.

2. **ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; LEGAL AND JUDICIAL EXCEPTIONS TO PROHIBITION AGAINST WARRANTLESS SEARCH AND SEIZURE.—** [T]he constitutional proscription against warrantless searches and seizures admits of certain legal and judicial exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.

3. **ID.; ID.; ID.; WHEN THE ACCUSED WAS CAUGHT *IN FLAGRANTE DELICTO*, THE WARRANTLESS ARREST AND SEIZURE WAS LEGALLY JUSTIFIED; CASE AT BAR.—** "Transport" as used under the Dangerous Drugs Act is defined to mean "to carry or convey from one place to another." The evidence in this case shows that at the time of their arrest,

accused-appellants were caught *in flagrante* carrying/ transporting dried marijuana leaves in their traveling bags. PO3 Masanggue and SPO1 Blanco need not even open Dequina's traveling bag to determine its content because when the latter noticed the police officers' presence, she walked briskly away and in her hurry, accidentally dropped her traveling bag, causing the zipper to open and exposed the dried marijuana bricks therein. Since a crime was then actually being committed by the accused-appellants, their warrantless arrest was legally justified, and the following warrantless search of their traveling bags was allowable as incidental to their lawful arrest.

4. **ID.; ID.; ID.; WAIVER OF PROTEST AGAINST WARRANTLESS SEARCH, A CASE OF.—** [A]ccused-appellants did not raise any protest when they, together with their bags containing marijuana, were brought to the police station for investigation and subsequent prosecution. In *People v. Fernandez*, we ruled that: When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof. x x x. The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly.

5. **CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; NATURE OF AN IRRESISTIBLE FORCE TO EXEMPT A PERSON FROM CRIMINAL LIABILITY, EXPLAINED.—** A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of an uncontrollable fear of equal or greater injury, is exempt from criminal liability because he does not act with freedom. *Actus me invito factus non est meus actus*. An act done by me against my will is not my act. The force contemplated must be so formidable as to reduce the actor to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity for the accused for escape or self-defense in equal combat.

6. **REMEDIAL LAW; EVIDENCE; CONSPIRACY, WHEN PRESENT.—** Conspiracy can be inferred from and proven by

acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. Although the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy, it need not be proven by direct evidence. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated. Thus, as found by the RTC, conspiracy by and among accused-appellants was present in this case, as it may be inferred from the x x x acts of accused-appellants.

7. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972; PENALTY IMPOSABLE UPON VIOLATORS THEREOF; APPLICATION.—** With the enactment and effectivity of Republic Act No. 7659, the penalty imposable upon violators of Section 4 of the Dangerous Drugs Act of 1972, as amended, is *reclusion perpetua* to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) if the marijuana involved weighs 750 grams or more. The quantity of marijuana involved in this case weighs 32,995 grams, hence, the applicable penalty is *reclusion perpetua* to death. Since the imposable penalty is composed of two indivisible penalties, the rules for the application of indivisible penalties under Article 63 of the Revised Penal Code should be applied. As there is neither mitigating nor aggravating circumstance in the commission of the crime, the RTC correctly imposed the lesser penalty of *reclusion perpetua*. Finally, considering that the penalty imposed is the indivisible penalty of *reclusion perpetua*, the Indeterminate Sentence Law could not be applied.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

DECISION

LEONARDO-DE CASTRO, *J*.:

Accused-appellants Nelida D. Dequina (Dequina), Joselito J. Jundoc (Jundoc), and Nora C. Jingabo (Jingabo) were charged before the Regional Trial Court (RTC) of Manila, Branch 27, with Violations of Section 4, in relation to Section 21, paragraphs (e-l), (f), (m), and (o) of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659. The accusatory portion of the Amended Information reads:

> That on or about September 29, 1999, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, not being authorized by law to sell, deliver, transport or give away to another any prohibited drug, did and there willfully, unlawfully and knowingly sell, or offer for sale, deliver or transport marijuana dried flowering tops with total weight of thirty two thousand nine hundred ninety five (32,995) grams which is a prohibited drug.[1]

The case was docketed as Criminal Case No. 99-177383. Upon arraignment, all accused-appellants entered a plea of not guilty.[2]

The prosecution presented four witnesses: Police Officer (PO) 3 Wilfredo Masanggue (Masanggue), Senior Police Officer (SPO) 1 Anthony Blanco (Blanco), PO3 Eduardo Pama (Pama), and Forensic Chemist George de Lara (De Lara). The RTC summarized the testimonies of the prosecution witnesses as follows:

> Police Officer III Wilfredo Masanggue testified that at about 6:00 a.m., of September 29, 1999, he and SPO1 Anthony Blanco were instructed by their superior, Chief Inspector Romulo Sapitula to proceed at the corner of Juan Luna and Raxabago Sts., Tondo, Manila, where, according to the report given by the informant, three persons – a

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[1] Records, p. 19.

[2] *Id*. at 31.

male and two female*[*s*]* would be coming from Baguio City to deliver unknown quantity of marijuana. In no time, they arrived at the designated place and parked their mobile patrol car along Juan Luna Street, facing the northern direction just near the corner of Raxabago Street.

At around 9:00 a.m., they noticed a taxi cab coming from Yuseco St. heading towards the direction of the pier. At a certain point along Raxabago Street, about a hundred meters away from the position of their patrol car the taxi stopped. From it emerged three passengers – a man and two women – each one of them carrying a black travelling bag. As the trio fitted the descriptions given to them by Inspector Sapitula, they intently watched and monitored their movements.

About one or two minutes later, as the trio started walking towards the western portion of Raxabago St., they drove and trailed them. As the patrol car got closer behind them, [Dequina] noticed its presence. She started walking in a more hurried pace (*"parang walkathon"*) as if she wanted to run away (*"parang patakbo"*). SPO1 Blanco alighted from the car and chased [Dequina] while PO3 Masanggue, who was behind the wheels also alighted and restrained [Jundoc] and [Jingabo]. While thus trying to get away, [Dequina] dropped the bag she was carrying. As a result, the zipper of the bag gave way. Bundles of dried leaves wrapped in transparent plastic bags case into view. Suspecting the stuffs to be marijuana, they further inspected the other two bags in the possession of [Jingabo] and [Jundoc] and found out that they had the same contents. They boarded the three accused, along with their bags in their patrol car and proceeded to the hospital for physical examination before bringing them to their headquarters. While in transit, [Dequina] pleaded to them to allow her to make a call but they did not heed the request as the car was still in motion.

At the western Police District Headquarters at United Nations Avenue, they turned over the three accused together with the bags to PO3 Eduardo Pama, a police investigator of the district Anti-Narcotics Unit for investigation. During the investigation, it was discovered that each of the three black travelling bags confiscated from the three accused contained eleven bricks of marijuana. In connection with the incident, he and SPO1 Blanco executed the Joint Affidavit of Apprehension dated September 30, 1999 (Exhs, "A" and submarkings).

SPO1 Anthony Blanco testified that in the early morning of September 29, 1999, together with PO3 Wilfredo Masanggue, he was dispatched by their superior to the corner of Juan Luna and Raxabago Sts., Tondo, Manila, where it was reported that shipment of marijuana would take place. They were further informed that the drug couriers were composed of a man and two women and that each of them were carrying a travelling bag.

After they arrived at the designated area, they parked their vehicle along Juan Luna near Raxabago Street. Then they waited. Suddenly, they noticed the arrival of a taxicab from where three persons – a man and two women – alighted. Each of them was carrying a bag. The trio fitted the descriptions given to them. As the suspects walked away, they drove and trailed them. As they got close behind them, accused Nelida Dequina noticed the presence of the mobile car. She dropped the black bag she was carrying and the same was unzipped. The contents thereof consisting of dried marijuana leaves wrapped in transparent plastic bags came into view. They arrested the three suspects later identified as the accused herein and boarded them into their car. While on board the vehicle, [Dequina] and [Jundoc] confessed that the contents of the other two bags confiscated from them were also marijuana.

At the WPD Headquarters, United Nations Avenue, Manila, the three accused were turned over to the Office of the District Anti-Narcotics Unit where they were investigated by PO3 Wilfredo Pama. It was there where the other two bags confiscated from [Jingabo] and [Jundoc] were re-opened and confirmed to contain marijuana.

In the course of his cross-examination, SPO1 Blanco admitted that the three of them – Inspector Sapitula, PO3 Masanggue and himself, along with the three accused, were photographed, at what appeared to be a *"sari-sari"* store as their background. The same appeared in the clipping of "Tonight" September 20, 1999 issue.

PO3 Eduardo Pama, an investigator from the District Anti-Narcotics Unit of the WPD was the one who investigated the case. He placed the corresponding markings on the packs of marijuana confiscated from the three accused after the same were turned over to him by SPO1 Blanco and PO3 Masanggue. He marked the bag recovered from [Dequina] "NDD" and the contents thereof "NDD-1" to "NDD-11". He marked the bag taken from [Jundoc] "JJJ" and the contents thereof " JJJ-1" to "JJJ-11". Finally, he marked the bag recovered from [Jingabo] "NCJ" and the contents thereof "NCJ-1" to "NCJ-

11". In connection with his investigation, he prepared the Booking Sheet and Arrest Reports of the three accused (Exhs. "F". "G" and "H") as well as the Referral Letter to the City Prosecutor's Office (Exh. "I"). Afterwards, he brought the three bags of suspected marijuana together with the letter-request to the National Bureau of Investigation [(NBI)] Chemistry Division, for the laboratory examinations. The same were received thereat on September 29, 1999 at 10:12 in the evening. The following day, September 30, 1999, at 10:38 p.m., certifications, corresponding to each and every set of items recovered from the three accused were released to PO3 Pama.

George De Lara, Forensic Chemist, Forensic Chemistry Division, NBI, Manila testified that he conducted the laboratory examinations of the subject specimens based on the letter-request from DANU Police Superintendent Miguel de Mayo Laurel (Exh. "B" and submarkings). From the black bag (Exh. "K") allegedly recovered from [Dequina], he counted a total of eleven bricks of dried leaves suspected to be marijuana which had a total weight of 10,915.0 grams. The results of the chemical, microscopic and chromatographic examinations he conducted show that the said specimens were positive for the presence of chemical found only in marijuana.

With regard to the bag allegedly confiscated from [Jundoc] (Exh. "O"), witness counted eleven bricks of dried leaves believed to be marijuana. The specimens had a total weight of 11,010.0 grams. When subjected to be same type of laboratory examinations, the specimens yielded positive result for marijuana, a prohibited drug.

Anent the bag (Exh. "R") with masking tape having the mark "DDM-99-110" allegedly recovered from [Jingabo], witness also found eleven bricks of dried flowering tops suspected to be marijuana which when weighed yielded a total weight of 11,070.0 grams. The results of similar types of examinations conducted confirmed the specimens to be marijuana.

He prepared separate certifications for the results of the examinations he conducted on the specimens contained in three separate bags allegedly confiscated from accused Dequina, Jundoc and Jingabo (Exhs. "C", "D" and "E", respectively). He also prepared NBI Forensic Chemistry Division Report No. DDM-99-108 dated October 1, 1999 (Exh. "L" and submarkings).[3]

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[3] *Id.* at 155-158.

For the defense, only the accused-appellants took the witness stand. The RTC recapitulated the testimonies of the accused-appellants, thus:

Accused Nelida Dequina testified that she became an orphan at a tender age. With the help of her aunt, she was able to pursue her studies. She was a consistent scholar from elementary until college. While in the third year of her Accountancy course, she encountered severe financial difficulties. She stopped schooling and worked instead. Soon, she had a relationship with a man with whom she begot a child. The relationship did not last. Not long after, she had a relationship with another man. This time she begot her second child named Samantha.

In May 1999, while the Kilusang Mayo Uno (KMU) members were having a parade in Iloilo City, she met a certain Salvacion Peñaredondo, a member of the group. She calls her Sally. Sally convinced her to join the movement. Since she used to watch similar group activities while in college, she manifested her desire to join the movement by nodding her head. From then on, Sally frequently visited her at home. For a living, she was engaged in selling ready-to-wear dresses, frozen meat and relief goods which Sally supplied to her.

On September 27, 1999, Sally told her that the movement had decided to send her to a mission which would determine if she was really qualified to join the group. She was advised to bring alone (sic) two friends, preferably a woman and a gay. As at time Sally saw them in her company, she chose Nora Jingabo and Joselito Jundoc to be her companions. Sally did not elaborate the real nature of such mission. She did not press to know more about the venture either. Before they parted that day, Sally instructed her to fetch her two friends and meet her (Sally) early in the morning of the following day, September 28, 1999 near the entrance of the Gaisano Mall, the largest department store in Iloilo. She dropped by the public market and told Nora and Joselito about the plan to meet Sally the following morning.

As agreed upon, they met Sally at the designated place and time. Sally secretly told her that the three of them would be going to Manila for a still undisclosed mission. She was briefed that the three of them will temporarily stay in the house of her [Dequina] relative in Manila. She was further instructed that they will go to the Philippine Rabbit Terminal in Avenida where they will be met by members of

their group who will also monitor their movements. Afterwards, they will proceed to Dau, Mabalacat, Pampanga where they will pick-up some bags. Thereat, somebody will meet and give them instructions. From Dau, they will return to Manila. They will alight at the first ShoeMart Department Store which they will see along the way. A waiting tricycle would bring them to a store where they could buy carton boxes for their bags. Finally, a taxicab will fetch and bring them all the way to the pier.

[Dequina] received ₱3,000.00 from Sally for their expenses and plane tickets for the three of them from Sally. However, she noticed that instead of their true names, the tickets were in the names of other persons. Her plane ticket was in the name of Sarah Ganje. That of [Jundoc] and [Jingabo] were in the names of Rowenal Palma and Mary Grace Papa, respectively. Nervous, she thought of backing out at the last minute but Sally assured her that she had nothing to worry about. Sally culminated by saying that something will happen to her child if ever she backed out from the plan.

Because of the threat, [Dequina] went on with the plan. Enroute to the Iloilo airport, [Jundoc] and [Jingabo] expressed their anxieties about the venture but she calmed them down and assured them that she will take care of everything.

From the Manila Domestic Airport, they proceeded to her aunt's place at Pitogo St., Guadalupe, Makati City where they rested after taking their meal. At around 2:00 p.m., her aunt woke her up and told her that the two vehicles – an owner-type jepney (sic) and a passenger jepney (sic) with unfamiliar faces on board were lurking in their vicinity for quite sometime.

At around 5:00 p.m., they left the place on board a taxi to the Philippine Rabbit Terminal at Avenida, Rizal. While waiting for their schedule, two men approached and handed to her bus tickets. The same men nosed out to them the vehicle where they were supposed to board. She was further reminded by the men that members of the movement will also be on board.

They arrived in Dau, Mabalacat, Pampanga at about 12:30 a.m. of September 29, 1999. While they were having their snacks, a couple went near and instructed them to cross the road and take the bags from the three men whom they saw for the first time. The couple also handed over to them bus tickets. They were instructed to board vehicles bound for Pasay and alight at the first Shoemart (SM)

Department Store that they will see along the way. They took the bags from the three men without even bothering to know the contents thereof. However, she noticed that the bags were very heavy.

As they boarded the Pasay bound bus, the conductor took the bags from them and loaded the same in compartment section of the vehicle. With the assistance of the bus conductor, they alighted at SM North Edsa. They transferred to a waiting tricycle, as per instruction given by Sally. The tricycle dropped them at a *"sari-sari"* store where they bought carton boxes where they placed two of the three bags. From there, the driver lead them to a waiting taxi where they loaded all their baggages. She and Nora occupied the back seat while Joselito sat beside the driver. She instructed the driver to take them to the pier for Iloilo bound ships.

As they entered the pier premises, a mobile patrol car came from nowhere and blocked their path. Two police officers emerged and ordered them to alight. Then, upon the policemen's order, the driver opened the taxi's trunk where the three bags were loaded. The police officers forcibly opened one of the three bags where they saw something wrapped in jute bags and plastic bags. It was learned that the contents of the bags were marijuana.

They were all herded into the mobile car. While on board the mobile car, the police officers asked them if they had money. When the policemen learned that they did not have money, they were brought to a *"sari-sari"* store where a police officer named Sapitula was waiting. Sapitula asked them questions. At one point, Sapitula slapped her. They were made to line up and Sapitula summoned some press reporters who photographed them.

They were brought to the Ospital ng Maynila. While being examined, she confided to a nurse that she was manhandled by Sapitula. They were brought to the office of the District Anti-Narcotics Unit where corresponding charges were filed against them.

She insisted that the incident took place near the pier and not at the corner of Raxabago and Juan Luna Sts., Tondo, Manila. Were if not for the threat that something will happen to her daughter, she could not followed (sic) the orders of Sally.

The combined testimony of accused Nora Jingabo and Joselito Jundoc established the following facts.

On September 27, 1999, while [Jundoc] and [Jingabo] were tending to their fish stall in Iloilo Public Market, [Dequina], their friend, came and invited them to meet her, for a still undisclosed reason, at the ground floor of the Gaisano Mall, early in the morning of the following day, September 28, 1999. As agreed upon, they met at the designated place and time. Not long thereafter, Sally joined them. They knew Sally to be [Dequina's] supplier of RTW's and other merchandise. For a while, [Dequina] and Sally excused themselves and proceeded to the first floor of the mall where they talked privately. Soon after Sally left, [Jingabo] and [Jundoc] asked [Dequina] what they talked about. Instead of answering, [Dequina] asked if they are willing to go with her to Manila in order to get something. While a little bit surprised, [Jingabo] and [Jundoc] readily agreed as they had never been in the city before. [Dequina] handed to them their plane tickets. They were told that the same were given by Sally. However, they noticed that the plane tickets were not in their names but in the names of other persons. When they called the attention of [Dequina] about it, the latter simply replied "Anyway that is free." [Jingabo] noticed anxiety got the better of Nelida at that time. Nevertheless, the three of them enplaned for Manila at around 7:45 a.m. of September 28, 1999.

From the Ninoy Aquino Domestic Airport, they proceeded to the house of [Dequina's] aunt in Guadalupe, Makati City. In the afternoon, their host noticed the presence of unfamiliar vehicles. Some of these vehicles were even parked right in front of the house. Unmindful about it, they left Guadalupe at around 6:00 p.m. and proceeded to a Philippine Rabbit Bus Terminal. Thereat, two male persons approached [Dequina] and handed to her bus tickets. They were pointed to the particular vehicle where they were to board.

They reached Dau, Mabalacat, Pampanga between 12:30 and 1:00 a.m. of September 29, 1999. While they were having their snacks, a couple approached [Dequina] and they had a talk. Thereafter, the couple motioned them to three male persons, each carrying a bag, at the opposite side of the road. Upon [Dequina's] instruction, they took the bags from the three men. Then, they waited for their ride back to Manila.

As they boarded the bus, the conductor loaded their bags inside the compartment. They alighted at SM EDSA at around 6:00 a.m. of September 29, 1999. They boarded a waiting tricycle. When they reached a certain store, the trike driver bought carton boxes where they loaded two of the three bags. Thereafter, the tricycle driver

pointed [Dequina] to a waiting taxi where they boarded along with their baggages.

As they entered the pier premises, a police officer on board a mobile patrol car ordered them to stop. They were ordered to alight and the police officers ordered the driver to open the taxi's compartment. One of the police officers took a knife from his pocket and slashed one of the bags. Then, the policemen told them that what they had in their bags were marijuana. The police officers ordered them to board the mobile car while the bags were loaded inside the compartment of the same car.

They were brought to a *"sari-sari"* store where a certain Chief Sapitula, whom they later knew to be the police officers' superior, was waiting. Sapitula interrogated [Dequina] and at one point, he slapped her. Sapitula summoned press people who took their photographs. Thereafter, they were brought to the "Hospital ng Bayan" and finally, to the police precinct were they were charged accordingly.[4]

The parties dispensed with the testimony of Prose M. Arreola, a representative of Air Philippines, since they were willing to stipulate on the existence of the passenger manifest, on which appeared the accused-appellants' assumed names, as well as the accused-appellants' plane tickets for the flight from Iloilo to Manila on September 28, 1999 at 7:00 a.m.

The RTC, in a Decision dated October 30, 2000, found the accused-appellants guilty as charged. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the judgment is hereby rendered finding accused NELIDA DEQUINA *y* DIMAPANAN, JOSELITO JUNDOC *y* JAPITANA and NORA JINGABO *y* CRUZ guilty beyond reasonable doubt of the crime of Illegal transport marijuana and sentencing each of them to suffer the penalty of *reclusion perpetua*. Each of them is ordered to pay a fine of ₱500,000.00.[5]

The accused-appellants filed a Motion for Reconsideration of the foregoing decision, but the RTC denied the same in its Order dated December 27, 2000.

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[4] *Id.* at 158-164.

[5] *Id.* at 167-168.

Accused-appellants then filed a notice of appeal on January 25, 2001. Thus, the records of Criminal Case No. 99-177383 were forwarded to this Court. Pursuant to our decision in *People v. Mateo*,[6] however, we referred the case to the Court of Appeals,[7] where it was docketed as CA-G.R. CR.-H.C. No. 01431.

Accused-appellants made the following assignment of errors in their brief:

I

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT FOR ILLEGAL TRANSPORT OF MARIJUANA.

II

THE COURT *A QUO* GRAVELY ERRED IN ADMITTING IN EVIDENCE THE SEIZED ITEMS FROM THE ACCUSED-APPELLANTS DESPITE THE FACT THAT THEY WERE SEIZED IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS AGAINST ILLEGAL SEARCH AND SEIZURE.[8]

In its Decision[9] dated August 16, 2006, the appellate court affirmed accused-appellants' conviction. It decreed:

WHEREFORE, the instant appeal is **DENIED**, the Decision of the Regional Trial Court, Branch 27, in Manila, in Criminal Case No. 99-177393, finding accused-appellants NELIDA DEQUINA *y* DIMAPANAN, JOSELITO JUNDOC *y* JAPITANA and NORA JINGABO *y* CRUZ guilty beyond reasonable doubt of illegally transporting 32[,]995 grams of marijuana is hereby **AFFIRMED**.[10]

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

[7] CA *rollo*, p. 114.

[8] *Id.* at 84.

[9] *Rollo*, pp. 3-13; penned by Associate Justice Rosmari D. Carandang with Associate Justices Renato C. Dacudao and Monina Arevalo-Zenarosa, concurring.

[10] *Id.* at 12.

Hence, accused-appellants appealed to this Court.

In our Resolution dated July 4, 2007, we required the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice. Both parties manifested that they no longer intend to file any supplemental brief considering that they have already raised all the issues and arguments in their original briefs.

We find no merit in the present appeal.

The accused-appellants were charged with and convicted of the offense of illegal transport of marijuana, defined and penalized under Section 4 of the Dangerous Drugs Act of 1972, as amended, which provides:

> SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

Accused-appellants assail their conviction, asserting that their arrests were illegal. They were not doing anything illegal that would have justified their warrantless arrest, much less a warrantless search of their persons and belongings. A search made without a warrant cannot be justified as an incident of arrest unless the arrest itself was lawful. Accused-appellants insist that the description of the persons who were transporting marijuana relayed by the Chief of Police to the apprehending officers, PO3 Masanggue and SPO1 Blanco, was so general that it could not be sufficient ground for the apprehension of accused-appellants.

The People counters that accused-appellants' arrests were lawful as they were then actually committing a crime. Since accused-appellants were lawfully arrested, the resulting warrantless search of their persons and belongings was also valid. In addition, accused-appellants did not refute that they were indeed transporting prohibited drugs when they were arrested and, instead, alleged as defenses that Dequina acted under the impulse of

uncontrollable fear, and Jundoc and Jingabo were merely accommodating a trusted childhood friend.

After a thorough review of the records, we find that the judgment of the RTC, as affirmed by the Court of Appeals, was supported by the evidence on record. The People was able to discharge the burden of proving the accused-appellants' guilt beyond reasonable doubt.

Well-settled is the rule that the findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate court. Since credibility is a matter that is peculiarly within the province of the trial judge, who had the first hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense at the time of their testimony,[11] we have no reason to disregard the findings of the lower court, as affirmed by the Court of Appeals.

In this case, Chief Inspector Sapitula, in the early morning of September 29, 1999, received a tip that a huge amount of marijuana would be transported from Baguio City to the Manila pier, which will then be loaded on vessels bound for Iloilo. Acting on the information he received, Chief Inspector Sapitula dispatched PO3 Masanggue and SPO1 Blanco to the corner of Raxabago and Juan Luna Streets, where they were supposed to watch out for two females and one male. PO3 Masanggue and SPO1 Blanco posted their mobile patrol car near said corner. From where they were at, PO3 Masanggue and SPO1 Blanco spotted three persons, two females and one male – who turned out to be accused-appellants – alighting from a taxi at the corner of Raxabago and Juan Luna Streets, each carrying a traveling bag. PO3 Masanggue and SPO1 Blanco then followed accused-appellants until one of them, Dequina, dropped her traveling bag. The traveling bag fell open and inside, PO3 Masanggue and SPO1 Blanco saw dried leaves in transparent plastic bags.

[11] *People v. Tangliben,* G.R. No. 63630, April 6, 1990, 184 SCRA 220, 227.

It was only then that the two police officers apprehended accused-appellants and their persons and belongings searched.

As PO3 Masanggue testified:

Q Now, on September 29, 1999 at around 6:00 o'clock in the morning will you please tell us where you were?
A I reported to Headquarters Office for INSS briefing and information.

Q And while you were there can you recall if there is any unusual incident that happened?

x x x x x x x x x

WITNESS:

Yes, your Honor.

PUB. PROS. TAN, JR.:

After the formation what happen?

x x x x x x x x x

WITNESS

After our formation we are informed by our chief that he received a telephone call and receive an information that three persons will be arriving and will deliver marijuana.

Q And what else if any did your chief tell you?
A And we were dispatched by our chief to the place where the marijuana will be dropped at corner Juan Luna and Raxabago.

Q And did you indeed go there?
A Yes, sir.

Q What district is that, Mr. Witness?
A District II of Manila.

Q And, then what transpired when you went there?
A We saw three persons alighting from a taxi and each of them carrying a black bag.

Q And what did you do?
A When we saw that the three persons who alighted from the taxi match with the description of the persons we are looking for we approach them.

Q And what happen when you approach them?
A When we were about to approach them one of them by the name of [Dequina] tried to run away.

xxx xxx xxx

Q And then what did you do if any when she try to run away?
A We chase her and told her to stop running and she drop the bag she was carrying.

Q You state that we, who else are you referring to?
A SPO1 Anthony Blanco.

Q Now, when she drop the bag from her shoulder what did you do if any?
A When the bag fell the zipper open and we saw dry leaves wrapped in a transparent plastic bag from the inside.

Q And then what did you do if any?
A Because I was convinced that the person is the one match the person we are looking for and as our SOP we brought them to the Ospital ng Maynila for medical examination.

Q You stated you brought them or she only you brought her?
A No, sir. I'm referring to the three accused in this case.

xxx xxx xxx

Q And why did you bring the other two persons when you said that it was only [Dequina] who dropped the bag?
A Because they were together who alighted from the taxi.

xxx xxx xxx

Q And what transpired in your office?
A We brought them to our chief and also the bag which contained the dried leaves suspected to be marijuana and the bag was later turn over to the Anti Narcotic Unit.

xxx xxx xxx

Q So you mean to say that there were three (3) bags that were recover by you from the three accused?
A Yes, sir.

Q And, so in your office you stated that you turn over the said three (3) bags to whom, Mr. Witness?
A To the investigator of DANU.

Q What is DANU?
A District Anti Narcotics Unit.

Q And do you know what they do with the bag if you know to the bag?

A They counted the contains of all the bag sir and found out that each bag contain eleven (11) blocks of suspected marijuana.[12]

The positive and categorical testimony of PO3 Masanggue, corroborated by SPO1 Blanco, deserves weight and credence in light of the presumption of regularity accorded to the performance of their official duties as police officers, and the lack of motive on their part to falsely testify against accused-appellants.

To discredit PO3 Masanggue and SPO1 Blanco, accused-appellants claimed that they were blocked by the police officers at the pier and not at the corner of Juan Luna and Raxabago Streets; and that PO3 Masanggue and SPO1 Blanco did not mention in their testimonies passing by a *sari-sari* store to meet up with Chief Inspector Sapitula and presenting accused-appellants to the media. These details, however, are immaterial, not really departing significantly from the police officers' version of the events surrounding accused-appellants' arrest and search, which yielded the marijuana

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[12] TSN, January 26, 2000, pp. 4-10, 14-15.

they were transporting. At any rate, certain parts of the testimonies of PO3 Masanggue and SPO1 Blanco were corroborated by the accused-appellants themselves (*i.e.*, that the police officers, prior to bringing accused-appellants to the police headquarters, first brought accused-appellants to the Ospital ng Maynila for medical examination), PO3 Pama (*i.e.*, that each of the three traveling bags turned over to him by PO3 Masanggue and SPO1 Blanco contained 11 bricks of marijuana), and NBI Forensic Chemist De Lara (*i.e.*, that the dried leaves marked and turned over to him by PO3 Pama tested positive for marijuana).

There is no question that the warrantless arrest of accused-appellants and the warrantless seizure of the marijuana were valid and legal.

Settled is the rule that no arrest, search or seizure can be made without a valid warrant issued by a competent judicial authority. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[13] It further decrees that any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding.[14]

Nevertheless, the constitutional proscription against warrantless searches and seizures admits of certain legal and judicial exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[15]

On the other hand, Section 5, Rule 113 of the Rules of Court provides that a lawful arrest without a warrant may be made by a peace officer or a private person under the following circumstances:

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[13] 1987 Constitution, Article III, Section 2.

[14] 1987 Constitution, Article III, Section 3(2).

[15] *People v. Gonzales*, 417 Phil. 342, 357 (2001).

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

"Transport" as used under the Dangerous Drugs Act is defined to mean "to carry or convey from one place to another."[16] The evidence in this case shows that at the time of their arrest, accused-appellants were caught *in flagrante* carrying/ transporting dried marijuana leaves in their traveling bags. PO3 Masanggue and SPO1 Blanco need not even open Dequina's traveling bag to determine its content because when the latter noticed the police officers' presence, she walked briskly away and in her hurry, accidentally dropped her traveling bag, causing the zipper to open and exposed the dried marijuana bricks therein. Since a crime was then actually being committed by the accused-appellants, their warrantless arrest was legally justified, and the following warrantless search of their traveling bags was allowable as incidental to their lawful arrest.

Besides, accused-appellants did not raise any protest when they, together with their bags containing marijuana, were brought to the police station for investigation and subsequent prosecution. In *People v. Fernandez,*[17] we ruled that:

When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof. x x x. The right to be secure from unreasonable search may,

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[16] *People v. Del Mundo,* 418 Phil. 740, 754 (2001).

[17] G.R. No. 113474, December 13, 1994, 239 SCRA 174.

like every right, be waived and such waiver may be made either expressly or impliedly.[18]

In order to exonerate herself from criminal liability, Dequina contends that she transported the marijuana under the compulsion of an irresistible fear. Jundoc and Jingabo, on the other hand, claim that they went along to accommodate Dequina, a trusted childhood friend.

We are unconvinced.

A person who acts under the compulsion of an irresistible force, like one who acts under the impulse of an uncontrollable fear of equal or greater injury, is exempt from criminal liability because he does not act with freedom. *Actus me invito factus non est meus actus*. An act done by me against my will is not my act. The force contemplated must be so formidable as to reduce the actor to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity for the accused for escape or self-defense in equal combat.[19] Here, Dequina's version of events that culminated with her and Jundoc and Jingabo's arrests on September 29, 1999 is implausible. Equally far-fetched is Jundoc and Jingabo's assertion of blind trust in Dequina and total ignorance of the transportation of marijuana. We agree with the Court of Appeals when it observed that:

> While [Dequina] wants us to believe that she acted under compulsion and that a certain Sally called all the shots, she nevertheless admitted that their accommodations when they reached Manila was with her aunt in Guadalupe. On cross examination, she said that it was she who told Sally that they were going to stay with her aunt. More importantly, the alleged threat on her daughter was unclear. At one point in her testimony, she claimed that her daughter was to be under the custody of Sally while she was away. However, during the trial her lawyer

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[18] *Id*. at 184.

[19] *People v. Del Rosario*, 365 Phil. 292, 299-300 (1999).

manifested that her daughter was in fact in Manila and in the court room attending the hearing. Moreover, accused-appellants themselves picture a very precise and elaborate scheme in the transport of the huge shipment of marijuana. With this, it is simply contrary to human experience that the people behind the shipment would entrust the same to an unknowing and uncertain person such as [Dequina] and her two stooges, unless they themselves were in on it. Furthermore, the scheme or transport of the marijuana shipment was so exact that [Jundoc] and [Jingabo] only had enough time to rest in the house of [Dequina's] aunt in Guadalupe – from the time they arrived in Manila in the morning to the time they had to go to provincial bus station in the afternoon, negating their purported desire to see Manila. Clearly, the defense' story is riddled with holes.[20]

Conspiracy can be inferred from and proven by acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. Although the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy, it need not be proven by direct evidence. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated.[21] Thus, as found by the RTC, conspiracy by and among accused-appellants was present in this case, as it may be inferred from the following acts of accused-appellants:

This was shown when by their account, the three accused left Iloilo together, stayed in Manila for a while, left for Dau, Mabalacat, Pampanga and returned to Manila thereafter. They were together when the apprehending police officers pounced on them near the pier premises on their way back to Iloilo, each of them carrying a travelling bag which contained marijuana. x x x.[22]

With the enactment and effectivity of Republic Act No. 7659,[23] the penalty imposable upon violators of Section 4 of the

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[20] *Rollo,* pp. 9-10.

[21] *People v. Licayan*, 415 Phil. 459, 475 (2001).

[22] Records, p. 167.

[23] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for other Purposes.

Dangerous Drugs Act of 1972, as amended, is *reclusion perpetua* to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) if the marijuana involved weighs 750 grams or more. The quantity of marijuana involved in this case weighs 32,995 grams, hence, the applicable penalty is *reclusion perpetua* to death. Since the imposable penalty is composed of two indivisible penalties, the rules for the application of indivisible penalties under Article 63[24] of the Revised Penal Code should be applied. As there is neither mitigating nor aggravating circumstance in the commission of the crime, the RTC correctly imposed the lesser penalty of *reclusion perpetua*. Finally, considering that the penalty imposed is the indivisible penalty of *reclusion perpetua*, the Indeterminate Sentence Law could not be applied.[25]

WHEREFORE, the instant appeal is *DENIED*. The Decision dated August 16, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01431, which affirmed the Decision dated October 30, 2000 of the Regional Trial Court of Manila, Branch 27, in Criminal Case No. 99-177383, finding accused-appellants *GUILTY* of the crime of illegal transport of marijuana and sentencing them to *reclusion perpetua*, and to pay a fine of ₱500,000.00 each, is hereby *AFFIRMED*. Costs against accused-appellants.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.,* concur.

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[24] Art. 63. *Rules for the application of indivisible penalties.* –

x x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x x x x x x

[25] *People v. Valdez*, 363 Phil. 481, 494 (1999).

SECOND DIVISION

[G.R. No. 177937. January 19, 2011]

ROBINSONS GALLERIA/ROBINSONS SUPERMARKET CORPORATION and/or JESS MANUEL, *petitioners, vs.* **IRENE R. RANCHEZ,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; WHEN IT EXISTS.—** There is probationary employment when the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.
2. **ID.; ID.; ID.; GROUNDS FOR TERMINATION OF PROBATIONARY EMPLOYMENT.—** A probationary employee, like a regular employee, enjoys security of tenure. However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, *i.e.*, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause; and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.
3. **ID.; ID.; ID.; REQUIREMENTS FOR A VALID TERMINATION OF PROBATIONARY EMPLOYMENT.—** Article 277(b) of the Labor Code mandates that subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal, except for just and authorized cause and without prejudice to the requirement of notice under Article 283 of the same Code, the employer shall furnish the worker, whose employment is sought to be terminated, a written notice

containing a statement of the causes of termination, and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires, in accordance with company rules and regulations pursuant to the guidelines set by the Department of Labor and Employment.

4. **ID.; ID.; ID.; ID.; DUE PROCESS REQUIREMENTS UNDER THE LABOR CODE ARE MANDATORY AND MAY NOT BE SUPPLANTED BY POLICE INVESTIGATION OR COURT PROCEEDINGS.—** As correctly pointed out by the NLRC, the due process requirements under the Labor Code are mandatory and may not be supplanted by police investigation or court proceedings. The criminal aspect of the case is considered independent of the administrative aspect. Thus, employers should not rely solely on the findings of the Prosecutor's Office. They are mandated to conduct their own separate investigation, and to accord the employee every opportunity to defend himself.

5. **ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED PROBATIONARY EMPLOYEE; BACKWAGES, HOW COMPUTED.—** [A]s an illegally or constructively dismissed employee, respondent is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively. In this case, since respondent was a probationary employee at the time she was constructively dismissed by petitioners, she is entitled to separation pay and backwages. Reinstatement of respondent is no longer viable considering the circumstances. However, the backwages that should be awarded to respondent shall be reckoned from the time of her constructive dismissal until the date of the termination of her employment, *i.e.*, from October 30, 1997 to March 14, 1998. The computation should not cover the entire period from the time her compensation was withheld up to the time of her actual reinstatement. This is because respondent was a probationary employee, and the lapse of her probationary employment without her appointment as a regular employee of petitioner Supermarket effectively severed the employer-employee relationship between the parties.

APPEARANCES OF COUNSEL

Bolos Reyes-Beltran Miranda Araneta & Del Rosario Law Offices for petitioners.

Misa law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated August 29, 2006 and the Resolution[2] dated May 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 91631.

The Facts

The facts of the case are as follows.

Respondent was a probationary employee of petitioner Robinsons Galleria/Robinsons Supermarket Corporation (petitioner Supermarket) for a period of five (5) months, or from October 15, 1997 until March 14, 1998.[3] She underwent six (6) weeks of training as a cashier before she was hired as such on October 15, 1997.[4]

Two weeks after she was hired, or on October 30, 1997, respondent reported to her supervisor the loss of cash amounting to Twenty Thousand Two Hundred Ninety-Nine Pesos (₱20,299.00) which she had placed inside the company locker. Petitioner Jess Manuel (petitioner Manuel), the Operations Manager of petitioner Supermarket, ordered that respondent be strip-searched by the company guards. However, the search on her and her personal belongings yielded nothing.[5]

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[1] Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Bienvenido Reyes and Fernanda Lampas Peralta, concurring; *rollo*, pp. 67-75.

[2] *Id.* at 77-78.

[3] Labor Arbiter's decision; CA *rollo*, p. 50.

[4] *Id.* at 47.

[5] *Id.* at 48.

Respondent acknowledged her responsibility and requested that she be allowed to settle and pay the lost amount. However, petitioner Manuel did not heed her request and instead reported the matter to the police. Petitioner Manuel likewise requested the Quezon City Prosecutor's Office for an inquest.[6]

On November 5, 1997, an information for Qualified Theft was filed with the Quezon City Regional Trial Court. Respondent was constrained to spend two weeks in jail for failure to immediately post bail in the amount of Forty Thousand Pesos (₱40,000.00).[7]

On November 25, 1997, respondent filed a complaint for illegal dismissal and damages.[8]

On March 12, 1998, petitioners sent to respondent by mail a notice of termination and/or notice of expiration of probationary employment dated March 9, 1998.[9]

On August 10, 1998, the Labor Arbiter rendered a decision,[10] the *fallo* of which reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered dismissing the claim of illegal dismissal for lack of merit.

Respondents are ordered to accept complainant to her former or equivalent work without prejudice to any action they may take in the premises in connection with the missing money of ₱20,299.00.

SO ORDERED.[11]

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[6] Labor Arbiter's decision, *id.*; NLRC decision, *id.* at 67; CA Decision, *rollo*, p. 68.

[7] Labor Arbiter's decision, CA *rollo*, p. 48; NLRC decision, CA *rollo*, p. 70; CA Decision, *rollo*, p. 68.

[8] CA Decision; *rollo*, p. 69.

[9] CA Decision, *id.* at 68; NLRC decision, CA *rollo*, p. 67.

[10] Penned by Labor Arbiter Melquiades Sol D. del Rosario; CA *rollo*, pp. 47-53.

[11] *Id.* at 52-53.

In dismissing the complaint for illegal dismissal, the Labor Arbiter ratiocinated that at the time respondent filed the complaint for illegal dismissal, she was not yet dismissed by petitioners. When she was strip-searched by the security personnel of petitioner Supermarket, the guards were merely conducting an investigation. The subsequent referral of the loss to the police authorities might be considered routine. Respondent's non-reporting for work after her release from detention could be taken against her in the investigation that petitioner supermarket would conduct.[12]

On appeal, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter in a decision[13] dated October 20, 2003. The dispositive portion of the decision reads:

> WHEREFORE, the appealed decision is SET ASIDE. The respondents are hereby ordered to immediately reinstate complainant to her former or equivalent position without loss of seniority rights and privileges and to pay her full backwages computed from the time she was constructively dismissed on October 30, 1997 up to the time she is actually reinstated.
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> SO ORDERED.[14]

In reversing the decision of the Labor Arbiter, the NLRC ruled that respondent was denied due process by petitioners. Strip-searching respondent and sending her to jail for two weeks certainly amounted to constructive dismissal because continued employment had been rendered impossible, unreasonable, and unlikely. The wedge that had been driven between the parties was impossible to ignore.[15] Although respondent was only a probationary employee, the subsequent lapse of her probationary contract of employment did not have the effect of validly

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[12] Labor Arbiter's decision; *id.* at 51-52.

[13] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring; *id.* at 65-72.

[14] *Id.* at 71.

[15] *Id.* at 69.

terminating her employment because constructive dismissal had already been effected earlier by petitioners.[16]

Petitioners filed a motion for reconsideration, which was denied by the NLRC in a resolution[17] dated July 21, 2005.

Petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On August 29, 2006, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the challenged Decision of the National Labor Relations Commission is **AFFIRMED** with **MODIFICATION** in that should reinstatement be no longer possible in view of the strained relation between the parties, Petitioners are ordered to pay Respondent separation pay equivalent to one (1) month pay in addition to backwages from the date of dismissal until the finality of the assailed decision.
>
> SO ORDERED.[18]

Petitioners filed a motion for reconsideration. However, the CA denied the same in a Resolution dated May 16, 2007.

Hence, this petition.

Petitioners assail the reinstatement of respondent, highlighting the fact that she was a probationary employee and that her probationary contract of employment lapsed on March 14, 1998. Thus, her reinstatement was rendered moot and academic. Furthermore, even if her probationary contract had not yet expired, the offense that she committed would nonetheless militate against her regularization.[19]

On the other hand, respondent insists that she was constructively dismissed by petitioner Supermarket when she

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[16] *Id.* at 70.

[17] Penned by Commissioner Proculo T. Sarmen, with the concurrence of OIC, Office of the Chairman Raul T. Aquino and Commissioner Romeo L. Go; *id.* at 86-88.

[18] *Rollo*, p. 74.

[19] CA Decision, *id.* at 68-69; NLRC decision, CA *rollo*, p. 67.

was strip-searched, divested of her dignity, and summarily thrown in jail. She could not have been expected to go back to work after being allowed to post bail because her continued employment had been rendered impossible, unreasonable, and unlikely. She stresses that, at the time the money was discovered missing, it was not with her but locked in the company locker. The company failed to provide its cashiers with strong locks and proper security in the work place. Respondent argues that she was not caught in the act and even reported that the money was missing. She claims that she was denied due process.[20]

The Issue

The sole issue for resolution is whether respondent was illegally terminated from employment by petitioners.

The Ruling of the Court

We rule in the affirmative.

There is probationary employment when the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[21]

A probationary employee, like a regular employee, enjoys security of tenure.[22] However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, *i.e.*, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause; and (3) when he fails to qualify as a regular

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[20] CA Decision, *rollo*, p. 68; NLRC decision, CA *rollo*, p. 67.

[21] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6.

[22] *Id*.

employee in accordance with reasonable standards prescribed by the employer.[23]

Article 277(b) of the Labor Code mandates that subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal, except for just and authorized cause and without prejudice to the requirement of notice under Article 283 of the same Code, the employer shall furnish the worker, whose employment is sought to be terminated, a written notice containing a statement of the causes of termination, and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires, in accordance with company rules and regulations pursuant to the guidelines set by the Department of Labor and Employment.

In the instant case, based on the facts on record, petitioners failed to accord respondent substantive and procedural due process. The haphazard manner in the investigation of the missing cash, which was left to the determination of the police authorities and the Prosecutor's Office, left respondent with no choice but to cry foul. Administrative investigation was not conducted by petitioner Supermarket. On the same day that the missing money was reported by respondent to her immediate superior, the company already pre-judged her guilt without proper investigation, and instantly reported her to the police as the suspected thief, which resulted in her languishing in jail for two weeks.

As correctly pointed out by the NLRC, the due process requirements under the Labor Code are mandatory and may not be supplanted by police investigation or court proceedings. The criminal aspect of the case is considered independent of the administrative aspect. Thus, employers should not rely solely on the findings of the Prosecutor's Office. They are mandated to conduct their own separate investigation, and to accord the

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[23] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6(c).

employee every opportunity to defend himself. Furthermore, respondent was not represented by counsel when she was strip-searched inside the company premises or during the police investigation, and in the preliminary investigation before the Prosecutor's Office.

Respondent was constructively dismissed by petitioner Supermarket effective October 30, 1997. It was unreasonable for petitioners to charge her with abandonment for not reporting for work upon her release in jail. It would be the height of callousness to expect her to return to work after suffering in jail for two weeks. Work had been rendered unreasonable, unlikely, and definitely impossible, considering the treatment that was accorded respondent by petitioners.

As to respondent's monetary claims, Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, due to the strained relations of the parties, the payment of separation pay has been considered an acceptable alternative to reinstatement, when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[24]

Thus, as an illegally or constructively dismissed employee, respondent is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.[25]

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[24] *Coca-Cola Bottlers Phils., Inc. v. Daniel,* 499 Phil. 491, 511 (2005).

[25] *Siemens v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 100.

In this case, since respondent was a probationary employee at the time she was constructively dismissed by petitioners, she is entitled to separation pay and backwages. Reinstatement of respondent is no longer viable considering the circumstances.

However, the backwages that should be awarded to respondent shall be reckoned from the time of her constructive dismissal until the date of the termination of her employment, *i.e.*, from October 30, 1997 to March 14, 1998. The computation should not cover the entire period from the time her compensation was withheld up to the time of her actual reinstatement. This is because respondent was a probationary employee, and the lapse of her probationary employment without her appointment as a regular employee of petitioner Supermarket effectively severed the employer-employee relationship between the parties.

In all cases involving employees engaged on probationary basis, the employer shall make known to its employees the standards under which they will qualify as regular employees at the time of their engagement. Where no standards are made known to an employee at the time, he shall be deemed a regular employee,[26] unless the job is self-descriptive, like maid, cook, driver, or messenger. However, the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[27] Naturally, petitioner Supermarket cannot be expected to retain respondent as a regular employee considering that she lost ₱20,299.00 while acting as a cashier during the probationary period. The rules on probationary employment should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which, there is no need to spell out a policy or standard to be met.[28]

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[26] Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Sec. 6(d).

[27] *Capili v. National Labor Relations Commission*, 337 Phil. 210, 216 (1997).

[28] *Aberdeen Court, Inc. v. Agustin, Jr.*, 495 Phil. 706, 716-717 (2005).

WHEREFORE, in view of the foregoing, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 91631 is hereby *AFFIRMED* with the *MODIFICATION* that petitioners are hereby ordered to pay respondent Irene R. Ranchez separation pay equivalent to one (1) month pay and backwages from October 30, 1997 to March 14, 1998.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 178039. January 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO UYBOCO *y* RAMOS,** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS; PROVEN IN CASE AT BAR.—** In order for the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained

[*] In lieu of Associate Justice Diosdado M. Peralta per Raffle dated July 6, 2009.

or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial. We are in full accord with the findings of the trial court that these elements were proven by the prosecution.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON, ACCORDED RESPECT.—** We are inclined to accord due weight and respect to the ruling of the lower courts in giving credence to the positive testimonies of Nimfa and Jepson, both pointing to appellant as one of the kidnappers. Both witnesses testified in a clear and categorical manner, unfazed by efforts of the defense to discredit them. As a rule, the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, which had a unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial, as in this case, cannot render a valid and just decision, since the latter can very well rely on the transcribed stenographic notes taken during the trial as the basis of his decision.

3. **ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, APPLIED.—** Appellant cannot rely on a vague mention of an interview, if it indeed exists, to discredit the testimony of P/Supt. Chan. The truth of the matter is appellant failed to prove the existence of the alleged taped conversations. The matters of failure of the police officer to properly document the alleged pay-off, the non-production of the master copy of the video tape, and the chain of custody supposedly broken are not semblance of neglect so as to debunk the presumption of regularity. In the absence of proof of motive on the part of the police officers to falsely ascribe a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the trial court's assessment on the credibility of the apprehending officers, shall prevail over the accused's self-serving and uncorroborated claim of frame-up.

4. ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; TWO REQUIREMENTS FOR VALIDITY UNDER PARAGRAPH B, SECTION 5 OF THE RULES, PRESENT.— The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. Records show that both requirements are present in the instant case. The police officers present in Magallanes Commercial Center were able to witness the pay-off which effectively consummates the crime of kidnapping. They all saw appellant take the money from the car trunk of Jepson. Such knowledge was then relayed to the other police officers stationed in Fort Bonifacio where appellant was expected to pass by. Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest. Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes. It is sufficient for the arresting team that they were monitoring the pay-off for a number of hours long enough for them to be informed that it was indeed appellant, who was the kidnapper. This is equivalent to personal knowledge based on probable cause.

5. ID.; ID.; SEARCH AND SEIZURE; SEARCH INCIDENTAL TO LAWFUL ARREST, HELD VALID.— [T]he search conducted inside the car of appellant was legal because the latter consented to such search as testified by P/Supt. Cruz. Even assuming that appellant did not give his consent for the police to search the car, they can still validly do so by virtue of a search incident to a lawful arrest under Section 13, Rule 126 of the Rules of Court. x x x In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the

permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence. Therefore, it is only but expected and legally so for the police to search his car as he was driving it when he was arrested.

6. **CRIMINAL LAW; KIDNAPPING; PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF KIDNAPPING FOR RANSOM AND CONSPIRACY THEREIN, PROVEN.—** The testimonies of Nimfa and Jepson sufficiently point to the participation of appellant. While he was not present during the abduction, he was present in the house where the victims were detained, oftentimes giving the phone to Nimfa to talk to Jepson. He also actively demanded ransom from Jepson. The conspiracy was likewise proven by the above testimonies. Appellant conspired with Macias and other John Does in committing the crime. Therefore, even with the absence of appellant in the abduction stage, he is still liable for kidnapping for ransom because in conspiracy, the act of one is the act of all.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Subject of this appeal is the 27 September 2006 Decision[1] promulgated by the Court of Appeals, affirming the Regional Trial Court's (RTC) Judgment[2] in Criminal Case Nos. 93-130980,

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[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Regalado E. Maambong and Jose Catral Mendoza (now Supreme Court Associate Justice), concurring. *Rollo,* pp. 3-27.

[2] Penned by Acting Presiding Judge Edelwina Catubig Pastoral. CA *rollo,* pp. 94-128.

93-132606, and 93-132607, finding Ernesto Uyboco *y* Ramos (appellant) guilty of three (3) counts of kidnapping for ransom.

Appellant, along with now deceased Colonel Wilfredo Macias (Macias) and several John Does were charged in three separate Informations, which read as follow:

In Criminal Case No. 93-130980:

That in the morning of December 20, 1993 and for sometime subsequent thereto in Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap, carry away and detain the minor, JESON KEVIN DICHAVES, five (5) years old, against his will and consent, thus depriving him of his liberty, for the purpose of extorting ransom for his release, which after payment thereof in the amount of ₱1,320,000.00 in cash and ₱175,000.00 worth of assorted jewelry, including a Colt .45 Caliber Pistol with SN 14836 or a total of ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00) was divided by said accused between and/or among themselves to the damage and prejudice of the aforementioned victim/or his parents.[3]

In Criminal Case No. 93-132606:

That in the morning of December 20, 1993 and for sometime subsequent thereto in Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap, carry away and detain the minor, JESON KIRBY DICHAVES, two (2) years old, against his will and consent, thus depriving him of his liberty, for the purpose of extorting ransom for his release, which after payment thereof in the amount of ₱1,320,000.00 in cash and ₱175,000.00 worth of assorted jewelry, including a Colt .45 Caliber Pistol with SN 14836 or a total of ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00) was divided by said accused between and/or among themselves to the damage and prejudice of the aforementioned victim/or his parents.[4]

[3] Records, Vol. I, pp. 260-261.

[4] *Id.* at 257-258.

In Criminal Case No. 93-132607:

That in the morning of December 20, 1993 and for sometime subsequent thereto in Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap, carry away and detain NIMFA CELIZ, against her will and consent, thus depriving her of liberty, for the purpose of extorting ransom for her release, which after payment thereof in the amount of ₱1,320,000.00 in cash and ₱175,000.00 worth of assorted jewelry, including a Colt .45 Caliber Pistol with SN 14836 or a total of ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00) was divided by said accused between and/or among themselves to the damage and prejudice of the aforementioned victim.[5]

The arraignment was held in abeyance twice.[6] Finally, the arraignment was set on 22 October 1996. Appellant and Macias, with the assistance of their counsels, however refused to enter a plea. This prompted the RTC to enter a plea of "Not Guilty" for each of them. Trial on the merits ensued.

The prosecution presented the following witnesses: Nimfa Celiz (Nimfa), Jepson Dichaves (Jepson), Police Superintendent Gilbert Cruz (P/Supt. Cruz), Police Superintendent Mario Chan (P/Supt. Chan), Police Inspector Cesar Escandor (P/Insp. Escandor) and Carolina Alejo, whose version of facts are summarized as follows:

At around 10:30 a.m. on 20 December 1993, Nimfa and her wards, siblings Jeson Kevin and Jeson Kirby Dichaves were riding in the Isuzu car of the Dichaves family, together with Yusan Dichaves (Yusan). Driver Pepito Acon (Acon) dropped off Yusan at Metrobank in Claro M. Recto Avenue, Manila. While waiting for Yusan, Acon drove along Bilibid Viejo, Sampaloc. When the vehicle passed by in front of San Sebastian

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[5] *Id.* at 260-261.

[6] The first arraignment was held in abeyance and the DOJ was ordered to conduct preliminary investigation by the Court of Appeals while the second arraignment was postponed when the Court of Appeals issued a restraining order. *See* CA *rollo,* p. 96.

Church, a stainless jeep with two men and one woman described as a *tomboy* on board, suddenly blocked its way. One of the men, who was in police uniform accosted Acon and accused him of hitting the son of a Presidential Security Group (PSG) General apparently with a stone when the vehicle ran over it. Acon denied the charges but he was transferred to the stainless jeep while the man in police uniform drove the Isuzu car. The *tomboy* sat next to Nimfa who then had Jeson Kirby sit on her lap while Jeson Kevin was sitting on the *tomboy*'s lap. They were brought to a house in Merville Subdivision, Parañaque.[7]

While still in garage of the house, Nimfa was able to sneak out of the car and place a call to the secretary of her employer to inform the latter that they were in Merville Subdivision. She came back to the car undetected and after a while, she and her wards were asked to alight from the car and they were locked inside the comfort room.[8]

Jepson was at his office at 10:00 a.m. of 20 December 1993. He received a call from his wife asking him if Nimfa or Acon called up, as she had been waiting for them at Metrobank where she was dropped off earlier. After 15 minutes, Yusan called again and was already hysterical because she could not find the car when she roamed around the area. Jepson immediately called up his brother Jaime and some police officers to inform them that his sons were missing. When Jepson arrived at Metrobank at around 11:30 a.m., he received a call from his secretary informing him that Nimfa called about their whereabouts. When Jepson got back to his office, his secretary informed him that an unidentified man called to inform them that he has custody of the children and demanded ₱26 Million.[9]

Meanwhile in Merville Subdivision, the man in police uniform introduced himself to Nimfa as Sarge. He asked Nimfa for information regarding her name and her employer's telephone

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[7] TSN, 12 December 1996, pp. 23-38.

[8] *Id.* at 43-45.

[9] TSN, 8 May 1997, pp. 8-14.

number. She feigned ignorance of those information. She even claimed that she was merely a new employee.[10] Sarge informed Nimfa that they were in Fairview and that she was asked if she knew how to go home. Nimfa chose to stay with her wards. When the phone rang, Sarge went out of the house and Nimfa again sneaked a phone call to her employer informing them that they were being held up in Merville Subdivision.[11]

Jepson, through Jaime's help, went to the house of then Vice-President Joseph Estrada (Vice-President Estrada) at 8:00 p.m. Thereat, he met General Jewel Canson (Gen. Canson), General Panfilo Lacson (Gen. Lacson) and Major Ray Aquino (Major Aquino). Vice-President Estrada ordered the police generals to rescue Jepson's sons and arrest the kidnappers.[12]

At 6:00 p.m., the kidnappers called Jepson and reduced the ransom to ₱10 Million.[13] That night, Nimfa was able to speak to Jepson when two men handed the telephone to her. She recognized one of them as appellant, because she had seen the latter in her employer's office sometime in the first week of December 1993.[14]

On the following noon of 21 December 1993, the kidnappers called up Jepson numerous times to negotiate for the ransom. In one of those calls, Jepson was able to recognize the voice of appellant because he had several business transactions with the latter and they have talked for at least a hundred times during a span of two to four years.[15]

On 22 December 1993, the parties finally agreed to a ransom of ₱1.5 Million. Jepson offered ₱1.3 Million in cash and the balance to be paid in kind, such as jewelry and a pistol.[16] Appellant

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[10] TSN, 12 December 1996, pp. 48-50.

[11] TSN, 9 January 1997, pp. 14-16.

[12] TSN, 8 May 1997, p. 18.

[13] *Id.* at 27.

[14] TSN, 9 January 1997, pp. 19-22.

[15] TSN, 8 May 1997, pp. 32-34.

[16] *Id.* at 52-53.

asked Jepson to bring the ransom alone at Pancake House in Magallanes Commercial Center. Jepson called up Gen. Canson and Gen. Lacson to inform them of the pay-off.[17]

At around 1:00 p.m. of even date, Nimfa was able to talk to Jepson and the latter informed her that they would be released that afternoon.[18] At 3:00 p.m., Jepson drove his white Toyota Corolla car and proceeded to Pancake House in Magallanes Commercial Center. He placed the money inside a gray bag and put it on the backseat. Jepson received a call from appellant at 4:00 p.m. who ordered him to put the bag in the trunk, leave the trunk unlocked, and walk away for ten (10) minutes without turning back. Later, appellant checked on his trunk and the bag was already gone. Appellant then apprised him that his sons and helper were already at the Shell Gasoline Station along South Luzon Expressway. He immediately went to the place and found his sons and helper seated at the corner of the gas station.[19]

P/Insp. Escandor was assigned to proceed to Magallanes Commercial Center, together with two other police officers. They reached the place at 3:30 p.m. and positioned themselves in front of the Maranao Arcade located at Magallanes Commercial Center. He brought a camera to cover the supposed pay-off. He took a total of 24 shots.[20] He identified Macias together with appellant in Magallanes Commercial Center and the latter as the one who took the ransom.[21]

P/Supt. Chan was one of the team leaders dispatched also at Magallanes Commercial Center in Makati on 22 December 1993 to take a video coverage on the supposed pay-off. He witnessed the pay-off and identified appellant as the one who

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[17] *Id.* at 60.

[18] TSN, 7 January 1997, pp. 41-42.

[19] TSN, 9 May 1997, pp. 6-13.

[20] TSN, 15 April 1999, pp. 8-16.

[21] *Id.* at 34-42.

took the bag containing the ransom money from the car trunk of Jepson.[22]

P/Supt. Cruz is assigned to the now defunct Presidential Anti-Crime Commission Task Force Habagat and one of the team leaders of Special Project Task Force organized on 22 December 1993 with the primary task of apprehending the kidnappers of Dichaves' children and helper. His group was assigned at Fort Bonifacio to await instructions from the overall Field Command Officer Gen. Lacson. They had been waiting from 4:00 p.m. until 6:00 p.m. when they received information that the kidnap victims were released unharmed. They were further asked to maintain their position in Fort Bonifacio. At around 7:45 p.m., they heard on their radio that the suspect's vehicle, a red Nissan Sentra was heading in their direction. A few minutes later, they saw the red car and tailed it until it reached Dasmariñas Village in Makati. They continuously followed the car inside the village. When said car slowed down, they blocked it and immediately approached the vehicle.[23]

They introduced themselves as police officers and accosted the suspect, who turned out to be appellant. Appellant suddenly pulled a .38 caliber revolver and a scuffle took place. They managed to subdue appellant and handcuffed him. Appellant was requested to open the compartment and a gray bag was found inside. P/Supt. Cruz saw money, jewelry and a gun inside the bag. Appellant was then brought to Camp Crame for questioning.[24]

At 8:00 p.m., Jepson received a call from Gen. Lacson asking him to go to Camp Crame. He and Nimfa went to Camp Crame where he saw appellant alone in the office of Gen. Canson. He then saw the bag containing the ransom money, pieces of jewelry and his gun on the table. Photographs were taken and Jepson was asked to identify them.[25]

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[22] TSN, 8 June 1999, pp. 5-11.

[23] TSN, 16 February 1999, pp. 4-13.

[24] *Id.* at 13-22.

[25] TSN, 9 May 1997, pp. 15-27.

A written inventory was prepared on the contents of the bag.[26] It was found out that a portion of the ransom money was missing. It was then that appellant revealed that the missing money was in the possession of Macias. Appellant accompanied P/Supt. Cruz and his team to the residence of Macias in Camp Aguinaldo. P/Supt. Cruz waited for Macias until 4:00 a.m. on the following day and placed him under arrest. Macias was asked where the rest of the ransom money was and Macias went inside the house and retrieved a red bag inside a small cabinet. P/Supt. Cruz prepared a receipt of the seized property from Macias. Macias placed his signature on the receipt.[27]

Carolina Alejo was the owner of the house in Merville Subdivision where the kidnap victims were detained. She stated that she leased the house to appellant. On 23 December 1993, it came to her knowledge that said house was used in the kidnapping. She noticed that the lock of the comfort room was reversed so that it could only be locked from the outside. She considered this unusual because she personally caused the door knob to be installed.[28]

The defense, on its part, presented appellant, Florinda Sese Barcelona (Ms. Sese), Dr. Jaime Leal (Dr. Leal), and retired Colonel Ramon Navarro (Col. Navarro).

Appellant testified that he came to know Jepson when he was introduced to him by Col. Navarro in 1989 as the importer of police equipment and accessories. Jepson wanted to buy revolving lights, police sirens and paging system. Through Navarro, appellant also met Macias who was then selling his security agency in July 1993. He admitted that Jepson had been lending him money since 1990 and his total borrowings amounted to ₱8.5 Million in December 1993. Appellant also knew Nimfa since 1990 and had met her five (5) times in the office of Jepson where Nimfa usually served him coffee.[29]

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[26] TSN, 16 February 1999, pp. 4-24.

[27] *Id.* at 33-42.

[28] CA *rollo*, p. 108.

[29] TSN, 12 November 1999, pp. 10-30.

In December 1993, he rented a house in Merville Subdivision for his mother. He was given the key to the house in 15 December 1993 but he denied going to said place on 20, 21, 22, 23 of December 1993.

At 3:00 p.m. of 20 December 1993, he received a call from Jepson asking for ₱1 Million, as partial payment of his loan. Jepson informed appellant that his sons were kidnapped and he requested appellant to negotiate with the kidnappers for the release of his children. Out of pity, appellant agreed. He actively participated in the negotiations between 20 to 22 of December 1993, where he successfully negotiated a lower ransom of ₱1.5 Million.

On 11:30 a.m. of 22 December 1993, Jepson again requested appellant to deliver the ransom money to the kidnappers. Appellant acceded to the request. He asked Macias, who was in his office that day, to accompany him. The kidnappers asked appellant to proceed to the Makati area and wait for further instructions. Appellant called up Jepson who told him that he would deliver the money to appellant once instructions were given by the kidnappers. The kidnappers finally called and asked appellant to proceed to Shell Gasoline Station-Magallanes. He informed Jepson of this fact and the latter asked appellant to meet him in Magallanes Commercial Center where he would just put the money inside the car trunk and leave it unlocked. Appellant took the money from Jepson's car and put it inside his car trunk and proceeded to Shell Gasoline station.[30] Appellant and Macias did not see the kidnappers and Jepson's children at the station. He tried calling Jepson but failed to communicate with him. They then decided to go back to the office in Cubao, Quezon City. At 7:00 p.m., he received a call from the kidnappers who were cursing him because they apparently went to the Shell Gasoline Station and noticed that there were many policemen stationed in the area, which prompted them to release the victims. Appellant left his office at around 7:20 p.m. to go home in Dasmariñas Village, Makati. When he was about ten (10) meters

[30] TSN, 10 December 1999, pp. 23-62.

away from the gate of his house, a car blocked his path. He saw P/Supt. Cruz, a certain Lt. Rodica and two other men alight from the car and were heavily armed. They pulled him out of the car and hit him with their firearms.[31]

Ms. Sese was at the office of appellant on 22 December 1993 when she was told by the secretary, who appeared shaken, that a caller was looking for appellant. She saw appellant arrive at the office with Macias.[32]

Dr. Leal, the medico-legal officer at Philippine National Police (PNP) Crime Laboratory, presented the medico-legal certificate of appellant and testified that the injuries of appellant could have been sustained during the scuffle.[33]

Col. Navarro introduced appellant to Jepson. He was privy to the loan transactions between appellant and Jepson where the former asked loans from the latter. He even served as guarantor of some of the obligations of appellant. When the checks issued by appellant were dishonored by the bank, Jepson filed a case against Navarro for violation of *Batas Pambansa Blg*. 22, wherein the latter was eventually acquitted.[34]

While the criminal cases were undergoing trial, Macias died. Consequently, his criminal liability is totally extinguished under Article 89, paragraph 1 of the Revised Penal Code.[35]

On 30 August 2002, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crime of kidnapping for ransom. The dispositive portion reads:

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[31] TSN, 13 December 1999, pp. 8-26.

[32] TSN, 8 December 2000, pp. 4-6.

[33] TSN, 29 May 2001, pp. 11-12.

[34] TSN, 4 June 2001, pp. 3-9.

[35] Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

WHEREFORE, premises considered herein accused Ernesto Ramos Uyboco is hereby found guilty beyond reasonable doubt of the crime of Kidnapping for Ransom penalized by Article 267 of the Revised Penal Code, as amended by R.A. 1084. He is hereby ordered to suffer the prison term of *reclusion perpetua* for three (3) counts together with the accessory penalties provided by law. He should pay private complainant Jepson Dichaves the amount of ₱150,000.00 as moral damages.

The above-described .45 Caliber Colt Pistol and 12-gauge Remington shotgun as well as the Nissan Sentra 4-Door Sedan are hereby confiscated in favor of the government.

The Warden of Metro Manila Rehabilitation Center, Camp Ricardo R. Papa, Bicutan, Taguig, Metro Manila is hereby ordered to immediately transfer the said accused to the Bureau of Corrections, National Bilibid Prison, Muntinlupa City. The Jail Director of said bureau is ordered to inform this court in writing soonest as to when the said official took custody of the accused.[36]

The trial court held that the prosecution had established with the required quantum of evidence that the elements of kidnapping for ransom were present and that appellant was the author of said crime.

Appellant filed a notice of appeal to the Supreme Court. Conformably to *People v. Mateo,*[37] this Court in a Resolution dated 6 September 2004, referred the case to the Court of Appeals for appropriate action and disposition.[38]

On 27 September 2006, the Court of Appeals affirmed *in toto* the Decision of the RTC, the dispositive portion of which reads:

WHEREFORE, the August 30, 2002 Decision of the Regional Trial Court, National Capital Judicial Region, Br. 18, Manila, in Criminal Cases Nos. 93-130980, 93-132606, and 93-132607, in convicting Ernesto Uyboco of three (3) counts of Kidnapping for Ransom is hereby AFFIRMED *in toto*. No costs.[39]

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[36] CA *rollo*, pp. 127-128.

[37] G.R. No. 147678-87, 7 July 2004, 433 SCRA 640.

[38] *Rollo*, p. 2.

[39] *Id.* at 27.

A motion for reconsideration was filed by appellant but the same was denied in a Resolution dated 22 December 2006. Hence, this appeal.

On 3 September 2007, this Court required the parties to file their respective supplemental briefs. On 25 October 2007, appellant's counsel filed a withdrawal of appearance. Appellee manifested that it is no longer filing a Supplemental Brief.[40] Meanwhile, this Court appointed the Public Attorney's Office as counsel *de oficio* for appellant. Appellee also filed a manifestation that it is merely adopting all the arguments in the appellant's brief submitted before the Court of Appeals.[41]

Appellant prays for a reversal of his conviction on three (3) counts of kidnapping for ransom based on the following assignment of errors:

I. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE DISTURBING WHISPERS OF DOUBT REPLETE IN THE PROSECUTION'S THEORY.

II. THE TRIAL COURT ERRED IN GIVING CREDENCE TO NIMFA CELIZ' TESTIMONY NOTWITHSTANDING THE INCREDIBILITY OF HER STORY.

III. THE TRIAL COURT ERRED IN PRESUMING REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS OVER THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED UYBOCO.

IV. THE TRIAL COURT ERRED IN ADMITTING THE TESTIMONY OF JEPSON DICHAVEZ NOTWITHSTANDING HIS DISPLAYED PROPENSITY FOR UNTRUTHFULNESS.

V. THE TRIAL COURT ERRED IN ADMITTING MOST OF THE OBJECT EVIDENCE PRESENTED AGAINST THE ACCUSED-APPELLANT SINCE THEY WERE PROCURED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

VI. THE TRIAL COURT ERRED IN FINDING OF FACT THAT THE MERVILLE PROPERTY LEASED BY ACCUSED-

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[40] *Id.* at 36.

[41] *Id.* at 49.

APPELLANT FROM MS. CAROLINA ALEJO WAS THE VERY SAME HOUSE WHERE NIMFA CELIZ AND HER WARDS WERE ALLEGEDLY DETAINED.

VII. THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED UYBOCO AS HAVING PARTICIPATED IN THE ABDUCTION OF JESON KEVIN, JESON KIRBY, AND NIMFA CELIZ AS NOT A SINGLE EVIDENCE ON RECORD SUPPORTS THE SAME.

VIII. THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED CONSIDERING THAT ABDUCTION, AN IMPORTANT ELEMENT OF THE CRIME, WAS NEVER ESTABLISHED AGAINST HIM.

IX. THE TRIAL COURT ERRED IN HOLDING THE ACCUSED GUILTY OF KIDNAPPING FOR RANSOM WITHOUT DISCUSSING THE PARTICIPATION OF ACCUSED MACIAS CONSIDERING THAT THE CHARGE WAS FOR CONSPIRACY.[42]

The ultimate issue in every criminal case is whether appellant's guilt has been proven beyond reasonable doubt. Guided by the law and jurisprudential precepts, this Court is unerringly led to resolve this issue in the affirmative, as we shall hereinafter discuss.

In order for the accused to be convicted of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped and kept in detained is a minor, the duration of his

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[42] CA *rollo,* pp. 192-193.

detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.[43]

We are in full accord with the findings of the trial court that these elements were proven by the prosecution, thus:

1) Accused Uyboco is a private individual;
2) Accused Uyboco together with the unidentified persons/ companions of accused Uyboco, referred to as John Does, forcibly abducted the two sons of private complainant Jepson Dichaves, namely: then five-year-old Jeson Kevin and two-year old Jeson Kirby as well as their maid or "*yaya*" Nimfa Celiz. Their abduction occurred at about 10:30 in the morning of December 20, 1993. The three victims were on board Jepson's Isuzu pick-up driven by Jepson's driver Pepito Acon. The moving pick-up was in front of San Sebastian Church, Legarda, Manila when its path was blocked by a stainless jeep. A man in white t-shirt and brown vest accosted driver Pepito for having allegedly ran over a stone that hit a son of a general working at the Presidential Security Group. Pepito was made to ride in a jeep. The same man drove the pick-up to a house in Merville Subdivision, Paranaque, Metro Manila, where the victims were illegally detained from December 20 to 23, 1993.

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3) The act of the detention or kidnapping of the three victims was indubitably illegal. Their detention was not ordered by any competent authority but by the private individual whose mind and heart were focused to illegally amassed huge amount of money thru force and coercion for personal gain;

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[43] *People v. Cruz, Jr.,* G.R. No. 168446, 18 September 2009, 600 SCRA 449, 463-464 citing *People. v. Soberano*, G.R. No. 116234, 6 November 1997, 281 SCRA 438, 446; *People v. Tan*, G.R. No. 177566, 26 March 2008, 549 SCRA 489, 498 citing *People v. Ejandra*, G.R. No. 134203, 27 May 2004, 429 SCRA 364, 381-382.

5) Both accused Uyboco and Macias had successfully extorted ransom by compelling the parents of the minors to give in to their unreasonable demands to get the huge amount of money, a gun, and pieces of jewelry x x x.[44]

These facts were based on the narrations of the prosecution's witnesses, particularly that of Nimfa, the victim herself and Jepson, the father of the two children abducted and the person from whom ransom was extorted.

Nimfa recounted how she and her wards were abducted in the morning of 20 December 2003 and detained in a house in Merville Subdivision, Parañaque, thus:

A: When we arrived at the office after awhile we boarded the pick-up and then we left, Sir.

x x x x x x x x x

A: Those who boarded the pick-up, the driver Pepito Acon, Mrs. Yusan Dichavez, the two (2) children and myself, Sir.

x x x x x x x x x

A: We proceeded to Metrobank Recto, Sir.

x x x x x x x x x

Q: And when you stopped there, what happened?

A: Mrs. Yusan Dichavez alighted in order to cross the street to go to Metrobank, Sir.

Q: And then what followed next?

A: The driver, Jeson Kirvy, Jeson Kervin and myself made a right turn and we entered an alley, Sir.

x x x x x x x x x

Q: Before reaching Legarda, do you know of any untowards incident that happened?

A: Yes, sir.

[44] CA *rollo*, p. 122.

ATTY. PAMARAN:

Q: What?

A: When we were already in front of the San Sebastian Church and Sta. Rita College there was a stainless jeep that block our path, Sir.

Q: How many persons were inside that stainless jeep, if you know?

A: I have not notice, but there were many, Sir.

Q: How did that stainless jeep stop your vehicle?

A: Our driver Pepito Acon was signaled by the persons on the stainless jeep to stay on the side, sir.

Q: What did your driver Pepito Acon do when the sign was made to him?

A: The driver stopped the pick-up and set on the side, Sir.

Q: And then what followed next after he stopped?

x x x x x x x x x

A: The man told us that we will be brought to the precinct because when we then make a turn at Kentucky a stone was ran and hit the son of the General of PSG from Malacañang, Sir.

x x x x x x x x x

Q: What did Pepito Acon do? When told to alight?

A: Pepito Acon alighted, Sir.

Q: Then what followed next?

A: After that Pepito alighted and the man who came from the stainless jeep boarded and he was the one who drove, Sir.

x x x x x x x x x

A: When that man boarded the pick-up there was a T-bird who also boarded on the passenger's side, Sir.

x x x x x x x x x

Q: When you entered the gate of Merville Subdivision, where did you proceed?

A: When we entered the gate there was a street which I do not know and when we went straight as to my estimate we were going back to the main gate, Sir.

x x x x x x x x x

A: The pick-up stopped in front of a low house near the gate, Sir.

Q: When you stopped in front of the gate, that house which is low, what happened?

A: The *tomboy* alighted and opened the gate of that low house, Sir.

Q: What followed next after the *tomboy* opened the gate?

A: After the *tomboy* opened the gate, the driver entered the pick-up inside, Sir.

x x x x x x x x x

Q: And when you entered the house, what happened?

A: When we entered the house we were confined at the comfort room, Sir.[45]

Jepson gave an account how appellant demanded ransom from him and eventually got hold of the money, thus:

A: Then Macias offered the release of the two (2) boys for 1.5 Million each, Sir.

A: Then I started begging and bargaining with them and then suddenly Uyboco was again the one continuing the conversation, Sir.

Q: What did you say?

A: After some bargaining and beggings he reduced the demand to 1.7 million, and he asked for my wife to talk to because according to him I was very hard to talk too, Sir.

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[45] TSN, 12 December 1996, pp. 24-45.

ATTY. PAMARAN:

Q: You said he, to whom are you referring?

A: To Mr. Uyboco, Sir.

Q: What followed?

A: After some more bargaining and begins he further reduced their demand to1.5 million x x x.

x x x x x x x x x

Q: And after that what followed?

A: I offered them to fill up the different (*sic*) in kind, Sir.

Q: Why to offer the different (*sic*) in kind?

A: To fill up the different (sic) between 1.3 million to 1.5 million, Sir.

Q: So in short, how much cash did you offer?

A: I offered it for 1.3 million, Sir.

Q: How about the different (sic), what will it be?

A: At this point, he asked me to include my gun, Sir.

Q: How about the other balance?

A: My jewelry, Sir.[46]

x x x x x x x x x

Q: And what did you do after you were in possession of the money, the jewelries, the gun and the bag?

A: I returned to my office and put the cash in the bag.

Q: In short, what were those inside the bag?

A: The ₱1.325 million money, the gun and the assorted jewelries.

Q: And after placing them inside the bag, what happened?

A: I left my office at 3:00 PM to proceed to the Pancake House at the Magallanes Commercial Center.

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[46] TSN, 8 May 1997, pp. 51-54.

Q: Where did you place that bag?

A: That bag, at that time, was placed at the back seat when I was going to the Pancake House.

x x x x x x x x x

Q: What else did he tell you?

A: x x x He told me to put the ransom bag x x x inside my trunk compartment, leave it and lock the car, and walk away without looking back for ten (10) minutes.

Q: After that instruction, what happened, or what did you do?

A: After few minutes, he called again. He told me to drive and park the car beside the car Mitsubishi Colt Mirage with Plate NO. NRZ-863.

Q: Did he tell you where was that Colt Mirage car parked?

A: Yes, in front of the Mercury Drug Store.

Q: And then, what did you do?

A: I followed his instruction.

Q: And what followed next?

A: After few more minutes, he called again and asked if I am in front of the Mercury Drug Store already.

Q: And what was your answer?

A: I told him yes and he again gave me the final arrangement, but he uttered I walk back towards the Pancake House without looking back for ten (10) minutes.

Q: And?

A: And informing me the whereabouts of my sons.

ATTY. PAMARAN:

Q: Did you comply with that instruction?

A: Yes, sir.

Q: What did you do?

A: I walked towards the Pancake House without looking back for more than ten (10) minutes.

Q: That car that you parked near the Mitsubishi Colt, how far was your car the parked form that Colt Mirage?

A: Beside the Colt Mirage, Sir.

Q: And after you parked the car, what followed?

A: I walked towards the Pancake House without looking back and then I turned to the back of the supermarket and I checked my trunk and saw that the bag is gone already.

Q: And what followed thereafter?

A: A few minutes, Uyboco called up and told me that my sons were at the shell station after the Magallanes Commercial Center inside the *Bibingkahan*.[47]

Now, appellant seeks to destroy the credibility of these witnesses by imputing inconsistencies, untruthfulness and incredibility in their testimonies.

Appellant harps on the supposed inconsistencies in the testimony of Nimfa, namely: First, Nimfa stated that on the day they were to be released, they, together with Macias, left Merville Subdivision at 4:00 p.m. while appellant stayed behind. However, P/Insp. Escandor testified that at around 4:00 p.m., he saw Macias and appellant at Magallanes Commercial Center. Second, Nimfa could not properly identify the number of kidnappers. Third, Nimfa failed to state in her affidavit and during the direct examination that Sarge had a gun, but later on cross-examination, she intimated that Sarge had a gun. Fourth, it was incredible that Nimfa was able to identify the route taken by the kidnappers to the safe house because she was not allegedly blindfolded. Fifth, it was strange for Nimfa to say that two persons, Macias and appellant, were holding the receiver and the dialing mechanism whenever they hand the phone to her. Sixth, it was impossible for Nimfa to have access to an operational telephone while in captivity.[48] The Court of Appeals correctly dismissed these inconsistencies as immaterial, in this wise:

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[47] TSN, 9 May 1997, pp. 5-12.

[48] CA *rollo*, pp. 211-225.

The purported inconsistencies and discrepancies involve estimations of time or number; hence, the reference thereto would understandably vary. The rule is that inconsistencies in the testimonies of prosecution witnesses on minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimonies. The inconsistencies and discrepancies of the testimonies, in the case at bar, are not of such nature as would warrant the reversal of the decision appealed from. On the contrary, such trivial inconsistencies strengthen, rather than diminish, Celiz' testimony as they erase suspicion that the same was rehearsed.

The fact that Uyboco and his companions neither donned masks to hide their faces nor blindfolded or tied up their victims goes to show their brazenness in perpetrating the crime. Besides, familiarity with the victims or their families has never rendered the commission of the crime improbable, but has in fact at times even facilitated its commission. Moreover, the fact that there was a usable phone in the house where Celiz and the kids were held captive only proves that, in this real world, mistakes or blunders are made and there is no such thing as a perfect crime. On a different view, it may even be posited that the incredible happenings narrated by Celiz only highlights the brilliance of Uyboco and his companions. Verily, in committing the crime of kidnapping with ransom, they adopted and pursued unfamiliar strategies to confuse the police authorities, the victim, and the family of the victims.[49]

Appellant then zeroes in on Jepson and accuses him of lying under oath when he claimed that appellant owed him only ₱2.3 Million when in fact, appellant owed him ₱8.5 Million. Appellant charges Jepson of downplaying his closeness to him when in fact they had several business deals and Jepson would address appellant as "Ernie." Moreover, it was unbelievable for Jepson to be able to identify with utmost certainty that the kidnapper he was supposedly talking to was appellant. Finally, appellant claims that Jepson's motive to maliciously impute a false kidnapping charge against him boils down to money. Among the businesses that Jepson owns was along the same line of

[49] *Rollo*, pp. 19-20.

business as that of appellant, which is the supply of police equipment to the PNP. To eliminate competition and possibly procure all contracts from the PNP and considering his brother's close association to then Vice-President Estrada, Jepson crafted and executed a frame up of appellant.

And the Court of Appeals had this to say:

> For one, the strategy used, which is the use of unconventional or not so commonly used strategy, to apprehend the kidnappers of Celiz and the Dichaves' children is, by reason of their special knowledge and expertise, the police operatives' call or prerogative. Accordingly, in the absence of any evidence that said agents falsely testified against Uyboco, We shall presume regularity in their performance of official duties and disregard Uyboco's unsubstantiated claim that he was framed up.
>
> Secondly, matters of presentation of witnesses by the prosecution and the determination of which evidence to present are not for Uyboco or even the trial court to decide, but the same rests upon the prosecution. This is so since Section 5, Rule 110 of the Revised Rules of Court expressly vests in the prosecution the direction and control over the prosecution of a case. As the prosecution had other witnesses who it believes could sufficiently prove the case against Uyboco, its non-presentation of other witnesses cannot be taken against the same.[50]

Time and again, this court has invariably viewed the defense of frame-up with disfavor. Like the defense of *alibi*, it can be just as easily concocted.[51]

We are inclined to accord due weight and respect to the ruling of the lower courts in giving credence to the positive testimonies of Nimfa and Jepson, both pointing to appellant as one of the kidnappers. Both witnesses testified in a clear and categorical manner, unfazed by efforts of the defense to discredit them. As a rule, the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial

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[50] *Id.* at 22.

[51] *People v. Silongan,* 449 Phil. 478, 497 (2003).

court, which had a unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude.[52] While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial, as in this case, cannot render a valid and just decision, since the latter can very well rely on the transcribed stenographic notes taken during the trial as the basis of his decision.[53]

Appellant raises questions which purportedly tend to instill doubt on the prosecution's theory, thus:

> If Uyboco is really the mastermind of the kidnapping syndicate, why would he demand only ₱1.325M x x x as ransom? Why would he be the one to personally pick-up the ransom money using his own car registered in his son's name? Why did he not open the bag containing the ransom to check its contents? Why would he be the one to personally hand the phone to Nimfa Celiz without any mask covering his face x x x. Why would he go back to his family residence x x x with the ransom money still intact in the trunk of his car?
>
> If Nimfa Celiz and her wards were indeed kidnapped, why were they not blindfolded x x x? Why were they not tied x x x?
>
> x x x x x x x x x
>
> If it is true that the house at Merville, Parañaque was used by accused-appellant Uyboco as the place of the alleged detention x x x how come Uyboco signed the lease contract under his own name? x x x Certainly, any person with the education attainment of at least high school degree, much more so an established businessman like accused-appellant would know that the lease contract and the post-dated checks are incriminating evidence.
>
> x x x (h)ow come no effort was exerted in apprehending Uyboco during day 1 of the kidnapping? x x x Why is their story focused only on

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[52] *People v. Morales*, G.R. No. 148518, 15 April 2004, 427 SCRA 765, 784.

[53] *People v. Pacapac*, G.R. No. 90623, 7 September 1995, 248 SCRA 77, 92.

the day of the ransom payment? Why did they not apply for a warrant of arrest against accused-appellant Uyboco when they supposedly knew that from day 1, he was the kidnapper?

Why were there no tapes presented in evidence which recorded the conversations between the kidnappers x x x.[54]

Furthermore, appellant stresses that his financial status as an established and well-off businessman negates any motive on his part to resort to kidnapping.

If we indulge appellant's speculations, we could readily provide for the answers to all these questions – that appellant originally demanded ₱26 Million but this had been substantially reduced due to aggressive bargaining and negotiations; that appellant personally picked up the ransom money because he could not trust anybody to do the work for him; that appellant did not open the bag containing the money because he trusted Jepson, who then out of fear, would deliver as instructed; that appellant did not cover his face in front of Nimfa because he thought Nimfa would not recognize him; that appellant went back to his family residence because he never thought that Jepson would recognize him as the voice behind one of the kidnappers; that the victims were not blindfolded or tied because Nimfa, who appeared to be ignorant to the kidnappers and the two children barely 5 years old would be emboldened to escape; that appellant never thought that the police would discover the place of detention; that the police employed a different strategy, which is to first secure the victims before they apprehend the kidnappers; that to secure a warrant would be futile as the police then did not have sufficient evidence to pin down appellant to the crime of kidnapping; that there were no actual record of the telephone conversations between Jepson and the kidnappers.

However, to individually address each and every question would be tantamount to engaging in a battle of endless speculations, which do not have a place in a court of law where proof or hard evidence takes precedence. On the other hand,

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[54] CA *rollo,* pp. 203-205.

the prosecution presented testimonies and evidence to prove that kidnapping occurred and that appellant is the author thereof.

Appellant seeks to pierce the presumption of regularity enjoyed by police officers to anchor his argument that he has been framed up. He belittles the efforts of the police officers who participated in the operation. Appellant claims that despite knowledge of the place of alleged detention, the police did not try to rescue the kidnap victims. Appellant also notes that while P/Supt. Chan denies installing any listening device to record the conversations of the kidnappers and Jepson, the interview made by a reporter for a television network shows that Major Aquino admitted to taped conversations of appellant's alleged negotiations for the ransom with Jepson. Appellant insists that these taped conversations do exist.

Appellant cannot rely on a vague mention of an interview, if it indeed exists, to discredit the testimony of P/Supt. Chan. The truth of the matter is appellant failed to prove the existence of the alleged taped conversations. The matters of failure of the police officer to properly document the alleged pay-off, the non-production of the master copy of the video tape, and the chain of custody supposedly broken are not semblance of neglect so as to debunk the presumption of regularity. In the absence of proof of motive on the part of the police officers to falsely ascribe a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the trial court's assessment on the credibility of the apprehending officers, shall prevail over the accused's self-serving and uncorroborated claim of frame-up.[55]

Appellant then questions the validity of his arrest and the search conducted inside his car in absence of a warrant. The arrest was validly executed pursuant to Section 5, paragraph (b) of Rule 113 of the Rules of Court, which provides:

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[55] *People v. Gutierrez*, G.R. No. 177777, 4 December 2009, 607 SCRA 377, 384 citing *Mamangun v. People*, G.R. No. 149152, 2 February 2007, 514 SCRA 44, 53; *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

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 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 has 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. (Emphasis supplied)

The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it.[56]

Records show that both requirements are present in the instant case. The police officers present in Magallanes Commercial Center were able to witness the pay-off which effectively consummates the crime of kidnapping. They all saw appellant take the money from the car trunk of Jepson. Such knowledge was then relayed to the other police officers stationed in Fort Bonifacio where appellant was expected to pass by.

Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

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[56] *People v. Agojo*, G.R. No. 181318, 16 April 2009, 585 SCRA 652, 664-665.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes.[57]

It is sufficient for the arresting team that they were monitoring the pay-off for a number of hours long enough for them to be informed that it was indeed appellant, who was the kidnapper. This is equivalent to personal knowledge based on probable cause.

Likewise, the search conducted inside the car of appellant was legal because the latter consented to such search as testified by P/Supt. Cruz. Even assuming that appellant did not give his consent for the police to search the car, they can still validly do so by virtue of a search incident to a lawful arrest under Section 13, Rule 126 of the Rules of Court which states:

> SEC. 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.[58] Therefore,

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[57] *Abelita III v. Doria,* G.R. No. 170672, 14 August 2009, 596 SCRA 220, 226-227 citing *People v. Cubcubin, Jr.*, 413 Phil. 249, 267 (2001); *Umil v. Ramos*, G.R. No. 81567, 3 October 1991, 202 SCRA 251, 261; *People v. Lozada*, 454 Phil. 241, 250-251 (2003).

[58] *Valeroso v. Court of Appeals*, G.R. No. 164815, 3 September 2009, 598 SCRA 41, 55-56 citing *People v. Cueno*, 359 Phil. 151, 163 (1998); *People v. Cubcubin, Jr*., *id.* at 271; *People v. Estella*, 443 Phil. 669, 683 (2003).

it is only but expected and legally so for the police to search his car as he was driving it when he was arrested.

Appellant avers that it was not proven that appellant was present and in fact participated in the abduction of the victims. Lacking this element, appellant should have been acquitted. In a related argument, appellant contends that conspiracy was not proven in the execution of the crime, therefore, appellant's participation was not sufficiently established.

The Court of Appeals effectively addressed these issues, to wit:

The prosecution was able to prove that: 1) At the time of the kidnapping, the house where Celiz and the Dichaves' children were kept was being leased by Uyboco; 2) Uyboco was present in the said house at the time when Celiz and the Dichaves' children were being kept thereat; 3) there being no evidence to the contrary, Uyboco's presence in the same is voluntary; 4) that Uyboco has in his possession some of the ransom payment; and, 5) that Uyboco was the one who told them that the balance of the ransom payment is with Macias. All these circumstances clearly point out that Uyboco, together with several unidentified persons, agreed or decided and conspired, to commit kidnapping for ransom.

x x x x x x x x x

x x x Uyboco's claim, that since it was not proven that he was one of the passengers of the jeep which waylaid the Dichaves' vehicle on December 20, 1993, he could not be convicted of kidnapping for ransom considering that his participation, if any, was merely to provide the house where the victims were kept, is misplaced.

Moreover, to Our mind, it is inconceivable that members of a kidnapping syndicate would entrust the performance of an essential and sensitive phase of their criminal scheme, *i.e.* possession of the ransom payment, to people not in cahoots with them, and who had no knowledge whatsoever of the details of their nefarious plan.[59]

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[59] *Rollo*, pp. 24-25.

The testimonies of Nimfa and Jepson sufficiently point to the participation of appellant. While he was not present during the abduction, he was present in the house where the victims were detained, oftentimes giving the phone to Nimfa to talk to Jepson. He also actively demanded ransom from Jepson. The conspiracy was likewise proven by the above testimonies. Appellant conspired with Macias and other John Does in committing the crime. Therefore, even with the absence of appellant in the abduction stage, he is still liable for kidnapping for ransom because in conspiracy, the act of one is the act of all.[60]

Based on the foregoing, we sustain appellant's conviction.

WHEREFORE, the Decision dated 30 August 2002 in Criminal Case Nos. 93-130980, 93-132606, and 93-132607 RTC, Branch 18, Manila, finding Ernesto Uyboco *y* Ramos guilty of kidnapping for ransom, and the Decision dated 27 September 2006 of the Court of Appeals, affirming *in toto* the Decision of the RTC, are *AFFIRMED*.

SO ORDERED.

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

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[60] *People v. Pangilinan*, 443 Phil. 198, 239 (2003) citing *People v. Boller*, 429 Phil. 754, 766 (2002); *People v. Bacungay*, 428 Phil. 798 (2002); *People v. Manlansing*, 428 Phil. 743, 756 (2002).

SECOND DIVISION

[G.R. No. 178044. January 19, 2011]

ALAIN M. DIÑO, *petitioner, vs.* **MA. CARIDAD L. DIÑO**, *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLES 147 AND 148 THEREOF, WHEN APPLICABLE.— The Court has ruled in *Valdes v. RTC, Branch 102, Quezon City* that in a void marriage, regardless of its cause, the property relations of the parties during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code. Article 147 of the Family Code applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void, such as petitioner and respondent in the case before the Court.

2. ID.; ID.; ID.; ELEMENTS FOR APPLICABILITY OF ARTICLE 147 OF THE FAMILY CODE, PRESENT.— For Article 147 of the Family Code to apply, the following elements must be present: (1) The man and the woman must be capacitated to marry each other; (2) They live exclusively with each other as husband and wife; and (3) Their union is without the benefit of marriage, or their marriage is void. All these elements are present in this case and there is no question that Article 147 of the Family Code applies to the property relations between petitioner and respondent.

3. ID.; ID.; ID.; SECTION 19 OF THE RULE ON DECLARATION OF ABSOLUTE NULLITY OF NULL MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES (THE RULE) DOES NOT APPLY TO CASES GOVERNED BY ARTICLES 147 AND 148 OF THE FAMILY CODE.— We agree with petitioner that the trial court erred in ordering that a decree of absolute nullity of marriage shall be issued only after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code. The ruling has no basis because Section 19(1) of the Rule does not apply to cases governed under Articles 147 and 148 of the Family Code.

4. **ID.; ID.; THE RULE APPLIES ONLY TO MARRIAGES WHICH ARE DECLARED VOID *AB INITIO* UNDER ARTICLES 40 AND 45 OF THE FAMILY CODE.—** It is clear from Article 50 of the Family Code that Section 19(1) of the Rule applies only to marriages which are declared void *ab initio* or annulled by final judgment **under Articles 40 and 45 of the Family Code**. In short, Article 50 of the Family Code does not apply to marriages which are declared void *ab initio* under Article 36 of the Family Code, which should be declared void without waiting for the liquidation of the properties of the parties.

5. **ID.; ID.; DIFFERENT SITUATIONS CONTEMPLATED BY ARTICLES 40 AND 45 OF THE FAMILY CODE.—** Article 40 of the Family Code contemplates a situation where a second or bigamous marriage was contracted. Under Article 40, "[t]he absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." x x x Article 45 of the Family Code, on the other hand, refers to voidable marriages, meaning, marriages which are valid until they are set aside by final judgment of a competent court in an action for annulment. In both instances under Articles 40 and 45, the marriages are governed either by absolute community of property or conjugal partnership of gains unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by absolute community of property or conjugal partnership of gains, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued. That is not the case for annulment of marriage under Article 36 of the Family Code because the marriage is governed by the ordinary rules on co-ownership.

6. **ID.; ID.; WHERE THE MARRIAGE WAS DECLARED VOID UNDER ARTICLE 36 OF THE FAMILY CODE, THE LIQUIDATION OF PROPERTIES OWNED IN COMMON BY THE PARTIES SHALL BE GOVERNED BY THE RULES ON CO-OWNERSHIP.—** In this case, petitioner's marriage to respondent was declared void under Article 36 of the Family Code and not under Article 40 or 45. Thus, what governs the liquidation of properties owned in common by petitioner and respondent are the rules on co-ownership. In *Valdes*, the Court ruled that the property relations of parties in a void marriage

during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code. The rules on co-ownership apply and the properties of the spouses should be liquidated in accordance with the Civil Code provisions on co-ownership. Under Article 496 of the Civil Code, "[p]artition may be made by agreement between the parties or by judicial proceedings. x x x." It is not necessary to liquidate the properties of the spouses in the same proceeding for declaration of nullity of marriage.

APPEARANCES OF COUNSEL

Riguera & Riguera Law Office for petitioner.

D E C I S I O N

CARPIO, *J.*:

<u>The Case</u>

Before the Court is a petition for review[1] assailing the 18 October 2006 Decision[2] and the 12 March 2007 Order[3] of the Regional Trial Court of Las Piñas City, Branch 254 (trial court) in Civil Case No. LP-01-0149.

<u>The Antecedent Facts</u>

Alain M. Diño (petitioner) and Ma. Caridad L. Diño (respondent) were childhood friends and sweethearts. They started living together in 1984 until they decided to separate in 1994. In 1996, petitioner and respondent decided to live together again. On 14 January 1998, they were married before Mayor Vergel Aguilar of Las Piñas City.

On 30 May 2001, petitioner filed an action for Declaration of Nullity of Marriage against respondent, citing psychological incapacity under Article 36 of the Family Code. Petitioner alleged that respondent failed in her marital obligation to give love and

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 28-34. Penned by Presiding Judge Gloria Butay Aglugub.

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

support to him, and had abandoned her responsibility to the family, choosing instead to go on shopping sprees and gallivanting with her friends that depleted the family assets. Petitioner further alleged that respondent was not faithful, and would at times become violent and hurt him.

Extrajudicial service of summons was effected upon respondent who, at the time of the filing of the petition, was already living in the United States of America. Despite receipt of the summons, respondent did not file an answer to the petition within the reglementary period. Petitioner later learned that respondent filed a petition for divorce/dissolution of her marriage with petitioner, which was granted by the Superior Court of California on 25 May 2001. Petitioner also learned that on 5 October 2001, respondent married a certain Manuel V. Alcantara.

On 30 April 2002, the Office of the Las Piñas prosecutor found that there were no indicative facts of collusion between the parties and the case was set for trial on the merits.

Dr. Nedy L. Tayag (Dr. Tayag), a clinical psychologist, submitted a psychological report establishing that respondent was suffering from Narcissistic Personality Disorder which was deeply ingrained in her system since her early formative years. Dr. Tayag found that respondent's disorder was long-lasting and by nature, incurable.

In its 18 October 2006 Decision, the trial court granted the petition on the ground that respondent was psychologically incapacited to comply with the essential marital obligations at the time of the celebration of the marriage.

The Decision of the Trial Court

The trial court ruled that based on the evidence presented, petitioner was able to establish respondent's psychological incapacity. The trial court ruled that even without Dr. Tayag's psychological report, the allegations in the complaint, substantiated in the witness stand, clearly made out a case of psychological incapacity against respondent. The trial court found that respondent committed acts which hurt and embarrassed petitioner and the rest of the family, and that respondent failed to observe mutual love, respect and

fidelity required of her under Article 68 of the Family Code. The trial court also ruled that respondent abandoned petitioner when she obtained a divorce abroad and married another man.

The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Declaring the marriage between plaintiff ALAIN M. DIÑO and defendant MA. CARIDAD L. DIÑO on January 14, 1998, and all its effects under the law, as NULL and VOID from the beginning; and

2. Dissolving the regime of absolute community of property.

A DECREE OF ABSOLUTE NULLITY OF MARRIAGE shall only be issued upon compliance with Article[s] 50 and 51 of the Family Code.

Let copies of this Decision be furnished the parties, the Office of the Solicitor General, Office of the City Prosecutor, Las Piñas City and the Office of the Local Civil Registrar of Las Piñas City, for their information and guidance.

SO ORDERED.[4]

Petitioner filed a motion for partial reconsideration questioning the dissolution of the absolute community of property and the ruling that the decree of annulment shall only be issued upon compliance with Articles 50 and 51 of the Family Code.

In its 12 March 2007 Order, the trial court partially granted the motion and modified its 18 October 2006 Decision as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1) Declaring the marriage between plaintiff ALAIN M. DIÑO and defendant MA. CARIDAD L. DIÑO on January 14, 1998, and all its effects under the law, as NULL and VOID from the beginning; and

2) Dissolving the regime of absolute community of property.

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[4] *Id.* at 34.

A DECREE OF ABSOLUTE NULLITY OF MARRIAGE shall be issued after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code.

Let copies of this Order be furnished the parties, the Office of the Solicitor General, the Office of the City Prosecutor of Las Piñas City and the Local Civil Registrar of Las Piñas City, for their information and guidance.[5]

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the trial court erred when it ordered that a decree of absolute nullity of marriage shall only be issued after liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code.

The Ruling of this Court

The petition has merit.

Petitioner assails the ruling of the trial court ordering that a decree of absolute nullity of marriage shall only be issued after liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code. Petitioner argues that Section 19(1) of the Rule on Declaration of Absolute Nullity of Null Marriages and Annulment of Voidable Marriages[6] (the Rule) does not apply to Article 147 of the Family Code.

We agree with petitioner.

The Court has ruled in *Valdes v. RTC, Branch 102, Quezon City* that in a void marriage, regardless of its cause, the property relations of the parties during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code.[7] Article 147 of the Family Code applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage,

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[5] *Id.* at 46.

[6] A.M. No. 02-11-10-SC, effective 15 March 2003.

[7] 328 Phil. 1289 (1996).

but whose marriage is nonetheless void,[8] such as petitioner and respondent in the case before the Court.

Article 147 of the Family Code provides:

Article 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

For Article 147 of the Family Code to apply, the following elements must be present:

1. The man and the woman must be capacitated to marry each other;
2. They live exclusively with each other as husband and wife; and

[8] *Mercado-Fehr v. Bruno Fehr*, 460 Phil. 445 (2003).

3. Their union is without the benefit of marriage, or their marriage is void.[9]

All these elements are present in this case and there is no question that Article 147 of the Family Code applies to the property relations between petitioner and respondent.

We agree with petitioner that the trial court erred in ordering that a decree of absolute nullity of marriage shall be issued only after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code. The ruling has no basis because Section 19(1) of the Rule does not apply to cases governed under Articles 147 and 148 of the Family Code. Section 19(1) of the Rule provides:

Sec. 19. *Decision*. - (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

The pertinent provisions of the Family Code cited in Section 19(1) of the Rule are:

Article 50. The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45.[10]

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody

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[9] *Id*.

[10] Article 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

(1) The children of the subsequent marriage conceived prior to its termination shall be considered legitimate and their custody and support in case of dispute shall be decided by the court in a proper proceeding;

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property

and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

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shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.

Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

Article 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

(2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

(3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

(4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

(5) That either party was physically incapable of consummating the marriage with the other and such incapacity continues and appears to be incurable; or

(6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

All creditors of the spouses as well as of the absolute community of the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

Article 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children of their guardian, or the trustee of their property, may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

It is clear from Article 50 of the Family Code that Section 19(1) of the Rule applies only to marriages which are declared void *ab initio* or annulled by final judgment **under Articles 40 and 45 of the Family Code**. In short, Article 50 of the Family Code does not apply to marriages which are declared void *ab initio* under Article 36 of the Family Code, which should be declared void without waiting for the liquidation of the properties of the parties.

Article 40 of the Family Code contemplates a situation where a second or bigamous marriage was contracted. Under Article 40, "[t]he absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." Thus we ruled:

x x x where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring a previous marriage void.[11]

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[11] *Nicdao Cariño v. Yee Cariño*, 403 Phil. 861 (2001).

Article 45 of the Family Code, on the other hand, refers to voidable marriages, meaning, marriages which are valid until they are set aside by final judgment of a competent court in an action for annulment.[12] In both instances under Articles 40 and 45, the marriages are governed either by absolute community of property[13] or conjugal partnership of gains[14] unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by absolute community of property or conjugal partnership of gains, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued. That is not the case for annulment of marriage under Article 36 of the Family Code because the marriage is governed by the ordinary rules on co-ownership.

In this case, petitioner's marriage to respondent was declared void under Article 36[15] of the Family Code and not under Article 40 or 45. Thus, what governs the liquidation of properties owned in common by petitioner and respondent are the rules on co-ownership. In *Valdes*, the Court ruled that the property relations of parties in a void marriage during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code.[16] The rules on co-ownership apply and the properties of the spouses should be liquidated in accordance with the Civil Code provisions on co-ownership. Under Article 496 of the Civil Code, "[p]artition may be made by agreement between the parties or by judicial proceedings. x x x." It is not necessary to liquidate the properties of the spouses in the same proceeding for declaration of nullity of marriage.

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[12] *Suntay v. Cojuangco-Suntay*, 360 Phil. 932 (1998).

[13] Article 88 of the Family Code.

[14] Article 105 of the Family Code.

[15] Article 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.

[16] *Supra* note 7.

WHEREFORE, we *AFFIRM* the Decision of the trial court with the *MODIFICATION* that the decree of absolute nullity of the marriage shall be issued upon finality of the trial court's decision without waiting for the liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179617. January 19, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ASIAN TRANSMISSION CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, ACCORDED RESPECT.—** Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, this Court more explicitly pronounced: Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect.

2. **TAXATION; TAX REFUND; CLAIM FOR TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR UNUTILIZED CREDITABLE WITHHOLDING TAXES, SUFFICIENTLY ESTABLISHED; PROOF OF ACTUAL REMITTANCE, NOT NEEDED.—** [T]he CIR is correct in stating

that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be refunded is correct. In this case, however, the CTA-First Division and the CTA-*En Banc* uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of ₱27,325,856.58. The Court finds no cogent reason to rule differently. As correctly noted by the CTA-*En Banc*: x x x proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Agan & Montenegro Law Offices for respondent.

DECISION

MENDOZA, *J.*:

This case is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue *(CIR)* seeking to reverse and set aside the July 16, 2007 Decision[1] of the Court of Tax Appeals *En Banc (CTA-En Banc),* in C.T.A. EB No. 205 and its September 11, 2007 Resolution[2] denying its motion for reconsideration.

Through the assailed issuances, the CTA-*En Banc* affirmed *in toto* the Decision[3] and the Amended Decision[4] of its First Division *(CTA-First Division)* in CTA Case No. 9282 ordering the CIR to refund or issue a tax credit certificate in favor of respondent Asian Transmission Corporation *(ATC)* for unutilized creditable withholding taxes for the taxable year 2001.

From the records, it appears that ATC is a domestic corporation engaged in the manufacture of automotive parts. It filed its annual Income Tax Return *(ITR)* for the year 2000[5] on April 10, 2001 where it declared a gross income of ₱370,532,082.00, a net loss of ₱279,926,225.00 and a minimum corporate income tax *(MCIT)* of ₱7,410,642.00. The MCIT due was offset against the ₱38,301,198.00 existing tax credits and creditable taxes withheld of the ATC, thereby leaving an excess tax credit or overpayment of ₱30,890,556.00, as shown below:

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[1] *Rollo*, pp. 42-53. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] *Id.* at 70-73.

[3] *Id.* at 54-64.

[4] *Id.* at 65-69.

[5] *Id.* at 89-91.

MCIT		₱ 7,410,642.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	₱23,250,734.00	
b. Creditable Tax Withheld for First Three Quarters	11,868,132.00	
c. Creditable Tax Withheld for the Fourth Quarter	3,121,256.00	
d. Foreign Tax Credits	61,076.00	38,301,198.00
Total Overpayment		₱30,890,556.00

For the ₱30,890,556.00 overpayment, ATC opted "To be issued a Tax Credit Certificate."

In its ITR for the year 2001,[6] ATC declared a gross income of ₱322,839,802.00, a net loss of ₱37,869,455.00, and MCIT of ₱6,456,796.00. After deducting its MCIT due against its existing tax credits and creditable taxes, ATC was left with a total tax credit of ₱51,760,312.00 detailed as follows:

MCIT		₱ 6,456,796.00
Less: Tax Credit/Payments		
a. Prior Year's Excess Credits	₱ 30,890,556.00	
b. Creditable Tax Withheld for First Three Quarters	12,405,573.00	
c. Creditable Tax Withheld for the Fourth Quarter	14,920,979.00	58,217,108.00
Total Overpayment		₱51,760,312.00

ATC, however, applied part of its unutilized creditable taxes for the year 2000 amounting to ₱7,639,822.00 to its MCIT due of ₱6,456,796.00 for the year 2001. Left unapplied of its 2000 creditable taxes, therefore, was the amount of ₱1,183,026.00 as shown in the following computation:

Creditable Tax Withheld for the First Three Quarters of 2000	₱	11,868,132.00
Creditable Tax Withheld for the Fourth Quarter of 2000	₱	3,121,256.00
Foreign Tax Credits for 2000		61,076.00

[6] *Id.* at 92-94.

Total	₱	15,050,464.00
Less: 2000 MCIT		7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	₱	7,639, 822.00
Less: 2001 MCIT	₱	6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	₱	1,183,026.00

Again, ATC opted "To be issued a Tax Credit Certificate" for the excess income tax payment.

On April 9, 2003, ATC filed with CIR's Large Taxpayers Service an administrative claim[7] for the issuance of tax credit certificate or cash refund in the amount of ₱28,509,578.00, representing excess/unutilized creditable income taxes withheld as of December 31, 2001, to wit:

Remaining Unutilized 2000 Creditable Taxes Withheld		₱1,183,026.00
Unapplied 2001 Creditable Taxes Withheld:		
a. Creditable Tax Withheld for the First Three Quarters of 2001	₱ 12,405,573.00	
b. Creditable Tax Withheld for the Fourth Quarter of 2001	14,920,979.00	27,326,552.00
Total		₱28,509,578.00

The next day, on April 10, 2003, ATC filed a petition for review[8] with the CTA without waiting for an action from the CIR to avoid the prescriptive period under Section 229 of the Tax Code.

On July 30, 2003, both parties filed a Joint Stipulation of Facts and Issues with the CTA-First Division, submitting the following issues for consideration of the tax tribunal:

1. Whether petitioner's claim for refund was filed within the two-year prescriptive period as prescribed under Section 204 and 229 of the NIRC;

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[7] *Id.* at 78-80.

[8] *Id.* at 81-88.

2. Whether the income upon which the creditable taxes withheld were included and reported as income in the income tax returns of petitioner for both years;

3. Whether the creditable taxes are duly substantiated by the necessary statement issued by the withholding agent to the petitioner, showing the amount paid and the amount of the tax withheld therefrom;

4. Whether petitioner incurred a net loss of ₱279,926,225.00 and ₱37,869,455.00 during the taxable years 2000 and 2001, respectively; and

5. Whether petitioner is entitled to the refund and/or credit of the amount of 28,509,578.00 representing its excess/unutilized creditable income taxes as of December 31, 2001.

After the CTA-First Division approved the Joint Stipulation of Facts and Issues, the case was submitted for decision.[9]

On March 20, 2006, the CTA-First Division rendered its Decision partially granting ATC's claim for refund on its unutilized creditable withholding taxes for the taxable year 2001, *viz*:

WHEREFORE, 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 ₱24,325,856.58 representing the unutilized creditable withholding taxes for the taxable year 2001.

The CTA-First Division found that, contrary to the contentions of the CIR, ATC was able to establish the factual basis for its claim for refund or for the issuance of a tax credit certificate, and that the same was filed within the period prescribed under Section 229 of the Tax Code. Thus, it was written:

In the case of *Citibank N.A. vs. Court of Appeals*, the Supreme Court emphasized that the burden of proving the factual basis of his claim for

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

tax credit or refund is upon the claimant. Thus, for a claim [for] tax credit or refund be granted, the taxpayer must establish that:

(i) The claim for refund was filed within two years as prescribed in Sec. 230 (now 229) of the Tax Code;

(ii) The income upon which the taxes were withheld were included in the return of the recipient; and

(iii) The fact of withholding is established by a copy of statement (BIR Form 1743-A) duly issued by the payer (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

Applying the above rule, the following are evident:

One, the petitioner complied with the first requirement. The claim for refund of petitioner for the calendar years ended December 31, 2000 and December 31, 2001 were filed within the two-year prescriptive period reckoned from the date of payment of the tax. The phrase "date of payment of tax" is construed to mean the dates of the filing of the 2000 and 2001 annual income tax returns. Petitioner filed its 2000 and 2001 original annual income tax return on April 10, 2001 and April 15, 2002, respectively. The administrative and judicial claims for refund were filed on April 9, 2003 and April 10, 2003, respectively. Both filings of claim for refund and Petition for Review were made within the two-year prescriptive period.

Two, petitioner was able to establish its qualified compliance with requirement numbers two and three. In the admitted 2000 and 2001 Certificates of Creditable Withholding at Source, the following amounts of income payments and withholding taxes were reflected –

x x x x x x x x x

We have traced the income payments in the 2000 and 2001 income tax returns and found out that petitioner declared the same. It should be noted though that the substantiated 2000 and 2001 creditable taxes amounted only to ₱14,986,640.75 (instead of ₱15,050,464.00) and ₱24,325,856.58 (instead of ₱27,326,552.00) respectively. Hence we recomputed the supported unapplied creditable taxes withheld as of December 31, 2001, to wit:

	Amount
2000 Supported Creditable Taxes Withheld	₱ 14,986,640.75
Less: 2000 MCIT	7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	₱ 7,575,998.75
Less: 2001 MCIT	6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	₱ 1,119,202.75
Add: 2001 Supported and Unapplied Creditable Taxes Withheld	24,325,856.58
Supported Unapplied Creditable Taxes Withheld as of December 31, 2001	₱ 25,445,059.33

As to the losses declared by ATC for the years 2000 and 2001, the CTA-First Division opined that ATC was not required to prove them. It explained:

Lastly, we do not agree with the respondent that petitioner is required to prove that it incurred a net loss for the years 2000 and 2001. The implied allegation of irregularity in the declared operational losses is a matter which must be proven by competent evidence. And the burden of proof as to whether petitioner incurred net losses from its operations rests on the respondent. This is the reason why respondent is authorized by law to examine the books and accounting records to ascertain the truthfulness of petitioner's declaration in its income tax return. In the absence of any showing that there is irregularity in claimed losses for 2000 and 2001 business operations and taking into account that income tax returns are prepared under penalty of perjury, We consider the returns of petitioner to be accurate and regular.[10]

The CTA-First Division, however, noted that ATC could not be issued a tax credit certificate for the remaining 2000 unutilized creditable taxes pursuant to Section 78 of the Tax Code, considering that ATC initially declared that it would opt "To be Issued a Tax Credit Certificate" for its 2000 creditable taxes, but never really exercised this option. Instead, it made use of the option to carry-over its excess income tax payments, when it applied the same in reducing its 2001 MCIT.

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[10] Decision, CTA-First Division, p. 10, *rollo*, p. 63.

Thus, the CTA-First Division ordered the CIR to issue a tax credit certificate in favor of ATC in the reduced amount of ₱24,325,856.58 representing the unutilized creditable withholding taxes for the taxable year 2001 based on its own computation, to wit:

Income Payment	Tax Witheld	Without Agent	Exh.
₱ 300,603,978.00	₱ 3,006,039.78	Mitsubishi Motors Phils. Corp.	S
195,263.12	1,952.63	Nidec-Shimpo Philippines Corp.	T
363,266.839.00	3,632,668.39	Mitsubishi Motors Phils. Corp.	U
137,659.10	1,376.59	Nedic-Shimpo Philippines Corp.	V
576,146,311.00	5,761,463.11	Mitsubishi Motors Phils.	W
137,659.10	1,376.59	Nidec-Shimpo PhilippinesCorp.	X
488,449,635.00	4,884,496.35	Mitsubishi Motors Phils. Corp.	Y
103,611.44	2,072.23	Nedic-Shimpo Philippines Corp.	Z
44,663,921.73	6,702,586.91	MMC Sittipol Co. Ltd.	AA
22,212,5158.06	331,824.00	MMC Sittipol Co. Ltd.	BB
₱1,795,937,026.55	₱24,325,856.88		

Both parties sought reconsideration. On one hand, CIR insisted that ATC failed to establish the net loss it incurred and the tax credits due it.[11] On the other hand, ATC averred that the CTA-First Division erred in: a) crediting only the amount of ₱331,824.00 as the amount withheld by MMC Sittipol Co. Ltd. instead of the ₱3,831,824.00 it actually withheld from ATC; and b) in ordering the issuance of a Tax Credit Certificate in the amount of ₱24,325,856.58.[12]

Finding merit only in the motion for reconsideration of ATC, the CTA-First Division issued the Amended Decision[13] on August 4, 2006, disposing the case in the following manner:

WHEREFORE, petitioner's Motion is hereby GRANTED while respondent's Motion is hereby DENIED for lack of merit. Accordingly, respondent is ORDERED TO REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner the amount

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[11] *Id.* at 105.

[12] Amended Decision, p. 2, *id.* at 66.

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

of TWENTY SEVEN MILLION THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED FIFTY SIX & 58/100 PESOS (₱27,325,856.58) representing unutilized creditable withholding taxes for taxable year 2001.

On appeal, the CTA-*En Banc* was convinced that ATC was able to provide sufficient evidence to establish its claim for refund or issuance of a tax credit certificate.[14] Thus, it rendered its July 16, 2007 Decision, the decretal portion of which states:

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

Hence this petition.

The CIR raises the sole issue of:

WHETHER OR NOT RESPONDENT IS ENTITLED TO REFUND IN THE AMOUNT OF ₱27,325,856.58 REPRESENTING THE ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2001.[15]

The petition has no merit.

The CIR argues that while the certificates of withholding taxes and the annual income tax returns for the years 2000 and 2001 submitted by ATC may prove the inclusion of income payments which were the bases of the withholding taxes and the fact of withholding, they are not sufficient to prove entitlement to the tax refund requested. According to the CIR, since Section 2.58.3 (B) of Revenue Regulation provides that "claims for refund or tax credit shall be given due course upon showing that income payment has been declared as part of gross income and the fact of withholding is established," the mere submission of the withholding tax statements shall only mean that ATC's claim shall be given due course, *i.e.,* heard or considered.

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[14] *Rollo,* p. 51.

[15] *Id.* at 170.

Accordingly, the CIR posits that ATC still has to show that it is entitled to the refund requested by proving not only the income payments made but also the reported losses.

It should be pointed out that the arguments raised by the CIR in support of its position have already been thoroughly discussed both by the CTA-First Division and the CTA-*En Banc*. Notwithstanding, the CIR comes to this Court insisting that the same be once again reviewed. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[16] In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[17] this Court more explicitly pronounced:

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

At any rate, the CIR is correct in stating that the taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should

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[16] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,* G.R. No. 157594, March 9, 2010.

[17] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

be refunded is correct. In this case, however, the CTA-First Division and the CTA-*En Banc* uniformly found that from the evidence submitted, ATC has established its claim for refund or issuance of a tax credit certificate for unutilized creditable withholding taxes for the taxable year 2001 in the amount of ₱27,325,856.58. The Court finds no cogent reason to rule differently. As correctly noted by the CTA-*En Banc*:

> x x x proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.
>
> In this regard, We do not agree with petitioner's allegation that respondent failed to prove that creditable withholding taxes were duly supported by valid Certificates of Creditable Tax Withheld at Source. As aptly ruled by the Court in Division, and We reiterate, the evidence on record in which petitioner interposed no objection to its admission and was subsequently admitted by the Court in Division, show that respondent was able to substantiate its claim through the presentation of Exhibits "J" to "P" and "R" to "Z", the Certificates of Creditable Tax Withheld At Source. The documentary

evidence presented were sufficient to establish that respondent was withheld taxes and that there was an excess which remain unutilized and now subject of refund.

With respect to the losses incurred by the ATC, it is true that the taxpayer bears the burden to establish the losses, but it is quite clear from the evidence presented that ATC has fulfilled its duty. Moreover, other than the bare assertion that ATC must establish its losses, the CIR fails to point to any circumstance or evidence that would cast doubt on ATC's sworn declaration that it incurred losses in 2000 and 2001.

Curiously, in its petition, the CIR further adds that ATC cannot claim a cash refund or tax credit for the unutilized withholding tax for the year 2000 as this would be violative of Section 76 of the Tax Code. This matter, however, was already acted upon in favor of the CIR, when the CTA-First Division only partially granted ATC's petition by disallowing its claim for cash refund or tax credit for the unutilized withholding tax for the year 2000. This reiteration by the CIR of this argument despite the fact that it has already been acted favorably by the tax court below, only shows that the appeal has not been thoroughly studied.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated July 29, 2009.

SECOND DIVISION

[G.R. No. 180909. January 19, 2011]

EXXONMOBIL PETROLEUM AND CHEMICAL HOLDINGS, INC. – PHILIPPINE BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON PLEADING THE GROUNDS FOR DISMISSAL AS AFFIRMATIVE DEFENSES, APPLIED.— This case is a clear cut application of [Rule 16, Section 6 of the 1997 Rules of Civil Procedure]. The CIR did not file a motion to dismiss. Thus, he pleaded the grounds for dismissal as affirmative defenses in its Answer and thereafter prayed for the conduct of a preliminary hearing to determine whether petitioner was the proper party to apply for the refund of excise taxes paid.

2. TAXATION; EXCISE TAXES; TWO CONDITIONS THAT MUST CONCUR FOR THESE TAXES TO BE IMPOSED.— Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported. In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and second, that said articles are for domestic sale or consumption, excluding those that are actually exported.

3. ID.; ID.; EXEMPTIONS FROM THE COVERAGE OF EXCISE TAXES.— There are, however, certain exemptions to the coverage of excise taxes, such as petroleum products sold to international carriers and exempt entities or agencies. x x x [U]nder Section 135, petroleum products sold to international carriers of foreign registry on their use or consumption outside the Philippines are exempt from excise tax, provided that the petroleum products sold to such international carriers shall be stored in a bonded storage tank and may be disposed of only

in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

4. **ID.; ID.; THE PARTY WHO IS NOT STATUTORILY LIABLE TO PAY EXCISE TAXES IS NOT THE PROPER PARTY TO CLAIM FOR A REFUND OF ANY TAXES ERRONEOUSLY PAID.—** As early as the 1960's, this Court has ruled that the proper party to question, or to seek a refund of, an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if he shifts the burden thereof to another. x x x Therefore, as Exxon is not the party statutorily liable for payment of excise taxes under Section 130, in relation to Section 129 of the NIRC, it is not the proper party to claim a refund of any taxes erroneously paid.

APPEARANCES OF COUNSEL

Salvador and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 filed by petitioner Exxonmobil Petroleum and Chemical Holdings, Inc. - Philippine Branch *(Exxon)* to set aside the September 7, 2007 Decision[1] of the Court of Tax Appeals *En Banc (CTA-En Banc)* in CTA E.B. No. 204, and its November 27, 2007 Resolution[2] denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 62-88. Penned by Associate Justice Juanito C. Castañeda Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta issued a separate dissenting opinion.

[2] *Id.* at 89-94.

THE FACTS

Petitioner Exxon is a foreign corporation duly organized and existing under the laws of the State of Delaware, United States of America.[3] It is authorized to do business in the Philippines through its Philippine Branch, with principal office address at the 17/F The Orient Square, Emerald Avenue, Ortigas Center, Pasig City.[4]

Exxon is engaged in the business of selling petroleum products to domestic and international carriers.[5] In pursuit of its business, Exxon purchased from Caltex Philippines, Inc. (*Caltex*) and Petron Corporation (*Petron*) Jet A-1 fuel and other petroleum products, the excise taxes on which were paid for and remitted by both Caltex and Petron.[6] Said taxes, however, were passed on to Exxon which ultimately shouldered the excise taxes on the fuel and petroleum products.[7]

From November 2001 to June 2002, Exxon sold a total of 28,635,841 liters of Jet A-1 fuel to international carriers, free of excise taxes amounting to Php105,093,536.47.[8] On various dates, it filed administrative claims for refund with the Bureau of Internal Revenue (*BIR*) amounting to Php105,093,536.47.[9]

On October 30, 2003, Exxon filed a petition for review with the CTA[10] claiming a refund or tax credit in the amount of Php105,093,536.47, representing the amount of excise taxes

[3] *Id.* at 73.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] Docketed as CTA Case No. 6809.

paid on Jet A-1 fuel and other petroleum products it sold to international carriers from November 2001 to June 2002.[11]

Exxon and the Commissioner of Internal Revenue (*CIR*) filed their Joint Stipulation of Facts and Issues on June 24, 2004, presenting a total of fourteen (14) issues for resolution.[12]

During Exxon's preparation of evidence, the CIR filed a motion dated January 28, 2005 to first resolve the issue of whether or not Exxon was the proper party to ask for a refund.[13] Exxon filed its opposition to the motion on March 15, 2005.

On July 27, 2005, the CTA First Division issued a resolution[14] sustaining the CIR's position and dismissing Exxon's claim for refund. Exxon filed a motion for reconsideration, but this was denied on July 27, 2006.[15]

Exxon filed a petition for review[16] with the CTA *En Banc* assailing the July 27, 2005 Resolution of the CTA First Division which dismissed the petition for review, and the July 27, 2006 Resolution[17] which affirmed the said ruling.

RULING OF THE COURT OF TAX APPEALS *EN BANC*

In its Decision dated September 7, 2007, the CTA *En Banc* dismissed the petition for review and affirmed the two resolutions of the First Division dated July 27, 2005 and July 27, 2006. Exxon filed a motion for reconsideration, but it was denied on November 27, 2007.

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[11] *Rollo*, p. 63.

[12] *Id*.

[13] *Id.* at 64.

[14] *Id.* at 138. Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring. Presiding Justice Ernesto D. Acosta issued a separate dissenting opinion.

[15] *Id.* at 150.

[16] *Id.* at 95.

[17] *Id.* at 62-63.

Citing Sections 130 (A)(2)[18] and 204 (C) in relation to Section 135 (a)[19] of the National Internal Revenue Code of 1997 (*NIRC*),

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[18] **SEC. 130.** ***Filing of Return and Payment of Excise Tax on Domestic Products.*** —

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* —

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(2) *Time for Filing of Return and Payment of the Tax.* – Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: Provided, That the tax excise on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

x x x x x x x x x

[19] **SEC. 135.** ***Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*** — Petroleum products sold to the following are exempt from excise tax:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

x x x x x x x x x

the CTA ruled that in consonance with its ruling in several cases,[20] only the taxpayer or the manufacturer of the petroleum products sold has the legal personality to claim the refund of excise taxes paid on petroleum products sold to international carriers.[21]

The CTA stated that Section 130(A)(2) makes the manufacturer or producer of the petroleum products directly liable for the payment of excise taxes.[22] Therefore, it follows that the manufacturer or producer is the taxpayer.[23]

This determination of the identity of the taxpayer designated by law is pivotal as the NIRC provides that it is only the taxpayer who "has the legal personality to ask for a refund in case of erroneous payment of taxes."[24]

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[20] *Koyo Manufacturing (Philippines) Corp. v. Commissioner of Internal Revenue*. CTA E.B. No. 194, March 1, 2007; *Mobil Philippines, Inc. v. Commissioner of Internal Revenue*, CTA E.B. No. 110, July 26, 2006; *Dunlop Slazenger Phils., Inc. v. Commissioner of Internal Revenue*, CTA E.B. No. 102, May 18, 2006; *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd.*, CTA E.B. No. 67, January 5, 2006; *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd.*, CTA E.B. No. 56, October 20, 2005; and *Commissioner of Internal Revenue v. Silkair (Singapore) Pte. Ltd.*, CTA E.B. No. 25, May 20, 2005.

[21] *Rollo*, p. 74.

[22] *Id.* at 75.

[23] *Id.*

[24] *Id*, citing Section 204(C) of the NIRC of 1997, which reads:

SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may -

x x x x x x x x x

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x x x x x x

Further, the excise tax imposed on manufacturers upon the removal of petroleum products by oil companies is an indirect tax, or a tax which is primarily paid by persons who can shift the burden upon someone else.[25] The CTA cited the cases of *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[26] *Contex Corporation v. Commissioner of Internal Revenue*,[27] and *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[28] and explained that with indirect taxes, "although the burden of an indirect tax can be shifted or passed on to the purchaser of the goods, the liability for the indirect tax remains with the manufacturer."[29] Moreover, "the manufacturer has the option whether or not to shift the burden of the tax to the purchaser. When shifted, the amount added by the manufacturer becomes a part of the price, therefore, the purchaser does not really pay the tax *per se* but only the price of the commodity."[30]

Going by such logic, the CTA concluded that a refund of erroneously paid or illegally received tax can only be made in favor of the taxpayer, pursuant to Section 204(C) of the NIRC.[31] As categorically ruled in the *Cebu Portland Cement*[32] and *Contex*[33] cases, in the case of indirect taxes, it is the manufacturer

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[25] *Id.* at 77, citing *Maceda v. Macaraig, Jr., et al.*, 274 Phil. 1060 (1991).

[26] 127 Phil. 461 (1967).

[27] G.R. No. 151135, July 2, 2004, 433 SCRA 577.

[28] G.R. No. 140230, December 15, 2005, 478 SCRA 61, citing *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, *supra* note 27 at 470.

[29] *Rollo*, p. 77.

[30] *Id.* at 78.

[31] *Id.* at 80.

[32] *Cebu Portland Cement Company v. Commissioner of Internal Revenue*, 134 Phil. 735 (1968).

[33] *Contex Corporation v. Commissioner of Internal Revenue*, *supra* note 27.

of the goods who is entitled to claim any refund thereof.[34] Therefore, it follows that the indirect taxes paid by the manufacturers or producers of the goods cannot be refunded to the purchasers of the goods because the purchasers are not the taxpayers.[35]

The CTA also emphasized that tax refunds are in the nature of tax exemptions and are, thus, regarded as in derogation of sovereign authority and construed *strictissimi juris* against the person or entity claiming the exemption.[36]

Finally, the CTA disregarded Exxon's argument that "in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the First Division of [the CTA] sanctioned a universal amendment of existing bilateral agreements which the Philippines have with other countries, in violation of the basic principle of '*pacta sunt servanda.*'"[37] The CTA explained that the findings of fact of the First Division (that when Exxon sold the Jet A-1 fuel to international carriers, it did so free of tax) negated any violation of the exemption from excise tax of the petroleum products sold to international carriers. Second, the right of international carriers to invoke the exemption granted under Section 135(a) of the NIRC was neither affected nor restricted in any way by the ruling of the First Division. At the point of sale, the international carriers were free to invoke the exemption from excise taxes of the petroleum products sold to them. Lastly, the lawmaking body was presumed to have enacted a later law with the knowledge of all other laws involving the same subject matter.[38]

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[34] *Rollo*, p. 79, citing Section 204(C) of the 1997 NIRC and *Cebu Portland Cement Company v. Collector of Internal Revenue*, 134 Phil. 735 (1968).

[35] *Id.* at 81.

[36] *Id.*

[37] *Id.* at 82.

[38] *Id.*

THE ISSUES

Petitioner now raises the following issues in its petition for review:

I.

WHETHER THE ASSAILED DECISION AND RESOLUTION ERRONEOUSLY PROHIBITED PETITIONER, AS THE DISTRIBUTOR AND VENDOR OF PETROLEUM PRODUCTS TO INTERNATIONAL CARRIERS REGISTERED IN FOREIGN COUNTRIES WHICH HAVE EXISTING BILATERAL AGREEMENTS WITH THE PHILIPPINES, FROM CLAIMING A REFUND OF THE EXCISE TAXES PAID THEREON; AND

II.

WHETHER THE ASSAILED DECISIONS ERRED IN AFFIRMING THE DISMISSAL OF PETITIONER'S CLAIM FOR REFUND BASED ON RESPONDENT'S "MOTION TO RESOLVE FIRST THE ISSUE OF WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY THAT MAY ASK FOR A REFUND," SINCE SAID MOTION IS ESSENTIALLY A MOTION TO DISMISS, WHICH SHOULD HAVE BEEN DENIED OUTRIGHT BY THE COURT OF TAX APPEALS FOR HAVING BEEN FILED OUT OF TIME.

RULING OF THE COURT

I. On respondent's "motion to resolve first the issue of whether or not the petitioner is the proper party that may ask for a refund."

For a logical resolution of the issues, the court will tackle first the issue of whether or not the CTA erred in granting respondent's *Motion to Resolve First the Issue of Whether or Not the Petitioner is the Proper Party that may Ask for a Refund.*[39] In said motion, the CIR prayed that the CTA First Division resolve ahead of the other stipulated issues the sole issue of whether petitioner was the proper party to ask for a refund.[40]

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[39] *Id.* at 204.

[40] *Id.* at 205.

Exxon opines that the CIR's motion is essentially a motion to dismiss filed out of time,[41] as it was filed *after* petitioner began presenting evidence[42] more than a year after the filing of the Answer.[43] By praying that Exxon be declared as not the proper party to ask for a refund, the CIR asked for the dismissal of the petition, as the grant of the Motion to Resolve would bring trial to a close.[44]

Moreover, Exxon states that the motion should have also complied with the three-day notice and ten-day hearing rules provided in Rule 15 of the Rules of Court.[45] Since the CIR failed to set its motion for any hearing before the filing of the Answer, the motion should have been considered a mere scrap of paper.[46]

Finally, citing *Maruhom v. Commission on Elections and Dimaporo*,[47] Exxon argues that a defendant who desires a preliminary hearing on special and affirmative defenses must file a motion to that effect at the time of filing of his answer.[48]

The CIR, on the other hand, counters that it did not file a motion to dismiss.[49] Instead, the grounds for dismissal of the case were pleaded as special and affirmative defenses in its Answer filed on December 15, 2003.[50] Therefore, the issue of "whether or not petitioner is the proper party to claim for a tax refund of the excise taxes allegedly passed on by Caltex and Petron" was included as one of the issues in the Joint Stipulation

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[41] *Id.* at 397.

[42] *Id.* at 396.

[43] *Id.* at 397.

[44] *Id.* at 396.

[45] *Id.* at 397.

[46] *Id*.

[47] 387 Phil. 491 (2000).

[48] *Rollo*, p. 399.

[49] *Id.* at 279.

[50] *Id*.

of Facts and Issues dated June 24, 2004 signed by petitioner and respondent.[51]

The CIR now argues that nothing in the Rules requires the preliminary hearing to be held before the filing of an Answer.[52] However, a preliminary hearing cannot be held before the filing of the Answer precisely because any ground raised as an affirmative defense is pleaded in the Answer itself.[53]

Further, the CIR contends that the case cited by petitioner, *Maruhom v. Comelec*,[54] does not apply here. In the said case, a motion to dismiss was filed after the filing of the answer.[55] And, the said motion to dismiss was found to be a frivolous motion designed to prevent the early termination of the proceedings in the election case therein.[56] Here, the Motion to Resolve was filed not to delay the disposition of the case, but rather, to expedite proceedings.[57]

Rule 16, Section 6 of the 1997 Rules of Civil Procedure provides:

> **SEC. 6.** ***Pleading grounds as affirmative defenses.*** - If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer, and in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
>
> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (Underscoring supplied.)

This case is a clear cut application of the above provision. The CIR did not file a motion to dismiss. Thus, he pleaded the

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[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Supra* note 47.

[55] *Rollo*, p. 280.

[56] *Id.*

[57] *Id.*

grounds for dismissal as affirmative defenses in its Answer and thereafter prayed for the conduct of a preliminary hearing to determine whether petitioner was the proper party to apply for the refund of excise taxes paid.

The determination of this question was the keystone on which the entire case was leaning. If Exxon was not the proper party to apply for the refund of excise taxes paid, then it would be useless to proceed with the case. It would not make any sense to proceed to try a case when petitioner had no standing to pursue it.

In the case of *California and Hawaiian Sugar Company v. Pioneer Insurance and Surety Corporation*,[58] the Court held that:

> Considering that there was only one question, which may even be deemed to be the very touchstone of the whole case, the trial court had no cogent reason to deny the Motion for Preliminary Hearing. Indeed, it committed grave abuse of discretion when it denied a preliminary hearing on a simple issue of fact that could have possibly settled the entire case. Verily, where a preliminary hearing appears to suffice, there is no reason to go on to trial. One reason why dockets of trial courts are clogged is the unreasonable refusal to use a process or procedure, like a motion to dismiss, which is designed to abbreviate the resolution of a case.[59] (Underscoring supplied.)

II. On whether petitioner, as the distributor and vendor of petroleum products to international carriers registered in foreign countries which have existing bilateral agreements with the Philippines, can claim a refund of the excise taxes paid thereon

This brings us now to the substantive issue of whether Exxon, as the distributor and vendor of petroleum products to international carriers registered in foreign countries which have existing bilateral agreements with the Philippines, is the proper party to

[58] 399 Phil. 795 (2000).

[59] *Id.* at 805.

claim a tax refund for the excise taxes paid by the manufacturers, Caltex and Petron, and passed on to it as part of the purchase price.

Exxon argues that having paid the excise taxes on the petroleum products sold to international carriers, it is a real party in interest consistent with the rules and jurisprudence.[60]

It reasons out that the subject of the exemption is neither the seller nor the buyer of the petroleum products, but the products themselves, so long as they are sold to international carriers for use in international flight operations, or to exempt entities covered by tax treaties, conventions and other international agreements for their use or consumption, among other conditions.[61]

Thus, as the exemption granted under Section 135 attaches to the petroleum products and not to the seller, the exemption will apply regardless of whether the same were sold by its manufacturer or its distributor for two reasons.[62] *First*, Section 135 does not require that to be exempt from excise tax, the products should be sold by the manufacturer or producer.[63] *Second*, the legislative intent was precisely to make Section 135 independent from Sections 129 and 130 of the NIRC,[64] stemming from the fact that unlike other products subject to excise tax, petroleum products of this nature have become subject to preferential tax treatment by virtue of either specific international agreements or simply of international reciprocity.[65]

Respondent CIR, on the other hand, posits that Exxon is not the proper party to seek a refund of excise taxes paid on the petroleum products.[66] In so arguing, the CIR states that excise

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[60] *Rollo*, p. 39.

[61] *Id.* at 31.

[62] *Id.* at 32.

[63] *Id*.

[64] *Id.*, citing BIR Ruling DA-038-98.

[65] *Id.* at 34.

[66] *Id.* at 271.

taxes are indirect taxes, the liability for payment of which falls on one person, but the burden of payment may be shifted to another.[67] Here, the sellers of the petroleum products or Jet A-1 fuel subject to excise tax are Petron and Caltex, while Exxon was the buyer to whom the burden of paying excise tax was shifted.[68] While the impact or burden of taxation falls on Exxon, as the tax is shifted to it as part of the purchase price, the persons statutorily liable to pay the tax are Petron and Caltex.[69] As Exxon is not the taxpayer primarily liable to pay, and not exempted from paying, excise tax, it is not the proper party to claim for the refund of excise taxes paid.[70]

The excise tax, when passed on to the purchaser, becomes part of the purchase price.

Excise taxes are imposed under Title VI of the NIRC. They apply to specific goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and to those that are imported.[71] In effect, these taxes are imposed when two conditions concur: *first*, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and *second*, that said articles are for domestic sale or consumption, excluding those that are actually exported.[72]

There are, however, certain exemptions to the coverage of excise taxes, such as petroleum products sold to international carriers and exempt entities or agencies. Section 135 of the NIRC provides:

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[67] *Id*.

[68] *Id*.

[69] *Id.* at 273.

[70] *Id.* at 277.

[71] J.C. Vitug and E.D. Acosta, *Tax Law and Jurisprudence,* 271 (2006). See also Republic Act No. 8424 (1997), as amended, Sec. 129.

[72] *Id*.

SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:

(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

(c) Entities which are by law exempt from direct and indirect taxes. (Underscoring supplied.)

Thus, under Section 135, petroleum products sold to international carriers of foreign registry on their use or consumption outside the Philippines are exempt from excise tax, provided that the petroleum products sold to such international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.[73]

The confusion here stems from the fact that excise taxes are of the nature of indirect taxes, the liability for payment of which may fall on a person other than he who actually bears the burden of the tax.

In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[74] the Court discussed the nature of indirect taxes as follows:

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[73] *Id.* at 281.

[74] *Supra* note 28 at 72, citing *Commissioner of Internal Revenue v. Tours Specialists, Inc.*, 262 Phil. 437 (1990).

[I]ndirect taxes are those that are demanded, in the first instance, from, or are paid by, one person to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser, as part of the goods sold or services rendered.

Accordingly, the party liable for the tax can shift the burden to another, as part of the purchase price of the goods or services. Although the manufacturer/seller is the one who is statutorily liable for the tax, it is the buyer who actually shoulders or bears the burden of the tax, albeit not in the nature of a tax, but part of the purchase price or the cost of the goods or services sold.

As petitioner is not the statutory taxpayer, it is not entitled to claim a refund of excise taxes paid.

The question we are faced with now is, if the party statutorily liable for the tax is different from the party who bears the burden of such tax, who is entitled to claim a refund of the tax paid?

Sections 129 and 130 of the NIRC provide:

SEC. 129. Goods subject to Excise Taxes. - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. —

(1) Persons Liable to File a Return. - *Every person liable to pay excise tax imposed under this Title* shall file a separate return for each place of production setting forth, among others the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: Provided, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, *the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production:* Provided, That the tax excise on locally manufactured petroleum products and indigenous petroleum/ levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or

nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

x x x x x x x x x

(Italics and underscoring supplied.)

As early as the 1960's, this Court has ruled that the proper party to question, or to seek a refund of, an indirect tax, is the statutory taxpayer, or the person on whom the tax is imposed by law and who paid the same, even if he shifts the burden thereof to another.[75]

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,[76] the Court held that the sales tax is imposed on the manufacturer or producer and not on the purchaser, "except probably in a very remote and inconsequential sense."[77] Discussing the "passing on" of the sales tax to the purchaser, the Court therein cited Justice Oliver Wendell Holmes' opinion in *Lash's Products v. United States*[78] wherein he said:

"The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. The purchaser does not really pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all. x x x The price is the sum total paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price x x x."[79]

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[75] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100, 112; J.C. Vitug and E.D. Acosta, *Tax Law and Jurisprudence,* 317 (2006), citing *Commissioner of Internal Revenue v. American Rubber Company and Court of Tax Appeals*, 124 Phil. 1471 (1966); *Cebu Portland Cement Co. v. Collector of Internal Revenue*, 134 Phil. 735 (1968).

[76] *Supra* note 26.

[77] *Id.* at 470.

[78] 278 U.S. 175 (1928).

[79] *Supra* note 26 at 465-466.

Proceeding from this discussion, the Court went on to state:

It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. x x x The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.

But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser.[80]

The above case was cited in the later case of *Cebu Portland Cement Company v. Collector (now Commissioner) of Internal Revenue*,[81] where the Court ruled that as the sales tax is imposed upon the manufacturer or producer and not on the purchaser, "it is petitioner and not its customers, who may ask for a refund of whatever amount it is entitled for the percentage or sales taxes it paid before the amendment of Section 246 of the Tax Code."[82]

The *Philippine Acetylene* case was also cited in the first *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*[83] case, where the Court held that the proper party to question, or to seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.[84]

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[80] *Id.* at 470, citing 47 Harv. Ld. Rev. 860, 869 (1934).

[81] *Supra* note 32.

[82] *Id.* at 743.

[83] *Supra* note 75. See also *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141.

[84] *Id.*

In the *Silkair* cases,[85] petitioner Silkair (Singapore) Pte, Ltd. (*Silkair*), filed with the BIR a written application for the refund of excise taxes it claimed to have paid on its purchase of jet fuel from Petron. As the BIR did not act on the application, Silkair filed a Petition for Review before the CTA.

In both cases, the CIR argued that the excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article.

In the first *Silkair* case, the Court ruled:

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.

Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.[86] (Emphasis and underscoring supplied.)

Citing the above case, the second *Silkair* case was promulgated a few months after the first, and stated:

The issue presented is not novel. In a similar case involving the same parties, this Court has categorically ruled that "the proper party

[85] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue,* G.R. No. 173594, February 6, 2008, 544 SCRA 100 and *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141.

[86] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, *supra* note 75.

to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another." The Court added that "even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is **not a tax but part of the price** which Silkair had to pay as a purchaser."[87]

The CTA *En Banc*, thus, held that:

> The determination of who is the taxpayer plays a pivotal role in claims for refund because the same law provides that it is only the taxpayer who has the legal personality to ask for a refund in case of erroneous payment of taxes. Section 204 (C) of the 1997 NIRC, [provides] in part, as follows:
>
> > SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may —
> >
> > x x x xxx xxx
> >
> > **(C) Credit or refund taxes erroneously or illegally received** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed **unless the taxpayer files in writing with the Commissioner a claim for credit or refund** within two (2) years after the payment of the tax or penalty: Provided, however, That a return showing an overpayment shall be considered as a written claim for credit or refund.
> >
> > x x x xxx xxx
>
> (Emphasis shown supplied by the CTA.)[88]

Therefore, as Exxon is not the party statutorily liable for payment of excise taxes under Section 130, in relation to Section 129 of the NIRC, it is not the proper party to claim a refund of any taxes erroneously paid.

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[87] *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 and 172379, November 14, 2008, 571 SCRA 141, 153-154.

[88] *Rollo*, pp. 75-76.

There is no unilateral amendment of existing bilateral agreements of the Philippines with other countries.

Exxon also argues that in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the CTA *En Banc* sanctioned a unilateral amendment of existing bilateral agreements which the Philippines has with other countries, in violation of the basic international law principle of *pacta sunt servanda*.[89] The Court does not agree.

As correctly held by the CTA *En Banc*:

> One final point, petitioner's argument "that in effectively holding that only petroleum products purchased directly from the manufacturers or producers are exempt from excise taxes, the First Division of this Court sanctioned a unilateral amendment of existing bilateral agreements which the Philippines have (sic) with other countries, in violation of the basic international principle of "*pacta sunt servanda*" is misplaced. First, the findings of fact of the First Division of this Court that "when petitioner sold the Jet A-1 fuel to international carriers, it did so free of tax" negates any violation of the exemption from excise tax of the petroleum products sold to international carriers insofar as this case is concerned. Secondly, the right of international carriers to invoke the exemption granted under Section 135 (a) of the 1997 NIRC has neither been affected nor restricted in any way by the ruling of the First Division of this Court. At the point of sale, the international carriers are free to invoke the exemption from excise taxes of the petroleum products sold to them. Lastly, the law-making body is presumed to have enacted a later law with the knowledge of all other laws involving the same subject matter."[90] (Underscoring supplied.)

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[89] *Id.* at 34.

[90] *Id.* at 82.

THIRD DIVISION

[G.R. No. 183843. January 19, 2011]

GOLDEN ARCHES DEVELOPMENT CORPORATION, *petitioner, vs.* **ST. FRANCIS SQUARE HOLDINGS, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; VENUE; IN A PERSONAL ACTION FILED BY A CORPORATION, THE PROPER VENUE IS THE PLACE WHERE IT HAD ACTUALLY BEEN "RESIDING" OR HOLDING ITS PRINCIPAL OFFICE AT THE TIME IT FILED ITS COMPLAINT; CHOICE OF PLAINTIFF MUST BE RESPECTED.— Respondent's complaint, being one for enforcement of contractual provisions and recovery of damages, is in the nature of a personal action which, under Section 2, Rule 4 of the Rules of Court, shall be filed at the plaintiff's residence. Specifically with respect to a domestic corporation, it is "in a metaphysical sense a resident of the place where its principal office is located as stated in the articles of incorporation." x x x [A]lthough respondent's Amended Articles of Incorporation of 2007 indicates that its principal business address is at "Metro Manila," venue was properly laid in Mandaluyong since that is where it had actually been "residing" (or holding its principal office) at the time it filed its complaint. Section 2, Rule 4 of the Rules of Court, quoted earlier, authorizes the plaintiff (respondent in this case) to make a choice of venue for personal actions – whether to file the complaint in the place where he resides or where defendant resides. Respondent's choice must be respected as "[t]he controlling factor in determining venue for cases is the primary objective for which said cases are filed." Respondent's purpose in filing the complaint in Mandaluyong where it holds its principal office is obviously for its convenience and for orderly administration of justice.

APPEARANCES OF COUNSEL

Manlangit Maquinto Salomon & De Guzman Law Office for petitioner.

Javier Jose Mendoza & Associates for respondent.

DECISION

CARPIO MORALES, *J.*:

In June 1991, Golden Arches Development Corporation (petitioner) entered into a lease contract over a property owned by Prince City Realty, Inc. located at the corner of Julia Vargas Avenue and Bank Drive, Ortigas Center, Mandaluyong City.

The lease contract commenced on June 27, 1991 and was to terminate on February 27, 2008. On November 2, 2006, however, petitioner informed St. Francis Square Holdings, Inc. (respondent), successor-in-interest of ASB Holdings, Inc. by which Prince Realty, Inc. eventually became known, of its intention to discontinue the lease.

Amicable negotiations between the parties having failed, respondent filed on May 4, 2007 an action for breach of contract and damages against petitioner before the Regional Trial Court (RTC) of Mandaluyong.

Petitioner filed a Motion to Dismiss for lack of cause of action and improper venue. It claimed that respondent maintained its principal address in Makati as records of the Securities and Exchange Commission (SEC) in 2007 show, *viz*: Cover Sheet of Amended Articles of Incorporation[1] (wherein it is stated that the business address of ASB Holdings Inc. is at Makati), Company Relationship Information Sheet, and Director's Certificate dated February 3, 2007 stating that ASB Holdings, Inc., with principal address at Makati, had amended its Articles of Incorporation by renaming it (ASB Holdings, Inc.) to St. Francis Square Holdings, Inc., respondent herein, hence, the complaint should have been filed in Makati. By filing the complaint in Mandaluyong, petitioner concluded that respondent violated Section 2, Rule 4 of the Rules of Court which provides:

Sec. 2. *Venue of personal actions*. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiff

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[1] Respondent filed an amendment to its Articles of Incorporation in 2007 to reflect the change in the name of the corporation to "St. Francis Square Holdings, Inc."

resides, or where the defendant or any of the principal defendant resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff. (underscoring supplied)

Opposing the Motion to Dismiss, respondent claimed that it had closed down its office in Makati effective December 31, 2005 as it now holds office in Mandaluyong City of which petitioner is aware.

By Order of August 21, 2007,[2] Branch 212 of the Mandaluyong RTC denied the motion to dismiss in this wise:

. . . [P]laintiff's[-herein respondent's] Articles of Incorporation having stated [that] its principal office is located in Metro Manila, this Court is of the opinion that venue was properly laid considering that the instant case was filed in Mandaluyong Cty which is part or a place within Metro Manila.

Basic is the rule regarding propriety of venue in actions involving private juridical entities that the principal place of business of a corporation determines its residence or domicile such that the place indicated in petitioner's Articles of Incorporation becomes controlling in determining the venue.[3]

Petitioner moved to reconsider the denial of the motion, pointing out that respondent violated SEC Memorandum Circular No. 03 dated February 16, 2006, the relevant portion of which reads:

In line with the "full disclosure" requirement of existing laws, all corporations and partnerships **applying** for registration with the Securities and Exchange Commission should state in their Articles of Incorporation or Articles of Partnership the (i) specific address of their principal office, which shall include, if feasible, the street name, *barangay*, city or municipality; and (ii) specific residence address of each incorporator, stockholder, director, trustee, or partner.

"Metro Manila" shall no longer be allowed as address of the principal office. (emphasis and underscoring supplied)

Albeit in respondent's Amended Articles of Incorporation which was filed in 2007, after the above-stated SEC circular

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[2] *Id.* at 99-104.

[3] *Id.* at 103.

had been issued, it still indicated its principal office address to be "Metro Manila," the trial court just the same denied petitioner's motion for reconsideration by Order of November 12, 2007.[4]

On petition for *certiorari* and prohibition, the Court of Appeals, by Decision of July 22, 2008,[5] **affirmed** the trial court's order, hence, the present petition for review on *certiorari*.

The petition fails.

Venue, in essence, concerns a rule of procedure. In personal actions, it is fixed for the greatest possible convenience of the plaintiff and his witnesses,[6] and to promote the ends of justice.

Respondent's complaint, being one for enforcement of contractual provisions and recovery of damages, is in the nature of a personal action which, under Section 2, Rule 4 of the Rules of Court,[7] shall be filed at the plaintiff's residence. Specifically with respect to a domestic corporation, it is "in a metaphysical sense a resident of the place where its principal office is located as stated in the articles of incorporation."[8]

The letters of <u>petitioner</u> itself to respondent dated November 2, 2006, December 18, 2006 and January 2, 2007 indicate the address of respondent to be at St. Francis Square Mall, Julia Vargas, Ortigas Center, just as the letters of <u>respondent</u> to petitioner *before*

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[4] *Id.* at 105-107.

[5] Penned by Associate Justice Myrna Dimaranan Vidal with the concurrence of Associate Justices Jose L. Sabio, Jr. (ret.) and Jose C. Reyes, Jr., *rollo,* pp. 11-22.

[6] *Marcos-Araneta v. Court of Appeals*, G.R. No. 154096, August 22, 2008, 563 SCRA 41.

[7] Sec. 2. Venue of personal actions. – All other actions may be commenced and tried where the <u>plaintiff or any of the principal plaintiff resides,</u> or where the defendant or any of the principal defendant resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

[8] *Young Auto Supply v. Court of Appeals,* G.R. No. 104175, June 25, 1993, 223 SCRA 670, 674 citing *Cohen v. Benguet Commercial Co., Ltd.*, 34 Phil. 526 [1916] *Clavecilla Radio System v. Antillo*, 19 SCRA 379 [1967]).

the filing of the complaint on May 4, 2007 indicate its (respondent's) address to be at St. Francis Square Mall, Julia Vargas, Ortigas Center. Petitioner was thus put on notice that at the respondent's filing of the complaint, the latter's business address has been at Mandaluyong.

IN FINE, although respondent's Amended Articles of Incorporation of 2007 indicates that its principal business address is at "Metro Manila," venue was properly laid in Mandaluyong since that is where it had actually been "residing" (or holding its principal office) at the time it filed its complaint. Section 2, Rule 4 of the Rules of Court, quoted earlier, authorizes the plaintiff (respondent in this case) to make a choice of venue for personal actions – whether to file the complaint in the place where he resides or where defendant resides.[9] Respondent's choice must be respected as "[t]he controlling factor in determining venue for cases is the primary objective for which said cases are filed."[10] Respondent's purpose in filing the complaint in Mandaluyong where it holds its principal office is obviously for its convenience and for orderly administration of justice.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[9] *Saludo, Jr. v. American Express International, Inc.*, G.R. No. 159507, April 19, 2006, 487 SCRA 462, 476.

[10] *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, G.R. No. 178188, May 8, 2009, 587 SCRA 624, 663, citing *Go v. United Coconut Planters Bank*, G.R. No. 156187, November 11, 2004, 442 SCRA 264.

THIRD DIVISION

[G.R. No. 185715. January 19, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERLINDA CAPUNO *y* TISON**, *appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF PROHIBITED DRUGS, ELEMENTS OF; HOW PROVED.—** In a prosecution for the 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. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.

2. **ID.; ID.; REQUIRED PROCEDURE IN THE HANDLING OF THE SEIZED DRUGS, NOT COMPLIED WITH.—** The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165. x x x This procedure, however, was not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the evidence. x x x [I]t is clear that the apprehending team, upon confiscation of the drug, immediately brought the appellant and the seized specimen to the police station. **No physical inventory and photograph of the seized items were taken in the presence of the appellant or her counsel, a representative from the media and the DOJ, and an elective official**. We stress that PO1 Antonio's testimony was corroborated by another member of

the apprehending team, PO1 Jiro, who narrated that after arresting the appellant, they brought her and the seized item to the police station. At no time during PO1 Jiro's testimony did he even intimate that they inventoried or photographed the confiscated item.

3. **ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED PROCEDURE, WHEN EXCUSED; CONDITIONS FOR NON-COMPLIANCE, NOT MET.—** To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e., "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[.]"* This saving clause, however, applies only where the prosecution recognized the procedural lapses, and, thereafter, explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. These conditions were not met in the present case, as the prosecution did not even attempt to offer any justification for its failure to follow the prescribed procedures in the handling of the seized items.

4. **ID.; ID.; CHAIN OF CUSTODY; DEFINED AND EXPLAINED.—** Board Regulation No. 1, Series of 2002, defines chain of custody as "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." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would, thus, include a testimony about the every link in the chain, from the moment the item was seized to the time it was offered in court as evidence, such that every person who handled the same would admit as to how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witnesses would then describe the precautions taken

to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

5. **ID.; ID.; ID.; FAILURE TO ESTABLISH THE LINKS IN THE CHAIN OF CUSTODY; EFFECT.—** In the present case, the prosecution's evidence failed to establish the chain that would have shown that the *shabu* presented in court was the very same specimen seized from the appellant. The *first* crucial link in the chain of custody starts with the seizure of the plastic sachet from the appellant. From the testimonies and joint affidavit of PO1 Antonio and PO1 Jiro, it is clear that the police did not mark the confiscated sachet upon confiscation. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence. The *second* link in the chain of custody is its turnover from PO1 Antonio to the police station. Both PO1 Antonio and PO1 Jiro testified that they brought the appellant and the seized item to the police station. They, however, failed to identify the person to whose custody the seized item was given. Although the records show that the request for laboratory examination of the seized item was prepared by the Chief of Police, Police Senior Inspector Anastacio Benzon, the evidence does not show that he was the official who received the marked plastic sachet from PO1 Antonio. As for the *subsequent links* in the chain of custody, the records show that the seized item was forwarded to the Philippine National Police Crime Laboratory by a certain PO1 Sanchez. We stress, however, that PO1 Sanchez forwarded the said specimen only on the next day, or on July 22, 2002. To harp back to what we earlier discussed, there was a missing link in the custody of the seized drug after it left the hands of PO1 Antonio. We cannot, therefore, presume that PO1 Sanchez had custody of the specimen in the interim. We also

stress that the identity of the person who received the seized item at the crime laboratory was not clearly identified. Due to the procedural lapses pointed out above, serious uncertainty hangs over the identification of the seized *shabu* that the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONFLICTING STATEMENTS OR DECLARATIONS OF WITNESSES DESTROYED THEIR CREDIBILITY.—** We are at a loss how PO1 Antonio and PO1 Jiro could have given different accounts regarding how the confidential asset informed them of the appellant's illegal activities when both of them were present at the police station on July 21, 2002. What baffles us even more is why PO1 Jiro's gave conflicting statements in his joint affidavit and in his court testimony. To us, the conflicting statements and declarations of PO1 Antonio and PO1 Jiro destroyed their credibility; it made their testimonies unreliable. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.

7. **ID.; ID.; PRESUMPTIONS; DISPUTABLE PRESUMPTION THAT OFFICIAL DUTIES HAVE BEEN REGULARLY PERFORMED CANNOT OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.—** In sustaining the appellant's conviction, the CA also relied on the evidentiary presumption that official duties have been regularly performed. This presumption, it must be stressed, is not conclusive. It cannot, by itself, overcome the constitutional presumption of innocence. Any taint of irregularity affects the whole performance and should make the presumption unavailable. The presumption, in other words, obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, as in this case, 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

BRION, *J.*:

We review the May 27, 2008 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR No. 30215, affirming with modification the April 3, 2006 decision[2] of the Regional Trial Court (*RTC*), Branch 75, San Mateo, Rizal. The RTC decision found Erlinda Capuno *y* Tison (*appellant*) guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

ANTECEDENT FACTS

The prosecution charged the appellant with violation of Section 5, Article II of R.A. No. 9165 before the RTC, under an Information that states:

> That on or about the 21st day of July 2002, in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another, one (1) heat-sealed transparent plastic sachet of white crystalline substance weighing 0.04 gram which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, and which substance produces a physiological action similar to amphetamine or other compound thereof providing similar physiological effects.
>
> CONTRARY TO LAW.[3]

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, and concurred in by Associate Justice Edgardo F. Sundiam and Associate Justice Sixto C. Marella, Jr; *rollo*, pp. 3-12.

[2] Penned by Judge Elizabeth Balquin-Reyes; CA *rollo*, pp. 9-17.

[3] Records, p. 1.

The appellant pleaded not guilty to the charge.[4] The prosecution presented Police Officer 1 (*PO1*) Jose Gordon Antonio and PO1 Fortunato Jiro III at the trial. The appellant and Maria Cecilia Salvador took the witness stand for the defense.

PO1 Antonio narrated that at around 11:10 a.m. of July 21, 2002, he was at the Rodriguez Police Station when a civilian informant arrived and told him that a woman was openly selling dangerous drugs on Manggahan Street, *Barangay* Burgos, Montalban, Rizal. Upon receiving this information, he, PO1 Joseph G. Fernandez, and PO1 Jiro planned an entrapment operation: he (PO1 Antonio) was designated as the poseur-buyer, while his two companions would act as back-up. Before leaving the police station, they asked the desk officer to record their operation.[5] They went to Manggahan Street, and when they were near this place, the informant pointed to them the appellant. PO1 Antonio alighted from the vehicle, approached the appellant, and told her, "*Paiskor ng halagang piso*"*;* he then handed the pre-marked one hundred peso bill to her. The appellant pulled out a plastic sachet from her left pocket and gave it to PO1 Antonio. PO1 Antonio immediately held the appellant's arm, introduced himself to her, and stated her constitutional rights. It was at this time that PO1 Fernandez and PO1 Jiro approached them; PO1 Jiro recovered the marked money from the appellant. They brought the appellant to the police station for investigation.[6] According to PO1 Antonio, the police forwarded the seized item to the Eastern Police District Crime Laboratory for examination.[7]

PO1 Jiro testified that at around 11:00 a.m. of July 21, 2002, he was at the Rodriguez Police Station when a confidential asset called and informed the police that he saw one "*alias Erlinda*" selling illegal drugs. The police planned a buy-bust operation wherein they prepared a one hundred peso bill (₱100.00)

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[4] *Id.* at 23-24.

[5] TSN, October 30, 2002, pp. 2-3.

[6] *Id.* at 3-5.

[7] *Id.* at 6.

marked money, and designated PO1 Antonio as the poseur buyer. Afterwards, PO1 Jiro, PO1 Antonio, PO1 Fernandez, and the confidential asset left the police station and proceeded to Manggahan Street. On their arrival there, the confidential asset pointed to them the appellant.[8] PO1 Antonio alighted from the vehicle, approached the appellant, and talked to her. Thereafter, PO1 Antonio handed the marked money to the appellant; the appellant took "something" from her pocket and handed it to PO1 Antonio.[9] Immediately after, PO1 Antonio arrested the appellant. He (PO1 Jiro) and PO1 Fernandez approached the appellant; he recovered the marked money from the appellant's left pocket. They brought the appellant to the police station and asked the duty officer to blotter the incident. Afterwards, they brought the appellant to the police investigator; they also made a request for a laboratory examination.[10]

On cross-examination, PO1 Jiro stated that he was 10 meters away from PO1 Antonio when the latter was transacting with the appellant. He maintained that the buy-bust operation took place outside the appellant's house.[11] He recalled that the appellant had two other companions when they arrived. When they arrested the appellant, some residents of the area started a commotion and tried to grab her.[12]

The testimony of Police Inspector Abraham Tecson, the Forensic Chemist, was dispensed with after both parties stipulated on the result of the examination conducted on the specimen submitted to the crime laboratory.

On the hearing of April 14, 2004, the prosecution offered the following as exhibits:

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[8] TSN, March 5, 2003, pp. 3-4.

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

[10] *Id.* at 6-7.

[11] TSN, March 31, 2003, pp. 5-6.

[12] *Id.* at 9-10.

Exhibit "A" – the *Sinumpaang Salaysay* of PO1 Antonio, PO1 Jiro and PO1 Fernandez

Exhibit "B" – the request for laboratory examination

Exhibit "C" – Chemistry Report No. D-1373-02E

Exhibit "D" – the buy-bust money

Exhibit "E" – Chemistry Report No. RD-78-03

Exhibit "F" – the specimen confiscated from the appellant

Exhibit "G" – Police Blotter[13]

The defense presented a different version of the events.

The appellant testified that at around 11:00 a.m. of July 21, 2002, she was inside her house and lying on the bed, together with her 15-year old daughter, when two persons, who introduced themselves as police officers, entered her house. They wore *maong* pants and *sando*. They asked her if she was Erlinda Capuno and when she answered in the affirmative, they searched her house.[14] They invited the appellant and her daughter to the Municipal Hall of Montalban, Rizal when they did not find anything in the house. Upon arriving there, the police told her to reveal the identity of the person who gave her *shabu*. When she answered that she had no idea what they were talking about, the police put her in jail.[15] The appellant further stated that she saw the seized specimen only in court.[16]

On cross-examination, the appellant denied that she had been selling illegal drugs. She explained that she consented to the search because she believed that the two persons who entered her house were policemen.[17]

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[13] Records, pp. 120-121.

[14] TSN, January 24, 2004, pp. 3-4.

[15] *Id.* at 5.

[16] *Id.* at 8.

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

Maria, the appellant's daughter, corroborated her mother's testimony on material points, but stated that the two policemen did not search their house but merely "looked around."[18]

The RTC, in its decision[19] of April 3, 2006, convicted the appellant of the crime charged, and sentenced her to suffer the indeterminate penalty of imprisonment for twelve (12) years and one (1) day to twelve (12) years, ten (10) months and twenty (20) days. The RTC likewise ordered the appellant to pay a ₱100,000.00 fine.

The appellant appealed to the CA, docketed as CA-G.R. CR No. 30215. The CA, in its decision[20] dated May 27, 2008, affirmed the RTC decision with the modification that the appellant be sentenced to life imprisonment, and that the amount of fine be increased to ₱500,000.00.

The CA found unmeritorious the appellant's claim that the prosecution witnesses were not credible due to their conflicting statements regarding the place of the buy-bust operation. As the records bore, PO1 Antonio stated that they conducted the entrapment operation on Manggahan Street; PO1 Jiro testified that it was held on Manggahan Street. The CA, nevertheless, ruled that PO1 Jiro made a slip of the tongue as there was no Manggahan Street in *Barangay* Burgos, Montalban, Rizal.[21]

The CA added that despite the minor inconsistencies in the testimonies of PO1 Antonio and PO1 Jiro, the records do not show that they were ever motivated by any ulterior motive other than their desire to help wipe out the drug menace. It added that the appellant's denial cannot prevail over the positive identification made by the prosecution witnesses, who, as police officers, performed their duties in a regular manner.[22]

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[18] TSN, July 13, 2005, pp. 1-11.

[19] *Supra* note 2.

[20] *Supra* note 1.

[21] *Rollo*, p. 8.

[22] *Id.* at 9-10.

Finally, the CA held that all the elements of illegal sale of dangerous drugs had been established.[23]

In her brief,[24] the appellant claims that the lower courts erred in convicting her of the crime charged despite the prosecution's failure to prove her guilt beyond reasonable doubt. She harps on the fact that PO1 Antonio and PO1 Jiro gave conflicting statements on how they came to know of her alleged illegal activities. On one hand, PO1 Antonio claimed that an informant went to the police station and told them that the appellant was openly selling illegal drugs; PO1 Jiro, on the other hand, stated that a civilian informant called the police and informed them of the appellant's illegal activities. The appellant also alleges that the testimonies of these two witnesses differ as regards the actual place of the entrapment operation. She further argues that the police did not coordinate with the Philippine Drug Enforcement Agency (*PDEA*) in conducting the buy-bust operation.

The appellant likewise contends that the prosecution failed to show an unbroken chain of custody in the handling of the seized specimen. She claims that the apprehending team did not mark the seized items upon confiscation. Moreover, there was no showing that the police inventoried or photographed the seized items in her presence or her counsel, a representative of the media and the Department of Justice (*DOJ*), and any elected public official.[25]

For the State, the Office of the Solicitor General (*OSG*) counters with the argument that the testimonies of the police officers prevail over the appellant's bare denial, more so since there was nothing in the records to show that they were motivated by any evil motive other than their desire to curb the vicious drug trade.[26]

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[23] *Id.* at 10.

[24] CA *rollo*, pp. 29-39.

[25] *Id.* at 33-38.

[26] *Id.* at 62-64.

The OSG added that when the buy-bust operation took place on July 21, 2002, there was no institution yet known as the PDEA, as the Implementing Rules of R.A. No. 9165 (*IRR*) took effect only on November 27, 2002.[27] It further claimed that the failure to comply with the Dangerous Drugs Board Regulations was not fatal to the prosecution of drug cases.[28]

THE COURT'S RULING

After due consideration, we resolve to *acquit* the appellant for the prosecution's failure to prove her guilt beyond reasonable doubt.

In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused – in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.[29] The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption prevails and the accused should necessarily be acquitted.[30]

The requirements of paragraph 1, Section 21 of Article II of R.A. No. 9165

In a prosecution for the 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

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[27] *Id.* at 69.

[28] *Id.* at 69-71.

[29] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 207.

[30] *People v. dela Cruz*, G.R. No. 177222, October 29, 2008, 570 SCRA 273, 283.

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. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.[31]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

> 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[.]

This procedure, however, was not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the evidence. The deficiency is patent from the following exchanges at the trial:

FISCAL ROMNIEL MACAPAGAL:

Q: Upon arrival at Manggahan Street, what did x x x your group do?

PO1 JOSE GORDON ANTONIO:

A: We proceeded to the place and before we reach[ed] that place[,] our civilian asset pointed to us the suspect.

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[31] See *People v. Pagaduan*, G.R. No. 179029, August 12, 2010.

Q: After your civilian informer pointed to the suspect, what did your group do?

A: I alighted from our private vehicle at the time and I was the one who talked to Erlinda Capuno.

Q: You said [that] you talked to Erlinda Capuno, what did you tell her when you approached her?

A: I told her "*Paiskor ng halagang piso*."

Q: When you told this to Erlinda that you buy one Hundred Peso of *shabu*, what did he do? [*sic*]

A: When I gave her on [*sic*] piece of the marked money[,] he [*sic*] pulled out something from her pocket.

Q: What is the denomination of the marked money?

A: One Hundred Peso bill.

Q: Upon receiving the plastic sachet, what did you do next?

A: After she gave me the suspected *shabu*, I held her by the arm and my two companions who [were] then seeing me approached me. [*sic*]

Q: What is the purpose of holding the hands of Erlinda when you received this plastic sachet?

A: When I took the plastic sachet that was the time I held her and after that I introduced myself and explained to her Constitutional rights. [*sic*]

Q: After arresting Erlinda, where did you proceed?

A: We brought her to the Police Station for investigation where she gave her full name and also turned over the suspected items[.]

Q: Who recovered the buy-bust money?

A: Police Officer Hero [*sic*], Sir.

Q: You stated you were the one who handed the buy bust money to Erlinda. Do you have that buy bust money with you?

A: After I gave the marked money to her[,] she picked from her left pocket the suspected *shabu* and Police Officer Hero recovered the money. [*sic*]

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Q: The alleged specimen you got from Erlinda, where is it now?

A: We brought it to the Eastern Police District Crime Laboratory for examination.

Q: Were you able to know the result of this examination?

A: Yes, Sir. When we returned we already have the result.[32]

From the foregoing exchanges, it is clear that the apprehending team, upon confiscation of the drug, immediately brought the appellant and the seized specimen to the police station. **No physical inventory and photograph of the seized items were taken in the presence of the appellant or her counsel, a representative from the media and the DOJ, and an elective official**. We stress that PO1 Antonio's testimony was corroborated by another member of the apprehending team, PO1 Jiro, who narrated that after arresting the appellant, they brought her and the seized item to the police station. At no time during PO1 Jiro's testimony did he even intimate that they inventoried or photographed the confiscated item.

A review of jurisprudence, even prior to the passage of R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974.[33] Section 1 of this Regulation requires the apprehending team, having initial custody and control of the seized drugs, to immediately inventory and photograph the same in the presence of the accused and/or his representatives, who shall be required to sign the copies of the inventory and be given a copy thereof.

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[32] *Supra* note 5, at 3-6.

[33] See *People v. Magat*, G.R. No. 179939, September 29, 2008, 567 SCRA 86, 95.

The Court remained vigilant in ensuring that the prescribed procedures in the handling of the seized drugs were observed after the passage of R.A. No. 9165. In *People v. Lorenzo*,[34] we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items. *People v. Garcia*[35] likewise resulted in an acquittal because no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165. In *Bondad, Jr. v. People*,[36] we also acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized item, without justifiable grounds.

We had the same rulings in *People v. Gutierrez*,[37] *People v. Denoman*,[38] *People v. Partoza*,[39] *People v. Robles*,[40] and *People v. dela Cruz,*[41] where we emphasized the importance of complying with the required procedures under Section 21 of R.A. No. 9165.

To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165*, i.e., "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[.]"* This saving clause, however, applies only where the prosecution recognized the procedural lapses, and, thereafter, explained the cited justifiable grounds, and when the prosecution established that the integrity

[34] G.R. No. 184760, April 23, 2010.

[35] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[36] G.R. No. 173804, December 10, 2008, 573 SCRA 497.

[37] G.R. No. 179213, September 3, 2009, 598 SCRA 92.

[38] G.R. No. 171732, August 14, 2009, 596 SCRA 257.

[39] G.R. No. 182418, May 8, 2009, 587 SCRA 809.

[40] G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[41] G.R. No. 181545, October 8, 2008, 568 SCRA 273.

and evidentiary value of the evidence seized had been preserved.[42]

These conditions were not met in the present case, as the prosecution did not even attempt to offer any justification for its failure to follow the prescribed procedures in the handling of the seized items.

The "Chain of Custody" Requirement

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti* - the body of the crime whose core is the confiscated illicit drug. Thus, every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed.[43]

Board Regulation No. 1, Series of 2002, defines chain of custody as "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." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would, thus, include a testimony about the every link in the chain, from the moment the item was seized to the time it was offered in court as evidence, such that every person who handled the same would admit as to how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witnesses would then describe the precautions taken to ensure that there

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[42] *People v. Garcia, supra* note 35.

[43] *People v. Sanchez, supra* note 29, citing *People v. Kimura*, 428 SCRA 51 (2004) and *Lopez v. People*, 553 SCRA 619 (2008).

had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[44]

In the present case, the prosecution's evidence failed to establish the chain that would have shown that the *shabu* presented in court was the very same specimen seized from the appellant.

The *first* crucial link in the chain of custody starts with the seizure of the plastic sachet from the appellant. From the testimonies and joint affidavit of PO1 Antonio and PO1 Jiro, it is clear that the police did not mark the confiscated sachet upon confiscation. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[45]

The *second* link in the chain of custody is its turnover from PO1 Antonio to the police station. Both PO1 Antonio and PO1 Jiro testified that they brought the appellant and the seized item to the police station. They, however, failed to identify the person to whose custody the seized item was given. Although the records show that the request for laboratory examination of the seized item was prepared by the Chief of Police, Police Senior Inspector Anastacio Benzon, the evidence does not show that he was the official who received the marked plastic sachet from PO1 Antonio.

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[44] See *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 149.

[45] See *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

As for the *subsequent links* in the chain of custody, the records show that the seized item was forwarded to the Philippine National Police Crime Laboratory by a certain PO1 Sanchez. We stress, however, that PO1 Sanchez forwarded the said specimen only on the next day, or on July 22, 2002. To harp back to what we earlier discussed, there was a missing link in the custody of the seized drug after it left the hands of PO1 Antonio. We cannot, therefore, presume that PO1 Sanchez had custody of the specimen in the interim. We also stress that the identity of the person who received the seized item at the crime laboratory was not clearly identified.

Due to the procedural lapses pointed out above, serious uncertainty hangs over the identification of the seized *shabu* that the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.

Credibility of the Prosecution Witnesses

We likewise cannot acquiesce to the credibility accorded to the prosecution witnesses by the courts *a quo*. Contrary to the lower courts' ruling, the inconsistencies in the statements of the prosecution witnesses are substantial, not trivial. To recall, PO1 Antonio, PO1 Jiro and PO1 Fernandez stated in their *Pinagsamang Sinumpaang Salaysay*[46] that a civilian asset **arrived at the police station** on July 21, 2002, and informed them that one "*alias Erlinda*" was selling illegal drugs on Manggahan Street, *Barangay* Burgos, Rodriguez, Rizal. PO1 Antonio reiterated this fact when he testified in court that a civilian informant **arrived at the police station** on July 21, 2002 and told them that a woman was openly selling dangerous drugs on Manggahan Street, *Barangay* Burgos, Montalban, Rizal. PO1 Jiro, however, changed his story in court and testified that the confidential informant **called the police** and informed then that one "*alias Erlinda*" was selling illegal drugs.

We are at a loss how PO1 Antonio and PO1 Jiro could have given different accounts regarding how the confidential asset informed them of the appellant's illegal activities when both of them were

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[46] Records, p. 10.

present at the police station on July 21, 2002. What baffles us even more is why PO1 Jiro's gave conflicting statements in his joint affidavit and in his court testimony. To us, the conflicting statements and declarations of PO1 Antonio and PO1 Jiro destroyed their credibility; it made their testimonies unreliable. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.[47]

Presumption of Regularity in the Performance of Official Duties

In sustaining the appellant's conviction, the CA also relied on the evidentiary presumption that official duties have been regularly performed. This presumption, it must be stressed, is not conclusive. It cannot, by itself, overcome the constitutional presumption of innocence. Any taint of irregularity affects the whole performance and should make the presumption unavailable.[48] The presumption, in other words, obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, as in this case, an adverse presumption arises as a matter of course.[49] As we explained in *People v. Sanchez*:

> While the Court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity

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[47] See also *Zarraga v. People*, G.R. No. 162064, March 14, 2006, 484 SCRA 639, a case that, although not squarely in point, underscores the importance of consistency in the statements of the members of the buy-bust team. In the said case, the Court reversed a guilty verdict for violation of Section 5 of R.A. No. 9165 largely due to the conflicting testimonies of the police officers who conducted the operation on when and where the seized drugs were marked.

[48] *People v. Pagaduan, supra* note 31.

[49] *Cariño v. People*, G.R. No. 178757, March 13, 2009, 581 SCRA 388, 406.

in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because "*First*, the presumption is precisely just that - a mere presumption. Once challenged by evidence, as in this case, xxx [it] cannot be regarded as binding truth. *Second*, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt." The presumption also cannot prevail over positive averments concerning violations of the constitutional rights of the accused. In short, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.[50]

All told, we find merit in the appellant's claim that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt, due to the unreliability of the testimonies of the prosecution witnesses and substantial gaps in the chain of custody, raising reasonable doubt on the authenticity of the *corpus delicti*.

WHEREFORE, premises considered, we hereby *REVERSE* and *SET ASIDE* the May 27, 2008 Decision of the Court of Appeals in CA-G.R. CR No. 30215. Appellant Erlinda Capuno *y* Tison is hereby *ACQUITTED* for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately *RELEASED* from detention unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

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[50] *Supra* note 29, at 221.

SECOND DIVISION

[G.R. No. 187725. January 19, 2011]

BENJAMIN JESALVA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; CUSTODIAL INVESTIGATION; NATURE.—** Custodial investigation refers to "any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." This presupposes that he is suspected of having committed a crime and that the investigator is trying to elicit information or a confession from him. The rule begins to operate at once, as soon as the investigation ceases to be a general inquiry into an unsolved crime, and direction is aimed upon a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements.

2. **ID.; EVIDENCE; DIRECT EVIDENCE OF THE COMMISSION OF THE CRIME IS NOT ALWAYS REQUIRED FOR CONVICTION.—** Direct evidence of the commission of the crime charged is not the only matrix wherefrom a court may draw its conclusions and findings of guilt. There are instances when, although a witness may not have actually witnessed the commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person last seen with the victim immediately before and right after the commission of the crime. This is the type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition where concealment is highly probable. If direct evidence is insisted upon under all circumstances, the guilt of vicious felons who committed heinous crimes in secret or in secluded places will be hard, if not well-nigh impossible, to prove.

3. ID.; ID.; CIRCUMSTANCIAL EVIDENCE; CAN BE THE BASIS FOR CONVICTION; REQUISITES.— [T]here can be a verdict of conviction based on circumstantial evidence when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pinpointing the accused, to the exclusion of all the others, as the perpetrator of the crime. However, in order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, *viz.*: (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.

4. ID.; ID.; ID.; CIRCUMSTANCIAL EVIDENCE CLEARLY ESTABLISHED THE GUILT OF THE ACCUSED.— Petitioner's mere denial cannot outweigh the circumstantial evidence clearly establishing his culpability in the crime charged. It is well-settled that the positive declarations of a prosecution witness prevail over the bare denials of an accused. The evidence for the prosecution was found by both the RTC and the CA to be sufficient and credible, while petitioner's defense of denial was weak, self-serving, speculative, and uncorroborated. Petitioner's silence as to the matters that occurred during the time he was alone with Leticia is deafening. An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence. We find that the prosecution has met this quantum of proof in this case.

APPEARANCES OF COUNSEL

Rofebar F. Gerona for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the

[1] *Rollo*, pp. 9-26.

reversal of the Court of Appeals (CA) Decision[2] dated October 17, 2008, which affirmed with modification the decision[3] of the Regional Trial Court (RTC) of Sorsogon, Sorsogon, dated November 18, 1997, finding petitioner Benjamin Jesalva *alias* Ben Sabaw[4] (petitioner) guilty beyond reasonable doubt of the crime of Homicide.

The Facts

On September 11, 1992, the Chief of Police of Sorsogon, Sorsogon, filed a criminal complaint[5] for Frustrated Murder against petitioner. Four days thereafter, or on September 15, 1992, the complaint was amended, charging petitioner with the crime of Murder, as the victim Leticia Aldemo[6] (Leticia) died on September 14, 1992.[7] After conducting a hearing on the bail application of petitioner, the Municipal Trial Court (MTC) of Sorsogon, Sorsogon, on December 18, 1992, granted him bail.[8] On January 11, 1993, the MTC recommended the filing of Murder against petitioner, and then ordered the transmittal of the records of the case to the Provincial Prosecutor of Sorsogon.[9]

Thus, petitioner was charged with the crime of Murder in an Information[10] dated January 26, 1993, which reads:

> That on or about the 9th day of September, 1992 in the Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the

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[2] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Monina Arevalo-Zenarosa and Ramon M. Bato, Jr., concurring; *id.* at 29-64.

[3] CA *rollo*, pp. 104-119.

[4] Also referred to as Ben Jesalva in some pleadings and documents.

[5] Records, p. 1.

[6] Also referred to as Letecia Aldemo and Letty Aldemo in some pleadings and documents.

[7] Records, p. 12.

[8] *Id.* at 101-109.

[9] *Id.* at 122-123.

[10] *Id.* at 125.

jurisdiction of this Honorable Court, the above-named accused, with intent to kill, taking advantage of superior strength, with treachery and evident premeditation with the use of motor vehicle and during night time, did then and there [wilfully], unlawfully and feloniously attack, assault, manhandle and use personal violence upon [Leticia] Aldemo, inflicting upon the latter serious and mortal wounds which directly caused her death shortly thereafter, to the damage and prejudice of her legal heirs.

CONTRARY TO LAW.

When arraigned on March 1, 1993, petitioner entered a plea of not guilty to the offense charged.[11] Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

The testimonies of the prosecution witnesses are essentially summarized by the Office of the Solicitor General (OSG), as follows:

In the evening of September 8, 1992, witness Gloria Haboc, together with the victim Leticia Aldemo, Benjamin Jesalva (petitioner), Elog Ubaldo,[12] Jo Montales and Romy Paladin were at Nena's place playing mahjong. A certain Mrs. Encinas and Atty. Alibanto were also there. At about 10 o'clock that night, Gloria's group left Nena's place and boarded the Isuzu panel of petitioner. With the exception of Jo Montales, the group proceeded to Bistro Christina to eat and drink. While Gloria had softdrink, Leticia drank two (2) bottles of beer, and the rest consumed beer and [F]undador until 11:30 in the evening.

After they ate and drank, the group, with the exception of Elog Ubaldo who flagged down a tricycle, once again boarded petitioner's Isuzu panel as it was usually petitioner who drove them home. The victim Leticia Aldemo was seated at the front seat. Petitioner dropped Romy Paladin at his house first, followed by Gloria, who resided some 20 meters away from Leticia's house. While at Gloria's house, petitioner wanted to drink some more but Gloria told him to defer it until the next day because the stores were already closed. Gloria then gave Leticia three (3) sticks of barbecue and accompanied her and petitioner

[11] *Id.* at 141.

[12] Also referred to as Ilog Ubaldo in some pleadings and documents.

at the gate. After petitioner and Leticia boarded the Isuzu [panel], the former immediately accelerated his car and went to the direction of 6th Street instead of towards 7th Street where Leticia's house was situated.

At about 12:20 early morning of September 9, 1992, the group of SPO1 Edgardo Mendoza (SPO1 Mendoza) of the Sorsogon PNP Mobile Patrol Section chanced upon petitioner's Isuzu [panel] in St. Rafael Subdivision in [Our Lady's Village] OLV, Pangpang, Sorsogon. The police patrol team approached the vehicle and SPO1 Mendoza focused a flashlight at the front portion of the vehicle to check what was going on. There, SPO1 Mendoza saw petitioner whom he knew since childhood seated in front of the wheel so he called out his name. Instead of heeding his call, however, petitioner did not respond, immediately started the engine and sped away toward Sorsogon town proper which is directly opposite his place of residence which is Ticol, Sorsogon, Sorsogon.

At about the same time that night, Noel Olbes, a driver for the MCST Sisters holding office at the Bishop's Compound in Sorsogon, Sorsogon, was also in OLV Pangpang. While he was walking from a certain Lea's house, he saw a woman naked from the waist down and lying on her belly on the highway. Her jeans and [panty] were beside her. Because it was raining, Olbes pitied her so he carried her and her things to the shed some 10 meters away. As he was doing so, a tricycle being driven by Eduardo De Vera focused its headlight in his direction. De Vera called out, "What is that?" Because he received no response from Noel Olbes, he decided to bring his passenger home first and just come back to check the site later.

Meanwhile, upon reaching the shed, Olbes noticed that the woman was bleeding that he even got stained with her blood. Afraid that he might be implicated, he hurriedly left the woman at Hazelwood such that when De Vera came back, he no longer found Olbes. De Vera then proceeded to the police station to report the incident to [SPO1] Balaoro.

De Vera, SPO1 Balaoro and SPO1 Sincua eventually returned to comb the area but to no avail. On their way back at about 1:15 o'clock (sic) in the morning, they met Lt. Caguia talking with Noel Olbes. De Vera lost no time in identifying him to be the man he saw with the woman. At this point, Olbes admitted the allegation but professed innocence. He admitted he left the woman in Hazelwood where the police found her.

Eventually, Olbes was investigated by the police and was not released until the next day. However, because the evidence pointed to petitioner as the last person seen with the victim, a search for him was conducted. He "surrendered" at one (1) o'clock in the afternoon accompanied by Fiscal Jose Jayona, his first cousin.[13]

The prosecution highlighted that, per testimony of Gloria Haboc, Leticia disclosed to her that petitioner was courting Leticia. However, Leticia told petitioner that they should just remain as friends because she was already married, and that she loved her handsome husband.[14] Moreover, the prosecution asseverated that, at around 12:20 a.m. of September 9, 1992, while conducting patrol in St. Rafael Subdivision,[15] together with other police officers, Senior Police Officer 1 Edgardo Mendoza (SPO1 Mendoza), by using his flashlight, saw petitioner on board his vehicle alone. Upon sight, petitioner immediately started his vehicle and drove toward the town proper of Sorsogon, which was directly opposite his residence in Ticol, Sorsogon, disregarding SPO1 Mendoza's calls.[16] Lastly, at about 1:00 p.m. of September 9, 1992, petitioner, together with his first cousin Fiscal Jose Jayona (Fiscal Jayona), went to the police station, wherein he voluntarily intimated to SPO4 William Desder (SPO4 Desder) that Leticia jumped out of his vehicle.[17] At about 1:20 p.m. of September 9, 1992, SPO2 Enrique Renoria, together with other police officers, Fiscal Jayona, and petitioner inspected the place, which petitioner identified as the place where he and Leticia sat. They found bloodstains thereat.[18]

After the prosecution presented twelve (12) witnesses, the defense moved for leave of court to file demurrer to evidence.

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[13] *Rollo*, pp. 77-80.

[14] TSN, March 20, 1996, pp. 27-28.

[15] Also referred to as St. Raphael Subdivision in some pleadings and documents.

[16] TSN, January 24, 1996, pp. 12-29.

[17] TSN, May 22, 1996, pp. 18-20 and TSN, August 22, 1996, p. 38.

[18] TSN, August 8, 1996, pp. 25-29.

On February 21, 1994, the defense filed before the RTC, Branch 51, its Demurrer to Evidence,[19] which the RTC, Branch 51, denied in its Order[20] dated July 8, 1994. On August 11, 1994, the defense filed a Motion[21] for Reconsideration of the Order dated July 8, 1994 and Inhibition of Presiding Judge, which the prosecution opposed. The Presiding Judge of the RTC, Branch 51, voluntarily inhibited himself from taking any further action in the case;[22] hence, the case was re-raffled to the RTC, Branch 52. Acting on the pending Motion for Reconsideration of the defense, the Presiding Judge of the RTC, Branch 52, denied the same and set the reception of evidence of the defense.[23]

Version of the Defense

In his relatively short stint on the witness stand, petitioner denied that he killed Leticia. He testified that he did not have any reason to kill her, and that he had many reasons why he should not kill her.[24] The prosecution manifested that it would not conduct a cross-examination on the person of petitioner as his testimony was tantamount to pure denial.[25] To prove that there was a broken chain of circumstantial evidence, the defense presented, as witness, Eduardo de Vera. The CA narrated:

> 12. **Eduardo de Vera** declared that on September 9, 1992 at about 12:30 a.m., he was driving his tricycle en route to OLV, Pangpang, Sorsogon; upon reaching the junction of the national road or highway, he saw a man and a woman three meters from the edge of the road; he stopped his tricycle and focused the headlight of his tricycle towards the two; he saw the woman leaning on the left arm of the man while the man was on a squatting position; he asked them "what is that?" and did not get any response; that the man was hiding his face and

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[19] Records, pp. 188-218.

[20] *Id.* at 229-231.

[21] *Id.* at 232-234.

[22] *Id.* at 244.

[23] *Id.* at 262-263.

[24] TSN, August 23, 1997, p. 7.

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

saw little blood on the clothes of the woman; he saw the woman with clothes, a polo shirt and pants; he decided to bring home his passenger home (sic) first and then returned to the scene but found no one there; he reported the matter to [SPO1] Balaoro, who immediately accompanied him to the place; they searched for the man and woman but they could not find them; they checked the Sorsogon Provincial Hospital but nobody had been brought there; then they proceeded back to the junction and later to the Sorsogon town proper; upon reaching Barangay Tugos, they saw [Lt.] Caguia talking with a man, whom he (De Vera) recognized as the man with the woman; [Lt.] Caguia directed the man to go to Police Sub-Station 1; at the police Sub-Station 1, he came to know the name of the man – Noel Olbes; he saw bloodstains on Olbes' arms, hands, face and nose; the police interrogated him about it and he replied that he just helped the woman.

On cross-examination, he admitted that he has known [petitioner] for a longtime; and he has good relationship with him; [petitioner] was his bondsman in Criminal Case No. 95-3989 for illegal possession of firearms and because of this, he is indebted to him and he thus wants to repay his gratitude to [petitioner]; [petitioner] requested him to be a witness in the case.[26]

Relative to the subsequent events, the CA summarized the testimonies of SPO1 Eduardo Balaoro and Noel Olbes (Olbes), as follows:

6. **SPO1 Eduardo Balaoro** essayed that at around 1:00 a.m. of September 9, 1992, Eduardo De Vera reported to him at the Police Sub-Station 1 that he saw a man, who was in squatting position, and a woman, who had blood on the upper right breast of her clothes, lean[ing] against the man and that after De Vera brought his tricycle passenger home, he returned to the site but he could not find the two anymore; upon receiving the report, he (SPO1 Balaoro), together with SPO1 Sincua and De Vera, proceeded to the diversion road, at the junction going to the hospital and Pangpang, Sorsogon, Sorsogon to investigate; they searched the place and went to the hospital but found nothing; on their way back, at around 1:15 [a.m.] they saw Noel Olbes talking with Lt. Caguia at Barangay Tugos; De Vera pointed to Olbes as the man he saw with the woman at the crossing so they brought him to Police Sub-Station 1 for investigation; Olbes

[26] *Supra* note 2, at 46-48.

told them that he saw the woman lying on the side of the road so he tried to lift her up but when he saw the tricycle (De Vera's) he became afraid as he might be implicated in the crime so he brought her to Hazelwood, which is five meters away from the highway; at 2:25 a.m. the patrol team found Leticia Aldemo, whom they found naked from the waist down; at the garage of Hazelwood; they found the long pants of the victim lying beside her and noted that her panty was still on one of her knees; the victim's body appeared to have been laid down; they did not find any blood in the garage except where the victim's body was found outside the garage, they saw the other pair of shoes of a woman and thick bloodstains; he (SPO1 Balaoro) brought Olbes to Balogo station and entrusted him to their investigator.

7. **Noel Olbes** testified that he is a driver for the MCST Sisters who are holding office at the Bishop's Compound in Sorsogon, Sorsogon; that on September 8, 1997, he went out with his friends Danny, Oca and Ely in Almendras to drink a bottle of gin; at around 6:30 p.m. he went to downtown Sorsogon and roamed around until 10:30 p.m.; then he went to Bahay Kainan and at about 11:00 or 11:30 p.m., he went to Pena Fast Food and took a bottle of beer; upon the invitation of Lea, he went inside Pena and drank another bottle of beer; he brought Lea to her home at OLV, Pangpang, Sorsogon, Sorsogon; from Lea's house, he walked and upon reaching the junction of OLV, he saw a woman lying on her belly naked from the waist down; the woman was just uttering guttural sound; her jeans and panty were just lying beside her; taking pity on the woman and since it was raining that night, he carried the woman to a nearby shed in order that she would not be run over by motor vehicles; he also took the panty and the jeans to the shed; he noticed that a tricycle stopped for a while and focused its headlight on them and proceeded on its way; when he laid down the woman in the shed, he noticed that she was bleeding and he was stained with her blood; after seeing the blood, he got scared and left; he walked towards the Sorsogon town proper and after about forty-five minutes, two policem[e]n apprehended him and brought him to the police station for investigation; while being investigated, he was not apprised of his constitutional rights and made to sign the police blotter; he was detained as he was a suspect for the injuries of the victim; after 7 or 8 hours, he was released; and he executed a Sworn Statement and affirmed its contents.[27]

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[27] *Id.* at 40-43.

Dr. Antonio Dioneda, Jr.[28] and Dr. Wilhelmino Abrantes (Dr. Abrantes) testified on the injuries suffered by Leticia, which eventually caused her death:

9. **Dr. Antonio Dionedas** testified that he encountered on September 9, 1992 a patient by the name of Leticia Aldemo, who was in comatose state; she sustained the following injuries (1) severe cerebral contusion; (2) 2.5 cm punctured wound, occipital area (3) .5 cm punctured wound, parietal left area[;] (4) multiple contusion hematoma antero lateral aspect deltoid left area[;] (5) contusion hematoma 3rd upper left arm; (6) contusion hematoma left elbow[;] (7) abrasion left elbow[;] (8) hematoma, 3rd left thigh[;] (9) abrasion right knee[;] (10) multiple confluent abrasion right foot[;] (11) contusion hematoma right hand[;] (12) abrasion right elbow[;] (13) contusion hematoma right elbow[;] and (14) skull-segmented fracture parietal bone with separation.

He explained that the punctured wound in the occipital area (lower back of the skull) was caused by a pebble which they recovered from said area; the punctured wound on the parietal left area was caused by a sharp object and may have been secondary to a fall on a rough surface; the first three findings could also have been caused by the punch made by the perpetrator; the fourth finding could have been caused by a blunt instrument or a punch or a strong grip; the fifth and the sixth findings could have been caused also by some of the above-mentioned means; the eighth finding could have been caused by a fall or rubbing on a hard object; the ninth finding could have been caused by a blunt instrument or a fist blow while the tenth finding could have been caused by a fall on a rough object and the knee rubbing on a rough object; the eleventh finding could have been due to a fall or by being dragged; the twelfth finding could be caused by a blunt instrument or by a fall or by fist blow and the thirteenth finding could also be caused by a fall or fist blow.

He stated [that] the victim died despite the operation he performed on her.

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[28] Also referred to as Dr. Antonio Dioneda and Dr. Antonio Dionedas in other pleadings and documents.

14. **Dr. Wilhelmino Abrantes** – He explained the different kinds of injuries sustained by the victim. In addition, he stated that since there were wounds sustained by the victim in the dorsum part of the foot and sustained injuries on both knees, upper portion of the back of the hand, the victim could have been thrown off while unconscious.[29]

The RTC's Ruling

On November 18, 1997, the RTC ruled in favor of the prosecution, finding petitioner guilty beyond reasonable doubt based on circumstantial evidence, not of the crime of Murder, but of Homicide. The RTC ratiocinated that, in the absence of any direct evidence or testimonies of eyewitnesses, treachery was not established, and that evident premeditation and abuse of superior strength were not duly proven. Thus, the RTC disposed of the case in this wise:

WHEREFORE, premises considered, the Court finds the accused Benjamin Jesalva *alias* Ben Sabaw guilty beyond reasonable doubt of the crime of Homicide penalized under Art. 249 of the Revised Penal Code and considering that there was no aggravating nor mitigating circumstances attendant thereto and taking into consideration the Indeterminate Sentence Law, the court hereby sentences the accused to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum and to pay death indemnity of the sum of ₱50,000.00 to the legal heirs of the victim, plus ₱42,755.45 for compensatory damages plus ₱50,000.00 by way of moral damages and ₱10,000.00 as attorney's fees (*People v. Aguiluz,* March 11, 1992).

SO ORDERED.[30]

Aggrieved, petitioner appealed to the CA.[31]

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[29] *Supra* note 2, at 44-48.

[30] *Supra* note 3, at 119.

[31] Records, p. 410.

The CA's Ruling

On October 17, 2008, the CA pertinently held, among others, that petitioner could not point to Olbes as the culprit because, when Eduardo de Vera saw the former holding on to Leticia in a squatting position, Olbes was in the act of lifting her in order to bring her to the nearby shed. The CA opined that, if any misdeed or omission could be attributed to Olbes, it was his failure to bring Leticia to a nearby hospital, because his fear of being implicated in the crime clouded his better judgment. Thus:

All told, We find that the prosecution's evidence suffice to sustain the accused-appellant's conviction for homicide.

As to the award of attorney's fees, We find the award of ₱10,000.00 by the trial court meritorious, the records reveal that services of private prosecutor was engaged.

Under Article 249 of the Revised Penal Code, homicide is punishable by *reclusion temporal.* With the attendant mitigating circumstance of voluntary surrender of accused-appellant, the penalty *reclusion temporal* is imposed in its minimum period. Accordingly, accused-appellant Benjamin J. Jesalva should suffer the indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal* as maximum and SIX (6) YEARS and ONE (1) DAY of *prision mayor* as minimum.

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52 dated November 18, 1997 in Criminal Case No. 3243 is **AFFIRMED** with **MODIFICATION** as to the penalty.

Accused-appellant Benjamin J. Jesalva is sentenced to serve the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal,* as maximum.

SO ORDERED.[32]

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[32] *Supra* note 2, at 62-63.

Undaunted, petitioner filed a Motion for Reconsideration,[33] which the CA, however, denied in its Resolution[34] dated April 7, 2009 for lack of merit.

Hence, this Petition based on the following grounds:

A) THE COURT OF APPEALS AND RTC DECISIONS CONVICTING PETITIONER OF THE CRIME OF HOMICIDE BASED ON PURELY CIRCUMSTANTIAL EVIDENCE WERE BOTH NOT IN ACCORD WITH ESTABLISHED JURISPRUDENCE REQUIRING THAT SUCH BE ACTED WITH CAUTION AND THAT ALL THE ESSENTIAL FACTS MUST BE CONSISTENT WITH THE HYPOTHESIS OF GUILT; AND

B) THE COURT OF APPEALS, AS WELL AS THE TRIAL COURT, SERIOUSLY ERRED IN RULING THAT STATEMENTS MADE BY PETITIONER IN THE POLICE STATION WERE ADMISSIBLE AS HE WAS THEN NOT UNDER CUSTODIAL INVESTIGATION DESPITE SUFFICIENT EVIDENCE ON RECORD THAT HE WOULD HAVE BEEN DETAINED BY THE POLICE HAD HIS FISCAL-COMPANION NOT [TAKEN] HIM UNDER HIS CUSTODY.[35]

Petitioner argues that no evidence was ever introduced as to how, when, and where Leticia sustained her injuries. No witness ever testified as to who was responsible for her injuries. He refutes the prosecution's contention that, even if he took the 6th Street, the same could still lead to the 7th Street, where Leticia's house is located. Petitioner stresses that Olbes should have been considered as a suspect in this case, considering that he was the last person seen with Leticia when she was still alive. He avers that the statements he made at the police station are not admissible in evidence, considering that he was, technically, under custodial investigation, and that there was no waiver of his right to remain silent.[36] Moreover, petitioner

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[33] CA *rollo*, pp. 179-186.

[34] *Id.* at 221-222.

[35] *Supra* note 1, at 15.

[36] *Supra* note 1.

alleges that the fatal injuries sustained by Leticia, per the testimony of Dr. Abrantes, are consistent with a fall, thereby suggesting petitioner's innocence. Petitioner claims that the evidence shows that there was more blood in Hazelwood than in the place where Olbes spotted Leticia, thereby suggesting that something worse than her jumping out of the vehicle might have happened.[37]

On the other hand, respondent People of the Philippines, through the OSG, argues that only questions of law may be entertained by this Court, and that we accord great respect to factual findings of the trial court especially when affirmed by the CA. The OSG insists that the CA, affirming the RTC's ruling, did not err in convicting petitioner on the basis of circumstantial evidence, because the particular circumstances enumerated by both the RTC and the CA satisfactorily meet the requirements of the rules and of jurisprudence for conviction. Moreover, the OSG claims that the statements made by petitioner before SPO4 Desder, in the presence of Fiscal Jayona, were voluntarily given and were not elicited on custodial investigation. Lastly, the OSG counters that petitioner was not deprived of his rights since he was never held for questioning by any police officer upon arriving at the police station and, besides, he was accompanied by his first cousin, Fiscal Jayona.[38]

Our Ruling

The Petition is bereft of merit.

Custodial investigation refers to "any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." This presupposes that he is suspected of having committed a crime and that the investigator is trying to elicit information or a confession from him.[39] The rule begins to operate at once, as soon as the investigation ceases to be

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[37] *Rollo*, pp. 100-102.

[38] *Id.* at 74-98.

[39] *People v. Canton*, 442 Phil. 743, 761 (2002).

a general inquiry into an unsolved crime, and direction is aimed upon a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements.[40] The assailed statements herein were spontaneously made by petitioner and were not at all elicited through questioning. It was established that petitioner, together with his cousin Fiscal Jayona, personally went to the police station and voluntarily made the statement that Leticia jumped out of his vehicle at around 12:30 a.m. of September 9, 1992.[41] The RTC and the CA did not, therefore, err in holding that the constitutional procedure for custodial investigation is not applicable in the instant case.

Be that as it may, even without these statements, petitioner could still be convicted of the crime of Homicide. The prosecution established his complicity in the crime through circumstantial evidence, which were credible and sufficient, and which led to the inescapable conclusion that petitioner committed the said crime. Indeed, when considered in their totality, the circumstances point to petitioner as the culprit.

Direct evidence of the commission of the crime charged is not the only matrix wherefrom a court may draw its conclusions and findings of guilt. There are instances when, although a witness may not have actually witnessed the commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person last seen with the victim immediately before and right after the commission of the crime. This is the type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition where concealment is highly probable. If direct evidence is insisted upon under all circumstances, the guilt of vicious

[40] *People v. De la Cruz*, 344 Phil. 653, 660-661 (1997).

[41] *Supra* note 17.

felons who committed heinous crimes in secret or in secluded places will be hard, if not well-nigh impossible, to prove.[42]

Thus, there can be a verdict of conviction based on circumstantial evidence when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pinpointing the accused, to the exclusion of all the others, as the perpetrator of the crime. However, in order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, *viz.*: (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.[43]

We accord respect to the following findings of the CA, affirming those of the RTC:

> After a thorough review of the records of the case, We find that the circumstantial evidence proved by the prosecution, when viewed in its entirety, points unerringly to [petitioner] Benjamin Jesalva as the person responsible for the death of the victim Leticia Aldemo. Truly, the following combination of the circumstances which comprised such evidence forms an unbroken chain that points to [petitioner] and no other, as the perpetrator of the crime, to wit:
>
> 1. [Petitioner] Benjamin Jesalva *(who was previously courting the victim Leticia Aldemo, and whom the latter advised to stop as she was already married)* together with Gloria Haboc, and six other individuals left Nena Ables' house at 10 p.m. of September 8, 1992 after playing mahjong thereat. They rode in [petitioner's] red panel.
> 2. Benjamin Jesalva, Leticia Aldemo, Gloria Haboc and two others proceeded to Bistro Christina. [Petitioner], together with other two male companions, consumed one bottle of Fundador, in addition to the three bottles of beer. At 11:30 p.m., the group left the place.

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[42] *People v. Manalo*, G.R. No. 173054, December 6, 2006, 510 SCRA 664, 670.

[43] *People v. Matignas*, 428 Phil. 834, 869-870 (2002).

3. After dropping one male companion at his house, Benjamin Jesalva, together with Leticia Aldemo, proceeded to bring Gloria Haboc to her home, which was only twenty meters away from Leticia's residence.

4. After staying at Gloria Haboc's house for five minutes, and denied another drink, Benjamin Jesalva immediately accelerated his vehicle en route to 6th Street instead of the shorter and direct route, the 7th street, where Leticia Aldemo's house is located;

5. Leticia Aldemo never reached home as testified by her husband Efren Aldemo;

6. At around 12:20 a.m. of September 9, 1992, the police patrolling the St. Ra[f]ael Subdivision saw the red panel thereat and when they approached and beamed a flashlight, they saw Benjamin Jesalva behind the wheel, who suddenly drove away in the direction of Sorsogon town proper, opposite to where he lives. SPO1 Eduardo Mendoza told Benjamin Jesalva (*whom he had known since his teen-age years*) to stop but the latter did not respond or heed his call;

7. At 12:30 o'clock (sic) of even date, Noel Olbes saw the body of Leticia Aldemo sprawled on her belly at the crossing/ junction of OLV, Pangpang Sorsogon, Sorsogon, naked from the waist down. He lifted her up and brought the body at Hazelwood, which is about 10 meters away from the highway.

8. The police found the body of the victim at Hazelwood at around 2:15 a.m. of the same day, and brought her to the Sorsogon Provincial Hospital in comatose condition.

9. The police proceeded to inform the victim's sister, who in turn informed the victim's husband of the incident.

10. In the morning of September 9, 1992, the police looked for Benjamin Jesalva to invite him at the police station but was not able to find him.

11. At around 1:00 o'clock p.m. of September 9, 1992, Benjamin Jesalva, together with his first cousin, Asst. Prosecutor Jose Jayona, presented himself at the PNP Sorsogon, Sorsogon headquarters, where he voluntarily stated that the victim

Leticia Aldemo was his passenger in his vehicle at about 12:30 in the early morning of September 9, 1992 at St. Rafael Subdivision but upon reaching the crossing of OLV, Pangpang, Sorsogon, Sorsogon near the Provincial Hospital, she jumped out of his vehicle. These declarations were recorded in the police blotter by PO1 Enrique [Renoria] upon the instruction of SPO4 William Desder, the PNP Sorsogon Chief Investigator.

12. At about 1:30 p.m. of the same day, a police team, together with [petitioner] and Asst. Prosecutor Jayona, went to St. Ra[f]ael Subdivision to conduct an ocular inspection. [Petitioner] pointed to the police the place where he and the victim spent their time. The police photographed what appear[ed] to be bloodstains just two meters away from the place pointed by [petitioner].

13. **Dr. Antonio Dioneda** testified that the punctured wound in the occipital area was caused by a pebble which he recovered from said area; the punctured wound in the parietal left area was caused by a sharp object and may have been secondary to a fall on a rough surface, the cerebral contusion, the punctured wound in the occipital and in the parietal area could also be caused by a punch by the perpetrator. As to the multiple contusion hematoma anterior lateral aspect of the deltoid left area was caused by a blunt instrument or a punch or a strong grip; the contusion hematoma on the upper left arm and left elbow could as well be similarly caused by a blunt instrument or a punch or a strong grip. As to the abrasion on the right knee, the same could have been caused by a blunt instrument or a fist blow. The multiple confluent abrasion[s] on the right foot could have been caused by a fall on a rough object. The abrasions on the right elbow could have been caused by a blunt instrument or by a fall or by a fist blow. The same is true with the contusion hematoma found on the victim's right elbow.[44]

Petitioner's mere denial cannot outweigh the circumstantial evidence clearly establishing his culpability in the crime charged.

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[44] *Supra* note 2, at 53-58.

It is well-settled that the positive declarations of a prosecution witness prevail over the bare denials of an accused. The evidence for the prosecution was found by both the RTC and the CA to be sufficient and credible, while petitioner's defense of denial was weak, self-serving, speculative, and uncorroborated. Petitioner's silence as to the matters that occurred during the time he was alone with Leticia is deafening. An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence. We find that the prosecution has met this quantum of proof in this case.[45]

All told, we find no reversible error in the assailed CA decision which would warrant the modification much less the reversal thereof.

WHEREFORE, the petition is *DENIED*, and the Court of Appeals Decision dated October 17, 2008 in CA-G.R. CR No. 22126, affirming with modification the decision of the Regional Trial Court, Branch 52, Sorsogon, Sorsogon, in Criminal Case No. 3243, is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[45] *People v. Macabare*, G.R. No. 179941, August 25, 2009, 597 SCRA 119, 132.

SECOND DIVISION

[G.R. No. 187917. January 19, 2011]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **SPOUSES EDMUNDO MIRANDA and JULIE MIRANDA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES; ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION.—** [I]t must be stated that only questions of law may be raised before this Court in a Petition for Review under Rule 45 of the Revised Rules of Civil Procedure. This Court is not a trier of facts, and it is not the function of this Court to reexamine the evidence submitted by the parties.

2. **ID.; ID.; ID.; QUESTION OF NON-COMPLIANCE WITH NOTICE AND PUBLICATION REQUIREMENTS OF AN EXTRAJUDICIAL SALE IS A FACTUAL ISSUE.—** It has been our consistent ruling that the question of compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue, and the resolution thereof by the trial court is generally binding on this Court.

3. **ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT ON NON-COMPLIANCE WITH THE PUBLICATION REQUIREMENT WHEN AFFIRMED BY THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES.—** The matter of sufficiency of posting and publication of a notice of foreclosure sale need not be resolved by this Court, especially when the findings of the RTC were sustained by the CA. Well-established is the rule that factual findings of the CA are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court. The unanimity of the CA and the trial court in their factual ascertainment that there was non-compliance with the publication requirement bars us from supplanting their findings and substituting them with our own.

4. **ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; A MORTGAGEE-BANK IS REQUIRED TO**

PRESENT PROOF OF PUBLICATION; IT CANNOT RELY ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES.— It would have been a simple matter for Metrobank to rebut the allegation of non-compliance by producing the required proof of publication. Yet, Metrobank opted not to rebut the allegation; it simply relied on the presumption of regularity in the performance of official duty. Unfortunately, Metrobank's reliance on the presumption of regularity must fail because it did not present any proof of publication of the notice of sale. As held by this Court in *Spouses Pulido v. Court of Appeals*: [P]etitioners' reliance on the presumption of regularity in the performance of official duties falls in the face of a serious imputation on non-compliance. The presumption of compliance with official duty is rebutted by failure to present proof of posting.

5. **ID.; ID.; ID.; RATIONALE BEHIND THE NOTICE REQUIREMENT, EXPLAINED.—** We take this occasion to reiterate that the object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given for the purpose of securing bidders and preventing a sacrifice sale of the property. The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation. Thus, the publication of the notice of sale was held essential to the validity of foreclosure proceedings.

6. **ID.; EVIDENCE; JUDICIAL NOTICE; COURTS MAY NOT TAKE JUDICIAL NOTICE OF THE EVIDENCE PRESENTED IN OTHER PROCEEDINGS; EXCEPTION THERETO, APPLIED.—** As a rule, courts do not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court or before the same judge. This rule, however, is not absolute. In *Juaban v. Espina* and *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU)*, we held that, in some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice. The RTC,

therefore, acted well within its authority in taking cognizance of the records of the extrajudicial foreclosure proceedings, and the CA cannot be faulted for sustaining the RTC.

APPEARANCES OF COUNSEL

Corpuz Law Offices for petitioner.
Tabalingcos Caraos & Mongan for respondents.

D E C I S I O N

NACHURA, *J.*:

On appeal is the June 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 87775, affirming the June 16, 2006 Decision[2] of the Regional Trial Court (RTC) of Santiago City, Branch 35, as well as its subsequent Resolution dated May 7, 2009,[3] denying petitioner's motion for reconsideration.

Respondents, spouses Edmundo Miranda and Julie Miranda, applied for and obtained a credit accommodation from petitioner Metropolitan Bank & Trust Company (Metrobank). On August 27, 1996, respondents obtained a ₱4,000,000.00 loan from Metrobank and executed a real estate mortgage[4] over a parcel of land in Poblacion, Santiago, Isabela, covered by Transfer Certificate of Title (TCT) No. 202288. Upon respondents' request, Metrobank increased the loan from ₱4,000,000.00 to ₱5,000,000.00. The real estate mortgage executed on August 27, 1996 was thus amended[5] to increase the principal amount of loan secured by the mortgage to ₱5,000,000.00.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Mariflor P. Punzalan Castillo, concurring, *rollo*, pp. 25-37.

[2] *Id.* at 166-176.

[3] *Id.* at 39-40.

[4] Exhibit "2"; records, p. 265.

[5] Exhibit "3"; *id.* at 266.

Subsequently, respondents obtained additional loans from Metrobank - ₱1,000,000.00 on December 3, 1996, and ₱1,000,000.00 on May 8, 1997. The additional loans were secured by mortgage[6] over lands situated in Dubinan and Mabini, Santiago, Isabela, covered by TCT Nos. T-202288, T-180503, T-260279, and T-272664.

Respondents encountered difficulties in paying their loans. They requested for a longer period to settle their account and further requested for the restructuring of their loans, which requests Metrobank granted. Respondents then signed Promissory Note (PN) No. 599773[7] for ₱6,400,000.00, and PN No. 599772[8] for ₱950,000.00, both payable on February 24, 2002, with interest at 17.250% per annum. They also amended the deeds of real estate mortgage they executed in favor of Metrobank to increase the amount of loans secured by mortgage to ₱6,350,000.00. The amendment was inscribed on TCT Nos. T-202288,[9] T-260279,[10] and T-180503.[11]

On August 25, 2000, Metrobank sent respondents a demand letter[12] to settle their overdue account of ₱8,512,380.15, inclusive of interest and penalties; otherwise, the bank would initiate "*the necessary legal proceedings x x x, without further notice*." Respondents, however, failed to settle their account. Consequently, Metrobank caused the extrajudicial foreclosure and auction sale of the mortgaged properties on November 16, 2000. The Clerk of Court and *Ex-Officio* Sheriff of Santiago City sold the mortgaged properties at public auction for the sum of ₱9,284,452.00 to Metrobank, as the highest bidder. A Certificate of Sale[13] was issued in favor of Metrobank on November 27, 2000, which

[6] See Exhibits "4" and "5"; *id*. at 267, 268.

[7] Exhibit "17"; id. at 285.

[8] Exhibit "18"; id. at 286.

[9] *Id*. at 353.

[10] *Id*. at 356-357.

[11] *Id*. at 359.

[12] Exhibit "10"; *id.* at 273.

[13] Exhibit "11"; *id*. at 274-276.

was registered with the Registry of Deeds on November 29, 2000.

Claiming that the extrajudicial foreclosure was void, respondents filed a complaint for Nullification of the Foreclosure Proceedings and Damages with Prayer for Temporary Restraining Order/ Injunction[14] with the RTC of Santiago City. They alleged non-compliance with the provisions of Presidential Decree No. 1079[15] and Act No. 3135,[16] particularly the publication requirement. Respondents further asserted that Metrobank required them to sign blank promissory notes and real estate mortgage, and that they were not furnished with copies of these documents. Later, they discovered that the terms and conditions of the promissory notes and of the mortgage were entirely different from what was represented to them by the bank. The right to fix the interest rates, they added, was exclusively given to the bank. Respondents, thus, prayed for the annulment of the extrajudicial foreclosure proceedings.

Metrobank answered the complaint, denying its material allegations and asserting the validity of the foreclosure proceedings. Specifically, it averred compliance with the posting and publication requirements. Thus, it prayed for the dismissal of the complaint.[17]

Meanwhile, on December 20, 2001, Metrobank caused the cancellation of the TCTs in the name of respondents and the issuance of new ones in its name. On December 21, 2001, the *Ex-Officio* Sheriff executed a Final Deed of Sale.[18]

On June 16, 2006, the RTC rendered a decision[19] annulling the extrajudicial foreclosure proceedings. The RTC reviewed

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

[15] *Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Biddings, Notices of Auction Sales and Other Similar Notices.*

[16] *An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.*

[17] Records, pp. 30-34.

[18] *Id.* at 348-350.

[19] *Supra* note 2.

the records of the foreclosure proceedings and found no proof of publication of the sheriff's notice of sale; there was no affidavit of publication attached to the records. This fatal defect, it held, invalidated the auction sale and the entire foreclosure proceedings.The RTC further held that, when Metrobank foreclosed the mortgaged properties, respondents' loan account was still outstanding for there was an overpayment of interests amounting to ₱1,529,922.00. Thus, the foreclosure proceedings were without factual and legal basis. The RTC further noted that Metrobank consolidated its title even before the issuance of the sheriff's Final Deed of Sale. The trial court considered it an irregularity sufficient to invalidate the consolidation.

The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondents] and against [petitioner] Metrobank as follows:
>
> 1) DECLARING as null and void the Sheriff's Certificate of Sale, dated November 27, 2000, Exhibit "11";
>
> 2) DECLARING as null and void the Sheriff's Final Deed of Sale, dated December 21, 2000, Exhibit "12";
>
> 3) CANCELLING [Metrobank's] TCT Nos. T-319236 (Exhibit "13"); T-319235 over Lot 6-B-18 (Exhibit "14"); T-T-319235 over Lot 4-F (Exhibit "15"); and T-319237 (Exhibit "16");
>
> 4) RESTORING [respondents'] TCT Nos. T-260279 (Exhibit "E"); T-202288 (Exhibit "F"); T-180503 (Exhibit "G"; and T-272664 (Annex "E"); and
>
> 5) ORDERING x x x Metrobank to pay PHP50,000.00 as attorney's fees, and the cost of suit.
>
> SO ORDERED. [20]

Metrobank filed a motion for reconsideration, but the RTC denied it on July 31, 2006.

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[20] *Id.* at 416-417.

Metrobank then appealed to the CA, faulting the RTC for annulling the foreclosure proceedings. It insisted that the bank complied with the publication requirement. Metrobank also disagreed with the trial court's finding of overpayment of interests amounting to ₱1,529,922.00, claiming that the applicable interest rates on respondents' loans were 17% and not 12% as computed by the trial court. It further asserted that a final deed of sale is not necessary for purposes of consolidating its ownership over the subject properties. Finally, Metrobank assailed the award of attorney's fees for lack of basis.

On June 30, 2008, the CA resolved Metrobank's appeal in this wise:

> WHEREFORE, the appeal is **DISMISSED**. The assailed decision dated June 16, 2006 of the RTC of Santiago City, Branch 35, in Civil Case No. 35-3022 is **AFFIRMED**.
>
> SO ORDERED.[21]

Metrobank's motion for reconsideration also suffered the same fate, as the CA denied it on May 7, 2009.[22]

Before us, Metrobank insists on the validity of the foreclosure proceedings. Essentially, it argues that foreclosure proceedings enjoy the presumption of regularity, and the party alleging irregularity has the burden of proving his claim. Metrobank asserts that, in this case, the presumption of regularity was not disputed because respondents failed to prove that the notice of sale was not published as required by law.

At the outset, it must be stated that only questions of law may be raised before this Court in a Petition for Review under Rule 45 of the Revised Rules of Civil Procedure. This Court is not a trier of facts, and it is not the function of this Court to reexamine the evidence submitted by the parties.[23]

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[21] *Rollo*, p. 36.

[22] CA *rollo*, pp. 117-118.

[23] *Langkaan Realty & Dev't., Inc. v. UCPB*, 400 Phil. 1349, 1356-1357 (2000).

It has been our consistent ruling that the question of compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue, and the resolution thereof by the trial court is generally binding on this Court. The matter of sufficiency of posting and publication of a notice of foreclosure sale need not be resolved by this Court, especially when the findings of the RTC were sustained by the CA. Well-established is the rule that factual findings of the CA are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court.[24]

The unanimity of the CA and the trial court in their factual ascertainment that there was non-compliance with the publication requirement bars us from supplanting their findings and substituting them with our own. Metrobank has not shown that they are entitled to an exception to this rule. It has not sufficiently demonstrated any special circumstances to justify a factual review.

Metrobank makes much ado of respondents' failure to present proof of non-compliance with the publication requirement. It insists that respondents failed to discharge the requisite burden of proof.

Apparently, Metrobank lost sight of our ruling in *Spouses Pulido v. CA,*[25] *Sempio v. CA*,[26] and, recently, in *Philippine Savings Bank v. Spouses Dionisio Geronimo and Caridad Geronimo*,[27] *viz.*:

While it may be true that the party alleging non-compliance with the requisite publication has the burden of proof, still negative allegations need not be proved even if essential to one's cause of

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[24] *Id.* at 1357, citing *Reyes v. Court of Appeals*, No. 52043, August 31, 1981, 107 SCRA 126, 129.

[25] 321 Phil. 1064, 1069 (1995).

[26] 331 Phil. 912, 925 (1996).

[27] G.R. No. 170241, April 19, 2010.

action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.

It would have been a simple matter for Metrobank to rebut the allegation of non-compliance by producing the required proof of publication. Yet, Metrobank opted not to rebut the allegation; it simply relied on the presumption of regularity in the performance of official duty.

Unfortunately, Metrobank's reliance on the presumption of regularity must fail because it did not present any proof of publication of the notice of sale. As held by this Court in *Spouses Pulido v. Court of Appeals*:[28]

[P]etitioners' reliance on the presumption of regularity in the performance of official duties falls in the face of a serious imputation on non-compliance. The presumption of compliance with official duty is rebutted by failure to present proof of posting.

Further, in *Philippine Savings Bank v. Spouses Dionisio Geronimo and Caridad Geronimo*,[29] this Court rejected a similar contention, *viz.*:

Petitioner's invocation of the presumption of regularity in the performance of official duty on the part of Sheriff Castillo is misplaced. While posting the notice of sale is part of a sheriff's official functions, the actual publication of the notice of sale cannot be considered as such, since this concerns the publisher's business. Simply put, the sheriff is incompetent to prove that the notice of sale was actually published in a newspaper of general circulation.

As correctly found by the RTC and the CA, the records[30] of the foreclosure proceedings lacked any proof of publication. This explains why Metrobank could not present any proof of publication.

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[28] *Supra* note 25, at 1070.

[29] *Philippine Savings Bank v. Spouses Dionisio Geronimo and Caridad Geronimo*, *supra* note 27.

[30] Records, pp. 348-405.

We take this occasion to reiterate that the object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given for the purpose of securing bidders and preventing a sacrifice sale of the property.

The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation. Thus, the publication of the notice of sale was held essential to the validity of foreclosure proceedings.[31] In this case, Metrobank failed to establish compliance with the publication requirement. The RTC and the CA cannot, therefore, be faulted for nullifying the foreclosure proceedings.

Metrobank next questions the authority of the RTC and the CA to take cognizance of the records of the foreclosure proceedings as basis for annulling the auction sale. It claims that the trial court may not take judicial notice of the records of proceedings in another case, unless the parties themselves agreed to it. Metrobank asserts that it did not give its consent to the trial court's examination of the records of the extrajudicial foreclosure proceedings. Further, the RTC did not even set a hearing for the purpose of declaring its intention to take judicial notice of the records of the extrajudicial proceedings, as required by Section 3[32] of Rule 129. Metrobank, thus, contends that the RTC exceeded its authority in taking cognizance of the records of the extrajudicial proceedings.

We disagree.

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[31] *Philippine Savings Bank v. Spouses Dionisio Geronimo and Caridad Geronimo*, *supra* note 27, citing *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*, G.R. No. 173976, February 27, 2009, 580 SCRA 352, 357.

[32] Section 3. *Judicial notice, when hearing necessary*. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon. (Rule 129, Revised Rules on Evidence).

As a rule, courts do not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court or before the same judge. This rule, however, is not absolute.

In *Juaban v. Espina*[33] and *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU)*,[34] we held that, in some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice.

The RTC, therefore, acted well within its authority in taking cognizance of the records of the extrajudicial foreclosure proceedings, and the CA cannot be faulted for sustaining the RTC.

Metrobank further questions the trial court's finding of overpayment of interests. But like the issue on compliance with the publication requirement, the issue on overpayment of interests involves the ascertainment of facts not subject of review by this Court. We reiterate that our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[35]

Besides, we find nothing erroneous in this factual finding of the RTC. As explained by the RTC in its decision:

> [T]he Court notes that the original promissory notes evidencing the various loans of the plaintiffs were not presented in court by either party; they are needed to determine the stipulated interest rate. The Court is thus left to determine the same based on the testimony of the plaintiffs that the agreed interest rate is 12% per annum; amazingly, this was not denied or refuted by the [petitioner] bank, in which case,

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[33] G.R. No. 170049, March 14, 2008, 548 SCRA 588, 611.

[34] G.R. No. 160236, October 16, 2009, 604 SCRA 73, 91.

[35] *Cuenca v. Atas,* G.R. No. 146214, October 5, 2007, 535 SCRA 48, 84-85.

12% interest rate is applied at least for the period beginning 1997 until 1999, when the loan was renewed under the two (2) new promissory notes which indicated a higher rate of interest of 17.250% per annum. As mentioned above, the interest payments made by the [respondents] were already admitted by [Metrobank] in its answer to the complaint as well as in its comment to [respondents'] formal offer of evidence, and such interest payments are duly reflected and contained in the passbook account of the [respondents], Exhibit "H", "H-1" to "H-10". But, in order to determine whether [respondents'] account has become past due or not, as the [petitioner] bank represents, the Court deems it necessary to undertake some mathematical computation the result of which would decisively guide the Court to arrive at a rightful conclusion, thus:

1) Total interest payments by [respondents]
from May 7, 1997 to June 30, 1999 - ₱3,332,422.00

2) Interest due
from May 7, 1997 to June 30, 1999 - ₱1,802,500.00
computed as follows:

a) 1st year (₱7 M x 12%), from May 7, 1997 to May 28, 1998 - ₱ 840,000.00

b) 2nd year
i) from June 3, 1998 to Feb. 24, 1999 (8 mos.) - ₱ 560,000.00
ii) from March, 1999 to June 30, 1999 (4 mos.) - ₱402,500.00

3) Total Interest paid - ₱ 3,332,422.00
Less Interest due - ₱ 1,802,500.0
Overpaid interest - ₱ 1,529,922.00

From the foregoing, it is evident that [respondents] overpaid interests for the period of two (2) years, from May 1997 to June 1999, in the total amount of Php 1,529,922.00. Thus, the Court is convinced that it is just and equitable that such an overpayment be construed as advance interest payments which should be applied for the succeeding period or year of their contract. Otherwise, [Metrobank] would unjustly enrich itself at the expense of [respondents]. In such a case, it was premature then for [Metrobank] to declare [respondents'] account as past due, because at that juncture [,

respondents'] loan obligation was outstanding and in declaring otherwise, [Metrobank's] action was without basis as there was no violation of their loan contract. Consequently, it follows that the foreclosure proceedings subsequently held on November 26, 2000 was without factual and legal basis, too. For, indeed, when the foreclosure proceedings in question was conducted, [respondents'] loan account with [Metrobank], as it is said, was still outstanding, because [respondents] were able to pay the interest due. Therefore, the Court is again convinced that the nullification prayed for is in order.[36]

We need not say more.

In fine, the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation must be exercised according to its clear mandate, and every requirement of the law must be complied with, or the valid exercise of the right would end. The exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[37]

As further declared by this Court in *Philippine Savings Bank v. Spouses Dionisio Geronimo and Caridad Geronimo*:[38]

While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.

We, therefore, affirm the CA and sustain the RTC in nullifying the extrajudicial foreclosure of real estate mortgage and sale, including Metrobank's title.

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[36] Records, pp. 414-416.

[37] *PNB v. Nepomuceno Productions, Inc.*, 442 Phil. 655, 665 (2002).

[38] *Supra* note 27, citing *Metropolitan Bank v. Wong*, 412 Phil. 207, 220 (2001).

With this disquisition, we find no necessity to discuss the issue of the validity of the consolidation of title by Metrobank.

WHEREFORE, the petition is *DENIED*. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 87775 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 160923. January 24, 2011]

MOISES TINIO, JR. and FRANCIS TINIO, *petitioners, vs.* **NATIONAL POWER CORPORATION,** *respondent.*

[G.R. No. 161093. January 24, 2011]

NATIONAL POWER CORPORATION, *petitioner, vs.* **MOISES TINIO, JR. and FRANCIS TINIO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; THE COURT WILL NOT REVIEW THE FACTUAL FINDINGS OF THE COURT OF APPEALS ESPECIALLY WHEN SUCH FINDING COINCIDES WITH THE TRIAL COURT.—** With respect to the time of the taking of the subject property, the findings of fact of the CA and the RTC with respect to this issue shall no longer be disturbed. It is axiomatic that this Court will not review, much less reverse, the factual findings of the CA, especially where, as in this case, such findings coincide with those of the trial court and that these findings are supported by sufficient evidence.

2. **ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; PRINCIPAL CRITERION FOR DETERMINING JUST COMPENSATION.—** It is settled that the nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner.

3. **ID.; ID.; ID.; ID.; SUBSEQUENT CLASSIFICATION OF THE LAND WOULD NOT ALLOW OWNERS TO RECOVER MORE THAN THE VALUE OF THE LAND AT THE TIME OF TAKING.—** In the instant case, it cannot be denied that prior to the NPC's introduction of improvements in the area where the subject parcel of land is located, the properties therein, including the disputed lot, remained agricultural and residential. It was only upon entry of the NPC in *Barangay* San Roque, and after constructing buildings and other facilities and bringing in various equipment for its multi-purpose project, that the lands in the said locality were later classified as commercial or industrial. Stated differently, to allow the Tinios to ask compensation on the basis of the subsequent classification of the contested lot as industrial would be to allow them to recover more than the value of the land at the time when it was taken, which is the true measure of the damages or just compensation.

APPEARANCES OF COUNSEL

The Solicitor General for National Power Corporation.
Villarin and Tinio Law Offices for petitioners.

D E C I S I O N

PERALTA, *J*.:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court both seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 70252, dated November

[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Jose C. Reyes, Jr., concurring; *rollo* (G.R. No. 160923), pp. 11-21; *rollo* (G.R. No. 161093), pp. 24-34.

19, 2003. The assailed CA Decision modified the Resolution[2] dated January 22, 2001, of the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 48 in Civil Case No. U-6938.

The pertinent factual and procedural antecedents of the case are as follows:

The National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395,[3] as amended by Presidential Decree No. 938. The main purpose of the NPC, as stated in its charter, is to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. In order to accomplish its objectives, the NPC is granted the power, among others, to exercise the right of eminent domain.

For purposes of constructing and maintaining its San Roque Multi-Purpose Project, which is one of the major undertakings of the government for North Luzon, the NPC filed on October 13, 1999 a complaint for eminent domain with the RTC of Urdaneta, Pangasinan against Moises Tinio, Jr. and Francis Tinio (hereafter collectively referred to as the Tinios) for the purpose of expropriating a parcel of land owned by the Tinios. The subject property, consisting of 52,710 square meters, denominated as Lot 14556-A and covered by Transfer Certificate of Title (TCT) No. T-5775, is located at *Barangay* San Roque, San Manuel, Pangasinan.

Prior to filing its complaint, the NPC took possession of the subject land on February 9, 1998 by virtue of a Permit to Enter signed by Moises.

During the pre-trial conference, one of the stipulations proposed by the NPC and admitted by the Tinios is the authority of the NPC to expropriate the subject lot. Thus, the parties

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[2] Records, pp. 234-237.

[3] An Act Revising the Charter of the National Power Corporation.

agreed that the only issue left for determination by the trial court is the just compensation to be paid to the Tinios.

Commissioners were then appointed to appraise the value of the subject property and, thereafter, to make a recommendation to the RTC. Subsequently, the commissioners made separate reports and recommendations.

On January 22, 2001, the trial court issued a Resolution disposing of the case as follows:

> WHEREFORE, PREMISES CONSIDERED, the Court hereby orders the National Power Corporation to pay defendants Moises Tinio, Jr. and Francis Tinio the amount of ₱12,850,400.00, plus legal interest until fully paid as just compensation for Lot No. 14556 under TCT No. T-5775 with a total area of 52,710 sq.m.
>
> Costs against the plaintiff.
>
> SO ORDERED.[4]

NPC filed a Motion for Reconsideration,[5] but the same was denied by the RTC in an Order[6] dated February 20, 2001.

Thereafter, the NPC appealed the January 22, 2001 Resolution and February 20, 2001 Order of the RTC with the CA.

On November 19, 2003, the CA rendered its presently assailed Decision, with the following dispositive portion:

> In view of the Foregoing, the resolution appealed from is MODIFIED, in that the NPC is ordered to pay the defendants as just compensation for the land taken from them, the amount of ₱2,343,900 with legal interest of 6 percent [per] annum from February 9, 1998 until paid.
>
> SO ORDERED.[7]

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[4] Records, p. 237.

[5] *Id.* at 243-248.

[6] *Id.* at 255.

[7] *Rollo* (G.R. No. 160923), p. 21.

Feeling aggrieved, both the NPC and the Tinios are now before this Court arguing that the CA committed error in its judgment.

Praying that the judgment of the RTC be reinstated, the Tinios contend that the CA erred in affirming the findings of the RTC that the NPC took possession of, or entered upon, the subject property on February 9, 1998.

They also argue that the CA erred in arriving at a lower amount of just compensation than that arrived at by the RTC on the ground that before the NPC made improvements on the subject property, the same was already classified as industrial or commercial land. The Tinios claim that in 1997, the NPC declared its properties in *Barangay* San Roque, San Manuel, Pangasinan, as commercial lands with a value of ₱250.00 per square meter. They aver that the subject lot is within the vicinity of the NPC properties. As such, any increase in the value of the NPC properties should also redound to the benefit of the lands which are located within the same locality.

On its part, the NPC's main asseveration is that the CA erred in relying on the present state and character of the subject land as commercial in determining just compensation. It prayed for the reduction of the just compensation awarded by the CA.

The issues raised by the parties boil down to the question of whether the CA was correct in its determination of just compensation as based on its findings on the time of taking of the subject property and the nature and character of the subject property at the time of such taking.

The Court finds no error in the assailed Decision of the CA.

With respect to the time of the taking of the subject property, the findings of fact of the CA and the RTC with respect to this issue shall no longer be disturbed. It is axiomatic that this Court will not review, much less reverse, the factual findings of the CA, especially where, as in this case, such findings coincide with those of the trial court and that these findings are supported by sufficient evidence. Both the RTC and the CA are one in finding that the NPC took possession of the subject lot on February 9, 1998 as

evidenced by a Permit to Enter Land/Property[8] signed by Moises on even date. While the Tinios aver that Moises was deceived into signing the said permit, no evidence was presented to prove this allegation.

As to the nature and character of the subject lot at the time of its taking, the Court takes exception to the contention of the NPC that the CA determined the value of just compensation on the basis of the subject lot's classification as industrial.

A perusal of the disputed decision of the CA would clearly show that the appellate court's determination of just compensation is based on its finding that 12,710 square meters of the subject property was considered residential and that the remaining 40,000 square meter portion thereof was classified as agricultural land at the time of taking of the said lot. This finding is based on a certification dated March 10, 1998 issued by the Municipal Assessor of San Manuel, Pangasinan, attesting to the fact that the disputed property was indeed partly residential and largely agricultural prior to its possession by the NPC. In this respect, the Court agrees with the following findings of the CA:

> x x x The four government offices which gave their contemporaneous findings at the time were one in saying that of the total area of 5.2 hectares, 4 were for agricultural use. About 1.2 hectares had been traversed by the hydro highway, and an area of this size was specifically determined by the municipal assessor to be residential in character. x x x[9]

In fact, an examination of the evidence on record, to wit: a subsequent certification issued by the Municipal Assessor, dated August 11, 1998, and the Tinios' Tax Declaration for 1999, would show that the subject lot was classified as industrial only after six months upon the NPC's entry into and development of the said land.

It is settled that the nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner.[10]

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[8] Records, p. 188.

[9] *Rollo* (G.R. No. 160923), p. 19.

[10] *National Power Corporation v. Tiangco*, G.R. No. 170846, February 6, 2007, 514 SCRA 674, 685.

Hence, the argument of the Tinios that the subject property should benefit from the subsequent classification of its adjoining properties as industrial lands is, likewise, untenable. The Court, in a number of cases,[11] has enunciated the principle that it would be injustice on the part of the expropriator where the owner would be given undue incremental advantages arising from the use to which the government devotes the property expropriated.

In the instant case, it cannot be denied that prior to the NPC's introduction of improvements in the area where the subject parcel of land is located, the properties therein, including the disputed lot, remained agricultural and residential. It was only upon entry of the NPC in *Barangay* San Roque, and after constructing buildings and other facilities and bringing in various equipment for its multi-purpose project, that the lands in the said locality were later classified as commercial or industrial.

Stated differently, to allow the Tinios to ask compensation on the basis of the subsequent classification of the contested lot as industrial would be to allow them to recover more than the value of the land at the time when it was taken, which is the true measure of the damages or just compensation.

WHEREFORE, the petitions are *DENIED*. The Decision of the Court of Appeals, dated November 19, 2003, in CA-G.R. CV No. 70252, is *AFFIRMED*.

SO ORDERED.

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

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[11] *National Power Corporation v. Ibrahim*, G.R. No. 168732, June 29, 2007, 526 SCRA 149, 167; *National Power Corporation v. Court of Appeals*, G.R. No. 113194, March 11, 1996, 254 SCRA 577, 589, citing *Provincial Government of Rizal v. Caro de Araullo*, August 16, 1933, 58 Phil. 308, 316. (1993).

FIRST DIVISION

[G.R. No. 169942. January 24, 2011]

BARANGAY DASMARIÑAS thru BARANGAY CAPTAIN MA. ENCARNACION R. LEGASPI, *petitioner, vs.* **CREATIVE PLAY CORNER SCHOOL, DR. AMADO J. PIAMONTE, REGINA PIAMONTE TAMBUNTING, CELINE CONCEPCION LEBRON and CECILE CUNA COLINA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; AN EXTENSION OF FIFTEEN DAYS WITHIN WHICH TO FILE THE PETITION MAY BE ALLOWED AND A FURTHER EXTENSION MAY BE GRANTED FOR THE MOST COMPELLING REASON BUT IS LIMITED ONLY TO A PERIOD OF FIFTEEN DAYS.—** Section 4, Rule 43 of the Rules of Court provides: "Section 4. *Period of appeal.* x x x ***Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.***" From the above, it is clear that the CA, after it has already allowed petitioner an extension of 15 days within which to file a petition for review, may only grant a further extension when presented with the most compelling reason but same is limited only to a period of 15 days. Thus, when the CA denied petitioner's Second Motion for Extension of five days, it was merely following the abovementioned provision of the rules after it found the reason for the second extension as not compelling. And, considering that the CA has already sufficiently explained how it was able to arrive at the conclusion that there is no compelling reason for such second extension, we deem it unnecessary to repeat the same especially since we are in total agreement with the ratiocination of the CA.

2. **ID.; RULES OF PROCEDURE; REQUIRED TO BE FOLLOWED EXCEPT ONLY FOR THE MOST PERSUASIVE OF REASONS.—** As to petitioner's invocation of liberal application of the rules, we cannot heed the same. "It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons."

3. **ID.; ID.; LIBERAL APPLICATION THEREOF, NOT WARRANTED IN CASE AT BAR.—** While petitioner cites several jurisprudence wherein this Court set aside procedural rules, an imperative existed in those cases that warranted a liberal application of the rules. We have examined the records of this case, however, and we are convinced that the present case is not attended by such an imperative that justifies relaxation of the rules. Moreover, as pointed out by respondents, petitioner had not only once transgressed procedural rules. This Court has previously held that "[t]echnical rules may be relaxed only for the furtherance of justice and to benefit the deserving." Petitioner's low regard of procedural rules only shows that it is undeserving of their relaxation.

4. **ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; BELATED FILING OF THE PETITION CANNOT BE DISREGARDED IN CASE AT BAR.—** Also, we cannot subscribe to petitioner's argument that considering that no prejudice was caused to respondents by the belated filing of the petition as the latter were free and not detained hence, the CA should have just disregarded such belated filing. Likewise, the filing of the petition and payment of the corresponding docket fees prior to petitioner's receipt of the CA's resolution denying its Second Motion for Extension does not, contrary to petitioner's position, render such belated filing moot. If such would be the case, the delay in the delivery of court resolutions caused by the limitations of postal service would serve as a convenient cover up for a pleading or a motion's belated filing. This would be contrary to the aim of procedural rules which is to secure an effective and expeditious administration of justice.

5. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65; THE REMEDY OF A PARTY DESIRING TO ELEVATE TO THE APPELLATE COURT AN ADVERSE RESOLUTION OF THE SECRETARY OF JUSTICE.— Besides, even if the CA ignores the petition's belated filing, the same would have been dismissed for being an improper remedy. It has been held that "[t]he remedy of a party desiring to elevate to the appellate court an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65. A Rule 43 petition for review is a wrong mode of appeal."

APPEARANCES OF COUNSEL

Padilla Asuncion Bote-Veguillas Matta Corpuz Law Offices for petitioner.

Flores & Associates Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

"Utter disregard of [the rules of procedure] cannot justly be rationalized by harking on the policy of liberal construction."[1]

This Petition for Review on *Certiorari* assails the Resolution[2] dated July 21, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 89723 denying petitioner's *Second Motion for Extension of Time to File Petition for Review* and consequently dismissing the Petition for Review for having been filed beyond the period allowed by the Rules of Court. Likewise assailed is the Resolution[3] dated September 29, 2005 denying the Motion for Reconsideration thereto.

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[1] *Lapid v. Judge Laurea*, 439 Phil. 887, 897 (2002).

[2] CA *rollo*, pp. 137-139; penned by now Supreme Court Associate Justice Arturo D. Brion and concurred in by Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos.

[3] *Id*. at 177-182.

Factual Antecedents

On June 28, 2004, petitioner *Barangay* Dasmariñas thru Ma. Encarnacion R. Legaspi (Legaspi) filed a *Complaint-Affidavit*[4] before the Office of the Prosecutor of Makati docketed as I.S. No. 04-F-10389, charging respondent Creative Play Corner School (CPC) and its alleged owners, respondents Dr. Amado J. Piamonte (Piamonte), Regina Piamonte Tambunting (Tambunting), Celine Concepcion Lebron (Lebron) and Cecille Cuna Colina (Colina) with Falsification and Use of Falsified Documents. Petitioner alleged that respondents falsified and used the *Barangay* Clearance and Official Receipt purportedly issued in the name of CPC by the Office of the *Barangay* Captain of Dasmariñas Village, Makati City of which Lepaspi was *Barangay* Captain.

In their *Counter-Affidavit,*[5] Lebron and Colina denied having falsified the subject documents. They averred that petitioner's assertion that they were owners of CPC is a mere allegation without proof. They also pointed out that the complaint neither shows any operative act committed by any of the respondents in perpetrating the crime charged nor identified who among them actually committed it. They thus insisted that no probable cause exists to warrant their indictment for the offense charged. For their part, Tambunting and Piamonte in their respective *Counter-Affidavits*[6] affirmed the arguments made by Lebron and Colina. In addition, Tambunting alleged that the subject documents were not received by any relevant office while Piamonte claimed that he had no participation whatsoever in the operation of CPC. Both of them averred that petitioner was not able to discharge its burden of presenting sufficient evidence to support the belief that they committed the crime charged.

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[4] *Id.* at 57-59.

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

[6] *Id.* 81-84.

Ruling of the Prosecutor

In a Resolution[7] dated September 29, 2004, Assistant City Prosecutor Carolina Esguerra-Ochoa (Prosecutor Ochoa) recommended the dismissal of the case because of failure to establish probable cause. Prosecutor Ochoa noted the absence of any finding from pertinent police laboratory tests and/or law enforcement agency confirming that the subject documents were indeed falsified, forged or tampered or if so, that respondents were the ones who falsified, forged or tampered the same. Prosecutor Ochoa concluded that petitioner failed to show any cause which would engender the belief that respondents are probably guilty of the offense charged.

City Prosecutor Feliciano Aspi approved the Resolution and released the same on November 4, 2004.

Petitioner thus brought the case before the Department of Justice (DOJ) through a Petition for Review.

Ruling of the Department of Justice

Petitioner refuted the prosecutor's finding of lack of probable cause. It claimed that since it was Legaspi's signature which was forged, she was in the best position to attest to the fact of falsification and therefore her affidavit speaks volumes. Petitioner likewise argued that the documents attached to the complaint, *i.e. sample format of Barangay Clearances legitimately issued by the Office of the Barangay Captain showing Legaspi's signature and Certifications regarding the allegation of tampered official receipt*, were sufficient to support a finding of probable cause. After all, a finding of probable cause does not mean conviction; it simply manifests that there is sufficient evidence to procure a conviction. It is enough that it is believed that the act complained of constitutes the offense charged. Thus, petitioner sought for the reversal and setting aside of the Resolution of the Prosecution Office

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[7] *Id.* at 102-105.

and prayed for the issuance of an order directing it to cause the filing of the corresponding criminal information against respondents.

Respondents, on the other hand, basically reiterated the allegations in their respective counter-affidavits and maintained that Prosecutor Ochoa did not err in holding that no probable cause exists against them.

The DOJ, though, after finding that no error which would justify the reversal of the assailed resolution was committed by Prosecutor Ochoa and that the petition was filed late, dismissed the Petition for Review through a Resolution[8] dated February 21, 2005. Petitioner filed a *Motion for Reconsideration*[9] thereto but same was also denied in a Resolution[10] dated April 25, 2005.

Still unsatisfied, petitioner challenged this dismissal through a Petition for Review before the CA.

Ruling of the Court of Appeals

But before petitioner was able to file its petition, it first sought for an extension of time[11] of 15 days from May 13, 2005[12] or until May 28, 2005 within which to file the same due to counsel's heavy workload. The CA granted the extension in a Resolution[13] dated May 23, 2005. Subsequently, petitioner asked for another extension[14] of five days from May 28, 2005 until June 2, 2005 for the same reason given in its first motion for extension. However, petitioner filed the petition by mail only on June 7,

[8] *Id.* at 39-40.

[9] *Id.* at 41-53.

[10] *Id.* at 54-55.

[11] *Id.* at 3-6.

[12] Petitioner's last day for filing its Petition for Review which is fifteen (15) days from April 28, 2005, the date of receipt of the April 25, 2005 DOJ Resolution denying its Motion for Reconsideration.

[13] CA *rollo*, p. 7.

[14] *Id.* at 8-11.

2005.[15] Because of these, the CA issued the following assailed Resolution of July 21, 2005:

> In a Resolution dated May 23, 2005, this Court granted petitioner an additional period of fifteen (15) days from May 13, 2005 or until May 28, 2005 within which to file its petition for review. However, instead of filing its petition on May 28, 2005, petitioner filed [the] Second Motion for Extension of Time to File Petition for Review requesting for an additional period of five days from May 28, 2005 or until June 2, 2005 within which to file its petition for review.
>
> Section 4, Rule 43 of the Rules of Court provides that we may grant an additional period of fifteen (15) days only within which to file the petition for review and no further extension shall be granted except for the most compelling reason. We do not find petitioner's reason to be compelling to grant another extension. In this second motion, petitioner gave the same reason it gave us in its first motion for extension of time to file petition for review, *i.e. pressures of other equally important pleadings.* The original period of fifteen days and the extension of fifteen days granted are not unreasonable as they add up to thirty days within which petitioner can prepare, perfect and file its petition.
>
> In addition, records of the case show that petitioner filed its petition for review on June 7, 2005 or five days late from the extension sought from us.
>
> WHEREFORE, premises considered, we hereby DENY the 'Second Motion for Extension of Time to File Petition for Review' and DISMISS the Petition for Review for having been filed beyond the period allowed by the Revised Rules of Civil Procedure.
>
> SO ORDERED.[16]

Petitioner filed a *Motion for Reconsideration*[17] explaining therein that aside from the first and second motions for extension, it also filed a *Final Motion for Additional Time to File Petition for Review*[18] asking for another five days from June 2, 2005 or until June 7, 2005 within which to file the petition. This new request

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[15] *Id.* at dorsal side of p. 13.

[16] *Id.* at 137-139.

[17] *Id.* at 140-163.

[18] Attached as Annex "A" to petitioner's Motion for Reconsideration, *id.* at 157-159.

for extension was allegedly on account of a sudden death in the family of the handling lawyer, Atty. Maria Katrina Bote-Veguillas (Atty. Bote-Veguillas). Thus, petitioner argued that when the petition was filed on June 7, 2005, it was still within the period of extension prayed for in said final motion for extension. At any rate, petitioner prayed that the CA set aside rules of technicalities as it claimed that the slight delay in the filing of the petition did not after all result to the prejudice of respondents. More importantly, it believed that the merits of the case justify the relaxation of technical rules.

After respondents filed their *Comment,*[19] the CA issued its September 29, 2005 Resolution[20] denying the Motion for Reconsideration. The CA ratiocinated that while Section 4, Rule 43 of the Rules of Court allows it a great leeway in the exercise of discretion in granting an additional period of 15 days for filing a petition for review, said Rules, however, limit such discretion in the grant of a second extension only to the most compelling reasons presented by the movant. And, considering that the reason given by petitioner for the extension sought in its first and second motions for extension, *i.e. pressure and large volume of work of counsel,* is, as held by jurisprudence, not an excuse for filing a petition out of time, the CA was constrained to deny the second motion for extension and consequently, dismiss the petition for review.

With respect to the final motion for extension, the CA gave three reasons for it to disregard the same: First, a third extension is not authorized by the Rules of Court. Second, the reason given for the extension sought was the sudden death of a relative of the handling lawyer Atty. Bote-Veguillas. However, no details as to the degree of relationship between Atty. Bote-Veguillas and the deceased was given for the court to determine whether such reason is indeed compelling. Third, the reason given is not sufficiently persuasive because petitioner's counsel of record is Dela Vega Matta Bote-Veguillas and Associates Law Offices and not Atty. Bote-Veguillas alone. This means that any member of the law firm could have prepared, perfected and filed the petition for

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[19] *Id.* at 165-175.

[20] *Id.* at 177-182.

the law firm other than Atty. Bote-Veguillas if the latter has indeed gone through a personal tragedy. The CA thus saw no reason to grant petitioner's Motion for Reconsideration.

This notwithstanding, petitioner still firmly believes that the case should have been resolved on the merits and hence, it is now before this Court *via* this Petition for Review on *Certiorari.*

Issues

Petitioner advances the following grounds:

The Honorable Court of Appeals gravely erred in dismissing the Petition For Review on a mere technicality, without considering the substantive grounds on which the Petition For Review was based.

The Honorable Court of Appeals gravely erred in not considering that respondents' rights had not been prejudiced in any way by the short delay of ten days on account of the requests for extension of time to file Petition for Review.

The Honorable Court of Appeals gravely erred when it dismissed the Petition for Review despite the clear and categorical existence of probable cause that would justify the filing of criminal cases against the respondents.[21]

Petitioner's Arguments

Petitioner harps on the policy of liberal construction embodied in Section 6, Rule 1 of the Rules of Court which provides that the rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action. It cites several jurisprudence[22] where this Court set aside technical rules to give way to the merits of the case. Petitioner notes that the CA in dismissing the petition merely focused on the technical infirmity and did not even bother to take a look at its substance.

[21] *Rollo*, p. 18.

[22] *Siguenza v. Court of Appeals*, 222 Phil. 94 (1985); *Alonso v. Villamor*, 16 Phil. 315 (1910); *Toribio v. Bidin*, G.R. No. 57821, January 17, 1985, 134 SCRA 162; *Public Estates Authority v. Yujuico*, 404 Phil. 91 (2001); *Fajardo v. Court of Appeals*, 407 Phil. 241 (2001); *Fr. Martinez v. Court of Appeals*, 410 Phil. 241 (2001).

Petitioner believes that if only the CA examined the records of the case, it would find that the substantial merits of the case are enough to override technical deficiencies. It likewise argues that *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*[23] relied upon by respondents does not apply because although the Court dismissed the appeal in said case for having been filed beyond the reglementary period and did not find "pressure of work on equally important cases" as compelling reason to grant an extension of time to file the same, still the merits of the case were nevertheless examined and considered.

Moreover, petitioner avers that even if the petition was filed 10 days beyond the extended period, respondents have not been prejudiced in any way by such delay as they were free and not detained. Petitioner also posits that since it received the CA's resolution denying its Second Motion for Extension on July 27, 2005 or after it has filed the Petition for Review and paid the corresponding docket fees, such belated filing of the petition has already become moot and the more equitable action of the CA should have been to admit the petition.

Lastly, petitioner believes that there is probable cause for the charge of falsification and use of falsified documents against respondents and that it was able to discharge its burden of establishing the same.

Respondents' Arguments

Respondents find no error on the part of the CA in denying petitioner's Second Motion for Extension and in dismissing the petition. They cited *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*[24] wherein this Court held that "pressure of work on equally important cases" is not a compelling reason to merit an extension of time. Besides, even assuming that petitioner's Second Motion for Extension was granted, respondents point out that the petition was nevertheless

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[23] 480 Phil. 575, 583 (2004).

[24] *Id*.

filed beyond the period requested. With respect to petitioner's Final Motion for Extension, the CA has already adequately explained the reasons why it cannot consider the same.

Moreover, respondents call this Court's attention to petitioner's repeated transgression of technical rules: first, before the DOJ where it belatedly filed thereat its petition for review and again, before the CA. To respondents, petitioner's utter disregard of the rules should not be countenanced and hence the Court must not excuse it from complying therewith.

Respondents also put forward the principle that the determination of probable cause is an executive function and that as a matter of sound judicial policy, courts should refrain from interfering in the conduct of investigation. It is precisely because of this principle that the DOJ has a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. This means that petitioner can assail the decision of the prosecuting arm of the government only if the same is tainted with grave abuse of discretion. In this case, however, it is clear that there is no grave abuse of discretion. As petitioner was not able to point out any operative act committed by any of the respondents in perpetrating the crime charged or when and who among them perpetrated it, the CA, therefore, was correct in dismissing the petition. Finally, respondents argue that the issues raised are factual and hence cannot be passed upon by this Court in this Petition for Review on *Certiorari.* In sum, respondents pray that the present petition be dismissed and the assailed CA resolutions affirmed.

Our Ruling

We deny the petition.

Section 4, Rule 43 of the Rules of Court provides:

Section 4. *Period of appeal.* The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo.* Only one (1) motion for reconsideration shall be allowed. ***Upon proper motion and the***

payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied.)

From the above, it is clear that the CA, after it has already allowed petitioner an extension of 15 days within which to file a petition for review, may only grant a further extension when presented with the most compelling reason but same is limited only to a period of 15 days. Thus, when the CA denied petitioner's Second Motion for Extension of five days, it was merely following the abovementioned provision of the rules after it found the reason for the second extension as not compelling. And, considering that the CA has already sufficiently explained how it was able to arrive at the conclusion that there is no compelling reason for such second extension, we deem it unnecessary to repeat the same especially since we are in total agreement with the ratiocination of the CA.

As to petitioner's invocation of liberal application of the rules, we cannot heed the same. "It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons."[25]

While petitioner cites several jurisprudence wherein this Court set aside procedural rules, an imperative existed in those cases that warranted a liberal application of the rules. We have examined the records of this case, however, and we are convinced that the present case is not attended by such an imperative that justifies relaxation of the rules. Moreover, as pointed out by respondents, petitioner had not only once transgressed procedural rules. This

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[25] *Ramos v. People of the Philippines*, G.R. No. 171565, July 13, 2010.

Court has previously held that "[t]echnical rules may be relaxed only for the furtherance of justice and to benefit the deserving."[26] Petitioner's low regard of procedural rules only shows that it is undeserving of their relaxation.

Also, we cannot subscribe to petitioner's argument that considering that no prejudice was caused to respondents by the belated filing of the petition as the latter were free and not detained hence, the CA should have just disregarded such belated filing. Likewise, the filing of the petition and payment of the corresponding docket fees prior to petitioner's receipt of the CA's resolution denying its Second Motion for Extension does not, contrary to petitioner's position, render such belated filing moot. If such would be the case, the delay in the delivery of court resolutions caused by the limitations of postal service would serve as a convenient cover up for a pleading or a motion's belated filing. This would be contrary to the aim of procedural rules which is to secure an effective and expeditious administration of justice.

Besides, even if the CA ignores the petition's belated filing, the same would have been dismissed for being an improper remedy. It has been held that "[t]he remedy of a party desiring to elevate to the appellate court an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65. A Rule 43 petition for review is a wrong mode of appeal."[27]

With the foregoing, it is clear that the present petition is unworthy of this Court's attention and should be denied.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The assailed Resolutions dated July 21, 2005 and September 29, 2005 of the Court of Appeals in CA-G.R. SP No. 89723 are *AFFIRMED*.

SO ORDERED.

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

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[26] *Fundialan v. Sps. Andres*, G.R. No. 166236, July 29, 2010.

[27] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 28.

SECOND DIVISION

[G.R. No. 172804. January 24, 2011]

GONZALO VILLANUEVA, represented by his heirs, *petitioner, vs.* **SPOUSES FROILAN and LEONILA BRANOCO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; POST-MORTEM DISPOSITIONS; NATURE.—** Post-mortem dispositions typically – "(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive; (2) That before the [donor's] death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed; (3) That the transfer should be void if the transferor should survive the transferee." Further –"[4] [T]he specification in a deed of the causes whereby the act may be revoked by the donor indicates that the donation is *inter vivos*, rather than a disposition *mortis causa*[;] [5] That the designation of the donation as *mortis causa*, or a provision in the deed to the effect that the donation is "to take effect at the death of the donor" are not controlling criteria; such statements are to be construed together with the rest of the instrument, in order to give effect to the real intent of the transferor[;] [and] (6) That in case of doubt, the conveyance should be deemed donation *inter vivos* rather than *mortis causa*, in order to avoid uncertainty as to the ownership of the property subject of the deed."

2. **ID.; ID.; ID.; DONATION *INTER VIVOS*; THE DONOR IN CASE AT BAR PASSED NAKED TITLE TO THE DONEE UNDER A PERFECTED DONATION *INTER VIVOS*.—** It is immediately apparent that Rodrigo passed naked title to Rodriguez under a perfected donation *inter vivos.* x x x Rodrigo stipulated that "if the herein Donee predeceases me, the [Property] will not be reverted to the Donor, but will be inherited by the heirs of

x x x Rodriguez," signaling the irrevocability of the passage of title to Rodriguez's estate, waiving Rodrigo's right to reclaim title. This transfer of title was perfected the moment Rodrigo learned of Rodriguez's acceptance of the disposition which, being reflected in the Deed, took place on the day of its execution on 3 May 1965. Rodrigo's acceptance of the transfer underscores its essence as a gift *in presenti*, not *in futuro*, as only donations *inter vivos* need acceptance by the recipient. Indeed, had Rodrigo wished to retain full title over the Property, she could have easily stipulated, as the testator did in another case, that "the donor, may transfer, sell, or encumber to any person or entity the properties here donated x x x" or used words to that effect. Instead, Rodrigo expressly waived title over the Property in case Rodriguez predeceases her.

3. ID.; ID.; ID.; ID.; NOT NEGATED BY THE DONOR'S RESERVATION TO HERSELF OF THE BENEFICIAL TITLE TO THE PROPERTY DONATED; CASE AT BAR.— What Rodrigo reserved for herself was only the beneficial title to the Property, evident from Rodriguez's undertaking to "give one [half] x x x of the produce of the land to Apoy Alve during her lifetime." Thus, the Deed's stipulation that "the ownership shall be vested on [Rodriguez] upon my demise," taking into account the non-reversion clause, could only refer to Rodrigo's beneficial title. We arrived at the same conclusion in *Balaqui v. Dongso* where, as here, the donor, while "b[inding] herself to answer to the [donor] and her heirs x x x that none shall question or disturb [the donee's] right," also stipulated that the donation "does not pass title to [the donee] during my lifetime; but when I die, [the donee] shall be the true owner" of the donated parcels of land. x x x Indeed, if Rodrigo still retained full ownership over the Property, it was unnecessary for her to reserve partial usufructuary right over it.

4. ID.; ID.; ID.; ID.; THE EXISTENCE OF CONSIDERATION OTHER THAN THE DONOR'S DEATH CORROBORATES THE EXPRESS IRREVOCABILITY OF *INTER VIVOS* TRANSFERS.— The existence of consideration other than the donor's death, such as the donor's love and affection to the donee and the services the latter rendered, while also true of devises, nevertheless "corroborates the express irrevocability of x x x [*inter vivos*] transfers." Thus, the CA committed no error in giving weight to Rodrigo's statement of "love and

affection" for Rodriguez, her niece, as consideration for the gift, to underscore its finding.

5. **ID.; ID.; ID.; DISPOSITIONS BEARING CONTRADICTORY STIPULATIONS ARE INTERPRETED WHOLISTICALLY, TO GIVE EFFECT TO THE DONOR'S INTENT.—** It will not do, therefore, for petitioner to cherry-pick stipulations from the Deed tending to serve his cause (*e.g.* "the ownership shall be vested on [Rodriguez] upon my demise" and "devise"). Dispositions bearing contradictory stipulations are interpreted wholistically, to give effect to the donor's intent. In no less than seven cases featuring deeds of donations styled as "*mortis causa*" dispositions, the Court, after going over the deeds, eventually considered the transfers *inter vivos*, consistent with the principle that "the designation of the donation as *mortis causa*, or a provision in the deed to the effect that the donation is 'to take effect at the death of the donor' are not controlling criteria [but] x x x are to be construed together with the rest of the instrument, in order to give effect to the real intent of the transferor." Indeed, doubts on the nature of dispositions are resolved to favor *inter vivos* transfers "to avoid uncertainty as to the ownership of the property subject of the deed."

6. **ID.; ID.; PRESCRIPTION OF OWNERSHIP; ORDINARY ACQUISITIVE PRESCRIPTION; REQUIRES UNINTERRUPTED POSSESSION COUPLED WITH JUST TITLE AND GOOD FAITH.—** The ten year ordinary prescriptive period to acquire title through possession of real property in the concept of an owner requires uninterrupted possession coupled with just title and good faith. There is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right. Good faith, on the other hand, consists in the reasonable belief that the person from whom the possessor received the thing was the owner thereof, and could transmit his ownership.

7. **ID.; ID.; ID.; ID.; ID.; GOOD FAITH POSSESSION, NOT PRESENT IN CASE AT BAR.—** Although Vere and petitioner arguably had just title having successively acquired the Property through sale, neither was a good faith possessor. As Rodrigo herself disclosed in the Deed, Rodriguez already occupied and possessed

the Property "in the concept of an owner" ("*como tag-iya*") since 21 May 1962, nearly three years before Rodrigo's donation in 3 May 1965 and seven years before Vere bought the Property from Rodrigo. This admission against interest binds Rodrigo and all those tracing title to the Property through her, including Vere and petitioner. Indeed, petitioner's insistent claim that Rodriguez occupied the Property only in 1982, when she started paying taxes, finds no basis in the records. In short, when Vere bought the Property from Rodrigo in 1970, Rodriguez was in possession of the Property, a fact that prevented Vere from being a buyer in good faith. Lacking good faith possession, petitioner's only other recourse to maintain his claim of ownership by prescription is to show open, continuous and adverse possession of the Property for 30 years. Undeniably, petitioner is unable to meet this requirement.

8. ID.; ID.; DONATION; NOT PERFECTED BY REGISTRATION OR TAX PAYMENT.— Petitioner brings to the Court's attention facts which, according to him, support his theory that Rodrigo never passed ownership over the Property to Rodriguez, namely, that Rodriguez registered the Deed and paid taxes on the Property only in 1982 and Rodriguez obtained from Vere in 1981 a waiver of the latter's "right of ownership" over the Property. None of these facts detract from our conclusion that under the text of the Deed and based on the contemporaneous acts of Rodrigo and Rodriguez, the latter, already in possession of the Property since 1962 as Rodrigo admitted, obtained naked title over it upon the Deed's execution in 1965. Neither registration nor tax payment is required to perfect donations.

9. ID.; OBLIGATIONS AND CONTRACTS; WAIVER AGREEMENT; IRRELEVANT IN CASE AT BAR.— On the relevance of the waiver agreement, suffice it to say that Vere had nothing to waive to Rodriguez, having obtained no title from Rodrigo. Irrespective of Rodriguez's motivation in obtaining the waiver, that document, legally a scrap of paper, added nothing to the title Rodriguez obtained from Rodrigo under the Deed.

APPEARANCES OF COUNSEL

Sergio C. Sumayod for petitioners.
Jose C. Gonzales for respondents.

DECISION

CARPIO, *J.*:

The Case

This resolves the petition for review[1] of the ruling[2] of the Court of Appeals dismissing a suit to recover a realty.

The Facts

Petitioner Gonzalo Villanueva (petitioner), here represented by his heirs,[3] sued respondents, spouses Froilan and Leonila Branoco (respondents), in the Regional Trial Court of Naval, Biliran (trial court) to recover a 3,492 square-meter parcel of land in Amambajag, Culaba, Leyte (Property) and collect damages. Petitioner claimed ownership over the Property through purchase in July 1971 from Casimiro Vere (Vere), who, in turn, bought the Property from Alvegia Rodrigo (Rodrigo) in August 1970. Petitioner declared the Property in his name for tax purposes soon after acquiring it.

In their Answer, respondents similarly claimed ownership over the Property through purchase in July 1983 from Eufracia Rodriguez (Rodriguez) to whom Rodrigo donated the Property in May 1965. The two-page deed of donation (Deed), signed at the bottom by the parties and two witnesses, reads in full:

KNOW ALL MEN BY THESE PRESENTS:

That I, ALVEGIA RODRIGO, Filipino, of legal age, widow of the late Juan Arcillas, a resident of Barrio Bool, municipality of Culaba,

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 6 June 2005 and Resolution dated 5 May 2006 per by Associate Justice Vicente L. Yap with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring.

[3] Petitioner, who died while the case was litigated in the Court of Appeals, is represented by Isidra Kikimen *Vda. De* Villanueva, Josephine Kikimen-Haslam, Fermin Kikimen, Victorio Kikimen, Merlinda Kikimen-Yu, and Fortunila Villanueva.

subprovince of Biliran, Leyte del Norte, Philippines, hereby depose and say:

That as we live[d] together as husband and wife with Juan Arcillas, we begot children, namely: LUCIO, VICENTA, SEGUNDINA, and ADELAIDA, all surnamed ARCILLAS, and by reason of poverty which I suffered while our children were still young; and because my husband Juan Arcillas aware as he was with our destitution separated us [sic] and left for Cebu; and from then on never cared what happened to his family; and because of that one EUFRACIA RODRIGUEZ, one of my nieces who also suffered with our poverty, obedient as she was to all the works in our house, and because of the love and affection which I feel [for] her, I have one parcel of land located at Sitio Amambajag, Culaba, Leyte bearing Tax Decl. No. 1878 declared in the name of Alvegia Rodrigo, I give (devise) said land in favor of EUFRACIA RODRIGUEZ, her heirs, successors, and assigns together with all the improvements existing thereon, which parcel of land is more or less described and bounded as follows:

1. Bounded North by Amambajag River; East, Benito Picao; South, Teofilo Uyvico; and West, by Public land; 2. It has an area of 3,492 square meters more or less; 3. It is planted to coconuts now bearing fruits; 4. Having an assessed value of ₱240.00; 5. It is now in the possession of EUFRACIA RODRIGUEZ since May 21, 1962 in the concept of an owner, but the Deed of Donation or that ownership be vested on her upon my demise.

That I FURTHER DECLARE, and I reiterate that the land above described, I already devise in favor of EUFRACIA RODRIGUEZ since May 21, 1962, her heirs, assigns, and that if the herein Donee predeceases me, the same land will not be reverted to the Donor, but will be inherited by the heirs of EUFRACIA RODRIGUEZ;

That I EUFRACIA RODRIGUEZ, hereby accept the land above described from Inay Alvegia Rodrigo and I am much grateful to her and praying further for a longer life; however, I will give one half (1/2) of the produce of the land to Apoy Alve during her lifetime.[4]

Respondents entered the Property in 1983 and paid taxes afterwards.

[4] Records, p. 18.

The Ruling of the Trial Court

The trial court ruled for petitioner, declared him owner of the Property, and ordered respondents to surrender possession to petitioner, and to pay damages, the value of the Property's produce since 1982 until petitioner's repossession and the costs.[5] The trial court rejected respondents' claim of ownership after treating the Deed as a donation *mortis causa* which Rodrigo effectively cancelled by selling the Property to Vere in 1970.[6] Thus, by the time Rodriguez sold the Property to respondents in 1983, she had no title to transfer.

Respondents appealed to the Court of Appeals (CA), imputing error in the trial court's interpretation of the Deed as a testamentary disposition instead of an *inter vivos* donation, passing title to Rodriguez upon its execution.

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[5] In the Decision dated 18 August 2000 penned by Judge Enrique C. Asis, the dispositive portion of which provides (*Rollo*, p. 93):

WHEREFORE, premises considered, this Court finds in favor of the plaintiff as against the defendants, hereby declaring:

1. The plaintiff is the absolute owner of the property in question;

2. The defendants are directed to surrender possession of the property in question;

3 The defendants shall pay the plaintiff the value of the harvest or produce of the land from 1982 until the land is actually vacated;

4 To pay the plaintiff:

a) ₱ 2,500.00 in litigation expenses; and

b) ₱ 5,000.00 in attorney's fees; and

5. To pay the costs of the suit.

[6] Citing Article 957(2) of the Civil Code. ("The legacy or devise shall be without effect:

x x x x x x x x x

(2) If the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated.")

Ruling of the Court of Appeals

The CA granted respondents' appeal and set aside the trial court's ruling. While conceding that the "language of the [Deed is] x x x confusing and which could admit of possible different interpretations,"[7] the CA found the following factors pivotal to its reading of the Deed as donation *inter vivos*: (1) Rodriguez had been in possession of the Property as owner since 21 May 1962, subject to the delivery of part of the produce to Apoy Alve; (2) the Deed's consideration was not Rodrigo's death but her "love and affection" for Rodriguez, considering the services the latter rendered; (3) Rodrigo waived dominion over the Property in case Rodriguez predeceases her, implying its inclusion in Rodriguez's estate; and (4) Rodriguez accepted the donation in the Deed itself, an act necessary to effectuate donations *inter vivos*, not devises.[8] Accordingly, the CA upheld the sale between Rodriguez and respondents, and, conversely found the sale between Rodrigo and petitioner's predecessor-in-interest, Vere, void for Rodrigo's lack of title.

In this petition, petitioner seeks the reinstatement of the trial court's ruling. Alternatively, petitioner claims ownership over the Property through acquisitive prescription, having allegedly occupied it for more than 10 years.[9]

Respondents see no reversible error in the CA's ruling and pray for its affirmance.

The Issue

The threshold question is whether petitioner's title over the Property is superior to respondents'. The resolution of this issue rests, in turn, on whether the contract between the parties' predecessors-in-interest, Rodrigo and Rodriguez, was a donation or a devise. If the former, respondents hold superior title, having bought the Property from Rodriguez. If the latter, petitioner

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[7] *Rollo*, p. 55.

[8] *Id.* at 55-58.

[9] *Id.* at 37.

prevails, having obtained title from Rodrigo under a deed of sale the execution of which impliedly revoked the earlier devise to Rodriguez.

The Ruling of the Court

We find respondents' title superior, and thus, affirm the CA.

Naked Title Passed from Rodrigo to Rodriguez Under a Perfected Donation

We examine the juridical nature of the Deed – whether it passed title to Rodriguez upon its execution or is effective only upon Rodrigo's death – using principles distilled from relevant jurisprudence. Post-mortem dispositions typically —

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;

(2) That before the [donor's] death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;

(3) That the transfer should be void if the transferor should survive the transferee.[10]

Further —

[4] [T]he specification in a deed of the causes whereby the act may be revoked by the donor indicates that the donation is *inter vivos*, rather than a disposition *mortis causa*[;]

[5] That the designation of the donation as *mortis causa*, or a provision in the deed to the effect that the donation is "to take effect at the death of the donor" are not controlling criteria; such statements are to be construed together with the rest of the instrument, in order to give effect to the real intent of the transferor[;] [and]

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[10] *Bonsanto v. Court of Appeals*, 95 Phil. 481, 487 (1954) (internal citations omitted).

(6) That in case of doubt, the conveyance should be deemed donation *inter vivos* rather than *mortis causa*, in order to avoid uncertainty as to the ownership of the property subject of the deed.[11]

It is immediately apparent that Rodrigo passed naked title to Rodriguez under a perfected donation *inter vivos. First.* Rodrigo stipulated that "if the herein Donee predeceases me, the [Property] will not be reverted to the Donor, but will be inherited by the heirs of x x x Rodriguez," signaling the irrevocability of the passage of title to Rodriguez's estate, waiving Rodrigo's right to reclaim title. This transfer of title was perfected the moment Rodrigo learned of Rodriguez's acceptance of the disposition[12] which, being reflected in the Deed, took place on the day of its execution on 3 May 1965. Rodrigo's acceptance of the transfer underscores its essence as a gift *in presenti*, not *in futuro*, as only donations *inter vivos* need acceptance by the recipient.[13] Indeed, had Rodrigo wished to retain full title over the Property, she could have easily stipulated, as the testator did in another case, that "the donor, may transfer, sell, or encumber to any person or entity the properties here donated x x x"[14] or used words to that effect. Instead, Rodrigo expressly waived title over the Property in case Rodriguez predeceases her.

In a bid to diffuse the non-reversion stipulation's damning effect on his case, petitioner tries to profit from it, contending it is a fideicommissary substitution clause.[15] Petitioner assumes the fact he is laboring to prove. The question of the Deed's juridical nature, whether it is a will or a donation, is the crux

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[11] *Puig v. Peñaflorida*, 122 Phil. 665, 671-672 (1965) (internal citations omitted).

[12] Article 734, Civil Code ("The donation is perfected from the moment the donor knows of the acceptance by the donee.")

[13] *Alejandro v. Geraldez*, 168 Phil. 404 (1977); *Concepcion v. Concepcion*, 91 Phil. 823 (1952); *Laureta v. Mata*, 44 Phil. 668 (1923).

[14] *Puig v. Peñaflorida*, *supra* note 11 at 674 ("[*l*]*a DONANTE, podra enajenar, vender, traspasar o hipotecar a cuallesquier personas o entidades los bienes aqui donados* x x x").

[15] *Rollo*, p. 43.

of the present controversy. By treating the clause in question as mandating fideicommissary substitution, a mode of testamentary disposition by which the first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance,[16] petitioner assumes that the Deed is a will. Neither the Deed's text nor the import of the contested clause supports petitioner's theory.

Second. What Rodrigo reserved for herself was only the beneficial title to the Property, evident from Rodriguez's undertaking to "give one [half] x x x of the produce of the land to Apoy Alve during her lifetime."[17] Thus, the Deed's stipulation that "the ownership shall be vested on [Rodriguez] upon my demise," taking into account the non-reversion clause, could only refer to Rodrigo's beneficial title. We arrived at the same conclusion in *Balaqui v. Dongso*[18] where, as here, the donor, while "b[inding] herself to answer to the [donor] and her heirs x x x that none shall question or disturb [the donee's] right," also stipulated that the donation "does not pass title to [the donee] during my lifetime; but when I die, [the donee] shall be the true owner" of the donated parcels of land. In finding the disposition as a gift *inter vivos*, the Court reasoned:

> Taking the deed x x x as a whole, x x x it is noted that in the same deed [the donor] guaranteed to [the donee] and her heirs and successors, the right to said property thus conferred. From the moment [the donor] guaranteed the right granted by her to [the donee] to the two parcels of land by virtue of the deed of gift, she surrendered such right; otherwise there would be no need to guarantee said right. Therefore, when [the donor] used the words upon which the appellants base their contention that the gift in question is a donation *mortis causa* [that the gift "does not pass title during my lifetime; but when I die, she shall be the true owner of the two aforementioned parcels"] ***the donor meant nothing else than that she reserved of herself the possession and usufruct of said two parcels of land until her death,***

[16] Civil Code, Article 863.

[17] The records do not disclose the identity of "Apoy Alve" but this likely refers to the donor Alvegia Rodrigo, Rodriguez's aunt.

[18] 53 Phil. 673 (1929).

at which time the donee would be able to dispose of them freely.[19] (Emphasis supplied)

Indeed, if Rodrigo still retained full ownership over the Property, it was unnecessary for her to reserve partial usufructuary right over it.[20]

Third. The existence of consideration other than the donor's death, such as the donor's love and affection to the donee and the services the latter rendered, while also true of devises, nevertheless "corroborates the express irrevocability of x x x [*inter vivos*] transfers."[21] Thus, the CA committed no error in giving weight to Rodrigo's statement of "love and affection" for Rodriguez, her niece, as consideration for the gift, to underscore its finding.

It will not do, therefore, for petitioner to cherry-pick stipulations from the Deed tending to serve his cause (*e.g*. "the ownership shall be vested on [Rodriguez] upon my demise" and "devise"). Dispositions bearing contradictory stipulations are interpreted wholistically, to give effect to the donor's intent. In no less than seven cases featuring deeds of donations styled as "*mortis causa*" dispositions, the Court, after going over the deeds, eventually considered the transfers *inter vivos*,[22] consistent with the principle that "the designation of the donation as *mortis causa*, or a provision in the deed to the effect that the donation is 'to take effect at the death of the donor' are not controlling criteria [but] x x x are to be construed together with the rest

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[19] *Id.* at 676.

[20] See *Bonsanto v. Court of Appeals*, 95 Phil. 481, 487 (1954), where, in interpreting an identical reservation, the Court observed the "donor's reserv[ation] for himself, during his lifetime, the owner's share of the fruits or produce" is "unnecessary if the ownership of the donated property remained with the donor."

[21] *Id.* at 489.

[22] *Del Rosario v. Ferrer*, G.R. No. 187056, 20 September 2010; *Puig v. Peñaflorida*, 122 Phil. 665 (1965); *Bonsanto v. Court of Appeals*, 95 Phil. 481 (1954); *Concepcion v. Concepcion*, 91 Phil. 823, 829 (1952); *Sambaan v. Villanueva*, 71 Phil. 303 (1941); *Balaqui v. Dongso*, 53 Phil. 673 (1929); *Laureta v. Mata*, 44 Phil. 668 (1923).

of the instrument, in order to give effect to the real intent of the transferor."[23] Indeed, doubts on the nature of dispositions are resolved to favor *inter vivos* transfers "to avoid uncertainty as to the ownership of the property subject of the deed."[24]

Nor can petitioner capitalize on Rodrigo's post-donation transfer of the Property to Vere as proof of her retention of ownership. If such were the barometer in interpreting deeds of donation, not only will great legal uncertainty be visited on gratuitous dispositions, this will give license to rogue property owners to set at naught perfected transfers of titles, which, while founded on liberality, is a valid mode of passing ownership. The interest of settled property dispositions counsels against licensing such practice.[25]

Accordingly, having irrevocably transferred naked title over the Property to Rodriguez in 1965, Rodrigo "cannot afterwards revoke the donation nor dispose of the said property in favor of another."[26] Thus, Rodrigo's post-donation sale of the Property vested no title to Vere. As Vere's successor-in-interest, petitioner acquired no better right than him. On the other hand, respondents bought the Property from Rodriguez, thus acquiring the latter's title which they may invoke against all adverse claimants, including petitioner.

Petitioner Acquired No Title Over the Property

Alternatively, petitioner grounds his claim of ownership over the Property through his and Vere's combined possession of the Property for more than ten years, counted from Vere's purchase of the Property from Rodrigo in 1970 until petitioner initiated his suit in the trial court in February 1986.[27] Petitioner

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[23] *Puig v. Peñaflorida*, *supra* note 11 at 671-672.

[24] *Id.* at 672.

[25] Thus, in *Del Rosario v. Ferrer*, G.R. No. 187056, 20 September 2010, we annulled a post-donation assignment of rights over the donated property for lack of the assignor's title.

[26] *Concepcion v. Concepcion*, 91 Phil. 823, 829 (1952), quoting Manresa.

[27] *Rollo*, pp. 48-49. Petitioner crafted this theory for the first time in the Court of Appeals, having limited his case in the trial court to the single

anchors his contention on an unfounded legal assumption. The ten year ordinary prescriptive period to acquire title through possession of real property in the concept of an owner requires uninterrupted possession coupled with just title and good faith.[28] There is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.[29] Good faith, on the other hand, consists in the reasonable belief that the person from whom the possessor received the thing was the owner thereof, and could transmit his ownership.[30]

Although Vere and petitioner arguably had just title having successively acquired the Property through sale, neither was a good faith possessor. As Rodrigo herself disclosed in the Deed, Rodriguez already occupied and possessed the Property "in the concept of an owner" ("*como tag-iya*"[31]) since 21 May 1962, nearly three years before Rodrigo's donation in 3 May 1965 and seven years before Vere bought the Property from Rodrigo. This admission against interest binds Rodrigo and all those tracing title to the Property through her, including Vere and petitioner. Indeed, petitioner's insistent claim that Rodriguez occupied the Property only in 1982, when she started paying taxes, finds no basis in the records. In short, when Vere bought the Property from Rodrigo in 1970, Rodriguez was in possession

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cause of action of ownership based on his purchase of the Property from Vere. Another alternative argument petitioner raises concerns the alleged inofficious nature of the donation (*id*. at 43). Aside from the fact that petitioner never raised this contention below, he is not the proper party to raise it, not being one of the heirs allegedly prejudiced by the transfer.

[28] Civil Code, Article 1117 ("Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.") (emphasis supplied).

[29] Civil Code, Article 1129.

[30] Civil Code, Article 1127.

[31] Records, p. 129.

of the Property, a fact that prevented Vere from being a buyer in good faith.

Lacking good faith possession, petitioner's only other recourse to maintain his claim of ownership by prescription is to show open, continuous and adverse possession of the Property for 30 years.[32] Undeniably, petitioner is unable to meet this requirement.

Ancillary Matters Petitioner Raises Irrelevant

Petitioner brings to the Court's attention facts which, according to him, support his theory that Rodrigo never passed ownership over the Property to Rodriguez, namely, that Rodriguez registered the Deed and paid taxes on the Property only in 1982 and Rodriguez obtained from Vere in 1981 a waiver of the latter's "right of ownership" over the Property. None of these facts detract from our conclusion that under the text of the Deed and based on the contemporaneous acts of Rodrigo and Rodriguez, the latter, already in possession of the Property since 1962 as Rodrigo admitted, obtained naked title over it upon the Deed's execution in 1965. Neither registration nor tax payment is required to perfect donations. On the relevance of the waiver agreement, suffice it to say that Vere had nothing to waive to Rodriguez, having obtained no title from Rodrigo. Irrespective of Rodriguez's motivation in obtaining the waiver, that document, legally a scrap of paper, added nothing to the title Rodriguez obtained from Rodrigo under the Deed.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 6 June 2005 and the Resolution dated 5 May 2006 of the Court of Appeals.

SO ORDERED.

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

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[32] Civil Code, Article 1137 ("Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.")

SECOND DIVISION

[G.R. NO. 176438. January 24, 2011]

PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC), *petitioner, vs.* **PHILIPPINE COUNTRYSIDE RURAL BANK, INC., RURAL BANK OF CARMEN (CEBU), INC., BANK OF EAST ASIA (MINGLANILLA, CEBU) INC., and PILIPINO RURAL BANK (CEBU), INC.**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; NOT PRESENT WHERE THE ELEMENTS OF *LITIS PENDENTIA* ARE WANTING; CASE AT BAR.—** Juxtaposing the RTC-Makati, CA-Manila and CA-Cebu petitions, what must be determined here, is whether the elements of *litis pendentia* are present between and among these petitions, *i.e.* whether (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. The first element is clearly present as between the RTC-Makati petition and the CA-Cebu petition. Both involved the Banks on one hand, and the PDIC on the other. The second and third elements of *litis pendentia,* however, are patently wanting. The rights asserted and reliefs prayed for were different, though founded on the same set of facts. The RTC-Makati Petition was one for declaratory relief while the CA-Manila Petition was one for injunction with a prayer for preliminary injunction. x x x As between the CA-Manila and the CA-Cebu petitions, the second and third elements of *litis pendentia* are absent. The rights asserted and reliefs prayed for were different, although founded on the same set of facts.The CA-Manila Petition is a petition for injunction x x x The CA-Cebu Petition, on the other hand, is denominated as a Petition for Injunction With Prayer for Writ of Preliminary Injunction and/or Restraining Order. x x x As can be gleaned from the x x x

portions of the CA-Manila and CA-Cebu petitions, the petitions seek different reliefs. Therefore, as between and among the RTC Makati, and the CA-Manila and CA-Cebu petitions, there is no forum shopping.

2. **ID.; ID.; PETITION FOR DECLARATORY RELIEF AND INJUNCTION, DISTINGUISHED.—** A petition for declaratory relief is filed by any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation, before breach or violation, thereof, to determine any question of construction or validity arising, and for a declaration of his rights or duties thereunder. Injunction, on the other hand, is "a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction, or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment." Clearly, there is a marked difference between the reliefs sought under an action for declaratory relief and an action for injunction. While an action for declaratory relief seeks a declaration of rights or duties, or the determination of any question or validity arising under a statute, executive order or regulation, ordinance, or any other governmental regulation, or under a deed, will, contract or other written instrument, under which his rights are affected, and before breach or violation, an action for injunction ultimately seeks to enjoin or to compel a party to perform certain acts.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE ESSENCE OF PROCEDURAL DUE PROCESS IS FOUND IN THE REASONABLE OPPORTUNITY TO BE HEARD AND SUBMIT ONE'S EVIDENCE IN SUPPORT OF HIS DEFENSE.—** The essence of procedural due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. The Court finds that procedural due process was observed by the CA-Cebu. The parties were afforded equal opportunity to present their arguments. In the absence of any indication to the contrary, the CA-Cebu must be accorded the presumption of regularity in the performance of their functions.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; NOT PRESENT IN CASE AT BAR.—** In G.R. 173370, a petition for *certiorari* under Rule 65 of the Rules of Court, PDIC alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction. In the case at bench, a petition for review under Rule 45, PDIC's core contention is that the CA-Cebu erred in finding that prior approval of the Monetary Board of the BSP is necessary before it may conduct an investigation of the Banks. Clearly then, the two petitions were of different nature raising different issues. G.R. 173370 challenged the CA-Cebu's having taken cognizance of the Banks' petition and interlocutory orders on the issuance of a TRO and a writ of preliminary injunction. This case, however, strikes at the core of the final decision on the merits of the CA-Cebu, and not merely the interlocutory orders. While both G.R. 173370 and the present case may have been anchored on the same set of facts, that is, the refusal of the Banks to allow PDIC to conduct an investigation without the prior consent of the Monetary Board, the issues raised in the two petitions are not identical. Moreover, the disposal of the first case does not amount to *res judicata* in this case.

5. **MERCANTILE LAW; REPUBLIC ACT NO. 3591 (THE PHILIPPINE DEPOSIT INSURANCE CORPORATION CHARTER); PHILIPPINE DEPOSIT INSURANCE CORPORATION; ACTS AS DEPOSIT INSURER, AS A CO-REGULATOR OF BANKS, AND AS RECEIVER AND LIQUIDATOR OF CLOSED BANKS.—** The PDIC was created by R.A. No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. xIt is a government instrumentality that operates under the Department of Finance. Its primary purpose is to act as deposit insurer, as a co-regulator of banks, and as receiver and liquidator of closed banks.

6. **ID.; ID.; ID.; POWERS.—** Under its charter, the PDIC is empowered to conduct examination of banks with prior approval of the Monetary Board x x x. The charter empowers the PDIC to conduct an investigation of a bank and to appoint examiners

who shall have the power to examine any insured bank. Such investigators are authorized to conduct investigations on frauds, irregularities and anomalies committed in banks, based on an examination conducted by the PDIC and the BSP or on complaints from depositors or from other government agencies.

7. **ID.; ID.; ID.; ID.; POWER TO INVESTIGATE AND POWER TO EXAMINE, DISTINGUISHED. —** The distinction between the power to investigate and the power to examine is emphasized by the existence of two separate sets of rules governing the procedure in the conduct of investigation and examination. Regulatory Issuance *(RI)* No. 2005-02 or the *PDIC Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks* covers the procedural requirements of the exercise of the PDIC's power of investigation. On the other hand, RI No. 2009-05 sets forth the guidelines for the conduct of the power of examination. The definitions provided under the two aforementioned regulatory issuances elucidate on the distinction between the power of examination and the power of investigation. Section 2 of RI No. 2005-02 states that its coverage shall be applicable to "all fact-finding investigations on fraud, irregularities and/or anomalies committed in banks that are conducted by PDIC based on: [a] complaints from depositors or other government agencies; and/or [b] final reports of examinations of banks conducted by the Bangko Sentral ng Pilipinas and/or PDIC." The same issuance states that the Final Report of Examination is one of the three pre-requisites to the conduct of an investigation, in addition to the authorization of the PDIC Board and a complaint. Juxtaposing this provision with Section 9(b-1) of the PDIC Charter, since an examination is explicitly made the basis of a fact-finding examination, then clearly examination and investigation are two different proceedings. It would obviously defy logic to make the result of an "investigation" the basis of the same proceeding. Thus, RI No. 2005-02 defines an "investigation" as a "fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action."

8. **ID.; ID.; ID.; ID.; SCOPE OF EXAMINATION AND SCOPE OF INVESTIGATION; DISTINGUISHED.—** The process of examination covers a wider scope than that of investigation.

Examination involves an evaluation of the current status of a bank and determines its compliance with the set standards regarding solvency, liquidity, asset valuation, operations, systems, management, and compliance with banking laws, rules and regulations. Investigation, on the other hand, is conducted based on specific findings of certain acts or omissions which are subject of a complaint or a Final Report of Examination. Clearly, investigation does not involve a general evaluation of the status of a bank. An investigation zeroes in on specific acts and omissions uncovered via an examination, or which are cited in a complaint. An examination entails a review of essentially all the functions and facets of a bank and its operation. It necessitates poring through voluminous documents, and requires a detailed evaluation thereof. Such a process then involves an intrusion into a bank's records. In contrast, although it also involves a detailed evaluation, an investigation centers on specific acts or omissions and, thus, requires a less invasive assessment.

9. **ID.; ID.; ID.; ID.; POWER TO INVESTIGATE; THE MONETARY BOARD APPROVAL IS NOT REQUIRED TO CONDUCT AN INVESTIGATION OF BANKS; RATIONALE.—** The practical justification for not requiring the Monetary Board approval to conduct an investigation of banks is the administrative hurdles and paperwork it entails, and the correspondent time to complete those additional steps or requirements. As in other types of investigation, time is always of the essence, and it is prudent to expedite the proceedings if an accurate conclusion is to be arrived at, as an investigation is only as precise as the evidence on which it is based. The promptness with which such evidence is gathered is always of utmost importance because evidence, documentary evidence in particular, is remarkably fungible. A PDIC investigation is conducted to "determine[e] whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action." In other words, an investigation is based on reports of examination and an examination is conducted with prior Monetary Board approval. Therefore, it would be unnecessary to secure a separate approval for the conduct of an investigation. Such would merely prolong the process and provide unscrupulous individuals the opportunity to cover their tracks. Indeed, while in a literary sense, the two terms may be used interchangeably, under the PDIC Charter, examination and investigation refer to two different processes.

To reiterate, an examination of banks requires the prior consent of the Monetary Board, whereas an investigation based on an examination report, does not.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Pizarras & Associates Law Offices for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Philippine Deposit Insurance Corporation *(PDIC)* assailing the September 18, 2006 Decision of the Court of Appeals-Cebu *(CA-Cebu),* which granted the petition for injunction filed by respondents Philippine Countryside Rural Bank, Inc. *(PCRBI),* Rural Bank of Carmen (Cebu), Inc. *(RBCI),* Bank of East Asia (Minglanilla, Cebu), Inc. *(BEAI),* and Pilipino Rural Bank (Cebu), Inc. *(PRBI),* all collectively referred to as "Banks." The dispositive portion of the CA-Cebu decision reads:

WHEREFORE, in view of all the foregoing premises, the petition for injunction is hereby **GRANTED**. The respondent PDIC is restrained from further conducting investigations or examination on petitioners-banks without the requisite approval from the Monetary Board.

SO ORDERED.[1]

In a resolution dated January 25, 2007, the CA-Cebu denied petitioner's motion for reconsideration for "lack of merit."[2]

THE FACTS

On March 9, 2005, the Board of Directors of the PDIC *(PDIC Board)* adopted Resolution No. 2005-03-032[3] approving the conduct

[1] *Rollo*, p. 107. Penned by Justice Pampio A. Abarintos with Justice Agustin S. Dizon and Justice Priscilla Baltazar-Padilla, concurring.

[2] *Id.* at 111.

[3] *Id.* at 113.

of an investigation, in accordance with Section 9(b-1) of Republic Act *(R.A.)* No. 3591, as amended, on the basis of the Reports of Examination of the Bangko Sentral ng Pilipinas *(BSP)* on ten (10) banks, four (4) of which are respondents in this petition for review. The said resolution also created a Special Investigation Team to conduct the said investigation, with the authority to administer oaths, to examine, take and preserve testimony of any person relating to the subject of the investigation, and to examine pertinent bank records.

On May 25, 2005, the PDIC Board adopted another resolution, Resolution No. 2005-05-056,[4] approving the conduct of an investigation on PCRBI based on a Complaint-Affidavit filed by a corporate depositor, the Philippine School of Entrepreneurship and Management *(PSEMI)* through its president, Jacinto L. Jamero.

On June 3, 2005, in accordance with the two PDIC Board resolutions, then PDIC President and Chief Executive Officer Ricardo M. Tan issued the Notice of Investigation[5] to the President or The Highest Ranking Officer of PCRBI.

On June 7, 2005, the PDIC Investigation Team personally served the Notice of Investigation on PCRBI at its Head Office in Pajo, Lapu-Lapu City.[6]

According to PDIC, in the course of its investigation, PCRBI was found to have granted loans to certain individuals, which were settled by way of *dacion* of properties. These properties, however, had already been previously foreclosed and consolidated under the names of PRBI, BEAI and RBCI.[7]

On June 15, 2005, PDIC issued similar notices of investigation to PRBI[8] and BEAI.[9]

The notices stated that the investigation was to be conducted pursuant to Section 9 (b-1) of the PDIC Charter and upon

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[4] *Id.* at 115.
[5] *Id.* at 116.
[6] *Id.*
[7] *Id.* at 25.
[8] *Id.* at 120.
[9] *Id.* at 126.

authority of PDIC Board Resolution No. 2005-03-032 authorizing the twelve (12) named representatives of PDIC to conduct the investigation.[10]

The investigation was sought because the Banks were found to be among the ten (10) banks collectively known as "Legacy Banks." The Reports of General and Special Examinations of the BSP as of June 30, 2004, disclosed, among others, that the Legacy Banks were commonly owned and/or controlled by Legacy Plans Inc. *(now Legacy Consolidated Plans, Inc.),* and Celso Gancayco delos Angeles, Jr. and his family.[11]

The notice of investigation was served on PRBI the next day, June 16, 2005.[12]

On June 25, 2005, a separate notice of investigation[13] was served on RBCI. The latter provided the PDIC Investigation Team with certified copies of the loan documents they had requested, until its president received an order directing him not to allow the investigation.[14]

Subsequently, PRBI and BEAI refused entry to their bank premises and access to their records and documents by the PDIC Investigation Team, upon advice of their respective counsels.[15]

On June 16 and 17, 2005, Atty. Victoria G. Noel *(Atty. Noel)* of the Tiongson & Antenor Cruz Law Office sent letters to the PDIC[16] informing it of her legal advice to PCRBI and BEAI not to submit to PDIC investigation on the ground that its

[10] *Id.* at 120-121, 126-127, 132-133.

[11] *Id.* at 20.

[12] *Id.* at 27.

[13] *Id.* at 132.

[14] *Id.* at 29.

[15] *Id.* at 29-30.

[16] *Id.* at 134-135.

investigatory power pursuant to Section 9(b-1) of R.A. No. 3591, as amended *(An Act Establishing The Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes)*, cannot be differentiated from the examination powers accorded to PDIC under Section 8, paragraph 8 of the same law, under which, prior approval from the Monetary Board is required.

On June 17, 2005, PDIC General Counsel Romeo M. Mendoza sent a reply to Atty. Noel stating that "PDIC's investigation power, as distinguished from the examination power of the PDIC under Section 8 of the same law, does not need prior approval of the Monetary Board."[17] PDIC then urged PRBI and BEAI "not to impede the conduct of PDIC's investigation" as the same "constitutes a violation of the PDIC Charter for which PRBI and BEAI may be held criminally and/or administratively liable."[18]

On June 27 and 28, 2005, the Banks, through counsel, sought further clarification from PDIC on its source of authority to conduct the impending investigations and requested that PDIC refrain from proceeding with the investigations.[19]

Simultaneously, the Banks wrote to the Monetary Board requesting a clarification on the parameters of PDIC's power of investigation/examination over the Banks and for an issuance of a directive to PDIC not to pursue the investigations pending the requested clarification.[20]

On June 28, 2005, PRBI and BEAI again received letters from PDIC, dated June 24, 2005, which appeared to be final demands on them to allow its investigation.[21] PRBI and BEAI replied that letters of clarification had been sent to PDIC and

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[17] *Id.* at 31, 136-141.

[18] *Id.* at 136-141.

[19] *Id.* at 142-159.

[20] *Id.* at 160-161.

[21] *Id.* at 579.

the Monetary Board.[22] Pending action on such requests, PDIC was requested to refrain from proceeding with the investigation.[23]

Notwithstanding, on July 11, 2005, the Banks received a letter, dated July 8, 2005, from the PDIC General Counsel reiterating its position that prior Monetary Board approval was not a pre-requisite to PDIC's exercise of its investigative power.[24]

Not in conformity, on July 28, 2005, the Banks filed a *Petition for Declaratory Relief with a Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction (RTC Petition)* before the Regional Trial Court of Makati *(RTC-Makati)* which was docketed as Civil Case No. 05-697.[25]

In the RTC Petition, the Banks prayed for a judgment interpreting Section 9(b-1) of the PDIC Charter, as amended, to require prior Monetary Board approval before PDIC could exercise its investigation/examination power over the Banks.[26]

PDIC filed a motion to dismiss alleging that the RTC had no jurisdiction over the said petition since a breach had already been committed by the Banks when they received the notices of investigation, and because PDIC need not secure prior Monetary Board approval since "examination" and "investigation" are two different terms.[27]

Later, the Banks withdrew their application for a temporary restraining order *(TRO)* reasoning that lower courts cannot issue injunctions against PDIC. Thus, the Banks instituted a petition for injunction with application for TRO and/or Preliminary Injunction *(CA-Manila petition)* before the Court of Appeals-Manila *(CA-Manila).* The case was docketed as CA-G.R. SP No. 91038.[28]

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[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id.* at 572.

[26] *Id.* at 579.

[27] *Id.* at 579-580.

[28] *Id.* at 219.

Even before the CA-Manila could rule on the application for a TRO and/or writ of preliminary injunction, the RTC-Makati dismissed the petition on the ground that there already existed a breach of law that isolated the case from the jurisdiction of the trial court.[29]

The Banks filed a motion for reconsideration but it was denied by the RTC for lack of merit.[30] On February 10, 2006, the Banks filed a notice of appeal[31] which they later withdrew on February 28, 2006.[32]

In view of the dismissal of the RTC-Makati petition, the CA-Manila dismissed the petition for injunction for being moot and academic. In its Decision, dated February 1, 2006,[33] the CA-Manila wrote:

> What remained for the petitioners to do was to litigate over the breach or violation by ordinary action, as the circumstances ensuing from the breach or violation warrant. The ordinary action may either be in the same case, if the RTC permitted the conversion, in which event the RTC may allow the parties to file such pleadings as may be necessary or proper, pursuant to Sec. 5, Rule 63; or the petitioners may file another action in the proper court (*e.g.* including the Court of Appeals, should injunction be among the reliefs to be sought) upon some cause of action that has arisen from the breach or violation.[34]

Thereafter, on March 14, 2006, the Banks filed their *Petition for Injunction with Prayer for Preliminary Injunction*[35] *(CA-Cebu Petition)* with the CA-Cebu *(CA-Cebu).*

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[29] *Id.* at 260.

[30] *Id.* at 337.

[31] *Id.* at 338.

[32] *Id.* at 340.

[33] *Id.* at 433.

[34] *Id.* at 430-431.

[35] *Id.* at 442.

On March 15, 2006, the CA-Cebu issued a resolution granting the Bank's application for a TRO. This enjoined the PDIC, its representatives or agents or any other persons or agency assisting them or acting for and in their behalf from conducting examinations/ investigations on the Banks' head and branch offices without securing the requisite approval from the Monetary Board of BSP.[36]

During the pendency of the CA-Cebu petition, PDIC filed with this Court a *Petition for Certiorari, Prohibition and Mandamus with Prayer for Issuance of Temporary Restraining Order and/ or Writ of Preliminary Injunction* under Rule 65 docketed as G.R. No. 173370.[37] It alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction.[38]

On July 31, 2006, this Court issued a resolution dismissing the petition for *certiorari* in G.R. No. 173370. The Resolution reads:

> Considering the allegations, issues and arguments adduced in the petition for *certiorari*, prohibition and *mandamus* with prayer for preliminary injunction and/or restraining order dated 19 July 2006, the Court resolves to DISMISS the petition for failure to sufficiently show that the questioned resolution of the Court of Appeals is tainted with grave abuse of discretion. Moreover, the petition failed to conform with Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing petitions for *certiorari*, prohibition and *mandamus* filed with the Supreme Court, since petitioner failed to submit a verified statement of material date of receipt of the assailed resolution dated 16 May 2006 in accordance with Section 4, Rule 65 in relation to the second paragraph of Section 3, Rule 46. In any event, the petition is premature since no motion for reconsideration of the questioned resolution of the Court of Appeals was filed prior to the availment of this special civil action and there are no sufficient allegations to bring the case within the recognized exceptions to this rule.[39]

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[36] *Id.* at 448.

[37] *Id.*

[38] *Id.* at 583.

[39] *Id.* at 152.

On September 18, 2006, after both parties had submitted their respective memoranda, the CA-Cebu rendered a decision granting the writ of preliminary injunction,[40] pertinent portions of which read:

[A]fter undergoing a series of amendments, the controlling law with respect to PDIC's power to conduct examination of banks is-prior approval of the Monetary Board is a condition *sine qua non* for PDIC to exercise its power of examination. To rule otherwise would disregard the amendatory law of the PDIC's charter.

The Court is not also swayed by the contention of respondent that what it seeks to conduct is an investigation and not an examination of petitioners' transactions, hence prior approval of the Monetary Board is a mere surplusage.

The ordinary definition of the words "examination" and "investigation" would lead one to conclude that both pertain to the same thing and there seems to be no fine line differentiating one from the other. Black's Law Dictionary defines the word "investigate" as "to examine and inquire into with care and accuracy; to find out by careful inquisition; examination and the word "examination" as an investigation. In Collin's Dictionary of Banking and Finance, the word "investigation" is defined as an "examination to find out what is wrong."

In the case of *Anti-Graft League of the Philippines, Inc. vs. Hon. Ortega, et al.,*[41] the Supreme Court using Ballentine's Law Dictionary defines an "investigation" as an inquiry, judicial or otherwise, for the discovery or collection of facts concerning the matter or matters involved. Such common definitions would show that there is really nothing to distinguish between these two (2) terms as to support the PDIC view differentiating Section 9 (b-1) from paragraph 8, Section 8 of the PDIC Charter.

In the realm of the PDIC rules, specifically under Section 3 of PDIC Regulatory Issuance No. 2205-02[42] "investigation" is defined as:

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[40] *Id.* at 94.

[41] 188 Phil. 55, 58 (1980).

[42] This should read "Regulatory Issuance No. 2005-02."

Investigation shall refer to fact-finding *examination*, study, inquiry, for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action.

From the foregoing definition alone, it can be easily deduced that investigation and examination are synonymous terms. Simply stated, investigation encompasses a fact-finding examination. Thus, it is inconsistent with the rules if respondent PDIC be (sic) allowed to conduct an investigation without the approval of the Monetary Board.

Moreover, the Court sees that the rationale of the law in requiring a (sic) prior approval from the Monetary Board whenever an examination or in this case an investigation needs to be conducted by the PDIC is obviously to ensure that there is no overlapping of efforts, duplication of functions and more importantly to provide a check and balance to the otherwise unrestricted power of respondent PDIC to conduct investigations on banks insured by it.

With the foregoing premises, this Court rules that a prior approval from the Monetary Board is necessary before respondent PDIC can proceed with its investigations on petitioners-banks.[43]

PDIC moved for reconsideration but it was denied in a resolution dated January 25, 2007.[44]

Hence, this petition.

THE ISSUES

I.

WHETHER RESPONDENT BANKS VIOLATED THE RULE AGAINST FORUM SHOPPING WHEN THEY FILED THE PETITION FOR INJUNCTION BEFORE THE COURT OF APPEALS-CEBU.

II.

WHETHER THE PRONOUNCEMENT OF THE REGIONAL TRIAL COURT OF MAKATI IN THE PETITION FOR DECLARATORY

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[43] *Rollo*, pp. 102-104.

[44] *Id.* at 110.

RELIEF CONSTITUTES *RES JUDICATA* TO THE PETITION FOR INJUNCTION IN THE COURT OF APPEALS-CEBU.

III.

WHETHER PETITIONER WAS DEPRIVED OF ITS OPPORTUNITY TO BE HEARD WHEN THE COURT OF APPEALS-CEBU ISSUED THE WRIT OF INJUNCTION.

IV.

WHETHER THE ISSUES RAISED BY PETITIONERS ARE THE SAME ISSUES RAISED IN G.R. NO. 173370 WHICH WAS EARLIER DISMISSED BY THIS COURT.

V.

WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT PRIOR APPROVAL OF THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS IS NECESSARY BEFORE THE PDIC MAY CONDUCT AN INVESTIGATION OF RESPONDENT BANKS.

THE COURT'S RULING

I - ***Whether respondent banks violated the rule against forum shopping when they filed the petition for injunction before the Court of Appeals-Cebu.***

II - ***Whether the pronouncement of the Regional Trial Court of Makati in the petition for declaratory relief constitutes res judicata to the petition for injunction in the Court of Appeals-Cebu.***

In the recent case of *Sameer Overseas Placement Agency, Inc. v. Mildred R. Santos,*[45] the Court discussed the matter of forum shopping:

[45] G.R. No. 152579, August 4, 2009, 595 SCRA 67, 76-77.

Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. It is expressly prohibited by this Court because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt.[46]

Juxtaposing the RTC-Makati, CA-Manila and CA-Cebu petitions, what must be determined here, is whether the elements of *litis pendentia* are present between and among these petitions, *i.e.* whether (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.

The first element is clearly present as between the RTC-Makati petition and the CA-Cebu petition. Both involved the Banks on one hand, and the PDIC on the other.

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[46] *Id.*, citing *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Company, Inc.*, G.R. No. 167674, June 17, 2008, 554 SCRA 561, 569; *Tegimenta Chemical Phils. v. Buensalida*, G.R. No. 176466, June 17, 2008, 554 SCRA 670, 679; and *Tapuz v. Del Rosario*, G.R. No. 182484, June 17, 2008, 554 SCRA 768, 782.

The second and third elements of *litis pendentia,* however, are patently wanting. The rights asserted and reliefs prayed for were different, though founded on the same set of facts. The RTC-Makati Petition was one for declaratory relief while the CA-Manila Petition was one for injunction with a prayer for preliminary injunction.

A petition for declaratory relief is filed by any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation, before breach or violation, thereof, to determine any question of construction or validity arising, and for a declaration of his rights or duties thereunder.[47]

Injunction, on the other hand, is "a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction, or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment."[48]

Clearly, there is a marked difference between the reliefs sought under an action for declaratory relief and an action for injunction. While an action for declaratory relief seeks a declaration of rights or duties, or the determination of any question or validity arising under a statute, executive order or regulation, ordinance, or any other governmental regulation, or under a deed, will, contract or other written instrument, under which his rights are affected, and before breach or violation, an action for injunction ultimately seeks to enjoin or to compel a party to perform certain acts.

Moreover, as stated in the RTC-Makati Decision, because the Banks had already breached the provisions of law on which declaratory judgment was being sought, it was without jurisdiction

[47] Rule 63, Section 1 Revised Rules of Civil Procedure.

[48] *PEZA v. Carantes*, G.R. No. 181274, 23 June 2010.

to take cognizance of the same. Any judgment rendered in the RTC-Makati petition would not amount to *res judicata* in the CA-Manila Petition. Thus, the RTC was correct in dismissing the case, having been bereft of jurisdiction to take cognizance of the action for declaratory judgment.

As between the CA-Manila and the CA-Cebu petitions, the second and third elements of *litis pendentia* are absent. The rights asserted and reliefs prayed for were different, although founded on the same set of facts.

The CA-Manila Petition is a petition for injunction wherein the Banks prayed that:

> 1) Immediately upon filing of this Petition, a Writ of Preliminary Injunction and/or Temporary Restraining Order be issued commanding the respondent and all its officers, employees and agents to cease and desist from proceeding with the investigations sought to be conducted on the petitioners' head and branch offices <u>while the Petition for Declaratory Relief before Branch 58 of the Makati Regional Trial Court is pending.</u>
>
> 2) After due proceedings, judgment be rendered declaring as permanent the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for above.
>
> Other equitable reliefs are likewise prayed for.[49]
>
> [Underscoring supplied]

The CA-Cebu Petition, on the other hand, is denominated as a Petition for Injunction With Prayer for Writ of Preliminary Injunction and/or Restraining Order. The Banks prayed therein that:

> 1) Upon filing of this Petition, a Writ of Preliminary Injunction and/or Temporary Restraining Order be issued forthwith, enjoining Respondent PDIC and all its officers, employees and agents to cease and desist from conducting examinations/investigations on Petitioner Banks' head and branch offices without securing the requisite approval from the Monetary Board of the Bangko Sentral ng Pilipinas, as required by Sec. 8, Paragraph 8 of the PDIC Charter, as amended;

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[49] *Rollo*, p. 452.

2) After due proceedings, judgment be rendered declaring as permanent the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for above.

Other equitable reliefs are likewise prayed for.[50]

As can be gleaned from the above-cited portions of the CA-Manila and CA-Cebu petitions, the petitions seek different reliefs.

Therefore, as between and among the RTC Makati, and the CA-Manila and CA-Cebu petitions, there is no forum shopping.

III - *Whether petitioner was deprived of its opportunity to be heard when the Court of Appeals-Cebu issued the writ of injunction.*

PDIC alleges that the CA-Cebu, in issuing the TRO in its March 15, 2006 Resolution, and subsequently, the preliminary injunction in its May 16, 2006 Resolution, violated the fundamental rule that courts should avoid issuing injunctive relief which would in effect dispose of the main case without trial.[51] PDIC argues that a TRO is intended only as a restraint until the propriety of granting a temporary injunction can be determined, and it goes no further than to preserve the status until that determination.[52] Moreover, its purpose is merely to suspend proceedings until such time when there may be an opportunity to inquire whether any injunction should be granted, and it is not intended to operate as an injunction *pendente lite,* and should not, in effect, determine the issues involved before the parties can have their day in court, or give an advantage to either party by proceeding in the acquisition or alteration of the property the right to which is disputed while the hands of the other party are tied.[53]

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[50] *Id.* at 390.

[51] *Id.* at 669.

[52] *Id.* at 671, citing *Francisco, The Revised Rules of Court in the Philippines*, Vol. IV-A, 1971, p. 185.

[53] *Id.*, citing *Government Service Insurance System v. Florendo,* G.R. No. 48603, September 29, 1989, 178 SCRA 76, 87.

On the other hand, the Banks claim that PDIC was given every opportunity to present its arguments against the issuance of the injunction.[54] Its active participation in the proceedings negates its assertion that it was denied procedural due process in the issuance of the writ of injunction.[55] Citing *Salonga v. Court of Appeals*,[56] the Banks state that the essence of due process is the reasonable opportunity to be heard and to submit evidence one may have in support of one's defense,[57] and PDIC was able to do so.

On March 15, 2006, the CA-Cebu issued a resolution granting their prayer for a 60-day TRO, and requiring PDIC to file its comment.[58] The latter thereafter filed its Comment *ad Cautelam* dated March 30, 2006.[59] [Underscoring ours]

On May 16, 2006, the CA-Cebu issued another resolution, this time granting the prayer for a preliminary injunction and requiring the parties to file their respective memoranda. PDIC thereafter filed its memorandum dated July 31, 2006.[60]

On September 18, 2006, the CA-Cebu promulgated its Decision granting the Petition for Injunction.[61] PDIC filed a motion for reconsideration dated October 10, 2006,[62] which was subsequently denied.

The essence of procedural due process is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense.[63] The Court finds that procedural

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[54] *Id.* at 605.

[55] *Id.* at 607.

[56] 336 Phil. 514, 528 (1997).

[57] *Rollo*, p. 605.

[58] *Id.* at 606.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 94.

[62] *Id.* at 606.

[63] *Republic of the Philippines v. Sandiganbayan, et al.* 461 Phil. 598, 614 (2003), citing *Mutuc v. Court of Appeals*, G.R. No. 48108, September 26, 1990, 190 SCRA 43.

due process was observed by the CA-Cebu. The parties were afforded equal opportunity to present their arguments. In the absence of any indication to the contrary, the CA-Cebu must be accorded the presumption of regularity in the performance of their functions. However, as discussed herein, the matter of whether it erred in its conclusion and issuance of the TRO, preliminary injunction and final injunction is another matter altogether.

IV - *Whether the issues raised by petitioner are the same issues raised in G.R. No. 173370 which was earlier dismissed by this Court.*

In G.R. 173370, a petition for *certiorari* under Rule 65 of the Rules of Court, PDIC alleged that the CA-Cebu committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the Banks' petition, and in issuing a TRO and a writ of preliminary injunction.[64]

In the case at bench, a petition for review under Rule 45, PDIC's core contention is that the CA-Cebu erred in finding that prior approval of the Monetary Board of the BSP is necessary before it may conduct an investigation of the Banks.

Clearly then, the two petitions were of different nature raising different issues.

G.R. 173370 challenged the CA-Cebu's having taken cognizance of the Banks' petition and interlocutory orders on the issuance of a TRO and a writ of preliminary injunction. This case, however, strikes at the core of the final decision on the merits of the CA-Cebu, and not merely the interlocutory orders. While both G.R. 173370 and the present case may have been anchored on the same set of facts, that is, the refusal of the Banks to allow PDIC to conduct an investigation without the prior consent of the Monetary Board, the issues raised in the two petitions are not identical. Moreover, the disposal of the first case does not amount to *res judicata* in this case.

[64] *Rollo*, p. 583.

V - *Whether the Court of Appeals-Cebu erred in finding that prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas is necessary before the PDIC may conduct an investigation of respondent banks.*

PDIC is of the position that in order for it to exercise its power of investigation, the law requires that:

(a) The investigation is based on a complaint of a depositor or any other government agency, or on the report of examination of [the] Bangko Sentral ng Pilipinas (BSP) and/or PDIC; and,

(b) The complaint alleges, or the BSP and/or PDIC Report of Examination contains adverse findings of, fraud, irregularities or anomalies committed by the Bank and/or its directors, officers, employees or agents; and,

(c) The investigation is upon the authority of the PDIC Board of Directors.[65]

It argues that when it commenced its investigation on the Banks, all of the aforementioned requirements were met. PDIC stresses that its power of examination is different from its power of investigation, in such that the former requires prior approval of the Monetary Board while the latter requires merely the approval of the PDIC Board.[66] It further claims that the power of examination cannot be exercised within twelve (12) months from the last examination conducted, whereas the power of investigation is without limitation as to the frequency of its conduct. It states that the purpose of the PDIC's power of examination is merely to look into the condition of the bank, whereas the power of investigation aims to address fraud, irregularities and anomalies based on complaints from depositors and other government agencies or upon reports of examinations conducted by the PDIC itself or by the BSP.[67]

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[65] *Id.* at 673.

[66] *Id.* at 82.

[67] *Id.*

The Banks, on the other hand, are of the opinion that a holistic reading of the PDIC charter shows that petitioner's power of examination is synonymous with its power of investigation.[68] They cite, as bases, the law dictionary definitions, Section 8, Eighth paragraph[69] and Section 9(b-1)[70] of the PDIC Charter,

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[68] *Id.* at 474-479.

[69] Section 8 of R.A. 3591 provides:

"POWERS AS A CORPORATE BODY

SECTION 8. The Corporation as a corporate body shall have the power —

x x x x x x x x x

Eighth – To conduct examination of banks with prior approval of the Monetary Board: *Provided*, That no examination can be conducted within twelve (12) months from the last examination date: *Provided*, *however*, That the Corporation may, in coordination with the Bangko Sentral, conduct a special examination as the Board of Directors, by an affirmative vote of a majority of all of its members, if there is a threatened or impending closure of a bank; *Provided, further,* That, notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the Corporation and/or the Bangko Sentral, may inquire into or examine deposit accounts and all information related thereto incase there is a finding of unsafe or unsound banking practice; *Provided*, That to avoid overlapping of efforts, the examination shall maximize the efficient use of the relevant reports, information, and findings of the Bangko Sentral, which it shall make available to the Corporation; *(As amended by R.A. 9302, 12 August 2004, R.A. 9576, 1June 2009)*

x x x x x x x x x"

[70] Section 9(b-1) of the PDIC Charter further provides that the Board of Directors of the PDIC shall have the power to:

"POWERS AND RESPONSIBILITIES AND PROHIBITIONS

SECTION 9. xxx

(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation to examine any insured bank. Each such examiner shall have the power to make a thorough examination of all the affairs of the bank and in doing so, he shall have the power to administer oaths, to examine and take and preserve the testimony of any of the officers and agents thereof, and, to compel the presentation of books, documents, papers, or records necessary in his judgment to ascertain the facts relative to the condition of the bank; and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner

and Rule 1, Section 3(l) of PDIC Regulatory Issuance No. 2005-02, which defines "investigation" as follows:

> (l) 'Investigation' shall refer to fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action.

The Banks further cite Section X658 of the Manual of Regulations for Banks, which states:

> Sec. X658 – Examination by the BSP. The Term 'examination' shall, henceforth, refer to an investigation of an institution under the supervisory authority of the BSP to determine compliance with laws and regulations. It shall include determination that the institution is conducting its business on a safe and sound basis. Examination requires full and comprehensive looking into the operations and books of institutions, and shall include, but need not be limited to the following:
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> a. Determination of the bank's solvency and liquidity position;
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> b. Evaluation of asset quality as well as determination of sufficiency of valuation reserves on loans and other risk assets;
>
> c. Review of all aspects of bank operations;
>
> d. Assessment of risk management system, including the evaluation of the effectiveness of the bank management's

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shall appoint claim agents who shall have the power to investigate and examine all claims for insured deposits and transferred deposits. Each claim agent shall have the power to administer oaths and to examine under oath and take and preserve testimony of any person relating to such claim. *(As amended by E.O. 890, 08 April 1983; R.A. 7400, 13 April 1992)*

(b-1) The investigators appointed by the Board of Directors shall have the power on behalf of the Corporation to conduct investigations on frauds, irregularities and anomalies committed in banks, based on reports of examination conducted by the Corporation and *Bangko Sentral ng Pilipinas* or complaints from depositors or from other government agency. Each such investigator shall have the power to administer oaths, and to examine and take and preserve the testimony of any person relating to the subject of investigation. *(As added by R.A. 9302, 12 August 2004)*

x x x x x x x x x"

oversight functions, policies, procedures, internal control and audit;

e. Appraisal of overall management of the bank;

f. Review of compliance and applicable laws, rules and regulations; and any other activities relevant to the above."

After an evaluation of the respective positions of the parties, the Court is of the view that the Monetary Board approval is not required for PDIC to conduct an investigation on the Banks.

The disagreement stems from the interpretation of these two key provisions of the PDIC Charter. The confusion can be attributed to the fact that although "investigation" and "examination" are two separate and distinct procedures under the charter of the PDIC and the BSP, the words seem to be used loosely and interchangeably.

It does not help that indeed these terms are very closely related in a generic sense. However, while "examination" connotes a mere generic perusal or inspection, "investigation" refers to a more intensive scrutiny for a more specific fact-finding purpose. The latter term is also usually associated with proceedings conducted prior to criminal prosecution.

The PDIC was created by R.A. No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. It is a government instrumentality that operates under the Department of Finance. Its primary purpose is to act as deposit insurer, as a co-regulator of banks, and as receiver and liquidator of closed banks.[71]

Section 1 of the PDIC Charter states:

SECTION 1. There is hereby created a Philippine Deposit Insurance Corporation hereinafter referred to as the "Corporation" which shall

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[71] Republic Act No. 3591, as amended, Section 1.

insure, as herein provided, the deposits of all banks which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

The Corporation shall, as a basic policy, promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits.

Section 1 of R.A. No. 9576 further provides: An Act Increasing the Maximum Deposit Insurance Coverage, and in connection therewith, to Strengthen the Regulatory and Administrative Authority, and Financial Capability of the Philippine Deposit Insurance Corporation (PDIC), amending for this purpose R.A. No. 3591, as Amended, otherwise known as the PDIC Charter.

SECTION 1. ***Statement of State Policy and Objectives.*** **—**It is hereby declared to be the policy of the State to strengthen the mandatory deposit insurance coverage system to generate, preserve, maintain faith and confidence in the country's banking system, and protect it from illegal schemes and machinations.

Towards this end, the government must extend all means and mechanisms necessary for the Philippine Deposit Insurance Corporation to effectively fulfill its vital task of promoting and safeguarding the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times.

Under its charter, the PDIC is empowered to conduct examination of banks with prior approval of the Monetary Board:

Eighth – To conduct examination of banks with prior approval of the Monetary Board: *Provided*, That no examination can be conducted within twelve (12) months from the last examination date: *Provided*, *however*, That the Corporation may, in coordination with the Bangko Sentral, conduct a special examination as the Board of Directors, by an affirmative vote of a majority of all of its members, if there is a threatened or impending closure of a bank; *Provided, further,* That, notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the Corporation and/or the Bangko Sentral, may inquire into

or examine deposit accounts and all information related thereto incase there is a finding of unsafe or unsound banking practice; *Provided*, That to avoid overlapping of efforts, the examination shall maximize the efficient use of the relevant reports, information, and findings of the Bangko Sentral, which it shall make available to the Corporation; *(As amended by R.A. 9302, 12 August 2004, R.A. 9576, 1 June 2009)*

xxx. [Underlining supplied]

Section 9(b-1) of the PDIC Charter further provides that the PDIC Board shall have the power to:

POWERS AND RESPONSIBILITIES AND PROHIBITIONS

SECTION 9. xxx

(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation to examine any insured bank. Each such examiner shall have the power to make a thorough examination of all the affairs of the bank and in doing so, he shall have the power to administer oaths, to examine and take and preserve the testimony of any of the officers and agents thereof, and, to compel the presentation of books, documents, papers, or records necessary in his judgment to ascertain the facts relative to the condition of the bank; and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have the power to investigate and examine all claims for insured deposits and transferred deposits. Each claim agent shall have the power to administer oaths and to examine under oath and take and preserve testimony of any person relating to such claim. *(As amended by E.O. 890, 08 April 1983; R.A. 7400, 13 April 1992)*

(b-1) The investigators appointed by the Board of Directors shall have the power on behalf of the Corporation to conduct investigations on frauds, irregularities and anomalies committed in banks, based on reports of examination conducted by the Corporation and *Bangko Sentral ng Pilipinas* or complaints from depositors or from other government agency. Each such investigator shall have the power to administer oaths, and to examine and take and preserve the testimony of any person relating to the subject of investigation. *(As added by R.A. 9302, 12 August 2004)*

xxx. [Underscoring supplied]

As stated above, the charter empowers the PDIC to conduct an investigation of a bank and to appoint examiners who shall have the power to examine any insured bank. Such investigators are authorized to conduct investigations on frauds, irregularities and anomalies committed in banks, based on an examination conducted by the PDIC and the BSP or on complaints from depositors or from other government agencies.

The distinction between the power to investigate and the power to examine is emphasized by the existence of two separate sets of rules governing the procedure in the conduct of investigation and examination. Regulatory Issuance *(RI)* No. 2005-02 or the *PDIC Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks* covers the procedural requirements of the exercise of the PDIC's power of investigation. On the other hand, RI No. 2009-05 sets forth the guidelines for the conduct of the power of examination.

The definitions provided under the two aforementioned regulatory issuances elucidate on the distinction between the power of examination and the power of investigation.

Section 2 of RI No. 2005-02 states that its coverage shall be applicable to "all fact-finding investigations on fraud, irregularities and/or anomalies committed in banks that are conducted by PDIC based on: [a] complaints from depositors or other government agencies; and/or [b] final reports of examinations of banks conducted by the Bangko Sentral ng Pilipinas and/or PDIC."

The same issuance states that the Final Report of Examination[72] is one of the three pre-requisites to the conduct

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[72] The "Final Report of Examination" is defined under Section 2, Rule 3 of RI No. 2005-02 as follows:

"SECTION 2. Final Report of Examination.

A Final Report of Examination shall refer to the document approved by the PDIC Board or the Monetary Board containing a written statement/ narration of the findings and/or recommendations resulting from an examination of a bank.

of an investigation, in addition to the authorization of the PDIC Board[73] and a complaint.[74] Juxtaposing this provision with Section

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A Final Report of Examination of examiners of PDIC and/or BSP shall contain the following:

If possible, full name(s) and address(es) of the bank and/or its directors, officers, employees or agents or such description as would identify who appear to be responsible for the commission of fraud, irregularities and/or anomalies; and

A narration of the relevant and material facts which shows the fraudulent, irregular or anomalous acts or omissions allegedly committed in a bank.

In addition to the foregoing, copies of relevant documents, if available, should accompany the Final Report of Examination."

[73] Section 1, Rule 3 or RI No. 2005-02 states:

"**SECTION 1. Authorization by the PDIC Board.**

In all cases, a fact-finding investigation shall be conducted only upon authorization by the PDIC Board acting on the recommendation contained in a Final Report of Examination or based on any adverse finding stated therein, and/or a complaint from a depositor or government agency.

The Board shall likewise authorize the filing of criminal, civil, and/or administrative charges, if warranted. For this purpose, said authority is delegated to the President and Chief Executive Officer or the General Counsel in accordance with existing PDIC policies."

[74] Section 3, Rule 3 of RI No. 2005-02 provides for the definition of a complaint as follows:

"**SECTION 3. Complaint.**

A complaint is a verified statement from a depositor alleging the commission or omission of certain acts which constitute fraud, irregularity or anomaly in a bank. The complaint shall follow the form attached hereto as Annex "A" and/or contain the following:

Full name and address of the complainant;

Full name and address of the bank and/or the names or sufficient description that will identify the directors, officers, employees and/or agents thereof who appear to be responsible for the commission of fraud, irregularities and/or anomalies;

A narration of the relevant and material facts which shows the fraudulent, irregular or anomalous act or acts allegedly committed in a bank;

A statement that the complainant has not commenced any action or filed any claim involving the same issues with BSP or any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein; or a full disclosure of the status

9(b-1) of the PDIC Charter, since an examination is explicitly made the basis of a fact-finding examination, then clearly examination and investigation are two different proceedings. It would obviously defy logic to make the result of an "investigation" the basis of the same proceeding. Thus, RI No. 2005-02 defines an "investigation" as a "fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action."[75]

The Banks cite the dictionary definitions of "examination" and "investigation" to justify their conclusion that these terms refer to one and the same proceeding. It is tempting to use these two terms interchangeably, which practice may be perfectly justified in a purely literary sense. Indeed, a reading of the PDIC Charter shows that the two terms have been used interchangeably at some point. However, based on the provisions aforecited, the intention of the laws is clearly to differentiate between the process of investigation and that of examination.

In 2009, to clarify procedural matters, PDIC released RI No. 2009-05 or the Rules and Regulations on Examination of

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of an action or claim involving the same issues filed with BSP or any court, tribunal or quasi-judicial agency;

An undertaking that if the complainant should thereafter learn that a similar action or claim has been filed or is pending, he/she shall report that fact within five (5) days therefrom to PDIC;

If the incident complained of involves the deposit account of the complainant with the subject bank, a statement authorizing PDIC to look into the deposit account of the complainant for purposes of the investigation; and

Documents and/or affidavits, if any, supporting the allegations in the complaint.

In the absence of any one of the aforementioned requirements other than paragraph [g], the complaint may be dismissed.

A report from a government agency of fraud/irregularity/anomaly allegedly committed in a bank that is furnished PDIC, accompanied by a written request for the conduct of an investigation, is considered a valid complaint under these Rules."

[75] Sec. 3(l), PDIC Regulatory Issuance No. 2005-02.

Banks. Section 2 thereof differentiated between the two types of examination as follows:

Section 2. Types of Examination

a. *Regular Examination* – An examination conducted independently or jointly with the BSP. It requires the prior approval of the PDIC Board of Directors and the Monetary Board (MB). It may be conducted only after an interval of at least twelve (12) months from the closing date of the last Regular Examination.

b. *Special Examination* – An examination conducted at any time in coordination with the BSP, by an affirmative vote of a majority of all the members of the PDIC Board of Directors, without need of prior MB approval, if there is a threatened or impending bank closure as determined by the PDIC Board of Directors. [Underscoring supplied]

Section 3 of RI No. 2009-05 provides for the general scope of the PDIC examination:

Section 3. Scope of Examination

The examination shall include, but need not be limited to, the following:

a. Determination of the bank's solvency and liquidity position;

b. Evaluation of asset quality as well as determination of sufficiency of valuation reserves on loans and other risk assets;

c. Review of all aspects of bank operations;

d. Assessment of risk management system, including the evaluation of the effectiveness of the bank management's oversight functions, policies, procedures, internal control and audit;

e. Appraisal of overall management of the bank;

f. Review of compliance with applicable banking laws, and rules and regulations, including PDIC issuances;

g. Follow-through of specific exceptions/ violations noted during a previous examination; and

h. Any other activity relevant to the above.

Rule 2, Section 1 of PDIC RI No. 2005-02 or the *PDIC Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks* provides for the scope of fact-finding investigations as follows:

SECTION 1. Scope of the Investigation.

Fact-finding Investigations shall be limited to the particular acts or omissions subject of a complaint or a Final Report of Examination.

From the above-cited provisions, it is clear that the process of examination covers a wider scope than that of investigation.

Examination involves an evaluation of the current status of a bank and determines its compliance with the set standards regarding solvency, liquidity, asset valuation, operations, systems, management, and compliance with banking laws, rules and regulations.

Investigation, on the other hand, is conducted based on specific findings of certain acts or omissions which are subject of a complaint or a Final Report of Examination.

Clearly, investigation does not involve a general evaluation of the status of a bank. An investigation zeroes in on specific acts and omissions uncovered via an examination, or which are cited in a complaint.

An examination entails a review of essentially all the functions and facets of a bank and its operation. It necessitates poring through voluminous documents, and requires a detailed evaluation thereof. Such a process then involves an intrusion into a bank's records.

In contrast, although it also involves a detailed evaluation, an investigation centers on specific acts or omissions and, thus, requires a less invasive assessment.

The practical justification for not requiring the Monetary Board approval to conduct an investigation of banks is the administrative hurdles and paperwork it entails, and the correspondent time to

complete those additional steps or requirements. As in other types of investigation, time is always of the essence, and it is prudent to expedite the proceedings if an accurate conclusion is to be arrived at, as an investigation is only as precise as the evidence on which it is based. The promptness with which such evidence is gathered is always of utmost importance because evidence, documentary evidence in particular, is remarkably fungible. A PDIC investigation is conducted to "determine whether the allegations in a complaint or findings in a final report of examination may properly be the subject of an administrative, criminal or civil action."[76] In other words, an investigation is based on reports of examination and an examination is conducted with prior Monetary Board approval. Therefore, it would be unnecessary to secure a separate approval for the conduct of an investigation. Such would merely prolong the process and provide unscrupulous individuals the opportunity to cover their tracks.

Indeed, while in a literary sense, the two terms may be used interchangeably, under the PDIC Charter, examination and investigation refer to two different processes. To reiterate, an examination of banks requires the prior consent of the Monetary Board, whereas an investigation based on an examination report, does not.

WHEREFORE, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA G.R. CEB SP. No. 01550, dated September 18, 2006 and January 25, 2007 are *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

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[76] Sec. 3(l), PDIC Regulatory Issuance No. 2005-02.

SECOND DIVISION

[G.R. No. 184063. January 24, 2011]

CYNTHIA E. YAMBAO, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and PATRICIO E. YAMBAO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; ARTICLE 36 OF THE FAMILY CODE; EACH CASE FOR DECLARATION OF NULLITY OF MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY MUST BE JUDGED ACCORDING TO ITS OWN SET OF FACTS.—** [T]he Court reiterates its recent pronouncement that each case for declaration of nullity under the foregoing provision must be judged, not on the basis of *a priori* assumptions, predilections, or generalizations, but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals. Judicial understanding of psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thought, and experience. While the Court has not abandoned the standard set in *Molina*, the Court has reiterated the tenet that the factual milieu of each case must be treated as distinct and, as such, each case must be decided based on its own set of facts.

2. **ID.; ID.; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS.—** In *Santos v. Court of Appeals*, the Court held that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. These guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish the party's psychological condition. If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

3. **ID.; ID.; APPLIES TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE.—** The intendment of the law has been to confine the application of Article 36 to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Thus, for a marriage to be annulled under Article 36 of the Family Code, the psychologically incapacitated spouse must be shown to suffer no less than a mental (not physical) incapacity that causes him or her to be truly incognitive of the basic marital covenants. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. In this case, there is no showing that respondent was suffering from a psychological condition so severe that he was unaware of his obligations to his wife and family. On the contrary, respondent's efforts, though few and far between they may be, showed an understanding of his duty to provide for his family, albeit he did not meet with much success. Whether his failure was brought about by his own indolence or irresponsibility, or by some other external factors, is not relevant. What is clear is that respondent, in showing an awareness to provide for his family, even with his many failings, does not suffer from psychological incapacity.

4. **ID.; ID.; CONTEMPLATES INCAPACITY OR INABILITY TO TAKE COGNIZANCE OF AND TO ASSUME BASIC MARITAL OBLIGATIONS AND NOT MERELY DIFFICULTY, REFUSAL, OR NEGLECT IN THE PERFORMANCE OF MARITAL OBLIGATIONS OR ILL WILL.—** Article 36 contemplates *incapacity* or *inability* to take cognizance of and to assume basic marital obligations and not merely *difficulty*, *refusal*, or *neglect* in the performance of marital obligations or *ill will*. This incapacity consists of the following: (a) a true inability to commit oneself to the essentials of marriage; (b) this inability to commit oneself must refer to the essential obligations of marriage: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of offspring; and (c) the inability must be tantamount to a psychological abnormality. It is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological illness. That

respondent, according to petitioner, "lack[ed] effective sense of rational judgment and responsibility" does not mean he is incapable to meet his marital obligations. His refusal to help care for the children, his neglect for his business ventures, and his alleged unbearable jealousy may indicate some emotional turmoil or mental difficulty, but none have been shown to amount to a psychological abnormality.

5. ID.; ID.; PSYCHOLOGICAL INCAPACITY; EXISTENCE THEREOF AT THE TIME OF THE CELEBRATION OF THE MARRIAGE, NOT ESTABLISHED IN CASE AT BAR.— [E]ven assuming that respondent's faults amount to psychological incapacity, it has not been established that the same existed at the time of the celebration of the marriage. In his psychological report, Dr. Tolentino merely said, "[b]ecause one's personality or character is formed early in life, it has a clear ANTECEDENT and it has an enduring pattern of inner experience that deviates from the expectations of the individual's culture," without explaining this antecedent. Even petitioner, in her allegations, never explained how the alleged psychological incapacity manifested itself prior to or at the time of the celebration of their marriage.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.
The Solicitor General for public respondent.
Public Attorney's Office for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is yet another tale of marital woe.

Petitioner Cynthia E. Yambao (petitioner) is assailing the Decision[1] dated April 16, 2008 and the Resolution[2] dated August 4, 2008 of the Court of Appeals (CA) in CA-G.R. CV

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Portia Aliño-Hormachuelos and Rosmari D. Carandang, concurring; *rollo*, pp. 99-106.

[2] *Id.* at 117.

No. 89262. The CA affirmed the decision[3] of the Regional Trial Court (RTC) of Makati City, which denied petitioner's Petition[4] for the annulment of her marriage to respondent Patricio E. Yambao (respondent) on the ground of psychological incapacity.

Petitioner and respondent were married on December 21, 1968 at the Philamlife Church in Quezon City.[5] On July 11, 2003, after 35 years of marriage, petitioner filed a Petition[6] before the RTC, Makati City, praying that the marriage be declared null and void by reason of respondent's psychological incapacity, pursuant to Article 36 of the Family Code.[7]

In her petition before the RTC, petitioner narrated that, since the beginning, her and respondent's married life had been marred by bickering, quarrels, and recrimination due to the latter's inability to comply with the essential obligations of married life.[8]

Petitioner averred that through all the years of their married life, she was the only one who earned a living and took care of the children. Respondent, she alleged, did nothing but eat and sleep all day, and spend time with friends. When respondent would find a job, he would not be able to stay in it for long. Likewise, respondent went into several business ventures, which all failed. In addition, respondent loved to gamble and would gamble away whatever money would come his way.

Petitioner also claimed that, when their children were babies, respondent did not even help to change their diapers or feed them, even while petitioner was recovering from her caesarean operation, proffering the excuse that he knew nothing about

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[3] CA *rollo*, pp. 26-42.

[4] *Rollo*, pp. 32-35.

[5] Records (Vol. 1), p. 1.

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

[7] *Id.* at 3.

[8] *Id.* at 1.

children.[9] Later, respondent became insecure and jealous and would get mad every time he would see petitioner talking to other people, even to her relatives. When respondent started threatening to kill petitioner, she decided to leave the conjugal abode and live separately from him.[10] She then consulted a psychiatrist who concluded that respondent was indeed psychologically incapacitated to comply with the essential marital obligations.[11]

In his Answer, respondent denied that he has refused to work. He claimed that he had been trying to find a decent job, but was always unable to because of his old age and lack of qualifications. He also claimed that he did not stay long in the jobs he had because the same could not support the needs of his family, and yielded benefits that were not commensurate to the efforts he exerted. He had ventured into small businesses but they failed due to various economic crises. Respondent further claimed that he was not, in fact, contented with living with petitioner's relatives since his every move was being watched with eagle eyes.[12]

Respondent denied that he gambled, positing that since he had no income, he would not have the funds for such activity. He alleged that even without a steady source of income, he still shared in the payment of the amortization of their house in BF Homes, Parañaque City.

As to the care of their children, respondent countered that no fault should be attributed to him because that is the duty of the household help.[13]

Respondent also denied that he threatened to kill petitioner, considering that there was never any evidence that he had

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[9] *Id.* at 2.

[10] *Id*.

[11] *Id.* at 3.

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

[13] *Id.* at 12.

ever harmed or inflicted physical injury on petitioner to justify the latter having a nervous breakdown.[14]

He further alleged that he never consulted any psychiatrist, and denied that he was psychologically incapacitated to comply with the essential obligations of marriage.[15]

On February 9, 2007, the RTC rendered a decision[16] dismissing the petition for lack of merit. The RTC held that petitioner's evidence failed to support her argument that respondent was totally unaware of and incapacitated to perform his marital obligations such that the marriage was void from the beginning. The court said that, even as petitioner claimed to be unhappy in the marriage, it is incontrovertible that the union lasted for over thirty years and the parties were able to raise three children into adulthood without suffering any major parenting problems. The court also noted that respondent was faithful to petitioner and never physically abused her. Likewise, when the parties lived with petitioner's parents, respondent got along well enough with her family.[17]

The RTC recognized that respondent did indeed have many faults, such as his indolence and utter irresponsibility. However, the RTC said, respondent's failure to find decent work was due to his not having obtained a college degree and his lack of other qualifications. Likewise, respondent's failure in business could not be entirely attributed to him, since petitioner was a business partner in some of these ventures.[18]

The RTC also rejected the supposed negative effect of respondent's Dependent Personality Disorder. The RTC said that, although the evidence tended to show that respondent would unduly rely upon petitioner to earn a living for the family, there was no evidence to show that the latter resented such

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[14] *Id*.
[15] *Id.* at 13.
[16] Penned by Judge Marissa Macaraig-Guillen; *rollo*, pp. 41-57.
[17] *Id.* at 55.
[18] *Id*.

imposition or suffered with the additional financial burdens passed to her by her husband. On the contrary, the RTC averred that, despite a supposedly horrible married life, petitioner was able to rise in the ranks in her company and buy properties with hardly any help from respondent.[19]

The RTC concluded that while respondent might have been deficient in providing financial support, his presence, companionship, and love allowed petitioner to accomplish many things. Thus, respondent could be relied on for love, fidelity, and moral support, which are obligations expected of a spouse under Article 68 of the Family Code.[20]

Lastly, the RTC rejected petitioner's claim that she suffered through respondent's overbearing jealousy. It found that respondent only became jealous when he thought that petitioner was cheating on him. The RTC determined that jealousy was not a character trait that contributed to respondent's psychological dysfunction; much less did it amount to psychological or mental torture on petitioner.[21] Thus, the RTC concluded that the parties might have indeed entered into a bad marriage, but this did not in itself prove that the marriage did not exist, given the 30 years they remained together through the various ups and downs of their volatile relationship.[22]

Petitioner's motion for reconsideration was denied on May 21, 2007.[23] Petitioner subsequently filed a Notice of Appeal,[24] which was given due course by the RTC in an Order dated June 8, 2007.[25] She then appealed to the CA.

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[19] *Id.* at 56.

[20] Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[21] *Rollo*, p. 56.

[22] *Id.* at 57.

[23] Records (Vol. 1), p. 236.

[24] *Id.* at 237.

[25] *Id.* at 241.

In a Decision[26] dated April 16, 2008, the CA affirmed the RTC's decision. The CA held that petitioner failed to show that respondent was psychologically incapacitated to comply with the essential obligations of marriage. It pointed out that respondent exerted efforts to find a source of income to support his family. However, his failure to find a suitable job and the failure of his business ventures were not mental but physical defects and, hence, could not be considered "psychological incapacity" as contemplated under the law.

The CA also found that petitioner's claims that she lived in misery during the marriage and that respondent failed to keep his promises to her were not duly established. The CA held that the fact that the parties lived together for 35 years and raised three children well, and the fact that respondent never physically abused petitioner belied the former's psychological incapacity. The CA also held that respondent's refusal to care for the children was not psychological incapacity but "merely constituted refusal to perform the task," which is not equivalent to an incapacity or inability.[27]

The appellate court also rejected petitioner's allegation of respondent's unbearable jealousy. It said that the same must be shown as a manifestation of a disordered personality which would make respondent completely unable to discharge the essential obligations of the marital state.[28] The CA averred that a jealous attitude simply evinced respondent's love for his wife, whom he could not bear to lose to another man. Meanwhile, the CA construed the purported threats to kill petitioner as "emotional immaturity" and not psychological incapacity.[29]

Lastly, the CA found the report of expert witness Dr. Edgardo Juan Tolentino (Dr. Tolentino) to be unsupported by sufficient evidence since the findings therein were not corroborated by

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[26] *Supra* note 1.

[27] *Id.* at 104.

[28] *Id.*

[29] *Id.* at 105.

any other witness. Moreover, the CA said, neither the report nor petitioner's testimony established that respondent's psychological condition was grave enough to bring about the inability of the latter to assume the essential obligations of marriage, so that the same was medically permanent or incurable.[30]

Petitioner's subsequent motion for reconsideration was denied in a resolution dated August 4, 2008.[31]

Petitioner is now before this Court in a last ditch effort to gain freedom from her marriage to respondent. In her petition for review, petitioner submits the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER FAILED TO SHOW THAT RESPONDENT WAS PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT WAS MERELY REFUSING TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE AND NOT DOWNRIGHT INCAPACITATED OR UNABLE

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT'S UNBEARABLE JEALOUSY CANNOT BE CONSIDERED A CHARACTER TRAIT CONTRIBUTING TO PSYCHOLOGICAL INCAPACITY

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO SUFFICIENT EVIDENCE TO ESTABLISH THAT THE PSYCHOLOGICAL CONDITION OF RESPONDENT WAS

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[30] *Id.*

[31] *Supra* note 2.

GRAVE ENOUGH, INCURABLE AND HAD NO ANTECEDENCE (sic)[32]

Petitioner argues that respondent's Dependent Personality Disorder was sufficiently established by her testimony and that of her sister, which testimonies were both credible considering that they have personal knowledge of the circumstances prior to and during the parties' marriage. On the other hand, respondent's evidence consisted merely of his sole testimony, which were self-serving and full of inconsistencies.[33] Petitioner points out that what the CA characterized as respondent's "efforts" in finding jobs were merely the result of short-lived bursts of industry, failing to note that the jobs were few and very far between.[34] The rest of the time, respondent did nothing but eat, sleep, and party with his friends.[35] Petitioner also alleges that respondent was given the opportunity to finish his studies, first by his parents, and then by petitioner herself, but he never took up these offers.[36]

Petitioner also highlighted respondent's failure to earn his keep, participate in household chores, or take care of their children. She argues that respondent had the obligation to help and contribute to all the needs of the family, whether the same be in the form of material or physical support.[37]

Petitioner also refutes the CA's conclusion that respondent was *merely refusing* to attend to his family's needs. She insists that respondent's inability is due to a psychological affliction, *i.e.*, Dependent Personality Disorder, as attested to by the expert witness she presented during trial.[38] Part of this same disorder,

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[32] *Rollo*, pp. 15-16.

[33] *Id.* at 16-17.

[34] *Id.* at 17.

[35] *Id.* at 18.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 20.

according to petitioner, is respondent's jealous tendencies, which the CA belittled and attributed to emotional immaturity.[39]

Finally, petitioner argues against the CA's finding that respondent's laziness and dependence could not be characterized as inability but just plain refusal. Petitioner contends that she has complied with the guidelines laid down by the Court in *Republic v. Court of Appeals and Molina*. She further contends that the framers of the Family Code never intended to give such a suppressed definition of psychological incapacity, and, in fact, declared that a restrictive definition would limit the applicability of the provision.[40] Moreover, she asserts that she has proven that respondent's unbearable jealousy and Dependent Personality Disorder manifested themselves even before the marriage of the parties, although not in the same degree as when they were already married.[41]

The petition has no merit and, perforce, must be denied.

Article 36 of the Family Code states:

> 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.

Preliminarily, the Court reiterates its recent pronouncement that each case for declaration of nullity under the foregoing provision must be judged, not on the basis of *a priori* assumptions, predilections, or generalizations, but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.[42] Judicial understanding of

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[39] *Id.* at 20-22.

[40] *Id.* at 26.

[41] *Id.* at 27.

[42] *Ngo Te v. Yu-Te*, G.R. No. 161793, February 13, 2009, 579 SCRA 193, 228.

psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thought, and experience.[43]

While the Court has not abandoned the standard set in *Molina*,[44] the Court has reiterated the tenet that the factual milieu of each case must be treated as distinct and, as such, each case must be decided based on its own set of facts.

In *Santos v. Court of Appeals*,[45] the Court held that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. These guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified."[46] What is important is the presence of evidence that can adequately establish the party's psychological condition. If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.[47]

Hence, the issue in this case can be summed up, thus: Does the totality of petitioner's evidence establish respondent's psychological incapacity to perform the essential obligations of marriage?

The Court holds that it does not.

The intendment of the law has been to confine the application of Article 36 to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to

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[43] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 370.

[44] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 708.

[45] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[46] *Id.* at 33.

[47] *So v. Valera*, G.R. No. 150677, June 5, 2009, 588 SCRA 319, 334; *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

give meaning and significance to the marriage.[48] Thus, for a marriage to be annulled under Article 36 of the Family Code, the psychologically incapacitated spouse must be shown to suffer no less than a mental (not physical) incapacity that causes him or her to be truly incognitive of the basic marital covenants.[49] It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.[50]

In this case, there is no showing that respondent was suffering from a psychological condition so severe that he was unaware of his obligations to his wife and family. On the contrary, respondent's efforts, though few and far between they may be, showed an understanding of his duty to provide for his family, albeit he did not meet with much success. Whether his failure was brought about by his own indolence or irresponsibility, or by some other external factors, is not relevant. What is clear is that respondent, in showing an awareness to provide for his family, even with his many failings, does not suffer from psychological incapacity.

Article 36 contemplates *incapacity* or *inability* to take cognizance of and to assume basic marital obligations and not merely *difficulty*, *refusal*, or *neglect* in the performance of marital obligations or *ill will*.[51] This incapacity consists of the following: (a) a true inability to commit oneself to the essentials of marriage; (b) this inability to commit oneself must refer to the essential obligations of marriage: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of offspring; and (c) the inability

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[48] *Ting v. Velez-Ting*, *supra* note 43, at 711; *Dedel v. Court of Appeals*, 466 Phil. 226, 232 (2004).

[49] *Santos v. Court of Appeals*, *supra* note 44, at 34; *Hernandez v. Court of Appeals*, 377 Phil. 919, 930 (1999).

[50] *Marcos v. Marcos*, *supra* note 46, at 851.

[51] *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009, 596 SCRA 157, 179, citing *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272, 288.

must be tantamount to a psychological abnormality.[52] It is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological illness.[53]

That respondent, according to petitioner, "lack[ed] effective sense of rational judgment and responsibility"[54] does not mean he is incapable to meet his marital obligations. His refusal to help care for the children, his neglect for his business ventures, and his alleged unbearable jealousy may indicate some emotional turmoil or mental difficulty, but none have been shown to amount to a psychological abnormality.

Moreover, even assuming that respondent's faults amount to psychological incapacity, it has not been established that the same existed at the time of the celebration of the marriage.

In his psychological report,[55] Dr. Tolentino merely said, "[b]ecause one's personality or character is formed early in life, it has a clear ANTECEDENT and it has an enduring pattern of inner experience that deviates from the expectations of the individual's culture,"[56] without explaining this antecedent. Even petitioner, in her allegations, never explained how the alleged psychological incapacity manifested itself prior to or at the time of the celebration of their marriage.

Likewise militating against petitioner's cause is the finding of the trial court, and the same was affirmed by the CA, that respondent never committed infidelity or physically abused petitioner or their children. In fact, considering that the children lived with both parents, it is safe to assume that both made an impact in the children's upbringing. And still, as found by the RTC and the CA, the parties were able to raise three children

[52] *Santos v. Court of Appeals*, *supra* note 44, at 33.

[53] *Padilla-Rumbaua v. Rumbaua*, *supra* note 50, at 188.

[54] *Rollo*, p. 32.

[55] Records (Vol. 1), pp. 28-32.

[56] *Id.* at 32.

into adulthood "without any major parenting problems."[57] Such fact could hardly support a proposition that the parties' marriage is a nullity.

Respondent may not have turned out to be the ideal husband, or may have failed to meet petitioner's exacting standards. Yet this Court finds it impossible to believe that, as petitioner alleges, there was nothing but heartache and strife in their over 35 years (prior to filing the petition for declaration of nullity) of marriage.

To be sure, respondent, perhaps with a little more effort on his part, could have been more helpful and could have made life that much easier for his wife. The fact that he did not, however, does not mean that he is psychologically incapacitated to discharge his marital obligations, as to give the Court a reason to declare the marriage null and void.

Certainly, the marriage was beset by difficulties, or as petitioner puts it, "marred by bickerings, quarrels, and recrimination." It is a fact, however, that all marriages suffer through the same trials at one point or another, with some going through more rough patches than others. The Court concedes that petitioner and respondent's marriage, as characterized by the former, may indeed be problematic, even tumultuous. However, that they had gone through 35 years together as husband and wife is an indication that the parties can, should they choose to do so, work through their problems.

WHEREFORE, the foregoing premises considered, the petition is *DENIED*. The Decision dated April 16, 2008 and the Resolution dated August 4, 2008 of the Court of Appeals in CA-G.R. CV No. 89262 are *AFFIRMED*.

SO ORDERED.

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

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[57] CA *rollo*, p. 40.

EN BANC

[A.M. No. P-90-488. January 25, 2011]

OFFICE OF THE COURT ADMINISTRATOR *complainant, vs.* **JOSE M. RAMANO, Deputy Sheriff, Regional Trial Court, Branch 140, Makati City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; MUST COMPLY WITH THEIR MANDATED MINISTERIAL DUTY TO EXECUTE WRITS AS SPEEDILY AS POSSIBLE.—** Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments are not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.

2. **ID.; ID.; ID.; ID.; ID.; HIGH STANDARDS ARE EXPECTED OF SHERIFFS, AS THEY PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE.—** As employees of the court who play an important role in the administration of justice, high standards are expected of sheriffs. This Court expounded in *Vda. de Abellera v. Dalisay*: "At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice. x x x"

3. **ID.; ID.; ID.; ID.; MUST ADHERE TO HIGH ETHICAL STANDARDS TO PRESERVE THE COURT'S GOOD NAME**

AND STANDING.— Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

APPEARANCES OF COUNSEL

Loreto C. Buduan for respondent.

D E C I S I O N

PER CURIAM:

The instant administrative complaint before us stemmed from a criminal case for violation of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corruption Practices Act, which was filed by Jose S. Dela Riva against respondent Jose M. Ramano, Deputy Sheriff, of the Regional Trial Court of Makati City, Branch 140.

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

On July 6, 1990, complainant Jose S. Dela Riva filed before the Sandiganbayan, an Information for violation of Section 3 (f) of R.A. No. 3019, as amended, against respondent Jose M. Ramano (Ramano) for alleged extortion, deliberate delay in serving court processes, and refusal to levy, relative to Civil Case No. 35349. The complaint against Ramano was docketed as Criminal Case No. 15166 entitled *People of the Philippines v. Jose M. Ramano.*

Thus, on August 7, 1990, pursuant to the *En Banc* Resolution[1] dated March 12, 1981, then Court Administrator Meynardo A. Tiro filed the instant administrative case against Ramano.

Subsequently, in a Resolution dated August 27, 1990, the Court required Ramano to file his Comment on the instant complaint.

In his Comment, Ramano adopted his previous Comments filed before the Office of the Ombudsman and the Sandiganbayan. He maintained his denial of the charges against him. He reiterated that the delay in the implementation of the Writ of Execution was due to complainant Dela Riva's continued and unexplained refusal to consult with his lawyer, as well as his failure to locate and point out the properties to be levied upon. He vehemently denied complainant's allegation of extortion and his demand for a 35% share on all recoveries.

On October 10, 1990, the Court resolved to hold in abeyance the administrative proceedings in the instant case pending judgment in Criminal Case No. 15166.

On November 4, 1991, the Sandiganbayan rendered a Decision convicting Ramano for violation of RA 3019. Ramano moved for reconsideration, but was denied on June 15, 1992. The petition for review on *certiorari* was also dismissed by this Court and, subsequently, an entry of judgment was issued on March 25, 1993. Later, due to Ramano's failure to appear during the promulgation of judgment on June 15, 1993, the court ordered his arrest. To this date, Ramano remains at-large.

Moreover, per records of the Office of Administrative Services, Office of the Court Administrator (OCA), Ramano had been absent from work without official leave since July 1, 1993. The Court, however, resolved to hold in abeyance the action of dropping Ramano from the service due to the pendency of the instant complaint.

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[1] Authorizing the Office of the Court Administrator to *motu proprio* initiate administrative proceedings against judges and employees of inferior courts who have been convicted and/or charged before the Sandiganbayan or other courts.

On February 13, 2008, the Court referred the instant administrative matter to the OCA for evaluation, report and recommendation.

On May 19, 2008, in its Report,[2] the OCA considered the Sandiganbayan's findings that Ramano refused to take any sincere or determined effort to implement the Writ of Execution in order to compel complainant Dela Riva to agree to his demand for a 35% share in whatever may be collected. It concluded that Ramano's refusal to perform his duty was deliberate and was adopted as a means to obtain some consideration.

The OCA likewise pointed out that Ramano is technically a fugitive as he has remained at-large for more than a decade since his conviction having been absent from work without leave since July 1993.

Thus, considering that in administrative proceedings, only substantial evidence is required, the OCA found Ramano guilty of serious misconduct and recommended his dismissal from service with forfeiture of all benefits, except accrued leave credits.

We adopt the recommendation of the OCA.

Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments are not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.[3]

In the instant case, it was established that Ramano had been negligent in implementing the subject writ due to complainant Dela Riva's refusal to give in to respondent's demand that he be given 35% share of whatever may be collected from the

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[2] *Rollo*, pp. 50-54.

[3] *Aquino v. Lavadia*, 417 Phil. 770, 776 (2001).

implementation of the writ. Apparently, complainant Dela Riva even provided substantial leads to assist Ramano in pursuing the implementaion of the writ, but the latter stubbornly refused to facilitate it. While pointing the blame to complainant Dela Riva's alleged continued and unexplained refusal to consult with his counsel, as well as failure to locate the properties to be levied upon, Ramano himself failed to even make inquiries and verification with the pertinent government offices, such as the Office of Philippine Coast Guard, Land Transportation Office, or the Register of Deeds, which could have been helpful in locating the properties subject to execution. The Court also found no other reason why complainant Dela Riva would institute a criminal action against the accused if he was innocent of the charges.

Significantly, the decision finding Ramano guilty of violation of R.A. No. 3019 has already attained finality, as per entry of judgment dated March 25, 1993. Likewise, as per records, Ramano had not been reporting for work since July 1, 1993. This does not speak well of Ramano's claim of innocence, considering that his disappearance can be viewed as indication of his guilt as well as resistance to lawful orders of the court.

As employees of the court who play an important role in the administration of justice, high standards are expected of sheriffs. This Court expounded in *Vda. de Abellera v. Dalisay*:[4]

> At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice. x x x[5]

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[4] 335 Phil. 527 (1997).

[5] *Id.* at 530-531.

Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[6]

WHEREFORE, the Court finds *JOSE M. RAMANO,* Deputy Sheriff, Regional Trial Court, Branch 140, Makati City, *GUILTY of GROSS MISCONDUCT*[7] and orders his *DISMISSAL* from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Bersamin, J., on leave.

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[6] *Apuyan, Jr. v. Sta. Isabel*, A.M. No. P-01-1497, May 28, 2004, 430 SCRA 1, 15, citing *Gutierrez v. Quitalig*, 400 SCRA 391 (2003).

[7] Revised Rules on Administrative Cases in the Civil Service, Sec. 52 (A) (3).

EN BANC

[A.M. No. P-07-2364. January 25, 2011]

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNT OF SONIA L. DY AND ATTY. GRACIANO D. CUANICO, JR., REGIONAL TRIAL COURT, CATARMAN, NORTHERN SAMAR.

[A.M. No. P-11-2902]
(Formerly OCA I.P.I. No. 08-2790-P)

VIRGILIO O. GALLANO, *complainant, vs.* **ATTY. GRACIANO D. CUANICO, JR., Clerk of Court, and SONIA L. DY, Social Welfare Officer II, both from the Office of the Clerk of Court, Regional Trial Court, CATARMAN, NORTHERN SAMAR**, *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; PRIMARILY ACCOUNTABLE FOR ALL FUNDS THAT ARE COLLECTED FOR THE COURT.—** The Clerk of Court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. Being the custodian of the court's funds, revenues, and records, the Clerk of Court is likewise liable for any loss, shortage, destruction, or impairment of said funds and property.

2. **ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; FAILURE TO PROPERLY SUPERVISE AND MANAGE THE FINANCIAL TRANSACTIONS IN THE COURT, A CASE OF.—** As Clerk of Court, Cuanico is charged with the efficient recording, filing, and management of court records, and with the administrative supervision over court personnel. Clerks of Court cannot be permitted to slacken on their jobs under one pretext or another. Audits and other processes are but ways to determine

wrongdoing. Cuanico worked with the culpable persons on a daily basis and thus could observe their demeanor and their dealings with people. He was in a position to see if the personnel under his supervision were performing their tasks or if they were committing misdeeds. He cannot escape liability by arguing that the COA auditors found no discrepancies in the funds' records. He was primarily responsible for the funds being administered by his office. He failed to discharge his duty of overseeing the court personnel under his supervision. His failure to properly supervise and manage the financial transactions in his court constituted simple neglect of duty.

3. **ID.; ID.; ID.; ID.; ID.; ID.; DEFINED AS THE FAILURE TO GIVE ATTENTION TO A TASK, OR THE DISREGARD OF A DUTY DUE TO CARELESSNESS OR INDIFFERENCE; PENALTY.—** Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. As this Court has pronounced in the past, even simple neglect of duty lessens the people's confidence in the judiciary and, ultimately, in the administration of justice. Thus, the Court cannot allow those who commit this offense to escape liability. Under the *Uniform Rules on Administrative Cases in the Civil Service*, simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months, even for the first offense.

4. **ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE CHARGES MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE.—** As to the charges in OCA I.P.I. No. 08-2790-P, the Court finds the same to be without merit. The complainant failed to present any evidence that Cuanico was complicit in the misappropriation of funds. Although administrative charges need not be proven beyond reasonable doubt, the charges must be supported by substantial evidence. Under the circumstances, Cuanico did the prudent thing by first seeking the advice of the OCA. Thus, Cuanico's refusal to release the cash bond was by virtue of Court Administrator Lock's directive on the matter.

5. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; AN OFFICER-IN-CHARGE OF THE OFFICE OF THE CLERK OF COURT BEARS THE SAME RESPONSIBILITIES AND IS EXPECTED TO SERVE WITH THE SAME COMMITMENT AND EFFICIENCY AS A DULY-APPOINTED CLERK OF COURT.—** As the OIC

of the Office of the Clerk of Court, Dy bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court. Likewise, she must be held liable for any loss, shortage, destruction, or impairment of the funds entrusted to her by virtue of her office.

6. **ID.; ID.; ID.; ID.; CASH CLERKS; ACCOUNTABLE OFFICERS ENTRUSTED WITH THE GREAT RESPONSIBILITY OF COLLECTING MONEY BELONGING TO THE FUNDS OF THE COURT.—** A cash clerk is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. Thus, Mendez should have realized that the money she was receiving were public funds. It was incumbent upon her to be more circumspect and discerning in performing her assigned tasks, even in the seemingly inconsequential details – such as making sure that there was a carbon paper to make duplicate and triplicate copies when issuing receipts.

7. **ID.; ID.; ID.; ID.; ID.; DISHONESTY; COMMITTED IN CASE AT BAR; RESTITUTION OF THE MISSING AMOUNT DOES NOT ERASE LIABILITY.—** This Court cannot believe that Mendez did not entertain even an iota of doubt as to the propriety or legality in Dy's instruction of filling up duplicate and triplicate copies of receipts without having seen the originals. Her act of going along with Dy made her complicit in the latter's scheme. Mendez also cannot justify her actions by arguing that she was merely following the orders of her superior. As a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the judiciary and to the public, in general. At the first instance, she should have reported Dy's conduct to the Executive Judge. Even the fact that Mendez fully paid her shortages will not free her from the consequences of her wrongdoing. Restitution of the missing amount does not erase her liability. Thus, Mendez is also guilty of dishonesty, a grave offense punishable by dismissal even for a first offense.

8. **ID.; ID.; ID.; ID.; SHOULD BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY.—** Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should

be made accountable to all those whom he serves. There is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity.

D E C I S I O N

PER CURIAM:

Before this Court are two administrative cases, arising from the following factual antecedents:

A.M. No. P-07-2364

In 2007, a Financial Audit Team (OCA Audit Team) from the Office of the Court Administrator (OCA) conducted an audit of the books of account of Sonia L. Dy (Dy), Social Worker II and former Officer-in-Charge, and Atty. Graciano D. Cuanico, Jr. (Cuanico), incumbent Clerk of Court, of the Regional Trial Court (RTC) of Catarman, Northern Samar. The audit on Dy's accountability covered the period from July 2002 to July 31, 2003, while that of Cuanico's covered the period from August 2003 until February 28, 2007.[1]

The OCA Audit Team's objective was to determine whether the amounts collected were correctly and completely recorded in the books of the respective accountable officers, and whether the collections were deposited with the Land Bank of the Philippines within the prescribed period.

During the audit, the OCA Audit Team found that there were shortages in the Judiciary Development Fund (JDF) and Fiduciary Fund (FF). In its audit report, it made the following recommendations:[2]

1. The Report be docketed as a regular administrative complaint against Ms. Sonia L. Dy, Social Welfare Officer II and former Officer-in-Charge, Regional Trial Court [(RTC)], Catarman, Northern Samar;

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[1] *Rollo* (A.M. No. P-07-2364), p. 1.

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

2. MS. SONIA L. DY, former Officer-in-Charge, Office of the Clerk of Court of the Regional Trial Court (RTC), Catarman, Northern Samar be:

(a) DIRECTED to:

a.1 RESTITUTE the amounts of ₱356.20 and ₱2,686,840.62 representing the shortages in the JDF and Fiduciary Fund, respectively, by depositing said amounts to their respective accounts, furnishing the Fiscal Monitoring Division, [Court Management Office] (CMO)-OCA, with the machine validated deposit slips as proof of remittance and subject to refund totaling to ₱1,126,703.36 upon the proper presentation of the appropriate documents as shown in Schedule V and Annex "V-2", computed as follows[:]

x x x x x x x x x

a.2 EXPLAIN in writing within a period of fifteen (15) days from notice why she incurred the above shortages in her collections

3. ATTY. GRACIANO D. CUANICO, JR, incumbent Clerk of Court of RTC, Catarman, Northern Samar be DIRECTED within fifteen (15) days from notice to:

1.1 EXPLAIN in writing why he should not be administratively charged for failure to detect the anomalous transactions perpetrated by Ms. Sonia L. Dy and for delayed remittance;

1.2 Pay and Deposit the amount of ₱5,443.97 and ₱11,708.62 for the JDF and SAJF, respectively, by depositing said amounts to their respective accounts, furnishing the Fiscal Monitoring Division, CMO-OCA, with the machine validated deposit slips as proof of remittance thereof, computed as follows:

x x x x x x x x x

1.3 COLLECT the amount of ₱39,500.00 listed in (Annex "I-3") from the litigants for the unpaid bond fee and allocate the a mount collected to ₱23,700.00 and ₱15,800.00 for JDF and SAJF respectively and SUBMIT the machine validated deposit slips and the [official

receipts] issued to the Fiscal Monitoring Division, Court Management Office, this Office as proof of its transfer[.]

4. MRS. DIVINA D. MENDEZ,[3] Cash Clerk of RTC, Catarman, Northern Samar be DIRECTED within fifteen (15) days from notice to: EXPLAIN in writing why she should not be administratively charged for the shortages found in JDF & SAJF account and the falsification of official receipts of JDF account;

5. MRS. HELEN C. ANAVISO, be DIRECRED within fifteen (15) days from notice to: EXPLAIN in writing why she should not be administratively charged for the unremitted collection amounting to ₱5,000.00 under OR No. 1807562 as mentioned by Ms. Sonia L. Dy in her affidavit (Annex "T-2");

[6.] HON. NORMA MEGENIO CARDENAS, Executive Judge, same court, be DIRECTED to

(a) INVESTIGATE the extent of responsibilities of Ms. Sonia L. Dy and Ms. Divina D. Mendez in the falsification of official receipts for Fiduciary Fund and Judiciary Development Fund, respectively, and SUBMIT her report and recommendation within thirty (30) days from receipt of notice; and

(b) MONITOR the incumbent Clerk of Court and to advise said COC to strictly follow the Supreme Court Circulars on the proper handling of judiciary funds.

[7.] A hold Departure Order be ISSUED to prevent Ms. Sonia L. Dy from leaving the country.

Annexed to the report was an unnotarized Affidavit[4] dated January 8, 2007, executed by Dy. In it, she averred that she was pleading guilty to all the anomalies in the FF. However, she alleged that receipts were altered "to accommodate the financial needs of [the] late Judge Ernesto Corocoto (Judge Corocoto) as directed[.]" The late judge, Dy said, was to pay the amount back, but that the former died before he could do

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[3] Also known as Divina P. Mendez in other documents.

[4] *Rollo* (A.M. No. P-07-2364), p. 232.

so. She also alleged that, on isolated circumstances, she was forced to lend money to several persons she owed *utang na loob* to, but that she paid these back, "except for minimal amounts[.]"

In a Resolution dated August 29, 2007, the Court adopted the OCA Audit Team's recommendations. The employees involved were required to comply with the Court's directives. Only Cuanico, Divina D. Mendez (Mendez), and Helen C. Anaviso (Anaviso) filed their respective explanations.

In her explanation, Anaviso denied the allegations against her. She narrated that, on September 12, 2003, one Juanita F. Estacio came to the Office of the Clerk of Court to post a ₱5,000.00 cash bond. Since Dy was not around, Anaviso received the amount and issued the official receipt. Anaviso claimed that she could not deposit the amount because she did not know the bank account number and she was not authorized to make the deposit. Upon Dy's return, Anaviso turned over the amount to her. Dy then stamped the official receipt "cancelled." When the case was dismissed, the bondswoman filed a motion for the release of the ₱5,000.00 bond. Dy, without any question, released the amount to the bondswoman on October 6, 2003.[5] Anaviso further claimed that Dy only dragged her into the controversy because the latter had ill-feelings toward her, which fact is known to most of their co-workers.

Cuanico, in his compliance, alleged that it was only on September 19, 2006, when the Commission on Audit (COA) conducted a confirmation audit, that the discrepancies came to light. Prior to said confirmation audit, he had failed to detect any discrepancy between the amounts reflected in the original copies of the official receipts and those in the duplicate and triplicate copies, because Dy's anomalous transactions were cleverly planned. He narrated that the duplicate and triplicate copies of the official receipts, except those found by the audit team to be missing and those acknowledged by Dy as lost, conformed to the amounts deposited in the office's accounts. Even

[5] *Id.* at 266.

the COA auditors, in an earlier audit, failed to detect the discrepancies.[6]

Cuanico also alleged that he had made oral and written demands for Dy to settle her accountability, but the latter has failed to keep her promises to pay.[7] Further, Cuanico averred that the amounts of ₱5,443.97 and ₱11,708.62 were paid and deposited by Mendez as of July 12, 2007, as evidenced by machine validated receipts submitted to the OCA. However, he claimed to have no knowledge of the ₱39,500.00 in unpaid bonds.[8]

Mendez also filed her compliance. She narrated that during the period when there were alleged shortages, she was new in her position as cash clerk. She was not performing all the functions of her position and was made to assist Anaviso, who was acting as the cash clerk. Her job was limited to issuing receipts, making deposits, and typing monthly reports.[9]

Mendez said that, when the COA Regional Office conducted an audit in 2005 and 2006, there were no findings of any shortage in the JDF and Special Allowance for the Judiciary Fund (SAJF) accounts. However, when the Court Management Office (CMO) conducted an audit in March 2007, the team found that monthly reports for 2004 were lacking, but the monthly reports for 2005 and 2006 were complete.[10]

Mendez claimed that the auditors asked her to look for the missing reports. She found only the report for September 2004. When she examined the report and the deposit slips, she realized that deposit slips representing ₱11,708.62 in the SAJF collections were missing. Nonetheless, Mendez submitted the September 2004 report to the audit team.[11]

Mendez further narrated that, when her officemate Anaviso went to the Supreme Court, the audit team told her (Anaviso)

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[6] *Id.* at 274.

[7] *Id.*

[8] *Id.* at 274-275.

[9] *Id.* at 279.

[10] *Id.*

[11] *Id.*

to inform Mendez that the latter needed to deposit ₱11,708.62, the amount missing from the SAJF, and ₱5,800.17 to the JDF account. Mendez claimed that she had deposited the aforesaid amounts, and that the deposit slips had been submitted to the audit team. Thus, she argued, there was no shortage anymore.[12]

Mendez also claims that there were times when Dy would instruct her to fill up receipts, but unknown to her, there was no carbon paper underneath to make duplicate and triplicate copies of the receipts. When monthly JDF reports were to be sent to the Supreme Court, she would sometimes discover that some duplicates or triplicates were blank. Dy would instruct her to fill up the duplicate copies to make it appear that the same were issued for court clearances. Mendez claims that she did these without any inkling that the same were anomalous.[13] She maintains that she was merely "acting in the fulfillment of duty and in obedience to an order issued by a superior officer."[14]

The Court, in a Resolution dated December 12, 2007, referred the parties' compliance to the OCA for evaluation, report, and recommendation.[15]

Meanwhile, Judge Norma Megenio Cardenas (Judge Cardenas) submitted her findings in a letter dated January 11, 2008. She said that she found 41 counts of falsification and tampering of entries in the official receipts of the JDF and FF, for which Dy and Mendez should be held criminally liable.[16]

In a Resolution dated October 22, 2008, the Court referred Judge Cardenas' report to the OCA for evaluation, report, and recommendation.

On the same day, the Court noted a verified complaint filed against Dy and Cuanico, and resolved to incorporate the same to A.M. No. P-07-2364, considering that the amount claimed was

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[12] *Id.* at 280.

[13] *Id.* at 280-281.

[14] *Id.* at 281.

[15] *Id.* at 298.

[16] *Id.* at 325.

part of the fund under investigation in the latter administrative case.[17] The verified complaint was docketed as OCA I.P.I. No. 08-2790-P.

A.M. No. P-11-2902

In April 2008, Virgilio Gallano (Gallano) filed a Complaint before this Court, accusing Cuanico and Dy of dishonesty, grave misconduct, and conduct unbecoming of public officers.

In his Complaint, Gallano narrated that he is an employee of the Department of Agrarian Reform in Catarman, Northern Samar. He served as bondsman in a case for frustrated murder, docketed as C-3432, filed before the RTC of Catarman. The case was dismissed on April 11, 2007 and, consequently, the cash bond was cancelled and ordered to be returned to him, as the bondsman.[18]

Notwithstanding this order, Gallano filed a Motion to Release Bailbond. His motion was referred to then Chief Justice Reynato S. Puno for necessary legal action because of the discovery of a shortage in the FF, from which the cash bond was to be withdrawn.[19] Gallano claimed that despite demand to release the cash bond, Cuanico refused to release the same. He alleged that he posted the cash bond on January 2, 2006, when Cuanico had already assumed office as clerk of court, and the same was received by Dy, who represented herself as the clerk of court's authorized officer to collect and receive cash bonds.[20] Cuanico allegedly said that of the ₱100,000.00 cash bond posted by Gallano, only ₱10,000.00 was actually deposited to the FF, while the ₱90,000.00 was misappropriated by Dy.

Gallano argued that Dy was undoubtedly representing the office of the clerk of court, leading to the conclusion that the misappropriation was with the knowledge and consent of Cuanico. Thus, Gallano prayed that Cuanico and Dy be dismissed from

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[17] *Rollo* (OCA I.P.I. No. 08-2790-P), p. 64.
[18] *Id.* at 1-2.
[19] *Id.* at 2.
[20] *Id.* at 3.

the service, with the corresponding loss of benefits, and be ordered to return the ₱100,000.00 cash bond he paid.[21]

In separate Indorsements dated April 21, 2008, then Court Administrator Zenaida Elepaño directed Dy and Cuanico to submit their respective comments on the complaint.

In his comment, Cuanico alleged that his refusal to release the full amount of Gallano's cash bond was based on the Memorandum of then Court Administrator Christopher Lock (Court Administrator Lock), advising him to limit the withdrawals for cash bonds to the amounts actually deposited, in view of the shortage in the funds discovered by the OCA Audit Team.[22]

Cuanico averred that, prior to his assumption as clerk of court on September 1, 2003, Dy was the officer-in-charge (OIC) of the Office of the Clerk of Court. By virtue of a memorandum of then Executive Judge Corocoto, Dy was charged with collections, deposits, and withdrawals of the FF, in addition to her regular tasks. When Cuanico assumed office, Dy remained in charge of the funds while awaiting the outcome of an audit, which must be completed before the necessary turn over of responsibilities to him.[23] He denied that he conspired with Dy to misappropriate Gallano's cash bond. He narrated that, after the audit conducted by the team from the Supreme Court, Dy never reported back to work, and efforts to make her restitute the amounts found missing have failed.[24]

On the other hand, Dy failed to file the required Comment.

On October 22, 2008, the Court resolved to consider dropping Dy from the rolls without prejudice to the final outcome of A.M. No. P-07-2364; to suspend payment of all monetary benefits due Dy; and to incorporate OCA I.P.I No. 08-2790-P to A.M. No. P-07-2364, considering that the amount claimed is part of the fund in question in the latter administrative matter.

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[21] *Id.* at 4-5.
[22] *Id.* at 18.
[23] *Id.* at 19.
[24] *Id.*

In a Memorandum dated June 22, 2010, the OCA made the following recommendations:

a) The administrative complaint against **ATTY. GRACIANO D. CUANICO, JR.**, and **SONIA L. DY**, be re-docketed as a regular administrative case;

b) **ATTY. GRACIANO D. CUANICO, JR.** be found liable for **Simple Neglect of Duty**. Considering that this is his first offense, he is **SUSPENDED** from office for six (6) months effective immediately. He is **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely; and, he be furnished with a copy of Annex 1-3, for him to comply with paragraph 3 (1.3) of the 29 August 2007 Resolution of the Court;

c) **SONIA L. DY and DIVINA P. MENDEZ** be found **Guilty of Dishonesty** and the penalty of **DISMISSAL** from the service with forfeiture of all retirement benefits except leave credits and disqualification for reemployment in any government office including government owned or controlled corporations, be imposed upon them.

d) The **FISCAL MANAGEMENT OFFICE, OFFICE OF THE COURT ADMINISTRATOR,** be **ORDERED** to process the terminal leave pay of **Sonia L. Dy,** dispensing with the usual documentary requirements, and to apply the same as part of the restitution of the shortages in the Judiciary [Development] Fund and Fiduciary Fund.

SONIA L. DY is hereby ordered to **RESTITUTE** the balance of the shortage incurred in the Fiduciary Fund amounting to ₱2,576,586.44[.]

e) The **Office of the Court Administrator be DIRECTED** to file the appropriate criminal action against respondents **Sonia L. Dy and Divina P. Mendez**; and,

f) **Executive Judge Norma Megenio Cardenas** to exercise effective supervision over the personnel of her court, especially those charged with the collection of the Fiduciary Fund and other Trust Funds.

Respectfully Recommended.[25]

The Court adopts the OCA's recommendations. Personnel of the judiciary have always been held to high and exacting

[25] *Id.* at 78-79.

standards befitting the office of dispensing justice. It is with this precept in mind that the Court disposes of the cases at bar.

Liability of Cuanico

Cuanico would deflect his culpability by claiming that the reason he did not detect any wrongdoing by his co-workers was because COA auditors failed to find any discrepancies during their audit.

The Court is not convinced.

The Clerk of Court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control.[26] Being the custodian of the court's funds, revenues, and records, the Clerk of Court is likewise liable for any loss, shortage, destruction, or impairment of said funds and property.[27]

As Clerk of Court, Cuanico is charged with the efficient recording, filing, and management of court records, and with the administrative supervision over court personnel. Clerks of Court cannot be permitted to slacken on their jobs under one pretext or another.[28]

Audits and other processes are but ways to determine wrongdoing. Cuanico worked with the culpable persons on a daily basis and thus could observe their demeanor and their dealings with people. He was in a position to see if the personnel under his supervision were performing their tasks or if they were committing misdeeds. He cannot escape liability by arguing that the COA auditors found no discrepancies in the funds' records.

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[26] *Office of the Court Administrator v. Dureza-Aldevera*, A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18, 45.

[27] *Report on the Status of the Financial Audit Conducted in the RTC, Tarlac City*, A.M. No. P-06-2124, December 19, 2006, 511 SCRA 191,198, citing *Re: Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan*, A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 494.

[28] *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabao, Davao Del Norte*, 351 Phil. 1, 21 (1998).

He was primarily responsible for the funds being administered by his office. He failed to discharge his duty of overseeing the court personnel under his supervision.

His failure to properly supervise and manage the financial transactions in his court constituted simple neglect of duty.[29] Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[30] As this Court has pronounced in the past, even simple neglect of duty lessens the people's confidence in the judiciary and, ultimately, in the administration of justice.[31] Thus, the Court cannot allow those who commit this offense to escape liability.

Under the *Uniform Rules on Administrative Cases in the Civil Service*,[32] simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months, even for the first offense.[33]

The OCA's recommendation of a six-month suspension, then, is well-taken. Cuanico's neglect of duty led to the defalcation of court funds and the consequent loss of income from the interest of such funds.

As to the charges in OCA I.P.I. No. 08-2790-P, the Court finds the same to be without merit. The complainant failed to present any evidence that Cuanico was complicit in the misappropriation of funds. Although administrative charges need not be proven beyond reasonable doubt, the charges must be supported by substantial evidence. Under the circumstances, Cuanico did the prudent thing by first seeking the advice of the OCA. Thus, Cuanico's

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[29] *Office of the Court Administrator v. Paredes*, A.M. No. P-06-2103, April 17, 2007, 521 SCRA 365, 370, citing *Office of the Court Administrator v. Montalla*, A.M. No. P-06-2269, December 20, 2006, 511 SCRA 328.

[30] *Office of the Court Administrator v. Garcia-Rañoco*, A.M. No. P-03-1717, March 6, 2008, 547 SCRA 670, 673-674.

[31] *Pilipiña v. Roxas*, A.M. No. P-08-2423, March 6, 2008, 547 SCRA 676, 682, citing *Office of the Court Administrator v. Paredes, supra* note 29, at 371; *Reyes v. Pablico*, A.M. No. P-06-2109, November 27, 2006, 508 SCRA 146, 156.

[32] Civil Service Commission Memorandum Circular No. 19-99.

[33] Rule IV, Sec. 52(B)(1); *id.*

refusal to release the cash bond was by virtue of Court Administrator Lock's directive on the matter.

Liability of Dy

Dy herself admitted her liability,[34] but justifies her action by saying that the same was to accommodate the late Judge Corocoto. This, however, does not excuse her actions. Whatever may have been her motivation, the fact remains that Dy falsified receipts and took money that properly belonged to the judiciary.

Moreover, there is no way for the Court to test the veracity of Dy's statements. Her attempt to lay the blame on a dead person who cannot now defend himself is reprehensible and nothing but a feeble attempt to mitigate her liability. Likewise, even if her statements were to be believed, the late magistrate borrowed only a portion of the missing amount. Dy does not proffer any explanation on where the rest of the missing funds are. The inevitable conclusion is that she took them for her own personal gain, for which she must suffer the appropriate penalty.

As the OIC of the Office of the Clerk of Court, Dy bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court.[35] Likewise, she must be held liable for any loss, shortage, destruction, or impairment of the funds entrusted to her by virtue of her office.

Liability of Mendez

Mendez admitted that she made false entries in the receipts, albeit proffering the excuse that she did not know that what she was doing was illegal, and that she was only following the instructions of her OIC, Dy.

Her plea of ignorance does not negate her liability.

A cash clerk is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the

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[34] Affidavit dated January 8, 2007; *rollo*, p. 232.

[35] *Gutierrez v. Quitalig*, 448 Phil. 469, 481 (2003).

court.[36] Thus, Mendez should have realized that the money she was receiving were public funds. It was incumbent upon her to be more circumspect and discerning in performing her assigned tasks, even in the seemingly inconsequential details – such as making sure that there was a carbon paper to make duplicate and triplicate copies when issuing receipts.

This Court cannot believe that Mendez did not entertain even an iota of doubt as to the propriety or legality in Dy's instruction of filling up duplicate and triplicate copies of receipts without having seen the originals. Her act of going along with Dy made her complicit in the latter's scheme.

Mendez also cannot justify her actions by arguing that she was merely following the orders of her superior. As a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the judiciary and to the public, in general. At the first instance, she should have reported Dy's conduct to the Executive Judge.

Even the fact that Mendez fully paid her shortages will not free her from the consequences of her wrongdoing.[37] Restitution of the missing amount does not erase her liability. Thus, Mendez is also guilty of dishonesty, a grave offense punishable by dismissal even for a first offense.[38]

Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility.[39] A public servant is expected to

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[36] *Report on the Status of the Financial Audit Conducted in the RTC, Tarlac City*, *supra* note 27, at 198.

[37] *Re: Report on the Financial Audit conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 482; *Report on Anomalies of JDF Collections in MTCC, Angeles City*, 326 Phil. 704, 708 (1996).

[38] Civil Service Commission Memorandum Circular No. 19-99, Rule IV, Sec. 52(A)(1).

[39] *Office of the Court Administrator v. Paredes*, *supra* note 29, at 369, citing *Re: Final Report on the Financial Audit Conducted at the Municipal Trial Court of Midsayap, North Cotabato*, A.M. No. 05-8-233-MTC, January 31, 2006, 481 SCRA 12, 16.

exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity.[40]

WHEREFORE, the foregoing premises considered, the Court finds:

(1) *ATTY. GRACIANO D. CUANICO, JR. liable for Simple Neglect of Duty,* and is *SUSPENDED* from office for six (6) months effective immediately. He is S*TERNLY WARNED* that a repetition of the same or a similar offense shall be dealt with more severely; and

(2) *SONIA L. DY* and *DIVINA D. MENDEZ* both guilty of Dishonesty, and are *DISMISSED* from the service with forfeiture of all retirement benefits, except leave credits, with disqualification from reemployment in any government office, including government owned or controlled corporations. *SONIA L. DY* is hereby *ORDERED* to *IMMEDIATELY RESTITUTE* the balance of the shortage incurred in the Fiduciary Fund amounting to ₱2,576,586.44.

The *FISCAL MANAGEMENT OFFICE, OFFICE OF THE COURT ADMINISTRATOR*, is *ORDERED* to process the terminal leave pay of Sonia L. Dy, dispensing with the usual documentation requirements, and to *APPLY* the same as part of the restitution of the shortages in the Judiciary Development Fund and Fiduciary Fund.

The *OFFICE OF THE COURT ADMINISTRATOR* is also *DIRECTED* to file the appropriate criminal action against respondents *Sonia L. Dy* and *Divina D. Mendez.*

EXECUTIVE JUDGE NORMA MEGENIO CARDENAS is *REMINDED* to exercise effective supervision over the personnel of her court, especially those charged with the collection of the Fiduciary Fund and other Trust Funds.

SO ORDERED.

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

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[40] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 381 (2002).

Velasco, Jr. J., no part due to prior action in OCA.
Perez, J., no part. Acted as Court Administrator.
Bersamin, J., on leave.

EN BANC

[G.R. No. 167622. January 25, 2011]

GREGORIO V. TONGKO, *petitioner, vs.* **THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. and RENATO A. VERGEL DE DIOS,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; LABOR LAW CONTROL; NOT PRESENT IN CASE AT BAR.—** Control over the performance of the task of one providing service – both with respect to the means and manner, and the results of the service – is the primary element in determining whether an employment relationship exists. We resolve the petitioner's Motion against his favor since he failed to show that the control Manulife exercised over him was the control required to exist in an employer-employee relationship; Manulife's control fell short of this norm and carried only the characteristic of the relationship between an insurance company and its agents, as defined by the Insurance Code and by the law of agency under the Civil Code. x x x In our June 29, 2010 Resolution, we noted that there are built-in elements of control specific to an insurance agency, which do not amount to the elements of control that characterize an employment relationship governed by the Labor Code. The Insurance Code provides definite parameters in the way an agent negotiates for the sale of the company's insurance products, his collection activities and his delivery of the insurance contract or policy. In addition, the Civil Code defines an agent

as a person who binds himself to do something in behalf of another, with the consent or authority of the latter. Article 1887 of the Civil Code also provides that in the execution of the agency, the agent shall act in accordance with the instructions of the principal. All these, read without any clear understanding of fine legal distinctions, appear to speak of control by the insurance company over its agents. They are, however, controls aimed only at specific results in undertaking an insurance agency, and are, in fact, parameters set by law in defining an insurance agency and the attendant duties and responsibilities an insurance agent must observe and undertake. They do not reach the level of control into the means and manner of doing an assigned task that invariably characterizes an employment relationship as defined by labor law. From this perspective, the petitioner's contentions cannot prevail.

2. **ID.; ID.; ID.; ID.; THE GUIDELINES INDICATIVE THEREOF MUST HAVE THE NATURE OF DICTATING THE MEANS AND METHODS TO BE EMPLOYED IN ATTAINING THE DESIRABLE RESULT.—** [G]uidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result. Tested by this norm, Manulife's *instructions regarding the objectives and sales targets*, in connection with the training and engagement of other agents, are among the directives that the principal may impose on the agent to achieve the assigned tasks. They are targeted results that Manulife wishes to attain through its agents. Manulife's codes of conduct, likewise, do not necessarily intrude into the insurance agents' means and manner of conducting their sales. Codes of conduct are norms or standards of behavior rather than employer directives into how specific tasks are to be done. These codes, as well as insurance industry rules and regulations, are not *per se* indicative of labor law control under our jurisprudence.

3. **MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE AGENCY; THE DUTIES PERFORMED BY PETITIONER IN CASE AT BAR ARE THAT OF AN INSURANCE AGENT.—** The duties that the petitioner enumerated in his Motion are not supported by evidence and, therefore, deserve scant consideration. Even assuming their

existence, however, they mostly pertain to the duties of an insurance agent such as remitting insurance fees to Manulife, delivering policies to the insured, and after-sale services. For agents leading other agents, these include the task of overseeing other insurance agents, the recruitment of other insurance agents engaged by Manulife as principal, and ensuring that these other agents comply with the paperwork necessary in selling insurance. That Manulife exercises the power to assign and remove agents under the petitioner's supervision is in keeping with its role as a principal in an agency relationship; they are Manulife agents in the same manner that the petitioner had all along been a Manulife agent.

4. **ID.; ID.; ID.; ID.; THE ARRANGEMENTS, TITLES AND POSITIONS THE PETITIONER WAS INVESTED WITH DID NOT CHANGE HIS STATUS FROM THE INSURANCE AGENT THAT HE HAD ALWAYS BEEN; CASE AT BAR.—** The petitioner also questions Manulife's act of investing him with different titles and positions in the course of their relationship, given the respondents' position that he simply functioned as an insurance agent. He also considers it an unjust and inequitable situation that he would be unrewarded for the years he spent as a unit manager, a branch manager, and a regional sales manager. Based on the evidence on record, the petitioner's occupation was to sell Manulife's insurance policies and products from 1977 until the termination of the Career Agent's Agreement (*Agreement*). The evidence also shows that through the years, Manulife permitted him to exercise guiding authority over other agents who operate under their own agency agreements with Manulife and whose commissions he shared. Under this scheme – *an arrangement that pervades the insurance industry* – petitioner in effect became a "lead agent" and his own commissions increased as they included his share in the commissions of the other agents; he also received greater reimbursements for expenses and was allowed to use Manulife's facilities. His designation also changed from unit manager to branch manager and then to regional sales manager, to reflect the increase in the number of agents he recruited and guided, as well as the increase in the area where these agents operated. As our assailed Resolution concluded and as we now similarly conclude, these arrangements, and the titles and positions the petitioner was invested with, did not change his status from

the insurance agent that he had always been (as evidenced by the Agreement that governed his relationship with Manulife from the start to its disagreeable end). The petitioner simply progressed from his individual agency to being a lead agent who could use other agents in selling insurance and share in the earnings of these other agents.

5. REMEDIAL LAW; COURTS; SHOULD DECIDE CASES BASED ON THE FACTS AND THE LAW.— *This Court (and all adjudicators for that matter) cannot and should not fill in the evidentiary gaps in a party's case that the party failed to support;* ***we cannot and should not take the cudgels for any party***. Tongko failed to support his cause and we should simply view him and his case as they are; our duty is to sit as a judge in the case that he and the respondent presented. To support its arguments on equity, the Dissent uses the Constitution and the Civil Code, using provisions and principles that are all motherhood statements. *The mandate of the Court, of course, is* ***to decide cases based on the facts and the law****, and not to base its conclusions on fundamental precepts that are far removed from the particular case presented before it. When there is no room for their application, of capacity of principles, reliance on the application of these fundamental principles is misplaced.*

6. MERCANTILE LAW; INSURANCE LAW; INSURANCE CODE; INSURANCE AGENCY; PETITIONER'S EARNINGS ARE AGENT'S COMMISSIONS ARISING FROM HIS WORK AS AN INSURANCE AGENT; CASE AT BAR.— That his earnings were **agent's commissions** arising from his work as an insurance agent is *a matter that the petitioner cannot deny, as these are the declarations and representations he stated in his income tax returns through the years.* It would be doubly unjust, particularly to the government, if he would be allowed at this late point to turn around and successfully claim that he was merely an employee after he declared himself, through the years, as an independent self-employed insurance agent with the privilege of deducting business expenses. This aspect of the case alone – considered together with the probative value of income tax declarations and returns filed prior to the present controversy — should be enough to clinch the present case against the petitioner's favor.

7. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; A CONCLUSION ON THE EXISTENCE THEREOF IN A PARTICULAR CASE LARGELY DEPENDS ON THE FACTS AND ON THE PARTIES' EVIDENCE *VIS-À-VIS* THE CLEARLY DEFINED JURISPRUDENTIAL STANDARDS.— Decisions of the Supreme Court, as the Civil Code provides, form part of the law of the land. When the Court states that the determination of the existence of an employment relationship should be on a case-to-case basis, this does not mean that there will be as many laws on the issue as there are cases. In the context of this case, the four-fold test is the established standard for determining employer-employee relationship and the existence of these elements, most notably control, is the basis upon which a conclusion on the absence of employment relationship was anchored. This simply means that a conclusion on whether employment relationship exists in a particular case largely depends on the facts and, in no small measure, on the parties' evidence *vis-à-vis* the clearly defined jurisprudential standards. Given that the parties control *what* and *how* the facts will be established in a particular case and/or how a particular suit is to be litigated, deciding the issues on a case-to-case basis becomes an imperative.

8. REMEDIAL LAW; COURTS; HAVE THE DUTY TO SAY WHAT THE LAW IS.— Another legal reality, a more important one, is that *the duty of a court is to say what the law is.* This is the same duty of the Supreme Court that underlies the *stare decisis* principle. This is how the public, in general and the insurance industry in particular, views the role of this Court and courts in general in deciding cases. The lower courts and the bar, most specially, look up to the rulings of this Court for guidance. Unless extremely unavoidable, the Court must, *as a matter of sound judicial policy*, resist the temptation of branding its ruling *pro hac vice*.

9. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; A PART-EMPLOYEE/PART-INSURANCE AGENT STATUS UNDER AN ESSENTIALLY PRINCIPAL-AGENT CONTRACTUAL RELATIONS HAS NO LEGAL BASIS; EXPLAINED.— [T]here is no legal basis (be it statutory or jurisprudential) for the part-employee/part-insurance agent status under an essentially principal-agent contractual relation which the Dissent proposes

to accord to Tongko. If the Dissent intends to establish one, this is highly objectionable for this would amount to judicial legislation. A legal relationship, be it one of employment or one based on a contract other than employment, exists as a matter of law pursuant to the facts, incidents and legal consequences of the relationship; it cannot exist devoid of these legally defined underlying facts and legal consequences unless the law itself creates the relationship – an act that is beyond the authority of this Court to do. Additionally, the Dissent's conclusion completely ignores an unavoidable legal reality – that the parties are bound by a contract of agency that clearly subsists notwithstanding the successive designation of Tongko as a unit manager, a branch manager and a regional sales manager. x x x The Dissent, it must be pointed out, concludes that Tongko's employment as manager was illegally terminated; thus, he should be accordingly afforded relief therefor. But, can Tongko be given the remedies incidental to his dismissal as manager separately from his status as an insurance agent? In other words, since the respondents terminated all relationships with Tongko through the termination letter, can we simply rule that his role as a manager was illegally terminated without touching on the consequences of this ruling on his status as an insurance agent? Expressed in these terms, the inseparability of his contract as agent with any other relationship that springs therefrom can thus be seen as an insurmountable legal obstacle. The Dissent's compromise approach would also sanction split jurisdiction. The labor tribunals shall have jurisdiction over Tongko's employment as manager while another entity shall decide the issues/cases arising from the agency relationship. If the managerial employment is anchored on the agency, how will the labor tribunals decide an issue that is inextricably linked with a relationship that is outside the loop of their jurisdiction? As already mentioned in the Resolution granting Manulife's reconsideration, the **DOMINANT** relationship in this case is agency and no other.

10. **REMEDIAL LAW; ACTIONS; CASES ARE DECIDED ON THEIR OWN UNIQUE FACTS AND THEIR RESPECTIVE FACTS MUST BE STRICTLY EXAMINED TO ENSURE THAT THE RULING IN ONE APPLIES TO ANOTHER.—** The Dissent cites the cases of *Great Pacific Life Assurance Corporation v. National Labor Relations Commission* and *Insular Life*

Assurance Co., Ltd. v. National Labor Relations Commission to support the allegation that Manulife exercised control over the petitioner as an employer. In considering these rulings, a reality that cannot but be recognized is that cases turn and are decided on the basis of their own unique facts; the ruling in one case cannot simply be bodily lifted and applied to another, particularly when notable differences exist between the cited cases and the case under consideration; their respective facts must be strictly examined to ensure that the ruling in one applies to another. This is particularly true in a comparison of the cited cases with the present case. Specifically, care should be taken in reading the cited cases and applying their rulings to the present case as the cited cases all dealt with the proper legal characterization of *subsequent management contracts* that superseded the original agency contract between the insurance company and the agent.

VELASCO, JR., *J.*, *dissenting opinion:*

1. POLITICAL LAW; CONSTITUTION; LABOR; LABOR LAWS AND JURISPRUDENCE APPLY WHEN THERE IS DOUBT AS TO THE LAW TO BE APPLIED IN A CASE WITH AN ALLEGATION OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.— The Constitution acknowledges the reality that capital and labor often do not deal on equal grounds, requiring the state to protect labor from abuse. To level the playing field, the framers of the Constitution incorporated two (2) provisions therein to safeguard the employee's right to security of tenure and enhance protection to employees' rights and welfare x x x. [T]he mandate of this Court is to ensure that the provisions of the Constitution are carried out. The Court has the responsibility to ensure that the rights of labor, as guaranteed by the Constitution, are actually enjoyed by the workers. Thus, in several cases, the Court has repeatedly resolved doubts as to the relationship between parties as that of employment, that which is most favorable to labor. **The Court, in a slew of cases, has consistently ruled that when there is doubt as to the law to be applied in a case with an allegation of an employer-employee relationship, labor laws and jurisprudence shall apply.** x x x [B]ased on the x x x sample of numerous cases, the Court has invariably applied labor laws and doctrines, particularly the four-fold and control test, over Civil Code provisions, to determine the relationship of parties

where an employer-employee relationship is alleged, without regard to the industry or otherwise alleged relationship of the parties. The Court cannot now deviate from established precedents. The four-fold test must be used to determine whether Tongko was an employee of Manulife or not, and not the Insurance Code or Civil Code as claimed by Manulife.

2. **LABOR AND SOCIAL LEGISLATION: LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.—** As a matter of long and settled jurisprudence, the following are the elements, constituting the four-fold test, usually considered in determining the existence of an employer-employee relationship: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct, with the "control test" being the most crucial or generally assuming primacy in the overall consideration.

3. **ID.; ID.; ID.; EXISTS WHEN THE EMPLOYER HAS CONTROL OF THE MEANS AND METHODS EMPLOYED BY THE EMPLOYEE IN THE PERFORMANCE OF HIS WORK.—** The NLRC, taking stock of the affidavits of petitioner's fellow insurance managers therein detailing their duties, had concluded that petitioner was an employee of Manulife. Indeed, the duties, responsibilities and undertakings of these insurance managers are strikingly similar to those of Ernesto and Rodrigo Ruiz, as set forth in the Decision in *Great Pacific Life Assurance Corporation v. NLRC*. There, the Court decreed that the brothers Ruiz were employees of Grepalife. The reasons behind the declaration need no belaboring. Suffice it to state that *vis-à-vis* the Ruizes in *Grepalife*, Manulife had control of the means and methods employed by the petitioner in the performance of his work as a manager of Manulife. Following the *stare decisis* rule, there seems to be no rhyme or reason to withhold from herein petitioner the benefits accruing from an employer-employee relationship. x x x A close scrutiny of the duties and responsibilities of the Manulife managers with those of the Ruizes would show a striking similarity that cannot be denied. More so, taking the aggregate of the evidence presented in this case, a just and objective mind cannot but conclude that, as in *Grepalife*, the Manulife managers are also employees of Manulife. x x x Here, by virtue of designating Tongko initially as a Unit Manager and later on as a Regional Manager, Manulife

must be deemed as having considered Tongko as an officer of the company. Furthermore, Tongko has been involved in Manulife's manpower development programs. Thus, just as in *Equitable Banking Corporation*, Tongko must be considered as an employee of Manulife.

4. ID.; ID.; ID.; ELEMENT OF CONTROL; SUPERVISION AND MONITORING ARE SUFFICIENT TO ESTABLISH CONTROL.— With x x x [the]case [of *Aboitiz Haulers, Inc. v. Damapatoi*], it becomes apparent that supervision and monitoring is sufficient to establish control that is evidence of an employer-employee relationship. Such control would, therefore, be even more evident in the instant case considering that Tongko himself was tasked to supervise and monitor the activities of Manulife agents. Moreover, it may be gleaned from the records of the case that Tongko reported to Manulife with regards to the performance of his agents. It was not, as if, Tongko was left alone to supervise, and perhaps, discipline such agents. Tongko must be deemed as an employee of Manulife. In fact, in *Lazaro*, the Court ruled that a Sales Supervisor was considered an employee as she "oversaw and supervised the sales agents of the company" x x x. Tongko was held out as an officer of Manulife by Manulife itself, being tagged as its Manager. He was tasked to supervise the insurance agents of Manulife. Clearly, the *Lazaro* case must apply to Tongko and he must be considered an employee of Manulife.

5. ID.; ID.; ID.; ID.; A DIRECTIVE SEEKING TO PRESCRIBE THE MEANS AND METHODS TO ACHIEVE A COMPANY'S GOAL IS AN INDICATION OF CONTROL; CASE AT BAR.— [T]he letter of De Dios itself also contained several indicia of control. x x x The goal of Manulife was to become an agency-driven insurance company. If Tongko were indeed not an employee of Manulife, the company would not set the means and methods to achieve such goal. As long as Tongko was able to recruit the set number of agents, there would be no reason for Manulife to terminate his services as an independent contractor. However, that is not the case here. It may be gleaned from the letter that De Dios is directing Tongko to clamor more actively his peers and his agents to recruit other agents. It was not sufficient that Tongko, by himself, recruit agents. This directive certainly shows that Manulife sought to prescribe the means and methods to achieve its goal. De Dios further ordered Tongko to hire at

his expense an assistant on whom he "can unload you of much of the routine tasks which can be easily delegated." There is no other way to classify this order but as an intrusion into the means and methods of achieving the company's goals.

6. ID.; ID.; ID.; ID.; **THE POWER TO TRANSFER WORKERS FROM ONE WORKPLACE TO ANOTHER IS AN EXERCISE OF CONTROL.—** In the letter [of De Dios], Tongko was also informed that his area of responsibility was going to be reduced. In *Megascope General Services v. National Labor Relations Commission*, between February 15, 1977 and January 1, 1989, petitioner contracted the services of several individuals as gardeners, helpers and maintenance workers. These workers were deployed at the National Power Corporation in Bagac, Bataan. Except for Gener J. del Rosario whose employment ended on April 30, 1989, the work of the other workers ceased on January 31, 1991. Consequently, private respondents filed a complaint for illegal dismissal, underpayment of salaries, nonpayment of five-day service incentive leave credits and holiday pay against petitioner with the NLRC. The Court ruled therein that the company exercised control over the workers that would establish an employer-employee relationship when it reassigned the workers from one workplace to another x x x. In *South Davao Development Company, Inc.*, the Court ruled that the workers must be considered as employees of the company as the latter exercised control over the means and methods employed by the workers to achieve their objective, as evidenced by its power to transfer the copra workers as its employees to that of Gamo x x x. Similarly, in the instant case, by limiting the area of responsibility of Tongko, this is akin to a transfer or reassignment, an exercise of control by Manulife over Tongko that must necessarily determine the existence of an employer-employee relationship.

7. ID.; ID.; ID.; ID.; **PRESENT IN THE ADMINISTRATIVE DUTIES IMPOSED UPON PETITIONER IN CASE AT BAR.—** [W]hile this Court has already ruled that Article 280 of the Labor Code may not be used to prove the existence of an employer-employee relationship when the same is denied, the fact that the work of the alleged independent contractor is usually necessary or desirable in the usual business or trade of the employer would establish a management structure that would mean that Tongko was Manulife's employee. Such element of

control, however, was only present in the administrative duties imposed upon Tongko when he was a manager of Manulife. The Agreement, as well as the other evidence presented, does not show the control necessary to establish an employer-employee relationship while Tongko was just an agent of Manulife. Hence, it is emphasized that it was only upon the imposition of such administrative duties that Tongko was an employee of Manulife and only the consequent change in his remunerations should be considered as his salary. This would consist of his persistency income and management overrides only and not his commissions as an agent.

8. **ID.; ID.; LEGITIMATE JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT; LACKING IN CASE AT BAR.—** It bears pointing out that Tongko cannot be considered as an independent contractor of Manulife. There is no evidence to establish such a scenario. In *Television and Production Exponents, Inc. v. Servaña*, the Court enumerates the requirements for a worker to be considered an independent contractor x x x. Here, the records are bereft of any evidence to establish that Tongko had substantial capital or investment to be qualified as an independent contractor.

9. **ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; AN INDIVIDUAL MAY BE AN EMPLOYEE OF AN INSURANCE AGENCY WHILE CONCURRENTLY BEING ALLOWED TO SELL INSURANCE POLICIES FOR THE SAME COMPANY.—** It may be stated, as a general proposition, that an insurance agent––who usually sells insurance at his convenience following his own selling methods and who, for the most part, is governed by a set of rules the company promulgates to guide its commission agents in selling its policies that they may not run afoul of the law––is not an employee. But as explained for reasons stated in my Dissent to the June 29, 2010 Resolution, Manulife, **upon the petitioner's appointment as manager**, exercised effective control not only over the results of his work, but also over the means and methods by which it is to be accomplished. For sure, petitioner, while acting as Manulife's unit or branch manager, was allowed to sell insurance policies. And there is nothing absurd, let alone novel about an employee of an insurance company being given the privilege to solicit insurance. In two (2) cases, the Court has already ruled that an individual may be an employee of an insurance agency while

concurrently being allowed to sell insurance policies for the same company. In the *Insular Life* case, Insular Assurance Co., Ltd. (Insular) entered into an agency contract with Pantaleon de los Reyes authorizing the latter to solicit within the Philippines applications for life insurance and annuities for which he would be paid compensation in the form of commissions. Later, on March 1, 1993, the same parties entered into another contract where de los Reyes was appointed as Acting Unit Manager. The duties and responsibilities of de los Reyes included the recruitment, training, organization and development within his designated territory of a sufficient number of qualified, competent and trustworthy underwriters, and to supervise and coordinate the sales efforts of the underwriters in the active solicitation of new business and in the furtherance of the agency's assigned goals. x x x The fact that de los Reyes concurrently acted as an agent, selling insurance for Insular, and as an acting Unit Manager, did not prevent the Court from ruling that de los Reyes was Insular's employee. Similarly, in the *Grepalife* case, the brothers Rodrigo and Ernesto Ruiz entered into agency agreements with Great Pacific Life Assurance Corporation (Grepalife) for the former to sell the latter's insurance policies. They started out as trainee agents and later promoted to Zone Supervisor and District Manager, respectively. x x x [T]he Court ruled that the brothers Ruiz are employees of Grepalife, the latter exercising control over the means and methods employed by them to reach their objective. Clearly, the fact that an individual acts as an agent of an insurance company is irrelevant to the issue of whether the individual is an employee of the company. The Court has already recognized the reality that an employee of an insurance company may, at the same time, be an agent and allowed to act as such.

10. **ID.; ID.; ID.; NOT NEGATED BY THE NON-PRESENTATION OF THE MANAGEMENT CONTRACT IN CASE AT BAR.—** It may be, as asserted, that petitioner was unable to adduce in evidence copies of his management contracts specifying his overall duties and responsibilities as manager. But then, a management contract, for purposes of determining the relationship between the worker and the employer, is simply evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management

contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be clearly defined. Moreover, other evidence, like the letter of De Dios, may be considered to support the contention that he was an employee of Manulife and prove his duties and responsibilities as such.

11. **ID.; ID.; TERMINATION OF EMPLOYMENT; REQUIREMENTS FOR A VALID DISMISSAL ARE ONLY REQUIRED OF EMPLOYERS WITH REGARD TO THEIR EMPLOYEES.—** Any lingering doubt that petitioner was, by virtue of the management appointment, under Manulife's employ should be laid to rest by its virtual admission made in its Motion for Reconsideration dated December 3, 2008 that petitioner was dismissed for a just and lawful cause: gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders of Manulife x x x. Notably, in the termination letter of Manulife that was addressed to Tongko, no mention is made of any valid cause for the termination of his services. No mention was made of any particular rule that Tongko violated leading to his separation. Evidently, Tongko's termination of employment was without cause. In an apparent about face, Manulife now claims that it had a valid cause for the termination of Tongko's services. While the Court allows the presentation of inconsistent defenses, Manulife's argumentation on this point would destroy its position that Tongko is not its employee. Manulife is essentially pointing out the facts that would show that it abided by the requirements of the Labor Code on the dismissal of an employee. Article 282, paragraphs (a) and (b), of the Labor Code requires the presence of valid grounds for the legal dismissal of an employee x x x. Stated differently, such requirements are only required of employers with regard to their employees. Manulife had no reason to comply with this provision of law if it did not consider Tongko as an employee. Therefore, the question is begged as to why Manulife deemed it necessary to comply with such provision of law. There is an implied admission that Tongko was Manulife's employee.

12. **ID.; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ANY DOUBT AS TO THE EXISTENCE THEREOF SHOULD BE RESOLVED IN FAVOR OF THE EMPLOYEE.—** I submit that petitioner's peculiar circumstances as unit manager, branch manager and ultimately regional sales

manager of Manulife, with the exclusivity feature of his engagement and his duties as such manager, indicate, at the very least, a *prima facie* existence of an employer-employee relationship, following the control test. And given the bias of the Constitution, Labor Code and Civil Code in favor of labor, any doubt as to the existence of such relationship occasioned by the lack of evidence should be resolved in favor of petitioner and of employment. In this regard, I hark back anew to what the Court emphatically said in *Dealco Farms, Inc. v. National Labor Relations Commission* x x x. As in *Dealco Farms*, the sympathies of the Court in this case should be easy and clear. The flip-flopping of the lower tribunals and the change in the Court's own stand lucidly shows the ambiguity and doubt in the application of the labor laws to the instant case. As such, the Court is duty-bound to resolve such doubts in favor of the employee, Tongko.

13. **ID.; ID.; TERMINATION OF EMPLOYMENT; IN CASES OF TERMINATION OF EMPLOYMENT FOR JUST CAUSES, THE BURDEN RESTS ON THE EMPLOYER TO JUSTIFY SUCH DISMISSAL.—** In the NLRC and the CA, Manulife alleged that Tongko was validly dismissed for gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Evidently, such dismissal was due to Tongko's failure to recruit the required number of agents from his area of responsibility. To reiterate, two (2) of the alleged grounds for the dismissal of Tongko fall under Art. 282, paragraphs (a) and (b) of the Labor Code x x x. On the other hand, inefficiency as a ground for termination of employment is equated with gross and habitual neglect, as the Court explained in *St. Luke's Medical Center, Incorporated v. Fadrigo* x x x. In cases of termination of employment for just causes, the Court has repeatedly held that the burden rests on the employer to justify such dismissal. x x x Manulife has failed to overcome such burden.

14. **ID.; ID.; ID.; JUST CAUSES; WILLFUL DISOBEDIENCE; REQUIREMENTS.—** Willful disobedience, to justify termination from employment, must comply with the following requirements, as enunciated in *Areno v. SkyCable PCC-Baguio*, to wit: "As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful

orders requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, *i.e.,* characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge."

15. **ID.; ID.; ID.; ID.; NEGLECT OF DUTY; REQUIREMENTS.—** Neglect of duty, to be a valid ground for termination of employment must also conform to the following requirements, as stated in *Benjamin v. Amellar Corporation*: "It bears stressing in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross. It should also be habitual." x x x Here, Manulife has failed to identify the rule and the standards by which Tongko's acts were considered unsatisfactory. There were no set criteria for determining the sufficiency of Tongko's recruitment efforts. Moreover, Tongko's acts were not proved to be willful or gross and habitual as defined by the above-cited jurisprudence. Absent proof establishing such factors, Manulife cannot be considered to have discharged the burden required to prove that the just cause for termination of employment was indeed present. In fact, at the time Tongko's services were terminated, his area was not the last in agent recruitment. As such, Tongko's dismissal smacks of arbitrariness.

16. **REMEDIAL LAW; COURTS; *SUB JUDICE* RULE; RESTRICTS COMMENTS AND DISCLOSURES PERTAINING TO JUDICIAL PROCEEDINGS TO AVOID PREJUDGING THE ISSUE, INFLUENCING THE COURT, OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE.—** [T]he Court received and set for agenda four (4) letters in relation to the instant case: (1) Letter of Tongko dated November 30, 2005; (2) the aforementioned letter of the Joint Foreign Chambers of the Philippines dated December 16, 2008; (3) Letter of Gregorio Mercado, President of the Philippine Life Insurance Association, Inc. dated January 12, 2009; and (4) Letter of Tongko dated March 25, 2009, propounding their positions on the case. At that point in time, the case had not yet become final and executory, hence, *sub judice*. In *Romero v. Estrada*, the Court expounded on this principle, to wit: "The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings

to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*: [I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies." The principle of *sub judice* is a two-way street. Inasmuch as the parties and other interested individuals should refrain from trying to influence the courts, the court itself should also be on guard against such attempts. The Court should, therefore, be wary from accepting and putting on record, papers and documents not officially filed with it. Such submissions have the appearance of influencing the Court despite the latter's determined objectivity and must be avoided. To illustrate, the November 7, 2008 Decision of this Court was decided in favor of Tongko with only one (1) dissent. However, in the July 29, 2010 Resolution, the original Decision was reversed in favor of Manulife by the Court *en banc,* with only two (2) dissents. The above-mentioned letters were received by the Court after November 7, 2008 but before July 29, 2010. While the letters themselves may not have actually swayed the members of the Court, the appearance of impropriety should be avoided. To reiterate, when the parties submitted the aforementioned letters, the case had not yet become final and executory, they had sufficient remedies under the Rules of Court for redress. There was no reason for the parties to have submitted such letters and for this Court to have taken cognizance thereof and to set the same for agenda.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro & Associates for petitioner.
Pizarras & Associates Law Office for respondents.

RESOLUTION

BRION, *J.*:

We resolve petitioner Gregorio V. Tongko's bid, through his *Motion for Reconsideration,*[1] **to set aside our June 29, 2010 Resolution that reversed our Decision of November 7, 2008**.[2] With the reversal, the assailed June 29, 2010 Resolution effectively affirmed the Court of Appeals' ruling[3] in CA-G.R. SP No. 88253 that the petitioner was an insurance agent, not the employee, of the respondent The Manufacturers Life Insurance Co. (Phils.), Inc. (*Manulife*).

In his Motion for Reconsideration, petitioner reiterates the arguments he had belabored in his petition and various other submissions. He argues that for 19 years, he performed administrative functions and exercised supervisory authority over employees and agents of Manulife, in addition to his insurance agent functions.[4] In these 19 years, he was designated as a Unit Manager, a Branch Manager and a Regional Sales Manager, and now posits that he was not only an insurance agent for Manulife but was its employee as well.

We find no basis or any error to merit the reconsideration of our June 29, 2010 Resolution.

A. Labor Law Control = Employment Relationship

Control over the performance of the task of one providing service – both with respect to the means and manner, and the results of the service – is the primary element in determining

[1] Dated July 28, 2010.

[2] The Dissent considered the referral of the motion for reconsideration to the *En Banc* as an "APPEAL" from the Second Division to the *En Banc* (page 11 of the Dissent). Attention must be called to this matter for the use of the word "APPEAL" might give the impression that there is an appeal remedy from the decision of a division to the Court *En Banc*. The Court *En Banc* is not, as repeatedly held by the Supreme Court, an appellate court of any of its divisions.

[3] Dated March 29, 2005.

[4] Motion for Reconsideration dated July 28, 2010, p. 3.

whether an employment relationship exists. We resolve the petitioner's Motion against his favor since he failed to show that the control Manulife exercised over him was the control required to exist in an employer-employee relationship; Manulife's control fell short of this norm and carried only the characteristic of the relationship between an insurance company and its agents, as defined by the Insurance Code and by the law of agency under the Civil Code.

The petitioner asserts in his Motion that Manulife's labor law control over him was demonstrated (1) when it set the objectives and sales targets regarding production, recruitment and training programs; and (2) when it prescribed the Code of Conduct for Agents and the Manulife Financial Code of Conduct to govern his activities.[5] We find no merit in these contentions.

In our June 29, 2010 Resolution, we noted that there are built-in elements of control specific to an insurance agency, which do not amount to the elements of control that characterize an employment relationship governed by the Labor Code. The Insurance Code provides definite parameters in the way an agent negotiates for the sale of the company's insurance products, his collection activities and his delivery of the insurance contract or policy.[6] In addition, the Civil Code defines an agent as a person who binds himself to do something in behalf of another, with the consent or authority of the latter.[7] Article 1887 of the Civil Code also provides that in the execution of the agency, the agent shall act in accordance with the instructions of the principal.

All these, read without any clear understanding of fine legal distinctions, appear to speak of control by the insurance company over its agents. They are, however, controls aimed only at specific results in undertaking an insurance agency, and are, in fact, parameters set by law in defining an insurance agency and the attendant duties and responsibilities an insurance agent must observe and undertake. They do not reach the level of control into the means and manner of doing an assigned task that invariably characterizes an employment

[5] *Id.* at 29.

[6] Sections 300, 301 and 306 of the Insurance Code.

[7] Article 1868 of the Civil Code.

relationship as defined by labor law. From this perspective, the petitioner's contentions cannot prevail.

To reiterate, guidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result.[8] Tested by this norm, Manulife's *instructions regarding the objectives and sales targets*, in connection with the training and engagement of other agents, are among the directives that the principal may impose on the agent to achieve the assigned tasks. They are targeted results that Manulife wishes to attain through its agents. Manulife's codes of conduct, likewise, do not necessarily intrude into the insurance agents' means and manner of conducting their sales. Codes of conduct are norms or standards of behavior rather than employer directives into how specific tasks are to be done. These codes, as well as insurance industry rules and regulations, are not *per se* indicative of labor law control under our jurisprudence.[9]

The duties[10] that the petitioner enumerated in his Motion are not supported by evidence and, therefore, deserve scant consideration. Even assuming their existence, however, they mostly

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[8] *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465.

[9] *Id.* at 466-467.

[10] *Rollo*, pp. 977-978; Motion for Reconsideration dated July 28, 2010, pp. 29-30.

Petitioner asserts that:

"Aside from soliciting insurance for Manulife, petitioner was required to submit to the Company all completed applications for insurance and to deliver policies, receive, collect and remit premiums to respondent Manulife. Petitioner was required to use only sales materials and illustrations that were approved by Manulife. He was even required to provide after-sales services, including the forwarding of all written complaints to Manulife's Head Office. Petitioner as also obliged to turn over to Manulife any and all sums of money collected by him. He was further tasked to interview potential recruits both for his direct unit and units under the Metro North Region of Manulife. However, the appointment of these recruits is subject to the approval of Manulife. Likewise, he coordinated planning Key Result

pertain to the duties of an insurance agent such as remitting insurance fees to Manulife, delivering policies to the insured, and after-sale services. For agents leading other agents, these include the task of overseeing other insurance agents, the recruitment of other insurance agents engaged by Manulife as principal, and ensuring that these other agents comply with the paperwork necessary in selling insurance. That Manulife exercises the power to assign and remove agents under the petitioner's supervision is in keeping with its role as a principal in an agency relationship; they are Manulife agents in the same manner that the petitioner had all along been a Manulife agent.

The petitioner also questions Manulife's act of investing him with different titles and positions in the course of their relationship, given the respondents' position that he simply functioned as an insurance agent.[11] He also considers it an unjust and inequitable situation that he would be unrewarded for the years he spent as a unit manager, a branch manager, and a regional sales manager.[12]

Based on the evidence on record, the petitioner's occupation was to sell Manulife's insurance policies and products from 1977 until the termination of the Career Agent's Agreement (*Agreement*). The evidence also shows that through the years, Manulife permitted him to exercise guiding authority over other agents who operate under their own agency agreements with Manulife and whose commissions he shared.[13] Under this scheme – *an arrangement*

Areas for all the subordinate managers and distribute to subordinate managers and agents Manulife memos, copies of the Official Receipt, Daily Exception Reports, Overdue Notice Reports, Policy Contracts, Returned Check Notices, and Agent's Statement of Accounts and post on the bulletin board the Daily Production Report, Back-ended Cases Report and Daily Collection Reports. To reiterate, petitioner was tasked to supervise agents and managers assigned to his unit, the Metro North Region. It was Manulife who exercised the power to assign and remove agents under his supervision."

[11] *Rollo*, p. 966.

[12] *Id.* at 968.

[13] The Decision cites the Affidavits of other agents, wherein they described their duties and conditions of employment, all of which support the finding that they are independent agents and not employees of Manulife.

that pervades the insurance industry – petitioner in effect became a "lead agent" and his own commissions increased as they included his share in the commissions of the other agents;[14] he also received greater reimbursements for expenses and was allowed to use Manulife's facilities. His designation also changed from unit manager to branch manager and then to regional sales manager, to reflect the increase in the number of agents he recruited and guided, as well as the increase in the area where these agents operated.

As our assailed Resolution concluded and as we now similarly conclude, these arrangements, and the titles and positions the petitioner was invested with, did not change his status from the insurance agent that he had always been (as evidenced by the Agreement that governed his relationship with Manulife from the start to its disagreeable end). The petitioner simply progressed from his individual agency to being a lead agent who could use other agents in selling insurance and share in the earnings of these other agents.

In sum, we find absolutely no evidence of labor law control, as extensively discussed in our Resolution of June 29, 2010, granting Manulife's motion for reconsideration. The Dissent, unfortunately, misses this point.

B. No Resulting Inequity

We also do not agree that our assailed Resolution has the effect of fostering an inequitable or unjust situation. The records show that the petitioner was very amply paid for his services as an insurance agent, who also shared in the commissions of the other agents under his guidance. In 1997, his income was ₱2,822,620; in 1998, ₱4,805,166.34; in 1999, ₱6,797,814.05; in 2001, ₱6,214,737.11; and in 2002, ₱8,003,180.38. All these he earned as an insurance agent, as he failed to ever prove that he earned these sums as an employee. In technical terms, he could not have earned all these as an employee because he

[14] *Rollo,* p. 970. The petitioner admits in this motion that he was paid overriding commissions earned by agents under him.

failed to provide the substantial evidence required in administrative cases to support the finding that he was a Manulife employee. No inequity results under this legal situation; what would be unjust is an award of backwages and separation pay – amounts that are not due him because he was never an employee.

The Dissent's discussion on this aspect of the case begins with the wide disparity in the status of the parties – that Manulife is a big Canadian insurance company while Tongko is but a single agent of Manulife. The Dissent then went on to say that "[i]f is but just, it is but right, that the Court interprets the relationship between Tongko and Manulife as one of employment under labor laws and to uphold his constitutionally protected right, as an employee, to security of tenure and entitlement to monetary award should such right be infringed."[15] We cannot simply invoke the magical formula by creating an employment relationship even when there is none because of the unavoidable and inherently weak position of an individual over a giant corporation.

The Dissent likewise alluded to an ambiguity in the true relationship of the parties after Tongko's successive appointments. We already pointed out that the legal significance of these appointments had not been sufficiently explained and that it did not help that Tongko never bothered to present evidence on this point. The Dissent recognized this but tried to excuse Tongko from this failure in the subsequent discussion, as follows:

> [o]ther evidence was adduced to show such duties and responsibilities. For one, in his letter of November 6, 2001, respondent De Dios addressed petitioner as sales manager. And as I wrote in my Dissent to the June 29, 2010 Resolution, it is difficult to imagine that Manulife did not issue promotional appointments to petitioner as unit manager, branch manager, and, eventually, regional sales manager. Sound management practice simply requires an appointment for any upward personnel movement, particularly when additional functions and the corresponding increase in compensation are involved. Then, too, the adverted affidavits of the managers of

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[15] Dissent of Justice Presbitero J. Velasco, Jr., p. 12.

Manulife as to the duties and responsibilities of a unit manager, such as petitioner, point to the conclusion that these managers were employees of Manulife, applying the "four-fold" test.[16]

This Court (and all adjudicators for that matter) cannot and should not fill in the evidentiary gaps in a party's case that the party failed to support; ***we cannot and should not take the cudgels for any party***. Tongko failed to support his cause and we should simply view him and his case as they are; our duty is to sit as a judge in the case that he and the respondent presented.

To support its arguments on equity, the Dissent uses the Constitution and the Civil Code, using provisions and principles that are all motherhood statements. *The mandate of the Court, of course, is* ***to decide cases based on the facts and the law****, and not to base its conclusions on fundamental precepts that are far removed from the particular case presented before it. When there is no room for their application, of capacity of principles, reliance on the application of these fundamental principles is misplaced.*

C. Earnings were Commissions

That his earnings were **agent's commissions** arising from his work as an insurance agent is *a matter that the petitioner cannot deny, as these are the declarations and representations he stated in his income tax returns through the years.* It would be doubly unjust, particularly to the government, if he would be allowed at this late point to turn around and successfully claim that he was merely an employee after he declared himself, through the years, as an independent self-employed insurance agent with the privilege of deducting business expenses. This aspect of the case alone – considered together with the probative value of income tax declarations and returns filed prior to the present controversy — should be enough to clinch the present case against the petitioner's favor.

[16] *Id.* at 39.

D. The Dissent's Solution: Unwieldy and Legally Infirm

The Dissent proposes that Tongko should be considered as part employee (as manager) and part insurance agent; hence, the original decision should be modified to pertain only to the termination of his employment as a manager and not as an insurance agent. Accordingly, the backwages component of the original award to him should not include the insurance sales commissions. This solution, according to the line taken by the Dissent then, was justified on the view that this was made on a case-to-case basis.

Decisions of the Supreme Court, as the Civil Code provides, form part of the law of the land. When the Court states that the determination of the existence of an employment relationship should be on a case-to-case basis, this does not mean that there will be as many laws on the issue as there are cases. In the context of this case, the four-fold test is the established standard for determining employer-employee relationship and the existence of these elements, most notably control, is the basis upon which a conclusion on the absence of employment relationship was anchored. This simply means that a conclusion on whether employment relationship exists in a particular case largely depends on the facts and, in no small measure, on the parties' evidence vis-à-vis the clearly defined jurisprudential standards. Given that the parties control *what* and *how* the facts will be established in a particular case and/or how a particular suit is to be litigated, deciding the issues on a case-to-case basis becomes an imperative.

Another legal reality, a more important one, is that *the duty of a court is to say what the law is.*[17] This is the same duty of the Supreme Court that underlies the *stare decisis* principle. This is how the public, in general and the insurance industry in particular, views the role of this Court and courts in general in deciding cases. The lower courts and the bar, most specially, look up to the rulings of this Court for guidance. Unless extremely

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[17] *Marbury v. Madison*, 5 US 137 (1803).

unavoidable, the Court must, *as a matter of sound judicial policy*, resist the temptation of branding its ruling *pro hac vice*.

The compromise solution of declaring Tongko both an employee and an agent is legally unrealistic, unwieldy and is, in fact, legally infirm, as it goes against the above basic principles of judicial operation. Likewise, it does not and cannot realistically solve the problem/issue in this case; it actually leaves more questions than answers.

As already pointed out, there is no legal basis (be it statutory or jurisprudential) for the part-employee/part-insurance agent status under an essentially principal-agent contractual relation which the Dissent proposes to accord to Tongko. If the Dissent intends to establish one, this is highly objectionable for this would amount to judicial legislation. A legal relationship, be it one of employment or one based on a contract other than employment, exists as a matter of law pursuant to the facts, incidents and legal consequences of the relationship; it cannot exist devoid of these legally defined underlying facts and legal consequences unless the law itself creates the relationship – an act that is beyond the authority of this Court to do.

Additionally, the Dissent's conclusion completely ignores an unavoidable legal reality – that the parties are bound by a contract of agency that clearly subsists notwithstanding the successive designation of Tongko as a unit manager, a branch manager and a regional sales manager. (As already explained in our Resolution granting Manulife's motion for reconsideration, no evidence on record exists to provide the Court with clues as to the precise impact of all these designations on the contractual agency relationship.) The Dissent, it must be pointed out, concludes that Tongko's employment as manager was illegally terminated; thus, he should be accordingly afforded relief therefor. But, can Tongko be given the remedies incidental to his dismissal as manager separately from his status as an insurance agent? In other words, since the respondents terminated all relationships with Tongko through the termination letter, can we simply rule that his role as a manager was illegally terminated without touching on the consequences of this ruling on his status as an

insurance agent? Expressed in these terms, the inseparability of his contract as agent with any other relationship that springs therefrom can thus be seen as an insurmountable legal obstacle.

The Dissent's compromise approach would also sanction split jurisdiction. The labor tribunals shall have jurisdiction over Tongko's employment as manager while another entity shall decide the issues/cases arising from the agency relationship. If the managerial employment is anchored on the agency, how will the labor tribunals decide an issue that is inextricably linked with a relationship that is outside the loop of their jurisdiction? As already mentioned in the Resolution granting Manulife's reconsideration, the **DOMINANT** relationship in this case is agency and no other.

E. The Dissent's Cited Cases

The Dissent cites the cases of *Great Pacific Life Assurance Corporation v. National Labor Relations Commission*[18] and *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*[19] to support the allegation that Manulife exercised control over the petitioner as an employer.

In considering these rulings, a reality that cannot but be recognized is that cases turn and are decided on the basis of their own unique facts; the ruling in one case cannot simply be bodily lifted and applied to another, particularly when notable differences exist between the cited cases and the case under consideration; their respective facts must be strictly examined to ensure that the ruling in one applies to another. This is particularly true in a comparison of the cited cases with the present case. Specifically, care should be taken in reading the cited cases and applying their rulings to the present case as the cited cases all dealt with the proper legal characterization of *subsequent management contracts* that superseded the original agency contract between the insurance company and the agent.

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[18] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

[19] 350 Phil. 918 (1998).

In *Great Pacific Life*, the Ruiz brothers were appointed to positions different from their original positions as insurance agents, whose duties were clearly defined in a subsequent contract. Similarly, in *Insular*, de los Reyes, a former insurance agent, was appointed as acting unit manager based on a subsequent contract. In both cases, the Court anchored its findings of labor control on the stipulations of these subsequent contracts.

In contrast, the present case is remarkable for the absence of evidence of any change in the nature of the petitioner's employment with Manulife. As previously stated above and in our assailed Resolution, the petitioner had always been governed by the Agreement from the start until the end of his relationship with Manulife. His agency status never changed except to the extent of being a lead agent. Thus, the cited cases – where changes in company-agent relationship expressly changed and where the subsequent contracts were the ones passed upon by the Court – cannot be totally relied upon as authoritative.

We cannot give credit as well to the petitioner's claim of employment based on the affidavits executed by other Manulife agents describing their duties, because these same affidavits only affirm their status as independent agents, not as employees. To quote these various claims:[20]

1.a. I have no fixed wages or salary since my services are compensated by way of commissions based on the computed premiums paid in full on the policies obtained thereat;

1.b. I have no fixed working hours and employ my own method in soliciting insurance at a time and place I see fit;

1.c. I have my own assistant and messenger who handle my daily work load;

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[20] Motion for Reconsideration, dated December 3, 2008, quoting from the Affidavit of John Chua (Regional Sales Manager) dated April 28, 2003, Affidavit of Amanda Tolentino (Branch Manager) dated April 29, 2003, and Affidavit of Lourdes Samson (Unit Manager) dated April 28, 2003; *rollo,* p. 803.

1.d. I use my own facilities, tools, materials and supplies in carrying out my business of selling insurance;

x x x x x x x x x

6. I have my own staff that handles day to day operations of my office;

7. My staff are my own employees and received salaries from me;

x x x x x x x x x

9. My commission and incentives are all reported to the Bureau of Internal Revenue (BIR) as income by a self-employed individual or professional with a ten (10) percent creditable withholding tax. I also remit monthly for professionals.

The petitioner cannot also rely on the letter written by respondent Renato Vergel de Dios to prove that Manulife exercised control over him. As we already explained in the assailed Resolution:

Even de Dios' letter is not determinative of control as it indicates the least amount of intrusion into Tongko's exercise of his role as manager in guiding the sales agents. Strictly viewed, de Dios' directives are merely operational guidelines on how Tongko could align his operations with Manulife's re-directed goal of being a "big league player." The method is to expand coverage through the use of more agents. This requirement for the recruitment of more agents is not a means-and-method control as it relates, more than anything else, and is directly relevant, to Manulife's objective of expanded business operations through the use of a bigger sales force whose members are all on a principal-agent relationship. An important point to note here is that Tongko was not supervising regular full-time employees of Manulife engaged in the running of the insurance business; Tongko was effectively guiding his corps of sales agents, who are bound to Manulife through the same agreement that he had with manulife, all the while sharing in these agents' commissions through his overrides.[21]

[21] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc. and Renato A. Vergel de Dios*, G.R. No. 167622, Resolution dated June 29, 2010, pp. 26-27.

Lastly, in assailing the Agreement between him and Manulife, the petitioner cites *Paguio v. National Labor Relations Commission*[22] on the claim that the agreement that the parties signed did not conclusively indicate the legal relationship between them.

The evidentiary situation in the present case, however, shows that despite the petitioner's insistence that the Agreement was no longer binding between him and Manulife, no evidence was ever adduced to show that their relationship changed so that Manulife at some point controlled the means and method of the petitioner's work. In fact, his evidence only further supports the conclusion that he remained an independent insurance agent – a status he admits, subject only to the qualification that he is at the same time an employee. Thus, we can only conclude that the Agreement governed his relations with Manulife.

Additionally, it is not lost on us that *Paguio* is a ruling based on a different factual setting; it involves a publishing firm and an account executive, whose repeated engagement was considered as an indication of employment. Our ruling in the present case is specific to the insurance industry, where the law permits an insurance company to exercise control over its agents within the limits prescribed by law, and to engage independent agents for several transactions and within an unlimited period of time without the relationship amounting to employment. In light of these realities, the petitioner's arguments on his last argument must also fail.

The dissent also erroneously cites eight other cases — *Social Security System v. Court of Appeals*,[23] *Cosmopolitan Funeral Homes, Inc. v. Maalat*,[24] *Algon Engineering Construction Corporation v. National Labor Relations Commission*,[25] *Equitable Banking Corporation v. National Labor Relations*

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[22] 451 Phil. 243 (2003).

[23] 240 Phil. 364 (1987).

[24] G.R. No. 86693, July 2, 1990, 187 SCRA 108.

[25] 345 Phil. 408 (1997).

Commission,[26] *Lazaro v. Social Security Commission*,[27] *Dealco Farms, Inc. v. National Labor Relations Commission*,[28] *South Davao Development Company, Inc. v. Gamo*,[29] and *Abante, Jr. v. Lamadrid Bearing & Parts Corporation*.[30] The dissent cited these cases to support its allegation that labor laws and jurisprudence should be applied in cases, to the exclusion of other laws such as the Civil Code or the Insurance Code, even when the latter are also applicable.

In *Social Security System*, *Cosmopolitan Funeral Homes*, *Dealco Farms*, and *South Davao Development*, the issue that repeats itself is whether complainants were employees or independent contractors; the legal relationships involved are both labor law concepts and make no reference to the Civil Code (or even the Insurance Code). The provisions cited in the Dissent — Articles 1458-1637 of the Civil Code[31] and Articles 1713-1720 of the Civil Code[32] — do not even appear in the decisions cited.

In *Algon*, the issue was whether the lease contract should dictate the legal relationship between the parties, when there was proof of an employer-employee relationship. In the cited case, the lease provisions on termination were thus considered irrelevant because of a substantial evidence of an employment relationship. The cited case lacks the complexity of the present case; Civil Code provisions on lease do not prescribe that lessees exercise control over their lessors in the way that the Insurance Code and the Civil Code provide that insurance companies and principals exercised control over their agents.

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[26] 339 Phil. 541 (1997).

[27] 479 Phil. 384 (2004).

[28] G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[29] G.R. No. 171814, May 8, 2009, 587 SCRA 524.

[30] G.R. No. 159890, May 28, 2004, 430 SCRA 368.

[31] Dissent of Justice Velasco, Jr. p. 14.

[32] *Id.* at 16.

The issue in *Equitable*, on the other hand, is whether a lawyer-client relationship or an employment relationship governs the legal relation between parties. Again, this case is inapplicable as it does not illustrate the predominance of labor laws and jurisprudence over other laws, in general, and the Insurance Code and Civil Code, in particular. It merely weighed the evidence in favor of an employment relationship over that of a lawyer-client relationship. Similarly in *Lazaro*, the Court found ample proof of control determinative of an employer-employee relationship. Both cases are not applicable to the present case, which is attended by totally different factual considerations as the petitioner had not offered any evidence of the company's control in the means and manner of the performance of his work.

On the other hand, we find it strange that the dissent cites *Abante* as a precedent, since the Court, in this case, held that an employee-employer relationship is notably absent in this case as the complainant was a sales agent. This case better supports the majority's position that a sales agent, who fails to show control in the concept of labor law, cannot be considered an employee, even if the company exercised control in the concept of a sales agent.[33]

It bears stressing that our ruling in this case is not about which law has primacy over the other, but that we should be able to reconcile these laws. We are merely saying that where the law makes it mandatory for a company to exercise control over its agents, the complainant in an illegal dismissal case cannot rely on these legally prescribed control devices as indicators of an employer-employee relationship. As shown in our discussion, our consideration of the Insurance Code and Civil Code provisions does not negate the application of labor

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[33] *Supra* note 30 at 379-380. The Court specifically noted that: "While it is true that he [petitioner therein] occasionally reported the Manila office to attend conferences on marketing strategies, it was intended not to control the manner and means to be used in reaching the desired end, but to serve as a guide and to upgrade his skills for a more efficient marketing performance."

laws and jurisprudence; ultimately, we dismissed the petition because of its failure to comply with the control test.

WHEREFORE, premises considered, we hereby *DENY* the *Motion for Reconsideration WITH FINALITY* for lack of merit. No further pleadings shall be entertained. Let entry of judgment proceed in due course.

SO ORDERED.

Corona, C.J., Carpio, Peralta, del Castillo, Abad, Perez, and *Mendoza, JJ.,* concur.

Carpio Morales, J., maintains her original veto, hence, her dissent.

Velasco, Jr., J., see dissenting oipinion.

Nachura, Leonardo-de Castro, and *Bersamin, JJ.,* join the dissent of Justice Velasco, Jr.

Villarama, Jr. and *Sereno, JJ.,* no part.

DISSENTING OPINION

VELASCO, JR., *J.*:

Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if Labor had not first existed. Labor is superior to capital, and deserves much the higher consideration.

––Abraham Lincoln

Prefatory Statement

At the outset, it has to be made clear that the instant petition applies solely to petitioner Tongko with respect to his relationship with Manulife as the latter's Regional Manager of Metro North Region and not to ordinary underwriters of different insurance companies claiming to be totaling 45,000 in the Philippines. In view of the facts and circumstances peculiar only to Tongko's case, the disposition in the instant petition is *pro hac vice* in line with the previous rulings of this Court that the determination

of an employer-employee relationship shall be on a case-to-case basis.[1]

There is, therefore, no reason to conclude that the November 7, 2008 Decision of this Court was meant to indiscriminately classify all insurance agents as employees of their respective insurance companies. Nowhere in the Decision was such a conclusion made or espoused. To reiterate, it was specifically stated in the Decision that Tongko, given his administrative duties as a manager of Manulife, and not any other insurance agent in the Philippines, was an employee. As in every case involving the determination of whether or not an employer-employee relationship obtains, it must be established in each case that the alleged employer exercises control over the means and methods employed by the worker in achieving a set objective. Only then can such relationship be said to exist.

In a Letter dated December 16, 2008, the Joint Foreign Chambers of the Philippines implored this Court to reverse its November 7, 2008 Decision on the stated ground that it is "a case of judicial legislation that impairs the obligations of commercial contracts and interferes with established business models and practices." The Chambers conclusion, sad to state, was based on the erroneous premise that the Decision was a blanket declaration that all agents or underwriters are considered employees of the insurance company.

The Philippine Life Insurance Association, Inc., through its then President Gregorio D. Mercado, also wrote a letter dated January 12, 2009 reiterating the concerns of the Joint Foreign Chambers of the Philippines. In the letter, Mercado states:

> Thus, with the recent Decision of the Honorable Supreme Court, generalizing the code of conduct as an indication of control over

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[1] *Philippine Fuji Xerox Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 111501, March 5, 1996, 254 SCRA 294; *Associated Anglo-American Tobacco Corporation v. Clave*, G.R. No. 50915, August 30, 1990, 189 SCRA 127; *Tabas v. California Manufacturing Company, Inc.,* No. 80680, January 26, 1989, 169 SCRA 497.

the means and method of an employee, PLIA is alarmed that the floodgates would open to unscrupulous claimants and leave PLIA's member companies vulnerable to a multitude of law suits from agents who shall insist on benefits that only employees enjoy. Such a scenario would certainly cripple PLIA's member insurance companies, as their time and resources would be devoted to fending off unscrupulous claims instead of focusing on improving themselves to serve the interests of the public.

Mercado goes on to imply that the finality of the November 7, 2008 Decision would spell the end of the insurance industry.

The grim scenario depicted in Mercado's letter and the unmistakable veiled threats implied therein are uncalled for.

The November 7, 2008 Decision, to reiterate, applies only to Tongko in light of the circumstances attendant in his case. Certainly, his situation is unique from most other agents considering that he was promoted initially to Unit Manager, then to Branch Manager and, eventually, Regional Manager. By this fact alone, the Decision cannot be applicable to all other agents in the Philippines. Furthermore, the Decision was reached considering the totality of all relevant matters underpinning and/or governing the professional relationship of Tongko and Manulife, not only the Code of Conduct, or certain duties only. All the factors mentioned in the Decision contributed to the conclusion that at the time that Tongko was dismissed, he was an employee of Manulife. And it will only be in the far off possibility that a completely identical case is presented that the findings therein would apply.

Additionally, in line with the Court's ruling in the November 7, 2008 Decision that Tongko became an employee after his designation as a manager of Manulife, any backwages for illegal dismissal should only correspond to his income, bonuses and other benefits that were appurtenant to his designation as a manager. Under Tongko's Career Agent's Agreement, he was entitled to commissions, production bonus and persistency income. Thus, the basis for backwages would only be his management overrides and other bonuses relative to his position as manager.

The Case

For the consideration of the Court is the Motion for Reconsideration dated July 28, 2010, filed by petitioner Gregorio V. Tongko. Tongko seeks the reversal of our June 29, 2010 Resolution which dismissed the instant petition finding that Tongko was not an employee of Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife). The Resolution reversed the Court's November 17, 2008 Decision.

The Facts

For clarity, the facts of the case are hereby reiterated:

Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) is a domestic corporation engaged in life insurance business. Renato A. Vergel De Dios (De Dios) was, during the period material, its President and Chief Executive Officer. Gregorio V. Tongko started his professional relationship with Manulife on July 1, 1977 by virtue of a Career Agent's Agreement[2] (Agreement) he executed with Manulife.

In the Agreement, it is provided that:

> It is understood and agreed that the Agent is an independent contractor and nothing contained herein shall be construed or interpreted as creating an employer-employee relationship between the Company and the Agent.
>
> xxx xxx xxx
>
> a) The Agent shall canvass for applications for Life Insurance, Annuities, Group policies and other products offered by the Company, and collect, in exchange for provisional receipts issued by the Agent, money due or to become due to the Company in respect of applications or policies obtained by or through the Agent or from policyholders allotted by the Company to the Agent for servicing, subject to subsequent confirmation of receipt of payment by the Company as evidenced by an Official Receipt issued by the Company directly to the policyholder.

[2] *Rollo*, pp. 451-453.

x x x x x x x x x

14. TERMINATION

The Company may terminate this Agreement for any breach or violation of any of the provisions hereof by the Agent by giving written notice to the Agent within fifteen (15) days from the time of the discovery of the breach. No waiver, extinguishment, abandonment, withdrawal or cancellation of the right to terminate this Agreement by the Company shall be construed for any previous failure to exercise its right under any provision of this Agreement.

Either of the parties hereto may likewise terminate his Agreement at any time without cause, by giving to the other party fifteen (15) days notice in writing. This Agreement shall similarly terminate forthwith upon the death of the Agent.

In cases of termination, including the Agent's death, the Agent and/or his estate, executors or administrators, heirs, assignees or successors-in-interest, as the case may be, shall remain liable to the Company for all the Agent's obligations and indebtedness due the Company arising from law or this Agreement.

In 1983, Tongko was named as a Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. He was thereafter promoted to Regional Manager. As the Court of Appeals (CA) found, Tongko's gross earnings from his work at Manulife as a Regional Manager, consisting of commissions, persistency income, and management overrides, may be summarized as follows:

January to December 10, 2002	-	₱865,096.07
2001	-	6,214,737.11
2000	-	8,003,180.38
1999	-	6,797,814.05
1998	-	4,805,166.34
1997	-	2,822,620.00[3]

The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter

[3] *Id.* at 53.

dated November 6, 2001[4] to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

The first step to transforming Manulife into a big league player has been very clear - to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

x x x x x x x x x

The issues around agent recruiting are central to the intended objectives hence the need for a Senior Managers' meeting earlier last month when Kevin O'Connor, SVP - Agency, took to the floor to determine from our senior agency leaders what more could be done to bolster manpower development. At earlier meetings, Kevin had presented information where evidently, your Region was the lowest performer (on a per Manager basis) in terms of recruiting in 2000 and, as of today, continues to remain one of the laggards in this area.

While discussions, in general, were positive other than for certain comments from your end which were perceived to be uncalled for, it became clear that a one-on-one meeting with you was necessary to ensure that you and management, were on the same plane. As gleaned from some of your previous comments in prior meetings (both in group and one-on-one), it was not clear that we were proceeding in the same direction.

Kevin held subsequent series of meetings with you as a result, one of which I joined briefly. In those subsequent meetings you reiterated certain views, the validity of which we challenged and subsequently found as having no basis.

With such views coming from you, I was a bit concerned that the rest of the Metro North Managers may be a bit confused as to the directions the company was taking. For this reason, I sought a meeting with everyone in your management team, including you, to clear the air, so to speak.

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[4] *Id.* at 295-300.

This note is intended to confirm the items that were discussed at the said Metro North Region's Sales Managers meeting held at the 7/F Conference room last 18 October.

x x x x x x x x x

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we have been discussing these past few weeks, *i.e.,* Manulife's goal to become a major agency-led distribution company in the Philippines. While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

> 1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."
>
> You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.
>
> x x x x x x x x x
>
> 2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x
>
> I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.
>
> x x x x x x x x x

The above changes can end at this point and they need not go any further. This, however, is entirely dependent upon you. But you have to understand that meeting corporate objectives by everyone is primary and will not be compromised. We are meeting tough challenges next year and I would want everybody on board. Any resistance or holding back by anyone will be dealt with accordingly.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001,[5] terminating Tongko's services, thus:

It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O'Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Management's avowed agency growth policy.

x x x x x x x x x

On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this notice of termination of your Agency Agreement with us effective fifteen days from the date of this letter.

Therefrom, Tongko filed a Complaint dated November 25, 2002 with the National Labor Relations Commission (NLRC) against Manulife for illegal dismissal. The case, docketed as NLRC NCR Case No. 11-10330-02, was raffled to Labor Arbiter Marita V. Padolina.

In the Complaint, Tongko, in a bid to establish an employer-employee relationship, alleged that De Dios gave him specific directives on how to manage his area of responsibility in the latter's letter dated November 6, 2001. He further claimed that Manulife exercised control over him as follows:

Such control was certainly exercised by respondents over the herein complainant. It was Manulife who hired, promoted and gave various assignments to him. It was the company who set objectives as regards productions, recruitment, training programs and all activities pertaining

[5] *Id.* at 301-302.

to its business. Manulife prescribed a Code of Conduct which would govern in minute detail all aspects of the work to be undertaken by employees, including the sales process, the underwriting process, signatures, handling of money, policyholder service, confidentiality, legal and regulatory requirements and grounds for termination of employment. The letter of Mr. De Dios dated 06 November 2001 left no doubt as to who was in control. The subsequent termination letter dated 18 December 2001 again established in no uncertain terms the authority of the herein respondents to control the employees of Manulife. Plainly, the respondents wielded control not only as to the ends to be achieved but the ways and means of attaining such ends.[6]

Tongko bolstered his argument by citing *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*[7] and *Great Pacific Life Assurance Corporation v. NLRC*,[8] which Tongko claimed to be similar to the instant case.

Tongko further claimed that his dismissal was without basis and that he was not afforded due process. He also cited the Manulife Code of Conduct by which his actions were controlled by the company.

Manulife then filed a Position Paper with Motion to Dismiss dated February 27, 2003,[9] in which it alleged that Tongko is not its employee, and that it did not exercise "control" over him. Thus, Manulife claimed that the NLRC has no jurisdiction over the case.

In a Decision dated April 15, 2004, Labor Arbiter Marita V. Padolina dismissed the complaint for lack of an employer-employee relationship. Padolina found that applying the four-fold test in determining the existence of an employer-employee relationship, none was found in the instant case. The dispositive portion thereof states:

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[6] *Id.* at 310.

[7] G.R. No. 119930, March 12, 1998, 287 SCRA 476.

[8] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

[9] *Rollo*, pp. 430-450.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of jurisdiction, there being no employer-employee relationship between the parties.

SO ORDERED.

Tongko appealed the arbiter's Decision to the NLRC which reversed the same and rendered a Decision dated September 27, 2004 finding Tongko to have been illegally dismissed.

The NLRC's First Division, while finding an employer-employee relationship between Manulife and Tongko applying the four-fold test, held Manulife liable for illegal dismissal. It further stated that Manulife exercised control over Tongko as evidenced by the letter dated November 6, 2001 of De Dios and wrote:

> The above-mentioned letter shows the extent to which respondents controlled complainant's manner and means of doing his work and achieving the goals set by respondents. The letter shows how respondents concerned themselves with the manner complainant managed the Metro North Region as Regional Sales Manager, to the point that respondents even had a say on how complainant interacted with other individuals in the Metro North Region. The letter is in fact replete with comments and criticisms on how complainant carried out his functions as Regional Sales Manager.
>
> More importantly, the letter contains an abundance of directives or orders that are intended to directly affect complainant's authority and manner of carrying out his functions as Regional Sales Manager.[10]

Additionally, the NLRC also ruled that:

> Further evidence of [respondents'] control over complainant can be found in the records of the case. [These] are the different codes of conduct such as the Agent Code of Conduct, the Manulife Financial Code of Conduct, and the Manulife Financial Code of Conduct Agreement, which serve as the foundations of the power of control wielded by respondents over complainant that is further manifested in the different administrative and other tasks that he is required to

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[10] *Id.* at 361.

perform. These codes of conduct corroborate and reinforce the display of respondents' power of control in their 06 November 2001 Letter to complainant.[11]

The *fallo* of the September 27, 2004 NLRC Decision reads:

WHEREFORE, premises considered, the appealed Decision is hereby reversed and set aside. We find complainant to be a regular employee of respondent Manulife and that he was illegally dismissed from employment by respondents.

In lieu of reinstatement, respondent Manulife is hereby ordered to pay complainant separation pay as above set forth. Respondent Manulife is further ordered to pay complainant backwages from the time he was dismissed on 02 January 2002 up to the finality of this decision also as indicated above.

x x x x x x x x x

All other claims are hereby dismissed for utter lack of merit.

From this Decision, Manulife filed a motion for reconsideration which was denied by the NLRC First Division in a Resolution dated December 16, 2004.[12]

Thus, Manulife filed an appeal with the CA docketed as CA-G.R. SP No. 88253. Thereafter, the CA issued the assailed Decision dated March 29, 2005, finding the absence of an employer-employee relationship between the parties and deeming the NLRC with no jurisdiction over the case. The CA arrived at this conclusion while again applying the four-fold test. The CA found that Manulife did not exercise control over Tongko that would render the latter an employee of Manulife. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby GRANTED and the writ prayed for accordingly GRANTED. The assailed Decision dated September 27, 2004 and Resolution dated December 16, 2004 of the National Labor Relations Commission in NLRC NCR Case No. 00-11-10330-2002 (NLRC NCR CA No. 040220-

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[11] *Id.* at 363-364.

[12] *Id.* at 375-377.

04) are hereby ANNULLED and SET ASIDE. The Decision dated April 15, 2004 of Labor Arbiter Marita V. Padolina is hereby REINSTATED.

Hence, Tongko filed a petition with this Court raising the following issues: (1) whether Tongko was an employee of Manulife; and (2) whether Tongko was illegally dismissed.

In the November 17, 2010 Decision, this Court ruled that Tongko was an employee of Manulife and was illegally dismissed. Applying the four-fold test, the Court found sufficient indicia of employment to conclude that Manulife and Tongko had an employer-employee relationship. Thus, the Court further ruled that because there was no just or valid cause for the termination of Tongko's employment, he was therefore illegally dismissed.

Manulife appealed such Decision to the Court *en banc* which reversed the same in a June 29, 2010 Resolution. In the Resolution, the Court used the intent of the parties as well as the established insurance industry practices to conclude that the control required by the labor code to be present to establish an employer-employee relationship between Manulife and Tongko was not present. It was further ruled that there was no other concrete evidence to establish that Tongko was an employee of Manulife.

Thereafter, Tongko filed the instant motion for reconsideration of the Resolution.

The motion for reconsideration must be granted.

Labor laws, not the Insurance Code or the Corporation Code, shall prevail in the instant case

Manufacturers Life Insurance Co. (Phils.), Inc. is part of a Canada-based multinational financial company claiming to be the largest life insurance company in North America having 3,000 employees and 25,000 agents.[13] On the other hand, Tongko

[13] Manulife Financial. "Global Presence." October 20, 2010. <https://hermes.manulife.com/ Canada/wmHomepagesPub.nsf/public/strength_presence>.

is but a single Filipino agent/manager of Manulife. It is but just, it is but right, that the Court, interpret the relationship between Tongko and Manulife as one of employment under labor laws and to uphold his constitutionally protected rights as an employee, to security of tenure and an entitlement to monetary award should such right is infringed. And this constitutionally-guaranteed right cannot be diminished, let alone undermined, by a mere contract, or however the parties choose to call their true working relationship.[14] Neither, to stress, may the employer-employee relationship, if one exists, be subverted by the manner and form of remuneration or earnings being paid or received,[15] *i.e.,* fixed or on commission basis, or the method of calculating the same.

The controversy in this case arose from the fact that, initially, Tongko executed a Career Agent's Agreement whereby he became an agent of Manulife. As such agent, Manulife did not control the means and methods for accomplishing his assigned objective of canvassing life insurance applications. It is, therefore submitted that when he was exclusively an agent of Manulife, he was not the latter's employee.

The evidence, however, will reveal that he was later on promoted to the positions of unit, branch and regional manager. The evidence will also show that he, similar to his colleagues, was assigned other duties and responsibilities aside from those enumerated under the Agreement.

And there lies the crux of the problem. There is now an ambiguity as to the true relationship between Manulife and Tongko. Moreover, it is now unclear as to what law, labor laws, corporation code, insurance code or civil code, should be applied to the two parties.

Jurisprudence teaches that, given the doubt as to the applicable law in the instant case, labor law shall govern.

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[14] *Traders Royal Bank v. National Labor Relations Commission*, G.R. No. 127864, December 22, 1999, 321 SCRA 467.

[15] *Lazaro v. Social Security Commission*, G.R. No. 138254, July 30, 2004, 435 SCRA 472.

The Constitution acknowledges the reality that capital and labor often do not deal on equal grounds, requiring the state to protect labor from abuse. To level the playing field, the framers of the Constitution incorporated two (2) provisions therein to safeguard the employee's right to security of tenure and enhance protection to employees' rights and welfare:

ARTICLE II
DECLARATION OF PRINCIPLES
AND STATE POLICIES PRINCIPLES

STATE POLICIES

Section 18. The State affirms labor as a primary social economic force. **It shall protect the rights of workers and promote their welfare.**

ARTICLE XIII
SOCIAL JUSTICE AND HUMAN RIGHTS

LABOR

Section 3. **The State shall afford full protection to labor**, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure, humane conditions of work, and a living wage.** They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. (Emphasis supplied.)

In the Civil Code, it is provided in Articles 1700 and 1702 thereof that:

Art. 1700. The relations between capital and labor are not merely contractual. **They are so impressed with public interest that labor contracts must yield to the common good.** Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

Article 1702. In case of doubt, all labor legislation and **all labor contracts shall be construed in favor of the safety and decent living for the laborer.** (Emphasis supplied.)

Verily, the mandate of this Court is to ensure that the provisions of the Constitution are carried out. The Court has the responsibility to ensure that the rights of labor, as guaranteed by the Constitution, are actually enjoyed by the workers. Thus, in several cases, the Court has repeatedly resolved doubts as to the relationship between parties as that of employment, that which is most favorable to labor.

The Court, in a slew of cases, has consistently ruled that when there is doubt as to the law to be applied in a case with an allegation of an employer-employee relationship, labor laws and jurisprudence shall apply. Consider:

1. In *Social Security System v. Court of Appeals*,[16] the Court was faced with the conflicting claims of the workers and the proprietor on the issue of whether an employer-employee relationship exists. Romeo Carreon and Quality Tobacco Corporation (QTC) entered into an agreement whereby Carreon would allegedly purchase and sell QTC's products. Carreon claims that he was an employee of QTC while QTC claims that Carreon is an independent contractor. In the agreement, Carreon was referred to as a vendee of QTC's products. Their relationship would therefore be covered by the Civil Code provisions on sales.[17] However, in view of the complaint of Carreon praying for SSS benefits on the claim that he is an employee of QTC, there arose the question as to which law should apply––the Civil Code or the Labor Code and jurisprudence. The Court applied the jurisprudence in labor cases and used the four-fold test to determine the existence of an employer-employee relationship. The Court stated:

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[16] No. L-46058, December 14, 1987, 156 SCRA 383, 388-389.

[17] Arts. 1458-1637.

The issue raised by the petitioner before this Court is the very same issue resolved by the Court of Appeals-that is, whether or not Romeo Carreon is an employee or an independent contractor under the contract aforequoted. Corollary thereto the question as to whether or not the Mafinco case is applicable to this case was raised by the parties.

The Court took cognizance of the fact that the question of whether or not an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen with the aid of lawyers have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.

For this reason, in order to put the issue at rest, this Court has laid down in a formidable line of decisions the elements to be generally considered in determining the existence of an employer-employee relationship, as follows: a) selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the employer's power to control the employee with respect to the means and method by-which the work is to be accomplished. The last which is the so-called "control test" is the most important element (*Brotherhood Labor Unity Movement of the Phils. vs. Zamora,* 147 SCRA 49 [1987]; *Dy Ke Beng vs. International Labor and Marine Union of the Phil*., 90 SCRA 162 [1979]; *Mafinco Trading Corp. vs. Ople*, 70 SCRA 141 [1976]; *Social Security System vs. Court of Appeals*, 37 SCRA 579 [1971]).

Applying the control test, that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and method by which the same is to be accomplished, the question of whether or not there is an employer-employee relationship for purposes of the Social Security Act has been settled in this jurisdiction in the case of *Investment Planning Corp. vs. SSS*, 21 SCRA 924 (1967). In other words, where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his effort, the relationship of employer-employee does not exist. (*SSS vs. Court of Appeals*, 30 SCRA 210 [1969]). (Emphasis supplied.)

2. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*,[18] Cosmopolitan Funeral Homes, Inc. engaged the services of Noli Maalat as a "supervisor" to handle the solicitation of mortuary arrangements, sales and collections. Maalat was dimissed after having committed violations of the company's policies. He filed a complaint for illegal dismissal and nonpayment of commissions. Cosmopolitan argues that there is no employer-employee relationship between it and Maalat, the latter being an independent contractor. The Court ruled that:

> **In determining whether a person who performs work for another is the latter's employee or an independent contractor, the prevailing test is the "right of control" test.** Under this test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end.

The Court did not consider the provisions of the Civil Code on a Contract for a Piece of Work[19] in determining the relationship between the parties. Instead, it used the labor law concept, the control test, to determine such relationship.

3. The Court in *Algon Engineering Construction Corporation v. National Labor Relations Commission*[20] did not consider the Civil Code provisions on lease when it ruled upon the existence of an employer-employee relationship. In that case, from March 1, 1983 to May 10, 1985, Algon was in the process of completing the Lucena Talacogon Project in Del Monte, Talacogon, Agusan del Sur. Jose Espinosa's house is located near that project site. Thus, throughout that same period of time, Espinosa allowed petitioner Algon to use his house and the grounds adjacent thereto as a parking and storage place for the latter's heavy equipment. However, Espinosa also claims in addition thereto that there existed an employment

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[18] G.R. No. 86693, July 2, 1990, 187 SCRA 108, 112-113.

[19] Arts. 1713-1720.

[20] G.R. No. 83402, October 6, 1997, 280 SCRA 188, 197-198.

contract between himself and petitioner Algon which, he insisted, hired him as a watchman to guard the heavy equipment parked in other leased house spaces in Libtong, Talacogon, Agusan del Sur. The Court ruled therein that:

> No particular evidence is required to prove the existence of an employer-employee relationship. All that is necessary is to show that the employer is capable of exercising control over the employee. In labor disputes, it suffices that there be a casual connection between the claim asserted and the employer-employee relations.
>
> The elements of an employer-employee relationship are: (1) selection and engagement of the employee; (2) payment of wages; (3) power of dismissal; and (4) employer's own power to control employee's conduct. **Control of the employee's conduct is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.** In the case at bar, there is no doubt that petitioner exercises control over Espinosa's conduct, as shown by the fact that, rather than address the loss of batteries as a breach of the purported contract of lease, the memorandum instead emphasized the company rules and regulations and the fact that Espinosa was "on duty" at the time of the said loss. Moreover, the petitioner's act of transferring Espinosa to the day shift clearly shows its treatment of Espinosa as an employee, and not as a landlord. Thus, an employer-employee relationship exists where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such an end. (Emphasis supplied.)

4. Even when faced with the contention that the relationship between two parties was in the nature of a lawyer-client relationship, the Court, in *Equitable Banking Corporation v. National Labor Relations Commission*,[21] still employed the control test, a strictly labor law concept, to determine the existence of an employer-employee relationship. There, Ricardo L. Sadac was engaged in 1981 as Equitable's Vice-President for the legal department and as its General Counsel. In 1989, nine (9) lawyers of the legal department issued a letter-petition

[21] G.R. No. 102467, June 13, 1997, 273 SCRA 352, 371.

to the chairperson of the board of the bank accusing private respondent of abusive conduct, inefficiency, mismanagement, ineffectiveness and indecisiveness. Later, the lawyers threatened to resign en masse if Sadac was not relieved as the head of the legal department. After a formal investigation of the charges, Sadac was advised that he would be substituted as the bank's legal counsel. Sadac charged the bank with illegal dismissal. The bank in turn denied the existence of an employer-employee relationship between it and Sadac. The Court stated in its Decision that:

> **In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal, and (4) the power to control the employee's conduct, with the control test generally assuming primacy in the overall consideration.** The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential, in other words, for the employer to actually supervise the performance of duties of the employee; it is enough that the former has the right to wield the power. (Emphasis supplied.)

5. In *Lazaro v. Social Security Commission*,[22] Rosalina M. Laudato was a sales supervisor of Royal Star Marketing, the proprietor of which was Angelito L. Lazaro. Laudato claimed that the company failed to report her and remit her contributions as an employee, to the Social Security System (SSS). Denying that Laudato was a sales supervisor of Royal Star Marketing, Lazaro claimed that the former was only a sales agent earning on a commission basis. He added that Laudato did not maintain definite hours of work and therefore could not be considered as an employee of Royal Star Marketing. The Court, in determining the true relationship of the parties, did not apply the provisions of the Civil Code on agency. Rather, the labor law concept of the control test was applied to determine the relationship of the parties. The Court ruled therein that:

> Lazaro's arguments may be dispensed with by applying precedents. Suffice it to say, the fact that Laudato was paid by way of commission

[22] G.R. No. 138254, July 30, 2004, 435 SCRA 472, 476-477.

does not preclude the establishment of an employer-employee relationship. **In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, whether the "employer" controls or has reserved the right to control the "employee" not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished.**

Neither does it follow that a person who does not observe normal hours of work cannot be deemed an employee. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*, the employer similarly denied the existence of an employer-employee relationship, as the claimant according to it, was a "supervisor on commission basis" who did not observe normal hours of work. This Court declared that there was an employer-employee relationship, noting that "[the] supervisor, although compensated on commission basis, [is] exempt from the observance of normal hours of work for his compensation is measured by the number of sales he makes."

It should also be emphasized that the SSC, also as upheld by the Court of Appeals, found that Laudato was a sales supervisor and not a mere agent. As such, Laudato oversaw and supervised the sales agents of the company, and thus was subject to the control of management as to how she implements its policies and its end results. x x x (Emphasis supplied.)

6. While in *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division)*,[23] the Court declared the workers as employees of Dealco farms and not independent contractors. There, Albert Caban and Chiquito Bastida were hired by Dealco as escorts or "comboys" for the transit of live cattle from General Santos City to Manila in 1993. Sometime 1999, Caban and Bastida were summarily replaced. Thus, they filed a case for illegal dismissal. Dealco claimed that Caban and Bastida were in fact independent contractors hired by the buyers of the cattle who arranged for the transport thereof to

[23] G.R. No. 153192, January 30, 2009, 577 SCRA 280, 292-293, 295-296.

Manila. The Court again did not take into consideration provisions of the Civil Code on Contracts for a Piece of Work and instead used the four-fold test to determine the true nature of the parties' relationship. The Court ruled:

> Regrettably, upon an evaluation of the merits of the petition, we do not find cause to disturb the findings of the Labor Arbiter, affirmed by the NLRC, which are supported by substantial evidence.
>
> The well-entrenched rule is that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. Section 5, Rule 133 defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."
>
> Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. We may take cognizance of and resolve factual issues only when the findings of fact and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA.
>
> In the case at bench, both the Labor Arbiter and the NLRC were one in their conclusion that respondents were not independent contractors, but employees of petitioner. **In determining the existence of an employer-employee relationship between the parties, both the Labor Arbiter and the NLRC examined and weighed the circumstances against the four-fold test which has the following elements: (1) the power to hire, (2) the payment of wages, (3) the power to dismiss, and (4) the power to control the employees' conduct, or the so-called "control test."** Of the four, the power of control is the most important element. More importantly, the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof.
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> x x x x x x x x x
>
> We reject petitioner's self-serving contention. Having failed to substantiate its allegation on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that doubts reasonably arising from the evidence should be resolved in the former's favor. The policy is reflected in no less than the Constitution, Labor Code and Civil Code. (Emphasis supplied.)

7. Similarly, in *South Davao Development Company, Inc. v. Gamo*,[24] the Court refused to apply the provisions of the Civil Code on Contract for a Piece of Work to a copra maker contractor and instead used the control test to determine the worker's relationship with the company. South Davao Development Company was the operator of a coconut and mango farm in San Isidro, Davao Oriental and Inawayan/Baracatan, Davao del Sur. Sometime in August 1963, the company hired respondent Sergio L. Gamo (Gamo) as a foreman. Sometime in 1987, Gamo was appointed as a copra maker contractor. Ernesto Belleza, Carlos Rojas, Maximo Malinao were all employees in petitioner's coconut farm, while respondents Felix Terona, Virgilio Cosep, Maximo Tolda, and Nelson Bagaan were assigned to petitioner's mango farm. All of the abovenamed respondents (copra workers) were later transferred by petitioner to Gamo as the latter's copraceros. The Court ruled in that case that the workers must be considered as employees of the company as the latter exercised control over the workers as evidenced by its power to transfer the copra workers as its employees to that of Gamo:

> **In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme.** Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme. (Emphasis supplied.)

8. While in *Abante v. Lamadrid Bearing & Parts Corp.*,[25] despite the allegation that the worker was a commission salesman, the Court still used the four-fold test to determine the existence of an employer-employee relationship. The worker, Empermaco

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[24] G.R. No. 171814, May 8, 2009, 587 SCRA 524, 534.

[25] G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

B. Abante, Jr., was employed by respondent company Lamadrid Bearing and Parts Corporation sometime in June 1985 as a salesman earning a commission of 3% of the total paid-up sales covering the whole area of Mindanao. Sometime in 2001, Abante was informed by his customers that Lamadrid had issued a letter informing them that Abante was no longer their salesman. Thereafter, Abante filed a case against Lamadrid for illegal dismissal. Lamadrid, for its part, argued that Abante was not its employee but rather a freelance salesman on commission basis. The Court ruled therein:

> We are called upon to resolve the issue of whether or not petitioner, as a commission salesman, is an employee of respondent corporation. **To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control.** Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied.)

Verily, based on the above-mentioned sample of numerous cases, the Court has invariably applied labor laws and doctrines, particularly the four-fold and control test, over Civil Code provisions, to determine the relationship of parties where an employer-employee relationship is alleged, without regard to the industry or otherwise alleged relationship of the parties. The Court cannot now deviate from established precedents. The four-fold test must be used to determine whether Tongko was an employee of Manulife or not, and not the Insurance Code or Civil Code as claimed by Manulife.

Using the Four-Fold Test, Manulife exercised control over Tongko

As a matter of long and settled jurisprudence, the following are the elements, constituting the four-fold test, usually considered in determining the existence of an employer-employee relationship: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct, with the "control test" being the most crucial[26] or generally assuming primacy in the overall consideration.[27]

In *Meteoro v. Creative Creatures, Inc.*,[28] the Court stated that in the determination of the existence of an employer-employee relationship, any competent and relevant evidence may be considered, to wit:

> To resolve the issue raised by respondent, that is, the existence of an employer-employee relationship, there is need to examine evidentiary matters. The following elements constitute the reliable yardstick to determine such relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. **There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted.** Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status. These pieces of evidence are readily available, as they are in the possession of either the employee or the employer; and they may easily be looked into by the labor inspector (in the course of inspection) when confronted with the question of the existence or absence of an employer-employee relationship.

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[26] *Id.*

[27] *Traders Royal Bank v. NLRC*, *supra* note 14.

[28] G.R. No. 171275, July 13, 2009, 592 SCRA 481, 492-493.

Some businessmen, however, try to avoid an employer-employee relationship from arising in their enterprises, because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, termination pay, and unionism. **Thus, in addition to the above-mentioned documents, other pieces of evidence are considered in ascertaining the true nature of the parties' relationship. This is especially true in determining the element of "control."** The most important index of an employer-employee relationship is the so-called "control test," that is, whether the employer controls or has reserved the right to control the employee, not only as to the result of the work to be done, but also as to the means and methods by which the same is to be accomplished. (Emphasis supplied.)

The NLRC, taking stock of the affidavits of petitioner's fellow insurance managers therein detailing their duties, had concluded that petitioner was an employee of Manulife. Indeed, the duties, responsibilities and undertakings of these insurance managers are strikingly similar to those of Ernesto and Rodrigo Ruiz, as set forth in the Decision in *Great Pacific Life Assurance Corporation v. NLRC*.[29] There, the Court decreed that the brothers Ruiz were employees of Grepalife. The reasons behind the declaration need no belaboring. Suffice it to state that *vis-à-vis* the Ruizes in *Grepalife*, Manulife had control of the means and methods employed by the petitioner in the performance of his work as a manager of Manulife. Following the *stare decisis* rule, there seems to be no rhyme or reason to withhold from herein petitioner the benefits accruing from an employer-employee relationship.

Thus, in the Court's November 7, 2008 Decision, finding that Tongko was Manulife's employee, it was ruled that:

More importantly, Manulife's evidence establishes the fact that Tongko was tasked to perform administrative duties that establishes his employment with Manulife.

In its Comment (Re: Petition for Review dated 15 April 2005) dated August 5, 2005, Manulife attached affidavits of its agents purportedly

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[29] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

to support its claim that Tongko, as a Regional Sales Manager, did not perform any administrative functions. An examination of these affidavits would, however, prove the opposite.

In an Affidavit dated April 28, 2003, John D. Chua, a Regional Sales Manager of Manulife, stated:

> 4. On September 1, 1996, my services were engaged by Manulife as an Agency Regional Sales Manager (RSM) for Metro South Region pursuant to an Agency Contract. As such RSM, I have the following functions:
>
> 1. Refer and recommend prospective agents to Manulife
> 2. **Coach agents to become productive**
> 3. **Regularly meet with, and coordinate activities of agents affiliated to my region**.

While Amada Toledo, a Branch Manager of Manulife, stated in her Affidavit dated April 29, 2003 that:

> 3. In January 1997, I was assigned as a Branch Manager (BM) of Manulife for the Metro North Sector;
>
> 4. As such BM, I render the following services:
>
> a. Refer and recommend prospective agents to Manulife;
> **b. Train and coordinate activities of other commission agents;**
> **c. Coordinate activities of Agency Managers who, in turn, train and coordinate activities of other commission agents**;
> d. Achieve agreed production objectives in terms of Net Annualized Commissions and Case Count and recruitment goals; and
> e. Sell the various products of Manulife to my personal clients.

While Ma. Lourdes Samson, a Unit Manager of Manulife, stated in her Affidavit dated April 28, 2003 that:

> 3. In 1977, I was assigned as a Unit Manager (UM) of North Peaks Unit, North Star Branch, Metro North Region;
>
> 4. As such UM, I render the following services:
> a. To render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products and who will be part of my Unit;

b. To coordinate activities of the agents under my Unit in their daily, weekly and monthly selling activities, making sure that their respective sales targets are met;

c. To conduct periodic training sessions for my agents to further enhance their sales skills.

d. To assist my agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts.

e. To provide opportunities to motivate my agents to succeed like conducting promos to increase sales activities and encouraging them to be involved in company and industry activities.

f. To provide opportunities for professional growth to my agents by encouraging them to be a member of the LUCAP (Life Underwriters Association of the Philippines).

A comparison of the above functions and those contained in the Agreement with those cited in Great Pacific Life Assurance Corporation reveals a striking similarity that would more than support a similar finding as in that case. Thus, there was an employer-employee relationship between the parties. (Emphasis supplied.)

In comparison, in *Great Pacific Life Corporation v. NLRC* (*Grepalife*),[30] the Court stated:

Furthermore, it cannot be gainsaid that Grepalife had control over private respondents' performance as well as the result of their efforts. A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out. For instance, the District Manager must properly account, record and document the company's funds spot-check and **audit the work of the zone supervisors**, conserve the company's business in the district through 'reinstatements', **follow up the submission of weekly remittance reports of the debit agents and zone supervisors**, preserve company property in good condition, train understudies for the position of district manager, and maintain his quota of sales (the failure of which is a ground for termination). On the other hand, a zone supervisor must **direct and supervise the sales activities of the debit agents under him**, conserve company property through "reinstatements,"

[30] *Id.* at 698-699.

undertake and discharge the functions of absentee debit agents, **spot-check the records of debit agents, and insure proper documentation of sales and collections by the debit agents**. (Emphasis supplied.)

A close scrutiny of the duties and responsibilities of the Manulife managers with those of the Ruizes would show a striking similarity that cannot be denied. More so, taking the aggregate of the evidence presented in this case, a just and objective mind cannot but conclude that, as in *Grepalife*, the Manulife managers are also employees of Manulife.

In *Equitable Banking Corporation*,[31] the Court ruled:

The NLRC, in the instant case, based its finding that there existed an employer-employee relationship between petitioner bank and private respondent on these factual settings:

> "It was complainant's understanding with respondent Morales that he would be appointed and assigned to the Legal Department as vice President with the same salary, privileges and benefits granted by the respondent bank to its ranking senior officers. He was not hired as lawyer on a retainership basis but as an officer of the bank.
>
> "Thus, the complainant was given an appointment as Vice President, Legal Department, effective August 1, 1981, with a monthly salary of ₱8,000.00, monthly allowance of ₱4,500.00, and the usual two months Christmas bonus based on basic salary likewise enjoyed by the other officers of the bank.
>
> "Then, as part of the ongoing organization of the Legal Department, the position of General Counsel of the bank was created and extended to the complainant. In addition to his duties as Vice President of the bank, the complainant's duties and responsibilities were so defined as to prove that he was a bank officer working under the supervision of the President and the Board of Directors of the respondent bank.
>
> "In his more than eight years employment with the respondent bank, the complainant was given the usual payslips to evidence his monthly gross compensation. The respondent bank, as

[31] *Supra* note 21, at 331-334.

employer, withheld taxes due to the Bureau of Internal Revenue from the complainant's salary as employee. Moreover, the bank enrolled the complainant as its employee under the Social Security System and Medicare programs. The complainant contributed to the bank Employees' Provident Fund.

"When the respondent bank changed its payroll accounting system in September 1988 by appointing SGV & Co. to handle it and Far East Bank & Trust Company to pay the salaries and other benefits of Equitable Banking Corporation officers, the complainant was included as one of corporate officers. Specifically, that there were eleven Far East Bank and Trust Company credit memos starting October 13, 1988 up to September 13, 1989 received by the complainant from FBTC crediting his salary and Christmas bonus to his account with FBTC per instruction of the respondent bank.

"In as much as the complainant and the lawyers in the Legal Department were receiving salaries and other benefits as other bank officers and employees, the attorney's fees, documentary and notarial fees earned in the exercise of their profession as in-house lawyers were not given to or even shared with them, instead all were credited to the income of the bank. In 1987 and 1988, the complainant and his subordinate lawyers were able to generate by way of attorney's fees, documentary and notarial fees a total income of ₱973,028.00 for the bank('s) benefit. In turn, the respondent bank shouldered the professional tax and Integrated Bar of the Philippines dues of the complainant and his subordinate lawyers. **Further proofs that there existed employer-employee relationship between the respondent bank and the complainant are the following, to wit:**

> **"(1) Complainant's monthly attendance, like those of other bank officers, was recorded by the Chief Security Officer and reported to the Office of the President with copy of the report furnished to the bank Personnel and HRD Department.**
>
> **"(2) Complainant was authorized by the President to sign for and in behalf of the bank contracts covering legal services of lawyers to be retained by the respondent bank for its branches on periodical retainership basis.**

> **"(3) Complainant participated as part of management in annual Management Planning Conferences which started in 1986 on objective-setting and long-range planning in response to the requirement of the rapidly changing environment.**
>
> **"(4) Respondent bank extended to complainant the benefit (of) a car plan like any other qualified senior officer of the bank.**
>
> **"(5) Respondent bank since 1982 continuously reported and included the complainant as one of its senior officers in its statements of financial condition holding the position of Vice President. These bank statements have been distributed and circularized to the public, including bank clients and government entities.**
>
> **"(6) Complainant, like other bank officers, prepared his biographical data for submission to the Central Bank after his assumption of duties in 1981. Thereafter, and pursuant to the regulations of the Central Bank, he has been required to update annually his biographical data."**

It would virtually be foolhardy to so challenge the NLRC as having committed grave abuse of discretion in coming up with its above findings. Just to the contrary, NLRC appears to have been rather exhaustive in its examination of this particular question (existence or absence of an employer-employee relationship between the parties). Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies, connotes merely that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion. (Emphasis supplied.)

Here, by virtue of designating Tongko initially as a Unit Manager and later on as a Regional Manager, Manulife must be deemed as having considered Tongko as an officer of the company. Furthermore, Tongko has been involved in Manulife's manpower development programs. Thus, just as in *Equitable Banking Corporation*, Tongko must be considered as an employee of Manulife.

While in *Aboitiz Haulers, Inc. v. Dimapatoi*,[32] Dimapatoi and several other individuals worked as checkers in Mega Warehouse, which Aboitiz Haulers, Inc. owned. Aboitiz claimed that the complaining workers are not its employees, but rather, of Grigio Security Agency and General Services (Grigio), a manpower agency that supplies security guards, checkers and stuffers. It allegedly entered into a Written Contract of Service with Grigio in 1994. The workers' services were terminated by Aboitiz on the pretext that its contract with Grigio had already expired. In this case, the Court found that Aboitiz was the employer of the workers exercising control over them:

Petitioner's allegation that Grigio retained control over the respondents by providing supervisors to monitor the performance of the respondents cannot be given much weight. **Instead of exercising their own discretion or referring the matter to the officers of Grigio, Grigio's supervisors were obligated to refer to petitioner's supervisors any discrepancy in the performance of the respondents with their specified duties.** The Written Contract of Services provided that:

> 5.c. That the GRIGIO personnel, particularly the supervisors, shall perform the following:
>
> The Supervisor for the warehouse operation shall monitor the performance and productivity of all the checkers, jacklifters, stuffers/strippers, forklift operators, drivers, and helpers. He shall coordinate with AHI's supervisors regarding the operations at the Warehouse to ensure safety at the place of work.
>
> He shall see to it that the cargoes are not overlanded, shortlanded, delivered at a wrong destination, or misdelivered to consignee's port of destination. Any discrepancy shall be reported immediately to AHI's Logistic Manager, Mr. Andy Valeroso.

The control exercised by petitioner's supervisors over the performance of respondents was to such extent that petitioner's Warehouse Supervisor, Roger Borromeo, confidently gave an evaluation of the performance of respondent Monaorai Dimapatoi, who likewise felt obliged to obtain such Certification from Borromeo.

Petitioner's control over the respondents is evident. And it is this right to control the employee, not only as to the result of the

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[32] G.R. No. 148619, September 19, 2006, 502 SCRA 271, 288-289.

work to be done, but also as to the means and methods by which the same is to be accomplished, that constitutes the most important index of the existence of the employer-employee relationship. (Emphasis supplied.)

With this case, it becomes apparent that supervision and monitoring are sufficient to establish control that is evidence of an employer-employee relationship. Such control would, therefore, be even more evident in the instant case considering that Tongko himself was tasked to supervise and monitor the activities of Manulife agents. Moreover, it may be gleaned from the records of the case that Tongko reported to Manulife with regard to the performance of his agents. It was not, as if, Tongko was left alone to supervise, and perhaps, discipline such agents. Tongko must be deemed as an employee of Manulife.

In fact, in *Lazaro*,[33] the Court ruled that a Sales Supervisor was considered an employee as she "oversaw and supervised the sales agents of the company":

> Lazaro's arguments may be dispensed with by applying precedents. Suffice it to say, the fact that Laudato was paid by way of commission does not preclude the establishment of an employer-employee relationship. In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, whether the "employer" controls or has reserved the right to control the "employee" not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished.
>
> Neither does it follow that a person who does not observe normal hours of work cannot be deemed an employee. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*, the employer similarly denied the existence of an employer-employee relationship, as the claimant according to it, was a "supervisor on commission basis" who did not observe normal hours of work. This Court declared that there

[33] *Supra* note 22, at 476-478.

was an employer-employee relationship, noting that "[the] supervisor, although compensated on commission basis, [is] exempt from the observance of normal hours of work for his compensation is measured by the number of sales he makes."

It should also be emphasized that the SSC, also as upheld by the Court of Appeals, found that Laudato was a sales supervisor and not a mere agent. As such, Laudato oversaw and supervised the sales agents of the company, and thus was subject to the control of management as to how she implements its policies and its end results. x x x

The finding of the SSC that Laudato was an employee of Royal Star is supported by substantial evidence. The SSC examined the cash vouchers issued by Royal Star to Laudato, calling cards of Royal Star denominating Laudato as a "Sales Supervisor" of the company, and Certificates of Appreciation issued by Royal Star to Laudato in recognition of her unselfish and loyal efforts in promoting the company. On the other hand, Lazaro has failed to present any convincing contrary evidence, relying instead on his bare assertions. The Court of Appeals correctly ruled that petitioner has not sufficiently shown that the SSC's ruling was not supported by substantial evidence.

A piece of documentary evidence appreciated by the SSC is Memorandum dated 3 May 1980 of Teresita Lazaro, General Manager of Royal Star, directing that no commissions were to be given on all "main office" sales from walk-in customers and enjoining salesmen and sales supervisors to observe this new policy. The Memorandum evinces the fact that, contrary to Lazaro's claim, Royal Star exercised control over its sales supervisors or agents such as Laudato as to the means and methods through which these personnel performed their work. (Emphasis supplied.)

Tongko was held out as an officer of Manulife by Manulife itself, being tagged as its Manager. He was tasked to supervise the insurance agents of Manulife. Clearly, the *Lazaro* case must apply to Tongko and he must be considered an employee of Manulife.

Furthermore, the letter of De Dios itself also contained several indicia of control. To reiterate, it was stated in the letter that:

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we

have been discussing these past few weeks, *i.e.,* Manulife's goal to become a major agency-led distribution company in the Philippines. **While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.**

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

> 1. **You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated.** This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."
>
> You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.
>
> x x x x x x x x x
>
> 2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x
>
> **I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.** (Emphasis supplied.)

The goal of Manulife was to become an agency-driven insurance company. If Tongko were indeed not an employee of Manulife, the company would not set the means and methods to achieve such goal. As long as Tongko was able to recruit the set number of agents, there would be no reason for Manulife to terminate his services as an independent contractor. However, that is not the case here. It may be gleaned from the letter that De Dios is directing Tongko to clamor more actively his peers and his agents to recruit other agents. It was not sufficient that Tongko,

by himself, recruit agents. This directive certainly shows that Manulife sought to prescribe the means and methods to achieve its goal.

De Dios further ordered Tongko to hire at his expense an assistant on whom he "can unload you of much of the routine tasks which can be easily delegated." There is no other way to classify this order but as an intrusion into the means and methods of achieving the company's goals.

In the letter, Tongko was also informed that his area of responsibility was going to be reduced. In *Megascope General Services v. National Labor Relations Commission*,[34] between February 15, 1977 and January 1, 1989, petitioner contracted the services of several individuals as gardeners, helpers and maintenance workers. These workers were deployed at the National Power Corporation in Bagac, Bataan. Except for Gener J. del Rosario whose employment ended on April 30, 1989, the work of the other workers ceased on January 31, 1991. Consequently, private respondents filed a complaint for illegal dismissal, underpayment of salaries, nonpayment of five-day service incentive leave credits and holiday pay against petitioner with the NLRC. The Court ruled therein that the company exercised control over the workers that would establish an employer-employee relationship when it reassigned the workers from one workplace to another:

> Private respondents were selected and hired by petitioner which assigned them to the NPC housing village in Bagac and in Km. 168, Morong, Bataan. They drew their salaries from petitioner which eventually dismissed them. Petitioner's control over private respondents was manifest in its power to assign and pull them out of clients at its own discretion. Power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee. It is enough that the former has the right to wield the power.

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[34] G.R. No. 109224, June 19, 1997, 274 SCRA 146, 154.

In *South Davao Development Company, Inc.*,[35] the Court ruled that the workers must be considered as employees of the company as the latter exercised control over the means and methods employed by the workers to achieve their objective, as evidenced by its power to transfer the copra workers as its employees to that of Gamo:

In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme.

Similarly, in the instant case, by limiting the area of responsibility of Tongko, this is akin to a transfer or reassignment, an exercise of control by Manulife over Tongko that must necessarily determine the existence of an employer-employee relationship.

On the same issue, Justice Carpio Morales added in her Dissenting Opinion to the June 29, 2010 Resolution that:

More significantly, in the succeeding Insular Life case, the Court found the following indicators material in finding the presence of control in cases involving insurance managers:

> Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner. x x x

[35] *Supra* note 24, at 534.

The *ponencia* concludes that "[a]ll these are obviously absent" in petitioner's case. The facts show otherwise, however. On top of the exclusive service rendered to respondent, which *AFP Mutual Benefit Association, Inc. v. NLRC* instructs to be not controlling, other factors were present. Petitioner established no agency of his own as the Metro North Region to which he was assigned remained intact even after his ties with respondent were severed. Respondent provided and furnished company facilities, equipments and materials for petitioner at respondent's Makati office. Respondent's control of assignments was evident from its act of removing the North Star Branch from petitioner's scope of the Metro North Region, on which a "memo to spell this matter out in greater detail" was advised to be issued shortly thereafter. Respondent reserved to impose other improvements in the region after manifesting its intention to closely follow the region. Respondent's managers, like petitioner, could only refer and recommend to respondent prospective agents who would be part of their respective units. In other words, respondent had the last say on the composition and structure of the sales unit or region of petitioner. Respondent, in fact, even devised the deployment of an Agency Development Officer in the region to "contribute towards the manpower development work x x x as part of our agency growth campaign."

Such an arrangement leads to no other conclusion than that respondent exercised the type of control of an employer, thereby wiping away the perception that petitioner was only a "lead agent" as viewed by the ponencia. Even respondent sees otherwise when it rebuked petitioner that "[y]ou (petitioner) may have excelled in the past as an agent but, to this date, you still carry the mindset of a senior agent." Insofar as his management functions were concerned, petitioner was no longer considered a senior agent.

Furthermore, while this Court has already ruled that Article 280 of the Labor Code may not be used to prove the existence of an employer-employee relationship when the same is denied,[36] the fact that the work of the alleged independent contractor is usually necessary or desirable in the usual business or trade of

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[36] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406.

the employer would establish a management structure that would mean that Tongko was Manulife's employee.

Such element of control, however, was only present in the administrative duties imposed upon Tongko when he was a manager of Manulife. The Agreement, as well as the other evidence presented, does not show the control necessary to establish an employer-employee relationship while Tongko was just an agent of Manulife. Hence, it is emphasized that it was only upon the imposition of such administrative duties that Tongko was an employee of Manulife and only the consequent change in his remunerations should be considered as his salary. This would consist of his persistency income and management overrides only and not his commissions as an agent.

The majority would seem to suggest that the notion of "control" as understood in the Labor Code and as applied in labor relations cases differs from the concept of "control" that governs the relationship between an insurance company and its agents. In *Grepalife* and in the earlier *Insular life Assurance Co. Ltd. v. NLRC (4th Division)* (*Insular Life*),[37] it was distinctly noted that the Court did not posit the dichotomy presently parlayed by the majority. Consider the following excerpts from *Insular Life*:

> Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner.

Similarly, Justice Carpio Morales, in the same Dissenting Opinion, wrote:

> The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but <u>it does not bar the</u>

[37] G.R. No. 119930, March 12, 1998, 287 SCRA 476, 489.

application of the Labor Code with regard to labor standards and labor relations.

It bears pointing out that Tongko cannot be considered as an independent contractor of Manulife. There is no evidence to establish such a scenario. In *Television and Production Exponents, Inc. v. Servaña*,[38] the Court enumerates the requirements for a worker to be considered an independent contractor:

> Aside from possessing substantial capital or investment, a legitimate job contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. TAPE failed to establish that respondent is an independent contractor. As found by the Court of Appeals:
>
> > We find the annexes submitted by the private respondents insufficient to prove that herein petitioner is indeed an independent contractor. None of the above conditions exist in the case at bar. Private respondents failed to show that petitioner has substantial capital or investment to be qualified as an independent contractor. They likewise failed to present a written contract which specifies the performance of a specified piece of work, the nature and extent of the work and the term and duration of the relationship between herein petitioner and private respondent TAPE.

Here, the records are bereft of any evidence to establish that Tongko had substantial capital or investment to be qualified as an independent contractor.

Tongko being allowed the privilege to canvass insurance applications is not contrary to his employment status

The majority described petitioner as a lead insurance agent, at best, the change in his designation—from unit manager to branch manager and then to regional sales manager—being

[38] G.R. No. 167648, January 28, 2008, 542 SCRA 578, 588.

merely reflective of the increase in the number of agents under his guidance as well as the increase in the area of operation. Tongko, so the majority suggests, never rose to the level of Manulife's employee, as he did not even present copies of his managerial appointment to prove the fact that his agency relationship changed in the sense that Manulife controlled the means and methods of his work. The majority posits that even though the other managers of Manulife admitted to having duties and responsibilities other than those contained in a Career Agents Agreement, Tongko could not have been anything other than an agent.

With due respect, I beg to disagree with this posture.

It may be stated, as a general proposition, that an insurance agent—who usually sells insurance at his convenience following his own selling methods and who, for the most part, is governed by a set of rules[39] the company promulgates to guide its commission agents in selling its policies that they may not run afoul of the law—is not an employee. But as explained for reasons stated in my Dissent to the June 29, 2010 Resolution, Manulife, **upon the petitioner's appointment as manager**, exercised effective control not only over the results of his work, but also over the means and methods by which it is to be accomplished. For sure, petitioner, while acting as Manulife's unit or branch manager, was allowed to sell insurance policies. And there is nothing absurd, let alone novel about an employee of an insurance company being given the privilege to solicit insurance.

In two (2) cases, the Court has already ruled that an individual may be an employee of an insurance agency while concurrently being allowed to sell insurance policies for the same company. In the *Insular Life* case,[40] Insular Assurance Co., Ltd. (Insular) entered into an agency contract with Pantaleon de los Reyes authorizing the latter to solicit within the Philippines applications

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[39] Usually the Codes of Conduct.

[40] *Supra* note 7, at 481.

for life insurance and annuities for which he would be paid compensation in the form of commissions. Later, on March 1, 1993, the same parties entered into another contract where de los Reyes was appointed as Acting Unit Manager. The duties and responsibilities of de los Reyes included the recruitment, training, organization and development within his designated territory of a sufficient number of qualified, competent and trustworthy underwriters, and to supervise and coordinate the sales efforts of the underwriters in the active solicitation of new business and in the furtherance of the agency's assigned goals. We also stated that:

"**Aside from soliciting insurance**, De los Reyes was also expressly obliged to participate in the company's conservation program, *i.e.,* preservation and maintenance of existing insurance policies, and to accept moneys duly receipted on agent's receipts provided the same were turned over to the company. As long as he was unit manager in an acting capacity, De los Reyes was prohibited from working for other life insurance companies or with the government. He could not also accept a managerial or supervisory position in any firm doing business in the Philippines without the written consent of petitioner.

"**Private respondent worked concurrently as agent and Acting Unit Manager until he was notified by petitioner on 18 November 1993** that his services were terminated effective 18 December 1993. On 7 March 1994 he filed a complaint before the Labor Arbiter on the ground that he was illegally dismissed and that he was not paid his salaries and separation pay." (Emphasis supplied.)

The fact that de los Reyes concurrently acted as an agent, selling insurance for Insular, and as an acting Unit Manager, did not prevent the Court from ruling that de los Reyes was Insular's employee.

Similarly, in the *Grepalife* case,[41] the brothers Rodrigo and Ernesto Ruiz entered into agency agreements with Great Pacific Life Assurance Corporation (Grepalife) for the former to sell the latter's insurance policies. They started out as trainee agents

[41] *Supra* note 8, at 698.

and later promoted to Zone Supervisor and District Manager, respectively. Describing the brother's duties, the Court ruled:

> x x x [T]heir work at the time of their dismissal as zone supervisor and district manager are necessary and desirable to the usual business of the insurance company. They were entrusted with supervisory, **sales** and other functions to guard Grepalife's business interests and to bring in more clients to the company, and even with administrative functions to ensure that all collections, reports and data are faithfully brought to the company.

Upon the foregoing factual setting, the Court ruled that the brothers Ruiz are employees of Grepalife, the latter exercising control over the means and methods employed by them to reach their objective.

Clearly, the fact that an individual acts as an agent of an insurance company is irrelevant to the issue of whether the individual is an employee of the company. The Court has already recognized the reality that an employee of an insurance company may, at the same time, be an agent and allowed to act as such.

It may be, as asserted, that petitioner was unable to adduce in evidence copies of his management contracts specifying his overall duties and responsibilities as manager. But then, a management contract, for purposes of determining the relationship between the worker and the employer, is simply evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be clearly defined. Moreover, other evidence, like the letter of De Dios, may be considered to support the contention that he was an employee of Manulife and prove his duties and responsibilities as such.

It may not be remiss to point out that Tongko was dismissed from his employment with Manulife for his failure to recruit sufficient numbers of agents. As was explained in the November 7, 2008 Decision:

The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter dated November 6, 2001 to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

> The first step to transforming Manulife into a big league player has been very clear to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001, terminating Tongko's services, thus:

> It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O' Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Managements' avowed agency growth policy.
>
> xxx xxx xxx
>
> On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this notice of termination of your Agency Agreement with us effective fifteen days from the date of this letter.

And yet, the recruitment of agents is not among the duties and responsibilities that were designated to Tongko in the Agreement. And while there may not have been another contract to supersede the Agreement that was presented as evidence, the facts of the case bear out that Tongko was assigned various other duties and responsibilities that were not included therein.

Manulife's decision not to execute a management contract with petitioner was well within its prerogative. However, the bare fact of Manulife and petitioner not having executed a management contract, if this were the case, did not reduce the

petitioner to a mere "lead agent." While there was perhaps no written management contract whence petitioner's duties and undertaking as unit/branch manager may easily be fleshed out prefatory to determining if an employer-employee relationship with Manulife did exist, other evidence was adduced to show such duties and responsibilities. For one, in his letter[42] of November 6, 2001, respondent De Dios addressed petitioner as sales manager. And as I wrote in my Dissent to the June 29, 2010 Resolution, it is difficult to imagine that Manulife did not issue promotional appointments to petitioner as unit manager, branch manager, and eventually regional sales manager. Sound management practice simply requires an appointment for any upward personnel movement, particularly when additional functions and the corresponding increase in compensation are involved. Then, too, the adverted affidavits of the managers of Manulife as to the duties and responsibilities of a unit manager, such as petitioner, point to the conclusion that these managers were employees of Manulife, applying the "four-fold" test.

Any lingering doubt that petitioner was, by virtue of the management appointment, under Manulife's employ should be laid to rest by its virtual admission made in its Motion for Reconsideration dated December 3, 2008 that petitioner was dismissed for a just and lawful cause: gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders of Manulife, to wit:

> 5.4. And yet, until the November 7 Decision, Respondents never thought for one moment that Petitioner was Manulife's employee. All the agreements executed with him, his flexible hours, his unsupervised choice of clients and method of selling the products, his ability to take leave anytime, his separate business expenses, his own declarations in his tax return, Respondent Manulife's non-contribution of SSS premiums for him, his non-existence in the company plantilla, Respondent Manulife's withholding from him of creditable income tax, all consistently showed that Respondent Manulife's belief was singular in the existence of independent contractorship.

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[42] *Rollo*, p. 53.

x x x x x x x x x.

5.7. And yet, respondent Manulife did indeed substantially comply with the requirements for lawful dismissal of a regular employee, assuming *arguendo* that petitioner is one. He was dismissed for a just and lawful cause – for gross disobedience of the lawful orders of Respondent Manulife. Respondents presented an abundance of evidence demonstrating how termination happened only after failure to meet company goals, after all remedial efforts to correct the inefficiency of Petitioner failed and after Petitioner, as found by the CA, created dissension in Respondent Manulife when he refused to accept the need for improvement in his area and continued to spread the bile of discontent and rebellion that he had generated among the other agents.

Notably, in the termination letter of Manulife that was addressed to Tongko, no mention is made of any valid cause for the termination of his services. No mention was made of any particular rule that Tongko violated leading to his separation. Evidently, Tongko's termination of employment was without cause. In an apparent about face, Manulife now claims that it had a valid cause for the termination of Tongko's services.

While the Court allows the presentation of inconsistent defenses, Manulife's argumentation on this point would destroy its position that Tongko is not its employee. Manulife is essentially pointing out the facts that would show that it abided by the requirements of the Labor Code on the dismissal of an employee. Article 282, paragraphs (a) and (b), of the Labor Code requires the presence of valid grounds for the legal dismissal of an employee:

Article 282. Termination by employer. – An employer may terminate an employment for any of the following just causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

Stated differently, such requirements are only required of employers with regard to their employees. Manulife had no

reason to comply with this provision of law if it did not consider Tongko as an employee. Therefore, the question is begged as to why Manulife deemed it necessary to comply with such provision of law. There is an implied admission that Tongko was Manulife's employee.

The following excerpts appearing in my Dissent to the June 29, 2010 Resolution are self-explanatory:

> At this juncture, the Court notes that Manulife has changed its stance on the issue of illegal dismissal. In its *Position Paper with Motion to Dismiss* filed before the Labor Arbiter, in *its Motion for Reconsideration (Re: Decision dated 27 September 2004)* dated October 11, 2004 filed before the NLRC, and in its *Comment* dated August 5, 2006 filed before the Court, Manulife had consistently assumed the posture that the dismissal of petitioner was a proper exercise of termination proviso under the Career Agent's Agreement. In this motion, however, Manulife, in a virtual acknowledgment of petitioner being its employee, contends that the petitioner was "dismissed for a just and lawful cause – for gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders." Manulife adds that:
>
>> Respondents presented an abundance of evidence demonstrating how termination happened only after failure to meet company goals, after all remedial efforts to correct the inefficiency of Petitioner failed and after Petitioner, as found by the CA, created dissension in Respondent Manulife when he refused to accept the need for improvement in his area and continued to spread the bile of discontent and rebellion that he had generated among the other agents.

In all, I submit that petitioner's peculiar circumstances as unit manager, branch manager and ultimately regional sales manager of Manulife, with the exclusivity feature of his engagement and his duties as such manager, indicate, at the very least, a *prima facie* existence of an employer-employee relationship, following the control test. And given the bias of the Constitution,[43] Labor

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[43] Art. II, Section 8; and Art. XIII, Sec. 3.

Code[44] and Civil Code[45] in favor of labor, any doubt as to the existence of such relationship occasioned by the lack of evidence should be resolved in favor of petitioner and of employment. In this regard, I hark back anew to what the Court emphatically said in *Dealco Farms, Inc. v. National Labor Relations Commission*:

> Having failed to substantiate its allegations on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that doubts reasonably arising from the evidence should be resolved in the former's favor.[46]

As in *Dealco Farms*, the sympathies of the Court in this case should be easy and clear. The flip-flopping of the lower tribunals and the change in the Court's own stand lucidly show the ambiguity and doubt in the application of the labor laws to the instant case. As such, the Court is duty-bound to resolve such doubts in favor of the employee, Tongko.

Tongko was illegally dismissed

Having established that Tongko was indeed an employee of Manulife when he was a manager thereof, the next question is whether the dismissal was illegal.

This must be answered in the affirmative.

In the NLRC and the CA, Manulife alleged that Tongko was validly dismissed for gross and habitual neglect of duties, inefficiency, as well as willful disobedience of the lawful orders of Manulife. Evidently, such dismissal was due to Tongko's failure to recruit the required number of agents from his area of responsibility.

To reiterate, two (2) of the alleged grounds for the dismissal of Tongko fall under Art. 282, paragraphs (a) and (b) of the Labor Code:

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[44] Art. 4.

[45] Arts. 1700 and 1702.

[46] *Supra* note 23, at 295.

Article 282. Termination by employer. – An employer may terminate an employment for any of the following just causes:

(b) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(c) Gross and habitual neglect by the employee of his duties;

On the other hand, inefficiency as a ground for termination of employment is equated with gross and habitual neglect, as the Court explained in *St. Luke's Medical Center, Incorporated v. Fadrigo*:[47]

Gross inefficiency is closely related to gross neglect, for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. As a just cause for an employee's dismissal, inefficiency or neglect of duty must not only be gross but also habitual. Thus, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. (Emphasis supplied.)

In cases of termination of employment for just causes, the Court has repeatedly held that the burden rests on the employer to justify such dismissal. Art. 277, paragraph (b) of the Labor Code states:

Article. 277. Miscellaneous provisions. — x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall

[47] G.R. No. 185933, November 25, 2009, 605 SCRA 728, 736.

be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. **The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.** The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (Emphasis supplied.)

Thus, the Court has ruled in *Caltex (Philippines), Inc. v. Agad*[48] that:

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.

The quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct and loss of trust and confidence must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

While in *Lima Land, Inc. v. Cuevas*,[49] the Court ruled:

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.

Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his

[48] G.R. No. 162017, April 23, 2010.

[49] G.R. No. 169523, June 16, 2010.

dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him. The first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.

The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.

Manulife has failed to overcome such burden. Willful disobedience, to justify termination from employment, must comply with the following requirements, as enunciated in *Areno v. SkyCable PCC-Baguio*,[50] to wit:

As a just cause for dismissal of an employee under Article 282 of the Labor Code, willful disobedience of the employer's lawful orders requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, *i.e.,* characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

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[50] G.R. No. 180302, February 5, 2010.

Neglect of duty, to be a valid ground for termination of employment must also conform to the following requirements, as stated in *Benjamin v. Amellar Corporation*:[51]

> It bears stressing in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross. It should also be habitual. There being nothing in the records to identify what specific duties Anabel violated and whether the violations were gross and habitual, any discussion herein is an exercise in futility.

Here, Manulife has failed to identify the rule and the standards by which Tongko's acts were considered unsatisfactory. There were no set criteria for determining the sufficiency of Tongko's recruitment efforts. Moreover, Tongko's acts were not proved to be willful or gross and habitual as defined by the above-cited jurisprudence. Absent proof establishing such factors, Manulife cannot be considered to have discharged the burden required to prove that the just cause for termination of employment was indeed present. In fact, at the time Tongko's services were terminated, his area was not the last in agent recruitment. As such, Tongko's dismissal smacks of arbitrariness.

Informal communications violate the principle of *sub judice*

On a final note, the Court received and set for agenda four (4) letters in relation to the instant case: (1) Letter of Tongko dated November 30, 2005;[52] (2) the aforementioned letter of the Joint Foreign Chambers of the Philippines dated December 16, 2008;[53] (3) Letter of Gregorio Mercado, President of the Philippine Life Insurance Association, Inc. dated January 12, 2009;[54] and (4) Letter of Tongko dated March 25, 2009,[55]

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[51] G.R. No. 183383, April 5, 2010.

[52] *Rollo*, p. 680.

[53] *Id.* at 834-836.

[54] *Id.* at 839-840.

[55] *Id.* at 860.

propounding their positions on the case. At that point in time, the case had not yet become final and executory, hence, *sub judice*. In *Romero v. Estrada*,[56] the Court expounded on this principle, to wit:

> The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*:
>
>> [I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The principle of *sub judice* is a two-way street. Inasmuch as the parties and other interested individuals should refrain from trying to influence the courts, the court itself should also be on guard against such attempts. The Court should, therefore, be wary from accepting and putting on record, papers and documents not officially filed with it. Such submissions have the appearance of influencing the Court despite the latter's determined objectivity and must be avoided. To illustrate, the November 7, 2008 Decision of this Court was decided in favor of Tongko with only one (1) dissent. However, in the July 29, 2010 Resolution, the original Decision was reversed in favor of Manulife by the Court *en banc*, with only two (2) dissents. The above-mentioned letters were received by the Court after November 7, 2008 but before July 29, 2010. While the letters themselves may not have actually swayed the members of the Court, the appearance of impropriety should be avoided. To reiterate, when the parties submitted the aforementioned letters, the case had not yet become final and executory, they had

[56] G.R. No. 174105, April 2, 2009, 583 SCRA 396, 403.

sufficient remedies under the Rules of Court for redress. There was no reason for the parties to have submitted such letters and for this Court to have taken cognizance thereof and to set the same for agenda.

To reiterate, the declaration that Tongko is an employee of Manulife, having performed administrative functions as its manager, cannot be applied to insurance agents in general. Any finding of an employer-employee relationship shall always be on a case-to-case basis. The instant case is no exception. Any fear that the grant of Tongko's motion for reconsideration shall render all insurance agents in the country as employees of insurance companies is badly misplaced.

WHEREFORE, I vote to grant Tongko's Motion for Reconsideration dated July 28, 2010, to annul and set aside the June 29, 2010, and to reinstate the November 7, 2008 Decision with modification on the amount of backwages to which Tongko shall be entitled. As thus modified and subject to the qualifications defined in the Dissenting Opinion to the June 29, 2010, petitioner should be awarded backwages, to be computed as the monthly average of his management overrides, as well as other bonuses and benefits, corresponding to the period he was serving Manulife as unit, branch and eventually regional sales manager.

EN BANC

[G.R. No. 192280. January 25, 2011]

SERGIO G. AMORA, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and ARNIELO S. OLANDRIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.— We find that the COMELEC ruling smacks of grave abuse of discretion, a capricious and whimsical exercise

of judgment equivalent to lack of jurisdiction. *Certiorari* lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; UPHOLDING A CLAIM THAT AN IMPROPERLY SWORN CERTIFICATE OF CANDIDACY IS EQUIVALENT TO POSSESSION OF A GROUND FOR DISQUALIFICATION, A CASE OF.— In this case, it was grave abuse of discretion to uphold Olandria's claim that an improperly sworn COC is equivalent to possession of a ground for disqualification. Not by any stretch of the imagination can we infer this as an additional ground for disqualification from the specific wording of the OEC in Section 68 x x x and of Section 40 of the LGC x x x. It is quite obvious that the Olandria petition is not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions. Nowhere therein does it specify that a defective notarization is a ground for the disqualification of a candidate. Yet, the COMELEC would uphold that petition upon the outlandish claim that it is a petition to disqualify a candidate "for lack of qualifications or possessing some grounds for disqualification."

3. POLITICAL LAW; ELECTION LAWS; PETITION FOR DISQUALIFICATION; DEFINED.— The proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner. The absurd interpretation of Olandria, respondent herein, is not controlling; the COMELEC should have dismissed his petition outright. A petition for disqualification relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the position of mayor. The distinction between a petition for disqualification and the formal requirement in Section 73 of the OEC that a COC be under oath is not simply a question of semantics as the statutes list the grounds for the disqualification of a candidate. Recently, we have had occasion to distinguish the various petitions for disqualification and clarify the grounds therefor as provided in the OEC and the LGC.

4. ID.; ID.; LAWS PRESCRIBING QUALIFICATIONS FOR AND DISQUALIFICATIONS FROM OFFICE ARE LIBERALLY CONSTRUED IN FAVOR OF ELIGIBILITY.— Apart from the qualifications provided for in the Constitution, the power to

prescribe additional qualifications for elective office and grounds for disqualification therefrom, consistent with the constitutional provisions, is vested in Congress. However, laws prescribing qualifications for and disqualifications from office are liberally construed in favor of eligibility since the privilege of holding an office is a valuable one. We cannot overemphasize the principle that where a candidate has received popular mandate, all possible doubts should be resolved in favor of the candidate's eligibility, for to rule otherwise is to defeat the will of the people.

5. **ID.; ID.; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; REQUIREMENT OF A SWORN CERTIFICATE OF CANDIDACY, COMPLIED WITH IN CASE AT BAR.—** Our ruling herein does not do away with the formal requirement that a COC be sworn. In fact, we emphasize that the filing of a COC is mandatory and must comply with the requirements set forth by law. Section 2 of the 2004 Rules on Notarial Practice lists the act to which an affirmation or oath refers x x x. In this case, however, contrary to the declarations of the COMELEC, Amora complied with the requirement of a sworn COC. He readily explained that he and Atty. Granada personally knew each other; they were not just colleagues at the League of Municipal Mayors, Bohol Chapter, but they consider each other as distant relatives. Thus, the alleged defect in the oath was not proven by Olandria since the presentation of a CTC turned out to be sufficient in this instance. On the whole, the COMELEC should not have brushed aside the affidavit of Atty. Granada and remained inflexible in the face of Amora's victory and proclamation as Mayor of Candijay, Bohol.

APPEARANCES OF COUNSEL

Amora Del Valle & Associates Law Offices and *Nicodemus A. Tago* for petitioner.

The Solicitor General for public respondent.

G.E. Garcia Law Office for private respondent.

DECISION

NACHURA, *J.*:

Before us is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court, seeking to annul and set aside the Resolutions dated April 29, 2010[1] and May 17, 2010,[2] respectively, of the Commission on Elections (COMELEC) in SPA No. 10-046 (DC).

First, the undisputed facts.

On December 1, 2009, petitioner Sergio G. Amora, Jr. (Amora) filed his Certificate of Candidacy (COC) for Mayor of Candijay, Bohol. At that time, Amora was the incumbent Mayor of Candijay and had been twice elected to the post, in the years 2004 and 2007.

To oppose Amora, the Nationalist People's Coalition (NPC) fielded Trygve L. Olaivar (Olaivar) for the mayoralty post. Respondent Arnielo S. Olandria (Olandria) was one of the candidates for councilor of the NPC in the same municipality.

On March 5, 2010, Olandria filed before the COMELEC a Petition for Disqualification against Amora. Olandria alleged that Amora's COC was not properly sworn contrary to the requirements of the Omnibus Election Code (OEC) and the 2004 Rules on Notarial Practice. Olandria pointed out that, in executing his COC, Amora merely presented his Community Tax Certificate (CTC) to the notary public, Atty. Oriculo Granada (Atty. Granada), instead of presenting competent evidence of his identity. Consequently, Amora's COC had no force and effect and should be considered as not filed.

Amora traversed Olandria's allegations in his Answer cum Position Paper.[3] He countered that:

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[1] *Rollo*, pp. 59-64.

[2] *Id*. at 65-72.

[3] *Id*. at 96-102.

1. The Petition for Disqualification is actually a Petition to Deny Due Course or cancel a certificate of candidacy. Effectively, the petition of Olandria is filed out of time;

2. Olandria's claim does not constitute a proper ground for the cancellation of the COC;

3. The COC is valid and effective because he (Amora) is personally known to the notary public, Atty. Granada, before whom he took his oath in filing the document;

4. Atty. Granada is, in fact, a close acquaintance since they have been members of the League of Muncipal Mayors, Bohol Chapter, for several years; and

5. Ultimately, he (Amora) sufficiently complied with the requirement that the COC be under oath.

As previously adverted to, the Second Division of the COMELEC granted the petition and disqualified Amora from running for Mayor of Candijay, Bohol.

Posthaste, Amora filed a Motion for Reconsideration[4] before the COMELEC *en banc*. Amora reiterated his previous arguments and emphasized the asseverations of the notary public, Atty. Granada, in the latter's affidavit,[5] to wit:

1. The COMELEC's (Second Division's) ruling is contrary to the objectives and basic principles of election laws which uphold the primacy of the popular will;

2. Atty. Granada states that while he normally requires the affiant to show competent evidence of identity, in Amora's case, however, he accepted Amora's CTC since he personally knows him;

3. Apart from the fact that Amora and Atty. Granada were both members of the League of Municipal Mayors, Bohol Chapter, the two consider each other as distant relatives because Amora's mother is a Granada;

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[4] *Id*. at 115-136.

[5] *Id*. at 77-78.

4. It is a matter of judicial notice that practically everybody knows the Mayor, most especially lawyers and notaries public, who keep themselves abreast of developments in local politics and have frequent dealings with the local government; and

5. In all, the COC filed by Amora does not lack the required formality of an oath, and thus, there is no reason to nullify his COC.

Meanwhile, on May 10, 2010, national and local elections were held. Amora obtained 8,688 votes, equivalent to 58.94% of the total votes cast, compared to Olaivar's 6,053 votes, equivalent to only 41.06% thereof. Subsequently, the Muncipal Board of Canvassers of Candijay, Bohol, proclaimed Amora as the winner for the position of Municipal Mayor of Candijay, Bohol.[6]

A week thereafter, or on May 17, 2010, in another turn of events, the COMELEC *en banc* denied Amora's motion for reconsideration and affirmed the resolution of the COMELEC (Second Division). Notably, three (3) of the seven (7) commissioners dissented from the majority ruling. Commissioner Gregorio Larrazabal (Commissioner Larrazabal) wrote a dissenting opinion, which was concurred in by then Chairman Jose A.R. Melo and Commissioner Rene V. Sarmiento.

In denying Amora's motion for reconsideration and upholding Olandria's petition for disqualification of Amora, the COMELEC ratiocinated, thus:

> [Amora] himself admitted in his Motion that the *Second Division* was correct in pointing out that the CTC is no longer a competent evidence of identity for purposes of notarization.
>
> The COC therefore is rendered invalid when [petitioner] only presented his CTC to the notary public. His defense that he is personally known to the notary cannot be given recognition because the best proof [of] his contention could have been the COC itself. However, careful examination of the jurat portion of the COC reveals no assertion by the notary public that he personally knew the affiant,

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[6] *Id.* at 144.

[petitioner] herein. Belated production of an Affidavit by the Notary Public cannot be given weight because such evidence could and should have been produced at the earliest possible opportunity.

The rules are absolute. Section 73 of the Election Code states:

> "*Section 73. Certificate of Candidacy*. — No person shall be eligible for any elective public office unless he files a **sworn certificate of candidacy** within the period fixed herein."

Under the 2004 Rules on Notarial Practice of 2004 (Rules), the requirements of notarization of an oath are:

> "*Section 2. Affirmation or Oath*. — The term 'Affirmation' or 'Oath' refers to an act in which an individual on a single occasion:
>
> (a) appears in person before the notary public;
>
> (b) is **personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules**; and
>
> (c) avows under penalty of law to the whole truth of the contents of the instrument or document."

The required form of identification is prescribed in [S]ection 12 of the same Rules, to wit:

> "*Section 12. Competent Evidence of Identity*. —The phrase 'competent evidence of identity' refers to the identification of an individual based on:
>
> (a) at least one current identification document issued by an official agency **bearing the photograph** and signature of the individual. x x x."

It is apparent that a CTC, which bears no photograph, is no longer a valid form of identification for purposes of Notarization of Legal Documents. No less than the Supreme Court itself, when it revoked the Notarial Commission of a member of the Bar in *Baylon v. Almo*, reiterated this when it said:

> "As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it in the list of competent evidence of identity that notaries

public should use in ascertaining the identity of persons appearing before them to have their documents notarized."

Seeking other remedies, [Amora] maintained that Section 78 of the Election Code governs the Petition. Said section provides that:

"Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.— **A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false.** The petition may be filed at **any time not later than twenty-five days from the time of the filing of the certificate of candidacy** and shall be decided, after due notice and hearing, not later than fifteen days before the election."

[Amora] however failed to note that the Petition relies upon an entirely different ground. The Petition has clearly stated that it was invoking Section 73 of the Election Code, which prescribes the mandatory requirement of filing a sworn certificate of candidacy. As properly pointed out by [Olandria], he filed a Petition to Disqualify for Possessing Some Grounds for Disqualification, which, is governed by COMELEC Resolution No. 8696, to wit:

"B. **PETITION TO DISQUALIFY A CANDIDATE** PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR **POSSESSING SOME GROUNDS FOR DISQUALIFICATION**

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the **verified petition to disqualify a candidate for** lack of qualifications or **possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation**;

x x x x x x x x x

3. **The petition to disqualify a candidate for** lack of qualification or **possessing some grounds for disqualification**, shall be filed in ten (10) legible copies, personally or through a duly authorized representative, by any person of voting age, or duly registered political party, organization or coalition of political parties on the ground that the candidate does not possess all

> the qualifications as provided for by the Constitution or by existing law or who possesses some grounds for disqualification as provided for by the Constitution or by existing law."

x x x x x x x x x

Finally, we do not agree with [Amora] when he stated that the *Second Division's* Resolution "practically supplanted congress by adding another ground for disqualification, not provided in the omnibus election code or the local government code. The constitution is very clear that it is congress that shall prescribe the qualifications (and disqualifications) of candidates for local government positions." These grounds for disqualification were laid down in both laws mentioned by [Amora] and COMELEC Resolution 8696.[7]

Hence, this petition for *certiorari* imputing grave abuse of discretion to the COMELEC. On June 15, 2010, we issued a *Status Quo Ante* Order and directed respondents to comment on the petition. As directed, Olandria and the COMELEC filed their respective Comments[8] which uniformly opposed the petition. Thereafter, Amora filed his Reply.[9]

Amora insists that the Petition for Disqualification filed by Olandria is actually a Petition to Deny Due Course since the purported ground for disqualification simply refers to the defective notarization of the COC. Amora is adamant that Section 73 of the OEC pertains to the substantive qualifications of a candidate or the lack thereof as grounds for disqualification, specifically, the qualifications and disqualifications of elective local officials under the Local Government Code (LGC) and the OEC. Thus, Olandria's petition was filed way beyond the reglementary period of twenty-five (25) days from the date of the filing of the disputed COC.

Moreover, Amora maintains that his COC is properly notarized and not defective, and the presentation of his CTC to the notary public to whom he was personally known sufficiently complied with the requirement that the COC be under oath. Amora further

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[7] *Id.* at 68-72.

[8] *Id.* at 161-172, 180-190.

[9] *Id.* at 204-227.

alleges that: (1) Olaivar, his opponent in the mayoralty post, and likewise a member of the NPC, is purportedly a fraternity brother and close associate of Nicodemo T. Ferrer (Commissioner Ferrer), one of the commissioners of the COMELEC who disqualified him; and (2) Olaivar served as Consultant for the COMELEC, assigned to the Office of Commissioner Ferrer.

Olandria and the COMELEC reiterated the arguments contained in the COMELEC *en banc* resolution of May 17, 2010.

Amora's petition is meritorious.

We find that the COMELEC ruling smacks of grave abuse of discretion, a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. *Certiorari* lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion.[10]

In this case, it was grave abuse of discretion to uphold Olandria's claim that an improperly sworn COC is equivalent to possession of a ground for disqualification. Not by any stretch of the imagination can we infer this as an additional ground for disqualification from the specific wording of the OEC in Section 68, which reads:

> SEC. 68. *Disqualifications*. – Any candidate who, in an action or protest in which he is party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident

[10] RULES OF COURT, Rule 65, Sec. 1.

or immigrant of a foreign country in accordance with the residence requirement provided for in the elections laws.

and of Section 40 of the LGC, which provides:

SEC. 40. *Disqualifications.* – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

It is quite obvious that the Olandria petition is not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions. Nowhere therein does it specify that a defective notarization is a ground for the disqualification of a candidate. Yet, the COMELEC would uphold that petition upon the outlandish claim that it is a petition to disqualify a candidate "for lack of qualifications or possessing some grounds for disqualification."

The proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner. The absurd interpretation of Olandria, respondent herein, is not controlling; the COMELEC should have dismissed his petition outright.

A petition for disqualification relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the position of mayor. The distinction between a petition for disqualification and the formal requirement in Section 73 of the OEC that a COC be under oath is not simply a question of semantics as the statutes list the grounds for the disqualification of a candidate.

Recently, we have had occasion to distinguish the various petitions for disqualification and clarify the grounds therefor as provided in the OEC and the LGC. We declared, thus:

> To emphasize, a petition for disqualification on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a COC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a COC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose COC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[11]

Apart from the qualifications provided for in the Constitution, the power to prescribe additional qualifications for elective office and grounds for disqualification therefrom, consistent with the constitutional provisions, is vested in Congress.[12] However, laws prescribing qualifications for and disqualifications from office are liberally construed in favor of eligibility since the privilege of holding an office is a valuable one.[13] We cannot overemphasize the principle that where a candidate has received popular

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[11] *Fermin v. COMELEC*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 796.

[12] *Dumlao v. COMELEC*, 184 Phil. 369 (1980).

[13] Agpalo, *Comments on the Omnibus Election Code* (2004), p. 144.

mandate, all possible doubts should be resolved in favor of the candidate's eligibility, for to rule otherwise is to defeat the will of the people.[14]

In stark contrast to the foregoing, the COMELEC allowed and confirmed the disqualification of Amora although the latter won, and was forthwith proclaimed, as Mayor of Candijay, Bohol.

Another red flag for the COMELEC to dismiss Olandria's petition is the fact that Amora claims to personally know the notary public, Atty. Granada, before whom his COC was sworn. In this regard, the dissenting opinion of Commissioner Larrazabal aptly disposes of the core issue:

> With all due respect to the well-written Ponencia, I respectfully voice my dissent. The primary issue herein is whether it is proper to disqualify a candidate who, in executing his Certificate of Candidacy (COC), merely presented to the Notary Public his Community Tax Certificate.
>
> The majority opinion strictly construed the 2004 Rules on Notarial Practice (the "2004 Notarial Rules") when it provided that valid and competent evidence of identification must be presented to render Sergio G. Amora, Jr.'s [petitioner's] COC valid. The very wording of the 2004 Notarial Rules supports my view that the instant motion for reconsideration ought to be granted, to wit:
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>> Section 2. Affirmation or Oath. – The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:
>>
>> (a) appears in person before the notary public;
>>
>> (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and
>>
>> (c) avows under penalty of law to the whole truth of the contents of the instrument or document.
>
> As quoted *supra*, competent evidence of identity is not required in cases where the affiant is personally known to the Notary Public, which is the case herein. The records reveal that [petitioner] submitted to this

[14] *O'Hara v. COMELEC*, G.R. Nos. 148941-42, March 12, 2002, 379 SCRA 247.

Commission a sworn affidavit executed by Notary Public Oriculo A. Granada (Granada), who notarized [petitioner's] COC, affirming in his affidavit that he personally knows [petitioner].

[Respondent], on the other hand, presented no evidence to counter Granada's declarations. Hence, Granada['s] affidavit, which narrates in detail his personal relation with [petitioner], should be deemed sufficient.

The purpose of election laws is to give effect to, rather than frustrate, the will of the voters. The people of Candijay, Bohol has already exercised their right to suffrage on May 10, 2010 where [petitioner] was one of the candidates for municipal mayor. To disqualify [petitioner] at this late stage simply due to an overly strict reading of the 2004 Notarial Rules will effectively deprive the people who voted for him their rights to vote.

The Supreme Court's declaration in *Petronila S. Rulloda v. COMELEC, et al.* must not be taken lightly:

> Technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.
>
> Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[15]

Our ruling herein does not do away with the formal requirement that a COC be sworn. In fact, we emphasize that the filing of a COC is mandatory and must comply with the requirements set forth by law.[16]

Section 2 of the 2004 Rules on Notarial Practice lists the act to which an affirmation or oath refers:

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[15] *Rollo*, pp. 73-75.

[16] Omnibus Election Code, Secs. 73-74 .

Sec. 2. *Affirmation or Oath*. — The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

In this case, however, contrary to the declarations of the COMELEC, Amora complied with the requirement of a sworn COC. He readily explained that he and Atty. Granada personally knew each other; they were not just colleagues at the League of Municipal Mayors, Bohol Chapter, but they consider each other as distant relatives. Thus, the alleged defect in the oath was not proven by Olandria since the presentation of a CTC turned out to be sufficient in this instance. On the whole, the COMELEC should not have brushed aside the affidavit of Atty. Granada and remained inflexible in the face of Amora's victory and proclamation as Mayor of Candijay, Bohol.

WHEREFORE, the petition is *GRANTED*. The Resolutions of the Commission on Elections in SPA No. 10-046 (DC) dated April 29, 2010 and May 17, 2010, respectively, are *ANULLED* and *SET ASIDE*.

SO ORDERED.

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

Velasco, Jr., J., no part due to relationship to a party.

Bersamin, J., on leave.

SECOND DIVISION

[A.M. No. P-09-2627. January 26, 2011]

REINA EDENLYNE GARCIA, *complainant, vs.* **ROBERT V. ALEJO, Sheriff IV, Regional Trial Court, Branch 142, Makati City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENTS FROM THE PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES.—** A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure laid down in x x x [Section 9, Rule 141 of the Rules of Court]. x x x Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Sheriffs cannot receive gratuities or voluntary payments from parties they are ordered to assist. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.

2. **ID.; ID.; ID.; ID.; ID.; MOONLIGHTING AMOUNTS TO MALFEASANCE IN OFFICE; PENALTY.—** Alejo received money for extra work he rendered for Concorde. Alejo's defense that he is not using government time in doing his duties is not tenable considering that there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Alejo's acts can be considered as moonlighting, which, though not normally considered as a serious misconduct, amounts to malfeasance in office. x x x Alejo's moonlighting activities x x x constitute violation of reasonable office rules and regulations of which reprimand is the penalty for the first offense,

suspension for 1-30 days for the second offense, and dismissal for the third offense.

3. **ID.; ID.; ID.; ID.; ID.; DERELICTION OF DUTY; FAILURE TO OBSERVE THE PROCEDURE IN SECTION 9, RULE 141 OF THE RULES OF COURT, A CASE OF.—** [F]or failure to observe the procedure in Section 9, Rule 141 of the Rules of Court, Alejo is guilty of dereliction of duty. Under the Uniform Rules on Administrative Cases in the Civil Service, dereliction of duty calls for a suspension of one month and one day to six months.

4. **ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; IF THE RESPONDENT IS FOUND GUILTY OF TWO OR MORE CHARGES, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES.—** According to Section 55 of the Revised Uniform Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Alejo also had been previously admonished in A.M. No. P-08-2428 for abuse of authority. We modify the OCA's recommendation of suspension for a period of three months without pay to suspension for a period of six months without pay.

D E C I S I O N

CARPIO, *J*.:

Reina Edenlyne Garcia (Garcia) filed the present administrative complaint against Robert V. Alejo (Alejo), Sheriff IV of the Regional Trial Court, Branch 142, Makati City (RTC), for Gross Misconduct, Gross Dishonesty and Conduct Prejudicial to the Interest of the Service. The Office of the Court Administrator (OCA) recommended that Alejo be found guilty of dereliction of duty and be suspended for three months without pay.

The Facts

The memorandum from the OCA narrated the facts as follows:

In a Verified-Complaint dated March 14, 2008, Reina Edenlyne Garcia charges Robert V. Alejo, Sheriff IV, Regional Trial Court (Branch 142), Makati City, with Gross Misconduct, Gross Dishonesty and Conduct Prejudicial to the Interest of the Service for having been in the payroll of Concorde Condominium, Inc. (Concorde for brevity), a plaintiff in Civil Case No. 00-1547 entitled "*Concorde Condominium, Inc. v. Pulp & Paper, Inc*."

The complainant claims to be the legitimate president of Concorde, a domestic corporation engaged in real estate development and management which, since 1999, has been managed and controlled by a group of what she described as usurpers purporting to be the officers of Concorde. The complainant alleges that when the legitimate board of directors took over the management of the corporation, it was discovered that, in order to maintain power, anomalies and irregularities were committed by the usurpers including conspiring with people who willingly cooperated with the former.

The complainant alleges that one of the people with whom the usurpers conspired was Sheriff Robert V. Alejo. She submitted a copy of the summary of expenses for legal fees by Concorde which showed that the respondent was allegedly paid sheriff's fees without court approval on the following dates:

DATE	CASH VOUCHER NO.	AMOUNT
October 28, 2004	5068	₱15,000.00
November 22, 2004	5092	25,000.00
February 14, 2005	5173	10,000.00
March 30, 2005	5216	10,000.00
June 30, 2005	GJ-15	12,500.00

The complainant also alleges that Sheriff Alejo had been in the payroll of Concorde since January 2005, having received a monthly allowance of ₱2,500 as evidenced not only by the aforementioned summary of expenses for legal fees but also by photocopies of the checks issued by Concorde in the respondent's name the dorsal portion of which showed that it was respondent himself who encashed

the checks using his Supreme Court identification card. Another cash voucher dated July 27, 2004 showed that the respondent received the amount of ₱12,500.00 as advanced sheriff's fees, which amount was taken from the rent collected from a tenant of Concorde named Dra. Anduiza.

The complainant asserts that the respondent had been acting as an employee of Concorde by collecting rentals from the tenants of the said corporation and that he had been receiving a monthly allowance of ₱2,500.00 as compensation.

The complainant claims that these arrangements, *i.e.,* receiving fees without court approval and monthly allowances, explains the respondent's precipitate actions in serving the court's writs and processes to the complainant and to the tenants of Concorde.

For acting as a paid mercenary, the complainant declares that the respondent is not worthy to be an employee of the Court and should be held liable for gross misconduct, gross dishonesty and conduct prejudicial to the interest of the service.

In his Comment dated May 14, 2008, respondent Sheriff Robert V. Alejo vehemently denies the charges made against him by the complainant, declaring the accusations as baseless, groundless, founded on pure speculations and conjectures and devoid of any factual and legal justifications. He avers that the instant complaint is purely a harassment suit against him and that he was merely performing his ministerial functions in serving the writs and processes issued by RTC (Branch 142) in connection with Civil Case No. 00-1547.

The respondent deposes that a condominium unit owned by Pulp and Paper, Inc., the defendant in the said civil case, was levied upon on October 3, 2003. An *Alias* Writ of Execution was issued against the property and that he served said writ on May 27, 2004 upon the complainant who was the officer-in-charge of the defendant corporation. Thereafter, he served the Notice of Sheriff's Sale to defendant Pulp and Paper, Inc., and upon due notice, posting and publication, sold the unit to plaintiff Concorde, the highest bidder.

The respondent claims that the foregoing incidents were the cause of the complainant's ill-feeling towards him which became worse when the court issued an order directing him to place Concorde in possession of the property. Pursuant to the said order, the respondent issued a

Notice to Vacate to defendant Pulp and Paper, Inc. through the complainant.

The respondent asserts that the Sheriff's Commission on Sale had been duly collected and duly receipted by the Office of the Clerk of Court of RTC Makati City. As to the monthly allowances he had been receiving from Concorde, he avers that it was the administrator of Concorde, Mr. Adrian Castano, who asked the former to assist the latter in the collection of rentals from certain tenants of the condominium. The respondent claims that he initially declined the request but that Mr. Castano was insistent. The respondent says that Mr. Castano told him that he (the respondent) had gained the latter's trust and confidence. Being also a friend of Mr. Castano, the respondent says that he was prevailed upon to accept the offer on the condition that he would be assisting Concorde after office hours and during Saturdays or Sundays in order that the extra work would not interfere with his duties as sheriff.

The respondent likewise claims that he rejected the offer of compensation because of the existing prohibition on court employees. He, however, finally consented to accept the minimal amount of ₱2,500.00 to cover transportation and other incidental expenses.

The respondent argues that the complainant's assertions are bare and unsubstantiated and prays for the dismissal of the complaint for utter lack of merit.[1]

Garcia filed a Verified Complaint[2] dated 14 March 2008 before the OCA. Then Court Administrator Zenaida N. Elepaño (CA Elepaño) directed Alejo to file his comment within ten days from receipt of the indorsement from OCA. Alejo moved for an extension of time to file comment,[3] which the OCA granted.[4] Alejo filed his Comment[5] dated 14 May 2008.

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[1] *Rollo,* pp. 29-31.

[2] *Id.* at 1-2.

[3] *Id.* at 13.

[4] *Id.* at 14.

[5] *Id.* at 15-17.

The OCA's Ruling

On 2 March 2009, the OCA, under then Court Administrator Jose P. Perez[6] and Assistant Court Administrator Thelma C. Bahia, issued its Evaluation and Recommendation on Garcia's complaint.

The OCA took notice of Alejo's receipt of sheriff's fees without court approval and moonlighting activities. The OCA stated that Alejo failed to observe the procedure provided in Section 10(1)(2), Rule 141 of the Rules of Court. The OCA found Alejo guilty of dereliction of duty, which has the corresponding penalty of suspension of one month and one day to six months for the first offense. The OCA also found that Alejo's moonlighting activities gave rise to understandable suspicions regarding Alejo's independence of judgment in performing his official duties. Moreover, Alejo's position as Sheriff may have a direct bearing on why he was commissioned by Concorde as its collecting agent, "for the authority of the judicial office he represented undoubtedly played a major influencing factor in effecting collection from otherwise difficult tenants or lessees."[7] Alejo's role as collecting officer, though allegedly performed outside of normal working hours, is "incompatible with the performance of his duties and responsibilities since it would appear that the work would adversely reflect on the integrity of the judiciary."[8]

The OCA's recommendation reads as follows:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. That the administrative complaint against Sheriff Robert V. Alejo, Regional Trial Court (Branch 142), Makati City, be RE-DOCKETED as a regular administrative matter;

2. That Sheriff Alejo be found GUILTY of dereliction of duty in the performance of his official duties and violation of office

[6] Now Supreme Court Justice.

[7] *Rollo*, p. 32.

[8] *Id.* at 33.

rules and regulations and of the Code of Conduct for Court Personnel; and

3. That Sheriff Alejo be SUSPENDED for a period of three months without pay, with a stern warning that the commission of a similar or graver offense in the future shall be dealt with more severely.[9]

This Court, in a resolution[10] dated 30 March 2009, re-docketed administrative complaint OCA-IPI No. 08-2773-P as regular administrative matter A.M. No. P-09-2627.

In a Manifestation[11] dated 7 September 2010, Alejo submitted a Consolidated Resolution dated 15 February 2010 from the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices dismissing Garcia's complaint against Alejo in a related case. Garcia filed consolidated criminal complaints against several persons, Alejo included, for Malicious Mischief, Robbery, Grave Coercion, Delaying Release, Grave Slander, Arbitrary Detention, Violation of Domicile, and Trespass to Dwelling for allegedly invading Garcia and her husband Maximo B. Dilla's office and for arresting and detaining them.

The Court's Ruling

We adopt the recommendation of the OCA.

Pertinent portions of Section 9, Rule 141 of the Rules of Court read:

Section 9. *Sheriffs and other persons serving processes.* – x x x 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,

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[9] *Id.* at 33-34.

[10] *Id.* at 38.

[11] *Id.* at 41.

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.

A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure laid down in the aforecited provision.

Clearly, the steps that have to be followed before additional sums may be required are: *first,* the sheriff must make an estimate of the expenses to be incurred by him; *second,* he must obtain court approval for such estimated expenses; *third,* the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff; *fourth*, the Clerk of Court shall disburse the amount to the executing sheriff; and *fifth*, the executing sheriff shall disburse liquidate his expenses within the same period for rendering a return on the writ.[12]

Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Sheriffs cannot receive gratuities or voluntary payments from parties they are ordered to assist.[13] Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.[14]

The Court notes the OCA's finding about Alejo's receipt of voluntary payments:

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[12] *Rizal Commercial Banking Corp. v. Quilantang,* 413 Phil. 13, 22 (2001).

[13] *Bernabe v. Eguia*, 458 Phil. 97, 105 (2003).

[14] Section 4, Canon 1, Code of Conduct for Court Personnel.

x x x It must be noted that [Alejo] failed to refute [Garcia's] allegations that in six (6) instances (the five instances were listed in the summary of expenses of Concorde and the one instance where in the cash voucher of the amount of ₱12,500.00 was signed by [Alejo] himself), he received sheriff's fees in the total amount of ₱85,000.00 without court approval. In fact, he never categorically denied having received said fees. He did not even question the veracity of the summary of expenses presented by [Garcia]. Instead, in order to prove that his actions were above board he merely submitted a copy of the Sheriff's Commission on Sale duly collected and duly receipted by the Office of the Clerk of Court of RTC Makati City but which was never raised as an issue in the complaint.[15]

Moreover, Alejo received money for extra work he rendered for Concorde. Alejo's defense that he is not using government time in doing his duties is not tenable considering that there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours.[16] Alejo's acts can be considered as moonlighting, which, though not normally considered as a serious misconduct, amounts to malfeasance in office.[17]

Thus, for failure to observe the procedure in Section 9, Rule 141 of the Rules of Court, Alejo is guilty of dereliction of duty. Under the Uniform Rules on Administrative Cases in the Civil Service, dereliction of duty calls for a suspension of one month and one day to six months.[18] Alejo's moonlighting activities, on the other hand, constitute violation of reasonable office rules and regulations of which reprimand is the penalty for the first offense, suspension for 1-30 days for the second offense, and dismissal for the third offense. According to Section 55 of the Revised Uniform Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two or more charges

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[15] *Rollo*, p. 31.

[16] *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.,* A.M. No. P-93-811, 2 June 1994, 232 SCRA 707, 712.

[17] *Id*.

[18] *Geronca v. Magalona*, A.M. No. P-07-2398, 13 February 2008, 545 SCRA 1.

or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Alejo also had been previously admonished in A.M. No. P-08-2428 for abuse of authority. We modify the OCA's recommendation of suspension for a period of three months without pay to suspension for a period of six months without pay.

WHEREFORE, Robert V. Alejo, Sheriff IV, Regional Trial Court, Branch 142, Makati City, is *SUSPENDED* for six (6) months without pay for dereliction of duty and violation of office rules and regulations as well as the Code of Conduct for Court Personnel. Alejo is also *STERNLY WARNED* that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-10-2817. January 26, 2011]
(Formerly OCA I.P.I. No. 09-3089-P)

CORAZON TENORIO, represented by IMELDA TENORIO-ORTIZ, *complainant, vs.* **ALYN C. PERLAS, Sheriff III,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; THE DUTY OF A SHERIFF IN ENFORCING WRITS OF EXECUTION IS MINISTERIAL AND NOT DISCRETIONARY.— Well-settled is the rule that "[t]he duty of a sheriff in enforcing writs of execution is ministerial and not discretionary." However, "errors in the levy of properties do not necessarily give rise to liability if

circumstances exist showing that the erroneous levy was done in good faith."

2. ID.; ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; COMMITTED IN CASE AT BAR.— In the instant case, the conduct of Sheriff Perlas in implementing the Writ is inexcusable. The facts clearly show that the two (2) trucks seized by her did not belong to the spouses Pile but to herein complainant, Tenorio. What is more, she could have acted in good faith and checked from the LTO the identity of the registered owners of the said vehicles before proceeding with their seizure. x x x Thus, Sheriff Perlas' explanations deserve scant consideration. She failed to discharge her functions with due care and utmost diligence. Mere failure on the part of Tenorio and the drivers to present the certificates of registration of the vehicles at the time of taking should have prompted her to exhaust all means to discover the true identity of the owners.

3. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; GOVERNED BY THE SUBSTANTIAL EVIDENCE RULE.— [A]s to the alleged turn-over of the trucks made by Sheriff Perlas in favor of the attaching party after receiving money from the latter, there is lack of substantial evidence to prove it. Administrative proceedings are governed by the substantial evidence rule, *i.e.*, such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant. In the instant case, aside from the affidavit of Edgardo Pile, no other evidence was presented by the complainant to support the allegation that Sheriff Perlas received the money. Such cannot be considered substantial enough to support a finding of a serious charge.

4. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; NATURE.— Misconduct is a transgression of an established rule of action. More particularly, misconduct is the unlawful behavior of a public officer. It means the "intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official." In order for misconduct to constitute an administrative offense, it should be related to or connected with the performance of the official functions and duties of a public officer.

5. ID.; ID.; ID.; COURT PERSONNEL; SIMPLE MISCONDUCT; PENALTY.— Under Rule 140 of the Rules of Court, as amended

by A.M. No. 01-8-10-SC, simple misconduct is considered a less serious offense, sanctioned with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (PhP 10,000) but not exceeding twenty thousand pesos (PhP 20,000).

D E C I S I O N

VELASCO, JR., *J.*:

This administrative complaint against Sheriff Alyn C. Perlas (Sheriff Perlas), Office of the Clerk of Court, Metropolitan Trial Court (MeTC) of Pasig City stems from a complaint filed by Corazon Tenorio (Tenorio), represented by her attorney-in-fact Imelda Tenorio-Ortiz, charging Sheriff Perlas with Oppression, Dishonesty and Grave Misconduct under Republic Act No. (RA) 6713 and with violations of RA 3019 relative to the implementation of the Writ of Preliminary Attachment in Civil Case No. 15251, entitled *747 Lumber and Construction Supply v. Spouses Edgardo Pile and Marissa Pile* for Sum of Money.

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

According to the letter-complaint of Tenorio, on December 22, 2008, Sheriff Perlas, accompanied by other persons, arrived at her store, Ten Rey Gravel and Sand and Construction Materials, located at No. 377 McArthur Highway, Corazon, Calumpit, Bulacan.[1] Upon their arrival, Sheriff Perlas served upon her a Notice of Levy on Attachment clearly addressed to spouses Edgardo Pile and Marissa Pile (spouses Pile) of Apalit, Pampanga.[2] Tenorio emphasized that Sheriff Perlas served the notice in a discourteous and arrogant manner.[3]

After this, Tenorio showed Sheriff Perlas the Certificate of Car Registration of their two (2) units of dump trucks and pleaded to her not to take the trucks away because they were the registered

[1] Complaint-Affidavit, Corazon Tenorio, p. 2.
[2] *Id.*, Annex "B".
[3] *Id.* at 2.

owners of the trucks. However, despite this, Sheriff Perlas forcibly took the two (2) units of trucks without even verifying with the Land Transportation Office (LTO) as to who were the true registered owners of the trucks.[4]

Aggrieved, Tenorio filed a Complaint-Affidavit dated January 12, 2009 before the Office of the Court Administrator, charging Sheriff Perlas with Oppression, Dishonesty and Grave Misconduct under RA 6713 and with Violation of RA 3019. According to Tenorio, Sheriff Perlas used her public office as Sheriff to oppress and harass her. Further, Tenorio said that the humiliating manner by which Sheriff Perlas rudely and insolently served the Notice of Levy on her caused her serious mental anxieties, moral shock, and sleepless nights.[5]

Finally, Tenorio added in her Complaint-Affidavit that Sheriff Perlas received PhP 50,000 from 747 Lumber & Construction Supply, Inc. as evidenced by the affidavit of Edgardo Pile.[6] In his affidavit, Edgardo Pile stated that he saw the trucks parked in the vicinity of 747 Lumber & Construction Supply; and that despite explaining to the owner of the store who the true owners of the subject vehicles were, he refused to surrender them, saying that he paid Sheriff Perlas money for them.

On March 24, 2009, Sheriff Perlas filed her comment stating that Tenorio already earlier instituted a complaint for Damages against her before the Municipal Trial Court of Calumpit, Bulacan for the same incident subject of the instant case. She filed an answer in the said civil case which she is adopting in the instant administrative case.

In her answer, Sheriff Perlas denied all the allegations and recounted that on December 17, 2008, Judge Marina Gaerlan-Mejorada issued a Writ of Preliminary Attachment against Spouses Pile in relation to Civil Case No. 15251.[7] Consequently, on December

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[4] *Id.*

[5] *Id.* at 2-3.

[6] *Id.* at 4.

[7] Answer, Sheriff Alyn. C. Perlas, p. 1.

22, 2008, she, together with the plaintiff's representative in the civil case, George Clemente (Clemente), proceeded to implement the writ.[8] However, upon arriving at Ten Rey General Merchandise, the defendants spouses Pile were not present.

Clemente insisted that they proceed to spouses Pile's other address, which turns out to be the address of Tenorio, mother of Marissa Pile. When they reached the place, Sheriff Perlas noticed two (2) trucks with the body markings "TEN REY" and with plate numbers TJE 757 and TBU 705. She believed in good faith that these trucks belong to Spouses Pile and tried to obtain the certificates of registration from the drivers. When the drivers and Tenorio failed to produce certificates of registration, she assumed the vehicles were owned by spouses Pile.[9]

Further, Sheriff Perlas claimed that she acted within the scope of her authority and maintained that she was not arrogant, discourteous or callous.[10]

On March 16, 2009, the MeTC issued an Order resolving in its *ratio decidendi* that:

> x x x A considerable period of time had lapsed and yet, no such indemnity bond was filed by the plaintiff, hence, based on the provision of Section 14, Rule 57 of the Rules of Court '*the sheriff shall not be bound to keep the property under attachment*' emphasizing the point that the properties levied upon in this case may now be released to third-party claimant Corazon R. Tenorio, whose proofs of title or right of possession over the properties 'in litis' have proven to be persuasive.[11]

On June 17, 2009, Tenorio submitted a Manifestation to the Office of the Court Administrator seeking the dismissal of the instant administrative case against Sheriff Perlas due to the fact that the trucks had already been released and that Sheriff

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[8] *Id.* at 2.

[9] *Id.*

[10] *Id.*

[11] Order dated March 16, 2009, Civil Case No. 15251, p. 3.

Perlas already personally apologized to her for whatever damage and inconvenience that the Writ of Preliminary Attachment may have caused her. In addition, Tenorio pointed out that both parties had already settled amicably and jointly moved for the dismissal of the civil case for damages filed against Sheriff Perlas.

On May 14, 2010, Court Administrator Jose Midas P. Marquez (Court Administrator) issued his evaluation and recommendation on the case. In his evaluation, the Court Administrator found that respondent Sheriff Perlas was grossly inefficient and guilty of misconduct in implementing the Writ on December 22, 2008. As a result, the Court Administrator recommended the following:

(1) The complaint against Alyn C. Perlas, Sheriff III, OCC – MeTC, Pasig City, be RE-DOCKETED as a regular administrative matter;

(2) Sheriff Perlas be found GUILTY of Simple Misconduct and be FINED in the amount of Eleven Thousand Pesos (₱11,000.00) with a STERN WARNING that a repetition of the a similar offense in the future will be dealt with more severely in the future; and

(3) Respondent Perlas be directed to EXPLAIN within ten (10) days from notice the receipt of ₱50,000 from the plaintiff for the service of the Writ of Preliminary Attachment and Notice of Levy on Attachment.

We find the evaluation and recommendations of the Court Administrator well-taken.

Well-settled is the rule that "[t]he duty of a sheriff in enforcing writs of execution is ministerial and not discretionary."[12] However, "errors in the levy of properties do not necessarily give rise to liability if circumstances exist showing that the erroneous levy was done in good faith."[13]

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[12] *Bautista v. Orque, Jr.*, A.M. No. P-05-2099, October 31, 2006, 506 SCRA 309, 314.

[13] *Camarote v. Glorioso*, A.M. No. P-02-1611, July 31, 2002, 385 SCRA 533, 537.

In the instant case, the conduct of Sheriff Perlas in implementing the Writ is inexcusable. The facts clearly show that the two (2) trucks seized by her did not belong to the spouses Pile but to herein complainant, Tenorio. What is more, she could have acted in good faith and checked from the LTO the identity of the registered owners of the said vehicles before proceeding with their seizure.

In *Malmis v. Bungabong*, the Court explained the proper conduct that sheriffs must exercise when performing their functions, *viz*:

> While it is true that sheriffs must comply with their mandated ministerial duty to serve court writs, execute all processes and carry into effect all court orders promptly and expeditiously, **it needs to be pointed out that this ministerial duty is not without limitation**. In the performance of their duties, they are deemed to know what is inherently right and inherently wrong and are bound to discharge such duties with prudence, caution and attention which careful men usually exercise in the management of their affairs. **As agents of the law, sheriffs are called upon to discharge their functions with due care and utmost diligence** because, in serving the court's processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[14] (Emphasis supplied.)

Thus, Sheriff Perlas' explanations deserve scant consideration. She failed to discharge her functions with due care and utmost diligence. Mere failure on the part of Tenorio and the drivers to present the certificates of registration of the vehicles at the time of taking should have prompted her to exhaust all means to discover the true identity of the owners.

Moreover, as to the alleged turn-over of the trucks made by Sheriff Perlas in favor of the attaching party after receiving money from the latter, there is lack of substantial evidence to prove it. Administrative proceedings are governed by the substantial evidence rule, *i.e.,* such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[15] The

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[14] *Malmis v. Bungabong*, A.M. No. P-03-1721, September 30, 2004, 439 SCRA 538, 541-542.

[15] *Menor v. Guillermo,* A.M. No. P-08-2587, December 18, 2008, 574 SCRA 395, 400.

standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant.[16] In the instant case, aside from the affidavit of Edgardo Pile, no other evidence was presented by the complainant to support the allegation that Sheriff Perlas received the money. Such cannot be considered substantial enough to support a finding of a serious charge.

Accordingly, Sheriff Perlas is only guilty of misconduct in the discharge of her functions. Misconduct is a transgression of an established rule of action. More particularly, misconduct is the unlawful behavior of a public officer. It means the "intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official."[17] In order for misconduct to constitute an administrative offense, it should be related to or connected with the performance of the official functions and duties of a public officer.[18]

Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, simple misconduct is considered a less serious offense, sanctioned with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (PhP 10,000) but not exceeding twenty thousand pesos (PhP 20,000).

WHEREFORE, respondent Sheriff Alyn C. Perlas is found *GUILTY* of simple misconduct. She is meted the penalty of a *FINE of eleven thousand pesos (PhP11,000).* She is *STERNLY WARNED* that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

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[16] *Liguid v. Camano, Jr.*, A.M. No. RTJ-99-1509, August 8, 2002, 387 SCRA 1, 11.

[17] *Senarlo v. Paderanga*, A.M. No. RTJ-06-2025, April 5, 2010, 617 SCRA 247, 256.

[18] *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 599.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 159471. January 26, 2011]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEWING OR REVISING ERRORS OF LAW.— In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. x x x [P]etitioner insists that it has submitted documents and other pieces of evidence, except those required by law, that would establish the existence of the input VAT for the fourth quarter of 1993 and that the excess input VAT claimed for refund or tax credit has not been applied to its output tax liability for prior and succeeding quarters. The above argument, however, is flawed. It must be remembered that when claiming tax refund/ credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned. The CTA and the CA, based

on their appreciation of the evidence presented, committed no error when they declared that petitioner failed to prove that it is entitled to a tax refund and this Court, not being a trier of facts, must defer to their findings.

2. **TAXATION; TAX EXEMPTIONS; STATUTES GRANTING TAX EXEMPTIONS ARE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.—** Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And, since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpaper and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[1] dated April 19, 2001 and Resolution[2] dated August 6, 2003 of the Court of Appeals (CA).

The facts, as shown in the records, are the following:

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eloy R. Bello, Jr. and Mercedes Gozo-Dadole, concurring; *rollo*, pp. 32-36.

[2] *Id.* at 38-40.

Under Section 100 of the Tax Code of the Philippines, petitioner is a zero-rated Value Added Tax (VAT) person for being an exporter of copper concentrates. According to petitioner, on January 20, 1994, it filed its VAT return for the fourth quarter of 1993, showing a total input tax of ₱863,556,963.74 and an excess VAT credit of ₱842,336,291.60 and, on January 25, 1996, it applied for a tax refund or a tax credit certificate for the latter amount with respondent Commissioner of Internal Revenue (CIR). On the same date, petitioner filed the same claim for refund with the Court of Tax Appeals (CTA), claiming that the two-year prescriptive period provided for under Section 230 of the Tax Code for claiming a refund was about to expire. The CIR failed to file his answer with the CTA; thus, the former declared the latter in default.

On August 24, 1998, the CTA rendered its Decision[3] denying petitioner's claim for refund due to petitioner's failure to comply with the documentary requirements prescribed under Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration[5] praying for the reopening of the case in order for it to present the required documents, together with its proof of non-availment for prior and succeeding quarters of the input VAT subject of petitioner's claim for refund. The CTA granted the motion in its Resolution[6] dated October 29, 1998. Thereafter, in a Resolution[7] dated June

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[3] CTA records, pp. 116-120.

[4] *Id.* at 119.

[5] *Id.* at 122-128.

[6] *Id.* at 131-136.

[7] *Id.* at 189-195.

21, 2000, the CTA denied petitioner's claim. It ruled that the action has already prescribed and that petitioner has failed to substantiate its claim that it has not applied its alleged excess input taxes to any of its subsequent quarter's output tax liability.

The CTA's Decision and Resolution were questioned in the CA. However, the CA affirmed *in toto* the said Decision and Resolution, disposing the case as follows:

> WHEREFORE, the petition is DISMISSED for lack of merit. The questioned Decision of the CTA dated August 24, 1998 and the Resolution dated June 21, 2000 are AFFIRMED *in toto*.
>
> SO ORDERED.[8]

Subsequently, petitioner's Motion for Reconsideration[9] of the CA's Decision was denied in a Resolution[10] dated August 6, 2003.

Thus, the present petition.

Petitioner lists the following as grounds for his petition:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM FOR REFUND HAS PRESCRIBED, DESPITE FAILURE OF RESPONDENT AND THE COURT OF TAX APPEALS TO RAISE THE ISSUE OF PRESCRIPTION IN RESPONDENT'S ANSWER OR IN THE CTA'S ORIGINAL DECISION DATED 16 SEPTEMBER 1998.

II

THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING IN ITS DECISION DATED 24 AUGUST 1998 THAT PETITIONER, IN NOT SUBMITTING ITS EXPORT DOCUMENTS, FAILED TO PRESENT ADEQUATE PROOF THAT ITS INPUT TAXES ARE DIRECTLY ATTRIBUTABLE TO ITS EXPORT SALES.

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[8] *Rollo*, p. 36.

[9] CA *rollo*, pp. 64-70.

[10] *Rollo*, pp. 38-40.

III

THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING THAT PETITIONER FAILED TO PRESENT ADEQUATE PROOF THAT IT HAD NOT APPLIED THE CLAIMED INPUT TAX TO ITS OUTPUT TAXES FROM PRIOR AND SUCCEEDING QUARTERS.[11]

Petitioner herein had, in the past, similar petitions with this Court regarding the denial of its claims for tax refund of the input VAT on its purchases of capital goods and on its zero-rated sales. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[12] petitioner filed with the Bureau of Internal Revenue (BIR) its VAT Return for the first quarter of 1992 and also alleged that it filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of ₱26,030,460.00. Its application for refund/credit remained having been unresolved by the BIR, petitioner filed with the CTA, on April 20, 1994, a Petition for Review. Claiming to be a "zero-rated VAT person," petitioner prayed that the CTA order the CIR to refund/credit petitioner with the amount of ₱26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. Both, the CTA and the CA denied the claims of petitioner, ratiocinating that its claim has been filed beyond the prescriptive period provided by law and that evidence presented was insufficient.

In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. Again, citing the earlier case of *Atlas Consolidated Mining and Development Corporation v. CIR,*[13] this Court has expounded the nature and bases of claiming tax refund, thus:

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[11] *Id.* at 15.

[12] G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.

[13] *Id*.

Applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. As this Court has already ruled, Revenue Regulations No. 2-88 is not relevant to the applications for refund/credit of input VAT filed by petitioner corporation; nonetheless, the said applications must have been in accordance with Revenue Regulations No. 3-88, amending Section 16 of Revenue Regulations No. 5-87, which provided as follows —

SECTION 16. *Refunds or tax credits of input tax*. —

x x x x x x x x x

(c) *Claims for tax credits/refunds*. — Application for Tax Credit/ Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

x x x x x x x x x

3. Effectively zero-rated sale of goods and services.

i) photocopy of approved application for zero-rate if filing for the first time.

ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

iii) evidence of actual receipt of goods or services.

4. Purchase of capital goods.

i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.

ii) with respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.

5. In applicable cases, where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

Amount of Zero-rated Sale
Total Sales
x

Total Amount of Input Taxes
= Amount Creditable/Refundable

In case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA. If the taxpayer's claim is supported by voluminous documents, such as receipts, invoices, vouchers or long accounts, their presentation before the CTA shall be governed by CTA Circular No. 1-95, as amended, reproduced in full below —

In the interest of speedy administration of justice, the Court hereby promulgates the following rules governing the presentation of voluminous documents and/or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts pursuant to Section 3(c), Rule 130 of the Rules of

Court and the doctrine enunciated in *Compania Maritima vs. Allied Free Workers Union* (77 SCRA 24), as well as Section 8 of Republic Act No. 1125:

1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present:

(a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices. The name of the accountant or partner of the firm in charge must be stated in the motion so that he/she can be commissioned by the Court to conduct the audit and, thereafter, testify in Court relative to such summary and certification pursuant to Rule 32 of the Rules of Court.

2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise, the originals of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence.[14]

As to the evidence that must be presented, the provisions of the pertinent laws provide:

<u>Section 106, Tax Code</u>

Refunds or tax credits of input tax. - (a) Any VAT-registered person, whose sales are zero-rated, may, within two (2) years after

[14] *Id*. at 107-110. (Emphasis supplied.)

the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund 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 case of zero-rated sales under Section 100 (a) (2) (A) (I), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with the 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.

Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) Photocopy of export document showing the amount of export, the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

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In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

The CTA, applying the abovementioned rules, in its Decision dated August 24, 1998, came out with the following factual findings:

> The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being directly attributable to the goods so exported.
>
> Lastly, We cannot grant petitioner's claim for credit or refund of input taxes due to its failure to show convincingly that the same has not been applied to any of its output tax liability as provided under Section 106 (a) of the Tax Code. There is no evidence to show that the amount herein claimed for refund when applied for on January 25, 1996 has not been priorly or thereafter applied to its output tax liability.[15]

The above factual findings of the CTA were even bolstered when it granted petitioner's motion for reconsideration allowing petitioner to submit the necessary documents and other pieces of evidence, so as to comply with the requirements provided for by law. However, despite such allowance, petitioner still failed to comply. Thus, in its Resolution[16] dated June 21, 2000, the CTA finally disposed the case by ruling that:

> The Court finds and so holds that Petitioner failed again to present proof that it has not applied the alleged excess input taxes to any of its subsequent quarter's output tax liability. In this Court's decision dated August 24, 1998, We already mentioned that petitioner failed to convince us that its input taxes have not been applied to any of its output tax liability as provided under Section 106 (a). Now on

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[15] CTA records, pp. 118-119.

[16] *Id.* at 189-195.

its second opportunity to substantiate its claim, Petitioner again failed to prove this particular allegation. Petitioner merely presented in evidence the following documents to show that it has not applied the amount of ₱4,534,933.74, subject of the claim, to its 1994 first quarter output tax liability, to wit:

	Exhibits
1.) Output/Input VAT (Per Return) Listings for the first quarter of 1994	T
2.) Schedule of Output Taxes for the month of January 1994	U, U-1 to U-2 U-3 to U-5
3.) Schedule of Materials and Supplies for for the first quarter of 1994	V, V-1 to V-9
4.) Schedule of Output Taxes for the month of February 1994	W, W-1 to W-4

Nowhere in all the documents submitted to this Court by the Petitioner can We find its 1994 first quarter VAT return which, to Our mind and as repeatedly ruled in a litany of cases, is necessary for purposes of determining with particular certainty whether or not the claimed input taxes were applied to any of its output tax liability in the first quarter or in the succeeding quarters of 1994. And there is no reason at this point for Us to digress from this ruling.[17]

The above factual findings were affirmed and accorded respect by the CA. Nevertheless, petitioner insists that it has submitted documents and other pieces of evidence, except those required by law, that would establish the existence of the input VAT for the fourth quarter of 1993 and that the excess input VAT claimed for refund or tax credit has not been applied to its output tax liability for prior and succeeding quarters.

The above argument, however, is flawed. It must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns.

[17] *Id.* at 194-195.

Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.[18] The CTA and the CA, based on their appreciation of the evidence presented, committed no error when they declared that petitioner failed to prove that it is entitled to a tax refund and this Court, not being a trier of facts, must defer to their findings. Again, as aptly ruled by this Court in *Atlas*:[19]

> This Court is, therefore, bound by the foregoing facts, as found by the appellate court, for well-settled is the general rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals, by way of a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, is limited to reviewing or revising errors of law; findings of fact of the latter are conclusive. This Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented.
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> The distinction between a question of law and a question of fact is clear-cut. It has been held that "[t]here is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts."
>
> Whether petitioner corporation actually made zero-rated sales; whether it paid input VAT on these sales in the amount it had declared in its returns; whether all the input VAT subject of its applications for refund/credit can be attributed to its zero-rated sales; and whether it had not previously applied the input VAT against its output VAT liabilities, are all questions of fact which could only be answered after reviewing, examining, evaluating, or weighing the probative value of the evidence it presented, and which this Court does not have the jurisdiction to do in the present Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.
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> Granting that there are exceptions to the general rule, when this Court looked into questions of fact under particular circumstances, none of these exist in the instant cases. The Court of Appeals, in

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[18] *Atlas Consolidated Mining and Development Corporation v. CIR*, *supra* note 12.

[19] *Id.*

both cases, found a dearth of evidence to support the claims for refund/credit of the input VAT of petitioner corporation, and the records bear out this finding. Petitioner corporation itself cannot dispute its non-compliance with the requirements set forth in Revenue Regulations No. 3-88 and CTA Circular No. 1-95, as amended. It concentrated its arguments on its assertion that the substantiation requirements under Revenue Regulations No. 2-88 should not have applied to it, while being conspicuously silent on the evidentiary requirements mandated by other relevant regulations.[20]

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And, since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.[21]

Anent the issue of prescription, wherein petitioner questions the ruling of the CA that the former's claim for refund has prescribed, disregarding the failure of respondent Commissioner of Internal Revenue and the CTA to raise the said issue in their answer and original decision, respectively, this Court finds the same moot and academic. Although it may appear that the CTA only brought up the issue of prescription in its later resolution and not in its original decision, its ruling on the merits of the

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[20] *Id.* at 118-120, citing *Sps. Rosario v. Court of Appeals,* 369 Phil. 729, 738 (1999), *Bautista vs. Puyat Vinyl Products, Inc.,* 416 Phil. 305, 309 (2001), *Commissioner of Internal Revenue v. Court of Appeals*, 358 Phil. 562, 575 (1998) and *Sps. Sta. Maria v. Court of Appeals,* 349 Phil. 275, 282-283 (1998).

[21] *Paseo Realty and Development Corporation v. Court of Appeals*, 483 Phil. 254, 272-273 (2004), citing *Mactan Cebu International Airport Authority v. Marcos*, 330 Phil. 392 (1996), citations omitted; See also *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, 368 Phil. 388 (1999).

application for refund, could only imply that the issue of prescription was not the main consideration for the denial of petitioner's claim for tax refund. Otherwise, the CTA would have just denied the application on the ground of prescription.

WHEREFORE, the Petition is hereby *DENIED* for lack of merit. The Decision and Resolution of the Court of Appeals, dated April 19, 2001 and August 6, 2003, respectively, are hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167459. January 26, 2011)

JOSE REYNALDO B. OCHOSA, *petitioner, vs.* **BONA J. ALANO and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE UNDER ARTICLE 36; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS.— In the landmark case of *Santos v. Court of Appeals*, we observed that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated January 24, 2011.

it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

2. **ID.; ID.; ID.; ID.; THE PERSON TO BE DECLARED PSYCHOLOGICALLY INCAPACITATED NEED NOT BE EXAMINED BY A PHYSICIAN.—** Soon after, incorporating the three basic requirements of psychological incapacity as mandated in *Santos*, we laid down in *Republic v. Court of Appeals and Molina* the x x x guidelines in the interpretation and application of Article 36 of the Family Code x x x. In *Marcos v. Marcos*, we previously held that the x x x guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "*medically* or *clinically* identified." What is important is the presence of evidence that can adequately establish the party's *psychological* condition. For, indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

3. **ID.; ID.; ID.; DOES NOT REALLY DISSOLVE A MARRIAGE BUT SIMPLY RECOGNIZES THAT THERE NEVER WAS ANY MARRIAGE IN THE FIRST PLACE.—** It is also established in jurisprudence that from these requirements arise the concept that Article 36 of the Family Code does not really dissolve a marriage; it simply recognizes that there never was any marriage in the first place because the affliction – already then existing – was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed.

4. **ID.; ID.; ID.; EACH CASE MUST BE JUDGED, NOT ON THE BASIS OF *A PRIORI* ASSUMPTIONS, PREDILECTIONS OR GENERALIZATIONS BUT ACCORDING TO ITS OWN FACTS.—** A little over a decade since the promulgation of the *Molina* guidelines, we made a critical assessment of the same in *Ngo Te v. Yu-Te* x x x. However, our critique did not mean that we had declared an abandonment of the *Molina* doctrine. On the contrary, we simply declared and, thus, clarified in the same *Te* case that there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. Furthermore, we

reiterated in the same case the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

5. **ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY; JURISPRUDENTIAL REQUISITE OF JURIDICAL ANTECEDENCE; NOT DULY ESTABLISHED IN CASE AT BAR.—** We are sufficiently convinced, after a careful perusal of the evidence presented in this case, that Bona had been, on several occasions with several other men, sexually disloyal to her spouse, Jose. Likewise, we are persuaded that Bona had indeed abandoned Jose. However, we cannot apply the same conviction to Jose's thesis that the totality of Bona's acts constituted psychological incapacity as determined by Article 36 of the Family Code. There is inadequate credible evidence that her "defects" were already present at the inception of, or prior to, the marriage. In other words, her alleged psychological incapacity did not satisfy the jurisprudential requisite of "juridical antecedence." x x x Dr. Rondain's testimony and psychiatric evaluation report do not provide evidentiary support to cure the doubtful veracity of Jose's one-sided assertion. Even if we take into account the psychiatrist's conclusion that Bona harbors a Histrionic Personality Disorder that existed prior to her marriage with Jose and this mental condition purportedly made her helplessly prone to promiscuity and sexual infidelity, the same cannot be taken as credible proof of antecedence since the method by which such an inference was reached leaves much to be desired in terms of meeting the standard of evidence required in determining psychological incapacity.

6. **ID.; ID.; ID.; ID.; INFORMATION COMING FROM PERSONS WITH PERSONAL KNOWLEDGE OF THE JURIDICAL ANTECEDENTS MAY BE HELPFUL IN THE DETERMINATION OF A PARTY'S COMPLETE PERSONALITY PROFILE.—** We have previously held that, in employing a rigid and stringent level of evidentiary scrutiny to cases like this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds

that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons with personal knowledge of the juridical antecedents may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information. However, we have also ruled in past decisions that to make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, similar to what we have pointed out in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

7. **ID.; ID.; ID.; ID.; ALLEGED PSYCHOLOGICAL INCAPACITY IN CASE AT BAR CAN ONLY BE TRACED TO THE PERIOD AFTER THE MARRIAGE AND NOT TO THE INCEPTION OF THE SAID MARRIAGE.—** It is apparent from the x x x testimonies that Bona, contrary to Jose's assertion, had no manifest desire to abandon Jose at the beginning of their marriage and was, in fact, living with him for the most part of their relationship from 1973 up to the time when Jose drove her away from their conjugal home in 1988. On the contrary, the record shows that it was Jose who was constantly away from Bona by reason of his military duties and his later incarceration. A reasonable explanation for Bona's refusal to accompany Jose in his military assignments in other parts of Mindanao may be simply that those locations were known conflict areas in the seventies. Any doubt as to Bona's desire to live with Jose would later be erased by the fact that Bona lived with Jose in their conjugal home in Fort Bonifacio during the following decade. In view of the foregoing, the badges of Bona's alleged psychological incapacity, *i.e.*, her sexual infidelity and abandonment, can only be convincingly traced to the period of time after her marriage to Jose and not to the inception of the said marriage.

8. **ID.; ID.; ID.; REFERS TO A SERIOUS PSYCHOLOGICAL ILLNESS AFFLICTING A PARTY EVEN BEFORE THE CELEBRATION OF THE MARRIAGE.—** We have stressed

time and again that Article 36 of the Family Code is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. These marital obligations are those provided under Articles 68 to 71, 220, 221 and 225 of the Family Code.

APPEARANCES OF COUNSEL

Oscar T. Zaldivar for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated October 11, 2004 as well as the Resolution[2] dated March 10, 2005 of the Court of Appeals in CA-G.R. CV No. 65120, which reversed and set aside the Decision[3] dated January 11, 1999 of the Regional Trial Court of Makati City, Branch 140 in Civil Case No. 97-2903. In the said January 11, 1999 Decision, the trial court granted petitioner Jose Reynaldo Ochosa's (Jose) petition for the declaration of nullity of marriage between him and private respondent Bona J. Alano (Bona).

The relevant facts of this case, as outlined by the Court of Appeals, are as follows:

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[1] *Rollo*, pp. 28-39; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman, concurring.

[2] *Id.* at 41.

[3] *Id.* at 42-46.

It appears that Jose met Bona in August 1973 when he was a young lieutenant in the AFP while the latter was a seventeen-year-old first year college drop-out. They had a whirlwind romance that culminated into sexual intimacy and eventual marriage on 27 October 1973 before the Honorable Judge Cesar S. Principe in Basilan. The couple did not acquire any property. Neither did they incur any debts. Their union produced no offspring. In 1976, however, they found an abandoned and neglected one-year-old baby girl whom they later registered as their daughter, naming her Ramona Celeste Alano Ochosa.

During their marriage, Jose was often assigned to various parts of the Philippine archipelago as an officer in the AFP. Bona did not cohabit with him in his posts, preferring to stay in her hometown of Basilan. Neither did Bona visit him in his areas of assignment, except in one (1) occasion when Bona stayed with him for four (4) days.

Sometime in 1985, Jose was appointed as the Battalion Commander of the Security Escort Group. He and Bona, along with Ramona, were given living quarters at Fort Bonifacio, Makati City where they resided with their military aides.

In 1987, Jose was charged with rebellion for his alleged participation in the failed c*oup d'etat*. He was incarcerated in Camp Crame.

It appears that Bona was an unfaithful spouse. Even at the onset of their marriage when Jose was assigned in various parts of the country, she had illicit relations with other men. Bona apparently did not change her ways when they lived together at Fort Bonifacio; she entertained male visitors in her bedroom whenever Jose was out of their living quarters. On one occasion, Bona was caught by Demetrio Bajet *y* Lita, a security aide, having sex with Jose's driver, Corporal Gagarin. Rumors of Bona's sexual infidelity circulated in the military community. When Jose could no longer bear these rumors, he got a military pass from his jail warden and confronted Bona.

During their confrontation, Bona admitted her relationship with Corporal Gagarin who also made a similar admission to Jose. Jose drove Bona away from their living quarters. Bona left with Ramona and went to Basilan.

In 1994, Ramona left Bona and came to live with Jose. It is Jose who is currently supporting the needs of Ramona.

Jose filed a Petition for Declaration of Nullity of Marriage, docketed as Civil Case No. 97-2903 with the RTC of Makati City, Branch 140,

seeking to nullify his marriage to Bona on the ground of the latter's psychological incapacity to fulfill the essential obligations of marriage.

Summons with a copy of the petition and its annexes were duly served upon Bona who failed to file any responsive pleading during the reglementary period.

Pursuant to the order of the trial court, the Public Prosecutor conducted an investigation to determine whether there was collusion between the parties. Said prosecutor submitted a report that she issued a subpoena to both parties but only Jose appeared; hence, it can not be reasonably determined whether or not there was collusion between them.

Trial on the merits of the case ensued. Petitioner along with his two military aides, Gertrudes Himpayan Padernal and Demetrio Bajet *y* Lita, testified about respondent's marital infidelity during the marriage.

The fourth and final witness was Elizabeth E. Rondain, a psychiatrist, who testified that after conducting several tests, she reached the conclusion that respondent was suffering from histrionic personality disorder which she described as follows:

> "Her personality is that she has an excessive emotion and attention seeking behavior. So therefore they don't develop sympathy in feelings and they have difficulty in maintaining emotional intimacy. In the case of Mr. Ochosa he has been a military man. It is his duty to be transferred in different areas in the Philippines. And while he is being transferred from one place to another because of his assignments as a military man, Mrs. Bona Alano refused to follow him in all his assignments. There were only few occasions in which she followed him. And during those times that they were not living together, because of the assignments of Mr. Ochosa she developed extra marital affair with other man of which she denied in the beginning but in the latter part of their relationship she admitted it to Mr. Ochosa that she had relationship with respondent's driver. I believe with this extra marital affair that is her way of seeking attention and seeking emotions from other person and not from the husband. And of course, this is not fulfilling the basic responsibility in a marriage."

According to Rondain, respondent's psychological disorder was traceable to her family history, having for a father a gambler and a

womanizer and a mother who was a battered wife. There was no possibility of a cure since respondent does not have an insight of what is happening to her and refused to acknowledge the reality.

With the conclusion of the witnesses' testimonies, petitioner formally offered his evidence and rested his case.

The Office of the Solicitor General (OSG) submitted its opposition to the petition on the ground that "the factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage (*Santos v. CA,* 240 SCRA 20 [1995])."

In a Decision dated 11 January 1999, the trial court granted the petition and nullified the parties' marriage on the following findings, *viz*:

x x x x x x x x x

> Article 36 of the Family Code, as amended, provides as follows:
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> > '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.'
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> Such a ground to be invalidative (sic) of marriage, the degree of incapacity must exhibit GRAVITY, ANTECEDENCE and INCURABILITY.
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> From the evidence presented, the Court finds that the psychological incapacity of the respondent exhibited GRAVITY, ANTECEDENCE and INCURABILITY.
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> It is grave because the respondent did not carry out the normal and ordinary duties of marriage and family shouldered by any average couple existing under everyday circumstances of life and work. The gravity was manifested in respondent's infidelity as testified to by the petitioner and his witnesses.
>
> The psychological incapacity of the respondent could be traced back to respondent's history as testified to by the expert witness when she said that respondent's bad experience during her childhood resulted in her difficulty in achieving emotional intimacy, hence, her continuous illicit relations with several men before and during the marriage.

> Considering that persons suffering from this kind of personality disorder have no insight of their condition, they will not submit to treatment at all. As in the case at bar, respondent's psychological incapacity clinically identified as Histrionic Personality Disorder will remain incurable.[4] (Emphasis supplied.)

Thus, the dispositive portion of the trial court Decision dated January 11, 1999 read:

> WHEREFORE, premises considered, judgment is hereby rendered DECLARING the marriage of JOSE REYNALDO B. OCHOSA and BONA J. ALANO on October 27, 1973 at Basilan City *VOID AB INITIO* on ground of psychological incapacity of the respondent under Article 36 of the Family Code as amended with all the effects and consequences provided for by all applicable provisions of existing pertinent laws.
>
> After this Decision becomes final, let copies thereof be sent to the Local Civil Registrar of Basilan City who is directed to cancel the said marriage from its Civil Registry, and the Local Civil Registrar of Makati City for its information and guidance.[5]

The Office of the Solicitor General (OSG) appealed the said ruling to the Court of Appeals which sided with the OSG's contention that the trial court erred in granting the petition despite Jose's abject failure to discharge the burden of proving the alleged psychological incapacity of his wife, Bona, to comply with the essential marital obligations.

Thus, the Court of Appeals reversed and set aside the trial court Decision in its assailed Decision dated October 11, 2004, the dispositive portion of which states:

> WHEREFORE, the appeal is GRANTED, the appealed Decision dated 11 January 1999 in Civil Case No. 97-2903 of the Regional Trial Court (RTC) of Makati City, Branch 140, is accordingly REVERSED and SET ASIDE, and another is entered DISMISSING the petition for declaration of nullity of marriage.[6]

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[4] *Id.* at 28-33.

[5] *Id.* at 46.

[6] *Id.* at 39.

Jose filed a Motion for Reconsideration but this was denied by the Court of Appeals for lack of merit in its assailed Resolution dated March 10, 2005.

Hence, this Petition.

The only issue before this Court is whether or not Bona should be deemed psychologically incapacitated to comply with the essential marital obligations.

The petition is without merit.

The petition for declaration of nullity of marriage which Jose filed in the trial court hinges on Article 36 of the Family Code, to wit:

> 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.

In the landmark case of *Santos v. Court of Appeals*,[7] we observed that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

Soon after, incorporating the three basic requirements of psychological incapacity as mandated in *Santos*, we laid down in *Republic v. Court of Appeals and Molina*[8] the following guidelines in the interpretation and application of Article 36 of the Family Code:

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[7] 310 Phil. 21, 39 (1995).

[8] 335 Phil. 664 (1997).

(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. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence*, *inviolability* and *solidarity*.

(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. Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or physically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of

a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outburst" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Article 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. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(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. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."
>
> Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void.

> This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church – while remaining independent, separate and apart from each other – shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(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. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[9] (Citations omitted.)

In *Marcos v. Marcos*,[10] we previously held that the foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "*medically* or *clinically* identified." What is important is the presence of evidence that can adequately establish the party's *psychological* condition. For, indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

It is also established in jurisprudence that from these requirements arise the concept that Article 36 of the Family Code does not really dissolve a marriage; it simply recognizes that there never was any marriage in the first place because the affliction – already then existing – was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed.[11]

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[9] *Id.* at 676-680.

[10] 397 Phil. 840, 850 (2000).

[11] *Toring v. Toring*, G.R. No. 165321, August 3, 2010.

A little over a decade since the promulgation of the *Molina* guidelines, we made a critical assessment of the same in *Ngo Te v. Yu-Te*,[12] to wit:

> In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration of Article 36 as the "most liberal divorce procedure in the world." The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.[13]

However, our critique did not mean that we had declared an abandonment of the *Molina* doctrine. On the contrary, we simply declared and, thus, clarified in the same *Te* case that there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. Furthermore, we reiterated in the same case the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.[14]

In the case at bar, the trial court granted the petition for the declaration of nullity of marriage on the basis of Dr. Elizabeth

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[12] G.R. No. 161793, February 13, 2009, 579 SCRA 193.

[13] *Id.* at 224-225.

[14] *Id.* at 228.

Rondain's testimony[15] and her psychiatric evaluation report[16] as well as the individual testimonies of Jose[17] and his military aides - Mrs. Gertrudes Himpayan Padernal[18] and Corporal Demetrio Bajet.[19]

We are sufficiently convinced, after a careful perusal of the evidence presented in this case, that Bona had been, on several occasions with several other men, sexually disloyal to her spouse, Jose. Likewise, we are persuaded that Bona had indeed abandoned Jose. However, we cannot apply the same conviction to Jose's thesis that the totality of Bona's acts constituted psychological incapacity as determined by Article 36 of the Family Code. There is inadequate credible evidence that her "defects" were already present at the inception of, or prior to, the marriage. In other words, her alleged psychological incapacity did not satisfy the jurisprudential requisite of "juridical antecedence."

With regard to Bona's sexual promiscuity prior to her marriage to Jose, we have only the uncorroborated testimony of Jose made in open court to support this allegation. To quote the pertinent portion of the transcript:

Q: So, what was the reason why you have broken with your wife after several years -

A: Well, I finally broke up with my wife because I can no longer bear the torture because of the gossips that she had an affair with other men, and finally, when I have a chance to confront her she admitted that she had an affair with other men.

Q: With other men. And, of course this – her life with other men of course before the marriage you have already known –

A: Yes, your honor.

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[15] TSN, September 14, 1998.

[16] Records, pp. 70-74.

[17] TSN, March 3, 1998.

[18] TSN, July 1, 1998.

[19] TSN, August 21, 1998.

Q: So, that this gossips – because you said that you thought that this affair would go to end after your marriage?

A: Yes, I was thinking about that.

Q: So, that after several years she will not change so that's why you can't bear it anymore?

A: Yes, ma'am.[20]

Dr. Rondain's testimony and psychiatric evaluation report do not provide evidentiary support to cure the doubtful veracity of Jose's one-sided assertion. Even if we take into account the psychiatrist's conclusion that Bona harbors a Histrionic Personality Disorder that existed prior to her marriage with Jose and this mental condition purportedly made her helplessly prone to promiscuity and sexual infidelity, the same cannot be taken as credible proof of antecedence since the method by which such an inference was reached leaves much to be desired in terms of meeting the standard of evidence required in determining psychological incapacity.

The psychiatrist's findings on Bona's personality profile did not emanate from a personal interview with the subject herself as admitted by Dr. Rondain in court, as follows:

Q: How about, you mentioned that the petitioner came for psychological test, how about the respondent, did she come for interview and test?

A: No, ma'am.

Q: Did you try to take her for such?

A: Yes, ma'am.

Q: And what did she tell you, did she come for an interview?

A: There was no response, ma'am.[21]

As a consequence thereof, Dr. Rondain merely relied on her interview with Jose and his witness, Mrs. Padernal, as well

[20] TSN, March 3, 1998, p. 8.

[21] TSN, September 14, 1998, p. 8.

as the court record of the testimonies of other witnesses, to wit:

> Q: And you said you did interviews. Who did the interview?
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> A: I interviewed Mr. Ochosa and their witness Padernal, ma'am.
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> Q: When you say Padernal are you referring to Gertrudes Himpayan Padernal who testified in this court?
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> A: Yes, ma'am.
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> x x x x x x x x x
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> Q: Other than the interviews what else did you do in order to evaluate members of the parties?
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> A: I also interviewed (sic) the transcript of stenographic notes of the testimonies of other witnesses, ma'am.
>
> x x x x x x x x x
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> Q: Was there also a psychological test conducted on the respondent?
>
> A: Yes, your honor.
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> Q: It was on the basis of the psychological test in which you based your evaluation report?
>
> A: It was based on the psychological test conducted and clinical interview with the other witnesses, your Honor.[22]

Verily, Dr. Rondain evaluated Bona's psychological condition indirectly from the information gathered solely from Jose and his witnesses. This factual circumstance evokes the possibility that the information fed to the psychiatrist is tainted with bias for Jose's cause, in the absence of sufficient corroboration.

Even if we give the benefit of the doubt to the testimonies at issue since the trial court judge had found them to be credible enough after personally witnessing Jose and the witnesses testify in court, we cannot lower the evidentiary benchmark with regard to information on Bona's pre-marital history which is crucial to

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[22] *Id.* at 6-17.

the issue of antecedence in this case because we have only the word of Jose to rely on. In fact, Bona's dysfunctional family portrait which brought about her Histrionic Personality Disorder as painted by Dr. Rondain was based solely on the assumed truthful knowledge of Jose, the spouse who has the most to gain if his wife is found to be indeed psychologically incapacitated. No other witness testified to Bona's family history or her behavior prior to or at the beginning of the marriage. Both Mrs. Padernal and Corporal Bajet came to know Bona only during their employment in petitioner's household *during* the marriage. It is undisputed that Jose and Bona were married in 1973 while Mrs. Padernal and Corporal Bajet started to live with petitioner's family only in 1980 and 1986, respectively.

We have previously held that, in employing a rigid and stringent level of evidentiary scrutiny to cases like this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons with personal knowledge of the juridical antecedents may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.[23]

However, we have also ruled in past decisions that to make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, similar to what we have pointed out in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[24]

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[23] *Suazo v. Suazo*, G.R. No. 164493, March 12, 2010.

[24] *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009, 596 SCRA 157, 181.

Anent the accusation that, even at the inception of their marriage, Bona did not wish to be with Jose as a further manifestation of her psychological incapacity, we need only to look at the testimonial records of Jose and his witnesses to be convinced otherwise, to wit:

JOSE OCHOSA'S TESTIMONY:

Q: How long did you stay with your wife?

A: We were married in 1973 and we separated in 1988 but in all those years there were only few occasions that we were staying together because most of the time I'm in the field.

Q: Now, you said most of the time you were in the field, did you not – your wife come with you in any of your assignments?

A: Never, but sometimes she really visited me and stayed for one (1) day and then –

Q: And, where did your wife stayed when she leaves you?

A: She was staying with her mother in Basilan.

Q: Where were you assigned most of the time?

A: I was assigned in Davao, Zamboanga, Cotabato, Basilan.

Q: And, of course she would come to your place every now and then because it is not very far –

A: No, ma'am, once in a while only.

Q: Did you not go home to your conjugal home?

A: I have a chanced also to go home because we were allowed to at least three (3) days every other month.

Q: So, if you start from the marriage up to 1988 so that is 16 years you were supposed to have been living together?

A: No, actually in 19 – middle of 1987 because in 1987 I was in x x x.[25]

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[25] TSN, March 3, 1998, pp. 9-10.

GERTRUDES PADERNAL'S TESTIMONY:

Q: Now, do you know when they lived together as husband and wife?

A: 1979.

Q: And you said that you have known the petitioner and the respondent in this case because in fact, you lived with them together in the same quarters. Does the quarters have different rooms?

A: Yes, ma'am.

Q: But very near each other?

A: Yes, ma'am.

Q: You know them because of the proximity of the quarters?

A: Yes, ma'am.

Q: It was only during this 1980 to 1983, three (3) years that you lived together that you have a chance to be with the spouses?

x x x x x x x x x

A: Since 1980 to 1983 we lived together in the same house.

x x x x x x x x x

Q: Now, Madam Witness, after 1983, where did you reside together with your husband?

A: In Cagayan de Oro and in 1986 we came back to Manila, in Fort Bonifacio.

Q: You mean, in the same house where petitioner and the respondent lived together?

A: Yes. Ma'am.

Q: How long did you live in the house where the petitioner and the respondent stay?

A: Twelve years now since 1983 to 1995.

Q: Where was the petitioner working at that time, from 1982 to 1995?

A: He is a soldier, a Colonel.

Q: Do you know where he was assigned during this time?

A: Yes, ma'am, G-3.

Q: May we know where this G-3 is?

A: Fort Bonifacio, ma'am.

Q: What about the wife, where does she stay?

A: At Fort Bonifacio, in their house.[26]

DR. ELIZABETH E. RONDAIN'S TESTIMONY:

Q: Now, they got married in 1973, am I correct?

A: Yes, ma'am.

Q: But the matter of the work or assignment of the petitioner, he was assigned in different Provinces or *Barangays* in the Philippines?

A: Yes, ma'am.

Q: Now, when the wife or the respondent in this case did not go with the husband in different places of his assignment did you ask her why what was the reason why she did not like to go those places?

A: She just did not want to. The wife did not go with him because… by transferring from one place to another, she just don't want to go, she just wanted to stay in Basilan where her hometown is, ma'am.

Q: Did the petitioner herein tell you why the respondent don't want to go with him?

A: Yes, I asked, the answer of the petitioner was she simply did not want to go with him because she did not want him to be appointed to far away places.

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[26] TSN, July 1, 1998, pp. 7-10.

Q: And would it be that since she did not like to go with the husband in some far away different assignments she also assumed that the assignments were in this war regions they were always fighting considering the place in Basilan they were in fighting atmosphere?

A: It is possible but he was transferred to Manila and she also refused to stay in Manila, ma'am.

Q: When was that that she refused to come to Manila?

A: I think, sometime in 1983, ma'am. She did not follow immediately. She stayed with him only for four (4) months, ma'am.

Q: Now, do you know if the petitioner and the respondent were living together as husband and wife for this period of time during the relationship?

A: Yes, ma'am. After their marriage I believe their relationship was good for a few months until he was transferred to Julu. I believe during that time when they were together the husband was giving an attention to her. The husband was always there and when the husband transferred to Basilan, the attention was not there anymore, ma'am.[27]

It is apparent from the above-cited testimonies that Bona, contrary to Jose's assertion, had no manifest desire to abandon Jose at the beginning of their marriage and was, in fact, living with him for the most part of their relationship from 1973 up to the time when Jose drove her away from their conjugal home in 1988. On the contrary, the record shows that it was Jose who was constantly away from Bona by reason of his military duties and his later incarceration. A reasonable explanation for Bona's refusal to accompany Jose in his military assignments in other parts of Mindanao may be simply that those locations were known conflict areas in the seventies. Any doubt as to Bona's desire to live with Jose would later be erased by the fact that Bona lived with Jose in their conjugal home in Fort Bonifacio during the following decade.

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[27] TSN, September 14, 1998, pp. 13-15.

In view of the foregoing, the badges of Bona's alleged psychological incapacity, *i.e.*, her sexual infidelity and abandonment, can only be convincingly traced to the period of time after her marriage to Jose and not to the inception of the said marriage.

We have stressed time and again that Article 36 of the Family Code is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. These marital obligations are those provided under Articles 68 to 71, 220, 221 and 225 of the Family Code.[28]

While we are not insensitive to petitioner's suffering in view of the truly appalling and shocking behavior of his wife, still, we are bound by judicial precedents regarding the evidentiary requirements in psychological incapacity cases that must be applied to the present case.

WHEREFORE, the petition is *DENIED* and the assailed Decision of the Court of Appeals is hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.,* concur.

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[28] *Marcos v. Marcos*, *supra* note 10 at 857.

SECOND DIVISION

[G.R. No. 169144. January 26, 2011]

IN RE: IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF RUPERTA PALAGANAS WITH PRAYER FOR THE APPOINTMENT OF SPECIAL ADMINISTRATOR

MANUEL MIGUEL PALAGANAS and BENJAMIN GREGORIO PALAGANAS, *petitioners, vs.* **ERNESTO PALAGANAS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; WILLS; A WILL EXECUTED BY A FOREIGNER ABROAD MAY BE PROBATED IN THE PHILIPPINES ALTHOUGH IT HAS NOT BEEN PREVIOUSLY PROBATED IN ITS PLACE OF EXECUTION.—** [O]ur laws do not prohibit the probate of wills executed by foreigners abroad although the same have not as yet been probated and allowed in the countries of their execution. A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by the law of the place where he resides, or according to the formalities observed in his country. In this connection, Section 1, Rule 73 of the 1997 Rules of Civil Procedure provides that if the decedent is an inhabitant of a foreign country, the RTC of the province where he has an estate may take cognizance of the settlement of such estate. Sections 1 and 2 of Rule 76 further state that the executor, devisee, or legatee named in the will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

2. **REMEDIAL LAW; SPECIAL PROCEEDINGS; ALLOWANCE OR DISALLOWANCE OF WILL; PETITION FOR THE ALLOWANCE OF A WILL; CONTENTS.—** Our rules require merely that the petition for the allowance of a will must show,

so far as known to the petitioner: (a) the jurisdictional facts; (b) the names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent; (c) the probable value and character of the property of the estate; (d) the name of the person for whom letters are prayed; and (e) if the will has not been delivered to the court, the name of the person having custody of it. *Jurisdictional facts* refer to the fact of death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, the estate he left in such province. The rules do not require proof that the foreign will has already been allowed and probated in the country of its execution.

3. **ID.; ID.; REPROBATE OF A WILL; IN REPROBATE, THE LOCAL COURT ACKNOWLEDGES AS BINDING THE FINDINGS OF THE FOREIGN PROBATE COURT PROVIDED ITS JURISDICTION OVER THE MATTER CAN BE ESTABLISHED.—** In insisting that Ruperta's will should have been first probated and allowed by the court of California, petitioners Manuel and Benjamin obviously have in mind the procedure for the ***reprobate*** of will before admitting it here. But, reprobate or re-authentication of a will already probated and allowed in a foreign country is different from that of probate where the will is presented for the first time before a competent court. Reprobate is specifically governed by Rule 77 of the Rules of Court. Contrary to petitioners' stance, since this latter rule applies only to reprobate of a will, it cannot be made to apply to the present case. In reprobate, the local court acknowledges as binding the findings of the foreign probate court provided its jurisdiction over the matter can be established.

APPEARANCES OF COUNSEL

Alan Ramiro L. Guevara for petitioners.

Fernandez Fernandez and Associates Law Offices for respondent.

DECISION

ABAD, *J.*:

This case is about the probate before Philippine court of a will executed abroad by a foreigner although it has not been probated in its place of execution.

The Facts and the Case

On November 8, 2001 Ruperta C. Palaganas (Ruperta), a Filipino who became a naturalized United States (U.S.) citizen, died single and childless. In the last will and testament she executed in California, she designated her brother, Sergio C. Palaganas (Sergio), as the executor of her will for she had left properties in the Philippines and in the U.S.

On May 19, 2003 respondent Ernesto C. Palaganas (Ernesto), another brother of Ruperta, filed with the Regional Trial Court (RTC) of Malolos, Bulacan, a petition for the probate of Ruperta's will and for his appointment as special administrator of her estate.[1] On October 15, 2003, however, petitioners Manuel Miguel Palaganas (Manuel) and Benjamin Gregorio Palaganas (Benjamin), nephews of Ruperta, opposed the petition on the ground that Ruperta's will should not be probated in the Philippines but in the U.S. where she executed it. Manuel and Benjamin added that, assuming Ruperta's will could be probated in the Philippines, it is invalid nonetheless for having been executed under duress and without the testator's full understanding of the consequences of such act. Ernesto, they claimed, is also not qualified to act as administrator of the estate.

Meantime, since Ruperta's foreign-based siblings, Gloria Villaluz and Sergio, were on separate occasions in the Philippines for a short visit, respondent Ernesto filed a motion with the RTC for leave to take their deposition, which it granted. On April, 13, 2004 the RTC directed the parties to submit their memorandum on the

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[1] Docketed as Special Proceedings 112-M-2003, Branch 10, RTC of Malolos, Bulacan.

issue of whether or not Ruperta's U.S. will may be probated in and allowed by a court in the Philippines.

On June 17, 2004 the RTC issued an order:[2] (a) admitting to probate Ruperta's last will; (b) appointing respondent Ernesto as special administrator at the request of Sergio, the U.S.-based executor designated in the will; and (c) issuing the Letters of Special Administration to Ernesto.

Aggrieved by the RTC's order, petitioner nephews Manuel and Benjamin appealed to the Court of Appeals (CA),[3] arguing that an unprobated will executed by an American citizen in the U.S. cannot be probated for the first time in the Philippines.

On July 29, 2005 the CA rendered a decision,[4] affirming the assailed order of the RTC,[5] holding that the RTC properly allowed the probate of the will, subject to respondent Ernesto's submission of the authenticated copies of the documents specified in the order and his posting of required bond. The CA pointed out that Section 2, Rule 76 of the Rules of Court does not require prior probate and allowance of the will in the country of its execution, before it can be probated in the Philippines. The present case, said the CA, is different from reprobate, which refers to a will already probated and allowed abroad. Reprobate is governed by different rules or procedures. Unsatisfied with the decision, Manuel and Benjamin came to this Court.

The Issue Presented

The key issue presented in this case is whether or not a will executed by a foreigner abroad may be probated in the Philippines although it has not been previously probated and allowed in the country where it was executed.

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[2] *Rollo*, pp. 73-77.

[3] CA-G.R. CV 83564.

[4] Penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Rebecca De Guia Salvador and Fernanda Lampas Peralta.

[5] *Rollo*, pp. 26-39.

The Court's Ruling

Petitioners Manuel and Benjamin maintain that wills executed by foreigners abroad must first be probated and allowed in the country of its execution before it can be probated here. This, they claim, ensures prior compliance with the legal formalities of the country of its execution. They insist that local courts can only allow probate of such wills if the proponent proves that: (a) the testator has been admitted for probate in such foreign country, (b) the will has been admitted to probate there under its laws, (c) the probate court has jurisdiction over the proceedings, (d) the law on probate procedure in that foreign country and proof of compliance with the same, and (e) the legal requirements for the valid execution of a will.

But our laws do not prohibit the probate of wills executed by foreigners abroad although the same have not as yet been probated and allowed in the countries of their execution. A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by the law of the place where he resides, or according to the formalities observed in his country.[6]

In this connection, Section 1, Rule 73 of the 1997 Rules of Civil Procedure provides that if the decedent is an inhabitant of a foreign country, the RTC of the province where he has an estate may take cognizance of the settlement of such estate. Sections 1 and 2 of Rule 76 further state that the executor, devisee, or legatee named in the will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

Our rules require merely that the petition for the allowance of a will must show, so far as known to the petitioner: (a) the jurisdictional facts; (b) the names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;

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[6] Civil Code of the Philippines, Art. 816.

(c) the probable value and character of the property of the estate; (d) the name of the person for whom letters are prayed; and (e) if the will has not been delivered to the court, the name of the person having custody of it. *Jurisdictional facts* refer to the fact of death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, the estate he left in such province.[7] The rules do not require proof that the foreign will has already been allowed and probated in the country of its execution.

In insisting that Ruperta's will should have been first probated and allowed by the court of California, petitioners Manuel and Benjamin obviously have in mind the procedure for the ***reprobate*** of will before admitting it here. But, reprobate or re-authentication of a will already probated and allowed in a foreign country is different from that probate where the will is presented for the first time before a competent court. Reprobate is specifically governed by Rule 77 of the Rules of Court. Contrary to petitioners' stance, since this latter rule applies only to reprobate of a will, it cannot be made to apply to the present case. In reprobate, the local court acknowledges as binding the findings of the foreign probate court provided its jurisdiction over the matter can be established.

Besides, petitioners' stand is fraught with impractically. If the instituted heirs do not have the means to go abroad for the probate of the will, it is as good as depriving them outright of their inheritance, since our law requires that no will shall pass either real or personal property unless the will has been proved and allowed by the proper court.[8]

Notably, the assailed RTC order of June 17, 2004 is nothing more than an initial ruling that the court can take cognizance of the petition for probate of Ruperta's will and that, in the

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[7] *Cuenco v. Court of Appeals*, 153 Phil. 115, 133 (1973); Herrera, *Remedial Law,* Vol. III-A, Rex Bookstore, 1996 ed., p. 46.

[8] CIVIL CODE OF THE PHILIPPINES, Art. 838; RULES OF COURT, Rule 75, Sec. 1.

meantime, it was designating Ernesto as special administrator of the estate. The parties have yet to present evidence of the due execution of the will, *i.e.* the testator's state of mind at the time of the execution and compliance with the formalities required of wills by the laws of California. This explains the trial court's directive for Ernesto to submit the duly authenticated copy of Ruperta's will and the certified copies of the Laws of Succession and Probate of Will of California.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Court of Appeals decision in CA-G.R. CV 83564 dated July 29, 2005.

SO ORDERED.

Carpio (Chairperson), Nachura, Mendoza, and *Sereno,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 172224. January 26, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **COURT OF APPEALS and DINAH C. BARRIGA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN; FINALITY AND EXECUTION OF DECISION; AN APPEAL TO THE COURT OF APPEALS MAY BE MADE WHEN THE

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated January 24, 2011.

PENALTY IMPOSED IS SUSPENSION FOR MORE THAN A MONTH.— [Pursuant to] Section 7, Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17, x x x when a public official has been found guilty of an administrative charge by the Office of the Ombudsman and the penalty imposed is suspension for more than a month, just like in the present case, an appeal may be made to the CA. However, such appeal shall not stop the decision from being executory and the implementation of the decision follows as a matter of course.

2. **ID.; ID.; ID.; ID.; DECISIONS OF THE OMBUDSMAN ARE IMMEDIATELY EXECUTORY EVEN PENDING APPEAL IN THE COURT OF APPEALS.—** The provision in the Rules of Procedure of the Office of the Ombudsman is clear that an appeal by a public official from a decision meted out by the Ombudsman shall not stop the decision from being executory. In *Office of the Ombudsman v. Court of Appeals and Macabulos,* we held that decisions of the Ombudsman are immediately executory even pending appeal in the CA. As explained by this Court in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH,* this provision in the rules of the Ombudsman is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. Thus, the Ombudsman's order imposing on Barriga the penalty of suspension from office for one year without pay is immediately executory even pending appeal in the Court of Appeals.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Lawrence L. Fernandez for private respondent.

DECISION

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing the Resolutions dated 20 February 2006[2] and 16 June 2005[3] of the Court of Appeals (CA) in CA-G.R. SP No. 00079.

The Facts

Sometime in 2000, Sonia Q. Pua (Pua), a Municipal Councilor of Carmen, Cebu, filed a complaint[4] with the Office of the Deputy Ombudsman for Visayas. Pua alleged that Virgilio E. Villamor (Villamor), Municipal Mayor; Bebelia C. Bontia (Bontia), Municipal Treasurer; and respondent Dinah C. Barriga (Barriga), Municipal Accountant, all public officials of Carmen, Cebu, entered into several irregular and anomalous transactions in their official capacity. These transactions pertained to the handling of the trust fund of the Municipality of Carmen, Cebu in the Central Visayas Water and Sanitation Project.

On 7 March 2001, the Office of the Deputy Ombudsman for Visayas directed the parties to submit their counter-affidavits. In their Joint Counter-Affidavit dated 9 May 2001, Villamor and Barriga denied Pua's allegations.

In a Decision dated 28 August 2002,[5] the Office of the Deputy Ombudsman for Visayas found Barriga guilty of misconduct and imposed on her the penalty of six months suspension from the service. In the same decision, the case against Villamor

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

[2] *Rollo*, pp. 56-57. Penned by Justice Enrico A. Lanzanas with Justices Arsenio J. Magpale and Ramon M. Bato, Jr., concurring.

[3] *Id.* at 60-66.

[4] Docketed as OMB-VIS-ADM-2000-0968, entitled *"Sonia Q. Pua vs. Virgilio E. Villamor, et al."*

[5] *Rollo*, pp. 69-79.

and Bontia were dismissed for being moot and academic. At the time, Villamor was no longer the incumbent mayor of Carmen, Cebu but the municipality's elected vice-mayor and Bontia had already been dismissed from government service pursuant to a final decision of the Office of the Ombudsman dated 19 August 1998.[6]

Upon review, petitioner Office of the Ombudsman modified the decision and found Barriga guilty of conduct prejudicial to the best interest of the service and imposed on her the penalty of suspension for one year.[7]

Barriga filed a motion for reconsideration which petitioner denied in an Order dated 2 April 2003.[8]

Later, in an Order dated 13 November 2002,[9] petitioner directed the municipal mayor of Carmen, Cebu to implement the decision dated 28 August 2002.

Barriga filed a petition for review with the CA, docketed as CA G.R. SP No. 76958. On 7 July 2003, the petition was denied for lack of merit.[10]

Barriga then elevated the case to the Supreme Court, docketed as G.R. No. 160402. In a Resolution dated 14 January 2004, this Court denied the petition. Barriga filed a motion for reconsideration which this Court denied in a Resolution dated 17 March 2004. Barriga filed a second motion for reconsideration which this Court again denied in a Resolution dated 7 July 2004.

After a month, in a letter dated 10 August 2004, petitioner, through the Office of the Deputy Ombudsman for Visayas,

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[6] *Id.* at 70 and 74.

[7] *Id.* at 80.

[8] *Id.* at 86.

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

[10] Penned by Justice Martin S. Villarama, Jr. (now a member of this Court) with Justices Elvi John S. Asuncion and Mario L. Guariña III, concurring.

again directed the municipal mayor of Carmen, Cebu to implement the Order dated 13 November 2002.

In a letter[11] dated 16 August 2004 addressed to petitioner, Barriga made a request that the implementation of the penalty of one-year suspension be held in abeyance pending the issuance of the entry of judgment by this Court in G.R. No. 160402. The request was denied by petitioner in a letter dated 3 September 2004.[12] Barriga then challenged the said letters of petitioner with the CA through a petition for review.[13]

Meanwhile, the Supreme Court issued the entry of judgment in G.R. No. 160402 on 28 October 2004. In addition, the municipal mayor of Carmen, Cebu implemented Barriga's suspension from service through an Order dated 2 November 2004.[14]

Thereafter, in a Decision dated 18 March 2005, the CA denied Barriga's appeal. Barriga filed a motion for reconsideration. In a Resolution dated 16 June 2005, the CA modified its earlier decision and declared as null and void the orders of petitioner in the letters dated 10 August 2004 and 3 September 2004. The CA explained that the acts of petitioner went beyond mere recommendation but rather imposed upon the mayor to implement the order of suspension which run counter to its authority. The appellate court said that the immediate implementation of petitioner's Order dated 13 November 2002 was premature pending resolution of the appeal. Since Republic Act No. 6770 or the Ombudsman Act of 1989 gives parties the right to appeal then such right also generally carries with it the right to stay these decisions pending appeal. Thus, the CA concluded that the acts of petitioner cannot be permitted nor tolerated. The dispositive portion of the resolution states:

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[11] *Rollo*, p. 101.

[12] *Id.* at 102-103.

[13] Docketed as CA-G.R. SP No. 00079 entitled *"Dinah C. Barriga vs. Sonia Q. Pua."*

[14] See *rollo*, p. 64.

WHEREFORE, the decision in the instant case is MODIFIED in that the Orders of the Office of the Ombudsman dated August 10, 2004 and September 3, 2004 in so far as it directed the implementation of the suspension of petitioner is declared null and void having been made beyond its authority and prematurely. Consequently, the letter of the municipal mayor of Carmen, Cebu dated November 2, 2004 implementing said order is also nullified. Petitioner's immediate reinstatement is in order. No pronouncement as to costs.

SO ORDERED.[15]

Pursuant to the CA's Resolution dated 16 June 2005, the municipal mayor of Carmen, Cebu reinstated Barriga as municipal accountant in Memorandum No. 2005-99 dated 21 June 2005.[16]

Petitioner filed a Motion for Reconsideration and raised the issue of finality of the Ombudsman's Decision dated 28 August 2002. The motion was denied by the CA in a Resolution dated 20 February 2006.

Hence, this petition.

The Issue

The main issue is whether the Court of Appeals gravely abused its discretion in nullifying the orders of the Office of the Ombudsman to the municipal mayor of Carmen, Cebu for the immediate implementation of the penalty of suspension from service of respondent Barriga even though the case was pending on appeal.

The Court's Ruling

The petition is meritorious.

Petitioner submits that the Office of the Ombudsman is possessed with jurisdiction to entertain an administrative complaint against a public official and if found guilty, has the authority to impose a penalty and implement the decision. Petitioner explains that the implementation of administrative sanctions over erring

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[15] *Id.* at 66.

[16] *Id.* at 134.

public officials is not merely advisory in nature but is actually mandatory within the bounds of law. It is absurd for the Ombudsman to only recommend a penalty to a head of office, in this case, a municipal mayor, since political independence is the element that provides integrity to its quasi-judicial findings. Petitioner adds that a municipal mayor has no authority to adopt or reject petitioner's decision, as if in review, where no such recourse is provided by law.

Also, petitioner insists that the Ombudsman's Decision dated 28 August 2002 already reached finality after this Court in G.R. No. 160402 denied Barriga's second motion for reconsideration in a Resolution dated 7 July 2004. Thus, the implementation of the decision finding Barriga's administrative liability and the imposition of the corresponding disciplinary penalty should follow as a matter of course.

Section 7, Rule III of Administrative Order No. 7,[17] as amended by Administrative Order No. 17,[18] states:

Section 7. *Finality and execution of decision.*- Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

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[17] Rules of Procedure of the Office of the Ombudsman, dated 10 April 1990.

[18] Dated 15 September 2003 and took effect on 19 November 2003.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

It is clear from the provision that when a public official has been found guilty of an administrative charge by the Office of the Ombudsman and the penalty imposed is suspension for more than a month, just like in the present case, an appeal may be made to the CA. However, such appeal shall not stop the decision from being executory and the implementation of the decision follows as a matter of course.

Here, petitioner's modified Decision dated 28 August 2002 was not only appealed by Barriga to the CA but also reached the Supreme Court. The appeal to the CA was denied in a decision dated 7 July 2003. In this Court, the appeal was denied in a Resolution dated 14 January 2004. The motions for reconsideration were likewise denied in the Resolutions dated 17 March 2004 and 7 July 2004. The decision became final on 28 October 2004.

Petitioner ordered the municipal mayor of Carmen, Cebu to implement the decision suspending Barriga from government service two times, one through a letter dated 10 August 2004 and the other in a letter dated 3 September 2004 denying Barriga's request for the suspension of the penalty until the date of finality of the case. However, Barriga, in order to delay the implementation of her suspension from service elevated the case once again to the CA. The CA in rendering a favorable decision in favor of Barriga nullified the Ombudsman's orders from implementing its decision.

The CA is incorrect. The provision in the Rules of Procedure of the Office of the Ombudsman is clear that an appeal by a public official from a decision meted out by the Ombudsman shall not stop the decision from being executory. In *Office of the Ombudsman v. Court of Appeals and Macabulos,*[19] we

[19] G.R. No. 159395, 7 May 2008, 554 SCRA 75.

held that decisions of the Ombudsman are immediately executory even pending appeal in the CA. As explained by this Court in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,[20] this provision in the rules of the Ombudsman is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.[21]

Thus, the Ombudsman's order imposing on Barriga the penalty of suspension from office for one year without pay is immediately executory even pending appeal in the Court of Appeals.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Resolutions dated 20 February 2006 and 16 June 2005 of the Court of Appeals in CA-G.R. SP No. 00079. We *REINSTATE* the modified Order dated 28 August 2002 of the Office of the Ombudsman suspending Dinah C. Barriga from government service for one year without pay. Since Dinah C. Barriga already partially served her suspension from government service, the Municipal Mayor of Carmen, Cebu is *DIRECTED* to implement with dispatch the remaining balance of number of days of suspension from office not yet served by Dinah C. Barriga pursuant to Orders dated 10 August 2004 and 3 September 2004 of the Office of the Ombudsman in OMB-VIS-ADM-2000-0968.

SO ORDERED.

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

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[20] G.R. No. 150274, 4 August 2006, 497 SCRA 626.

[21] Memorandum Circular No. 19, series of 1999; approved on 31 August 1999.

Section 47. *Effect of Filing.* — **An appeal shall not stop the decision from being executory**, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

FIRST DIVISION

[G.R. No. 174725. January 26, 2011]

ALEXANDER B. GATUS, *petitioner, vs.* **SOCIAL SECURITY SYSTEM,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AMENDED RULES OF EMPLOYEES' COMPENSATION (PD 626); COMPENSABILITY; GROUNDS; CONDITIONS. —**The grounds for compensability are set forth in Section 1, Rule III of the Amended Rules on Employees' Compensation (the "Amended Rules"), the pertinent portion of which states: RULE III Compensability Sec. 1. *Grounds* — x x x (b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions. Further, under Annex "A" of the Amended Rules, For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The employee's work must involve the risks described herein; 2. The disease was contracted as a result of the employee's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the employee.

2. **ID.; ID.; ID.; ID.; ID.; CARDIOVASCULAR DISEASES, WHEN CONSIDERED AS OCCUPATIONAL DISEASE; BURDEN OF PROOF. —** Cardiovascular diseases are considered as occupational when contracted under any of the following conditions: (a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work. (b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac insult to constitute causal relationship. (c) If a

person who was apparently asymptomatic before subjecting himself to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. The burden of proof is thus on petitioner to show that any of the above conditions have been met in his case. The required proof is further discussed in *Ortega v. Social Security Commission:* The requisite quantum of proof in cases filed before administrative or quasi-judicial bodies is neither proof beyond reasonable doubt nor preponderance of evidence. In this type of cases, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, substantial evidence abounds.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED. —** Section 1 of Rule 45 states that "[t]he petition shall raise **only questions of law** which must be distinctly set forth." Hence, questions of fact may not be taken up in a petition for review on *certiorari* such as this case now before us. As we have held previously: A question of fact exists when the doubt centers on the truth or falsity of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts. There is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses. However, if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence, the question is one of law.

4. **ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES, RESPECTED. —** We have once more put great weight to the factual findings of administrative agencies and quasi-judicial bodies, namely the SSS and the ECC, as they have acquired expertise in all matters relating to employee compensation and disability benefits. As we have held in *Ortega v. Social Security Commission*: It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters. It is not for the Court to weigh evidence all over again. Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have

acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the Court of Appeals.

APPEARANCES OF COUNSEL

Orlando B. Torres para-legal counsel for petitioner.
Legal Department (SSS) for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* of the **Decision**[1] of the Court of Appeals dated May 24, 2006 in **CA-G.R. SP No. 88691** (the assailed Decision) and the **Resolution**[2] dated August 7, 2006 issued by the same court in said case.

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

[Petitioner Alexander B.] Gatus worked at the Central Azucarera de Tarlac beginning on January 1, 1972. He was a covered member of the SSS (SS No. 02-0055015-6). He optionally retired from Central Azucarera de Tarlac upon reaching 30 years of service on January 31, 2002, at the age of 62 years. By the time of his retirement, he held the position of Tender assigned at the Distillery Cooling Tower.

In the course of his employment in Central Azucarera de Tarlac, he was certified fit to work on October 21, 1975 and was accordingly promoted to a year-round regular employment.

He suffered chest pains and was confined at the Central Luzon Doctor's Hospital in Tarlac City on August 12, 1995. Upon discharge on August 17, 1995, he was diagnosed to be suffering from Coronary

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[1] *Rollo*, pp. 15-20; penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Renato C. Dacudao and Mariflor Punzalan Castillo, concurring.

[2] *Id.* at 28.

Artery Disease (CAD): Triple Vessel and Unstable Angina. **His medical records showed him to be hypertensive for 10 years and a smoker.**

On account of his CAD, he was given by the SSS the following EC/SSS Permanent Partial Disability (PPD) benefits: (a) 8 monthly pensions effective September 1, 1994 and (b) 4 monthly pensions effective January 3, 1997. He became an SSS retirement pensioner on February 1, 2002.

Sometime in 2003, an SSS audit revealed the need to recover the EC benefits already paid to him on the ground that his CAD, being attributed to his chronic smoking, was not work-related. He was notified thereof through a letter dated July 31, 2003.

Convinced that he was entitled to the benefits, he assailed the decision but the SSS maintained its position. The SSS also denied his *motion for reconsideration.*

He elevated the matter to the ECC, which denied his appeal on December 10, 2004, essentially ruling that although his CAD was a cardiovascular disease listed as an occupational disease under Annex A of the *Implementing Rules on Employees' Compensation*, nothing on record established the presence of the qualifying circumstances for responsibility; that it was incumbent upon him to prove that the nature of his previous employment and the conditions prevailing therein had increased the risk of contracting his CAD; and that he had failed to prove this requisite. The ECC concluded:

> **As explained medically, the development of IHD or otherwise termed as Coronary Artery Disease (CAD) is caused by atherosclerosis, the hardening of the inner lining of arteries. One of the risk factors considered by medical science for the development of atherosclerosis is smoking. Appellant had been documented to be a chronic smoker and such factor which is not in any way related to any form of employment increased his risk of contracting heart disease.**

Hence, this recourse, wherein he contends that he had contracted the disease due to the presence of harmful fuel smoke emission of methane gas from a nearby biological waste digester and a railway terminal where diesel-fed locomotive engines had "spew(ed) black smoke;" and that he had been exposed for 30 years to various smoke emissions that had contained carbon monoxide, carbon dioxide, sulfur, oxide of nitrogen and unburned carbon.[3] (Emphases added.)

[3] *Id*. at 16-17.

In the assailed Decision, the Court of Appeals held that petitioner is not entitled to compensation benefits under Presidential Decree No. 626, as amended, affirming the Decision of the Employees' Compensation Commission (ECC), which was likewise a confirmation of the audit conducted by the Social Security System (SSS).

Thus, this petition wherein, even without assistance of counsel, petitioner comes to this Court contending that "the appellate court's decision is flawed [and] if not reversed will result in irreparable damage to the interest of the petitioner."[4]

Petitioner lists the following as errors in the questioned Decision:

I. The appellate court's decision is against existing jurisprudence on increased risk theory of rebook condition and progression and deterioration of illness that supervened during employment and persisted after optional retirement.

II. Violation of due process.[5]

The Court of Appeals agreed with the ECC's findings that based on his medical records, petitioner has been hypertensive for ten (10) years and smokes 20 packs of cigarettes a year.[6] His medical condition was explained in the following manner by the ECC:

> Ischemic Heart Disease (IHD) is the generic designation for a group of closely related syndromes resulting from ischemia – an imbalance between the supply and demand of the heart for oxygenated blood. Because coronary artery narrowing or obstruction owing to atherosclerosis underlies MI, it is often termed coronary artery disease (CAD). **Atherosclerosis which is primarily due to smoking**, diet, hypertension and diabetes is the main culprit in the development of CAD. (Pathologic Basis of Disease by Robbins, 5th edition.)[7] (Emphasis supplied.)

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[4] *Id.* at 2.

[5] *Id.*

[6] CA *rollo,* p. 17.

[7] *Id.* at 18.

Petitioner claims that he was in good health when he first entered the *Central Azucarera de Tarlac* as a factory worker at the Alcohol Distillery Plant in 1972.[8] He alleges that in the course of his employment he suffered "essential hypertension" starting 1995, when he experienced chest pains and was confined at the Central Luzon Doctor's Hospital in Tarlac City; that he was diagnosed as having "Coronary Artery Disease (CAD) [Triple] Vessel and Angina Pectoris" and hypertension; that he was initially granted disability benefits by the SSS but his request for additional benefits was denied; and that the ECC denied his appeal due to allegations of smoking. He asserts that he has cited "technical, scientific and medical authorities to bolster his claim" including the exposure he experienced for thirty (30) years from the alcohol distillery to "hydrocarbons and [locomotives]," carbon monoxide, carbon dioxide, sulfur, phosphorous, nitrogen oxides and soot (particulate matter). [9]

Petitioner uses various references, including encyclopedia and medical books, to discuss the general effects of pollution, mostly caused by the burning of fossil fuels, to people with cardiovascular diseases; and the aggravation of coronary artery diseases brought about by exposure to carbon monoxide.[10] Petitioner claims that "air pollution (carbon monoxide and lead from gasoline) contributed to the development of essential hypertension and its complications: [c]oronary artery disease, hypertensive cardiovascular disease and stroke."[11]

Petitioner insists that the allegation of cigarette smoking was not proven and that the ECC did not present a document signed by competent medical authority to back such claim. Petitioner claims that there is no showing that the ECC records were elevated to the Court of Appeals, and that the latter had completely ignored his evidence.

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[8] *Rollo,* p. 2.

[9] *Id.* at 3.

[10] *Id.* at 3-5.

[11] *Id.* at 5.

In its **Comment**[12] dated December 11, 2006, respondent SSS alleges that the Decision of the Court of Appeals affirming the Decision of the ECC was in accordance with law and existing jurisprudence. Respondent SSS further alleges that as viewed from the records of the case, the petitioner failed to show proof by mere substantial evidence that the development of his disease was work-related;[13] that petitioner's heart ailment had no causal relation with his employment; and that **"[as] viewed from by his lifestyle, he was a chain smoker, a habit [which had] contributed to the development of his heart ailment."**[14]

Respondent further alleges that medical findings have revealed that nicotine in cigarette smoke damages the blood vessels of the heart, making them susceptible to the hardening of the inner lining of the arteries. As to petitioner's contention that there were harmful fuel and smoke emissions due to the presence of methane gas from a nearby biological waste as well as a railway terminal where diesel-fed locomotive engines spewed black smoke, respondent counters that these were mere allegations that were not backed by scientific and factual evidence and that petitioner had failed to show which harmful emissions or substances were present in his working environment and how much exposure thereto had contributed to the development of his illness. Respondent points out that petitioner's "bare allegations do not constitute such evidence that a reasonable mind might accept as adequate to support the conclusion that there is a causal relationship between his working conditions" and his sickness and that "the law is clear that award of compensation cannot rest on speculations or presumptions."[15]

The sole issue to be determined is whether the Court of Appeals committed grave abuse of discretion in affirming the finding of the ECC that petitioner's ailment is not compensable under Presidential Decree No. 626, as amended.

[12] *Id.* at 54-59.

[13] *Id.* at 55.

[14] *Id.* at 56.

[15] *Id.* at 57.

The grounds for compensability are set forth in Section 1, Rule III of the Amended Rules on Employees' Compensation (the "Amended Rules"), the pertinent portion of which states:

RULE III
Compensability

Sec. 1. *Grounds* — x x x

(b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

Further, under Annex "A" of the Amended Rules,

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The employee's work must involve the risks described herein;

2. The disease was contracted as a result of the employee's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4. There was no notorious negligence on the part of the employee.

Cardiovascular diseases are considered as occupational when contracted under any of the following conditions:

(a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work.

(b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac insult to constitute causal relationship.

(c) If a person who was apparently asymptomatic before subjecting himself to strain at work showed signs and symptoms of cardiac injury

during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.[16]

The burden of proof is thus on petitioner to show that any of the above conditions have been met in his case. The required proof is further discussed in *Ortega v. Social Security Commission*:[17]

> The requisite quantum of proof in cases filed before administrative or quasi-judicial bodies is neither proof beyond reasonable doubt nor preponderance of evidence. In this type of cases, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, substantial evidence abounds.[18]

As found by the Court of Appeals, petitioner failed to submit substantial evidence that might have shown that he was entitled to the benefits he had applied for. We thus affirm *in toto* the findings and conclusions of the Court of Appeals in the questioned Decision and quote with approval the following pronouncements of the appellate court:

> The degree of proof required under P.D. 626 is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Accordingly, the claimant must show, at least by substantial evidence, that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection, not a direct causal relation.
>
> Gatus was diagnosed to have suffered from CAD; Triple Vessel and Unstable Angina, diseases or conditions falling under the category of Cardiovascular Diseases which are not considered occupational diseases under the *Amended Rules on Employees Compensation.* His disease not being listed as an occupational disease, he was expected to show that the illness or the fatal disease was caused by

[16] No. 18, Annex "A", Amended Rules on Employees' Compensation.

[17] G.R. No. 176150, June 25, 2008, 555 SCRA 353.

[18] *Id.* at 364.

his employment and the risk of contracting the disease was increased or aggravated by the working conditions. His proof would constitute a reasonable basis for arriving at a conclusion that the conditions of his employment had caused the disease or that such working conditions had aggravated the risk of contracting the illness or the fatal disease.

Under ECC Resolution No. 432 dated July 20, 1977, cardiovascular disease is deemed compensable under any of the following conditions, *viz*:

> (a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
>
> (b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 28 hours of the clinical signs of cardiac insult to constitute causal relationship.
>
> x x x x x x x x x

Gatus did not discharge the burden of proof imposed under the *Labor Code* to show that his ailment was work-related. While he might have been exposed to various smoke emissions at work for 30 years, he did not submit satisfactory evidence proving that the exposure had contributed to the development of his disease or had increased the risk of contracting the illness. Neither did he show that the disease had progressed due to conditions in his job as a factory worker. In fact, he did not present any physician's report in order to substantiate his allegation that the working conditions had increased the risk of acquiring the cardiovascular disease.

Verily, his mere contention of exposure to various smoke emissions in the working environment for a period of time does not *ipso facto* make the resulting disability compensable. Awards of compensation cannot rest on speculations or presumptions, for the claimant must prove a positive proposition. As pronounced in *Sante v. Employees' Compensation Commission*:

> x x x What kind and quantum of evidence would constitute an adequate basis for a reasonable man (not necessarily a medical scientist) to reach one or the other conclusion, can obviously be determined only on a case-to-case basis. That

> evidence must, however, be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by existing law is real… not merely apparent…
>
> Moreover, he failed to show the presence of any of the conditions imposed for cardio-vascular diseases by Sec. 18. Hence, the affirmance of the SSS decision was properly made.
>
> The petitioner's plight might call for sympathy, particularly in the light of his 30 years of service to the company, but his petition cannot be granted on that basis alone. The policy of extending the applicability of P.D. 626 as many qualified employees as possible should be balanced by the equally vital interest of denying undeserving claims for compensation.
>
> In fine, Gatus was not qualified for the disability benefits under the employees compensation law.
>
> WHEREFORE, the Decision of the Employees Compensation Commission is **AFFIRMED**.[19]

Petitioner filed a Motion for Reconsideration but this was denied by the Court of Appeals in its **Resolution** dated August 7, 2006, which states:

> Finding nothing cogent and persuasive in the petitioner's *Motion for Reconsideration* dated June 20, 2006, we **DENY** the motion.
>
> We point out that our decision of May 24, 2006 has fully explained the bases for the ruling we have made, including the matters being discussed by the petitioner in his *Motion for Reconsideration.* We consider it repetitious and redundant to discuss them herein again.[20]

The questioned Decision deemed as established fact that petitioner is a cigarette smoker; but petitioner vehemently denies this, saying there is no competent evidence to prove he had that habit. What petitioner would like this Court to do is to pass upon a question of fact, which the ECC, the SSS, and the Court of Appeals have used to deny his claim for compensation. This

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

[20] *Id.* at 28.

is not allowed under Section 1 of Rule 45, which states that "[t]he petition shall raise **only questions of law** which must be distinctly set forth."[21] Hence, questions of fact may not be taken up in a petition for review on *certiorari* such as this case now before us. As we have held previously:

> A question of fact exists when the doubt centers on the truth or falsity of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts. There is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses. However, if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence, the question is one of law.[22]

This was emphasized in *La Union Cement Workers Union v. National Labor Relations Commission*,[23] thus:

> As an overture, clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. We therefore take this opportunity again to reiterate that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[24]

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[21] The Petition was filed on August 31, 2006, prior to the amendment of Rule 45 by A.M. No. 07-7-12-SC on December 27, 2007. The text of Rule 45, Section 1 then read:

> 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.

[22] *Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010.

[23] G.R. No. 174621, January 30, 2009, 577 SCRA 456.

[24] *Id.* at 462.

The matter of petitioner's cigarette smoking, established by two competent government agencies and the appellate court, is thus a matter that cannot be questioned before us via petition for review.

There is no doubt that petitioner deserves sympathy because even the benefits already given to him were questioned after the SSS found that he was a chronic cigarette smoker. For humanitarian reasons, as he pursued his claim all the way to the Court as an indigent litigant, and due to his advancing age, we would like to clarify that what had already been given him should no longer be taken away from him. But he is not entitled to further compensation for his condition.

We have once more put great weight to the factual findings of administrative agencies and quasi-judicial bodies, namely the SSS and the ECC, as they have acquired expertise in all matters relating to employee compensation and disability benefits. As we have held in *Ortega v. Social Security Commission*:[25]

> It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters. It is not for the Court to weigh evidence all over again. Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the Court of Appeals.[26]

WHEREFORE, premises considered, the petition is hereby *DENIED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.,* concur.

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[25] *Supra* note 17.

[26] *Id.* at 363-364.

SECOND DIVISION

[G.R. No. 176819. January 26, 2011]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, and SANDIGANBAYAN, First Division,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF COMPLAINT OR INFORMATION AND DESIGNATION OF THE OFFENSE. —** Sections 6 and 8, Rule 110 of the Rules of Court state, respectively: SEC. 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. When the offense is committed by more than one person, all of them shall be included in the complaint or information. SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. x x x In *Cabrera vs. Sandiganbayan*, the Court held that the fundamental test in determining the adequacy of the averments in an information is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime. Matters extrinsic or evidence *aliunde* should not be considered.

2. **ID.; ID.; ID.; ID.; SECTION 3(e) OF ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS THEREOF; CASE AT BAR. —** Section 3(e) of RA 3019, as amended, states: SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already

penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. x x x In *Dela Chica vs. Sandiganbayan*, the Court enumerated the essential elements of Section 3(e) of RA 3019, as amended. The Court held that: In a number of cases, the elements of this offense have been broken down as follows: (1) That the accused are public officers or private persons charged in conspiracy with them; (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) That they caused undue injury to any party, whether the Government or a private party; (4) That such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and (5) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence. Clearly, the allegations in the 5 March 2001 information, if hypothetically admitted, would establish the essential elements of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Juancho L. Botor for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for *certiorari* under Rule 65 of the Rules of Court. The petition challenges the 2 March 2007 Resolution[2] of the Sandiganbayan in Criminal Case No. 26583.

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[1] *Rollo*, pp. 30-59.

[2] *Id.* at 60-66. Penned by Presiding Justice Teresita J. Leonardo de Castro, with Associate Justices Diosdado M. Peralta and Alexander G. Gesmundo, concurring.

The Facts

On 1 May 2001, Ombudsman Prosecutor II Raul V. Cristoria filed with the Sandiganbayan an information[3] dated 5 March 2001 against respondents Robert P. Balao (Balao), Josephine C. Angsico (Angsico), Virgilio V. Dacalos (Dacalos), Felicisimo F. Lazarte, Jr. (Lazarte, Jr.), Josephine T. Espinosa, Noel A. Lobrido, and Arceo C. Cruz for violation of Section 3(e) of Republic Act No. 3019 (RA 3019), as amended. The information stated:

The undersigned Ombudsman Prosecutor II of the Office of the Ombudsman-Visayas, accuses ROBERT P. BALAO, FELICISIMO F. LAZARTE, JR., VIRGILIO V. DACALOS, JOSEPHINE C. ANGSICO, JOSEPHINE T. ESPINOSA, NOEL A. LOBRIDO AND ARCEO C. CRUZ for VIOLATION OF SECTION 3(e) of REPUBLIC ACT NO. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

> That in or about the month of March, 1992, at Bacolod City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, FELICISIMO LAZARTE, JR., JOSEPHINE T. ESPINOSA, and NOEL H. LOBRIDO, Public Officers, being the General Manager, Team Head, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, respectively, of the National Housing Authority, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused ARCEO C. CRUZ, a private individual and General Manager of A.C. Cruz Construction, with address at 7486 Bagtikan Street, Makati City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to A.C. Construction public funds in the amount of TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED TWENTY EIGHT PESOS and THIRTY FIVE CENTAVOS (₱232,628.35) PHILIPPINE CURRENCY, supposedly

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

for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by A.C. Construction as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves, to the damage and prejudice of the government.[4]

In its 22 May 2001 Order,[5] the Sandiganbayan found the 5 March 2001 information inadequate. The Sandiganbayan stated that:

This morning the Court expressed its anxiety over the inadequacy of the Information in that the participation of each of the accused did not appear clear in the resolution, much less in the Information.

In view hereof, Pros. Raymundo Julio A. Olaguer will be given ten (10) days to review the records and to inform this Court as to the course of action he proposes to take in order to enlighten the Court and, if necessary, himself so that a proper Information and a proper prosecution may be had before this Court.[6]

On 4 August 2004, Assistant Special Prosecutor II Julieta Zinnia A. Niduaza (Assistant Special Prosecutor Niduaza) filed with the Sandiganbayan a memorandum[7] dated 27 July 2004. In the memorandum, Assistant Special Prosecutor Niduaza recommended that the 5 March 2001 information be maintained.

In their 17 September 2004 motion,[8] Balao, Lazarte, Jr., Angsico, and Dacalos prayed for a reinvestigation of the case. In its 27 March 2005 Resolution,[9] the Sandiganbayan granted the motion. The Sandiganbayan held that:

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

[5] *Id*. at 97.

[6] *Id*.

[7] *Id*. at 98-110.

[8] *Id*. at 111-122.

[9] Records, Vol. 1, pp. 401-406.

The Court notes that the issue as to the participation of accused-movants in the acts complained of in the Information, as raised by the former First Division, appears not to have been addressed by the prosecution in the Memorandum dated July 27, 2004 of the Office of the Ombudsman, Office of the Special Prosecutor. In the said Memorandum, the prosecution found no reason to disturb the findings of probable cause and recommended that the Information be maintained.

x x x x x x x x x

The former Chairman and Members of the First Division expressed anxiety over the inadequacy of the x x x Information "in that the participation of each of the accused did not appear clear in the resolution, much less in the Information". Considering that the memorandum of the Ombudsman "recommended that the Information filed in Criminal Case No. 26583 be maintained and the prosecution of this case must proceed accordingly", without complying with the directive quoted above to clarify the participation of each of the accused, the Court finds merit in the accused-movants' prayer for reinvestigation.[10]

On 1 June 2006, Assistant Special Prosecutor Niduaza filed with the Sandiganbayan a memorandum[11] dated 30 May 2006. In the memorandum, Assistant Special Prosecutor Niduaza recommended that the 5 March 2001 information be maintained.

In his motion[12] dated 2 October 2006, Lazarte, Jr. prayed that the information be quashed. In their 4 October 2006 motion,[13] Balao, Angsico, and Dacalos prayed that their motion to quash the information be admitted. In another motion,[14] also dated 4 October 2006, Balao, Angsico, and Dacalos prayed that the information be quashed.

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[10] *Id.* at 403-404.

[11] *Id.* at 434-457.

[12] *Rollo*, pp. 146-155.

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

[14] *Id.* at 134-145.

The Sandiganbayan's Ruling

In its 2 March 2007 Resolution, the Sandiganbayan denied Lazarte's 2 October 2006 motion and granted Balao, Angsico, and Dacalos' 4 October 2006 motions. The Sandiganbayan held that:

The Court finds that the above Information and subsequent memoranda submitted by the prosecution in support of the said information, with respect to the accused-movants Balao, Angsico and Dacalos, fail to satisfy the requirements of Section 6, Rule 110. The Information and the supporting memoranda, still fail to state the acts or omissions of accused-movants Balao, Angsico and Dacalos with sufficient particularity so as to enable them to make a carefully considered plea to the charges against them.

It may be recalled that a reinvestigation of the case was ordered by this Court because the prosecution failed to satisfactorily comply with an earlier directive of the former Chairperson and Members of the first Division, after noting the inadequacy of the information, to clarify the participation of each of the accused. In ordering the reinvestigation, this Court noted the the prosecution's July 27, 2004 Memorandum did not address the apprehensions of the former Chairperson and Members of the First Division as to the inadequacy of the allegations in the information.

This time, despite a reinvestigation, the prosecution's Memorandum dated May 30, 2006 still failed to specify the participation of accused-movants Balao, Angsico and Dacalos. The most recent findings of the prosecution still do not address the deficiency found by the Court in the information. The prosecution avers that pursuant to Section 3, Rule 117 of the rules of Court, in determining the viability of a motion to quash based on the ground of "facts charged in the information do not constitute an offense," the test must be whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime as defined by law. The prosecution contends that matters *aliunde* should not be considered. However, in the instant case, the Court has found the information itself to be inadequate, as it does not satisfy the requirements of particularly alleging the acts or omissions of the said accused-movants, which served as the basis of the allegation of conspiracy between the aforementioned accused-movants and the other accused, in the commission of the offense charged in the information.

It appears from the prosecution's May 30, 2006 Memorandum that at the time material in this case, accused Roberto P. Balao was the General Manager of the NHA; accused Josephine C. Angsico, was the Team Head of the Visayas Management Office of the NHA; accused Virgilio V. Dacalos, was the Division Manager of the NHA's Visayas Management Office and accused Felicisimo F. Lazarte, Jr., was the Manager of the NHA's Regional Project Department. All four accused contend that they cannot be held accountable as they are high-ranking officials based in Metro Manila and that they relied solely on the recommendation of their subordinates in affixing their signatures. The prosecution concedes that high-ranking officials are not expected to personally examine every single detail of a transaction. But in this particular case, the general averment or conclusion of the prosecution in its memorandum that the accused allegedly had foreknowledge of the supposed anomalies and yet the accused did nothing to verify this, does not sufficiently show the basis of the charge of conspiracy insofar as accused Balao, Angsico and Dacalos are concerned.

The prosecution's May 30, 2006 Memorandum does not describe how accused Balao, Angsingco [sic] and Dacalos may have known or when they became aware of the alleged anomalies, before they allegedly caused payment to the alleged errant contractor. The said Memorandum states only that they failed to enforce the contract against the alleged errant private contractor, which is not even the act imputed against them in the information.

The prosecution contends that the allegation of conspiracy is sufficient, since there is no need to allege the individual acts of the conspirators because the act of one is imputable to all. The allegation of conspiracy in the information may be adequate if there is no uncertainty in the acts or omissions imputed against some of the accused and the findings of the prosecution, such as in the case at bar. To allow accused Balao, Angsico and Lazarte [sic] to be arraigned despite the seeming inadequacy of the instant information as to their actual involvement in the offense charged, which is not addressed by the mere allegation of conspiracy, infringes on the constitutional right of the accused to be informed of the nature and cause of the accusation against them.

Among the accused-movants, the public officer whose participation in the alleged offense is specifically mentioned in the May 30, 2006 Memorandum is accused Felicisimo Lazarte, Jr., the Chairman of the

Inventory and Acceptance Committee (IAC), which undertook the inventory and final quantification of the accomplishment of A.C. Cruz Construction. The allegations of Lazarte that the IAC, due to certain constraints, allegedly had to rely on the reports of the field engineers and/or the Project Office as to which materials were actually installed; and that he supposedly affixed his signature to the IAC Physical Inventory Report and Memorandum dated August 12, 1991 despite his not being able to attend the actual inspection because he allegedly saw that all the members of the Committee had already signed are matters of defense which he can address in the course of the trial. Hence, the quashal of the information with respect to accused Lazarte is denied for lack of merit.[15]

Hence, the present petition. The People of the Philippines, represented by the Office of the Ombudsman, raises as issue that the "Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the information in Criminal Case No. 26583 which sufficiently charged repondents Balao, Angsico and Dacalos of violating Sec. 3(e) of R.A. 3019, as amended."[16]

The Court's Ruling

The petition is meritorious.

In *Lazarte, Jr. v. Sandiganbayan*,[17] a case involving the same information, the Court held that the 5 March 2001 information is valid. The Court held that:

> **The Court finds that the Information in this case alleges the essential elements of violation of Section 3(e) of R.A. No. 3019**. The Information specifically alleges that petitioner, Espinosa and Lobrido are public officers being then the Department Manager, Project Management Officer A and Supervising Engineer of the NHA respectively; in such capacity and committing the offense in relation to the office and while in the performance of their official functions connived, confederated and mutually helped each other and with accused Arceo C. Cruz, with deliberate intent through manifest

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[15] *Id.* at 63-65.

[16] *Id.* at 36.

[17] G.R. No. 180122, 13 March 2009, 581 SCRA 431.

partiality and evident bad faith gave unwarranted benefits to the latter, A.C. Cruz Construction and to themselves, to the damage and prejudice of the government. The felonious act consisted of causing to be paid to A.C. Cruz Construction public funds in the amount of ₱232,628.35 supposedly for excavation and road filling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by said construction company as revealed by the Special Audit conducted by COA.[18] (Emphasis supplied)

Sections 6 and 8, Rule 110 of the Rules of Court state, respectively:

SEC. 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

In quashing the 5 March 2001 information, the Sandiganbayan held that the information "fail to satisfy the requirements of Section 6, Rule 110. The Information x x x still fail to state the acts or omissions of accused-movants Balao, Angsico and Dacalos with sufficient particularity so as to enable them to make a carefully considered plea to the charges against them."

The Court disagrees. In *Cabrera v. Sandiganbayan*,[19] the Court held that the fundamental test in determining the adequacy

[18] *Id*. at 447.

[19] 484 Phil. 350 (2004).

of the averments in an information is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the crime. Matters extrinsic or evidence *aliunde* should not be considered.[20]

Section 3(e) of RA 3019, as amended, states:

SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Dela Chica v. Sandiganbayan*,[21] the Court enumerated the essential elements of Section 3(e) of RA 3019, as amended. The Court held that:

In a number of cases, the elements of this offense have been broken down as follows:

1. That the accused are public officers or private persons charged in conspiracy with them;

2. That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;

3. That they caused undue injury to any party, whether the Government or a private party;

4. That such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and

[20] *Id.* at 359.

[21] 462 Phil. 712 (2003).

5. That the public officers acted with manifest partiality, evident bad faith or gross inexusable negligence.[22]

Clearly, the allegations in the 5 March 2001 information, if hypothetically admitted, would establish the essential elements of the crime. The information stated that (1) Balao, Lazarte, Jr., Angsico, and Dacalos were the general manager, team head of the Visayas Management Office, and Visayas division manager, respectively, of the National Housing Authority; (2) they committed the prohibited acts "in or about the month of March, 1992," "while in the performance of their official functions"; (3) they caused undue injury to the Government in the amount of P232,628.35, "supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken"; (4) they gave "unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves"; and (5) they acted "with deliberate intent, with manifest partiality and evident bad faith."

WHEREFORE, the Court *GRANTS* the petition. The Court *SETS ASIDE* the 2 March 2007 Resolution of the Sandiganbayan in Criminal Case No. 26583 and orders that (1) respondents Robert P. Balao, Josephine C. Angsico, and Virgilio V. Dacalos be reinstated as accused in Criminal Case No. 26583; (2) the hold departure order against them be reinstated; and (3) they be arrested or they post a cash bond in sufficient amount.

SO ORDERED.

Velasco, Jr.,[*] *Nachura, Abad,* and *Mendoza, JJ.,* concur.

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[22] *Id.* at 720.

[*] Designated additional member per Raffle dated 21 June 2010.

THIRD DIVISION

[G.R. No. 177685. January 26, 2011]

HEIRS OF RAMON C. GAITE, CYNTHIA GOROSTIZA GAITE and RHOGEN BUILDERS, *petitioners, vs.* **THE PLAZA, INC. and FGU INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RESCISSION AS REMEDY FOR BREACH THEREOF; POWER TO RESCIND GIVEN ONLY TO INJURED PARTY OR TO THE ONE WHO HAS FAITHFULLY FULFILLED HIS OBLIGATION. —** Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other. Respondent The Plaza predicated its action on Article 1191 of the Civil Code, which provides for the remedy of "rescission" or more properly *resolution*, a principal action based on breach of faith by the other party who violates the reciprocity between them. The breach contemplated in the provision is the obligor's failure to comply with an existing obligation. Thus, the power to rescind is given only to the injured party. The injured party is the party who has faithfully fulfilled his obligation or is ready and willing to perform his obligation.

2. **ID.; ID.; NATURE AND EFFECT OF OBLIGATIONS; LIABILITY FOR DAMAGES. —** Article 1170 of the Civil Code provides that those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages.

3. **ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; TO AVOID UNJUST ENRICHMENT, A CONTRACTOR IS ALLOWED TO RECOVER THE REASONABLE VALUE OF THE THING OR SERVICES RENDERED DESPITE THE LACK OF A WRITTEN CONTRACT. —** Under the principle of *quantum meruit*, a

contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment. *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.

4. **ID.; ID.; NATURE AND EFFECT OF OBLIGATIONS; RULE WHERE A PERSON OBLIGED TO DO SOMETHING FAILS TO DO IT. —** Article 1167 of the Civil Code is explicit point that if a person obliged to do something fails to do it, the same shall be executed at his cost. Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost. This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. In addition, Article 122 of the Articles of General Conditions provides that the contractor shall not be entitled to receive further payment "until the work is finished."

5. **ID.; DAMAGES; TEMPERATE OR MODERATE DAMAGES; RECOVERABLE 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. —** As to temperate damages, Article 2224 of the Civil Code provides that 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. The rationale behind temperate damages is precisely that from the nature of the case, definite proof of pecuniary loss cannot be offered. When the court is convinced that there has been such loss, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant's wrongful act.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioners.
Jacinto Jimenez for FGU Insurance Corp.
Balane Tamase Alampay Law Office for The Plaza, Inc.

DECISION

VILLARAMA, JR., *J.*:

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Decision[1] dated June 27, 2006 and Resolution[2] dated April 20, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 58790. The CA affirmed with modification the Decision[3] dated July 3, 1997 of the Regional Trial Court (RTC) of Makati City, Branch 63, in Civil Case Nos. 1328 (43083) and 40755.

The facts are as follows:

On July 16, 1980, The Plaza, Inc. (The Plaza), a corporation engaged in the restaurant business, through its President, Jose C. Reyes, entered into a contract[4] with Rhogen Builders (Rhogen), represented by Ramon C. Gaite, for the construction of a restaurant building in Greenbelt, Makati, Metro Manila for the price of ₱7,600,000.00. On July 18, 1980, to secure Rhogen's compliance with its obligation under the contract, Gaite and FGU Insurance Corporation (FGU) executed a surety bond in the amount of ₱1,155,000.00 in favor of The Plaza. On July 28, 1980, The Plaza paid ₱1,155,000.00 less withholding taxes as down payment to Gaite. Thereafter, Rhogen commenced construction of the restaurant building.

In a letter dated September 10, 1980, Engineer Angelito Z. Gonzales, the Acting Building Official of the Municipality of Makati, ordered Gaite to cease and desist from continuing with the construction of the building for violation of Sections 301 and 302 of the National Building Code (P.D. 1096) and its

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[1] *Rollo*, pp. 88-102. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro, concurring.

[2] *Id.* at 85-86.

[3] *Id.* at 440-444. Penned by Judge Salvador S. Abad Santos.

[4] Records, pp. 202-210.

implementing rules and regulations.[5] The letter was referred to The Plaza's Project Manager, Architect Roberto L. Tayzon.

On September 15, 1980, Engr. Gonzales informed Gaite that the building permit for the construction of the restaurant was revoked for non-compliance with the provisions of the National Building Code and for the additional temporary construction without permit.[6] The Memorandum Report of Building Inspector Victor Gregory enumerated the following violations of Rhogen in the construction of the building:

1) No permit for Temporary Structure.

2) No notice of concrete pouring.

3) Some workers have no safety devices.

4) The Secretary and Construction Foreman refused to [receive] the Letter of Stoppage dated September 10, 1980.

5) Mr. Ramon Gaite [is] questioning the authority of the Building Official's Inspector.

6) Construction plans use[d] on the job site is not in accordance to the approved plan.[7]

On September 19, 1980, the Project Manager (Tayzon) in his Construction Memo #23 reported on his evaluation of Progress Billing #1 submitted by Rhogen. Tayzon stated that actual jobsite assessment showed that the finished works fall short of Rhogen's claimed percentage of accomplishment and Rhogen was entitled to only ₱32,684.16 and not ₱260,649.91 being demanded by Rhogen. Further, he recommended that said amount payable to Rhogen be withheld pending compliance with Construction Memo #18, resolution of cases regarding unauthorized withdrawal of materials from jobsite and stoppage of work by the Municipal Engineer's Office of Makati.[8]

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[5] *Rollo*, p. 139.

[6] *Id.* at 140.

[7] *Id.* at 141.

[8] Records, Exhibits "DD" to "HH".

On October 7, 1980, Gaite wrote Mr. Jose C. Reyes, President of The Plaza regarding his actions/observations on the stoppage order issued. On the permit for temporary structure, Gaite said the plans were being readied for submission to the Engineering Department of the Municipality of Makati and the application was being resent to Reyes for his appropriate action. As to the notice for concrete pouring, Gaite said that their construction set-up provides for a Project Manager to whom the Pouring Request is first submitted and whose job is to clear to whoever parties are involved (this could still be worked out with the Building Inspector). Regarding the safety devices for workers, Gaite averred that he had given strict rules on this but in the course of construction some workers have personal preferences. On the refusal of the secretary and construction foreman to receive the stoppage order dated September 10, 1980, Gaite took responsibility but insisted it was not a violation of the National Building Code. Likewise, questioning the authority of the Building Inspector is not a violation of the Code although Gaite denied he ever did so. Lastly, on the construction plans used in the jobsite not being in accordance with the approved plan, Gaite said he had sent Engr. Cristino V. Laurel on October 3, 1980 to Reyes' office and make a copy of the only approved plan which was in the care of Reyes, but the latter did not give it to Engr. Laurel. Gaite thus thought that Reyes would handle the matter by himself.[9]

On the same day, Gaite notified Reyes that he is suspending all construction works until Reyes and the Project Manager cooperate to resolve the issue he had raised to address the problem.[10] This was followed by another letter dated November 18, 1980 in which Gaite expressed his sentiments on their aborted project and reiterated that they can still resolve the matter with cooperation from the side of The Plaza.[11] In his reply-letter dated November 24, 1980, Reyes asserted that The Plaza is

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[9] *Rollo*, pp. 368-370.

[10] *Id.* at 388.

[11] *Id.* at 389-390.

not the one to initiate a solution to the situation, especially after The Plaza already paid the agreed down payment of ₱1,155,000.00, which compensation so far exceeds the work completed by Rhogen before the municipal authorities stopped the construction for several violations. Reyes made it clear they have no obligation to help Rhogen get out of the situation arising from non-performance of its own contractual undertakings, and that The Plaza has its rights and remedies to protect its interest.[12]

Subsequently, the correspondence between Gaite and Reyes involved the custody of remaining bags of cement in the jobsite, in the course of which Gaite was charged with estafa for ordering the removal of said items. Gaite complained that Reyes continued to be uncooperative in refusing to meet with him to resolve the delay. Gaite further answered the estafa charge by saying that he only acted to protect the interest of the owner (prevent spoilage/hardening of cement) and that Reyes did not reply to his request for exchange.[13]

On January 9, 1981, Gaite informed The Plaza that he is terminating their contract based on the Contractor's Right to Stop Work or Terminate Contracts as provided for in the General Conditions of the Contract. In his letter, Gaite accused Reyes of not cooperating with Rhogen in solving the problem concerning the revocation of the building permits, which he described as a "minor problem." Additionally, Gaite demanded the payment of ₱63,058.50 from The Plaza representing the work that has already been completed by Rhogen.[14]

On January 13, 1981, The Plaza, through Reyes, countered that it will hold Gaite and Rhogen fully responsible for failure to comply with the terms of the contract and to deliver the finished structure on the stipulated date. Reyes argued that

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[12] *Id.* at 391-392.

[13] *Id.* at 393-396.

[14] *Id.* at 146-147.

the down payment made by The Plaza was more than enough to cover Rhogen's expenses.[15]

In a subsequent letter dated January 20, 1981, Reyes adverted to Rhogen's undertaking to complete the construction within 180 calendar days from July 16, 1980 or up to January 12, 1981, and to pay the agreed payment of liquidated damages for every month of delay, chargeable against the performance bond posted by FGU. Reyes invoked Section 121 of the Articles of General Conditions granting the owner the right to terminate the contract if the contractor fails to execute the work properly and to make good such deficiencies and deducting the cost from the payment due to the contractor. Reyes also informed Gaite that The Plaza will continue the completion of the structure utilizing the services of a competent contractor but will charge Rhogen for liquidated damages as stipulated in Article VIII of the Contract. After proper evaluation of the works completed by Rhogen, The Plaza shall then resume the construction and charge Rhogen for all the costs and expenses incurred in excess of the contract price. In the meantime that The Plaza is still evaluating the extent and condition of the works performed by Rhogen to determine whether these are done in accordance with the approved plans, Reyes demanded from Gaite the reimbursement of the balance of their initial payment of ₱1,155,000.00 from the value of the works correctly completed by Rhogen, or if none, to reimburse the entire down payment plus expenses of removal and replacement. Rhogen was also asked to turn over the jobsite premises as soon as possible.[16] The Plaza sent copy of said letter to FGU but the latter replied that it has no liability under the circumstances and hence it could not act favorably on its claim against the bond.[17]

On March 3, 1981, The Plaza notified Gaite that it could no longer credit any payment to Rhogen for the work it had completed because the evaluation of the extent, condition, and

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[15] *Id.* at 149-150.

[16] *Id.* at 151-154.

[17] *Id.* at 156-158,161-162.

cost of work done revealed that in addition to the violations committed during the construction of the building, the structure was not in accordance with plans approved by the government and accepted by Ayala. Hence, The Plaza demanded the reimbursement of the down payment, the cost of uprooting or removal of the defective structures, the value of owner-furnished materials, and payment of liquidated damages.[18]

On March 26, 1981, The Plaza filed *Civil Case No. 40755* for breach of contract, sum of money and damages against Gaite and FGU in the Court of First Instance (CFI) of Rizal.[19] The Plaza later amended its complaint to include Cynthia G. Gaite and Rhogen.[20] The Plaza likewise filed *Civil Case No. 1328 (43083)* against Ramon C. Gaite, Cynthia G. Gaite and/or Rhogen Builders also in the CFI of Rizal for nullification of the project development contract executed prior to the General Construction Contract subject of Civil Case No. 40755, which was allegedly in violation of the provisions of R.A. No. 545 (Architectural Law of the Philippines).[21] After the reorganization of the Judiciary in 1983, the cases were transferred to the RTC of Makati and eventually consolidated.

On July 3, 1997, Branch 63 of the RTC Makati rendered its decision granting the claims of The Plaza against Rhogen, the Gaites and FGU, and the cross-claim of FGU against Rhogen and the Gaites. The trial court ruled that the Project Manager was justified in recommending that The Plaza withhold payment on the progress billings submitted by Rhogen based on his evaluation that The Plaza is liable to pay only ₱32,684.16 and not ₱260,649.91. The other valid grounds for the withholding of payment were the pending estafa case against Gaite, non-compliance by Rhogen with Construction Memorandum No. 18 and the non-lifting of the stoppage order.[22]

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[18] *Id.* at 159-160.
[19] *Id.* at 103-120.
[20] *Id.* at 299-319.
[21] *Id.* at 276-282.
[22] *Id.* at 442.

Regarding the non-lifting of the stoppage order, which the trial court said was based on simple infractions, the same was held to be solely attributable to Rhogen's willful inaction. Instead of readily rectifying the violations, Rhogen continued with the construction works thereby causing more damage. The trial court pointed out that Rhogen is not only expected to be aware of standard requirements and pertinent regulations on construction work, but also expressly bound itself under the General Construction Contract to comply with all the laws, city and municipal ordinances and all government regulations. Having failed to complete the project within the stipulated period and comply with its obligations, Rhogen was thus declared guilty of breaching the Construction Contract and is liable for damages under Articles 1170 and 1167 of the Civil Code.[23]

The dispositive portion of the trial court's decision reads:

WHEREFORE, in Civil Case No. 40755, defendants Ramon Gaite, Cynthia Gaite and Rhogen Builders are jointly and severally ordered to pay plaintiff:

1. the amount of ₱525,422.73 as actual damages representing owner-furnished materials with legal interest from the time of filing of the complaint until full payment;
2. the amount of ₱14,504.66 as actual damages representing expenses for uprooting with interest from the time of filing the complaint until full payment;
3. the amount of ₱1,155,000.00 as actual damages representing the downpayment with legal interest from the time of filing the complaint until full payment;
4. the amount of ₱150,000.00 for moral damages;
5. the amount of ₱100,000.00 for exemplary damages;
6. the amount of ₱500,000.00 as liquidated damages;
7. the amount of ₱100,000.00 as reasonable attorney's fees; and,
8. the cost of suit.

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[23] *Id.* at 442-443.

Under the surety bond, defendants Rhogen and FGU are jointly and severally ordered to pay plaintiff the amount of ₱1,155,000.00 with legal interest from the time of filing the complaint until full payment. In the event [that] FGU pays the said amount, third-party defendants are jointly and severally ordered to pay the same amount to FGU plus ₱50,000.00 as reasonable attorney's fees, the latter having been forced to litigate, and the cost of suit.

Civil Case No. 1328 is hereby ordered dismissed with no pronouncement as to cost.

SO ORDERED.[24]

Dissatisfied, Ramon and Cynthia Gaite, Rhogen and FGU appealed to the CA.[25] In view of the death of Ramon C. Gaite on April 21, 1999, the CA issued a Resolution dated July 12, 2000 granting the substitution of the former by his heirs Cynthia G. Gaite, Rhoel Santiago G. Gaite, Genevieve G. Gaite and Roman Juan G. Gaite.[26]

In their appeal, the heirs of Ramon C. Gaite, Cynthia G. Gaite and Rhogen assigned the following errors, to wit:

I. THE TRIAL COURT ERRED IN DECLARING THAT THE GROUNDS RELIED UPON BY DEFENDANT-APPELLANT RHOGEN BUILDERS IN TERMINATING THE CONTRACT ARE UNTENABLE;

II. THE TRIAL COURT ERRED IN DECLARING THAT THE NON-LIFTING OF THE STOPPAGE ORDER OF THE THEN MUNICIPAL GOVERNMENT OF MAKATI WAS SOLELY ATTRIBUTABLE TO DEFENDANT-APPELLANT RHOGEN'S WILLFUL INACTION;

III. THE TRIAL COURT ERRED IN FAILING TO CONSIDER THAT IT WAS THE WILLFUL INACTION OF PLAINTIFF-APPELLEE WHICH MADE IT IMPOSSIBLE FOR DEFENDANT–APPELLANT RHOGEN TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT;

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[24] *Id.* at 444.

[25] Docketed as CA-G.R. CV No. 58790.

[26] CA *rollo*, p. 84.

IV. THE TRIAL COURT ERRED IN AWARDING ACTUAL DAMAGES AS WELL AS MORAL, EXEMPLARY, AND LIQUIDATED DAMAGES AND ATTORNEY'S FEES SINCE THERE WERE NO FACTUAL AND LEGAL BASES THEREFOR; AND

V. THE TRIAL COURT ERRED IN FAILING TO AWARD ACTUAL, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF DEFENDANTS-APPELLANTS.[27]

For its part, FGU interposed the following assignment of errors:

I. THE REGIONAL TRIAL COURT ERRED IN NOT RULING THAT DEFENDANT-APPELLANT RAMON GAITE VALIDLY TERMINATED THE CONTRACT BETWEEN HIM AND PLAINTIFF-APPELLEE.

II. THE REGIONAL TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT RAMON GAITE RESPONSIBLE FOR THE STOPPAGE OF THE CONSTRUCTION.

III. THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO PAY THE AMOUNT OF ₱525,422.73 FOR THE OWNER FURNISHED MATERIALS.

IV. THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF ₱14,504.66 AS ALLEGED EXPENSES FOR UPROOTING THE WORK HE PERFORMED.

V. THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO REFUND THE DOWN PAYMENT OF ₱1,155,000.00 PLAINTIFF-APPELLEE PAID HIM.

VI. THE REGIONAL TRIAL COURT ERRED IN AWARDING MORAL DAMAGES TO PLAINTIFF-APPELLEE.

VII. THE REGIONAL TRIAL COURT ERRED IN AWARDING EXEMPLARY DAMAGES TO PLAINTIFF-APPELLEE.

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[27] *Rollo*, pp. 450-451.

VIII. THE REGIONAL TRIAL [COURT] ERRED IN AWARDING LIQUIDATED DAMAGES TO PLAINTIFF-APPELLEE.

IX. THE REGIONAL TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES TO PLAINTIFF-APPELLEE.

X. THE REGIONAL TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT FGU INSURANCE CORPORATION LIABLE TO PLAINTIFF-APPELLEE.[28]

On June 27, 2006, the CA affirmed the Decision of the trial court but modified the award of damages as follows:

WHEREFORE, the Decision dated July 3, 1997 rendered by the Regional Trial Court of Makati City, Branch 63 in Civil Case Nos. 40755 and 1328 is **AFFIRMED** with the **modification** that: (a) the award for actual damages representing the owner-furnished materials and the expenses for uprooting are deleted, and in lieu thereof, the amount of ₱300,000.00 as temperate damages is awarded; and (b) the awards for moral, exemplary, liquidated and attorney's fees are likewise deleted.

SO ORDERED.[29]

According to the CA, The Plaza cannot now be demanded to comply with its obligation under the contract since Rhogen has already failed to comply with its own contractual obligation. Thus, The Plaza had every reason not to pay the progress billing as a result of Rhogen's inability to perform its obligations under the contract. Further, the stoppage and revocation orders were issued on account of Rhogen's own violations involving the construction as found by the local building official. Clearly, Rhogen cannot blame The Plaza for its own failure to comply with its contractual obligations. The CA stressed that Rhogen obliged itself to comply with "all the laws, city and municipal ordinances and all government regulations insofar as they are binding upon or affect the parties [to the contract] , the work or those engaged thereon."[30] As such, it was responsible for

[28] *Id.* at 544-545.

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

[30] Art. II, paragraph (4), General Construction Contract, records, pp. 733-734.

the lifting of the stoppage and revocation orders. As to Rhogen's act of challenging the validity of the stoppage and revocation orders, the CA held that it cannot be done in the present case because under Section 307 of the National Building Code, appeal to the Secretary of the Department of Public Works and Highways (DPWH) – whose decision is subject to review by the Office of the President — is available as remedy for Rhogen.[31]

However, the CA modified the award of damages holding that the claim for actual damages of ₱525,422.73 representing the damaged owner-furnished materials was not supported by any evidence. Instead, the CA granted temperate damages in the amount of ₱300,000.00. As to moral damages, no specific finding for the factual basis of said award was made by the trial court, and hence it should be deleted. Likewise, liquidated damages is not proper considering that this is not a case of delay but non-completion of the project. The Plaza similarly failed to establish that Rhogen and Gaite acted with malice or bad faith; consequently, the award of exemplary damages must be deleted. Finally, there being no bad faith on the part of the defendants, the award of attorneys' fees cannot be sustained.[32]

The motion for reconsideration of the aforesaid Decision was denied in the Resolution dated April 20, 2007 for lack of merit. Hence, this appeal.

Before us, petitioners submit the following issues:

I.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when it found that Petitioner Rhogen had no factual or legal basis to terminate the General Construction Contract.

II.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of

[31] *Rollo*, pp. 96-98.

[32] *Id.* at 98-101.

or excess of jurisdiction, when, as a consequence of its finding that Petitioners did not have valid grounds to terminate the Construction Contract, it directed Petitioners to return the downpayment paid by The Plaza, with legal interest.

III.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when, in addition thereto, it awarded temperate damages to The Plaza.

IV.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when it failed to award damages in favor of Petitioners.[33]

Petitioners contend that the CA gravely erred in not holding that there were valid and legal grounds for Rhogen to terminate the contract pursuant to Article 1191 of the Civil Code and Article 123 of the General Conditions of the Construction Contract. Petitioners claim that Rhogen sent Progress Billing No. 1 dated September 10, 1980 and demanded payment from The Plaza in the net amount of ₱473,554.06 for the work it had accomplished from July 28, 1980 until September 7, 1980. The Plaza, however, failed to pay the said amount. According to petitioners, Article 123 of the General Conditions of the Construction Contract gives The Plaza seven days from notice within which to pay the Progress Billing; otherwise, Rhogen may terminate the contract. Petitioners also invoke Article 1191 of the Civil Code, which states that the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

We deny the petition.

Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the

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[33] *Id.* at 44.

obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other. Respondent The Plaza predicated its action on Article 1191[34] of the Civil Code, which provides for the remedy of "rescission" or more properly *resolution,* a principal action based on breach of faith by the other party who violates the reciprocity between them. The breach contemplated in the provision is the obligor's failure to comply with an existing obligation. Thus, the power to rescind is given only to the injured party. The injured party is the party who has faithfully fulfilled his obligation or is ready and willing to perform his obligation.[35]

The construction contract between Rhogen and The Plaza provides for reciprocal obligations whereby the latter's obligation to pay the contract price or progress billing is conditioned on the former's performance of its undertaking to complete the works within the stipulated period and in accordance with approved plans and other specifications by the owner. Pursuant to its contractual obligation, The Plaza furnished materials and paid the agreed down payment. It also exercised the option of furnishing and delivering construction materials at the jobsite pursuant to Article III of the Construction Contract. However,

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[34] ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[35] *Heirs of Antonio F. Bernabe v. Court of Appeals,* G.R. No. 154402, July 21, 2008, 559 SCRA 53, 66, citing *Ong v. Court of Appeals,* 369 Phil. 243, 252 (1999), *Sps. Velarde v. Court of Appeals,* 413 Phil. 360, 373 (2001) and *Almira v. Court of Appeals,* 447 Phil. 467, 482 (2003).

just two months after commencement of the project, construction works were ordered stopped by the local building official and the building permit subsequently revoked on account of several violations of the National Building Code and other regulations of the municipal authorities.

Petitioners reiterate their position that the stoppage order was unlawful, citing the fact that when the new contractor (ACK Construction, Inc.) took over the project, the local government of Makati allowed the construction of the building using the *old building permit*; moreover, the basement depth of only two meters was retained, with no further excavation made. They cite the testimony of the late Ramon Gaite before the trial court that at the time, he had incurred the ire of then Mayor of Makati because his (Gaite) brother was the Mayor's political opponent; hence, they sought to file whatever charge they could against him in order to call the attention of his brother. This "political harassment" defense was raised by petitioners in their Amended Answer. Gaite's testimony was intended to explain the circumstances leading to his decision to terminate the construction contract and not to question the revocation of the building permit. As the available remedy was already foreclosed, it was thus error for the CA to suggest that Rhogen should have appealed the stoppage and revocations orders issued by the municipal authorities to the DPWH and then to the OP.[36]

Article 123 of the Articles of General Conditions states the grounds for the termination of the work or contract by the Contractor:

123. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

> If work should be stopped under order of any court, or other public authority, for period of three (3) months **through no act or fault of Contractor** or of anyone employed by him, or if Owner's Representative should fail to issue any certificate of payment within seven (7) days after its maturity and presentation of any sum certified by Owner's Representative

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[36] *Rollo,* pp. 55-58.

> or awarded arbitrator, then contractor, may, stop work or terminate Contract, recover from Owner payment for work executed, loss sustained upon any plant or materials, reasonable profit, damages.[37] (Emphasis supplied.)

Petitioners may not justify Rhogen's termination of the contract upon grounds of non-payment of progress billing and uncooperative attitude of respondent The Plaza and its employees in rectifying the violations which were the basis for issuance of the stoppage order. Having breached the contractual obligation it had expressly assumed, *i.e.,* to comply with all laws, rules and regulations of the local authorities, Rhogen was already at fault. Respondent The Plaza, on the other hand, was justified in withholding payment on Rhogen's first progress billing, on account of the stoppage order and additionally due to disappearance of owner-furnished materials at the jobsite. In failing to have the stoppage and revocation orders lifted or recalled, Rhogen should take full responsibility in accordance with its contractual undertaking, thus:

> In the performance of the works, services, and obligations subject of this Contract, the CONTRACTOR binds itself to observe all pertinent and applicable laws, rules and regulations promulgated by duly constituted authorities and **to be personally, fully and solely liable for any and all violations of the same**.[38] (Emphasis supplied.)

Significantly, Rhogen did not mention in its communications to Reyes that Gaite was merely a victim of abuse by a local official and this was the primary reason for the problems besetting the project. On the contrary, the site appraisal inspection conducted on February 12 and 13, 1981 in the presence of representatives from The Plaza, Rhogen, FGU and Municipal Engineer Victor Gregory, disclosed that in addition to the violations committed by Rhogen which resulted in the issuance of the stoppage order, Rhogen built the structure not in accordance with government approved plans and/or without securing the

[37] Records, Exhibit "AAA".

[38] Art. IX, paragraph (2), General Construction Contract, records, p. 737.

approval of the Municipal Engineer before making the changes thereon.[39]

Such non-observance of laws and regulations of the local authorities affecting the construction project constitutes a substantial violation of the Construction Contract which entitles The Plaza to terminate the same, without obligation to make further payment to Rhogen until the work is finished or subject to refund of payment exceeding the expenses of completing the works. This is evident from a reading of Article 122 which states:

122. OWNER'S RIGHT TO TERMINATE CONTRACT

A. If Contractor should be adjudged bankrupt, or if he should make general assignment for benefit of his creditors, or if receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Sub-Contractors or for materials of labor, or **persistently disregard laws, ordinances,** or instructions of Owner's Representative **or otherwise be guilty of substantial violation of any provision of [the] Contract,** then **Owner,** upon certification by Owner's Representative that sufficient cause exists to justify such action, **may,** without prejudice to any right or remedy, after giving Contractor seven days written notice, **terminate contract with Contractor, take possession of premises, materials, tools, appliances, thereon, finish work by whatever method he may deem expedient**. In such cases, **Contractor shall not be entitled to receive any further payment until work is finished.**

B. If unpaid balance of Contract sum shall exceed expense of finishing work including compensation for additional managerial and administrative services, such excess, paid to Contractor. **Refund the difference to Owner if such**

[39] Records, Exhibits "T", "RR" and "SS".

> **expense shall exceed unpaid balance**.[40] (Emphasis supplied.)

Upon the facts duly established, the CA therefore did not err in holding that Rhogen committed a serious breach of its contract with The Plaza, which justified the latter in terminating the contract. Petitioners are thus liable for damages for having breached their contract with respondent The Plaza. Article 1170 of the Civil Code provides that those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages.

Petitioners assail the order for the return of down payment, asserting that the principle of *quantum meruit* demands that Rhogen as contractor be paid for the work already accomplished.

We disagree.

Under the principle of *quantum meruit,* a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment. *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.[41]

Rhogen failed to finish even a substantial portion of the works due to the stoppage order issued just two months from the start of construction. Despite the down payment received from The Plaza, Rhogen, upon evaluation of the Project Manager, was able to complete a meager percentage much lower than

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[40] *Id.*, Exhibit "AAA".

[41] *H. L. Carlos Construction, Inc. v. Marina Properties Corporation,* G.R. No. 147614, January 29, 2004, 421 SCRA 428, 439, citing *Melchor v. Commission on Audit,* G.R. No. 95398, August 16, 1991, 200 SCRA 704, 713; *Republic v. Court of Appeals,* 359 Phil. 530, 640 (1998); and *Eslao v. Commission on Audit,* G.R. No. 89745, April 8, 1991, 195 SCRA 730, 738-739.

that claimed by it under the first progress billing between July and September 1980. Moreover, after it relinquished the project in January 1981, the site inspection appraisal jointly conducted by the Project Manager, Building Inspector Engr. Gregory and representatives from FGU and Rhogen, Rhogen was found to have executed the works not in accordance with the approved plans or failed to seek prior approval of the Municipal Engineer. Article 1167 of the Civil Code is explicit on this point that if a person obliged to do something fails to do it, the same shall be executed at his cost.

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

In addition, Article 122 of the Articles of General Conditions provides that the contractor shall not be entitled to receive further payment "until the work is finished." As the works completed by Rhogen were not in accordance with approved plans, it should have been executed at its cost had it not relinquished the project in January 1981. The CA thus did not err in sustaining the trial court's order for the return of the down payment given by The Plaza to Rhogen.

As to temperate damages, Article 2224 of the Civil Code provides that 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. The rationale behind temperate damages is precisely that from the nature of the case, definite proof of pecuniary loss cannot be offered. When the court is convinced that there has been such loss, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant's wrongful act.[42]

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[42] *Government Service Insurance System v. Labung-Deang*, G.R. No. 135644, September 17, 2001, 365 SCRA 341, 350.

Petitioners' contention that such award is improper because The Plaza could have presented receipts to support the claim for actual damages, must fail considering that Rhogen never denied the delivery of the owner-furnished materials which were under its custody at the jobsite during the work stoppage and before it terminated the contract. Since Rhogen failed to account either for those items which it had caused to be withdrawn from the premises, or those considered damaged or lost due spoilage, or disappeared for whatever reason – there was no way of determining the exact quantity and cost of those materials. Hence, The Plaza was correctly allowed to recover temperate damages.

Upon the foregoing, we find petitioners' claim for actual, moral and exemplary damages and attorney's fees lacking in legal basis and undeserving of further discussion.

WHEREFORE, the petition is *DENIED*. The Decision dated June 27, 2006 and the Resolution dated April 20, 2007 of the Court of Appeals in CA-G.R. CV No. 58790 are *AFFIRMED.*

With costs against petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Nachura,[*] *Brion,* and *Sereno, JJ.,* concur.

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[*] Designated additional member per Special Order No. 937 dated January 24, 2011.

SECOND DIVISION

[G.R. No. 179428. January 26, 2011]

PRIMO E. CAONG, JR., ALEXANDER J. TRESQUIO, and LORIANO D. DALUYON, *petitioners, vs.* **AVELINO REGUALOS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED. –** In an action for *certiorari*, petitioner must prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent. Mere abuse of discretion is not enough. It must be shown that public respondent exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and this must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONSHIP; RELATIONSHIP BETWEEN JEEPNEY OWNERS/OPERATORS AND JEEPNEY DRIVERS UNDER THE BOUNDARY SYSTEM IS THAT OF EMPLOYER-EMPLOYEE. –** It is already settled that the relationship between *jeepney* owners/operators and *jeepney* drivers under the boundary system is that of employer-employee and not of lessor-lessee. The fact that the drivers do not receive fixed wages but only get the amount in excess of the so-called "boundary" that they pay to the owner/operator is not sufficient to negate the relationship between them as employer and employee.

3. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THE NLRC AND LABOR ARBITER, RESPECTED. –** Findings of fact of the CA, particularly where they are in absolute agreement with those of the NLRC and the Labor Arbiter, are accorded not only respect but even finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYER'S PREROGATIVE; RESPECTED IF FAIR AND REASONABLE. – It is acknowledged that an employer has free rein and enjoys a wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline on his employees and to impose penalties, including dismissal, if warranted, upon erring employees. This is a management prerogative. Indeed, the manner in which management conducts its own affairs to achieve its purpose is within the management's discretion. The only limitation on the exercise of management prerogative is that the policies, rules, and regulations on work-related activities of the employees must always be fair and reasonable, and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.

APPEARANCES OF COUNSEL

Jay S. Albarece for petitioners.
Edgardo Y. Raagas for respondent.

D E C I S I O N

NACHURA, *J.*:

Is the policy of suspending drivers pending payment of arrears in their boundary obligations reasonable? The Court of Appeals (CA) answered the question in the affirmative in its Decision[1] dated December 14, 2006 and Resolution dated July 16, 2007. In this petition for review on *certiorari*, we take a second look at the issue and determine whether the situation at bar merits the relaxation of the application of the said policy.

Petitioners Primo E. Caong, Jr. (Caong), Alexander J. Tresquio (Tresquio), and Loriano D. Daluyon (Daluyon) were employed by respondent Avelino Regualos under a boundary agreement, as

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[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez, concurring; *rollo,* pp. 38-54.

drivers of his *jeepneys*. In November 2001, they filed separate complaints[2] for illegal dismissal against respondent who barred them from driving the vehicles due to deficiencies in their boundary payments.

Caong was hired by respondent in September 1998 and became a permanent driver sometime in 2000. In July 2001, he was assigned a brand-new *jeepney* for a boundary fee of ₱550.00 per day. He was suspended on October 9-15, 2001 for failure to remit the full amount of the boundary. Consequently, he filed a complaint for illegal suspension. Upon expiration of the suspension period, he was readmitted by respondent, but he was reassigned to an older *jeepney* for a boundary fee of ₱500.00 per day. He claimed that, on November 9, 2001, due to the scarcity of passengers, he was only able to remit ₱400.00 to respondent. On November 11, 2001, he returned to work after his rest day, but respondent barred him from driving because of the deficiency in the boundary payment. He pleaded with respondent but to no avail.[3]

Tresquio was employed by respondent as driver in August 1996. He became a permanent driver in 1997. In 1998, he was assigned to drive a new *jeepney* for a boundary fee of ₱500.00 per day. On November 6, 2001, due to the scarcity of passengers, he was only able to remit ₱450.00. When he returned to work on November 8, 2001 after his rest day, he was barred by respondent because of the deficiency of ₱50.00. He pleaded with respondent but the latter was adamant.[4]

On the other hand, Daluyon started working for respondent in March 1998. He became a permanent driver in July 1998. He was assigned to a relatively new *jeepney* for a boundary fee of ₱500.00 per day. On November 7, 2001, due to the scarcity of passengers, he was only able to pay ₱470.00 to respondent. The following day, respondent barred him from driving his *jeepney*. He pleaded but to no avail.[5]

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[2] *Id.* at 92-96.

[3] *Id.* at 98-99.

[4] *Id.* at 100.

[5] *Id.* at 100-101.

During the mandatory conference, respondent manifested that petitioners were not dismissed and that they could drive his *jeepneys* once they paid their arrears. Petitioners, however, refused to do so.

Petitioners averred that they were illegally dismissed by respondent without just cause. They maintained that respondent did not comply with due process requirements before terminating their employment, as they were not furnished notice apprising them of their infractions and another informing them of their dismissal. Petitioners claimed that respondent's offer during the mandatory conference to reinstate them was an insincere afterthought as shown by the warning given by respondent that, if they fail to remit the full amount of the boundary yet again, they will be barred from driving the *jeepneys*. Petitioners questioned respondent's policy of automatically dismissing the drivers who fail to remit the full amount of the boundary as it allegedly (a) violates their right to due process; (b) does not constitute a just cause for dismissal; (c) disregards the reality that there are days when they could not raise the full amount of the boundary because of the scarcity of passengers.

In his Position Paper, respondent alleged that petitioners were lessees of his vehicles and not his employees; hence, the Labor Arbiter had no jurisdiction. He claimed that he noticed that some of his lessees, including petitioners, were not fully paying the daily rental of his *jeepneys*. In a list which he attached to the Position Paper, it was shown that petitioners had actually incurred arrears since they started working. The list showed that Caong's total arrears amounted to ₱10,315.00, that of Tresquio was ₱10,760.00, while that of Daluyon was ₱6,890.00. He made inquiries and discovered that his lessees contracted loans with third parties and used the income of the *jeepneys* in paying the loans. Thus, on November 4, 2001, he gathered all the lessees in a meeting and informed them that, effective November 5, 2001, those who would fail to fully pay the daily rental would not be allowed to rent a *jeepney* on the following day. He explained to them that the *jeepneys* were acquired on installment basis, and that he was paying the monthly amortizations

through the lease income. Most of the lessees allegedly accepted the condition and paid their arrears. Petitioners, however, did not settle their arrears. Worse, their remittances were again short of the required boundary fee. Petitioner Daluyon's rent payment was short of ₱20.00 on November 5, 2001 and ₱80.00 on November 7, 2001. On November 6, 2001, it was Tresquio who incurred an arrear of ₱100.00. On November 7 and 9, 2001, petitioner Caong was in arrear of ₱50.00 and ₱100.00, respectively. Respondent stressed that, during the mandatory conference, he manifested that he would renew his lease with petitioners if they would pay the arrears they incurred during the said dates.[6]

On March 31, 2003, the Labor Arbiter decided the case in favor of respondent, thus:

> WHEREFORE, judgment is hereby rendered, DISMISSING the above-entitled cases for lack of merit. However, respondent Regualos is directed to accept back complainants Caong, Tresquio and Daluyon, as regular drivers of his passenger jeepneys, after complainants have paid their respective arrearages they have incurred in the remittance of their respective boundary payments, in the amount of ₱150.00, ₱100.00 and ₱100.00. Complainants, if still interested to work as drivers, are hereby ordered to report to respondent Regualos within fifteen (15) days from the finality of this decision. Otherwise, failure to do so means forfeiture of their respective employments.
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> Other claims of complainants are dismissed for lack of merit.
>
> SO ORDERED.[7]

According to the Labor Arbiter, an employer-employee relationship existed between respondent and petitioners. The latter were not dismissed considering that they could go back to work once they have paid their arrears. The Labor Arbiter opined that, as a disciplinary measure, it is proper to impose a reasonable sanction on drivers who cannot pay their boundary payments. He emphasized that respondent acquired the jeepneys

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[6] *Id.* at 112-114.

[7] *Id.* at 131.

on loan or installment basis and relied on the boundary payments to comply with his monthly amortizations.[8]

Petitioners appealed the decision to the National Labor Relations Commission (NLRC). In its resolution[9] dated March 31, 2004, the NLRC agreed with the Labor Arbiter and dismissed the appeal. It also denied petitioners' motion for reconsideration.[10]

Forthwith, petitioners filed a petition for *certiorari* with the CA.

In its Decision[11] dated December 14, 2006, the CA found no grave abuse of discretion on the part of the NLRC. According to the CA, the employer-employee relationship of the parties has not been severed, but merely suspended when respondent refused to allow petitioners to drive the *jeepneys* while there were unpaid boundary obligations. The CA pointed out that the fact that it was within the power of petitioners to return to work is proof that there was no termination of employment. The condition that petitioners should first pay their arrears only for the period of November 5-9, 2001 before they can be readmitted to work is neither impossible nor unreasonable if their total unpaid boundary obligations and the need to sustain the financial viability of the employer's enterprise—which would ultimately redound to the benefit of the employees—are taken into consideration.[12]

The CA went on to rule that petitioners were not denied their right to due process. It pointed out that the case does not involve a termination of employment; hence, the strict application of the twin-notice rule is not warranted. According to the CA, what is important is that petitioners were given the opportunity to be heard. The meeting conducted by respondent on November 4, 2001 served as sufficient notice to petitioners. During the said

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[8] *Id.* at 128-130.
[9] *Id.* at 183.
[10] *Id.* at 186.
[11] *Id.* at 53.
[12] *Id.* at 43-48.

meeting, respondent informed his employees, including petitioners, to strictly comply with the policy regarding remittances and warned them that they would not be allowed to take out the *jeepneys* if they did not remit the full amount of the boundary.[13]

Dissatisfied, petitioners filed a motion for reconsideration, but the CA denied the motion in its Resolution dated July 16, 2007.[14]

Petitioners are now before this Court resolutely arguing that they were illegally dismissed by respondent, and that such dismissal was made in violation of the due process requirements of the law.

The petition is without merit.

In an action for *certiorari*, petitioner must prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent. Mere abuse of discretion is not enough. It must be shown that public respondent exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and this must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15]

As correctly held by the CA, petitioners failed to establish that the NLRC committed *grave* abuse of discretion in affirming the Labor Arbiter's ruling, which is supported by the facts on record.

It is already settled that the relationship between *jeepney* owners/operators and *jeepney* drivers under the boundary system is that of employer-employee and not of lessor-lessee. The fact that the drivers do not receive fixed wages but only get the amount in excess of the so-called "boundary" that they pay to the owner/operator is not sufficient to negate the relationship between them as employer and employee.[16]

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[13] *Id.* at 50-51.

[14] *Id.* at 58.

[15] *Solvic Industrial Corporation v. NLRC,* 357 Phil. 430, 438 (1998).

[16] *Martinez v. NLRC,* 339 Phil. 176, 182 (1997), citing *National Labor Union v. Dinglasan,* 98 Phil. 649, 652-653 (1956).

The Labor Arbiter, the NLRC, and the CA uniformly declared that petitioners were not dismissed from employment but merely suspended pending payment of their arrears. Findings of fact of the CA, particularly where they are in absolute agreement with those of the NLRC and the Labor Arbiter, are accorded not only respect but even finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.[17]

We have no reason to deviate from such findings. Indeed, petitioners' suspension cannot be categorized as dismissal, considering that there was no intent on the part of respondent to sever the employer-employee relationship between him and petitioners. In fact, it was made clear that petitioners could put an end to the suspension if they only pay their recent arrears. As it was, the suspension dragged on for years because of petitioners' stubborn refusal to pay. It would have been different if petitioners complied with the condition and respondent still refused to readmit them to work. Then there would have been a clear act of dismissal. But such was not the case. Instead of paying, petitioners even filed a complaint for illegal dismissal against respondent.

Respondent's policy of suspending drivers who fail to remit the full amount of the boundary was fair and reasonable under the circumstances. Respondent explained that he noticed that his drivers were getting lax in remitting their boundary payments and, in fact, herein petitioners had already incurred a considerable amount of arrears. He had to put a stop to it as he also relied on these boundary payments to raise the full amount of his monthly amortizations on the *jeepneys*. Demonstrating their obstinacy, petitioners, on the days immediately following the implementation of the policy, incurred deficiencies in their boundary remittances.

It is acknowledged that an employer has free rein and enjoys a wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline on his employees and to impose penalties, including dismissal, if warranted, upon erring

[17] *San Miguel Corporation v. National Labor Relations Commission,* G.R. Nos. 146121-22, April 16, 2008, 551 SCRA 410, 422.

employees. This is a management prerogative. Indeed, the manner in which management conducts its own affairs to achieve its purpose is within the management's discretion. The only limitation on the exercise of management prerogative is that the policies, rules, and regulations on work-related activities of the employees must always be fair and reasonable, and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[18]

Petitioners argue that the policy is unsound as it does not consider the times when passengers are scarce and the drivers are not able to raise the amount of the boundary.

Petitioners' concern relates to the implementation of the policy, which is another matter. A company policy must be implemented in such manner as will accord social justice and compassion to the employee. In case of noncompliance with the company policy, the employer must consider the surrounding circumstances and the reasons why the employee failed to comply. When the circumstances merit the relaxation of the application of the policy, then its noncompliance must be excused.

In the present case, petitioners merely alleged that there were only few passengers during the dates in question. Such excuse is not acceptable without any proof or, at least, an explanation as to why passengers were scarce at that time. It is simply a bare allegation, not worthy of belief. We also find the excuse unbelievable considering that petitioners incurred the shortages on separate days, and it appears that only petitioners failed to remit the full boundary payment on said dates.

Under a boundary scheme, the driver remits the "boundary," which is a fixed amount, to the owner/operator and gets to earn the amount in excess thereof. Thus, on a day when there are many passengers along the route, it is the driver who actually benefits from it. It would be unfair then if, during the times when passengers are scarce, the owner/operator will be made to suffer by not getting the full amount of the boundary. Unless clearly

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[18] *St. Michael's Institute v. Santos,* 422 Phil. 723, 732-733 (2001).

shown or explained by an event that irregularly and negatively affected the usual number of passengers within the route, the scarcity of passengers should not excuse the driver from paying the full amount of the boundary.

Finally, we sustain the CA's finding that petitioners were not denied the right to due process. We thus quote with approval its discussion on this matter:

> Having established that the case at bench does not involve termination of employment, We find that the strict, even rigid, application of the twin-notice rule is not warranted.
>
> But the due process safeguards are nonetheless still available to petitioners.
>
> Due process is not a matter of strict or rigid or formulaic process. The essence of due process is simply the 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. A formal or trial-type hearing is not at all times and in all instances essential, as the due process requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x.
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> x x x x x x x x x
>
> In the case at bench, private respondent, upon finding that petitioners had consistently failed to remit the full amount of the boundary, conducted a meeting on November 4, 2001 informing them to strictly comply with the policy regarding their remittances and warned them to discontinue driving if they still failed to remit the full amount of the boundary.[19]

WHEREFORE, premises considered, the petition is *DENIED.* The Court of Appeals Decision dated December 14, 2006 and Resolution dated July 16, 2007 are *AFFIRMED*.

SO ORDERED.

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

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[19] *Rollo*, pp. 50-51.

SECOND DIVISION

[G.R. No. 181146. January 26, 2011]

THE UNIVERSITY OF THE IMMACULATE CONCEPTION and MO. MARIA ASSUMPTA DAVID, RVM, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and TEODORA AXALAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT ALLOWED; EXCEPTIONS; FACTUAL FINDINGS OF THE LABOR ARBITER, THOUGH AFFIRMED BY THE NLRC AND THE COURT OF APPEALS, ARE ERRONEOUS. —** Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by the evidence on record or the impugned judgment is based on a misapprehension of facts. Patently erroneous findings of the Labor Arbiter, even when affirmed by the NLRC and the Court of Appeals, are not binding on this Court.

2. **LABOR AND SOCIAL LEGISLATION; LABOR ARBITER; HAS JURISDICTION OVER UNFAIR LABOR PRACTICES AND TERMINATION DISPUTES; EXCEPTION. —** Article 217 of the Labor Code states that unfair labor practices and termination disputes fall within the original and exclusive jurisdiction of the Labor Arbiter: ART. 217. *Jurisdiction of Labor Arbiters and the Commission.*— (a) **Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction** to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural: 1. Unfair labor practice cases; 2. Termination disputes; x x x Article 262 of the same Code provides the exception: ART. 262. *Jurisdiction over other labor disputes.* — The Voluntary Arbitrator or panel of Voluntary Arbitrators, **upon agreement of the parties,** shall also hear and decide **all other labor disputes** including unfair labor practices and bargaining deadlocks. In

San Miguel Corp. v. NLRC, the Court ruled that for the exception to apply, there must be agreement between the parties clearly conferring jurisdiction to the voluntary arbitrator. Such agreement may be stipulated in a collective bargaining agreement. However, in the absence of a collective bargaining agreement, it is enough that there is evidence on record showing the parties have agreed to resort to voluntary arbitration.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; PREFERENTIAL USE OF VOLUNTARY MODES IN SETTLING DISPUTES DECLARED AS STATE POLICY. —** No less than Section 3, Article XIII of the Constitution declares as state policy the preferential use of voluntary modes in settling disputes, to wit: Sec. 3. x x x **The State shall promote** the principle of shared responsibility between workers and employers and **the preferential use of voluntary modes in settling disputes,** including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

4. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; ABSENCE THEREOF DOES NOT WARRANT PAYMENT OF BACKWAGES, SALARY DIFFERENTIALS AND ATTORNEY'S FEES. —** [C]onstructive dismissal occurs when there is **cessation** of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. x x x There being no constructive dismissal, there is no legal basis for the Labor Arbiter's order of reinstatement as well as payment of backwages, salary differentials, damages, and attorney's fees.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
The Solicitor General for public respondent.
Dante Santiago for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] of the 13 December 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 00812 affirming the 15 August 2005 and the 24 October 2005 Resolutions[3] of the National Labor Relations Commission in NLRC CA No. M-008333-2005, which sustained the 11 October 2004 Decision[4] of the Labor Arbiter in RAB-11-12-01187-03 ordering petitioner to reinstate private respondent to her former position without loss of seniority rights and to pay her backwages, salary differentials, damages, and attorney's fees.

The Facts

Petitioner University of the Immaculate Conception is a private educational institution located in Davao City. Private respondent Teodora C. Axalan is a regular faculty member in the university holding the position of Associate Professor II. Aside from being a regular faculty member, Axalan is the elected president of the employees' union.[5]

From 18 November to 22 November 2002, Axalan attended a seminar in Quezon City on website development. Axalan then received a memorandum[6] from Dean Maria Rosa Celestial asking

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

[2] *Rollo*, pp. 49-70. Penned by Associate Justice Romulo V. Borja, with Associate Justices Mario V. Lopez and Elihu A. Ybañez, concurring.

[3] *Id.* at 112-118. 15 August 2005 Resolution penned by Presiding Commissioner Salio B. Dumarpa, with Commissioners Proculo T. Sarmen, concurring and Jovito C. Cagaanan, dissenting.

Id. at 121-122. 24 October 2005 Resolution penned by Presiding Commissioner Salio B. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan, concurring.

[4] *Id.* at 123-138. Penned by Executive Labor Arbiter Elbert C. Restauro.

[5] *Id.* at 125.

[6] *Id.* at 357.

her to explain in writing why she should not be dismissed for having been absent without official leave.

In her letter,[7] Axalan claimed that she held online classes while attending the seminar. She explained that she was under the impression that faculty members would not be marked absent even if they were not physically present in the classroom as long as they conducted online classes.

In reply,[8] Dean Celestial relayed to Axalan the message of the university president that no administrative charge would be filed if Axalan would admit having been absent without official leave and write a letter of apology seeking forgiveness.

Convinced that she could not be deemed absent since she held online classes, Axalan opted not to write the letter of admission and contrition the university president requested.[9] The Dean wrote Axalan that the university president had created an *ad hoc* grievance committee to investigate the AWOL charge.[10]

From 28 January to 3 February 2003, Axalan attended a seminar in Baguio City on advanced paralegal training. Dean Celestial wrote Axalan informing her that her participation in the paralegal seminar in Baguio City was the subject of a second AWOL charge.[11] The dean asked Axalan to explain in writing why no disciplinary action should be taken against her.[12]

In her letter,[13] Axalan explained that before going to Baguio City for the seminar, she sought the approval of Vice-President for Academics Alicia Sayson. In a letter,[14] VP Sayson denied having approved Axalan's application for official leave. The

[7] *Id.* at 358.

[8] *Id.* at 361.

[9] *Id.* at 362.

[10] *Id.* at 363.

[11] *Id.* at 371.

[12] *Id.*

[13] *Id.* at 378.

[14] *Id.* at 380-382.

VP stated in her letter that it was the university president, Maria Assumpta David, who must approve the application.

After conducting hearings and receiving evidence, the *ad hoc* grievance committee found Axalan to have incurred AWOL on both instances and recommended that Axalan be suspended without pay for six months on each AWOL charge.[15] The university president approved the committee's recommendation.

The university president then wrote Axalan informing her that she incurred absences without official leave when she attended the seminars on website development in Quezon City and on advanced paralegal training in Baguio City on 18-22 November 2002 and on 28 January-3 February 2003, respectively. In the same letter, the university president informed Axalan that the total penalty of one-year suspension without pay for both AWOL charges would be effective immediately.[16]

On 1 December 2003, Axalan filed a complaint[17] against the university for illegal suspension, constructive dismissal, reinstatement with backwages, and unfair labor practice with prayer for damages and attorney's fees.

The university moved to dismiss the complaint on the ground that the Labor Arbiter had no jurisdiction over the subject matter of the complaint. The university maintained that jurisdiction lay in the voluntary arbitrator.[18]

In denying the university's motion to dismiss, the Labor Arbiter held that there being no existing collective bargaining agreement between the parties, no grievance machinery was constituted, which barred resort to voluntary arbitration.[19]

Meanwhile, upon the expiration of the one-year suspension, Axalan promptly resumed teaching at the university on 1 October 2004.

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[15] *Id.* at 406.

[16] *Id.* at 188-190.

[17] *Id.* at 192-210.

[18] *Id.* at 273-275.

[19] *Id.* at 280.

The Ruling of the Labor Arbiter

On 11 October 2004, the Labor Arbiter rendered a Decision holding that the suspension of Axalan amounted to constructive dismissal entitling her to reinstatement and payment of backwages, salary differentials, damages, and attorney's fees, thus:

> WHEREFORE, premises laid, judgment is hereby rendered declaring that the suspension of complainant amounted to constructive dismissal, and as such, she is entitled to reinstatement and payment of her full backwages reckoned from the time it was withheld from her up to the time of reinstatement. Accordingly, Respondent University of the Immaculate Conception acting through its President, Respondent Mo. Maria Assumpta David, RVM, is directed to reinstate the complainant to her former position without loss of seniority rights and to pay her the sum of Five Hundred Forty Three Thousand Four Hundred Fifty Two Pesos (₱543,452.00) representing her backwages, salary differentials (diminution) and damages plus ten percent (10%) thereof as attorney's fees or the sum of ₱54,345.20.
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> The Respondent UIC and its President are hereby directed to inform this Office of the mode of compliance it will avail itself by reason of the Order of reinstatement.
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> SO ORDERED.[20]

The university appealed the Labor Arbiter's Decision to the National Labor Relations Commission (NLRC). It challenged the jurisdiction of the Labor Arbiter insisting that the voluntary arbitrator had jurisdiction over the labor dispute. The university pointed out that when the Labor Arbiter rendered his Decision on 11 October 2004, Axalan had returned to work on 1 October 2004 upon the expiration of the one-year suspension.

The Ruling of the NLRC

The NLRC held that the Labor Arbiter, not the voluntary arbitrator, had jurisdiction as the controversy did not pertain to a dispute involving the union and the university. In its 15 August 2005 Resolution, the NLRC ruled:

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[20] *Id.* at 137-138.

WHEREFORE, for want of merit, the instant appeal is hereby DISMISSED.

SO ORDERED.[21]

NLRC Commissioner Jovito C. Cagaanan, in his dissenting opinion,[22] stressed that the parties previously agreed to submit the dispute to voluntary arbitration, which cast doubt on the jurisdiction of the Labor Arbiter.

The university moved for reconsideration of the NLRC Resolution. But the NLRC, in its 24 October 2005 Resolution,[23] denied the motion for reconsideration for lack of merit. The university challenged both Resolutions of the NLRC before the Court of Appeals *via* a petition for *certiorari*.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the findings of the Labor Arbiter and the NLRC. In its 13 December 2007 Decision, the Court of Appeals dismissed the university's petition for *certiorari*, thus:

> We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in affirming the Labor Arbiter. Respondent Commission's ruling finds more than ample support in statutory and case law. It cannot, therefore, be characterized as whimsical, arbitrary, or oppressive.
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> WHEREFORE, the instant petition is hereby DISMISSED.
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> SO ORDERED.[24]

Dissatisfied, the university filed in this Court the instant petition for review on *certiorari*.

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[21] *Id.* at 118.

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

[23] *Rollo*, p. 121.

[24] *Id.* at 69-70.

The Issues

The issues for resolution are (1) whether the voluntary arbitrator had jurisdiction over the labor dispute; (2) whether Axalan was constructively dismissed; and (3) whether the Labor Arbiter's computation of backwages, damages, and attorney's fees was correct.

The Court's Ruling

The petition is impressed with merit.

The university contends that based on the transcript of stenographic notes from the *ad hoc* grievance committee hearing held on 20 February 2003, the parties agreed that the voluntary arbitrator would have jurisdiction over the labor dispute. The university maintains that Axalan's suspension does not constitute constructive dismissal and that the Labor Arbiter's decision treating it as such is an attempt to make it appear that the voluntary arbitrator has no jurisdiction. The university points out that for constructive dismissal to exist, there must be severance of employment by the employee because of unbearable act of discrimination, insensibility, or disdain on the part of the employer leaving the employee with no choice but to forego continued employment. The university claims that on the contrary, Axalan eagerly reported for work as soon as the one-year suspension was over. The university further argues that assuming Axalan is entitled to backwages, it should have been based on Axalan's average gross monthly income at the time she was suspended in SY2003-2004, which was ₱14,145.00, not on her average gross monthly income in SY2002-2003, which was ₱18,502.00.

Private respondent Axalan counters that the university raises the same factual issues already decided unanimously by the Labor Arbiter, the NLRC, and the Court of Appeals. On the issue of jurisdiction, Axalan stresses that the present labor case, being a complaint for constructive dismissal and unfair labor practice, is within the jurisdiction of the Labor Arbiter. On the finding of constructive dismissal, Axalan points out that the Labor Arbiter's factual finding of constructive dismissal, when

affirmed by the NLRC and the Court of Appeals, binds this Court. Axalan claims that both AWOL charges against her were without basis and were only a form of harassment amounting to unfair labor practice. As to the computation of the award of backwages, Axalan points out that her average gross monthly income in SY2002-2003 was reduced in SY2003-2004 precisely because she was not given an overload of two extra assignments resulting in the diminution of her income. Axalan maintains that the award of damages was just proper considering that her suspension was without basis and amounted to unfair labor practice.

Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by the evidence on record or the impugned judgment is based on a misapprehension of facts. Patently erroneous findings of the Labor Arbiter, even when affirmed by the NLRC and the Court of Appeals, are not binding on this Court.[25]

As to the first issue, Article 217 of the Labor Code states that unfair labor practices and termination disputes fall within the original and exclusive jurisdiction of the Labor Arbiter:

> ART. 217. *Jurisdiction of Labor Arbiters and the Commission.* — (a) **Except as otherwise provided under this Code**, **the Labor Arbiters shall have original and exclusive jurisdiction** to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:
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> 1. Unfair labor practice cases;
> 2. Termination disputes;
> x x x (Emphasis supplied)

Article 262 of the same Code provides the exception:

> ART. 262. *Jurisdiction over other labor disputes.* —The Voluntary Arbitrator or panel of Voluntary Arbitrators, **upon agreement of the**

[25] *Metropolitan Bank and Trust Company v. Barrientos*, G.R. No. 157028, 31 January 2006, 481 SCRA 311.

parties, shall also hear and decide **all other labor disputes** including unfair labor practices and bargaining deadlocks. (Emphasis supplied)

In *San Miguel Corp. v. NLRC*,[26] the Court ruled that for the exception to apply, there must be agreement between the parties clearly conferring jurisdiction to the voluntary arbitrator. Such agreement may be stipulated in a collective bargaining agreement. However, in the absence of a collective bargaining agreement, it is enough that there is evidence on record showing the parties have agreed to resort to voluntary arbitration.[27]

As can be gleaned from the transcript of stenographic notes of the administrative hearing held on 20 February 2003, the parties in this case clearly agreed to resort to voluntary arbitration. To quote the exact words of the parties' counsels:

Atty. Dante Sandiego: x x x So, are we to understand that the decision of the President shall be without prejudice to the right of the employees to contest the validity or legality of his dismissal or of the disciplinary action imposed upon him by asking for voluntary arbitration under the Labor Code or when applicable availing himself of the grievance machinery under the Labor Code which ends in voluntary arbitration. That will be the steps that we will have to follow.

Atty. Sabino Padilla, Jr.: Yes, agreed.[28]

Thus, the Labor Arbiter should have immediately disposed of the complaint and referred the same to the voluntary arbitrator when the university moved to dismiss the complaint for lack of jurisdiction.

No less than Section 3, Article XIII of the Constitution declares as state policy the preferential use of voluntary modes in settling disputes, to wit:

Sec. 3. x x x **The State shall promote** the principle of shared responsibility between workers and employers and **the preferential use of voluntary modes in settling disputes**, including conciliation,

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[26] 325 Phil. 401 (1996).

[27] *Id.* at 406.

[28] *Rollo*, p. 24.

and shall enforce their mutual compliance therewith to foster industrial peace. (Emphasis supplied)

As to the second issue, constructive dismissal occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[29]

In this case however, there was no cessation of employment relations between the parties. It is unrefuted that Axalan promptly resumed teaching at the university right after the expiration of the suspension period. In other words, Axalan never quit. Hence, Axalan cannot claim that she was left with no choice but to quit, a crucial element in a finding of constructive dismissal. Thus, Axalan cannot be deemed to have been constructively dismissed.

Significantly, at the time the Labor Arbiter rendered his Decision on 11 October 2004, Axalan had already returned to her teaching job at the university on 1 October 2004. The Labor Arbiter's Decision ordering the reinstatement of Axalan, who at the time had already returned to work, is thus absurd.

There being no constructive dismissal, there is no legal basis for the Labor Arbiter's order of reinstatement as well as payment of backwages, salary differentials, damages, and attorney's fees.[30] Thus, the third issue raised in the petition is now moot.

Note that on the first AWOL incident, the university even offered to drop the AWOL charge against Axalan if she would only write a letter of contrition. But Axalan adamantly refused knowing fully well that the administrative case would take its course leading to possible sanctions. She cannot now be heard that the imposition of the penalty of six-month suspension without pay for each AWOL

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[29] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, 13 March 2009, 581 SCRA 340.

[30] *Sugue v. Triumph International (Phils.), Inc.,* G.R. No. 164804, 30 January 2009, 577 SCRA 323.

charge is unreasonable. We are convinced that Axalan was validly suspended for cause and in accord with procedural due process.

The Court recognizes the right of employers to discipline its employees for serious violations of company rules after affording the latter due process and if the evidence warrants. The university, after affording Axalan due process and finding her guilty of incurring AWOL on two separate occasions, acted well within the bounds of labor laws in imposing the penalty of six-month suspension without pay for each incidence of AWOL.

As a learning institution, the university cannot be expected to take lightly absences without official leave among its employees, more so among its faculty members even if they happen to be union officers. To do so would send the wrong signal to the studentry and the rest of its teaching staff that irresponsibility is widely tolerated in the academe.

The law protects both the welfare of employees and the prerogatives of management.[31] Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws, collective bargaining agreements if any, and general principles of fairness and justice.[32]

WHEREFORE, we *GRANT* the petition. The 13 December 2007 Decision of the Court of Appeals in CA-G.R. SP No. 00812 affirming the 15 August 2005 and the 24 October 2005 Resolutions of the National Labor Relations Commission in NLRC CA No. M-008333-2005, which sustained the 11 October 2004 Decision of the Labor Arbiter in RAB-11-12-01187-03, is *SET ASIDE.*

No pronouncement as to costs.

SO ORDERED.

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

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[31] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, 7 July 2004, 433 SCRA 756.

[32] *Id*.

SECOND DIVISION

[G.R. No. 181833. January 26, 2011]

INTERNATIONAL FREEPORT TRADERS, INC., *petitioner, vs.* **DANZAS INTERCONTINENTAL, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; ELEMENTS OF CONTRACT. —** Every contract has the elements of (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. A contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.

2. **ID.; ID.; DISTINCT STAGES OF CONTRACTS. —** Generally, contracts undergo three distinct stages: (1) preparation or negotiation; (2) perfection; and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract where the parties fulfill or perform the terms they agreed on, culminating in its extinguishment.

APPEARANCES OF COUNSEL

De Guzman Celis and Dionisio Law Office for petitioner.
Marilyn P. Cacho-Domingo for respondent.

DECISION

ABAD, *J.*:

This case involves the liability of the consignee for electric charges, demurrage, and storage fees based on a contract for lease of services that it entered into with a cargo handler.

The Facts and the Case

In March 1997 petitioner International Freeport Traders, Inc. (IFTI) ordered a shipment of Toblerone chocolates and assorted confectioneries from Jacobs Suchard Tobler Ltd. of Switzerland (Jacobs) through its Philippine agent, Colombo Merchants Phils., Inc., under the delivery term "F.O.B. Ex-Works."

To ship the goods, Jacobs dealt with Danmar Lines of Switzerland (Danmar) which issued to Jacobs negotiable house bills of lading[1] signed by its agent, respondent Danzas Intercontinental, Inc. (Danzas). The bills of lading stated that the terms were "F.O.B." and "freight payable at destination," with Jacobs as the shipper, China Banking Corporation as the consignee, and IFTI as the party to be notified of the shipment. The shipment was to be delivered at the Clark Special Economic Zone with Manila as the port of discharge. The goods were also covered by Letters of Credit MK-97/0467 and MK-97/0468 under a "freight collect" arrangement.

Since Danmar did not have its own vessel, it contracted Orient Overseas Container Line (OOCL) to ship the goods from Switzerland. OOCL issued a non-negotiable master bill of lading,[2] stating that the freight was prepaid with Danmar as the shipper and Danzas as the consignee and party to be notified. The shipment was to be delivered at Angeles City in Pampanga. Danmar paid OOCL an arbitrary fee of US$425.00 to process the release of the goods from the port and ship the same to Clark in Angeles City. The fee was to cover brokerage, trucking, wharfage, arrastre, and processing expenses.

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[1] CA *rollo*, pp. 109-110.

[2] *Id.* at 111.

The goods were loaded on board the OOCL vessel on April 20, 1997 and arrived at the port of Manila on May 14, 1997. Upon learning from Danmar that the goods had been shipped, Danzas immediately informed IFTI of its arrival. IFTI prepared the import permit needed for the clearing and release of the goods from the Bureau of Customs and advised Danzas on May 20, 1997 to pick up the document. Danzas got the import permit on May 26, 1997. At the same time, it asked IFTI to 1) surrender the original bills of lading to secure the release of the goods, and 2) submit a bank guarantee inasmuch as the shipment was consigned to China Banking Corporation to assure Danzas that it will be compensated for freight and other charges.

But IFTI did not provide Danzas a bank guarantee, claiming that letters of credit already covered the shipment. IFTI insisted that Danzas should already endorse the import permit and bills of lading to OOCL since the latter had been paid an arbitrary fee. But Danzas did not do this.

Because IFTI did not provide Danzas with the original bills of lading and the bank guarantee, the latter withheld the processing of the release of the goods. Danzas reiterated to IFTI that it could secure the release of the goods only if IFTI submitted a bank guarantee. Ultimately, IFTI yielded to the request and applied for a bank guarantee which was approved on May 23, 1997. It claimed to have advised Danzas on even date of its availability for pick up but Danzas secured it only on June 6, 1997.

In a letter dated June 6, 1997, Danzas told IFTI that the issuance of a promissory note would assure the delivery of the goods to Clark. On June 10, 1997 IFTI faxed a letter to Danzas, stating that Edwin Mabazza of OOCL confirmed that it had been paid an arbitrary fee. IFTI maintained, however, that it was not in a position to decide whether Danzas was to be liable for the charges. Nonetheless, IFTI issued a promissory note and requested that the goods be released to avoid any further charges.

Minutes later, IFTI faxed another letter reiterating its request that the goods be released pending payment of whatever charges Danzas had incurred for the release and delivery of the goods to Clark. IFTI promised to pay Danzas any charges within five days upon delivery of the goods as soon as the investigation as to which company will shoulder the expenses is settled.

On June 13, 1997 Danzas secured the release of the goods and delivered the same to IFTI at Clark on June 16, 1997. IFTI faxed a letter to Danzas, confirming the delivery. IFTI also said that Danzas' General Manager and OOCL's Mabazza visited IFTI's office to settle the charges on the goods. Danzas agreed to charge IFTI only the electric charges and storage fees totaling ₱56,000.00 (or roughly US$2,210.00) from the original billing of about US$7,000.00. In turn, IFTI agreed to give Danzas another opportunity to service its account and requested it to disregard IFTI's June 10, 1997 fax letter where it said that it would no longer employ Danzas for its future shipments for Subic and Clark.

On January 19, 1998, however, Danzas wrote IFTI, demanding payment of ₱181,809.45 for its handling of the shipment. IFTI ignored the demand. On March 26, 1998 Danzas filed separate complaints for sum of money against IFTI and OOCL before the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 78. The court subsequently dismissed the complaint against OOCL after it settled the case amicably.

In the main, Danzas claimed that IFTI engaged its services for ₱181,809.45 to process the release of the goods from the port and deliver it to IFTI at Clark but the latter reneged on its obligation, compelling Danzas to file the suit.

IFTI countered that it had no liability to Danzas since IFTI was not privy to the hiring of Danzas. Following normal procedure, IFTI coursed the import permit to Danzas since it was the party that issued the house bills of lading. IFTI added that under arbitrary shipments, imported goods are allowed to stay free of charge in the port for three working days and in the storage for five to six calendar days. Storage fees, electricity

charges, and demurrage become due only after such period. In this case, IFTI informed Danzas on May 20, 1997 to pick up the import permit but Danzas picked it up only on May 26, 1997. And instead of endorsing it with the bills of lading to OOCL, Danzas itself processed the release of the goods. Since Danzas failed to process the release or transshipment of the goods within the three-day period, then it should shoulder all the charges from May 20, 1997 to June 13, 1999.

On January 2, 2002,[3] the MeTC rendered a decision in favor of Danzas and ordered IFTI to pay (1) ₱181,809.45 plus legal interest to be computed from March 26, 1998 until fully paid; (2) ₱25,000.00 as attorney's fees; and (3) the costs of suit. On appeal, however, the Regional Trial Court (RTC)[4] of Parañaque City, Branch 274, dismissed the complaint.

Danzas elevated the case to the Court of Appeals (CA)[5] which reversed the RTC decision. The CA ruled that IFTI's fax letters dated June 10, 1997 showed the parties engaged in negotiation stage. When IFTI heeded Danzas' request for a bank guarantee, its action brought about a perfected contract of lease of service. The bank guarantee, procured by IFTI, contained all the requisites of a perfected contract. The cause of the contract was the release of the goods from the port and its delivery at Clark; the consideration was the compensation for the release and delivery of the goods to IFTI.

The Issues Presented

Two issues are presented:

1. Whether or not a contract of lease of service exists between IFTI and Danzas; and

2. Whether or not IFTI is liable to Danzas for the costs of the delay in the release of the goods from the port.

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[3] CA *rollo*, pp. 34-39.

[4] *Id.* at 40-44.

[5] *Rollo*, pp. 46-62. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Martin S. Villarama, Jr. and Edgardo F. Sundiam.

The Court's Rulings

One. The facts show the existence of several contracts: one between IFTI and Jacobs, another between Jacobs and Danmar, and still another between Danmar and OOCL. IFTI bought chocolates and confectioneries from Jacobs; Jacobs got Danmar to deliver the goods to its destination; Danmar got OOCL to carry the goods for it by ship to Manila. For this purpose, Danmar paid OOCL an arbitrary fee to process the release of the goods from the port of Manila and deliver the same to Clark. In all these transactions, Danzas acted as an agent of Danmar who signed the house bills of lading in favor of Jacobs.

In short, the combined services of different carriers were used for the delivery of the goods: Danmar, as the initial carrier, assumed the responsibility of conveyance when it received the goods for transportation; OOCL, as the forwarding carrier, had the duty to deliver the goods to Danzas which was designated as the consignee in the master bill of lading; and Danzas, being the agent of Danmar, assumed the responsibility for delivering the goods from Manila to IFTI at Clark.[6] Evidently, although Danmar intended the arbitrary fee that it paid OOCL to cover the latter's delivery of the goods all the way to Danzas, the latter had no notion of and was not a party to such arrangement. Since the last leg of the delivery of the goods to IFTI at Clark devolved on Danzas, the latter insisted that it was entitled to collect a separate fee following the terms of the sale (F.O.B. Ex-Works) and the house bills of lading (F.O.B. and freight payable at destination).

At first, IFTI did not want to pay more but when Danzas would not move the goods until it was assured that it would be paid, IFTI eventually negotiated with Danzas for its services. IFTI prepared the import permit and advised Danzas to pick up the document. But Danzas told IFTI that it also needed the house bills of lading and the bank guarantee. If IFTI believed

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[6] *Transportation Laws and Public Service Act,* Hernando B. Perez, 2001 Edition, pp. 86-87.

that it was OOCL's responsibility to deliver the goods at its doorsteps, then it should not have asked Danzas to pick up the import permit and submit to it the bank guarantee and promissory note that it required. IFTI should have instead addressed its demand to OOCL for the delivery of the goods.

What is clear to the Court is that, by acceding to all the documentary requirements that Danzas imposed on it, IFTI voluntarily accepted its services. The bank guarantee IFTI gave Danzas assured the latter that it would eventually be paid all freight and other charges arising from the release and delivery of the goods to it.

Another indication that IFTI recognized its contract with Danzas is when IFTI requested Danzas to have the goods released pending payment of whatever expenses the latter would incur in obtaining the release and delivery of the goods at Clark. It also admitted that it initially settled with Danzas' General Manager and OOCL's Mabazza the issue regarding the charges on the goods after Danzas agreed to bill IFTI for the electric charges and storage fees totaling ₱56,000.00. Certainly, this concession indicated that their earlier agreement did not push through.

Every contract has the elements of (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. A contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[7]

Generally, contracts undergo three distinct stages: (1) preparation or negotiation; (2) perfection; and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the

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[7] *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735, 750 (2004).

consummation of the contract where the parties fulfill or perform the terms they agreed on, culminating in its extinguishment.[8] Here, there is no other conclusion than that the parties entered into a contract of lease of service for the clearing and delivery of the imported goods.

Two. There is no dispute that under arbitrary shipments, imported goods are allowed to stay, free of charge, in the port for three working days, and in the storage for five to six calendar days. Beyond this period, storage fees, electric charges, and the demurrage are due.

Since the goods arrived at the Port of Manila on May 14, 1997, they could remain there until May 20, 1997 free of charge. The fact that IFTI had the import permit ready by May 20, 1997 was immaterial since it had not yet given the bank guarantee required of it. The Court is not convinced that IFTI had the bank guarantee ready as early as May 23, 1997 for, if that were the case, surely it did not make sense for it not to hand over such document to Danzas when the latter claimed the import permit on May 26, 1997.

Since the delay in the processing of the release of the goods was due to IFTI's fault, the CA rightly adjudged it liable for electric charges, demurrage, and storage fees of ₱122,191.75 from May 20, 1997 to June 13, 1999.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision dated October 25, 2007 of the Court of Appeals in CA-G.R. SP 79597.

SO ORDERED.

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

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[8] *XYST Corporation v. DMC Urban Properties Development, Inc.*, G.R. No. 171968, July 31, 2009, 594 SCRA 598, 604-605.

SECOND DIVISION

[G.R. No. 184202. January 26, 2011]

AQUINAS SCHOOL, *petitioner, vs.* **SPS. JOSE INTON and MA. VICTORIA S. INTON, on their behalf and on behalf of their minor child, JOSE LUIS S. INTON, and SR. MARGARITA YAMYAMIN, OP,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST.—** The Court has consistently applied the "four-fold test" to determine the existence of an employer-employee relationship: the employer (a) selects and engages the employee; (b) pays his wages; (c) has power to dismiss him; and (d) has control over his work. Of these, the most crucial is the element of control. Control refers to the right of the employer, whether actually exercised or reserved, to control the work of the employee as well as the means and methods by which he accomplishes the same.
2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE SUPREME COURT; PLEA FOR AWARD OF GREATER AMOUNTS OF DAMAGES, NOT PROPER ABSENT APPEAL THEREFOR IN THE COURT OF APPEALS. —** Regarding the Intons' plea for an award of greater amounts of damages, the Court finds no justification for this since they did not appeal from the decision of the CA. The Intons prayed for the increase only in their comment to the petition. They thus cannot obtain from this Court any affirmative relief other than those that the CA already granted them in its decision.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
*Zamora Poblador Vasquez and Bretañ*a for Sps. Inton.
Sanidad Abaya Te Viterbo Enriquez & Tan Law Firm for Sr. Margarita Yamyamin, OP.

DECISION

ABAD, *J.*:

This case is about the private school's liability for the outside catechist's act of shoving a student and kicking him on the legs when he disobeyed her instruction to remain in his seat and not move around the classroom.

The Facts and the Case

In 1998 respondent Jose Luis Inton (Jose Luis) was a grade three student at Aquinas School (Aquinas). Respondent Sister Margarita Yamyamin (Yamyamin), a religion teacher who began teaching at that school only in June of that year, taught Jose Luis' grade three religion class.

On July 14, 1998, while Yamyamin was writing on the blackboard, Jose Luis left his assigned seat and went over to a classmate to play a joke of surprising him. Yamyamin noticed this and sent Jose Luis back to his seat. After a while, Jose Luis got up again and went over to the same classmate. This time, unable to tolerate the child's behavior, Yamyamin approached Jose Luis and kicked him on the legs several times. She also pulled and shoved his head on the classmate's seat. Finally, she told the child to stay where he was on that spot of the room and finish copying the notes on the blackboard while seated on the floor.

As a result of the incident, respondents Jose and Victoria Inton (the Intons) filed an action for damages on behalf of their son Jose Luis against Yamyamin and Aquinas before the Regional Trial Court (RTC) of Pasig City in Civil Case 67427. The Intons also filed a criminal action against Yamyamin for violation of Republic Act 7610 to which she pleaded guilty and was sentenced accordingly.

With regard to the action for damages, the Intons sought to recover actual, moral, and exemplary damages, as well as attorney's fees, for the hurt that Jose Luis and his mother Victoria suffered. The RTC dismissed Victoria's personal claims but ruled in Jose Luis' favor, holding Yamyamin liable to him for moral damages

of ₱25,000.00, exemplary damages of ₱25,000.00, and attorney's fees of ₱10,000.00 plus the costs of suit.[1]

Not satisfied, the Intons elevated the case to the Court of Appeals (CA).[2] They asked the CA to increase the award of damages and hold Aquinas solidarily liable with Yamyamin. Finding that an employer-employee relation existed between Aquinas and Yamyamin, the CA found them solidarily liable to Jose Luis. The CA, however, declined to increase the award of damages.[3] Jose Luis moved for partial reconsideration but this was denied. Aquinas, for its part, appealed directly to this Court from the CA decision through a petition for review on *certiorari*.

The Issue Presented

The sole issue presented in this case is whether or not the CA was correct in holding Aquinas solidarily liable with Yamyamin for the damages awarded to Jose Luis.

The Court's Ruling

The CA found Aquinas liable to Jose Luis based on Article 2180 of the Civil Code upon the CA's belief that the school was Yamyamin's employer. Aquinas contests this.

The Court has consistently applied the "four-fold test" to determine the existence of an employer-employee relationship: the employer (a) selects and engages the employee; (b) pays his wages; (c) has power to dismiss him; and (d) has control over his work. Of these, the most crucial is the element of control. Control refers to the right of the employer, whether actually exercised or reserved, to control the work of the employee as well as the means and methods by which he accomplishes the same.[4]

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[1] In its Decision dated June 5, 2006.

[2] Docketed as CA-G.R. CV 88106.

[3] In its Decision dated August 4, 2008, penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario.

[4] *Social Security Commission v. Alba*, G.R. No. 165482, July 23, 2008, 559 SCRA 477, 488.

In this case, the school directress testified that Aquinas had an agreement with a congregation of sisters under which, in order to fulfill its ministry, the congregation would send religion teachers to Aquinas to provide catechesis to its students. Aquinas insists that it was not the school but Yamyamin's religious congregation that chose her for the task of catechizing the school's grade three students, much like the way bishops designate the catechists who would teach religion in public schools. Under the circumstances, it was quite evident that Aquinas did not have control over Yamyamin's teaching methods. The Intons had not refuted the school directress' testimony in this regard. Consequently, it was error for the CA to hold Aquinas solidarily liable with Yamyamin.

Of course, Aquinas still had the responsibility of taking steps to ensure that only qualified outside catechists are allowed to teach its young students. In this regard, it cannot be said that Aquinas took no steps to avoid the occurrence of improper conduct towards the students by their religion teacher.

First, Yamyamin's transcript of records, certificates, and diplomas showed that she was qualified to teach religion.

Second, there is no question that Aquinas ascertained that Yamyamin came from a legitimate religious congregation of sisters and that, given her Christian training, the school had reason to assume that she would behave properly towards the students.

Third, the school gave Yamyamin a copy of the school's Administrative Faculty Staff Manual that set the standards for handling students. It also required her to attend a teaching orientation before she was allowed to teach beginning that June of 1998.[5]

Fourth, the school pre-approved the content of the course she was to teach[6] to ensure that she was really catechizing the students.

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[5] TSN, October 4, 2005, p. 9.

[6] *Id.* at 48-49.

And fifth, the school had a program for subjecting Yamyamin to classroom evaluation.[7] Unfortunately, since she was new and it was just the start of the school year, Aquinas did not have sufficient opportunity to observe her methods. At any rate, it acted promptly to relieve her of her assignment as soon as the school learned of the incident.[8] It cannot be said that Aquinas was guilty of outright neglect.

Regarding the Intons' plea for an award of greater amounts of damages, the Court finds no justification for this since they did not appeal from the decision of the CA. The Intons prayed for the increase only in their comment to the petition. They thus cannot obtain from this Court any affirmative relief other than those that the CA already granted them in its decision.[9]

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. CV 88106 dated August 4, 2008, and *HOLDS* petitioner Aquinas School not liable in damages to respondent Jose Luis Inton.

SO ORDERED.

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

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[7] *Rollo*, p. 18.

[8] TSN, October 4, 2005, pp. 12 and 50.

[9] *Universal Staffing Services, Inc. v. National Labor Relations Commission*, G.R. No. 177576, July 21, 2008, 559 SCRA 221, 231.

FIRST DIVISION

[G.R. No. 185166. January 26, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARK LESTER DELA ROSA *y* SUELLO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In every prosecution for illegal sale of dangerous drugs, like *marijuana*, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence.** We reiterate the meaning of the term *corpus delicti* which the actual commission by someone of the particular crime charged. The **commission of the offense of illegal sale of dangerous drugs, like *marijuana*, requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.** Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former; **the crime is considered consummated by the delivery of the goods.**

2. **ID.; ID.; ID.; ID.; WHAT MATTERS ARE THE AGREEMENT AND ACTS CONSTITUTING SALE AND DELIVERY OF PROHIBITED DRUGS, NOT THE FAMILIARITY BETWEEN BUYER AND SELLER OR THE TIME AND VENUE OF SALE. —** The Court has consistently pronounced that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, **in private, as well as in public places, even in the daytime.** Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. **Hence, what matters is not the existing familiarity**

between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.

3. **ID.; ID.; ID.; ID.; PRE-ARRANGED SIGNAL AGREED UPON BY THE BUY-BUST TEAM AND INCONSISTENCIES THEREOF, NOT MATERIAL. —** The alleged contradiction and inconsistency pointed to by appellant in the testimony of P03 Lowaton as regards the pre-arranged signal agreed upon by the buy-bust team is only minor, trivial, immaterial, and does not in any way affect the credibility of PO3 Lowaton's testimony, since his testimony clearly and categorically established the sale of *marijuana.* Such minor inconsistency referring to the details of the sale of *marijuana* may be considered as badges of truth rather than of falsehood. In *People v. Nicolas,* this Court held that the employment of a pre-arranged signal, or the lack of it, is **not indispensable in a buy-bust operation. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense.** With more reason that a mere inconsistency thereof does not and will not affect the credibility of the prosecution witness so long as all the elements of the offense have been established with certainty.

4. **ID.; ID.; ID.; BUY-BUST OPERATIONS; REGULARITY THEREOF NOT AFFECTED BY THE ABSENCE OF A PRIOR TEST BUY OR SURVEILLANCE. —** That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, **the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant.** The Court will not pretend to establish on a *priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities.

5. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** For illegal possession of a dangerous drug, like *marijuana*, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited

or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.

6. **ID.; ID.; ID.; POSSESSION OF REGULATED DRUG WITHOUT AUTHORITY AND THE SAME WITHOUT SATISFACTORY EXPLANATION CONSTITUTE *ANIMUS POSSIDENDI* SUFFICIENT FOR CONVICTION. —** The record is bereft of any evidence that would show that appellant had the legal authority to possess the two plastic sachets of *marijuana* recovered from him. This Court held in a *catena* of cases that a mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.

7. **ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED DANGEROUS DRUGS; FLEXIBILITY ALLOWED IN THE COMPLIANCE OF THE EXPRESS REQUIREMENTS OF THE RULE. —** Section 21, paragraph 1, Article II of Republic Act No. 9165 provides: **Section 21**. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner: (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 aforesaid provision is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, which x x x offers some flexibility in complying with the express requirements. Indeed, the evident purpose of the procedure 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 of or innocence of the accused. **Thus, the *proviso* stating that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.**

8. **ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT ENSURES THE EVIDENTIARY VALUE OF THE SEIZED ITEMS. — 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.

9. **ID.; ID.; BUY-BUST OPERATIONS; PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTIES PREVAILS AS AGAINST DEFEATED PRESUMPTION OF INNOCENCE. —** It has been judicially settled that in buy-bust operations, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the **presumption that they have performed their duties regularly.** This presumption is overturned only if there is clear and convincing evidence that they were not properly performing their duty or that they were inspired by improper motive. The courts, nonetheless, are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally protected rights of the individual. x x x In *People v. Rosialda* citing *People v. Rodrigo,* this Court pronounced that **once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense** which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed

or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused.

10. **ID.; ID.; ID.; "OBJECTIVE" TEST DETERMINING THE CREDIBILITY OF POLICE OFFICERS IN THE OPERATION DEMANDS THAT THE DETAILS OF THE PURPORTED TRANSACTION BE CLEARLY AND ADEQUATELY SHOWN.** — In *People v. De Guzman* citing *People v. Doria*, this Court took pain in discussing the "objective" test in buy-bust operations to determine the credibility of the testimony of the police officers involved in the operation: We therefore stress that the "**objective**" **test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale**. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.

11. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS, RESPECTED.** — The Court finds no reason to deviate from the factual findings of the trial court and the Court of Appeals. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirm the findings. Trial courts are in the best position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.

12. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); DEFENSE OF DENIAL OR FRAME-UP, VIEWED WITH DISFAVOR. —** Denial or frame-up, like *alibi,* has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of Dangerous Drugs Act. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denial of appellant cannot prevail over the positive testimony of the prosecution witness.

13. **ID.; ID.; ILLEGAL SALE OF MARIJUANA; PENALTY IS LIFE IMPRISONMENT AND FINE WITHOUT ELIGIBILITY FOR PAROLE. —** Section 5, Article II of Republic Act No. 9165, provides for the imposable penalties for illegal sale of *marijuana*, thus: x x x The sale of any dangerous drug, like *marijuana*, regardless of the quantity and purity involved is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. In light of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. Consequently, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. Thus, this Court sustains the penalty imposed by the lower courts in Criminal Case No. 06-1870.

14. **ID.; ID.; ILLEGAL POSSESSION OF MARIJUANA WITH A QUANTITY OF FIVE GRAMS OR MORE BUT LESS THAN 10 GRAMS; PENALTY IS IMPRISONMENT OF 20 YEARS AND 1 DAY TO LIFE IMPRISONMENT AND FINE FROM ₱400,000 TO ₱500,000. —** Section 11, Article II of Republic Act No. 9165 expressly provides the penalty for illegal possession of *marijuana*, thus: x x x The aforesaid provision clearly states that the imposable penalty for illegal possession of any dangerous drug, like *marijuana*, **with a quantity of five grams or more but less than 10 grams,** is imprisonment of 20 years and 1 day to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00. x x x The Indeterminate Sentence Law finds no application in this case as the penalty of imprisonment provided for illegal possession of five grams or more but less than 10 grams of *marijuana* is indivisible.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The subject of this present appeal is the Decision[1] dated 24 April 2008 of the Court of Appeals in CA-G.R. CR HC No. 02642, affirming the Decision[2] dated 8 December 2006 of the Regional Trial Court (RTC) of Makati City, Branch 135, in Criminal Case Nos. 06-1870 to 06-1871, finding herein appellant Mark Lester Dela Rosa *y* Suello guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of *marijuana*, a dangerous drug, in violation of Sections 5[3] and 11,[4] Article

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[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Reyes, Jr. and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 2-19.

[2] Penned by Judge Francisco B. Ibay. CA *rollo*, pp. 11-15.

[3] SEC. 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 or such transactions.

[4] SEC. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

II of Republic Act No. 9165,[5] thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for violation of Section 5, Article II of Republic Act No. 9165 (Criminal Case No. 06-1870) and an indeterminate penalty of 12 years and 1 day, as minimum, to 14 years and 8 months, as maximum, and to pay a fine of ₱300,000.00 for violation of Section 11, Article II of Republic Act No. 9165 (Criminal Case No. 06-1871).

In two separate Informations[6] both dated 26 September 2006, appellant Mark Lester Dela Rosa *y* Suello was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 06-1870 and Criminal Case No. 06-1871. The Informations read as follows:

Criminal Case No. 06-1870

That on or about the 25th day of September 2006, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously **sell, distribute and transport three point zero two (3.02) grams of *marijuana***, which is a dangerous drug **in consideration of the amount of one hundred (Php100.00) pesos**.[7] [Emphasis supplied].

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(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana.

[5] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[6] CA *rollo*, pp. 7-8.

[7] *Id.* at 7.

Criminal Case No. 06-1871

That on or about the 25th day of September 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously **have in his possession five point six zero (5.60) grams of [m]arijuana**, which is a dangerous drug.[8] [Emphasis supplied].

When arraigned,[9] appellant, assisted by counsel *de oficio*, pleaded "NOT GUILTY" to both charges. Thereafter, trial on the merits ensued.

The prosecution presented the testimony of its lone witness, Police Officer 3 Eusebio Lowaton, Jr. (PO3 Lowaton), of the Special Anti Illegal Drug-Special Operation Task Force (SAID-SOTF), Makati City.

The facts of the case as culled from the records and testimony of PO3 Lowaton are as follows:

On 25 September 2006, the Makati Anti-Drug Abuse Council (MADAC) operatives, together with an informant, came to the office of SAID-SOTF, Makati City, where PO3 Lowaton was one of the police officers assigned thereat, and reported that appellant was involved in the illegal sale of *marijuana* in Kalayaan Avenue, *Barangay* Singkamas, Makati City.[10]

On the basis thereof, the SAID-SOTF, Makati City, formed a team to conduct a buy-bust operation to verify if appellant was, indeed, involved in the illegal sale of *marijuana* in the above-mentioned place. The buy-bust team through one of its members, PO3 Lowaton, prepared a Pre-Operational Report/ Coordination Sheet[11] and sent the same to the Philippine Drug

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[8] *Id.* at 8.

[9] As evidenced by Certification of Arraignment dated 11 October 2006. Records, p. 29.

[10] TSN, 27 October 2006, pp. 2-3.

[11] Records, p. 16.

Enforcement Agency (PDEA). In response thereto, PDEA sent a Certificate of Coordination[12] to confirm that the buy-bust team of SAID-SOTF, Makati City, had made the necessary coordination with their office in connection with the conduct of its anti-drug operations against appellant.[13]

After a complete coordination with PDEA, the briefing of the members of the buy-bust team followed, wherein PO3 Lowaton was designated as *poseur*-buyer. He was also given two Fifty Peso bills[14] marked money in the total amount of ₱100.00, bearing Serial Nos. FR 485129 and CY 532084, respectively, with markings "ATS" on the upper right portion of the serial number of each bill.[15]

Thereafter, the buy-bust team, together with the informant, proceeded to the target area in Kalayaan Avenue, *Barangay* Singkamas, Makati City. Upon arrival thereat, the buy-bust team waited for the appellant and soon after, the latter arrived after a few minutes. Subsequently, PO3 Lowaton and the informant walked towards the direction of the appellant. The informant then approached appellant and introduced to him PO3 Lowaton as someone interested in buying *marijuana*. Appellant asked PO3 Lowaton as to the amount of *marijuana* that he wanted to buy to which the latter replied that he would be buying ₱100.00 worth of *marijuana*. Appellant immediately took one plastic sachet of *marijuana* from his pocket that corresponds to the amount agreed upon and handed the same to PO3 Lowaton. The latter, in turn, handed the two marked Fifty Peso bills to appellant as payment for the purchased item.[16]

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[12] *Id.* at 17.

[13] TSN, 27 October 2006, pp. 4-5.

[14] Records, p. 50.

[15] As contained in the Joint Affidavit of Arrest executed by PO3 Lowaton and Jeffrey Abellana, one of MADAC operatives, which was adopted as part of the direct testimony of PO3 Lowaton. Records, pp. 21-22; TSN, 27 October 2006, p. 12.

[16] TSN, 27 October 2006, pp. 6-7.

Upon the consummation of the sale, PO3 Lowaton executed their pre-arranged signal by holding appellant's right hand. At this juncture, the other members of the buy-bust team who were in the vicinity of the target area came in to help PO3 Lowaton, who at that moment had already introduced himself as a police officer, in arresting appellant. Appellant was arrested at around 3:15 p.m. PO3 Lowaton informed appellant of the cause of his arrest and of his constitutional rights. While frisking the appellant, however, PO3 Lowaton recovered from the former two more plastic sachets of *marijuana*. Subsequently, PO3 Lowaton marked the one plastic sachet of *marijuana* sold to him by appellant with his initials "EBL." He likewise marked the two other plastic sachets of *marijuana* that he recovered from appellant as "EBL-1" and "EBL-2." The seized items from appellant were also inventoried at the place where appellant was arrested and in his presence, as evidenced by an Acknowledgment Receipt[17] dated 25 September 2006.[18]

After appellant's arrest, he was brought to the office of SAID-SOTF, Makati City. The three plastic sachets of *marijuana* that has been previously marked were photographed[19] and sent to the Philippine National Police (PNP) Crime Laboratory for examination. The examination conducted on the aforesaid specimen, *i.e.*, three plastic sachet of *marijuana*, yielded positive[20] results to the tests for the presence of *marijuana*, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S.[21] Also, after the completion of the buy-bust operation, an after operation report or the so-called "Spot Report"[22] was prepared and sent to PDEA.[23]

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[17] Records, p. 13.

[18] TSN, 27 October 2006, pp. 7 and 9; Joint Affidavit of Arrest that has been adopted as part of PO3 Lowaton's direct testimony, records, pp. 21-22; TSN, 27 October 2006, p. 12.

[19] Records, p. 19.

[20] *Id*.

[21] *Id.* at 11.

[22] *Id.* at 14.

[23] TSN, 27 October 2006, pp. 8-10.

After PO3 Lowaton's testimony, the parties agreed and stipulated that the testimony of Jeffrey Abellana, one of MADAC operatives, would be that he was a member of the back up team that assisted in the arrest of appellant. The prosecution, thus, decided to dispense with his testimony.[24]

The defense, on the other hand, presented appellant as their sole witness and offered a different version of what transpired on the day of his arrest.

Appellant narrated that on 25 September 2006, at around 12:00 noon, he was sleeping inside his house located at 4041 Kalayaan Street, *Barangay* Singkamas, Makati City, when suddenly he was awakened by three persons, who introduced themselves as MADAC operatives. These MADAC operatives were looking for a certain Richard. Upon asking them the reason why they were looking for Richard inside his house and at the same time telling them that he was not the person they were looking for, the MADAC operatives simply told him to just go with them peacefully. Without offering any resistance, appellant went with the MADAC operatives. The latter brought him to their office where he was asked to reveal the whereabouts of Richard to which the appellant replied that he does not know the person they were looking for. At this juncture, the MADAC operatives told him that if he will not reveal the whereabouts of Richard, then, they will charge him with possession of *marijuana* that they were carrying at that moment. Thereafter, he was detained at their office for about eight to nine days.[25]

Appellant further stated that when the MADAC operatives brought him out of the detention cell, he was subsequently brought inside a building where there was a fiscal. The latter then informed him that he was charged with the crime of illegal sale and possession of *marijuana* in violation of Sections 5 and 11, Article II of Republic Act No. 9165. Appellant, however, denied the same.[26]

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[24] *Id.* at 12.
[25] TSN, 3 November 2006, pp. 4-6.
[26] *Id.* at 7.

After all the documentary and testimonial evidence offered by both parties were meticulously evaluated, the trial court concluded that all the elements of the offenses charged against appellant were satisfactorily proven by the prosecution. Thus, in its Decision dated 8 December 2006, the trial court held appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

> WHEREFORE, it appearing that the guilt of [appellant] MARK LESTER DELA ROSA *y* SUELLO was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, for violation [of] Section[s] 5 and 11, Article II of Republic Act No. 9165, he is hereby sentenced:
>
> 1. In **Criminal Case No. 06-1870**, to suffer **life imprisonment and to pay a fine of ₱500,000.00**;
>
> 2. In **Criminal Case No. 06-1871**, to suffer imprisonment for **an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years, and eight [8] months, as maximum, and to pay a fine of ₱300,000.00**; and
>
> 3. To pay the costs.
>
> Let the plastic sachets containing 3.02grams, 2.95 grams, and 2.65 grams of *marijuana* be turned over to the PDEA for proper disposition.[27] [Emphasis supplied].

Aggrieved, appellant appealed the aforesaid 8 December 2006 Decision of the trial court to the Court of Appeals *via* a Notice of Appeal.[28]

The Court of Appeals, after a thorough study of the records, rendered the assailed Decision dated 24 April 2008, affirming appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165. The decretal portion of the said Decision reads, thus:

> WHEREFORE, the instant appeal is hereby **DENIED** and the questioned Decision of the RTC of Makati City, Branch 135, in Criminal

[27] CA *rollo*, p. 15.

[28] *Id.* at 16.

Case Nos. 06-1870 and 06-1871, convicting the [appellant] beyond reasonable doubt of the crime of violation of Sections 5 and 11, Article II of Republic Act No. 9165, **AFFIRMED**.[29] [Emphasis supplied].

Still unsatisfied, appellant elevated the aforesaid Decision of the appellate court to this Court *via* a Notice of Appeal.[30]

In a Resolution[31] dated 14 January 2009, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire. Instead of filing a Supplemental Brief, the Office of the Solicitor General filed a Manifestation and Motion[32] stating that it be excused from filing it as the appellant has not advanced any cogent or compelling reason for the modification, much less reversal of the assailed appellate court's Decision.

Appellant, on the other hand, opted to file a Supplemental Brief[33] reiterating therein the arguments raised in his Appellant's Brief filed before the Court of Appeals.

In his brief, appellant raised the following assignment of errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE [APPELLANT].

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY OF THE CRIMES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[34]

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[29] *Rollo*, p. 18.

[30] *Id.* at 20.

[31] *Id.* at 25-26.

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

[33] *Id.* at 31-37.

[34] CA *rollo*, p. 27.

Appellant argues that the fact of sale of *marijuana* was not conclusively established because PO3 Lowaton's testimony was incredible for no person in his right mind would boldly sell prohibited drugs in broad daylight and in a public place. The inconsistency in the testimony of PO3 Lowaton as regards their pre-arranged signal similarly casts doubt on the credibility of his testimony. More so, the alleged buy-bust operation was conducted without any prior surveillance. Appellant likewise maintains that his arrest was tainted with irregularity as there was an evident violation of Section 21, Article II of Republic Act No. 9165. By reason of the foregoing, appellant insists that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

After a painstaking review of the records, this Court affirms appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165.

In every prosecution for illegal sale of dangerous drugs, like *marijuana*, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[35] **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence**. We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.[36] The **commission of the offense of illegal sale of dangerous drugs**, **like *marijuana*, requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller**. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former; **the crime is considered consummated by the delivery of the goods**.[37]

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[35] *People v. Alao*, 379 Phil. 402, 412 (2000).

[36] *People v. Sembrano*, G.R. No. 185848, 16 August 2010.

[37] *People v. Dumlao*, G.R. No. 181599, 20 August 2008, 562 SCRA 762, 768-769.

In the case at bench, this Court is fully convinced that the prosecution has adequately and satisfactorily proved all the aforesaid elements of illegal sale of *marijuana*.

Appellant, who was caught in *flagrante delicto*, was positively identified by PO3 Lowaton, who acted as the *poseur*-buyer, as the same person who sold the one plastic sachet of *marijuana* to him weighing 3.02 grams for a consideration of ₱100.00. Such one plastic sachet of *marijuana* was presented in court, which PO3 Lowaton identified to be the same object sold to him by appellant. He further stated that the markings "EBL" found on the said object were his initials, which he placed thereon at the time the appellant was arrested.[38] PO3 Lowaton similarly identified in court the recovered marked money from the appellant that consists of two Fifty Peso bills in the total amount of ₱100.00 with markings "ATS" on the upper right portion of the serial number of each bill.[39]

More so, the testimony of PO3 Lowaton clearly established in detail how his transaction with appellant happened starting from the moment their informant introduced him to appellant as someone interested in buying his stuff from the time appellant handed him the one plastic sachet of *marijuana* and, in turn, he handed appellant the two Fifty Peso bills marked money for a total amount of ₱100.00 that consummated the sale transaction between him and appellant. PO3 Lowaton caused the one plastic sachet of *marijuana* to be examined at the PNP Crime Laboratory. The item weighing 3.02 grams was tested positive for *marijuana* as evidenced by Physical Science Report No. D-659-06S prepared by Engineer Richard Allan B. Mangalip, Forensic Chemical Officer/Chief, Physical Science Section of the PNP Crime Laboratory-Southern Police District Crime Laboratory Office.

Thus, it is already beyond question that appellant's guilt for the crime of illegal sale of *marijuana*, a dangerous drug, in

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[38] TSN, 27 October 2006, p. 8.

[39] *Id.* at 10.

violation of Section 5, Article II of Republic Act No. 9165 was proven by the prosecution beyond reasonable doubt.

Appellant's contention that PO3 Lowaton's testimony was not credible for no person in his right mind would boldly sell prohibited drugs in broad daylight and in a public place deserves scant consideration.

This Court has consistently pronounced that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, **in private, as well as in public places, even in the daytime**. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. **Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs**.[40]

Similarly, the alleged contradiction and inconsistency pointed to by appellant in the testimony of PO3 Lowaton as regards the pre-arranged signal agreed upon by the buy-bust team is only minor, trivial, immaterial, and does not in any way affect the credibility of PO3 Lowaton's testimony, since his testimony clearly and categorically established the sale of *marijuana*. Such minor inconsistency referring to the details of the sale of *marijuana* may be considered as badges of truth rather than of falsehood.[41]

In *People v. Nicolas*,[42] this Court held that the employment of a pre-arranged signal, or the lack of it, is **not indispensable in a buy-bust operation**. **What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense**. With more reason that a mere inconsistency thereof does not and will not affect the credibility of the prosecution witness so long as all the elements of the offense have been established with certainty.

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[40] *People v. Requiz*, 376 Phil. 750, 759-760 (1999).

[41] *People v. Chang*, 382 Phil. 669, 695 (2000) citing *People v. Salinas,* G.R. No. 107192, 18 November 1993, 228 SCRA 45, 50.

[42] G.R. No. 170234, 8 February 2007, 515 SCRA 187, 197.

That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, **the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant**. The Court will not pretend to establish on a *priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities.[43]

For illegal possession of a dangerous drug, like *marijuana*, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[44]

All the aforesaid elements were clearly established by the prosecution. As an incident to his lawful arrest resulting from the buy-bust operation, appellant was similarly found to have in his possession two more plastic sachets of *marijuana* with a total weight of 5.60 grams, the same kind of dangerous drug he was caught selling in *flagrante delicto*. The said two plastic sachets of *marijuana* was also presented in court, which PO3 Lowatan identified to be the same objects recovered from appellant while he was being frisked on the occasion of his arrest for illegally selling *marijuana*. PO3 Lowaton likewise explained that the markings "EBL-1" and "EBL-2" written on the two plastic sachets of *marijuana* were his initials and the same were done by him.

Further, the record is bereft of any evidence that would show that appellant had the legal authority to possess the two plastic sachets of *marijuana* recovered from him. This Court held in

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[43] *People v. Zheng Bai Hui*, 393 Phil. 68, 133 (2000).
[44] *People v. Tamayo*, G.R. No. 187070, 24 February 2010.

a *catena* of cases that a mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.[45]

With that, appellant's guilt for the crime of illegal possession of *marijuana*, a dangerous drug, in clear violation of Section 11, Article II of Republic Act No. 9165, was also proven by the prosecution beyond reasonable doubt.

As a last ditch effort, appellant claims that his arrest was tainted with irregularity as the seized items were not photographed in accordance with the provisions of Section 21, Article II of Republic Act No. 9165, thus, an evident violation thereof. The said argument is baseless.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (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].

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[45] *People v. Sembrano*, *supra* note 36 citing *People v. Noque*, G.R. No. 175319, 15 January 2010 and *People v. Tee*, 443 Phil. 521, 551 (2003).

The aforesaid provision is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) 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. [Emphasis supplied].

The afore-quoted Section 21(a), Article II of the IRR of Republic Act No. 9165, offers some flexibility in complying with the express requirements. Indeed, the evident purpose of the procedure 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 of or innocence of the accused. **Thus, the *proviso* stating that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers**.[46]

In the present case, the records and the transcribed stenographic notes clearly showed that the seized items from appellant were physically inventoried by PO3 Lowaton at the place where appellant was arrested and in his presence, as evidenced by an Acknowledgment Receipt[47] dated 25 September

[46] *People v. Lorenzo*, G.R. No. 184760, 23 April 2010.

[47] Records, p. 13.

2006.[48] Also, when appellant was brought to the office of SAID-SOTF, Makati City, the marked three plastic sachets of *marijuana* were photographed[49] by the apprehending team before it was sent to the PNP Crime Laboratory for examination, which examination yielded positive[50] result to the tests for the presence of *marijuana*, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S.[51]

Even granting *arguendo* that the prosecution failed to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the aforesaid guidelines, the same is not fatal and does not automatically render appellant's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.[52]

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.[53]

The prosecution, in this case, has adequately shown the continuous and unbroken possession and subsequent transfers of the three plastic sachets of *marijuana* from the time appellant

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[48] TSN, 27 October 2006, pp. 7 and 9; Joint Affidavit of Arrest that has been adopted as part of PO3 Lowaton's direct testimony, records, pp. 21-22; TSN, 27 October 2006, p. 12.

[49] Records, p. 19.

[50] *Id*.

[51] *Id.* at 11.

[52] *People v. Rosialda*, G.R. No. 188330, 25 August 2010.

[53] *Id*.

handed to PO3 Lowaton the one plastic sachet of *marijuana* to consummate the sale thereof; then the subsequent recovery by PO3 Lowaton of two more plastic sachets of *marijuana* from appellant; followed by the markings made by PO3 Lowaton of his initials on the said three plastic sachets of *marijuana* at the place where appellant was arrested and in his presence; until they were sent to the PNP Crime Laboratory for examination that yielded positive result for the presence of *marijuana*, a dangerous drug, as evidenced by a Physical Science Report No. D-659-06S; and up to the time that the marked three plastic sachets of *marijuana* were offered in court. Such fact persuasively proves that the three plastic sachets of *marijuana* presented in court were the same items seized from appellant during the buy-bust operation. The integrity and evidentiary value thereof was duly preserved.

It has been judicially settled that in buy-bust operations, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the **presumption that they have performed their duties regularly**. This presumption is overturned only if there is clear and convincing evidence that they were not properly performing their duty or that they were inspired by improper motive. The courts, nonetheless, are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual.[54]

In *People v. De Guzman*[55] citing *People v. Doria*,[56] this Court took pain in discussing the "objective" test in buy-bust operations to determine the credibility of the testimony of the police officers involved in the operation:

> We therefore stress that the **"objective" test in buy-bust operations demands that the details of the purported transaction must be clearly**

[54] *People v. De Guzman*, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 522-523.

[55] *Id*.

[56] G.R. No. 125299, 22 January 1999, 301 SCRA 668.

and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[57]

As aptly observed by both the trial court and the appellate court:

We find the testimony of the poseur-buyer, [PO3 Lowaton] clear and credible. He recounted in full detail how the deal was set by the informant, the actual exchange of the plastic sachet of *marijuana* and the [marked money] consisting of two (2) [F]ifty [P]eso bills, and the apprehension of the [appellant] [and the incidental recovery of two more plastic sachets of *marijuana* in his possession]. x x x.

The totality of evidence presented is convincing and points to appellant as being engaged in the sale of the illegal drugs. The testimony of the prosecution witness identifying the appellant to be a seller of illegal drugs appears to be categorical and unfabricated. No ill motive on the part of [PO3 Lowaton] has been shown to tarnish his testimony. Such positive evidence certainly prevails over mere denial and alibi which, if unsubstantiated by clear and convincing evidence, are negative and self-serving unworthy of credible weight in law.[58]

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[57] *Id.* at 698-699.

[58] *Rollo*, pp. 11-12.

The Court finds no reason to deviate from the factual findings of the trial court and the Court of Appeals. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirm the findings. Trial courts are in the best position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[59]

In comparison to the overwhelming evidence of the prosecution, all that the appellant could muster is the defense of denial and frame-up.

Denial or frame-up, like *alibi*, has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of Dangerous Drugs Act. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denial of appellant cannot prevail over the positive testimony of the prosecution witness.[60]

In *People v. Rosialda*[61] citing *People v. Rodrigo*,[62] this Court pronounced that **once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense** which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused.[63]

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[59] *Perez v. People*, 515 Phil. 195, 203-204 (2006).

[60] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468.

[61] *People v. Rosialda*, *supra* note 52.

[62] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 596.

[63] *People v. Rodrigo*, *id.*

In this case, it has been established beyond doubt that the prosecution was able to prove with certainty all the elements of the crimes charged and the identity of the appellant after he was positively identified by the prosecution witness. Thus, appellant's self-serving assertions unsupported by any plausible proof to bolster his allegations have no leg to stand on. His defense of denial or frame–up must necessarily fail.

To repeat, 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 is 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 petitioner's self-serving and uncorroborated denial**.[64]

This Court will now determine the penalties to be imposed upon appellant.

Section 5, Article II of Republic Act No. 9165, provides for the imposable penalties for illegal sale of *marijuana*, thus:

> **Sec. 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].

From the afore-quoted provision, the sale of any dangerous drug, like *marijuana*, regardless of the quantity and purity involved

[64] *People v. Dumlao*, *supra* note 37 at 770.

is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. In light of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed.[65] Consequently, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. Thus, this Court sustains the penalty imposed by the lower courts in Criminal Case No. 06-1870.

Section 11, Article II of Republic Act No. 9165, on the other hand, expressly provides the penalty for illegal possession of *marijuana*, thus:

Sec. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

(2) **Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams** of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of *marijuana.* [Emphasis supplied].

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[65] *People v. Sembrano*, *supra* note 36.

The aforesaid provision clearly states that the imposable penalty for illegal possession of any dangerous drug, like *marijuana*, **with a quantity of five grams or more but less than 10 grams,** is imprisonment of 20 years and 1 day to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00.

The prosecution in Criminal Case No. 06-1871 established beyond reasonable doubt that appellant, without any legal authority, had in his possession **5.60 grams of *marijuana***. Therefore, the penalty imposed upon appellant by the lower courts for illegal possession of *marijuana* is not proper as the said penalty was only for illegal possession of *marijuana* having a quantity of less than five grams.

Following the penalty provided for under Section 11, Article II of Republic Act No. 9165, for illegal possession of five grams or more but less than 10 grams of *marijuana*, this Court, thus, imposed upon appellant the penalty of imprisonment of 20 years and one day and a fine of ₱400,000.00.

The Indeterminate Sentence Law finds no application in this case as the penalty of imprisonment provided for illegal possession of five grams or more but less than 10 grams of *marijuana* is indivisible.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 02642 dated 24 April 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby *AFFIRMED with MODIFICATION* that for the crime of illegal possession of *marijuana* in violation of Section 11, Article II of Republic Act No. 9165, docketed as Criminal Case No. 06-1871, appellant is hereby sentenced to suffer the penalty of imprisonment of 20 years and 1 day and a fine of ₱400,000.00.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186528. January 26, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HEMIANO DE JESUS and RODELO MORALES,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL-MOTIVE. —** We adhere to the established rule that in the absence of evidence showing any reason or motive for the prosecution witness to perjure himself or herself, We can conclude that no improper motive exists, and his or her testimony is worthy of full faith and credit.

2. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER A CREDIBLE POSITIVE TESTIMONY. —** Accused-appellant Morales raised the defense of alibi. In the light of Santiago's positive identification and the credibility accorded his testimony by the trial court, the defense of alibi must fail.

3. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; UNLAWFUL AGGRESSION MUST BE SUFFICIENTLY ESTABLISHED BY THE ACCUSED. —** *Mahawan v. People* explains that: It is axiomatic that where an accused pleads self-defense, he thereby admits authorship of the crime. Accordingly, the burden of evidence is shifted to the accused who must then prove with clear and convincing proof the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although all three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression attributed to the victim is established, there can be no self-defense, whether complete or incomplete. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense to apply.

4. **ID.; ID.; ID.; NEGATED BY THE FLIGHT OF ACCUSED AND HIS HIDING FOR EIGHT YEARS. —** Another telling sign of

de Jesus' guilt is his flight from the scene. Had events occurred as per his version, he should have been ready to face the consequences of his action, and let the truth come out. There was no reported bad blood between him and the victim, no motive for him to kill Armando. The question that must be asked is, why then was he so afraid, that he went into hiding for eight years, for what he claims is a justified killing? Self-defense is not credible in the face of the flight of the accused from the crime scene and his or her failure to inform the authorities about the incident.

5. **ID.; MURDER; ABUSE OF SUPERIOR STRENGTH; PRESENT IN CASE AT BAR WHERE THERE ARE TWO ARMED ACCUSED STABBING THE UNARMED AND INTOXICATED VICTIM. —** Accused-appellants were convicted of the crime of murder under Article 248 of the Revised Penal Code (RPC), as the trial court found that the killing was attended by the aggravating circumstance of abuse of superior strength. Art. 248(1) provides: x x x To take advantage of superior strength is to purposely use excessive force, out of proportion to the means of defense available to the person attacked. As testified by Santiago Arasula, the lone eyewitness, the two accused were stabbing his brother, who was unarmed and intoxicated. It is clear, therefore, that Armando was in no position to defend himself from two armed assailants, who, as Santiago testified, were armed with small bolos. While it is true that superiority in number does not per se mean superiority in strength, accused-appellants in this case did not only enjoy superiority in number, but were armed with weapons, while the victim had no means with which to defend himself. Accused-appellants took advantage of their number and weapons, as well as the condition of the victim, to commit the crime.

6. **ID.; ID.; DEATH PENALTY MODIFIED TO *RECLUSION PERPETUA* IN VIEW OF RA 9346. —** The RTC correctly considered the circumstance that accused-appellants took advantage of superior strength in the commission of the crime, which qualifies the killing as murder under the first paragraph of Art. 248 of the RPC. Under Republic Act No. (RA) 7659, or "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes," the crime of murder is a heinous crime punishable by death. The RTC imposed the penalty of *reclusion*

perpetua to death. The CA modified the penalty to *reclusion perpetua* in view of RA 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines." There being neither mitigating nor aggravating circumstances, the penalty for murder should be imposed in its medium period or *reclusion perpetua*. The modification of the penalty by the CA was proper.

7. **ID.; ID.; DAMAGES; CIVIL INDEMNITY OF ₱75,000 AND MORAL DAMAGES OF ₱75,000 PROPER IN ACCORDANCE WITH THE CURRENT JURISPRUDENCE. —** The award of civil indemnity [for murder] must be raised to PhP 75,000, in order for the award to conform with current jurisprudence. Moral damages must also be awarded because they are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. Moral damages in the present case should be increased to PhP 75,000, in accordance with current jurisprudence.

8. **ID.; ID.; ID.; TEMPERATE DAMAGES OF ₱25,000 PROPER IN THE ABSENCE OF EVIDENCE FOR ACTUAL FUNERAL AND BURIAL EXPENSES. —** The CA also correctly awarded temperate damages, instead of actual damages, as awarded by the RTC, considering that Santiago Arasula was unable to prove the actual expenses incurred by the death of his brother. Art. 2224 of the Civil Code provides, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." x x x The award of PhP 25,000 as temperate damages in homicide or murder cases is proper when no evidence of burial or funeral expenses is presented in the trial court.

9. **ID.; ID.; ID.; EXEMPLARY DAMAGES OF ₱30,000 PROPER FOR THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH. —** Exemplary damages are also proper, as the crime was attended by the aggravating circumstance of taking advantage of superior strength. Under Art. 2230 of the Civil Code, "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from

fines and shall be paid to the offended party." The amount of PhP 30,000 as exemplary damages should be awarded, as per current jurisprudence.

10. **ID.; ID.; ID.; DAMAGES SUBJECT TO 6% INTEREST. —** The damages assessed in this case shall be subject to interest at six percent (6%).

11. **ID.; ID.; PENALTIES; WHERE ACCUSED DIED BEFORE FINALITY OF DECISION, THE CRIMINAL AND CIVIL LIABILITIES ARE EXTINGUISHED. —** Considering that accused-appellant Morales died before his conviction for murder had attained finality, his criminal as well as civil liabilities are extinguished, as per Art. 89(1) of the RPC. The final disposition of the case must reflect this as well.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

Before this Court on appeal is the August 19, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02493, which upheld the convictions of accused Hemiano de Jesus and Rodelo Morales in Criminal Case No. 4247-92, decided by the Regional Trial Court (RTC), Branch 87 in Rosario, Batangas on June 15, 2006.

The Facts

The accused were charged with the crime of Murder before the RTC in Lipa City, Batangas, in an Information dated October 8, 1992, which reads as follows:

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[1] Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

That on or about the 9th day of July, 1992, at about 9:00 o'clock in the evening, in Barangay Libato, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both armed with [a] small bolo (*gulukan*), conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery and evident premeditation and abuse of superior strength and without any justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault, hack and stab with the said small bolo one Armando Arasula *y* de Torres, suddenly and without warning, thereby inflicting upon the latter physical injuries on the different parts of his body which caused his instantaneous death.

Contrary to law.[2]

The RTC, Branch 13 in Lipa City issued a warrant of arrest dated October 22, 1992.[3] The case was transferred to the RTC, Branch 87 in Rosario, Batangas.

The RTC in Rosario, Batangas issued an *Alias* Warrant of Arrest dated June 25, 1997, which was then returned on October 24, 2000, with the information that both of the accused had been arrested on October 19, 2000 in Mamburao, Occidental Mindoro.[4] The case was revived in an Order dated November 15, 2000, and arraignment was set for November 29, 2000.[5] The accused both pleaded "not guilty" to the crime charged.[6] The trial then proceeded.

The Case for the Prosecution

The prosecution presented as its eyewitness Santiago Arasula, the younger brother of the victim, Armando Arasula. The prosecution and the defense agreed to stipulate on the testimony of Dr. Elizabeth Sario and the existence of the post-mortem

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[2] Records, p. 3.

[3] *Id.* at 13.

[4] *Id.* at 19.

[5] *Id.* at 24.

[6] *Id.* at 29-30.

findings[7] and certificate of death[8] made by her. Dr. Sario concluded that the cause of death was cardio-respiratory arrest, secondary to stab wounds.[9]

Santiago stated that his brother Armando lived in the house of their mother in *Barangay* Libato, San Juan, Batangas, which was more or less 10 meters from his own house.[10] Santiago testified that, on the evening of July 9, 1992, he, Armando, and the two accused had been drinking at the birthday party of a certain Alejandro Hornillo, but he left earlier than the others. Later, when Santiago was already at home with his wife and children, he heard Armando shouting, "Mother, Mother, I was stabbed by Hemiano and Rodelo!" Santiago then ran towards his brother, and saw him lying on the ground, with the accused still stabbing him with a *gulukan* (small bolo). He ordered the two to stop, whereupon they ran away, heading north. When Santiago reached his brother, he found that Armando was already dead.[11]

Santiago also testified as to the expenses entailed by his brother's death, which amounted to more than PhP 100,000, without receipts to prove them, broken down as follows: coffin, PhP 20,000; burial, PhP 20,000; first death anniversary, PhP 30,000; and the costs incurred in filing the criminal case, PhP 20,000.[12]

On cross-examination, Santiago stated that he left his brother drinking with the accused at the party of Alejandro Hornillo, and that prior to the attack, he had seen his brother lying drunk near the road.[13] He also stated that he did not run after the assailants, since he was more concerned about his brother,

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[7] *Id.* at 9.

[8] *Id.* at 10.

[9] *Id*.

[10] *Id.* at 108.

[11] *Id.* at 109.

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

[13] *Id.* at 110.

and that after the incident he went to the San Juan, Batangas police station to report what had happened.[14]

The Case for the Defense

Rodelo Morales testified that on July 9, 1992, he was at the house of Alejandro Hornillo to attend the latter's birthday party, and that he saw Hemiano de Jesus there as well.[15] He left the party at around 6:00 p.m., and went home. He claimed to be cooking dinner in his house at the time the victim was attacked, around 9:00 p.m. He said that he slept at around 10:00 p.m. He stated that there was no bad blood between him and the Arasula brothers, and denied having killed Armando.[16]

Hemiano de Jesus admitted having killed the victim, but raised the justifying circumstance of self-defense. He claimed that on July 9, 1992, he attended the birthday party of Alejandro Hornillo, then decided to go home at 9:00 p.m. Armando Arasula left the party at the same time, and de Jesus decided to accompany him, considering that Armando was drunk. De Jesus claimed that as they were walking, Armando got mad at him because he did not wish to be accompanied. De Jesus insisted, whereupon Armando drew his bolo and attacked him. De Jesus stated that he parried the first blow and grappled with Armando for the bolo. He then ran and went to the house of his cousin, and did not go home or report the incident to the police out of fear. He claimed that he was not aware that Armando was dead when he left him. He also claimed that Rodelo Morales was not with him at the time of Armando Arasula's demise.[17]

After deliberating upon the evidence, the trial court rendered its Decision, finding both of the accused guilty in Criminal Case No. 4247-92, the dispositive portion of the Decision reading as follows:

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[14] *Id*.

[15] *Id.* at 110-111.

[16] *Id.* at 111.

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

WHEREFORE, in view of the foregoing consideration, this Court hereby declares both accused RODEOLO [sic] MORALES and HEMIANO DE JESUS, GUILTY of the Crime of Murder penalized under Article 248 of the Revised Penal Code. There being no mitigating circumstances attending the commission of the offense, they are hereby sentenced to suffer the penalty of *Reclusion Perpetua* to Death and to pay the heirs of the victim with the following amount:

1. 50,000 as civil indemnity
2. 100,000 as moral indemnity
3. ₱25,000 as actual damages, considering that the actual expenses were not supported by documentary evidence

SO ORDERED.[18]

The Case before the CA

The case was raised to the CA and docketed as CA-G.R. CR-H.C. No. 02493. In their appeal, accused-appellants attempted to cast doubt upon the testimony of Santiago Arasula, claiming that the witness' identification of the accused lacked credibility, considering the circumstances that the area was dark and that Santiago was the only one to respond to the alleged cries for help of the victim.[19] They also attempted to show that the version of events posited by accused-appellant de Jesus was more credible, that the killing was done in self-defense. Accused-appellants further argued that, assuming *arguendo* that they committed the act of killing Armando Arasula, the trial court erred in appreciating the qualifying circumstance of superior strength.

The CA found the testimony of Santiago Arasula to be more credible and convincing, and thus upheld the RTC decision. The CA, however, found it necessary to modify the penalty and the award of damages. The penalty was reduced to *reclusion perpetua*, as no mitigating or aggravating circumstances attended the commission of the crime.[20] The award of moral damages

[18] *Id.* at 121.
[19] CA *rollo*, pp. 58-59.
[20] *Rollo*, p. 14.

was found to be excessive, and was reduced in accordance with current jurisprudence. The award of actual damages was modified to temperate damages as Santiago failed to prove his expenses with receipts.[21] The dispositive portion of the CA Decision, thus, reads as follows:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **DENIED** and, consequently, **DISMISSED**. The assailed decision dated June 15, 2006 is hereby **AFFIRMED with MODIFICATIONS** in that the penalty imposed is *reclusion perpetua* only and the damages awarded are the sum of Php50,000.00 as civil indemnity for the death of Armando Arasula, the sum of Php50,000 as moral damages, and the sum of Php10,000.00 as temperate damages.

SO ORDERED.[22]

Hence, We have this appeal.

The Ruling of this Court

The appeal is without merit.

The RTC gave more weight to the testimony of Santiago Arasula. Santiago testified in a candid and straightforward manner, and the cross-examination conducted by the defense failed to shake him.

Santiago positively identified the men who killed his brother, as he had known them for at least five years. His testimony to that effect went as follows:

Q Do you know the accused in this case?
A Yes, sir.

xxx xxx xxx

Q Since when have you known them?
A For quite a long time, sir.

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[21] *Id.*

[22] *Id.* at 15.

Q Could you estimate how long a time?
A I know them for about five years, sir.

Q Prior to the year 1992, they were five years in your place?
A Yes sir and even more than five years.

Q Do you know why they were in your *barangay*?
A They were working in the land of Atty. Bautista, sir.

Q That land is situated at Brgy. Libato, San Juan, Batangas?
A Yes, sir.[23]

Santiago demonstrated his familiarity with accused-appellants, which they failed to dispute or contest, so his identification of them may be relied upon.

Santiago testified what he witnessed on that night as follows:

Q Upon hearing your brother shouting, what if any, did you do next?
A I immediately went down of our house and I went to my brother, sir.

Q What if any, did you see when you went to your brother?
A When I was near to my brother, I saw that Heminiano [sic] and Rodelo stabbed again my brother twice, sir.

Q Prior to your saying that the two accused again stabbed your brother, what is the condition of your brother before he was stabbed again by the two accused?
A He was lying already down when I approached him and the two accused stabbed him, sir.

Q What did you do when you saw that your brother was stabbed again by the two accused?
A I approached my brother, sir.

Q Were you armed at the time?
A No, sir.

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[23] TSN, October 11, 2001, p. 4.

Q What was your distance when you saw the two accused [stab] your brother?
A More or less five (5) meters, sir.

Q Was your brother armed, if you noticed at that time?
A No, sir.

Q How about the two accused, you said that the two accused stabbed your brother, what weapon did the two accused use in stabbing your brother?
A A small bolo, sir.

Q You mean to say that they were both armed with a small bolo?
A Yes, sir.

Q Were you in fact able to approach your brother?
A Yes, sir.

Q When you approached your brother, where are the two accused at that time?
A They ran towards north, sir.[24]

On cross-examination, Santiago related the following:

Q How did you come to know that your brother was then alleged[ly] stab[bed] by [these] two accused Heminiano [sic] de Jesus and Rodelo Morales?
A My brother deceased shouted sir.

Q Did you [hear] the shout?
A Yes sir.

Q Where were you then when you heard shouts?
A In our house, Your Honor.

Q How far is the house of your mother from you in 1992?
A More or less 15 meters, Your Honor.

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[24] *Id.* at 6-7.

Q At the time that you heard that your brother shouting what immediate action did you take?
A I immediately went out of my house and approached my brother, sir.[25]

x x x x x x x x x

Q After you went to your house, Mr. Witness, and you [heard] shouting [from] your brother what did you see?
A I saw the two accused, sir.

Q Where did you see them?
A Near my brother, sir.

Q Was your brother then lying then on the ground or standing?
A He was lying, sir.

Q How far [were] the two accused from your brother?
A ½ arm length, sir.

Q What did you see them doing if they were doing anything?
A I saw them [stab] my brother, sir.

Q Both of them are stabbing?
A Yes, sir.[26]

Court:

Q You said you [saw] the two accused were stabbing your brother did you see what respective weapon [used] in stabbing?
A *Gulukan* sir.

Q And that is both of them?
A Yes sir.

Q You mean to say they have their respective *gulukan*?
A Yes sir.

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[25] TSN, March 7, 2002, p. 18.

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

Q Was your brother arm[ed] at that time?
A I do not know, Your Honor.[27]

x x x x x x x x x

Q How far were you when you saw them stabbing?
A About 5 meters, sir.[28]

Santiago's testimony was consistent and clear. Accused-appellants showed no reason or bias for Santiago to pinpoint them as the perpetrators of the crime, no motive for the lone eyewitness to falsely accuse them. Thus, We adhere to the established rule that in the absence of evidence showing any reason or motive for the prosecution witness to perjure himself or herself, We can conclude that no improper motive exists, and his or her testimony is worthy of full faith and credit.[29] We see no reason to deviate from the RTC's appreciation of said testimony and the conclusions drawn from it.

The claim of accused-appellants that the findings of Dr. Sario, the doctor who conducted the post-mortem examination, do not establish the number of attackers, nor do they support a conviction for murder, is not worthy of consideration. In support of their argument, they cited *People v. Matyaong*, which stated, "Therefore, the examination of a wound, from the legal point of view, should lead to the determination as to when the wound was inflicted, what the degree of danger the wound is, with its dangers to life or function, whether the wound was given by the injured man himself, or by some one else, and with what manner of instrument the wound was produced."[30] The citation of the case is inappropriate, as this refers to a case wherein no post-mortem examination of the victim was conducted, and the cause of death was uncertain, as witnesses gave varying

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[27] *Id.* at 23-24.

[28] *Id.* at 24.

[29] *People v. Nueva*, G.R. No. 173248, November 3, 2008, 570 SCRA 449, 463.

[30] G.R. No. 140206, June 21, 2001, 359 SCRA 392, 399.

accounts of the injuries suffered by the victim, unlike the present case wherein the cause of death is known as there **was** a post-mortem examination. The testimony of the eyewitness is what established the finding of the RTC that accused-appellants killed the victim, not the post-mortem examination.

Accused-appellant Morales raised the defense of alibi. In the light of Santiago's positive identification and the credibility accorded his testimony by the trial court, the defense of alibi must fail. As held in *People v. Dela Cruz*:

> Appellant's denial and alibi are not worthy of belief. It is an oft-quoted doctrine that positive identification prevails over denial and alibi. Alibi cannot prevail over the positive identification of the accused as the perpetrator of the crime.
>
> Furthermore, for the defense of alibi to prosper, appellant must establish that (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.[31] x x x

Morales testified that at the time of the killing, he was in his house, not far from the house of the victim, around 20 arm's-lengths, as per his reckoning.[32] There is, thus, the possibility of him being physically present at the place of the crime; indeed, as per his testimony, he was in the immediate vicinity. He presented no corroborating evidence to show that he was elsewhere at the time of the killing, nor did he present any witnesses to his whereabouts. There is only his word that he was not there, against Santiago's credible testimony. His defense, thus, cannot prosper.

As for accused-appellant de Jesus, he raises the justifying circumstance of self-defense. He related how the events unfolded after he and the victim left the birthday party together:

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[31] G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91.

[32] TSN, May 26, 2004, p. 3.

COURT

Q How did it happen that you grabbed the bolo from him?
A I was about to accompany him to his house, Your Honor.

ATTY. MACASAET

Q Where is his house?
A Near the place, sir.

COURT

Q Why are you going to accompany him to his house.
A He was already drunk, Your Honor.

Q Were you able to accompany him until his house?
A No, Your Honor.

Q Why?
A He got angry, Your Honor.

Q When he got mad at you, what did you do?
A None, Your Honor.

ATTY. MACASAET

Q Why [did] he get angry at you?
A He does not want me to accompany him, sir.

Q Where did he get angry at you?
A When we were at the middle of the ricefield, sir.

x x x x x x x x x

Q When this Armando Arizola [sic] got angry at you when you were at the middle of the ricefield, what did he do?
A He drew his bolo, sir.

Q What did you do?
A I grabbed the bolo and we grappled, sir.

Q What happened when you were grappling at the bolo?

A I was able to get hold of the bolo, sir.

COURT

Q After getting the bolo from him, what did you do?
A I happened to [stab] him, Your Honor.

ATTY MACASAET

Q What actually did Armando Arizola [sic] do after drawing his bolo?
A After drawing his bolo, he attacked me, sir.

COURT

Q Did he give you a hack blow?
A Yes, Your Honor.

ATTY. MACASAET

Q How many hack blows did he do?
A After the first hack blow, I was able to parry his hand, sir.

x x x x x x x x x

Q Mr. Witness, after your [encounter] with Armando Arazola [sic], what did you do?
A I ran away, sir.

Q Where did you go?
A I went to my cousin in Libato, San Juan, Batangas, sir.

Q How far was it from the place of the incident?
A It is far, sir.

COURT

Q How far, could it be one kilometer?
A More or less 5 kilometers, Your Honor.

Q What did you do there and why did you go there?
A I got afraid, Your Honor.

ATTY. MACASAET

Q Why did you not go to your house?
A I got afraid that is why I did not go home, sir.

x x x x x x x x x

Q When you left the place, the ricefield, are you aware that Armando Arazola [sic] is already dead?
A No, sir.

Q When did you come to know that he is already dead?
A The following day, sir.[33]

Mahawan v. People explains that:

It is axiomatic that where an accused pleads self-defense, he thereby admits authorship of the crime. Accordingly, the burden of evidence is shifted to the accused who must then prove with clear and convincing proof the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although all three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression attributed to the victim is established, there can be no self-defense, whether complete or incomplete. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense to apply.[34]

As de Jesus claims that the killing was done in self-defense, the burden is, thus, on him to prove unlawful aggression on the part of the victim, as well as the other elements of the justifying circumstance of self-defense.

Even if events had transpired as de Jesus related, he still failed to show that there was unlawful aggression on the part of the victim, or the other elements of the justifying circumstance of self-defense. In fact, he stated it was after he got possession

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[33] TSN, April 28, 2005, pp. 3-7.

[34] G.R. No. 176609, December 18, 2008, 574 SCRA 737, 746.

of the bolo that he stabbed Armando. Thus, the aggression on the part of Armando, if it existed, would have already ceased. As there was no longer any unlawful aggression on the part of the victim, the justifying circumstance of self-defense is absent.

The details provided by de Jesus are not too clear, and they fail to explain the fact that the victim suffered two stab wounds, whereas de Jesus only claims to have stabbed him once. The version propounded by de Jesus is, thus, less credible than that related by Santiago.

Another telling sign of de Jesus' guilt is his flight from the scene. Had events occurred as per his version, he should have been ready to face the consequences of his action, and let the truth come out. There was no reported bad blood between him and the victim, no motive for him to kill Armando. The question that must be asked is, why then was he so afraid, that he went into hiding for eight years, for what he claims is a justified killing? Self-defense is not credible in the face of the flight of the accused from the crime scene and his or her failure to inform the authorities about the incident.[35]

Accused-appellants were convicted of the crime of murder under Article 248 of the Revised Penal Code (RPC), as the trial court found that the killing was attended by the aggravating circumstance of abuse of superior strength. Art. 248(1) provides:

> Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> (1) With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.

To take advantage of superior strength is to purposely use excessive force, out of proportion to the means of defense

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[35] *Sullon v. People*, G.R. No. 139369, June 27, 2005, 461 SCRA 248, 255.

available to the person attacked.[36] As testified by Santiago Arasula, the lone eyewitness, the two accused were stabbing his brother, who was unarmed and intoxicated. It is clear, therefore, that Armando was in no position to defend himself from two armed assailants, who, as Santiago testified, were armed with small bolos. While it is true that superiority in number does not per se mean superiority in strength, accused-appellants in this case did not only enjoy superiority in number, but were armed with weapons, while the victim had no means with which to defend himself.[37] Accused-appellants took advantage of their number and weapons, as well as the condition of the victim, to commit the crime.

The RTC correctly considered the circumstance that accused-appellants took advantage of superior strength in the commission of the crime, which qualifies the killing as murder under the first paragraph of Art. 248 of the RPC. Under Republic Act No. (RA) 7659, or "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes," the crime of murder is a heinous crime punishable by death.

The RTC imposed the penalty of *reclusion perpetua* to death. The CA modified the penalty to *reclusion perpetua* in view of RA 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines." There being neither mitigating nor aggravating circumstances, the penalty for murder should be imposed in its medium period or *reclusion perpetua*.[38] The modification of the penalty by the CA was proper.

Having determined that the conviction of accused-appellants was proper, the time has come to review the assessment of damages.

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[36] *People v. Cariño*, G.R. No. 131117, June 15, 2004, 432 SCRA 57, 82-83.

[37] *People v. Parreno*, G.R. No. 144343, July 7, 2004, 433 SCRA 591, 608.

[38] *Ingal v. People*, G.R. No. 173282, March 4, 2008, 547 SCRA 632, 655.

The RTC awarded PhP 50,000 as civil indemnity, PhP 100,000 as moral damages, and PhP 25,000 as actual damages. The CA modified this award, retaining the award of PhP 50,000 as civil indemnity, reducing the award of moral damages to PhP 50,000, and removing the award of actual damages and instead awarding temperate damages in the amount of PhP 10,000.

The award of civil indemnity must be raised to PhP 75,000, in order for the award to conform with current jurisprudence.[39]

Moral damages must also be awarded because they are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[40] Moral damages in the present case should be increased to PhP 75,000, in accordance with current jurisprudence.[41]

The CA also correctly awarded temperate damages, instead of actual damages, as awarded by the RTC, considering that Santiago Arasula was unable to prove the actual expenses incurred by the death of his brother. Art. 2224 of the Civil Code provides, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." However, the award of PhP 10,000 should be modified to conform to current jurisprudence. The award of PhP 25,000 as temperate damages in homicide or murder cases is proper when no evidence of burial or funeral expenses is presented in the trial court.[42]

Exemplary damages are also proper, as the crime was attended by the aggravating circumstance of taking advantage of superior strength. Under Art. 2230 of the Civil Code, "In criminal offenses,

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[39] See *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 782.

[40] *Ingal v. People*, *supra* note 38, at 657.

[41] *People v. Satonero*, *supra* note 39.

[42] *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340.

exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party." The amount of PhP 30,000 as exemplary damages should be awarded, as per current jurisprudence.[43]

The damages assessed in this case shall be subject to interest at six percent (6%).[44]

Before We can proceed with the final disposition of this case, it is noted that the Court was informed of the death of accused-appellant Rodelo Morales on March 15, 2009 in an Indorsement[45] dated November 16, 2009 from Police Chief Superintendent Renato C. Ramos of the Batangas Provincial Jail, with the attached certificate of death[46] of accused-appellant Morales. Considering that accused-appellant Morales died before his conviction for murder had attained finality, his criminal as well as civil liabilities are extinguished, as per Art. 89(1) of the RPC.[47] The final disposition of the case must reflect this as well.

WHEREFORE, the CA Decision dated August 19, 2008 in CA-G.R. CR-H.C. No. 02493 is *AFFIRMED* with *MODIFICATION*, as follows:

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[43] *People v. Satonero*, *supra* note 39.

[44] See *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742-743.

[45] *Rollo*, p. 47.

[46] *Id.* at 49.

[47] Revised Penal Code, Art. 89(1) provides:

ART. 89. *How criminal liability is totally extinguished.*— Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary liabilities, liability therefore is extinguished only when the death of the offender occurs before final judgment.

(1) The case against accused-appellant Rodelo Morales is *DISMISSED*, as his criminal and civil liabilities are extinguished by reason of his death; and

(2) Accused-appellant Hemiano de Jesus is sentenced to *reclusion perpetua*. He is ordered to pay PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, PhP 30,000 as exemplary damages, and PhP 25,000 as temperate damages to the heirs of Armando Arasula, all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187320. January 26, 2011]

ATLANTA INDUSTRIES, INC. and/or ROBERT CHAN, *petitioners, vs.* **APRILITO R. SEBOLINO, KHIM V. COSTALES, ALVIN V. ALMOITE, and JOSEPH S. SAGUN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE DECISION OF THE NLRC; FORM AND CONTENTS; FAILURE TO PROVIDE LEGIBLE COPIES OF SOME MATERIAL DOCUMENTS REQUIRED NOT FATAL WHERE THE CHALLENGED CA DECISION CLEARLY SUMMARIZED THE LABOR TRIBUNAL'S RULINGS.** — In *Mariners Polytechnic Colleges Foundation, Inc. v. Arturo J. Garchitorena w*here the Court addressed essentially the same issue arising from Section 2(d), Rule 42 of the Rules of Court, we held that the phrase "of the pleadings and other material

portions of the record xxx as would support the allegation of the petition clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. The crucial issue to consider then is whether or not the documents accompanying the petition sufficiently supported the allegations therein." As in *Mariners,* we find that the documents attached to the petition sufficiently support the petitioners' allegations. x x x Significantly, the CA decision narrates the factual antecedents, defines the complainants' cause of action, and cites the arguments, including the evidence the parties adduced. If any, the defect in the petition lies in the petitioners' failure to provide legible copies of some of the material documents mentioned, especially several pages in the decisions of the labor arbiter and of the NLRC. This defect, however, is not fatal as the challenged CA decision clearly summarized the labor tribunal's rulings.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYMENT; APPRECIATED WHERE EMPLOYEES OCCUPIED POSITIONS OF TASKS USUALLY NECESSARY AND DESIRABLE IN THE EMPLOYER'S USUAL BUSINESS. —** [T]he respondents occupied positions such as machine operator, scaleman and extruder operator - tasks that are usually necessary and desirable in Atlanta's usual business or trade as manufacturer of plastic building materials. These tasks and their nature characterized the four as regular employees under Article 280 of the Labor Code. Thus, when they were dismissed without just or authorized cause, without notice, and without the opportunity to be heard, their dismissal was illegal under the law.

3. **ID.; ID.; APPRENTICESHIP; REQUIRING SECOND APPRENTICESHIP AFTER FINISHING FIRST APPRENTICESHIP AND BECOMING REGULAR EMPLOYEES, A VIOLATION OF THE LABOR LAWS. —** Even if we recognize the company's need to train its employees through apprenticeship, we can only consider the first apprenticeship agreement for the purpose. With the expiration of the first agreement and the retention of the employees, Atlanta had, to all intents and purposes, recognized the completion of their training and their acquisition of a regular employee status. To foist upon them the second apprenticeship agreement for a

> second skill which was not even mentioned in the agreement itself, is a violation of the Labor Code's implementing rules and is an act manifestly unfair to the employees, to say the least. This we cannot allow.

APPEARANCES OF COUNSEL

Dela Rosa & Nograles for petitioners.
Sentro ng Alternatibong Lingap Panligal for respondents.

D E C I S I O N

BRION, *J*.:

For resolution is the petition for review on *certiorari*[1] assailing the decision[2] and the resolution[3] of the Court of Appeals (CA) rendered on November 4, 2008 and March 25, 2009, respectively, in CA-G.R. SP. No. 99340.[4]

The Antecedents

The facts are summarized below.

In the months of February and March 2005, complainants Aprilito R. Sebolino, Khim V. Costales, Alvin V. Almoite, Joseph S. Sagun, Agosto D. Zaño, Domingo S. Alegria, Jr., Ronie Ramos, Edgar Villagomez, Melvin Pedregoza, Teofanes B. Chiong, Jr., Leonardo L. dela Cruz, Arnold A. Magalang, and Saturnino M. Mabanag filed several complaints for illegal dismissal, regularization, underpayment, nonpayment of wages and other money claims, as well as claims for moral and exemplary

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[1] *Rollo*, pp. 12-34; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 42-63; penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justice Edgardo F. Sundiam and Associate Justice Sesinando E. Villon.

[3] *Id.* at 65-66.

[4] *Aprilito R. Sebolino, Khim V. Costales, Alvin V. Almoite and Joseph S. Sagun v. National Labor Relations Commission, Atlanta Industries, Inc. and/or Robert Chan*.

damages and attorney's fees against the petitioners Atlanta Industries, Inc. (*Atlanta*) and its President and Chief Operating Officer Robert Chan. Atlanta is a domestic corporation engaged in the manufacture of steel pipes.

The complaints were consolidated and were raffled to Labor Arbiter Daniel Cajilig, but were later transferred to Labor Arbiter Dominador B. Medroso, Jr.

The complainants alleged that they had attained regular status as they were allowed to work with Atlanta for more than six (6) months from the start of a purported apprenticeship agreement between them and the company. They claimed that they were illegally dismissed when the apprenticeship agreement expired.

In defense, Atlanta and Chan argued that the workers were not entitled to regularization and to their money claims because they were engaged as apprentices under a government-approved apprenticeship program. The company offered to hire them as regular employees in the event vacancies for regular positions occur in the section of the plant where they had trained. They also claimed that their names did not appear in the list of employees (Master List)[5] prior to their engagement as apprentices.

On May 24, 2005, dela Cruz, Magalang, Zaño and Chiong executed a *Pagtalikod at Pagwawalang Saysay* before Labor Arbiter Cajilig.

The Compulsory Arbitration Rulings

On April 24, 2006, Labor Arbiter Medroso dismissed the complaint with respect to dela Cruz, Magalang, Zaño and Chiong, but found the termination of service of the remaining nine to be illegal.[6] Consequently, the arbiter awarded the dismissed workers backwages, wage differentials, holiday pay and service incentive leave pay amounting to ₱1,389,044.57 in the aggregate.

Atlanta appealed to the National Labor Relations Commission (*NLRC*). In the meantime, or on October 10, 2006, Ramos,

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[5] *Rollo*, pp. 192-216.

[6] *Id.* at 89-99; Petition, Annex "N".

Alegria, Villagomez, Costales and Almoite allegedly entered into a compromise agreement with Atlanta.[7] The agreement provided that except for Ramos, Atlanta agreed to pay the workers a specified amount as settlement, and to acknowledge them at the same time as regular employees.

On December 29, 2006,[8] the NLRC rendered a decision, on appeal, modifying the ruling of the labor arbiter, as follows: (1) withdrawing the illegal dismissal finding with respect to Sagun, Mabanag, Sebolino and Pedregoza; (2) affirming the dismissal of the complaints of dela Cruz, Zaño, Magalang and Chiong; (3) approving the compromise agreement entered into by Costales, Ramos, Villagomez, Almoite and Alegria, and (4) denying all other claims.

Sebolino, Costales, Almoite and Sagun moved for the reconsideration of the decision, but the NLRC denied the motion in its March 30, 2007[9] resolution. The four then sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. They charged that the NLRC committed grave abuse of discretion in: (1) failing to recognize their prior employment with Atlanta; (2) declaring the second apprenticeship agreement valid; (3) holding that the dismissal of Sagun, Mabanag, Sebolino and Melvin Pedregoza is legal; and (4) upholding the compromise agreement involving Costales, Ramos, Villagomez, Almoite and Alegria.

The CA Decision

The CA granted the petition based on the following findings:[10]

1. The respondents were already employees of the company before they entered into the first and second apprenticeship agreements – Almoite and Costales were employed as early as December 2003 and, subsequently, entered into a first

[7] CA *rollo*, pp. 286-287.

[8] *Rollo*, pp. 100-110; Petition, Annex "O".

[9] *Id.* at 115-118; Petition, Annex "P".

[10] *Supra* note 2.

apprenticeship agreement from May 13, 2004 to October 12, 2004; before this first agreement expired, a second apprenticeship agreement, from October 9, 2004 to March 8, 2005 was executed. The same is true with Sebolino and Sagun, who were employed by Atlanta as early as March 3, 2004. Sebolino entered into his first apprenticeship agreement with the company from March 20, 2004 to August 19, 2004, and his second apprenticeship agreement from August 20, 2004 to January 19, 2005. Sagun, on the other hand, entered into his first agreement from May 28, 2004 to October 8, 2004, and the second agreement from October 9, 2004 to March 8, 2005.

2. The first and second apprenticeship agreements were defective as they were executed in violation of the law and the rules.[11] The agreements did not indicate the trade or occupation in which the apprentice would be trained; neither was the apprenticeship program approved by the Technical Education and Skills Development Authority (TESDA).

3. The positions occupied by the respondents – machine operator, extruder operator and scaleman – are usually necessary and desirable in the manufacture of plastic building materials, the company's main business. Costales, Almoite, Sebolino and Sagun were, therefore, regular employees whose dismissals were illegal for lack of a just or authorized cause and notice.

4. The compromise agreement entered into by Costales and Almoite, together with Ramos, Villagomez and Alegria, was not binding on Costales and Almoite because they did not sign the agreement.

The petitioners themselves admitted that Costales and Almoite were initially planned to be a part of the compromise agreement, but their employment has been regularized as early as January 11, 2006; hence, the company did not pursue their inclusion in the compromise agreement.[12]

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[11] Article 61 of the Labor Code, and its Implementing Rules and Regulations, Book II, Rule VI, Section 18.

[12] CA *rollo,* p. 323; petitioners' Comment, p. 31, last paragraph.

The CA faulted the NLRC for failing to appreciate the evidence regarding the respondents' prior employment with Atlanta. The NLRC recognized the prior employment of Costales and Almoite on Atlanta's monthly report for December 2003 for the CPS Department/Section dated January 6, 2004.[13] This record shows that Costales and Almoite were assigned to the company's first shift from 7:00 a.m. to 3:00 p.m. The NLRC ignored Sebolino and Sagun's prior employment under the company's Production and Work Schedule for March 7 to 12, 2005 dated March 3, 2004,[14] as they had been Atlanta's employees as early as March 3, 2004, with Sebolino scheduled to work on March 7-12, 2005 at 7:00 a.m. to 7:00 p.m., while Sagun was scheduled to work for the same period but from 7:00 p.m. to 7:00 a.m. The CA noted that Atlanta failed to challenge the authenticity of the two documents before it and the labor authorities.

Atlanta and Chan moved for reconsideration, but the CA denied the motion in a resolution rendered on March 25, 2009.[15] Hence, the present petition.

The Petition

Atlanta seeks a reversal of the CA decision, contending that the appellate court erred in (1) concluding that Costales, Almoite, Sebolino and Sagun were employed by Atlanta before they were engaged as apprentices; (2) ruling that a second apprenticeship agreement is invalid; (3) declaring that the respondents were illegally dismissed; and (4) disregarding the compromise agreement executed by Costales and Almoite. It submits the following arguments:

First. The CA's conclusion that the respondent workers were company employees before they were engaged as apprentices was primarily based on the Monthly Report[16] and

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[13] CA *rollo*, p. 78.

[14] *Id.* at 92.

[15] *Supra* note 3.

[16] *Supra* note 13.

the Production and Work Schedule for March 7-12, 2005,[17] in total disregard of the Master List[18] prepared by the company accountant, Emelita M. Bernardo. The names of Costales, Almoite, Sebolino and Sagun do not appear as employees in the Master List which "contained the names of all the persons who were employed by and at petitioner."[19]

Atlanta faults the CA for relying on the Production and Work Schedule and the Monthly Report which were not sworn to, and in disregarding the Master List whose veracity was sworn to by Bernardo and by Alex Go who headed the company's accounting division. It maintains that the CA should have given more credence to the Master List.

Second. In declaring invalid the apprenticeship agreements it entered into with the respondent workers, the CA failed to recognize the rationale behind the law on apprenticeship. It submits that under the law,[20] apprenticeship agreements are valid, provided they do not exceed six (6) months and the apprentices are paid the appropriate wages of at least 75% of the applicable minimum wage.

The respondents initially executed a five-month apprenticeship program with Atlanta, at the end of which, they "voluntarily and willingly entered into another apprenticeship agreement with the petitioner for the training of a second skill"[21] for five months; thus, the petitioners committed no violation of the apprenticeship period laid down by the law.

Further, the apprenticeship agreements, entered into by the parties, complied with the requisites under Article 62 of the Labor Code; the company's authorized representative and the respondents signed the agreements and these were ratified by

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[17] *Supra* note 14.

[18] *Supra* note 5.

[19] *Rollo*, p. 22; Petition, p. 11, par. 1.

[20] Article 61 of the Labor Code.

[21] *Rollo*, pp. 27-28; Petition, pp. 16-17.

the company's apprenticeship committee. The apprenticeship program itself was approved and certified by the TESDA.[22] The CA, thus, erred in overturning the NLRC's finding that the apprenticeship agreements were valid.

Third. There was no illegal dismissal as the respondent workers' tenure ended with the expiration of the apprenticeship agreement they entered into. There was, therefore, no regular employer-employee relationship between Atlanta and the respondent workers.

The Case for Costales, Almoite, Sebolino and Sagun

In a Comment filed on August 6, 2009,[23] Costales, Almoite, Sebolino and Sagun pray for a denial of the petition for being procedurally defective and for lack of merit.

The respondent workers contend that the petition failed to comply with Section 4, Rule 45 of the Rules of Court which requires that the petition be accompanied by supporting material portions of the records. The petitioners failed to attach to the petition a copy of the Production and Work Schedule despite their submission that the CA relied heavily on the document in finding the respondent workers' prior employment with Atlanta. They also did not attach a copy of the compromise agreement purportedly executed by Costales and Almoite. For this reason, the respondent workers submit that the petition should be dismissed.

The respondents posit that the CA committed no error in holding that they were already Atlanta's employees before they were engaged as apprentices, as confirmed by the company's Production and Work Schedule.[24] They maintain that the Production and Work Schedule meets the requirement of substantial evidence as the petitioners failed to question its authenticity. They point out that the schedule was prepared

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[22] CA *rollo*, p. 354; Annex "4" of Atlanta's Comment.

[23] *Rollo,* pp. 125-139.

[24] *Supra* note 14.

by Rose A. Quirit and approved by Adolfo R. Lope, head of the company's PE/Spiral Section. They argue that it was highly unlikely that the head of a production section of the company would prepare and assign work to the complainants if the latter had not been company employees.

The respondent workers reiterate their mistrust of the Master List[25] as evidence that they were not employees of the company at the time they became apprentices. They label the Master List as "self-serving, dubious and even if considered as authentic, its content contradicts a lot of petitioner's claim and allegations,"[26] thus —

1. Aside from the fact that the Master List is not legible, it contains only the names of inactive employees. Even those found by the NLRC to have been employed in the company (such as Almoite, Costales and Sagun) do not appear in the list. If Costales and Almoite had been employed with Atlanta since January 11, 2006, as the company claimed,[27] their names would have been in the list, considering that the Master List accounts for all employees "as of May 2006" – the notation carried on top of each page of the document.

2. There were no entries of employees hired or resigned in the years 2005 and 2006 despite the "as of May 2006" notation; several pages making up the Master List contain names of employees for the years 1999 - 2004.

3. The fact that Atlanta presented the purported Master List instead of the payroll raised serious doubts on the authenticity of the list.

In sum, the respondent workers posit that the presentation of the Master List revealed the "intention of the herein petitioner[s] to perpetually hide the fact of [their] prior employment."[28]

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[25] *Supra* note 5.
[26] *Rollo*, p. 127; respondents' Comment, p. 3, par. 5.
[27] *Rollo,* p. 189.
[28] *Id.* at 151.

On the supposed apprenticeship agreements they entered into, Costales, Almoite, Sebolino and Sagun refuse to accept the agreements' validity, contending that the company's apprenticeship program is merely a ploy "to continually deprive [them] of their rightful wages and benefits which are due them as regular employees."[29] They submit the following "indubitable facts and ratiocinations:"[30]

1. The apprenticeship agreements were submitted to TESDA only in 2005 (with dates of receipt on "1/4/05" & "2/22/05"[31]), when the agreements were supposed to have been executed in April or May 2004. Thus, the submission was made long after the starting date of the workers' apprenticeship or even beyond the agreement's completion/termination date, in violation of Section 23, Rule VI, Book II of the Labor Code.

2. The respondent workers were made to undergo apprenticeship for occupations different from those allegedly approved by TESDA. TESDA approved Atlanta's apprenticeship program on "Plastic Molder"[32] and not for extrusion molding process, engineering, pelletizing process and mixing process.

3. The respondents were already skilled workers prior to the apprenticeship program as they had been employed and made to work in the different job positions where they had undergone training. Sagun and Sebolino, together with Mabanag, Pedregoza, dela Cruz, Chiong, Magalang and Alegria were even given production assignments and work schedule at the PE/Spiral Section from May 11, 2004 to March 23, 2005, and some of them were even assigned to the 3:00 p.m. – 11:00 p.m. and graveyard shifts (11:00 p.m. – 7:00 a.m.) during the period.[33]

4. The respondent workers were required to continue as apprentices beyond six months. The TESDA certificate of

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[29] *Id.* at 130; Respondent's Comment, p. 6, par. 12.

[30] *Ibid.*

[31] CA *rollo*, pp. 129-148 and 152-153.

[32] *Id.* at 162, Annex "H".

[33] *Id.* at 85-92-A; Petition for *Certiorari*, Annexes "JJ" to "RR".

completion indicates that the workers' apprenticeship had been completed after six months. Yet, they were suffered to work as apprentices beyond that period.

Costales, Almoite, Sebolino and Sagun resolutely maintain that they were illegally dismissed, as the reason for the termination of their employment – notice of the completion of the second apprenticeship agreement – did not constitute either a just or authorized cause under Articles 282 and 283 of the Labor Code.

Finally, Costales and Almoite refuse to be bound by the compromise agreement[34] that Atlanta presented to defeat the two workers' cause of action. They claim that the supposed agreement is invalid as against them, principally because they did not sign it.

The Court's Ruling

The procedural issue

The respondent workers ask that the petition be dismissed outright for the petitioners' failure to attach to the petition a copy of the Production and Work Schedule and a copy of the compromise agreement Costales and Almoite allegedly entered into — material portions of the record that should accompany and support the petition, pursuant to Section 4, Rule 45 of the Rules of Court.

In *Mariners Polytechnic Colleges Foundation, Inc. v. Arturo J. Garchitorena*[35] *w*here the Court addressed essentially the same issue arising from Section 2(d), Rule 42 of the Rules of Court,[36] we held that the phrase "of the pleadings and other

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[34] *Id.* at 286, Annex "RRR".

[35] G.R. No. 162253, August 13, 2008, 562 SCRA 80, citing *Atillo v. Bombay,* 404 Phil. 179 (2001).

[36] SEC. 2. *Form and contents*. – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters

material portions of the record xxx as would support the allegation of the petition clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. The crucial issue to consider then is whether or not the documents accompanying the petition sufficiently supported the allegations therein."[37]

As in *Mariners,* we find that the documents attached to the petition sufficiently support the petitioners' allegations. The accompanying CA decision[38] and resolution,[39] as well as those of the labor arbiter[40] and the NLRC,[41] referred to the parties' position papers and even to their replies and rejoinders. Significantly, the CA decision narrates the factual antecedents, defines the complainants' cause of action, and cites the arguments, including the evidence the parties adduced. If any, the defect in the petition lies in the petitioners' failure to provide legible copies of some of the material documents mentioned, especially several pages in the decisions of the labor arbiter and of the NLRC. This defect, however, is not fatal as the challenged CA decision clearly summarized the labor tribunal's rulings. We, thus, find no procedural obstacle in resolving the petition on the merits.

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involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

[37] *Supra* note 35, at 87.

[38] *Supra* note 2.

[39] *Supra* note 3.

[40] *Rollo*, pp. 89-99; Petition, Annex "N".

[41] *Id.* at 100-110; Petition, Annex "O".

The merits of the case

We find no merit in the petition. The CA committed no reversible error in nullifying the NLRC decision[42] and in affirming the labor arbiter's ruling,[43] as it applies to Costales, Almoite, Sebolino and Sagun. Specifically, the CA correctly ruled that the four were illegally dismissed because (1) they were already employees when they were required to undergo apprenticeship and (2) apprenticeship agreements were invalid.

The following considerations support the CA ruling.

First. Based on company operations at the time material to the case, Costales, Almoite, Sebolino and Sagun were already rendering service to the company as employees before they were made to undergo apprenticeship. The company itself recognized the respondents' status through relevant operational records – in the case of Costales and Almoite, the CPS monthly report for December 2003[44] which the NLRC relied upon and, for Sebolino and Sagun, the production and work schedule for March 7 to 12, 2005[45] cited by the CA.

Under the CPS monthly report, Atlanta assigned Costales and Almoite to the first shift (7:00 a.m. to 3:00 p.m.) of the Section's work. The Production and Work Schedules, in addition to the one noted by the CA, showed that Sebolino and Sagun were scheduled on different shifts *vis-à-vis* the production and work of the company's PE/Spiral Section for the periods July 5-10, 2004;[46] October 25-31, 2004;[47] November 8-14, 2004;[48]

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[42] *Ibid.*

[43] *Supra* note 40.

[44] *Supra* note 13.

[45] *Supra* note 14.

[46] CA *rollo*, p. 86.

[47] *Id.* at 87.

[48] *Id.* at 88.

November 16-22, 2004;[49] January 3-9, 2005;[50] January 10-15, 2005;[51] March 7-12, 2005;[52] and March 17-23, 2005.[53]

We stress that the CA correctly recognized the authenticity of the operational documents, for the failure of Atlanta to raise a challenge against these documents before the labor arbiter, the NLRC and the CA itself. The appellate court, thus, found the said documents sufficient to establish the employment of the respondents before their engagement as apprentices.

Second. The Master List[54] (of employees) that the petitioners heavily rely upon as proof of their position that the respondents were not Atlanta's employees, at the time they were engaged as apprentices, is unreliable and does not inspire belief.

The list, consisting of several pages, is hardly legible. It requires extreme effort to sort out the names of the employees listed, as well as the other data contained in the list. For this reason alone, the list deserves little or no consideration. As the respondents also pointed out, the list itself contradicts a lot of Atlanta's claims and allegations, thus: it lists only the names of inactive employees; even the names of those the NLRC found to have been employed by Atlanta, like Costales and Almoite, and those who even Atlanta claims attained regular status on January 11, 2006,[55] do not appear in the list when it was supposed to account for all employees "as of May 6, 2006." Despite the "May 6, 2006" cut off date, the list contains no entries of employees who were hired or who resigned

[49] *Id.* at 89.

[50] *Id.* at 90.

[51] *Id.* at 91.

[52] *Id.* at 92.

[53] *Id.* at 92-A.

[54] *Supra* note 5.

[55] *Supra* note 5, caption of each page of the list's last line.

in 2005 and 2006. We note that the list contains the names of employees from 1999 to 2004.

We cannot fault the CA for ignoring the Master List even if Bernardo, its head office accountant, swore to its correctness and authenticity.[56] Its substantive unreliability gives it very minimal probative value. Atlanta would have been better served, in terms of reliable evidence, if true copies of the payroll (on which the list was based, among others, as Bernardo claimed in her affidavit) were presented instead.

Third. The fact that Costales, Almoite, Sebolino and Sagun were already rendering service to the company when they were made to undergo apprenticeship (as established by the evidence) renders the apprenticeship agreements irrelevant as far as the four are concerned. This reality is highlighted by the CA finding that the respondents occupied positions such as machine operator, scaleman and extruder operator - tasks that are usually necessary and desirable in Atlanta's usual business or trade as manufacturer of plastic building materials.[57] These tasks and their nature characterized the four as regular employees under Article 280 of the Labor Code. Thus, when they were dismissed without just or authorized cause, without notice, and without the opportunity to be heard, their dismissal was illegal under the law.[58]

Even if we recognize the company's need to train its employees through apprenticeship, we can only consider the first apprenticeship agreement for the purpose. With the expiration of the first agreement and the retention of the employees, Atlanta had, to all intents and purposes, recognized the completion of their training and their acquisition of a regular employee status.

[56] *Rollo,* p. 217; Bernardo's Affidavit dated May 25, 2006.

[57] *Id.* at 60; CA Decision, p. 19, par. 1.

[58] Articles 279 & 277 (b) of the Labor Code.

To foist upon them the second apprenticeship agreement for a second skill which was not even mentioned in the agreement itself,[59] is a violation of the Labor Code's implementing rules[60] and is an act manifestly unfair to the employees, to say the least. This we cannot allow.

Fourth. The compromise agreement[61] allegedly entered into by Costales and Almoite, together with Ramos, Villagomez and Alegria, purportedly in settlement of the case before the NLRC, is not binding on Costales and Almoite because they did not sign it. The company itself admitted[62] that while Costales and Almoite were initially intended to be a part of the agreement, it did not pursue their inclusion "due to their regularization as early as January 11, 2006."[63]

WHEREFORE, premises considered, we hereby *DENY* the petition for lack of merit. The assailed decision and resolution of the Court of Appeals are *AFFIRMED*. Costs against the petitioner Atlanta Industries, Inc.

SO ORDERED.

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

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[59] *Rollo*, pp. 67-82; copies of the second apprenticeship agreements.

[60] Section 18, Rule VI, Book II of the Implementing Rules and Regulations of the Labor Code.

[61] CA *rollo*, pp. 286-287.

[62] *Supra* note 12.

[63] *Rollo,* p. 61; CA Decision, p. 20, last paragraph.

FIRST DIVISION

[G.R. No. 191198. January 26, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NENE QUIAMANLON *y* MALOG,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. —** Time and again, this Court has held that factual findings of the appellate court 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.
2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS. —** [I]n 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. It is worth noting that 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.
3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** With respect to the charge of illegal possession of dangerous drugs under Sec. 11, Art. II of RA 9165, the evidence of the prosecution has sufficiently established the elements of the violation, to wit: (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.
4. **ID.; ID.; ID.; POSSESSION OF DANGEROUS DRUGS IS *PRIMA FACIE* EVIDENCE OF *ANIMUS POSSIDENDI* SUFFICIENT FOR CONVICTION. —** Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus*

possidendi sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Thus, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.

5. **ID.; ID.; ID.; BUY-BUST OPERATION; CHAIN OF CUSTODY; TO ESTABLISH THE IDENTITY OF THE SUBSTANCE EXHIBITED IN COURT AS THE SAME SUBSTANCE SEIZED DURING THE OPERATION. —** Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material. Thus, it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.

6. **ID.; ID.; ID.; ID.; ID.; ID.; PERFECT CHAIN IS NOT THE STANDARD BUT THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS. —** Undeniably, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. The Implementing Rules and Regulations (IRR) of RA 9165 on the handling and disposition of seized dangerous drugs is clear on this matter, thus: x x x [T]he supposed procedural infirmities alleged by Quiamanlon with regard to the custody, photographing, inventory, and marking of the seized items do not, in any manner, affect the prosecution of the instant case and do not render her arrest illegal or the items seized from her inadmissible. Moreover, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. In this case, Quiamanlon bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties.

7. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE UNSUBSTANTIATED FALLS SHORT TO THE PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY. — This Court has held consistently that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt," as in the instant case. x x x 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. And in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of duty stands.

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 25, 2009 Decision[1] of the Court of Appeals (CA) in CA G.R. CR No. 31896 entitled *People of the Philippines v. Nene Quiamanlon y Malog*, which affirmed the July 10, 2008 Decision[2] in Criminal Case Nos. Q-05-135151 and Q-05-135152 of the Regional Trial Court (RTC), Branch 78 in Quezon City. The RTC found accused Nene Quiamanlon *y* Malog (Quiamanlon) guilty of violating

[1] *Rollo*, pp. 2-16. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison.

[2] CA *rollo*, pp. 31-43. Penned by Presiding Judge Fernando T. Sagun, Jr.

Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Criminal Case No. Q-05-135151 pertains to the Information filed against Quiamanlon for violation of Sec. 5, Art. II of RA 9165, the accusatory portion of which reads as follows:

> That on or about the 15th day of June 2005, in Quezon City, Philippines, the said accused, conspiring, confederating with other person whose true name and identity have not as yet been ascertained and mutually helping each other, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT TWELVE (0.12 gm.) of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.[3]

On the other hand, in Criminal Case No. Q-05-135152, Quiamanlon was charged with violation of Sec. 11, Art. II of RA 9165, as follows:

> That on or about the 15th day of June 2005, in Quezon City, Philippines, the said accused, conspiring, confederating with other person whose true name and identity have not yet been ascertained and mutually helping each other, not being authorized by law [to] possess or use any dangerous drug, did, then and there, willfully, unlawfully and knowingly have in her possession and control, ZERO POINT TWENTY SEVEN (0.27 gm.) of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous [drug].
>
> CONTRARY TO LAW.[4]

When arraigned on August 25, 2005, accused Quiamanlon pleaded "not guilty" to the foregoing accusations against her.[5] Thereafter, trial on the merits ensued.

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[3] Records, p. 2.

[4] *Id.* at 149.

[5] *Rollo*, p. 4.

During trial, the prosecution presented three witnesses, namely: Police Officer 3 Jerry Villamor (PO3 Villamor), PO3 Noel Magcalayo (PO3 Magcalayo), and PO3 Hector Hernandez (PO3 Hernandez).[6] On the other hand, the defense presented Quiamanlon as its lone witness.[7]

The Prosecution's Version of Facts

On June 15, 2005, a female confidential informant arrived at the office of the District Anti-Illegal Drugs (DAID) in Camp Karingal, Sikatuna Village, Quezon City and reported the illegal drug activities of a certain "Myrna" within the vicinity of Quezon City. The informant disclosed that she was asked by "Myrna" to look for a buyer of her stuff and to meet her at the Kentucky Fried Chicken restaurant located in Welcome Rotonda, Galas, Quezon City (KFC Welcome Rotonda) in case she already found one.

Acting on the information given by the informant, DAID Chief Colonel Gerardo B. Ratuita immediately formed a team to conduct a buy-bust operation composed of Police Chief Inspector Arnold Abad as team leader, with PO3 Hernandez, PO3 Magcalayo, PO2 Emeterio Mendoza, PO3 Villamor, PO1 Michael Collado, and PO2 Edmond Paculdar as members.

PO3 Villamor was designated as the poseur-buyer, while the other members served as back-up. PO3 Villamor was furnished a 500-peso bill with Serial No. XD338194, which he marked with his initials "JV" on the upper portion.

After a short briefing and preparation, the buy-bust team, along with the informant, proceeded to KFC Welcome Rotonda. PO3 Villamor and the informant waited for "Myrna" in front of said establishment, while the rest of the team positioned themselves within viewing distance to allow them to covertly monitor the operation.

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[6] *Id.*

[7] *Id.* at 6.

After waiting for about an hour, "Myrna" arrived with a female companion. The informant waved at "Myrna." When the latter approached them, the informant introduced PO3 Villamor to her as "Kuya Jerry," a prospective buyer of *shabu*.

Thereafter, PO3 Villamor asked "Myrna" whether she had an "item" with her at that time. In response, "Myrna" went to the side of the fastfood chain, took out one (1) small heat-sealed plastic sachet containing white crystalline substance from her pocket and showed it to him.[8] But as she did so, two (2) other sachets fell out from the pocket of her pants.[9] When "Myrna" handed the sachet containing a white crystalline substance to PO3 Villamor, the latter, in turn, handed her the 500-peso buy-bust money.

Afterwards, PO3 Villamor removed his earring to signal to his team members that the transaction was already consummated. PO3 Magcalayo and the other members of the team immediately rushed to the scene and introduced themselves as police officers. PO3 Magcalayo recovered the buy-bust money from "Myrna," while PO3 Villamor recovered the other two (2) plastic sachets also from her. They then arrested both "Myrna" and her companion, later identified as Saguera Samula *y* Dalunan (Samula), after informing them of the nature of their offense and their constitutional rights. "Myrna," who was later identified as Nene Quiamanlon, and Samula, as well as the recovered articles, were brought to the station for proper investigation and disposition.[10]

PO3 Villamor, who maintained custody over the seized sachets, marked the said items in his possession, recorded them in an inventory, and handed them over to the Duty Desk Officer, PO3 Hernandez.[11] PO3 Magcalayo likewise turned over the buy-bust money to PO3 Hernandez, who prepared a Request

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[8] CA *rollo*, pp. 32-33.

[9] *Rollo*, p. 5.

[10] CA *rollo*, pp. 33-34.

[11] *Rollo*, pp. 5-6.

for Laboratory Examination. Said request, with the seized sachets, were brought by PO3 Magcalayo to the Philippine National Police (PNP) Crime Laboratory, where they were received by PO2 Golpo and examined by Engr. Leonard M. Jabonillo, Chemist/Forensic Analyst for the PNP Crime Laboratory.[12] The examinations conducted on the plastic sachets of suspected *shabu* yielded positive results for methylamphetamine hydrochloride, as indicated in Chemistry Report No. D-507-2005.[13]

Version of the Defense

Quiamanlon interposed the defense of denial. She testified that at 7:00 p.m. on June 15, 2005, she was eating at Jollibee, Welcome Rotonda with Samula and the sister of her husband when, suddenly, four men, who identified themselves as policemen, approached and poked their gun at her and told her not to make any move. She was then brought to Camp Karingal aboard a black FX vehicle.[14]

According to Quiamanlon, the men were supposedly looking for *shabu* from her. When they arrived in Camp Karingal, PO3 Villamor and PO3 Magcalayo punched her on the thigh and on the arm while forcing her to produce the said *shabu*. They also forced her to remove her clothes to ensure that she was not hiding it in her underwear. They also kept on asking her to point to the person who is the alleged source of *shabu*, but she insisted that she could not name any because she is innocent of the accusations against her. Thereafter, she was brought to the fiscal (prosecutor).[15] On the other hand, her companion, Samula, was released since the latter was able to give the policemen money in the amount of PhP 25,000.

Ruling of the Trial Court

After trial, the RTC, on July 10, 2008, convicted Quiamanlon. The dispositive portion of its Decision reads:

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[12] *Id.* at 6.

[13] Records, p. 9.

[14] CA *rollo*, pp. 35-36.

[15] *Id.* at 36.

(1) In Criminal Case No. Q-05-135151:

WHEREFORE, premises considered, the Court finds accused NENE QUIMANLON [sic] *Y* MALOG **GUILTY** beyond reasonable doubt of Violation of SECTION 5, ARTICLE II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. She is hereby sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00), Philippine Currency plus the costs of the suit.

(2) In Criminal Case No. Q-05-135152

WHEREFORE, premises considered, the Court finds accused NENE QUIMANLON [sic] *Y* MALOG **GUILTY** beyond reasonable doubt of Violation of SECTION 11, ARTICLE II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. She is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and nine (9) months of *reclusion temporal* as maximum and to pay the fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00), Philippine Currency plus the costs of the suit.

Considering that the accused is a detention prisoner, her period of detention shall be properly credited in the service of her sentence in strict conformity with the provisions of Article 29 of the Revised Penal Code.

The dangerous drugs submitted as evidence in these cases is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA), for destruction and/or disposition in strict conformity with the provisions of our laws, rules and regulations on the matter.

SO ORDERED.[16]

On appeal to the CA, Quiamanlon questioned the trial court's decision in convicting her despite the prosecution's alleged failure to prove her guilt beyond reasonable doubt, as well as its purported failure to establish the chain of custody of the alleged *shabu*.[17]

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[16] *Id.* at 43.

[17] *Id.* at 55.

Ruling of the Appellate Court

On November 25, 2009, the CA affirmed the judgment of the RTC. It ruled that the sale and possession of illegal drugs were adequately established by the prosecution, to wit:

In the instant case, the sale of the illegal substance was adequately established by the testimony of PO3 Villamor who acted as the poseur buyer during the buy-bust operation. Relative to PO3 Villamor's testimony as to his own personal knowledge of the sale that took place was his positive identification of the appellant as the offender. He likewise testified on the other items (*shabu*) which appellant had in her possession. PO3 Villamor's testimony was corroborated by PO3 Magcalayo who testified that after he saw PO3 Villamayor [execute] the pre-arranged signal, they rushed to the scene and arrested the appellant; that right after appellant's arrest, he recovered the buy-bust money from her and brought appellant to the police station for investigation. Thus, the testimonies of the prosecution witnesses established that appellant was caught in the act of selling a sachet containing substances which turned out to be positive for *shabu*, the arrest, being a result of an entrapment operation conducted by the police operatives on the basis of information received from a confidential informant regarding appellant's illegal trade. On the other hand, the confiscated *shabu* found in her possession, being a result of a search incident to her lawful warrantless arrest [is] therefore, admissible in evidence against her.[18] (Citations omitted.)

The CA held that in the absence of proof to suggest that the arresting officers were moved by improper motives, their testimonies are entitled to full faith and credence.[19] Moreover, the appellate court ruled that the chain of custody of the seized prohibited drugs was shown not to have been broken and that the identity of the *corpus delicti* had been properly preserved and established by the prosecution.[20]

The *fallo* of the CA Decision reads:

WHEREFORE, finding no reversible error in the decision appealed from, We hereby **AFFIRM** the same and **DISMISS** the instant appeal.

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[18] *Rollo*, pp. 9-10.
[19] *Id.* at 11.
[20] *Id.* at 13-14.

SO ORDERED.[21]

On December 14, 2009, Quiamanlon filed her Notice of Appeal.[22]

In Our Resolution dated March 17, 2010,[23] We notified the parties that they may file their respective supplemental briefs if they so desired. Both parties manifested that they were no longer filing a supplemental brief, because their respective briefs before the CA had already taken up all the matters relevant to the case.

The Issues

Accused-appellant Quiamanlon contends in her *Brief* that:

I

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED *SHABU*.

Our Ruling

We sustain Quiamanlon's conviction.

Proof of guilt beyond reasonable doubt adequately established by the prosecution

We have carefully examined the records of this case and We are satisfied that the prosecution's evidence established the guilt of Quiamanlon beyond reasonable doubt.

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[21] *Id.* at 16.

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

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

Time and again, this Court has held that factual findings of the appellate court 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.[24] In *People v. Lusabio, Jr.*,[25] this Court held:

> 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.)

Since Quiamanlon failed to show any palpable error, arbitrariness, or capriciousness on the findings of fact of the trial and appellate courts, these findings deserve great weight and are deemed conclusive and binding.

Significantly, 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. It is worth noting that 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.[26]

The foregoing elements were sufficiently established by the prosecution. PO3 Villamor, the poseur-buyer, testified on the first element, thus:

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[24] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709.

[25] G.R. No. 186119, October 27, 2009, 604 SCRA 565, 590.

[26] *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.

QUESTION –
Mr.Witness, do you know the accused in these cases, Nene Quiamanlon *y* Malog?

ANSWER-
After the apprehension, Sir.

Q- Now, will you please look around and tell us if she is inside the Court Room?
A- (After looking around inside the Court Room) Yes, Sir.

Q- Will you point to the accused you apprehended?

INTERPRETER:
Witness pointing to a woman seated inside the Court Room, who, when asked her name, answered "Nene Quiamanlon."

ACP DELA CRUZ: (on direct examination)

QUESTION-
When did you arrest the accused?

ANSWER-
June 15, 2005, Sir.

Q- Where did you arrest the accused?
A- In front of KFC Food Chain located at Welcome Rotonda, Galas, Quezon City, Sir.

Q- And what was her specific violation or offense for which reason you arrested her?
A- For violation of Section 5 of RA 9165, for selling dangerous drug, Sir.

Q- To whom did this accused sell this dangerous drug?
A- To the undersigned PO3 Villamor, Sir.

Q- How did it happen that she sold to you this particular drug?
A- Through the help of our Confidential Informant, Sir.

Q- When you say "through the help of our confidential informant", how did it start?
A- The confidential informant came to the Office and informed us about the drug activities of a certain *Alias* Myrna, Sir.

Q- With that information received by your office, what was the initial reaction of your Office?
A- Immediately, our Chief, DAID, Colonel Ratuita, formed a team to conduct a buy-bust operation, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-

Who were the members of the team?

A- Led by Police Chief Inspector Arnold Abad, the members were PO3 Hernandez, PO3 Noel Magcalayo, PO2 Emeterio Mendoza, PO3 Villamor, PO1 Michael Collado and PO2 Paculdar, Sir.

Q- In that particular operation, did you have all these persons you mentioned as your companions in the buy-bust operation?

A- Yes, Sir, together with the informant.

Q- How many all in all proceeded to the place?

A- Nine (9), Sir.

Q- At about what time did you proceed to the place?

A- Six (6:00) P.M. we were dispatched, Sir.

Q- And what is this area called, if you know?

A- KFC Food Chain, Welcome Rotonda, Galas, Quezon City, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-

So you proceeded to that area which was at KFC Food Chain, Welcome Rotonda, Galas, Quezon City. By the way, who was the designated poseur-buyer?

ANSWER-

Myself, Sir.

Q- When you arrived in that area, who was the first one to arrive?

A- The undersigned together with the informant, Sir.

Q- You mean you yourself and the informant arrived ahead?

A- Yes, Sir.

Q- What was the position of your men when you arrived, where did you go in relation to the place as well as the confidential informant?

A- We were standing in front of the KFC Food Chain waiting for the arrival of the seller, Sir.

Q- How many minutes did you wait for the seller?
A- About one (1) hour, Sir.

Q- Then what happened after that?
A- Our target *Alias* Myrna arrived together with a female companion, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-
How did you know that the personality or *Alias* Myrna was the person who arrived?
ANSWER-
Because of the confidential informant who was with us and who told us to wait for the suspect, Sir.
Q- What happened after that waiting together with your confidential informant?
A- The said *Alias* Myrna approached us, Sir.

Q- From what area of KFC food chain did she approach you?
A- Beside the KFC Food Chain, Sir.

Q- And what happened after that?
A- The confidential informant introduced the suspect *Alias* Myrna, Sir.

Q- To whom?
A- To the undersigned, Sir.

Q- And how was she introduced to you?
A- The confidential informant said to the suspect "*Myrna, si Kuya Jerry. Malaking kumuha ito.*" (Myrna, this is [big brother] Jerry. He is a big buyer.)

ACP DELA CRUZ: (on direct examination)

QUESTION-
And what was the response of Myrna?
ANSWER-
Myrna just nodded, Sir.[27]

x x x x x x x x x

Q- This being a buy-bust operation, who was in charge of the buy-bust money used?

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[27] TSN, September 27, 2005, pp. 4-9.

A- Our Chief, DAID, Superintendent Ratuita, Sir.

Q- It came from your Office?
A- Yes, Sir.

Q- Now, after it was paid to the accused, who recovered it from the accused?
A- PO3 Noel Magcalayo, sir.

Q- But can you tell us where is this buy-bust money now?
ANSWER-
Yes, Sir. It is in my possession.

INTERPRETER:
Witness producing the buy-bust money together with a bunch of paper.

ACP DELA CRUZ: (on direct examination)

QUESTION-
At this point, Mr. Witness, I notice that this is a ₱500.00 bill, what is your assurance that this was the one used in the operation?
A- Because of my marking JV, Sir.

INTERPRETER:
Witness pointing to the initials JV before the serial number of the ₱500.00 bill.

ACP DELA CRUZ:
We request that the ₱500.00 bill produced by the witness be marked in evidence as Exhibit "E", your Honor.

COURT:
Mark it.

ACP DELA CRUZ:

Q- Now, you said that this was recovered by PO3 Magcalayo, how did you get possession of this ₱500.00 bill from PO3 Magcalayo?

ANSWER-
After the inquest, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-
It was turned over to you after the inquest?
A- Yes, Sir.

Q- What about the items, Mr. Witness, that were recovered during the buy-bust operation, who was in actual possession of these after the buy-bust operation?
A- I, Sir.

Q- I show you prosecution's Exhibit "A", will you please examine Exhibit "A", and tell us if you recognize it?

x x x x x x x x x

ANSWER-
This is the one I recovered, Sir.

INTERPRETER:
Witness is referring to the particular container with marking A(JV) on the masking tape across the big initials JV.

ACP DELA CRUZ:

Q- What does this JV represent?
A- Jerry Villamor, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-
Why do you know that this is the one, the subject of your buy-bust operation?

ANSWER-
Because I was the one who put the marking, Sir.

x x x x x x x x x

ACP DELA CRUZ:

Q- You also take out from the plastic container which we opened, the other two (2) items which were marked B(JV1) and C(JV2), what do these plastic containers mean?
A- These are the plastic sachets I also recovered from the suspect *Alias* Myrna, Sir.

Q- When did you recover these?
A- After the apprehension, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-
After the buy-bust operation?

ANSWER-
Yes, Sir.[28]

A chemical analysis on the contents of the confiscated plastic sachets confirmed that these are indeed methylamphetamine hydrochloride or *shabu*. This was established through the testimony of PO3 Magcalayo:

Q- After the turn-over, what else did you do?
A- The Investigator prepared a request for the examination of the recovered items, Sir.

Q- And that consist (sic) of what?
A- The Request for Laboratory Examination, Sir.

Q- What was the subject of the request?

ANSWER-
Request to determine the contents of the plastic sachets, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION-
Do you know what was the result of the request for laboratory examination?
A- Yes, Sir.

Q- And what was the result?
A- It resulted in the presence of dangerous drug, Sir.[29]

On the other hand, the second element of the crime of illegal sale of prohibited drugs was satisfied through the testimony of PO3 Villamor:

Q- And after that brief introduction, what else followed?
A- I asked her if she had an item with her, Sir.

[28] *Id.* at 12-17.

[29] TSN, September 14, 2006, pp. 12-13.

Q- In what manner did you ask her, in Tagalog or what?
A- In Tagalog, Sir.

Q- What did you tell her?
A- I asked her "*May dala ka bang item diyan*?" (Did you bring an item with you?)

Q- And what was the response of the accused?
A- She went to the side of the food chain and brought out something from her pocket and showed it to me, Sir.

Q- How far were you when this procedure was done?
A- We were very close to each other because I was covering her, Sir.

Q- And from what you observed, what did she show you?

ANSWER-
The plastic sachet containing *shabu*, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION:
And at that time what did you do next?
A- She gave me the sachet she took from her pocket and then I gave her the ₱500.00 bill with marking, Sir.

Q- How did you determine that what she gave you was worth ₱500.00?
A- According to the informant, every time she gets it is worth ₱500.00, Sir.

Q- That was the informant's representation of your manner of getting it?
A- Yes, Sir.

Q- And with that exchange of the item and the money, what else did you do next?
A- After receiving the item from her and giving her the money, I kept the item inside my pocket, Sir.

Q- And then what followed?
A- I took [off] my [earring] and told her "*Kung maganda ang negosyo natin, magiging mabuti akong suki mo*." (If our business will be good then I will be your good client.)

ACP DELA CRUZ: (on direct examination)

QUESTION-
That removal of your [earring], is this your pre-arranged signal?
ANSWER- Yes, Sir.

Q- By the way, how did you look like at that time, what were you wearing?
A- Civilian with two (2) [earrings], Sir.

Q- And with the execution of the pre-arranged signal, what did your teammates do, if any?
A- They rushed towards us and it was PO3 Noel Magcalayo who arrived first, Sir.

Q- What did he do?
A- He recovered the buy-bust money from the possession of Myrna, Sir.

Q- What followed after that?
A- We informed her that we were police officers, Sir.

Q- And how did she respond to this realization that you were police officers?
A- She was shocked and speechless, Sir.

Q- With the buy-bust money in the possession of PO3 Magcalayo and the item in your possession where did you proceed?
ANSWER-
Before we left, I asked her to take out the two (2) other sachets from her pocket, Sir.

ACP DELA CRUZ: (on direct examination)

QUESTION:
How did you know that there are still other items in her possession?

A- Because when she took out one sachet from the pocket of her pants, the other two (2) came out, Sir.

Q- You mean to say that she was not showing it to you surreptitiously?

A- Because when she took out the sachet that she was to give to me, the other two (2) also came out from the pocket of her pants, Sir.[30]

As established in PO3 Villamor's testimony, a buy-bust operation took place. Being the poseur-buyer, he positively identified the seller of a plastic sachet containing a white crystalline substance for a sum of PhP 500. The seller turned out to be Quiamanlon. Further, aside from substantially corroborating PO3 Villamor's testimony, the testimony of PO3 Magcalayo has shown that a subsequent laboratory examination on the contents of the confiscated plastic sachets confirmed that they are indeed methylamphetamine hydrochloride or *shabu*.

With respect to the charge of illegal possession of dangerous drugs under Sec. 11, Art. II of RA 9165, the evidence of the prosecution has sufficiently established the elements of the violation, to wit: (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.[31]

Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Thus, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.[32] In the instant case, Quiamanlon failed to discharge such burden.

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[30] TSN, September 27, 2005, pp. 9-12.

[31] *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.

[32] *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 513.

When Quiamanlon took a plastic sachet containing white crystalline substance from her pocket in order to show it to PO3 Villamor, two (2) other sachets containing white crystalline substance fell out of her pocket. Considerably, the owner-possessor of said sachets can be no other than Quiamanlon, who has neither shown any proof of the absence of *animus possidendi* nor presented any evidence that would show that she was duly authorized by law to possess them during the buy-bust operation.

Chain of Custody Established

Quiamanlon claims that the police officers who conducted the buy-bust operation failed to observe the existing rules in the proper custody of the seized items, thereby casting doubt as to the identity and integrity of the sachets allegedly containing *shabu* presented as evidence by the prosecution.

Relying on *People v. Lim*,[33] Quiamanlon insists that "any apprehending team having initial control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof."[34]

She asserts further that the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction, adding that it is, therefore, essential in these cases that the identity of the prohibited drug be established beyond doubt.[35]

Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material.[36] Thus, it

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[33] G.R. No. 141699, August 7, 2002, 386 SCRA 581, 597-598.

[34] CA *rollo*, p. 63.

[35] *Id.* at 64.

[36] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude.[37] It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.[38]

Contrary to Quiamanlon's assertion, the chain of custody of the seized prohibited drugs was adequately established in the instant case. As determined by the CA:

> x x x Going by the records, after the seizure of the drugs from appellant's possession, PO3 Villamor marked them with initials "JV", "JV1" and "JV2", then turned them over to PO3 Hernandez, the Duty Desk Officer assigned on that day at Camp Karingal. An Inventory Report was immediately prepared and subsequently, a laboratory examination of the seized items were conducted upon the request made by PS Gerardo Ratuita. The plastic sachets with the markings of "JV", "JV1" and "JV2", containing white crystalline substance when subjected to a qualitative examination by Forensic Analyst in the person of Engr. Leonard M. Jabonillo, yielded positive results, and turned out to be methamphetamine hydrochloride, a dangerous drug.[39]

Undeniably, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[40] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. The Implementing Rules and Regulations (IRR) of RA 9165 on the handling and disposition of seized dangerous drugs is clear on this matter, thus:

> SECTION 21. ***Custody and Disposition of Confiscated, Seized and/ or Surrendered Dangerous Drugs, Plant Sources of Dangerous***

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[37] *People v. Cortez*, G.R. No. 183819, July 23, 2009, 593 SCRA 743, 762.

[38] *Id.*; citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[39] *Rollo*, pp. 12-13.

[40] *People v. Cortez*, *supra* note 42, at 763.

Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided*****, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further*****, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items** x x x. (Emphasis supplied.)

An astute perusal of the above-quoted provision of the IRR of RA 9165 readily reveals that the custodial chain rule is not to be rigorously applied, provided "the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team." Thus, the supposed procedural infirmities alleged by Quiamanlon with regard to the custody, photographing, inventory, and marking of the seized items do not, in any manner, affect the prosecution of the instant case and do not render her arrest illegal or the items seized from her inadmissible.

Moreover, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[41] In this case, Quiamanlon bears the burden to show that the evidence was

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[41] *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 562; citing *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties.[42] Failing to discharge such burden, there can be no doubt that the drugs seized from Quiamanlon were the same ones examined in the crime laboratory. Evidently, the prosecution established the crucial link in the chain of custody of the seized drugs.

Denial as an Inherently Weak Defense

This Court has held consistently that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt,"[43] as in the instant case.

The sachet containing the dangerous drug was positively identified by PO3 Villamor during trial as the very sachet containing the white crystalline substance sold and delivered to him by Quiamanlon. Thus, Quiamanlon's denial is self-serving and has little weight in law.

A bare denial is an inherently weak defense[44] 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.[45] And in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of duty stands.[46]

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[42] *Id*.

[43] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317, 326; citing *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471.

[44] *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.

[45] *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[46] *People v. Cruz*, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 368.

All told, 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 Quiamanlon beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR No. 31896 finding accused-appellant Nene Quiamanlon *y* Malog guilty of the crimes charged is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192237. January 26, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JACQUILINE PAMBID *y* CORTEZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; STRICT COMPLIANCE NOT REQUIRED AS WHAT IS IMPERATIVE IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIAL VALUE OF THE SEIZED ITEMS. —** The Implementing Rules and Regulations (IRR) of [The Dangerous Drugs Act of 2002] (RA 9165) provides: SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment***.— x x x ***Provided*****, that <u>the physical inventory and photograph shall be</u>**

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. Evidently, the law itself lays down exceptions to its requirements. Thus, non-compliance with the above-mentioned requirements is not fatal. In fact, it has been ruled time and again that non-compliance with Sec. 21 of the IRR does not make the items seized inadmissible. What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRUSTWORTHY AND UNTAINTED TESTIMONY OF LONE WITNESS IS SUFFICIENT TO CONVICT.—** Well-settled is the rule that "the testimony of a lone prosecution witness, as long as positive and clear and not a result of improper motive to impute a serious offense against the accused, deserves full faith and credit." It is sufficient to prove the guilt of the accused beyond reasonable doubt.

3. **ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. —** [T]he factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal." As aptly held in *People v. Obina,* "In criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not."

4. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DRUGS; THE IDENTITY OF THE BUYER AND SELLER, THE OBJECT OF THE SALE AND THE CONSIDERATION, THE DELIVERY OF THE THING SOLD AND THE PAYMENT FOR IT MUST BE SUFFICIENTLY ESTABLISHED.—** Essentially, all the elements

of the crime of illegal sale of drugs have been sufficiently established, *i.e.,* (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for it. What is material is the proof that the transaction or sale actually took place. The delivery of the **illicit** drug to the **poseur-buyer** and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

5. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PRESENT WHEN ACCUSED WAS MINDFULLY IN POSSESSION, WITHOUT LEGAL AUTHORITY, OF A PROHIBITED OR REGULATED DRUG. —** [T]he elements of the crime of illegal possession of dangerous drugs are: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. x x x Having been caught *in flagrante delicto,* there is *prima facie* evidence of *animus possidendi* on accused-appellant's part. As held by this Court in *U.S. v. Bandoc*, the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation.

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. 03400

[1] *Rollo*, pp. 2-17. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia.

entitled *People of the Philippines v. Jacquiline Pambid y Cortez*, which affirmed the February 19, 2008 Decision[2] in Criminal Case Nos. Q-03-121145-46 of the Regional Trial Court (RTC), Branch 82 in Quezon City. The RTC found accused Jacquiline Pambid *y* Cortez (Pambid) guilty of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

In Criminal Case No. Q-03-121145, the charge against Pambid stemmed from the following Information:

> That on or about the 18th day of September 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT FOURTEEN (0.14) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to law.[3]

In Criminal Case No. Q-03-121146, the Information reads:

> That on or about the 18th day of September 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did, then and there, willfully, unlawfully and knowingly have in her/his/their possession and control, ZERO POINT ZERO EIGHT (0.08) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.
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> Contrary to law.[4]

On April 14, 2004, Pambid was arraigned with the assistance of her counsel, and she pleaded not guilty to both charges.[5] Upon the joint motion of counsel for the accused and the trial

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[2] CA *rollo*, pp. 12-19. Penned by Presiding Judge Severino B. De Castro, Jr.

[3] Records, p. 2.

[4] *Id.* at 6.

[5] *Id.* at 46.

prosecutor on June 7, 2004, the pre-trial was terminated and the cases were then set for trial on the merits.[6]

During the trial, the prosecution and defense stipulated on the intended testimonies of prosecution witnesses Police Inspector Bernardino Banac, Jr. (P/Insp. Banac, Jr.), Police Officer 1 Oliver Estrelles (PO1 Estrelles), and Police Officer 2 Edmond Paculdar (PO2 Paculdar), to wit:

(1) Stipulated testimony of P/Insp. Banac, Jr.:

> x x x that he is Forensic Chemist of the Philippine National Police; that his office received a request for laboratory examination marked as Exhibit 'A'; that together with said request was a brown envelope marked as Exhibit 'B' which contained two (2) plastic sachets marked as Exhibits 'B-1' and 'B-2'; that he thereafter conducted the requested laboratory examination and, in connection therewith, he submitted a Chemistry Report marked as Exhibit 'C'; the findings thereon showing the specimen positive for methylamphetamine hydrochloride was marked as Exhibit 'C-1' and the signature of said police officer was marked as Exhibit 'C-2'; that he then issued a Certification marked as Exhibit 'C-3' and thereafter turned over the specimen to the Evidence Custodian and retrieved the same for the trial scheduled today.[7]

(2) Stipulated testimony of PO1 Estrelles:

> x x x that he was the investigator assigned to investigate this case; that in connection therewith, he took the Affidavit of PO2 Michael Collado and PO1 Edmund Paculdar marked as Exhibits 'D' and 'D-1'; that the specimens subject of this case marked as Exhibit 'B-1' and 'B-2' were turned over to him; that he prepared a request for laboratory examination marked as Exhibit 'A' and in connection therewith he received a Chemistry Report marked as Exhibit 'C'; that the buy bust money marked as Exhibit 'E' and 'F' was likewise turned over to him; that he submitted the accused for drug test and in connection therewith he received the Chemistry Report marked as Exhibit 'G'; that

[6] *Id*. at 52.

[7] *Id*. at 66.

> after collating all the documents including the Pre-Operation Report marked as Exhibit 'H', he prepared the letter referral to the Office of the City Prosecutor, Quezon City marked as Exhibits 'I' and 'I-1'.[8]

(3) Stipulated testimony of PO2 Paculdar:

> x x x that said police officer assisted PO2 Michael Collado in arresting the accused; that he saw the evidence subject of these cases only at the police station; that said police officer, together with his companions conducted the operation on September 18, 2003 at 9:20 p.m. along 23 J.P. Laurel St., T.S. Cruz Subdivision, Brgy. San Agustin, Novaliches, Quezon City.[9]

Thereafter, the prosecution presented the testimony of PO2 Michael Collado (PO2 Collado).

On the other hand, the defense presented Pambid, Cristina Parama (Parama), and Julieta San Jose (San Jose) as its witnesses.

The Prosecution's Version of Facts

On September 18, 2003, at around 6 o'clock in the evening, a confidential informant arrived at the Station Anti-Illegal Drugs (SAID), Station 4, Novaliches, Quezon City. The informant reported to the SAID Chief, Chief Superintendent Nilo Wong (C/Supt. Wong), the illegal drug activities of *alias* "Jack" and "Junior Laurel." Accordingly, a buy-bust team was formed composed of C/Supt. Wong, Senior Police Officer Mario Concepcion, PO2 Paculdar, PO2 Noel Magcalayo, PO2 Andy Salonga (PO2 Salonga), PO2 Cesar Collado, PO1 Estrelles, PO1 Bucatcat, and PO2 Collado.[10] Likewise, a Pre-Operation Report was made.

The team proceeded to J.P. Laurel St., T.S. Cruz Subdivision, *Barangay* San Agustin, Novaliches, Quezon City and arrived there at around 9:10 in the evening. PO2 Collado then alighted

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[8] *Id.* at 74.

[9] *Id.* at 95.

[10] TSN, June 22, 2005, pp. 5-6.

from the vehicle and, along with the informant, proceeded to the house of *alias* "Jack," who was later identified as Pambid. They saw Pambid standing at the door of the house. The informant then introduced PO2 Collado to Pambid and told the latter that PO2 Collado needed PhP 200 worth of "*panggamit*." In response, Pambid gave PO2 Collado a plastic sachet containing white crystalline substance. PO2 Collado gave the PhP 200 to Pambid, and after the latter received the money, PO2 Collado executed the pre-arranged signal by scratching his head.[11]

PO2 Collado introduced himself to Pambid as a policeman, recovered another plastic sachet from her left hand, and arrested her. They then brought her to the station. At the station, PO2 Collado turned over the money and the plastic sachets to the investigator, PO1 Estrelles.[12] A request for laboratory examination was then prepared and the plastic sachets were sent to the Philippine National Police (PNP) Crime Laboratory, Central Police District Crime Laboratory Office in Doña Aurora Building, EDSA, Kamuning, Quezon City.[13] Subsequently, P/Insp. Banac, Jr. issued Chemistry Report No. D-1007-03 with the following results:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets containing white crystalline substance having the following markings and recorded net weights:

A (MBC) = 0.14 gram B (MBC) = 0.08 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drug. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. x x x

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

[12] *Id.* at 9-10.

[13] Records, p. 189.

CONCLUSION:

Specimens A and B contain Methylamphetamine Hydrochloride, a dangerous drug. [14] x x x

Version of the Defense

In contrast, Pambid interposed the defense of denial. She testified that on September 18, 2003, at around 5:30 p.m., she was preparing milk for her two-year old child when she was arrested.[15]

She recalled that when she heard a vehicle park outside her house, she opened the door and saw policemen who suddenly entered her house. She asked them why they were entering the house but they did not answer. She knew them to be PO2 Collado, PO1 Estrelles, PO2 Paculdar, C/Supt. Wong, PO2 Salonga and others because they eat in the *carinderia* or foodhouse in their area. They searched her house for about 20 minutes but found nothing. At which point, PO2 Paculdar pulled her out of the house while she was carrying her child and brought her to their vehicle. PO2 Collado asked her if she had any money to which she replied that she had money only for milk and diapers.[16] PO2 Collado took the money amounting to PhP 1,200. He stapled the two PhP 100 bills on a bond paper and pocketed the rest.[17] Afterwards, she was brought to the office of C/Supt. Wong while her child was sent home by PO2 Collado. She was then detained and later presented on inquest.[18]

The testimony of Parama is corroborative of the story of Pambid. Parama stated that on September 18, 2003 at exactly 5:30 p.m. in the afternoon, she was with Pambid, her son and

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[14] *Id.* at 17.

[15] TSN, January 16, 2007, p. 4.

[16] *Id.* at 5-7.

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

[18] *Id.* at 9.

her sister, Baby San Jose, at 23 J.P. Laurel, T.S. Cruz Subdivision, Novaliches, Quezon City. After conversing, Pambid went to her house and prepared milk for her son when policemen in civilian clothes entered the house and insisted to get the *shabu* which Pambid allegedly sells. The policemen then brought Pambid outside whereupon Pambid asked Parama to follow her to the precinct but she was unable to do so.[19]

Likewise, San Jose testified that on September 18, 2003, at about 5:00 p.m. in the afternoon, she was alone at home when she saw several men alight from a vehicle, a Ford Fierra.[20] The men proceeded to the house of her aunt, Flor San Jose, and started to search for something.[21] When they went out of the house, Pambid was already handcuffed.[22] She followed Pambid to the headquarters in Novaliches, Quezon City.

Ruling of the Trial Court

After trial, the RTC, on February 19, 2008, found Pambid guilty of the charges. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> a) Re: Criminal Case No. Q-03-121145, the Court finds accused **JACQUILINE PAMBID *y* CORTEZ guilty** beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165. Accordingly, she is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> b) Re: Criminal Case No. Q-03-121146, the same accused is likewise found **guilty** beyond reasonable doubt of a Violation of Section 11, Article II of the same Act, and accordingly hereby sentences her to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as

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[19] TSN, September 4, 2007, pp. 3-4.

[20] TSN, November 19, 2007, p. 4.

[21] *Id.* at 4-5.

[22] *Id.* at 6.

> Minimum to FOURTEEN (14) YEARS as Maximum and to pay a fine in the amount of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.

SO ORDERED.[23]

On appeal to the CA, Pambid disputed the trial court's decision finding her guilty beyond reasonable doubt of the violations. She argued that the RTC erred in admitting the seized dangerous drugs as evidence, considering that no proper inventory was taken of the seized drugs and that there was a break in the chain of custody of the evidence. Further, she contended that the police officers failed to read her rights to her as mandated by the Constitution.

Ruling of the Appellate Court

On November 27, 2009, the CA affirmed the judgment of the RTC. The dispositive portion of the CA Decision reads:

WHEREFORE, the foregoing considered, the appeal is **DENIED.** The Decision of the RTC dated February 19, 2008 is hereby **AFFIRMED**.

SO ORDERED.[24]

Accused-appellant Pambid timely filed a notice of appeal from the decision of the CA.

The Issues

Accused-appellant assigns the following errors in her Brief:

I.

The trial court gravely erred in convicting the accused-appellant despite the non-compliance with the requirements for the proper custody of seized dangerous drugs as provided under R.A. No. 9165.

II.

The trial court gravely erred in giving full weight and credence to the prosecution's evidence notwithstanding its failure to prove the integrity and identity of the *shabu* allegedly seized.

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[23] CA *rollo*, pp. 18-19.

[24] *Rollo*, p. 17.

III.

The trial court gravely erred in convicting the accused-appellant based solely on PO2 Michael Collado's testimony.

In addition, she assigns the following errors in her Supplemental Brief:

I.

The Honorable Court of Appeals committed a reversible error in convicting the accused-appellant despite non-compliance with the requirements for the proper custody of seized dangerous drugs under R.A. No. 9165.

II.

The Honorable Court of Appeals gravely erred in giving full weight and credence to the prosecution's evidence notwithstanding its failure to prove the integrity of the seized drug.

Our Ruling

The appeal has no merit.

Essentially, accused-appellant pegs almost all of her arguments on the fact that the police officers failed to properly mark, inventory, and photograph the prohibited items allegedly seized from her. She argues that as a result of this failure, there is doubt as to the identity and integrity of the drugs and that there was a break in the chain of custody of the evidence.

Such argument cannot prosper.

The Implementing Rules and Regulations (IRR) of RA 9165 provides:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*****—**The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided*****, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items** x x x. (Emphasis supplied.)

Evidently, the law itself lays down exceptions to its requirements. Thus, non-compliance with the above-mentioned requirements is not fatal. In fact, it has been ruled time and again that non-compliance with Sec. 21 of the IRR does not make the items seized inadmissible.[25] What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."[26]

In the instant case, the chain of custody can be easily established through the following link: (1) PO2 Collado marked the seized sachets subject of the buy-bust with "MBC," his own initials; (2) a request for laboratory examination of the seized items marked "MBC" was signed by C/Supt. Wong;[27] (3) the request and the marked items seized were received by the PNP Crime Laboratory; (4) Chemistry Report No. D-1007-03

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[25] *People v. De Mesa*, G.R. No. 188570, July 6, 2010; *People v. Mariacos*, G.R. No. 188611, June 16, 2010.

[26] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636.

[27] Records, p. 189.

confirmed that the marked items seized from accused-appellant were methylamphetamine hydrochloride;[28] and (5) the marked items were offered in evidence as Exhibits "B-1" and "B-2."[29]

Hence, it is clear that the integrity and the evidentiary value of the seized drugs were preserved. This Court, therefore, finds no reason to overturn the findings of the trial court that the drugs seized from accused-appellant were the same ones presented during trial. Accordingly, it is but logical to conclude that the chain of custody of the illicit drugs seized from accused-appellant remains unbroken, contrary to the assertions of accused-appellant.

Lastly, accused-appellant contends that the trial court erred in convicting her based on the sole testimony of PO2 Collado. We disagree.

Well-settled is the rule that "the testimony of a lone prosecution witness, as long as positive and clear and not a result of improper motive to impute a serious offense against the accused, deserves full faith and credit."[30] It is sufficient to prove the guilt of the accused beyond reasonable doubt.

Here, PO2 Collado was able to clearly and directly narrate the circumstances of the buy-bust operation conducted against accused-appellant which subsequently led to her arrest. Further, no ill motive was proved by the defense on the part of PO2 Collado and the rest of the police officers to falsely impute such a serious crime against her. As such, the presumption of regularity in the performance of official duty must prevail.

What is more, "the factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal."[31] As aptly held in *People v. Obina*, "In criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight

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[28] *Id.* at 191.

[29] *Id.* at 190.

[30] *Garcia v. CA*, G.R. No. 110983, March 8, 1996, 254 SCRA 542, 551.

[31] *RCBC v. Buenaventura*, G.R. No. 176479, October 6, 2010.

and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not."[32] Hence, We see no reason to deviate from the findings of the trial court.

Essentially, all the elements of the crime of illegal sale of drugs have been sufficiently established, *i.e.,* (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for it.[33] What is material is the proof that the transaction or sale actually took place. The delivery of the **illicit** drug to the **poseur-buyer** and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

In this case, the prosecution was able to establish these elements beyond moral certainty. Accused-appellant sold the *shabu* for PhP 200 to PO2 Collado posing as buyer; the said drug was seized and identified as a prohibited drug and subsequently presented in evidence; there was actual exchange of the marked money and contraband; and finally, accused-appellant was fully aware that she was selling and delivering a prohibited drug. This was clearly shown in the testimony of PO2 Collado, *viz*:

Q: What happened when you reported for duty on that date, Mr. Witness?
A: Nothing, sir. At 6:00 p.m. a confidential informant appeared to our station, sir.

Q: What happened when this confidential informant appeared in your office?
A: The confidential informant went to our SAID chief, Chief/ Supt. Nilo Wong, and reported to him that there was an illegal drug activity, sir.

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[32] G.R. No. 186540, April 14, 2010.

[33] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689, 697; *People v. Bongalon*, G.R. No. 125025, January 23, 2002, 374 SCRA 289, 307; *People v. Lacap*, G.R. No. 139114, October 23, 2001, 368 SCRA 124, 143; *People v. Tan*, G.R. No. 133001, December, 14, 2000, 348 SCRA 116, 123; *People v. Zheng Bai Hui*, G.R. No. 127580, August 22, 2000, 338 SCRA 420, 474.

x x x x x x x x x

Q: What did this Wong do after being informed by the confidential informant?
A: We waited to form our team and we waited for 9:00 a.m., sir.

x x x x x x x x x

Q: What is the purpose of this team?
A: To conduct a buy bust operation, sir.

Q: When this team was formed, what happened next?
A: We went to J.P. Laurel St., T.S. Cruz Subd., Brgy. San Agustin, Novaliches, Quezon City, sir.

Q: And what time did you go to that area, Mr. Witness?
A: Around 9:00 p.m., sir.

x x x x x x x x x

Q: What happened when you arrived there, Mr. Witness?
A: When we were already at that place I alighted from the vehicle together with the informant, sir.

Q: What did you do thereafter?
A: We proceeded to the subject house to the place of *alias* "Jack", sir.

Q: What happened when you proceeded to the house of *alias* "Jack"?
A: I saw *alias* "Jack" in front of her door, sir.

x x x x x x x x x

Q: What happened when you saw this accused in front of her door?
A: The confidential informant accompanied me and introduced me to *alias* "Jack", sir.

Q: What happened when you were introduced to *alias* "Jack"?
A: He told "Jack" that I need "*panggamit*" worth ₱200.00, sir.

Q: And what was her reply, if any?
A: Jack asked me if I need more, sir.

Q: What happened?
A: I told her that I only have ₱200.00 so I could only buy that worth, sir.

Q: So, what did she do, if any?
A: She gave me an equivalent of ₱200.00 on a plastic sachet, sir.

Q: What is that plastic sachet?
A: It contained white crystal "*buo-buo*" suspected to be *shabu*, sir.
Q: What did you do after these plastic sachets were handed to you?
A: I gave her the ₱200.00 and she accepted it, sir.

Q: What happened when she accepted this ₱200.00?
A: After she received the ₱200.00, I made the pre-arranged signal, sir.
Q: What was that pre-arranged signal?
A: Scratching my head, sir.

Q: What happened when you scratched your head?
A: I introduced myself as a policeman to *alias* "Jack", sir.

Q: What happened when you introduced yourself as policeman to *alias* "Jack"?
A: I got from her left hand another plastic sachet of suspected *shabu* and I arrested her, sir.

Q: How many plastic sachets were you able to recover from this accused?
A: Two (2) plastic sachets, sir.[34]

Without a doubt, all the elements of the crime of illegal sale of prohibited drugs were duly proved in the instant case. The testimony clearly shows that a sale occurred between accused-appellant, as the seller, and PO2 Collado, as the buyer, for PhP 200 worth of *shabu*. In addition, the said testimony illustrated the seizing of the prohibited drug, and the exchange of the marked money. As a matter of fact, the trial court, in disposing of the case, said:

x x x The Court sees in the case at bar the elements above-mentioned. PO2 Michael Collado, the poseur buyer, identified accused herein as the seller and particularly described the transaction entered into by and between him and her specifically the exchange of the buy bust money and the plastic sachet subject thereof. In fine, accused was identified as the offender, and the dangerous drugs sold by her [were] presented

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[34] TSN, June 22, 2005, pp. 5-9.

by the Court. Indubitable, therefore, is the presence of the elements of the offense enumerated by jurisprudence.[35]

Likewise, the prosecution has established all the elements of the crime of illegal possession of dangerous drugs in the same testimony of PO2 Collado. The elements are: (1) that the accused is in possession of the object identified as a prohibited or regulatory drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[36]

According to the testimony of PO2 Collado, accused-appellant was caught in actual possession of the prohibited drug without showing any proof that she was duly authorized by law to possess it. Having been caught *in flagrante delicto*, there is *prima facie* evidence of *animus possidendi* on accused-appellant's part. As held by this Court in *U.S. v. Bandoc*, the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation.[37] In the case at bar, accused-appellant failed to present any evidence to rebut her *animus possidendi* of the *shabu* taken from her left hand during the buy-bust operation.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03400 finding accused-appellant Jacquiline Pambid *y* Cortez guilty of the crimes charged is *AFFIRMED IN TOTO*.

SO ORDERED.

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

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[35] CA *rollo*, p. 17.

[36] *People v. Del Norte*, G.R. No. 149462, March 29, 2004, 426 SCRA 383, 388.

[37] 23 Phil. 14, 15 (1912).

INDEX

INDEX

ACTIONS

Disposition of cases — Cases are decided on their own unique facts and their respective facts must be strictly examined to ensure that the ruling in one applies to another. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011) p. 384

— Court should decide cases based on the facts and the law. *(Id.)*

ADMINISTRATIVE PROCEEDINGS

Administrative charges — Must be supported by substantial evidence. (Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011) p. 491

(Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

ALIBI

Defense of — Cannot prevail over a credible and positive testimony of witnesses. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official functions through manifest partiality, evident bad faith or gross inexcusable negligence — The elements of the offense are: (a) That the accused are public officers or private persons charged in conspiracy with them: (b) That said public officer committed the prohibited acts during the performance of their official duties or in relation to their public positions; (c) That they caused undue injury to any party, whether the Government or a private party; (d) That such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and (e) That the public officers acted with manifest

partiality, evident bad faith or gross inexcusable negligence. (People *vs*. Balao, G.R. No. 176819, Jan. 26, 2011) p. 563

APPEALS

Appeal from Court of Appeals — Failure to provide legible copies of some material documents required is not fatal where the challenged Court of Appeals' decision clearly summarized the Labor Tribunal's ruling. (Atlanta Industries, Inc. *vs*. Sebolino, G.R. No. 187320, Jan. 26, 2011) p. 678

Factual findings of the Court of Appeals — Not disturbed by the Supreme Court when supported by sufficient evidence; exceptions. (Caong, Jr. *vs*. Regualos, G.R. No. 179428, Jan. 26, 2011) p. 595

(Tinio, Jr. *vs*. NAPOCOR, G.R. No. 160923, Jan. 24, 2011) p. 278

Factual findings of the Court of Tax Appeals — Accorded with the highest respect. (Commissioner of Internal Revenue *vs*. Asian Transmission Corp., G.R. No. 179617, Jan. 19, 2011) p. 186

Factual findings of trial court — Generally binding on appeal; exceptions. (People *vs*. Pambid, G.R. No. 192237, Jan. 26, 2011) p. 719

(People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

(Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

(Dalton *vs*. FGR Realty and Dev't. Corp., G.R. No. 172577, Jan. 19, 2011) p. 93

Form and contents of — Failure to provide legible copies of some material documents required is not fatal where the challenged Court of Appeals' decision clearly summarized the Labor Tribunal's rulings. (Atlanta Industries, Inc. *vs*. Sebolino, G.R. No. 187320, Jan. 26, 2011) p. 678

Petition for review on certiorari under Rule 45 — Limited to reviewing or revising errors of law; exceptions. (University of the Immaculate Conception *vs*. NLRC, G.R. No. 181146, Jan. 26, 2011) p. 605

(Gatus *vs*. Social Security System, G.R. No. 174725, Jan. 26, 2011) p. 550

(Atlas Consolidated Mining Dev't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 159471, Jan. 26, 2011) p. 499

(Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

(Dalton *vs*. FGR Realty and Dev't. Corp., G.R. No. 172577, Jan. 19, 2011) p. 93

Petition for review under Rule 43 — An extension of fifteen (15) days within which to file the petition may be allowed and a further extension may be granted for the most compelling reason but it is limited only to a period of fifteen (15) days. (Brgy. Dasmariñas thru Brgy. Capt. Legaspi *vs*. Creative Play Corner School, G.R. No. 169942, Jan. 24, 2011) p. 285

Points of law, issues, theories, and arguments — Plea for award of greater amounts of damages is not proper if there is no appeal from the decision of the Court of Appeals. (Aquinas School *vs*. Sps. Inton, G.R. No. 184202, Jan. 26, 2011) p. 625

Question of fact — Question of non-compliance with notice and publication requirements of an extrajudicial sale is a factual issue. (Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

ARREST

Warrantless arrest —Requirements before a warrantless arrest can be effected are: (a) an offense has just been committed; and (b) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

CERTIORARI

Grave abuse of discretion as a ground — It must be shown that public respondent exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and this must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (Caong, Jr. *vs*. Regualos, G.R. No. 179428, Jan. 26, 2011) p. 595

— Present in case of upholding a claim that an improperly sworn Certificate of Candidacy is equivalent to possession. (Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

Petition for — A party who adopts an improper remedy subjects his petition to outright dismissal. (Sps. Leynes *vs*. Former Tenth Division of the CA, G.R. No. 154462, Jan. 19, 2011) p. 25

— A remedy of a party desiring to elevate to the appellate court an adverse resolution of the Secretary of Justice. (Brgy. Dasmariñas thru Brgy. Capt. Legaspi *vs*. Creative Play Corner School, G.R. No. 169942, Jan. 24, 2011) p. 285

— Cannot be used as a substitute for a lost appeal. (Sps. Leynes *vs*. Former Tenth Division of the CA, G.R. No. 154462, Jan. 19, 2011) p. 25

— Lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion. (Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

CIVIL SERVICE

Revised Uniform Rules on Administrative Cases in the Civil Service — If the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. (Garcia *vs*. Alejo, A.M. No. P-09-2627, Jan. 26, 2011) p. 482

CLERKS OF COURT

Duties of — An officer-in-charge of the office of the clerk of court bears the same responsibilities and is expected to serve with the same commitment and efficiency as a duly-appointed clerk of court. (Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., A.M. No. P-07-2364, Jan. 25, 2011) p. 367

— Clerks of court are primarily accountable for all funds that are collected for the court. *(Id.)*

Simple neglect of duty — Committed in case of failure to properly supervise and manage the financial transactions in the court. (Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., A.M. No. P-07-2364, Jan. 25, 2011) p. 367

— Defined as the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference; imposable penalty. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation —Its regularity is not affected by the absence of a prior test buy or surveillance. (People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

— Presumption of regular performance of official duties prevails as against defeated presumption of innocence. *(Id.)*

— The "objective" test in a buy-bust operation demands that the details of the purported transaction must be clearly and adequately shown. *(Id.)*

Chain of custody rule/custody and disposition of confiscated drugs — Defined as 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. (People *vs*. Capuno, G.R. No. 185715, Jan. 19, 2011) p. 226

— Its purpose is to establish the identity of the substance exhibited in court as the same substance seized during the buy-bust operation. (People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

— The non-compliance with the requirements under par. 1, Sec. 21, Article II of the Act 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. (People *vs*. Pambid, G.R. No. 192237, Jan. 26, 2011) p. 719

(People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

(People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

(People *vs*. Capuno, G.R. No. 185715, Jan. 19, 2011) p. 226

— The proper procedure is to make a physical inventory and the photograph of the seized items must be taken in the presence of the accused or his counsel, a representative from the media, the Department of Justice, and an elective official. *(Id.)*

Illegal possession of dangerous drugs —It must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (b) such possession is not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the drug. (People *vs*. Pambid, G.R. No. 192237, Jan. 26, 2011) p. 719

(People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

(People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

Illegal sale of prohibited drugs — Prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment therefor. (People *vs*. Pambid, G.R. No. 192237, Jan. 26, 2011) p. 719

(People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

(People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

(People *vs*. Capuno, G.R. No. 185715, Jan. 19, 2011) p. 226

— Punishable by life imprisonment and fine ranging from ₱500,000.00 to ₱10,000,000.00 without eligibility for parole. (People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

— The rule is that as long as the police officer went through the operation as a buyer and his offer was accepted by the accused and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods. *(Id.)*

— What matters are the agreement and acts constituting sale and delivery of prohibited drugs and not the familiarity between buyer and seller or the time and venue of the sale. *(Id.)*

CONSIGNATION

Valid consignation — Giving notice to the person interested in the performance of the obligation is mandatory; effect of failure to comply. (Dalton *vs*. FGR Realty and Dev't. Corp., G.R. No. 172577, Jan. 19, 2011) p. 93

— The requisites of a valid consignation are: (a) a debt due; (b) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown, or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (c) the person interested in the performance of the obligation was given notice before consignation was made; (d) the amount was placed at the disposal of the court; and e) the person interested in the performance of the obligation was given notice after the consignation was made. *(Id.)*

CONSPIRACY

Existence of — Conspiracy can be inferred from and proven by acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. (People *vs*. Dequina, G.R. No. 177570, Jan. 19, 2011) p. 110

Liability of conspirator — The act of one is the act of all. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

CONTRACTS

Elements of — Every contract has the elements of (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and (c) cause of the obligation which is established. (Int'l. Freeport Traders, Inc. *vs*. Danzas Intercontinental, Inc., G.R. No. 181833, Jan. 26, 2011) p. 617

Perfection of — A contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. (Int'l. Freeport Traders, Inc. *vs*. Danzas Intercontinental, Inc., G.R. No. 181833, Jan. 26, 2011) p. 617

Stages of — Contracts undergo three distinct stages: (a) preparation or negotiation; (b) perfection or birth; and (c) consummation. (Int'l. Freeport Traders, Inc. *vs*. Danzas Intercontinental, Inc., G.R. No. 181833, Jan. 26, 2011) p. 617

CORPORATIONS

Intra-corporate controversy — Not present when the root of the controversy is petitioner's dismissal as manager of respondent corporation, a position which is claimed to a corporate office. (Real *vs*. Sangu Phils., Inc. and/or Kiichi Abe, G.R. No. 168757, Jan. 19, 2011) p. 68

COURT PERSONNEL

Cash clerks — Considered accountable officers entrusted with the great responsibility of collecting money belonging to

the funds of the court. (Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., A.M. No. P-07-2364, Jan. 25, 2011) p. 367

Conduct of — Court employees from judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. (Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., A.M. No. P-07-2364, Jan. 25, 2011) p. 367

— Court personnel must adhere to high ethical standards to preserve the court's good name and standing. (OCA *vs*. Ramano, A.M. No. P-90-488, Jan. 25, 2011) p. 361

Dishonesty committed — Restitution of the missing amount does not erase liability. (Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., A.M. No. P-07-2364, Jan. 25, 2011) p. 367

Simple misconduct — Considered a less serious offense, sanctioned with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand Pesos (₱10,000.00) but not exceeding twenty thousand pesos (₱20,000.00). (Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011) p. 491

CUSTODIAL INVESTIGATION

Concept — Custodial investigation refers to any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. (Jesalva *vs*. People, G.R. No. 187725, Jan. 19, 2011) p. 246

— Presupposes that a person is suspected of having committed a crime and that the investigator is trying to elicit information or a confession from him. *(Id.)*

— The rule begins to operate at once, as soon as the investigation ceases to be a general inquiry into an unsolved crime, and direction is aimed upon a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements. *(Id.)*

DAMAGES

Exemplary damages — May be imposed when the crime was committed with one or more aggravating circumstances. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

Moral damages — Must be awarded because they are mandatory in cases of murder and homicide, with need of allegation and proof other than the death of the victim. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

Temperate or moderate damages — Awarded in the absence of evidence for actual funeral and burial expenses. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

— Recoverable 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. (Heirs of Ramon C. Gaite *vs*. The Plaza, Inc., G.R. No. 177685, Jan. 26, 2011) p. 574

DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425, AS AMENDED)

Illegal sale of marijuana — Imposable penalty. (People *vs*. Dequina, G.R. No. 177570, Jan. 19, 2011) p. 110

DECLARATORY RELIEF

Petition for — Distinguished from injunction. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

DENIAL OF THE ACCUSED

Defense of —Cannot prevail over the presumption of regularity in the performance of official duty. (People *vs*. Quiamanlon, G.R. No. 191198, Jan. 26, 2011) p. 695

— Viewed with disfavor for it can be easily concocted. (People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

DONATION

Deed of donation — Dispositions bearing contradictory stipulations are interpreted wholistically, to give effect to the donor's intent. (Villanueva *vs*. Sps. Branoco, G.R. No. 172804, Jan. 24, 2011) p. 298

— Not perfected by registration or tax payment. *(Id.)*

Donation inter vivos — Not negated by the donor's reservation to herself of the beneficial title to the property donated. (Villanueva *vs*. Sps. Branoco, G.R. No. 172804, Jan. 24, 2011) p. 298

— The existence of consideration other than the donor's death corroborates the express irrevocability of inter vivos transfers. *(Id.)*

Post mortem disposition — Nature of. (Villanueva *vs*. Sps. Branoco, G.R. No. 172804, Jan. 24, 2011) p. 298

DUE PROCESS

Essence of — Found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

ELECTION LAWS

Certificate of candidacy — Must be sworn to. (Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

Petition for disqualification — Relates to the declaration of a candidate as ineligible or lacking in quality or accomplishment fit for the position. (Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

Qualifications for and disqualifications from office — Law prescribing qualification for and disqualifications from office are liberally construed in favor of eligibility. (Amora, Jr. *vs*. COMELEC, G.R. No. 192280, Jan. 25, 2011) p. 467

EMINENT DOMAIN

Just compensation — Subsequent classification of the land would not allow owners to recover more than the value of the land at the time of the taking. (Tinio, Jr. *vs*. NAPOCOR, G.R. No. 160923, Jan. 24, 2011) p. 278

— The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner. *(Id.)*

EMPLOYEES

*Apprenticeshi*p — Requiring second apprenticeship after finishing first apprenticeship and becoming regular employees is a violation of the labor laws. (Atlanta Industries, Inc. *vs*. Sebolino, G.R. No. 187320, Jan. 26, 2011) p. 678

EMPLOYEES' COMPENSATION

Compensability — For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of the Amended Rules on Employees' Compensation with the condition set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working condition. (Gatus *vs*. Social Security System, G.R. No. 174725, Jan. 26, 2011) p. 550

Occupational disease and resulting disability or death — To be compensable, all of the following conditions must be satisfied: (a) the employee's work must involve the risks described herein; (b) the disease was contracted as a result of the employee's exposure to the described risks; (c) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (d) there was no notorious negligence on the part of the employee. (Gatus *vs*. Social Security System, G.R. No. 174725, Jan. 26, 2011) p. 550

Occupational diseases — Include cardiovascular diseases when contracted under any of the following conditions: (a) if the heart disease was known to have been present during employment there must be proof than an acute exacerbation was clearly precipitated by the unusual strain by reason of the nature of his work, (b) the strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac injury to constitute causal relationship, or (c) if a person who was apparently asymptomatic before subjecting himself to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. (Gatus *vs*. Social Security System, G.R. No. 174725, Jan. 26, 2011) p. 550

EMPLOYER-EMPLOYEE RELATIONSHIP

Element of control — Supervision and monitoring are sufficient to establish control. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

— The power to transfer workers from one workplace to another is an exercise of control. *(Id.)*

Employer's prerogative — Respected if fair and reasonable. (Caong, Jr. *vs*. Regualos, G.R. No. 179428, Jan. 26, 2011) p. 595

Existence of — A conclusion on the existence thereof in a particular case largely depends on the facts and on the parties' evidence vis-à-vis the clearly defined jurisprudential standards. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011) p. 384

— An individual may be an employee of an insurance agency while concurrently being allowed to sell insurance policies for the same company. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

— Any doubt as to the existence of an employer-employee relationship should be resolved in favor of the employee. *(Id.)*

— Four-fold test to determine the existence of an employer-employee relationship, are (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct, with the "control test" being the most crucial or generally assuming primacy in the overall consideration. (Aquinas School *vs*. Sps. Inton, G.R. No. 184202, Jan. 26, 2011) p. 625

(Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

— Guidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011) p. 384

— Labor laws and jurisprudence apply when there is doubt as to the law to be applied in a case with an allegation of an employer-employee relationship. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

— Not negated by the non-presentation of the management contract. *(Id.)*

— Present in case of relationship between jeepney owners/operators and jeepney drivers under the "boundary system." (Caong, Jr. *vs*. Regualos, G.R. No. 179428, Jan. 26, 2011) p. 595

EMPLOYMENT

Probationary employment — Established when the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify

for regular employment based on reasonable standards made known to him at the time of engagement. (Robinsons Galleria/Robinsons Supermarket Corp. and/or Jess Manuel *vs*. Ranchez, G.R. No. 177937, Jan. 19, 2011) p. 133

— Grounds for termination of employment of probationary employees. *(Id.)*

Regular employment — Established when employees occupied positions requiring tasks usually necessary and desirable in the employer's usual business. (Atlanta Industries, Inc. *vs*. Sebolino, G.R. No. 187320, Jan. 26, 2011) p. 678

EMPLOYMENT, TERMINATION OF

Constructive dismissal —Occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. (University of the Immaculate Conception *vs*. NLRC, G.R. No. 181146, Jan. 26, 2011) p. 605

Illegal dismissal — Illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement or separation pay. (Robinsons Galleria/Robinsons Supermarket Corp. and/or Jess Manuel *vs*. Ranchez, G.R. No. 177937, Jan. 19, 2011) p. 133

(Real *vs*. Sangu Phils., Inc. and/or Kiichi Abe, G.R. No. 168757, Jan. 19, 2011) p. 68

Negligence as a ground — The negligence should not merely be gross, it should also be habitual. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

Valid dismissal — Burden rests on the employer to justify such dismissal. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

(Real *vs*. Sangu Phils., Inc. and/or Kiichi Abe, G.R. No. 168757, Jan. 19, 2011) p. 68

— Due process requirements under the Labor Code are mandatory and may not be supplanted by police investigation or court proceedings. (Robinsons Galleria/ Robinsons Supermarket Corp. and/or Jess Manuel *vs*. Ranchez, G.R. No. 177937, Jan. 19, 2011) p. 133

— Grounds for termination of probationary employees, cited. *(Id.)*

— Must comply with the twin requirements of notice and hearing. (Real *vs*. Sangu Phils., Inc. and/or Kiichi Abe, G.R. No. 168757, Jan. 19, 2011) p. 68

— Requirements for valid dismissal apply when there is an employer-employee relationship. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

Willful disobedience of employer's lawful orders as a ground — Requires the concurrence of two elements: (a) the employee's assailed conduct must have been willful, i.e. characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

EVIDENCE

Circumstantial evidence — Requisites to be sufficient for conviction are: (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. (Jesalva *vs*. People, G.R. No. 187725, Jan. 19, 2011) p. 246

EXCISE TAX

Imposition of — Excise taxes are imposed when two conditions concur: first, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC; and second, that said articles are for domestic sale or consumption, excluding those that are actually exported. (Exxonmobil Petroleum and Chemical Holdings, Inc. – Phil. Branch *vs.* Commissioner of Internal Revenue, G.R. No. 180909, Jan. 19, 2011) p. 199

— Includes petroleum products sold to international carriers and exempt entities or agencies. *(Id.)*

— The party who is not statutorily liable to pay excise taxes is not the proper party to claim for a refund of any taxes erroneously paid. *(Id.)*

EXEMPTING CIRCUMSTANCES

Under the compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury — The force contemplated must be so formidable as to reduce the actor to a mere instrument who acts not only without will but against his will. (People *vs.* Dequina, G.R. No. 177570, Jan. 19, 2011) p. 110

EXPROPRIATION

Expropriation proceedings — Remedy of a party whose motion for intervention in an expropriation case was dismissed by the court. (Phil. Veterans Bank *vs.* Bases Conversion Dev't. Authority, G.R. No. 173085, Jan. 19, 2011) p. 104

— The court has authority to hear and adjudicate conflicting claims over the ownership of the land involved; when not applicable. *(Id.)*

FORCIBLE ENTRY

Action for — As the assessed value of property subject matter of the case is ₱26,940.00 and since more than one year had expired after the dispossession, jurisdiction properly belongs to the Regional Trial Court. (Padre *vs.* Badillo, G.R. No. 165423, Jan. 19, 2011) p. 52

— Must be brought within one year from the date of actual entry to the land. (Sps. Leynes *vs*. Former Tenth Division of the CA, G.R. No. 154462, Jan. 19, 2011) p. 25

FORECLOSURE OF MORTGAGE

Notice of sale — The object of a notice of sale is to inform the public of the nature and conditions of the property to be sold, and of the time, place, and terms of the sale; notices are given for the purpose of securing bidders and preventing a sacrifice sale of the property. (Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

Publication requirement — A mortgagee-bank is required to present proof of publication; it cannot rely on the presumption of regularity in the performance of official duties. (Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

FORUM SHOPPING

Existence of — Not present where the elements of *litis pendentia* are wanting, (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

FRAME-UP

Defense of — Viewed with disfavor for it can be easily concocted. (People *vs*. Dela Rosa, G.R. No. 185166, Jan. 26, 2011) p. 630

INSURANCE

Insurance agent — Agent's earnings are commission arising from his work as an agent. (Tongko *vs*. Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011) p. 384

— When established. *(Id.)*

JUDGES

Administrative charges against a judge — A judge cannot be held liable for an erroneous decision in the absence of

malice or wrongful conduct in rendering it. (Rubin *vs*. Judge Aguirre, Jr., A.M. No.RTJ-11-2267, Jan. 19, 2011) p. 12

— Previous infraction of respondent judge is considered in imposing the proper penalty. (Tobias *vs*. Judge Limsiaco, A.M. No.MTJ-09-1734, Jan. 19, 2011) p. 1

Conduct unbecoming of a judge — Talking to a prospective litigant in his court, recommending a lawyer to the litigant, and preparing a Motion to Withdraw a Counsel constitute conduct unbecoming of a judge. (Tobias *vs*. Judge Limsiaco, A.M. No.MTJ-09-1734, Jan. 19, 2011) p. 1

Ignorance of the law — To be liable, the assailed order, decision, or actuation of the judge in the performance of official duties must not only be erroneous but must be established to have been motivated by bad faith, dishonesty, hatred, or some other like motive. (Rubin *vs*. Judge Aguirre, Jr., A.M. No.RTJ-11-2267, Jan. 19, 2011) p. 12

Impropriety and conduct unbecoming of a judge — Manifested by the judge's act of sending a letter, in his official letterhead, to the judicial administrator of an estate to discuss a matter pending before his own court. (Rubin *vs*. Judge Aguirre, Jr., A.M. No.RTJ-11-2267, Jan. 19, 2011) p. 12

Judicial conduct of — The conduct of a judge must be beyond reproach and reflective of the integrity of his office. (Tobias *vs*. Judge Limsiaco, A.M. No.MTJ-09-1734, Jan. 19, 2011) p. 1

JUDGMENTS

Conviction — Direct evidence of the commission of the crime is not always required for conviction. (Jesalva *vs*. People, G.R. No. 187725, Jan. 19, 2011) p. 246

JUDICIAL NOTICE

Judicial notice of the evidence presented in other proceedings — Generally, courts may not take judicial notice thereof except cases that are closely connected to the matter in controversy. (Metropolitan Bank and Trust Co. *vs*. Sps. Miranda, G.R. No. 187917, Jan. 19, 2011) p. 265

JUSTIFYING CIRCUMSTANCES

Self-defense — Accused must prove the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the attack; and (c) lack of sufficient provocation on the part of the person defending himself. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

— Negated by the flight of accused and the fact that the accused was hiding for eight years. *(Id.)*

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (a) the offender is a private individual; (b) he kidnaps or detains another or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the following circumstances are present: (1) the kidnapping or detention lasts for more than 3 days; or (2) it is committed by simulating public authority; or (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

LABOR ARBITER

Jurisdiction — Generally, the Labor Arbiter has original and exclusive jurisdiction to hear and decide unfair labor practice cases and termination disputes; exceptions. (University of the Immaculate Conception *vs*. NLRC, G.R. No. 181146, Jan. 26, 2011) p. 605

MURDER

Commission of — Civil indemnities awarded to heirs of the victim; cited. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

— Punishable by *reclusion perpetua* to death. *(Id.)*

OBLIGATIONS

Nature and effect of obligations — If a person obliged to do something fails to do it, the same shall be executed at his cost. (Heirs of Ramon C. Gaite *vs*. The Plaza, Inc., G.R. No. 177685, Jan. 26, 2011) p. 574

Principle of quantum meruit — To avoid unjust enrichment, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract. (Heirs of Ramon C. Gaite *vs*. The Plaza, Inc., G.R. No. 177685, Jan. 26, 2011) p. 574

Reciprocal obligations — Covers those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. (Heirs of Ramon C. Gaite *vs*. The Plaza, Inc., G.R. No. 177685, Jan. 26, 2011) p. 574

— The power to rescind is given only to the injured party or to the one who has faithfully fulfilled his obligation. *(Id.)*

— Those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages. *(Id.)*

OMBUDSMAN

Finality and execution of decision — An appeal to the Court of Appeals may be made when the penalty imposed is suspension for more than a month. (Office of the Ombudsman *vs*. CA, G.R. No. 172224, Jan. 26, 2011) p. 541

— Decisions of the Ombudsman are immediately executory even pending appeal in the Court of Appeals. *(Id.)*

OWNERSHIP, MODES OF ACQUIRING

Acquisitive prescription — Requires uninterrupted possession coupled with just title and good faith. (Villanueva *vs*. Sps. Branoco, G.R. No. 172804, Jan. 24, 2011) p. 298

PENALTIES, EXTINGUISHMENT OF

Death of the accused — When accused died before his conviction attained its finality, his criminal as well as civil liabilities are extinguished. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) (R.A. NO. 3591)

Creation of — The PDIC was created as an insurer of deposits in all banks entitled to the benefits of insurance under its Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

Power to investigate — Distinguished from power to examine; Regulatory Issuance (RI) Nos. 2005-02 and 2009-05, cited. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

— The Monetary Board's approval is not required to conduct an investigation of banks; rationale. *(Id.)*

Powers of — Under the PDIC Charter, the PDIC is empowered to conduct examination of banks with prior approval of the Monetary Board. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

Purpose of — The primary purpose of its creation is to act as deposit insurer, as a co-regulator of banks, and as receiver and liquidator of closed banks. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

Scope of investigation — Distinguished from scope of examination. (Phil. Deposit Insurance Corp. *vs*. Phil. Countryside Rural Bank, Inc., G.R. No. 176438, Jan. 24, 2011) p. 313

PRESUMPTIONS

Regular performance of official duty — Prevails over the accused's self-serving and uncorroborated claim of frame-up. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

PROCEDURAL RULES

Application — Rules of procedure are required to be followed except only for the most persuasive of reasons. (Brgy. Dasmariñas thru Brgy. Capt. Legaspi *vs*. Creative Play Corner School, G.R. No. 169942, Jan. 24, 2011) p. 285

How to compute time — Administrative Circular No. 2-99 which requires certain trial court judges and employees to be present on Saturdays primarily to act on petitions for bail and other matters does not affect the manner by which periods set by Rules or the courts are computed under Rule 22, Section 1 of the Rules of Court. (Sps. Leynes *vs*. Former Tenth Division of the CA, G.R. No. 154462, Jan. 19, 2011) p. 25

— In computing any period of time prescribed or allowed by the Rules of Court, or by order of the court, or any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included; if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (Padre *vs*. Badillo, G.R. No. 165423, Jan. 19, 2011) p. 52

(Sps. Leynes *vs*. Former Tenth Division of the CA, G.R. No. 154462, Jan. 19, 2011) p. 25

PROSECUTION OF OFFENSES

Designation of the offense — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances; if there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (People *vs*. Balao, G.R. No. 176819, Jan. 26, 2011) p. 563

Sufficiency of complaint or information — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. (People *vs*. Balao, G.R. No. 176819, Jan. 26, 2011) p. 563

PUBLIC OFFICERS AND EMPLOYEES

Misconduct — Defined as a transgression of an established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011) p. 491

— To constitute an administrative offense, it should be related to or connected with the performance of the official function and duties of a public officer. *(Id.)*

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — Present where there are two armed men accused of stabbing the unarmed and intoxicated victim. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

SEARCH AND SEIZURE

Search incidental to a lawful arrest — In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's search. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

Warrantless search and seizure — The Constitutional proscription against warrantless searches and seizures admits of certain legal and judicial exceptions, as follows: (a) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (b) seizure of evidence in plain

view; (c) search of a moving vehicle; (d) consented warrantless search; (e) customs search; (f) stop and frisk; and (g) exigent and emergency circumstances. (People *vs*. Dequina, G.R. No. 177570, Jan. 19, 2011) p. 110

— Valid when accused was caught in flagrante delicto. *(Id.)*

SHERIFFS

Conduct of — High standard are expected of sheriffs, as they play an important role in the administration of justice. (OCA *vs*. Ramano, A.M. No. P-90-488, Jan. 25, 2011) p. 361

Dereliction of duty — Committed in case of failure to observe the procedure in Section 9, Rule 141 of the Rules of Court. (Garcia *vs*. Alejo, A.M. No. P-09-2627, Jan. 26, 2011) p. 482

Duties of — A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with procedure laid down by Section 9, Rule 141 of the Rules of Court; he is not allowed to receive any voluntary payments from the parties in the course of the performance of their duties. (Garcia *vs*. Alejo, A.M. No. P-09-2627, Jan. 26, 2011) p. 482

— Duty to enforce writs of execution is ministerial and not discretionary. (Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011) p. 491

— Sheriffs must comply with their mandated ministerial duty to execute writs as speedily as possible. (OCA *vs*. Ramano, A.M. No. P-90-488, Jan. 25, 2011) p. 361

Moonlighting of a sheriff — Amounts to malfeasance in office; imposable penalty. (Garcia *vs*. Alejo, A.M. No. P-09-2627, Jan. 26, 2011) p. 482

Simple misconduct — Committed in case of failure to discharge her functions with due care and utmost diligence. (Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011) p. 491

SOCIAL JUSTICE AND HUMAN RIGHTS

State policy — The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. (University of the Immaculate Conception *vs*. NLRC, G.R. No. 181146, Jan. 26, 2011) p. 605

***SUB JUDICE* RULE**

Application — Restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. (Tongko *vs*. The Manufacturers Life Insurance Co. [Phils.], Inc., G.R. No. 167622, Jan. 25, 2011; *Velasco, Jr., J., dissenting opinion*) p. 384

TAX REFUND

Claim for tax refund for unutilized creditable withholding taxes — There is no need for the claimant to prove actual remittance by the withholding agent to the Bureau of Internal Revenue. (Commissioner of Internal Revenue *vs*. Asian Transmission Corp., G.R. No. 179617, Jan. 19, 2011) p. 186

TAXATION

Tax exemptions — Statutes granting tax exemptions are construed *strictissimijuris* against the taxpayer and liberally in favor of the taxing authority. (Atlas Consolidated Mining Dev't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 159471, Jan. 26, 2011) p. 499

VENUE OF ACTIONS

Venue in a personal action filed by a corporation — The proper venue is the place where it had actually been residing or holding its principal office at the time it filed its complaint. (Golden Arches Dev't. Corp. *vs*. St. Francis Square Holdings, Inc., G.R. No. 183843, Jan. 19, 2011) p. 221

VOID MARRIAGES

Declaration of nullity of a void marriage — Does not really dissolve a marriage but simply recognizes that there never was any marriage in the first place. (Ochosa *vs*. Alano, G.R. No. 167459, Jan. 26, 2011) p. 512

— Each case must be judged, not on the basis of a priori assumptions, predilections, or generalizations but according to its own facts. *(Id.)*

Property relations in case of void marriage during the period of cohabitation – Governed either by Article 147 or Article 148 of the Family Code. (Diño *vs*. Diño, G.R. No. 178044, Jan. 19, 2011) p. 175

— Where the marriage was declared void under Article 36 of the Family Code, the liquidation of properties owned in common by the parties shall be governed by the rules on co-ownership. *(Id.)*

Psychological incapacity as a ground — Applies to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. (Yambao *vs*. Rep. of the Phils., G.R. No. 184063, Jan. 24, 2011) p. 346

— Contemplates incapacity or inability to take cognizance of and to assume basic marital obligations and not merely difficulty, refusal, or neglect in the performance of marital obligations or ill will. *(Id.)*

— If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to. (Ochosa *vs*. Alano, G.R. No. 167459, Jan. 26, 2011) p. 512

\— Information coming from persons with personal knowledge of the juridical antecedents may be helpful in the determination of a party's complete personality profile. *(Id.)*

— Must be characterized by: (a) gravity, (b) juridical antecedence, and (c) incurability. *(Id.)*

(Yambao *vs.* Rep. of the Phils., G.R. No. 184063, Jan. 24, 2011) p. 346

— Must be judged according to its own set of facts. *(Id.)*

— Must exist at the time of the celebration of the marriage. *(Id.)*

— Refers to a serious psychological illness afflicting a party even before the celebration of the marriage. *(Id.)*

WILLS

Petition for the allowance of a will — Must show, so far as known to the petitioner: (a) the jurisdictional facts; (b) the names, ages; and residences of the heirs, legatees, and devisees of the testator or decedent; (c) the probable value and character of the property of the estate; (d) the name of the person for whom letters are prayed; and (e) if the will has not been delivered to the court, the name of the person having custody of it. (Palaganas *vs.* Palaganas, G.R. No. 169144, Jan. 26, 2011) p. 535

Probate of a will — A will executed by a foreigner abroad may be probated in the Philippines although it has not been previously probated in its place of execution. (Palaganas *vs.* Palaganas, G.R. No. 169144, Jan. 26, 2011) p. 535

Reprobate of a will — In reprobate, the local court acknowledges as binding the findings of the foreign probate court provided its jurisdiction over the matter can be established. (Palaganas *vs.* Palaganas, G.R. No. 169144, Jan. 26, 2011) p. 535

WITNESSES

Credibility of — Destroyed by conflicting statements or declarations of witnesses. (People *vs.* Capuno, G.R. No. 185715, Jan. 19, 2011) p. 226

— Findings of trial court are entitled to great respect and accorded the highest consideration by the appellate court; exceptions. (People *vs*. Uyboco, G.R. No. 178039, Jan. 19, 2011) p. 143

(People *vs*. Dequina, G.R. No. 177570, Jan. 19, 2011) p. 110

— Stands in the absence of ill-motive to testify against the accused. (People *vs*. De Jesus, G.R. No. 186528, Jan. 26, 2011) p. 657

— Trustworthy and untainted testimony of lone witness is sufficient to convict. (People *vs*. Pambid, G.R. No. 192237, Jan. 26, 2011) p. 719

CITATION

Page

I. LOCAL CASES

Abante *vs*. Lamadrid Bearing & Parts Corp., G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379 436
Abante, Jr. *vs*. Lamadrid Bearing & Parts Corporation, G.R. No. 159890, May 28, 2004, 430 SCRA 368 413
Abelita III *vs*. Doria, G.R. No. 170672, Aug. 14, 2009, 596 SCRA 220, 226-227 172
Aberdeen Court, Inc. *vs*. Agustin, Jr., 495 Phil. 706, 716-717 (2005) 142
Aboitiz Haulers, Inc. *vs*. Dimapatoi, G.R. No. 148619, Sept. 19, 2006, 502 SCRA 271, 288-289 445
Agustin *vs*. Mercado, A.M. No. P-07-2340, July 26, 2007, 528 SCRA 203, 209 23
Alcantara *vs*. The Philippine Commercial and International Bank, G.R. No. 151349, Oct. 20, 2010 90
Aldeguer *vs*. Gemelo, 68 Phil. 421 (1939) 61
Alejandro *vs*. Geraldez, 168 Phil. 404 (1977) 307
Algon Engineering Construction Corporation *vs*. National Labor Relations Commission, 345 Phil. 408 (1997) 412
Almira *vs*. CA, 447 Phil. 467, 482 (2003) 588
Alonso *vs*. Villamor, 16 Phil. 315 (1910) 293
Anti-Graft League of the Philippines, Inc. *vs*. Hon. Ortega, et al., 188 Phil. 55, 58 (1980) 325
Antonio *vs*. Reyes, G.R. No. 155800, Mar. 10, 2006, 484 SCRA 353, 370 357
Apo Fruits Corporation *vs*. CA, G.R. No. 164195, Feb. 6, 2007, 514 SCRA 537, 555 90
Apuyan, Jr. *vs*. Sta. Isabel, A.M. No. P-01-1497, May 28, 2004, 430 SCRA 1, 15 366
Aquino *vs*. Lavadia, 417 Phil. 770, 776 (2001) 364
Areno *vs*. SkyCable PCC-Baguio, G.R. No. 180302, Feb. 5, 2010 464
Associated Anglo-American Tobacco Corporation *vs*. Clave, G.R. No. 50915, Aug. 30, 1990, 189 SCRA 127 416
Atillo *vs*. Bombay, 404 Phil. 179 (2001) 689

Page

Atlas Consolidated Mining and Development
Corporation *vs*. CIR, G.R. Nos. 141104 and 148763,
June 8, 2007, 524 SCRA 73 .... 503, 510
Avancena *vs*. Liwanag, A.M. No. MTJ-01-1383,
July 17, 2003, 406 SCRA 300, 304 23
Bach *vs*. Ongkiko Kalaw Manhit & Acorda Law Offices,
G.R. No. 160334, Sept. 11, 2006, 501 SCRA 419, 426 90
Balanay, Jr. *vs*. Martinez, G.R. No. L-39247,
June 27, 1975, 64 SCRA 452, 461-462 22
Balaqui *vs*. Dongso, 53 Phil. 673 (1929) 308-309
Balindong *vs*. Dacalos, 484 Phil. 574, 579 (2004) 62
Bank of the Philippine Islands *vs*. CA, G.R. No. 142731,
June 8, 2006, 490 SCRA 168 47
Barcelon, Roxas Securities, Inc. (now known as
UBP Securities, Inc.) *vs*. Commissioner of Internal
Revenue, G.R. No. 150764, Aug. 7, 2006,
498 SCRA 126, 135-136 196
Bautista *vs*. Orque, Jr., A.M. No. P-05-2099,
Oct. 31, 2006, 506 SCRA 309, 314 496
Bautista *vs*. Puyat Vinyl Products, Inc.,
416 Phil. 305, 309 (2001) 511
Benjamin *vs*. Amellar Corporation,
G.R. No. 183383, April 5, 2010 465
Bernabe *vs*. Eguia, 458 Phil. 97, 105 (2003) 489
Biyaheros Mart Livelihood Association, Inc. *vs*.
Cabusao, Jr., A.M. No. P-93-811, June 2, 1994,
232 SCRA 707, 712 490
Bondad, Jr. *vs*. People, G.R. No. 173804, Dec. 10, 2008,
573 SCRA 497 240
Bonsanto *vs*. CA, 95 Phil. 481, 487 (1954) 306-309
Buenaventura *vs*. People, G.R. No. 171578,
Aug. 8, 2007, 529 SCRA 500, 513 714
Caballes *vs*. CA, 492 Phil. 410, 420 (2005) 44
Cabrera *vs*. Sandiganbayan, 484 Phil. 350 (2004) 571
California and Hawaiian Sugar Company *vs*.
Pioneer Insurance and Surety Corporation,
399 Phil. 795 (2000) 210

Page

Caltex (Philippines), Inc. *vs.* Agad, G.R. No. 162017,
April 23, 2010 463
Camarote *vs*. Glorioso, A.M. No. P-02-1611,
July 31, 2002, 385 SCRA 533, 537 496
Capili *vs*. National Labor Relations Commission,
337 Phil. 210, 216 (1997) 142
Cariño *vs.* People, G.R. No. 178757, Mar. 13, 2009,
581 SCRA 388, 406 244
Cariño *vs.* Yee Cariño, 403 Phil. 861 (2001) 184
Cebu Portland Cement Company *vs.* Collector of
Internal Revenue, 134 Phil. 735 (1968) 205-206, 216-217
Chuan & Sons, Inc. *vs*. Peralta, A.M. No. RTJ-05-1917
[Formerly OCA I.P.I. No. 04-2006-RTJ], April 16, 2009,
585 SCRA 93, 96 23
Civil Service Commission *vs*. Belagan, G.R. No. 132164,
Oct. 19, 2004, 440 SCRA 578, 599 498
Clavecilla Radio System *vs.* Antillo, 19 SCRA 379 (1967) 224
Coca-Cola Bottlers Phils., Inc. *vs*. Daniel,
499 Phil. 491, 511 (2005) 141
Cohen *vs.* Benguet Commercial Co., Ltd.,
34 Phil. 526 (1916) 224
Commissioner of Internal Revenue *vs.* American Rubber
Company, et al., 124 Phil. 1471 (1966) 216
CA, 358 Phil. 562, 575 (1998) 511
Philippine Long Distance Telephone Company,
G.R. No. 140230, Dec. 15, 2005, 478 SCRA 61 205
S.C. Johnson & Son, Inc., 368 Phil. 388 (1999) 511
Tours Specialists, Inc., 262 Phil. 437 (1990) 213
Concepcion *vs*. Concepcion,
91 Phil. 823, 829 (1952) 307, 309-310
Contex Corporation *vs*. Commissioner of Internal
Revenue, G.R. No. 151135, July 2, 2004, 433 SCRA 577 205
Cosmo Entertainment Management, Inc. *vs.*
La Ville Commercial Corporation,
480 Phil. 75, 583 (2004) 294
Cosmopolitan Funeral Homes, Inc. *vs.* Maalat,
G.R. No. 86693, July 2, 1990, 187 SCRA 108 412

Page

Cuenca *vs*. Atas, G.R. No. 146214, Oct. 5, 2007, 535 SCRA 48, 84-85 275
Cuenco *vs*. CA, 153 Phil. 115, 133 (1973) 540
Dao-ayan *vs*. Department of Agrarian Reform Adjudication Board, G.R. No. 172109, Aug. 29, 2007, 531 SCRA 620, 628 109
Dealco Farms, Inc. *vs*. National Labor Relations Commission (5th Division), G.R. No. 153192, Jan. 30, 2009, 577 SCRA 280, 292-293, 295-296 .... 413, 434, 461
Dedel *vs*. CA, 466 Phil. 226, 232 (2004) 358
Del Rosario *vs*. Ferrer, G.R. No. 187056, Sept. 20, 2010 309-310
Dela Chica *vs*. Sandiganbayan, 462 Phil. 712 (2003) 572
Department of Agrarian Reform *vs*. Cuenca, 482 Phil. 208, 216 (2004) 108
Development Bank of the Philippines *vs*. Traders Royal Bank, G.R. No. 171982, Aug. 18, 2010 561
Dumlao *vs*. COMELEC, 184 Phil. 369 (1980) 478
Easycall Communications Phils., Inc. *vs*. King, G.R. No. 145901, Dec. 15, 2005, 478 SCRA 102, 110 87
Encarnacion *vs*. Amigo, G.R. No. 169793, Sept. 15, 2006, 502 SCRA 172, 179 66
Equitable Banking Corporation *vs*. National Labor Relations Commission, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 371 432
Equitable Banking Corporation *vs*. National Labor Relations Commission, 339 Phil. 541 (1997) 412-413
Eslao *vs*. Commission on Audit, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 738-739 592
Fajardo *vs*. CA, 407 Phil. 241 (2001) 293
Fermin *vs*. COMELEC, G.R. Nos. 179695 and 182369, Dec. 18, 2008, 574 SCRA 782, 796 478
Fortune Cement Corporation *vs*. National Labor Relations Commission, G.R. No. 79762, Jan. 24, 1991, 193 SCRA 258 .... 78, 89
Fortune Guarantee and Insurance Corporation *vs*. CA, 428 Phil. 783, 791 (2002) 45

Page

Fr. Martinez *vs.* CA, 410 Phil. 241 (2001) 293
Fuentes *vs*. CA, G.R. No. 109849, Feb. 26, 1997,
268 SCRA 703, 708-709 705
Fundialan *vs*. Spouses Andres, G.R. No. 166236,
July 29, 2010 297
"G" Holdings, Inc. *vs.* National Mines and
Allied Workers Union Local 103 (NAMAWU),
G.R. No. 160236, Oct. 16, 2009, 604 SCRA 73, 91 275
Gamboa-Mijares *vs.* Judge Limsiaco, Jr.,
458 Phil. 282 (2003) 11
Garcia *vs*. CA, G.R. No. 110983, Mar. 8, 1996,
254 SCRA 542, 551 731
Garcia *vs*. Eastern Telecommunications Philippines, Inc.,
G.R. Nos. 173115 and 173163-164, April 16, 2009,
585 SCRA 450, 468 85
General Milling Corporation *vs.* Casio, G.R. No. 149552,
Mar. 10, 2010 86
Geronca *vs*. Magalona, A.M. No. P-07-2398,
Feb. 13, 2008, 545 SCRA 1 490
Go *vs.* Costelo, Jr., A.M. No. P-08-2450, June 10, 2009,
589 SCRA 54 11
Go *vs*. United Coconut Planters Bank, G.R. No. 156187,
Nov. 11, 2004, 442 SCRA 264 225
Golden Ace Builders *vs*. Talde, G.R. No. 187200,
May 5, 2010 92
Government Service Insurance System *vs.* Florendo,
G.R. No. 48603, Sept. 29, 1989, 178 SCRA 76, 87 331
Government Service Insurance System *vs*.
Labung-Deang, G.R. No. 135644, Sept. 17, 2001,
365 SCRA 341, 350 593
Great Pacific Life Assurance Corporation *vs*.
NLRC, G.R. Nos. 80750-51, July 23, 1990,
187 SCRA 694 .... 409, 423, 439, 441
Guerrero *vs.* Villamor, A.M. No. RTJ-90-483,
Sept. 25, 1998, 296 SCRA 88, 97 21
Gutierrez *vs.* Quitalig, 400 SCRA 391,
448 Phil. 469, 481 (2003) 366, 381

Page

H. L. Carlos Construction, Inc. *vs*. Marina Properties Corporation, G.R. No. 147614, Jan. 29, 2004, 421 SCRA 428, 439 592
Heirs of Antonio F. Bernabe *vs*. CA, G.R. No. 154402, July 21, 2008, 559 SCRA 53, 66 588
Hernandez *vs*. CA, 377 Phil. 919, 930 (1999) 358
Iloilo La Filipina Uygongco Corporation *vs*. CA, G.R. No. 170244, Nov. 28, 2007, 539 SCRA 178, 189 62
In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH, G.R. No. 150274, Aug. 4, 2006, 497 SCRA 626 549
Ingal *vs*. People, G.R. No. 173282, Mar. 4, 2008, 547 SCRA 632, 655 675-676
Insular Life Assurance Co., Ltd. *vs*. National Labor Relations Commission, G.R. No. 84484, Nov. 15, 1989, 179 SCRA 459, 465 402
National Labor Relations Commission, 350 Phil. 918 (1998) 409
NLRC (4th Division), G.R. No. 119930, Mar. 12, 1998, 287 SCRA 476 .... 423, 452
Toyota Bel-Air, Inc., G.R. No. 137884, Mar. 28, 2008, 550 SCRA 70, 89 101
Juaban *vs*. Espina, G.R. No. 170049, Mar. 14, 2008, 548 SCRA 588, 611 275
La Rosa *vs*. Ambassador Hotel, G.R. No. 177059, Mar. 13, 2009, 581 SCRA 340 615
La Union Cement Workers Union *vs*. National Labor Relations Commission, G.R. No. 174621, Jan. 30, 2009, 577 SCRA 456 561
Lapid *vs*. Judge Laurea, 439 Phil. 887, 897 (2002) 287
Laresma *vs*. Abellana, 484 Phil. 766, 779 (2004) 67
Laureta *vs*. Mata, 44 Phil. 668 (1923) 307, 309
Lazaro *vs*. Social Security Commission, G.R. No. 138254, July 30, 2004, 435 SCRA 472, 476-477, 479 Phil. 384 .... 413, 427, 433
Lazarte, Jr. *vs*. Sandiganbayan, G.R. No. 180122, Mar. 13, 2009, 581 SCRA 431 570
Levi Strauss (Phils.), Inc. *vs*. Lim, G.R. No. 162311, Dec. 4, 2008, 573 SCRA 25, 28 297

Page

Liguid *vs.* Camano, Jr., A.M. No. RTJ-99-1509,
Aug. 8, 2002, 387 SCRA 1, 11 498
Lima Land, Inc. *vs.* Cuevas, G.R. No. 169523,
June 16, 2010 463
Lopez *vs.* David, Jr., G.R. No. 152145, Mar. 30, 2004,
426 SCRA 535, 543 66
Lopez *vs.* People, 553 SCRA 619 (2008) 241
Maceda *vs.* Macaraig, Jr., et al., 274 Phil. 1060 (1991) 205
Mactan Cebu International Airport Authority *vs.*
Marcos, 330 Phil. 392 (1996) 511
Madrigal Transport, Inc. *vs.* Lapanday Holdings Corp.,
479 Phil. 768 (2004) 40
Mahawan *vs.* People, G.R. No. 176609, Dec. 18, 2008,
574 SCRA 737, 746 673
Mainland Construction Co., Inc. *vs.* Movilla,
320 Phil. 353, 359-360 (1995) 81
Malillin *vs.* People, G.R. No. 172953, April 30, 2008,
553 SCRA 619, 632 716
Malmis *vs.* Bungabong, A.M. No. P-03-1721,
Sept. 30, 2004, 439 SCRA 538, 541-542 497
Mamangun *vs.* People, G.R. No. 149152,
Feb. 2, 2007, 514 SCRA 44, 53 170
Marcos *vs.* Marcos, 397 Phil. 840, 850 (2000) 357-358, 524, 534
Marcos-Araneta *vs.* CA, G.R. No. 154096,
Aug. 22, 2008, 563 SCRA 41 224
Mariners Polytechnic Colleges Foundation, Inc. *vs.*
Garchitorena, G.R. No. 162253, Aug. 13, 2008,
562 SCRA 80 689
Martinez *vs.* NLRC, 339 Phil. 176, 182 (1997) 601
Maruhom *vs.* Commission on Elections, et al.,
387 Phil. 491 (2000) 208-209
Megascope General Services *vs.* National Labor
Relations Commission, G.R. No. 109224,
June 19, 1997, 274 SCRA 146, 154 449
Melchor *vs.* Commission on Audit, G.R. No. 95398,
Aug. 16, 1991, 200 SCRA 704, 713 592
Mendoza *vs.* Rural Bank of Lucban, G.R. No. 155421,
July 7, 2004, 433 SCRA 756 616

Page

Menor *vs*. Guillermo, A.M. No. P-08-2587,
Dec. 18, 2008, 574 SCRA 395, 400 497
Mercado *vs.* Salcedo, A.M. No. RTJ-03-1781,
Oct. 16, 2009, 604 SCRA 4 24
Mercado-Fehr *vs.* Bruno Fehr, 460 Phil. 445 (2003) 181
Meteoro *vs*. Creative Creatures, Inc., G.R. No. 171275,
July 13, 2009, 592 SCRA 481, 492-493 438
Metropolitan Bank and Trust Company *vs*. Barrientos,
G.R. No. 157028, Jan. 31, 2006, 481 SCRA 311 613
Metropolitan Bank and Trust Company, Inc. *vs.*
Peñafiel, G.R. No. 173976, Feb. 27, 2009,
580 SCRA 352, 357 274
Munsalud *vs*. National Housing Authority,
G.R. No. 167181, Dec. 23, 2008, 575 SCRA 144 64
Mutuc *vs*. CA, G.R. No. 48108, Sept. 26, 1990,
190 SCRA 43 332
National Labor Union *vs*. Dinglasan,
98 Phil. 649, 652-653 (1956) 601
National Power Corporation *vs*. CA, G.R. No. 113194,
Mar. 11, 1996, 254 SCRA 577, 589 284
National Power Corporation *vs*. Ibrahim,
G.R. No. 168732, June 29, 2007, 526 SCRA 149, 167 284
National Power Corporation *vs*. Tiangco,
G.R. No. 170846, Feb. 6, 2007, 514 SCRA 674, 685 283
Navales *vs.* Navales, G.R. No. 167523, June 27, 2008,
556 SCRA 272, 288 358
Ngo Te *vs*. Yu-Te, G.R. No. 161793, Feb. 13, 2009,
579 SCRA 193, 228 .... 356, 525
Nuñez *vs.* Ibay, A.M. No. RTJ-06-1984, June 30, 2009,
591 SCRA 229, 241 10
O'Hara *vs*. COMELEC, G.R. Nos. 148941-42,
Mar. 12, 2002, 379 SCRA 247 479
Office of the Court Administrator *vs*. Besa,
437 Phil. 372, 381 (2002) 383
Dureza-Aldevera, A.M. No. P-01-1499, Sept. 26, 2006,
503 SCRA 18, 45 379
Garcia-Rañoco, A.M. No. P-03-1717, Mar. 6, 2008,
547 SCRA 670, 673-674 380

Page

Montalla, A.M. No. P-06-2269, Dec. 20, 2006,
511 SCRA 328 380
Paredes, A.M. No. P-06-2103, April 17, 2007,
521 SCRA 365, 370 .... 380, 382
Office of the Ombudsman *vs*. CA, et al., G.R. No. 159395,
May 7, 2008, 554 SCRA 75 548
Olympic Mines and Development Corp. *vs*.
Platinum Group Metals Corporation, G.R. No. 178188,
May 8, 2009, 587 SCRA 624, 663 225
Ong *vs*. CA, 369 Phil. 243, 252 (1999) 588
Ortega *vs*. Social Security Commission,
G.R. No. 176150, June 25, 2008, 555 SCRA 353 .... 558, 562
Padilla-Rumbaua *vs*. Rumbaua, G.R. No. 166738,
Aug. 14, 2009, 596 SCRA 157, 179, 181 .... 358-359, 529
Pagsibigan *vs*. People, G.R. No. 163868, June 4, 2009,
588 SCRA 249 103
Paguio *vs*. National Labor Relations Commission,
451 Phil. 243 (2003) 412
Pancho *vs*. Aguirre, Jr., A.M. No. RTJ-09-2196,
April 7, 2010 25
Paseo Realty and Development Corporation *vs*.
CA, 483 Phil. 254, 272-273 (2004) 511
Pearson & George (S.E. Asia), Inc. *vs*.
National Labor Relations Commission,
323 Phil. 166 (1996) 78, 89
People *vs*. Agojo, G.R. No. 181318, April 16, 2009,
585 SCRA 652, 664-665 171
Agulay, G.R. No. 181747, Sept. 26, 2008,
566 SCRA 571, 595 717
Alao, 379 Phil. 402, 412 (2000) 644
Alberto, G.R. No. 179717, Feb. 5, 2010,
611 SCRA 706, 713 705
Arlee, G.R. No. 113518, Jan. 25, 2000,
323 SCRA 201, 214 718
Bacungay, 428 Phil. 798 (2002) 174
Barita, G.R. No. 123541, Feb. 8, 2000,
325 SCRA 22, 38 718
Boller, 429 Phil. 754, 766 (2002) 174

Page

Bongalon, G.R. No. 125025, Jan. 23, 2002,
374 SCRA 289, 307 ... 732
Canton, 442 Phil. 743, 761 (2002) ... 259
Cariño, G.R. No. 131117, June 15, 2004,
432 SCRA 57, 82-83 ... 675
Chang, 382 Phil. 669, 695 (2000) ... 646
Chua Uy, 384 Phil. 70, 85 (2000) ... 170
Coreche, G.R. No. 182528, Aug. 14, 2009,
596 SCRA 350, 357 ... 242
Cortez, G.R. No. 183819, July 23, 2009,
593 SCRA 743, 762 ... 716
Cruz, G.R. No. 185381, Dec. 16, 2009,
608 SCRA 350, 368 ... 718
Cruz, Jr., G.R. No. 168446, Sept. 18, 2009,
600 SCRA 449, 463-464 ... 159
Cubcubin, Jr., 413 Phil. 249, 267 (2001) ... 172
Cueno, 359 Phil. 151, 163 (1998) ... 172
De Guzman, G.R. No. 151205, June 9, 2004,
431 SCRA 516, 522-523 ... 651
De la Cruz, 344 Phil. 653, 660-661 (1997) ... 260
De Mesa, G.R. No. 188570, July 6, 2010 ... 730
Del Monte, G.R. No. 179940, April 23, 2008,
552 SCRA 627, 636 ... 730
Del Mundo, G.R. No. 138929, Oct. 2, 2001,
366 SCRA 471, 418 Phil. 740, 754 ... 129, 718
Del Norte, G.R. No. 149462, Mar. 29, 2004,
426 SCRA 383, 388 ... 735
Del Rosario, 365 Phil. 292, 299-300 (1999) ... 130
Dela Cruz, G.R. No. 175929, Dec. 16, 2008,
574 SCRA 78, 91 ... 670
Dela Cruz, G.R. No. 177222, Oct. 29, 2008,
570 SCRA 273, 283 ... 236
Dela Cruz, G.R. No. 181545, Oct. 8, 2008,
568 SCRA 273 ... 240
Denoman, G.R. No. 171732, Aug. 14, 2009,
596 SCRA 257 ... 240
Doria, G.R. No. 125299, Jan. 22, 1999,
301 SCRA 668, 718 ... 651, 715

Page

Dulay, G.R. No. 150624, Feb. 24, 2004,
423 SCRA 652, 662 718
Dumlao, G.R. No. 181599, Aug. 20, 2008,
562 SCRA 762, 768-770 .... 644, 654, 705
Ejandra, G.R. No. 134203, May 27, 2004,
429 SCRA 364, 381-382 159
Estella, 443 Phil. 669, 683 (2003) 172
Eugenio, G.R. No. 146805, Jan. 16, 2003,
395 SCRA 317, 326 718
Fernandez, G.R. No. 113474, Dec. 13, 1994,
239 SCRA 174 129
Garcia, G.R. No. 173480, Feb. 25, 2009,
580 SCRA 259 240-241
Gonzales, 417 Phil. 342, 357 (2001) 128
Gonzales, G.R. No. 143805, April 11, 2002,
380 SCRA 689, 697 732
Gutierrez, G.R. No. 177777, Dec. 4, 2009,
607 SCRA 377, 384, 390-391 .... 170, 714
Gutierrez, G.R. No. 179213, Sept. 3, 2009,
598 SCRA 92 240
Kimura, 428 SCRA 51 (2004) 241
Lacap, G.R. No. 139114, Oct. 23, 2001,
368 SCRA 124, 143 732
Licayan, 415 Phil. 459, 475 (2001) 131
Lim, G.R. No. 141699, Aug. 7, 2002,
386 SCRA 581, 597-598 715
Lorenzo, G.R. No. 184760, April 23, 2010 .... 240, 649
Lozada, 454 Phil. 241, 250-251 (2003) 172
Lusabio, Jr., G.R. No. 186119, Oct. 27, 2009,
604 SCRA 565, 590 705
Macabare, G.R. No. 179941, Aug. 25, 2009,
597 SCRA 119, 132 264
Magat, G.R. No. 179939, Sept. 29, 2008,
567 SCRA 86, 95 239
Manalo, G.R. No. 173054, Dec. 6, 2006,
510 SCRA 664, 670 261
Manlansing, 428 Phil. 743, 756 (2002) 174

Page

Mariacos, G.R. No. 188611, June 16, 2010 730
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 .... 122, 156
Matignas, 428 Phil. 834, 869-870 (2002) 261
Matyaong, G.R. No. 140206, June 21, 2001,
359 SCRA 392, 399 669
Morales, G.R. No. 148518, April 15, 2004,
427 SCRA 765, 784 168
Nicolas, G.R. No. 170234, Feb. 8, 2007,
515 SCRA 187, 197 646
Noque, G.R. No. 175319, Jan. 15, 2010 648
Nueva, G.R. No. 173248, Nov. 3, 2008,
570 SCRA 449, 463 669
Obina, G.R. No. 186540, April 14, 2010 731-732
Obmiranis, G.R. No. 181492, Dec. 16, 2008,
574 SCRA 140, 149 242
Osianas, G.R. No. 182548, Sept. 30, 2008,
567 SCRA 319, 340 676
Pacapac, G.R. No. 90623, Sept. 7, 1995,
248 SCRA 77, 92 168
Pagaduan, G.R. No. 179029, Aug. 12, 2010 237
Pangilinan, 443 Phil. 198, 239 (2003) 174
Parreno, G.R. No. 144343, July 7, 2004,
433 SCRA 591, 608 675
Partoza, G.R. No. 182418, May 8, 2009, 587 SCRA 809 240
Pringas, G.R. No. 175928, Aug. 31, 2007,
531 SCRA 828, 846 714
Requiz, 376 Phil. 750, 759-760 (1999) 646
Robles, G.R. No. 177220, April 24, 2009,
586 SCRA 647 240
Rodrigo, G.R. No. 176159, Sept. 11, 2008,
564 SCRA 584, 596 653
Rosialda, G.R. No. 188330, Aug. 25, 2010 .... 650, 653
Salinas, G.R. No. 107192, Nov. 18, 1993,
228 SCRA 45, 50 646
Sanchez, G.R. No. 175832, Oct. 15, 2008,
569 SCRA 194, 207 .... 236, 241
Sandiganbayan, G.R. No. 156394, Jan. 21, 2005,
449 SCRA 205, 216 44

Page

Satonero, G.R. No. 186233, Oct. 2, 2009,
602 SCRA 769, 782 676-677
Sembrano, G.R. No. 185848, Aug. 16, 2010 .... 644, 648, 655
Silongan, 449 Phil. 478, 497 (2003) 167
Soberano, G.R. No. 116234, Nov. 6, 1997,
281 SCRA 438, 446 159
Soriano, G.R. No. 173795, April 3, 2007,
520 SCRA 458, 468 653
Tamayo, G.R. No. 187070, Feb. 24, 2010 647
Tan, G.R. No. 133001, Dec. 14, 2000,
348 SCRA 116, 123 732
Tan, G.R. No. 177566, Mar. 26, 2008,
549 SCRA 489, 498 159
Tangliben, G.R. No. 63630, April 6, 1990,
184 SCRA 220, 227 124
Tee, 443 Phil. 521, 551 (2003) 648
Tubongbanua, G.R. No. 171271, Aug. 31, 2006,
500 SCRA 727, 742-743 677
Valdez, 363 Phil. 481, 494 (1999) 132
Ventura, G.R. No. 184957, Oct. 27, 2009,
604 SCRA 543, 562 717
Zheng Bai Hui, G.R. No. 127580, Aug. 22, 2000,
338 SCRA 420, 474, 393 Phil. 68, 133 .... 647, 732
Pepsi Cola Products Philippines, Inc. *vs.* Santos,
G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252 91
Perez *vs.* People, 515 Phil. 195, 203-204 (2006) 653
PEZA *vs.* Carantes, G.R. No. 181274, June 23, 2010 329
Philippine Acetylene Co., Inc. *vs.* Commissioner
of Internal Revenue, 127 Phil. 461 (1967) 205, 216-217
Philippine Fuji Xerox Corporation *vs.* National
Labor Relations Commission (First Division),
G.R. No. 111501, Mar. 5, 1996, 254 SCRA 294 416
Philippine Islands Corporation for Tourism
Development, Inc. *vs.* Victorias Milling Company, Inc.,
G.R. No. 167674, June 17, 2008, 554 SCRA 561, 569 328
Philippine Savings Bank *vs.* Spouses Dionisio
Geronimo and Caridad Geronimo, G.R. No. 170241,
April 19, 2010 .... 272-273, 277

Page

Philippine School of Business Administration *vs.* Leano, 212 Phil. 716 (1984) 78, 89
Philippine Veterans Bank *vs*. CA, 501 Phil. 24, 34 (2005) 109
Pilipiña *vs.* Roxas, A.M. No. P-08-2423, Mar. 6, 2008, 547 SCRA 676, 682 380
PNB *vs*. Nepomuceno Productions, Inc., 442 Phil. 655, 665 (2002) 277
Polystyrene Manufacturing Company, Inc. *vs.* Privatization and Management Office, G.R. No. 171336, Oct. 4, 2007, 534 SCRA 640, 651 54
Provincial Government of Rizal *vs*. Caro de Araullo, Aug. 16, 1933, 58 Phil. 308, 316 (1993) 284
Public Estates Authority *vs.* Yujuico, 404 Phil. 91 (2001) 293
Puig *vs*. Peñaflorida, 122 Phil. 665, 671-672 (1965) 307, 309-310
Purefoods Corporation (now San Miguel Purefoods Company, Inc.) *vs.* National Labor Relations Commission, G.R. No. 172241, Nov. 20, 2008, 571 SCRA 406 451
Que *vs*. Atty. Revilla, Jr., A.C. No. 7054, Dec. 4, 2009, 607 SCRA 1, 17 22
Ramos *vs.* People of the Philippines, G.R. No. 171565, July 13, 2010 296
Ramos *vs*. Sarao, 491 Phil. 288 (2005) 102
RCBC *vs.* Buenaventura, G.R. No. 176479, Oct. 6, 2010 731
Re: Affidavit of Frankie N. Calabines, 518 SCRA 268 (2007) 23
Re: Final Report on the Financial Audit Conducted at the Municipal Trial Court of Midsayap, North Cotabato, A.M. No. 05-8-233-MTC, Jan. 31, 2006, 481 SCRA 12, 16 382
Re: Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 494 379
Re: Report on the Financial Audit conducted in the MTCC-OCC, Angeles City, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 482 382

Page

Re: Report on the Judicial and Financial
Audit of RTC-Br. 4, Panabao, Davao Del Norte,
351 Phil. 1, 21 (1998) 379
Report on Anomalies of JDF Collections in MTCC,
Angeles City, 326 Phil. 704, 708 (1996) 382
Report on the Status of the Financial Audit Conducted
in the RTC, Tarlac City, A.M. No. P-06-2124,
Dec. 19, 2006, 511 SCRA 191,198 .... 379, 382
Republic *vs.* CA, 359 Phil. 530, 640 (1998) 592
CA, et al., 335 Phil. 664 (1997) 521
Sandiganbayan, et al., 461 Phil. 598, 614 (2003) 332
Reyes *vs.* CA, No. 52043, Aug. 31, 1981,
107 SCRA 126, 129 272
Pablico, A.M. No. P-06-2109, Nov. 27, 2006,
508 SCRA 146, 156 380
Regional Trial Court of Makati, Br. 142,
G.R. No. 165744, Aug. 11, 2008,
561 SCRA 593, 609-612 81
Riesenbeck *vs.* CA, G.R. No. 90359, June 9, 1992,
209 SCRA 656 100
Rimbunan Hijau Group of Companies *vs.* Oriental Wood
Processing Corporation, 507 Phil. 631, 648-649 (2005) 86
Rizal Commercial Banking Corp. *vs*. Quilantang,
413 Phil. 13, 22 (2001) 489
Romero *vs.* Estrada, G.R. No. 174105, April 2, 2009,
583 SCRA 396, 403 466
Rosauro *vs*. Kallos, A.M. No. RTJ-03-1796,
Feb. 10, 2006, 482 SCRA 149, 162 24
Salonga *vs*. CA, 336 Phil. 514, 528 (1997) 332
Saludo, Jr. *vs.* American Express International, Inc.,
G.R. No. 159507, April 19, 2006, 487 SCRA 462, 476 225
Sambaan *vs*. Villanueva, 71 Phil. 303 (1941) 309
Sameer Overseas Placement Agency, Inc. *vs*.
Mildred R. Santos, G.R. No. 152579, Aug. 4, 2009,
595 SCRA 67, 76-77 327
San Miguel Corp. *vs*. NLRC, 325 Phil. 401 (1996) 614
San Miguel Corporation *vs*. National Labor
Relations Commission, G.R. Nos. 146121-22,
April 16, 2008, 551 SCRA 410, 422 602

Page

Santos *vs*. CA, 310 Phil. 21, 39 (1995) 521
Santos *vs*. CA, G.R. No. 112019, Jan. 4, 1995,
240 SCRA 20 357-359
Sempio *vs*. CA, 331 Phil. 912, 925 (1996) 272
Senarlo *vs*. Paderanga, A.M. No. RTJ-06-2025,
April 5, 2010, 617 SCRA 247, 256 498
Siemens *vs*. Domingo, G.R. No. 150488,
July 28, 2008, 560 SCRA 86, 100 141
Siguenza *vs*. CA, 222 Phil. 94 (1985) 293
Silkair (Singapore) Pte, Ltd. *vs*. Commissioner
of Internal Revenue, G.R. No. 173594, Feb. 6, 2008,
544 SCRA 100, 112 .... 216, 218
Silkair (Singapore) Pte, Ltd. *vs*. Commissioner
of Internal Revenue, G.R. Nos. 171383 and 172379,
Nov. 14, 2008, 571 SCRA 141, 1534-154 217-219
So *vs*. Valera, G.R. No. 150677, June 5, 2009,
588 SCRA 319, 334 357
Social Security Commission *vs*. Alba, G.R. No. 165482,
July 23, 2008, 559 SCRA 477, 488 627
CA, 240 Phil. 364 (1987) 412
CA, G.R. No.L-46058, Dec. 14, 1987,
156 SCRA 383, 388-389 429
Soco *vs*. Militante, et al., 208 Phil. 151 (1983) 102
Solvic Industrial Corporation *vs*. NLRC,
357 Phil. 430, 438 (1998) 601
Somoso *vs*. CA, G.R. No. 78050, Oct. 23, 1989,
178 SCRA 654, 663 90
South Davao Development Company, Inc. *vs*.
Gamo, G.R. No. 171814, May 8, 2009,
587 SCRA 524, 534 .... 413, 436
Spouses Pulido *vs*. CA, 321 Phil. 1064, 1069 (1995) 272-273
Spouses Rosario *vs*. CA, 369 Phil. 729, 738 (1999) 511
Spouses Sta. Maria *vs*. CA, 349 Phil. 275, 282-283 (1998) 511
Spouses Velarde *vs*. CA, 413 Phil. 360, 373 (2001) 588
St. Luke's Medical Center, Incorporated *vs*. Fadrigo,
G.R. No. 185933, Nov. 25, 2009, 605 SCRA 728, 736 462
St. Michael's Institute *vs*. Santos,
422 Phil. 723, 732-733 (2001) 603

Page

Suazo *vs.* Suazo, G.R. No. 164493, Mar. 12, 2010 529
Sugue *vs.* Triumph International (Phils.), Inc.,
G.R. No. 164804, Jan. 30, 2009, 577 SCRA 323 615
Sullon *vs.* People, G.R. No. 139369, June 27, 2005,
461 SCRA 248, 255 674
Suntay *vs.* Cojuangco-Suntay, 360 Phil. 932 (1998) 185
Swedish Match, AB *vs.* CA, 483 Phil. 735, 750 (2004) 623
Tabang *vs.* National Labor Relations Commission,
334 Phil. 424, 430 (1997) 76, 78
Tabas *vs.* California Manufacturing Company, Inc.,
G.R. No. 80680, Jan. 26, 1989, 169 SCRA 497 416
Tan *vs.* Bausch and Lomb, Inc., G.R. No. 148420,
Dec. 15, 2005, 478 SCRA 115, 120-121 45
Tanenglian *vs.* Lorenzo, G.R. No. 173415,
Mar. 28, 2008, 550 SCRA 348 45
Tapuz *vs.* Del Rosario, G.R. No. 182484,
June 17, 2008, 554 SCRA 768, 782 328
Tegimenta Chemical Phils. *vs.* Buensalida,
G.R. No. 176466, June 17, 2008, 554 SCRA 670, 679 328
Television and Production Exponents, Inc. *vs.*
Servaña, G.R. No. 167648, Jan. 28, 2008,
542 SCRA 578, 588 453
Ting *vs.* Velez-Ting, G.R. No. 166562, Mar. 31, 2009,
582 SCRA 694, 708 357-358
Tongko *vs.* The Manufacturers Life Insurance Co.
(Phils.), Inc., et al., G.R. No. 167622 411
Toribio *vs.* Bidin, G.R. No. 57821, Jan. 17, 1985,
134 SCRA 162 293
Toring *vs.* Toring, G.R. No. 165321, Aug. 3, 2010 524
Toshiba Information Equipment (Phils.), Inc. *vs.*
Commissioner of Internal Revenue, G.R. No. 157594,
Mar. 9, 2010 196
Traders Royal Bank *vs.* National Labor Relations
Commission, G.R. No. 127864, Dec. 22, 1999,
321 SCRA 467 .... 427, 438
U.S. *vs.* Bandoc, 23 Phil. 14, 15 (1912) 735
Umil *vs.* Ramos, G.R. No. 81567, Oct. 3, 1991,
202 SCRA 251, 261 172

Page

Universal Staffing Services, Inc. *vs*.
National Labor Relations Commission,
G.R. No. 177576, July 21, 2008, 559 SCRA 221, 231 629
Valdellon *vs*. Tengco, 225 Phil. 279 (1986) 102
Valdes *vs.* RTC, Branch 102, Quezon City,
328 Phil. 1289 (1996) 180
Valeroso *vs.* CA, G.R. No. 164815, Sept. 3, 2009,
598 SCRA 41, 55-56 172
Vda. de Abellera *vs*. Dalisay, 335 Phil. 527 (1997) 365
Villamor *vs.* Hon. Judge Bernardo Ll. Salas, et al.,
203 SCRA 540 (1991) 21
Villena *vs*. Payoyo, G.R. No. 163021, April 27, 2007,
522 SCRA 592, 597 64
XYST Corporation *vs*. DMC Urban Properties
Development, Inc., G.R. No. 171968, July 31, 2009,
594 SCRA 598, 604-605 624
Young Auto Supply *vs.* CA, G.R. No. 104175,
June 25, 1993, 223 SCRA 670, 674 224
Yu-Asensi *vs.* Villanueva, A.M. No. MTJ-00-1245,
Jan. 19, 2000, 322 SCRA 255, 266 23
Zarraga *vs*. People, G.R. No. 162064,
Mar. 14, 2006, 484 SCRA 639 244

II. FOREIGN CASES

Lash's Products *vs*. United States, 278 U.S. 175 (1928) 216
Marbury *vs*. Madison, 5 US 137 (1803) 407

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. II, Sec. 8 460
Art. III, Sec. 2 128
Sec. 3 (2) 128
Art. XIII, Sec. 3 .... 460, 614

Page

B. STATUTES

Act
Act No. 3135 269
Batas Pambansa
B.P. Blg. 22 155
B.P. Blg. 129 (Judiciary Reorganization Act of 1990) 58
Sec. 33 (2) 65
Canons of Judicial Ethics
Canon 3 24
Civil Code, New
Art. 496 185
Art. 555 66
Art. 734 307
Art. 816 539
Art. 838 540
Art. 863 308
Arts. 1117, 1127, 1129 311
Art. 1137 312
Art. 1144 58
Art. 1167 582,593
Art. 1170 .... 582, 592
Art. 1191 587-588
Arts. 1257-1258 101
Arts. 1458-1637 413
Arts. 1700-1702 .... 428, 461
Arts. 1713-1720 413
Arts. 1868, 1887 401
Art. 2180 627
Art. 2224 .... 593, 676
Art. 2230 676
Code of Conduct for Court Personnel
Canon1, Sec. 4 489
Code of Judicial Conduct
Canon 2 .... 20, 23, 25
Sec. 1 8-9
Canon 3 25
Sec. 2 8-9
Canon 4, Sec. 1 8-9

Page

Corporation Code
Sec. 25 85
Election Code
Sec. 73 473
Family Code
Art. 36 .... 185, 349, 356, 358, 521
Art. 40 184
Art. 45 184-185
Art. 50 .... 179, 184
Art. 51 179
Art. 68 .... 179, 352, 534
Art. 71 534
Arts. 88, 105 185
Art. 147 .... 180-182, 185
Art. 148 .... 180, 182, 185
Arts. 220-221, 225 534
Insurance Code
Secs. 300-301, 306 401
Labor Code
Art. 4 461
Art. 61 .... 683, 685
Art. 62 685
Art. 217 .... 89, 613
Art. 262 613
Art. 277 (b) 140, 463, 693
Art. 279 .... 141, 693
Art. 280 451
Art. 281 139
Art. 282 689
pars. (a)-(b) 459, 461
Art. 283 .... 140, 689
Local Government Code
Sec. 40 477
National Internal Revenue Code (Tax Code)
Sec. 76 198
Sec. 78 193
Sec. 100 501
Sec. 106 506

Page

Sec. 129 .... 211, 214, 219
Sec. 130 .... 211, 214
Sec. 130 (A) (2) 203
Sec. 135 212
Sec. 135 (a) 203, 206
Sec. 204 (C) 203-205
Sec. 229 190
Sec. 246 217
Omnibus Election Code
Secs. 73-74 480
Penal Code, Revised
Art. 63 132
Art. 89, par. 1 .... 155, 677
Art. 248 674-675
Art. 249 257
Art. 267 158
Presidential Decree
P.D. No. 626, as amended 554, 556
P.D. No. 902-A 84
P.D. No. 938 280
P.D. No. 1079 269
P.D. No. 1096 (National Building Code), Secs. 301-302 576
Sec. 307 586
Republic Act
R.A. No. 545 (Architectural Law of the Philippines) 581
R.A. No. 1125, Sec. 8 506
R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) 493
Sec. 3 (e) 565, 570, 572
Sec. 3 (f) 362
R.A. No. 3591, Sec. 8 335
Sec. 9 (b-1), as amended 319, 321
R.A. No. 6395, as amended 280
R.A. No. 6425 (Dangerous Drugs Act of 1972),
Sec. 4 .... 123, 131-132
Sec. 21, pars. (e-l), (f), (m), (o) 113
R.A. No. 6657 109
R.A. No. 6713 493
R.A. No. 6770 (Ombudsman Act of 1989) 545

Page

R.A. No. 7659 .... 131, 675
R.A. No. 7691 66
R.A. No. 8424, Sec. 129, as amended 212
R.A. No. 8799 (The Securities Regulation Code),
Sec. 5.2 .... 81, 90
R.A. No. 9165 (Comprehensive Dangerous Drugs
Act of 2002), Sec. 5 .... 230, 236, 244, 637, 641
Sec. 11 .... 637, 641, 648, 655, 698
Sec. 21 644
par. 1 .... 237, 240, 648
R.A. No. 9346 655
R.A. No. 9576, Sec. 1 338
Revised Rule on Summary Procedure
Rule 70, Sec. 6 47
Revised Rules of Evidence
Rule 129, Sec. 3 274
Rules of Court, Revised
Rule 1, Sec. 6 293
Rule 4, Sec. 2 .... 59, 222, 224-225
Rule 13, Sec. 3 63
Rule 22, Sec. 1 .... 47-48, 63
Rule 39, Sec. 6 58
Rule 40 62
Rule 42 40
Sec. 2 (d) 690
Rule 43, Sec. 4 .... 292, 295
Rule 45 .... 45, 94, 103, 188, 279
Sec. 4 .... 686, 689
Rule 46, Sec. 3 44
Rule 64 470
Rule 65 .... 30, 40, 44-45, 138, 543
Sec. 1 476
Rule 70, Sec. 1 49
Sec. 21 35
Rule 75, Sec. 1 540
Rule 76, Sec. 2 538
Rule 77 540
Rule 110, Secs. 6, 8 571

Page

Rule 113, Sec. 5 128
Sec. 5 (b) 170
Rule 126, Sec. 12 128
Sec. 13 172
Rule 140 498
Sec. 8 11
Sec. 11 11
Sec. 11 (c) 24
Rule 141, Sec. 9 .... 488, 490
Sec. 10 (1)(2) 487
Rules on Civil Procedure, 1997
Rule 16, Sec. 6 209
Rule 45 .... 177, 247, 271, 500, 576
Rule 63, Sec. 1 329
Rule 67, Sec. 9 107
Rule 73, Secs. 1-2 539
Rules on Criminal Procedure, 1985
Rule 113, Sec. 5 172

C. OTHERS

Implementing Rules and Regulations of the Labor Code
Book II, Rule VI, Sec. 18 .... 683, 694
Omnibus Rules Implementing the Labor Code
Book VI, Rule I, Sec. 6 (c) 140
Sec. 6 (d) 142
Revised Uniform Rules on Administrative Cases in the Civil Service
Rule IV, Sec. 47 549
Sec. 52 (A) (3) 366
Sec. 52 (B) (1) 380
Sec. 55 490

Page

D. BOOKS
(Local)

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(2004), p. 144 478
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and Cases, Volume II, 6th Edition (2007), pp. 46-49 81
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