PHILIPPINE REPORTS

VOL. 658

FEBRUARY 14, 2011 TO FEBRUARY 16, 2011

VOLUME 658

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 14, 2011 TO FEBRUARY 16, 2011

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 171165. February 14, 2011]

CAROLINA HERNANDEZ-NIEVERA, DEMETRIO P. HERNANDEZ, JR., and MARGARITA H. MALVAR, *petitioners, vs.* **WILFREDO HERNANDEZ, HOME INSURANCE AND GUARANTY CORPORATION, PROJECT MOVERS REALTY AND DEVELOPMENT CORPORATION, MARIO P. VILLAMOR and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CLAIM OF FORGERY IN A NOTARIZED DEED MUST BE SUBSTANTIATED SINCE THE EXECUTION THEREOF ENJOYS THE PRESUMPTION OF REGULARITY.— Firmly settled is the jurisprudential rule that forgery cannot be presumed from a mere allegation but rather must be proved by clear, positive and convincing evidence by the party alleging the same. The burden to prove the allegation of forgery in this case has not been conclusively discharged by petitioners because *first,* nothing in the records supports the allegation except only perhaps Demetrio's explicit self-serving disavowal of his signature in open court. *Second,* while in fact Demetrio at the trial of the case had committed to have the subject signature examined by an expert, nevertheless, the trial had terminated without the results of the examination being submitted in evidence. *Third,* the claim of forgery,

unsubstantiated as it is, becomes even more unremarkable in light of the fact that the DAC involved in this case is a notarized deed guaranteed by public attestation in accordance with law, such that the execution thereof enjoys the legal presumption of regularity in the absence of compelling proof to the contrary.

2. ID.; ID.; CONSTRUCTION; WHERE THE SPECIAL POWER OF ATTORNEY TO SELL NECESSARILY INCLUDES THE AUTHORITY TO EXTINGUISH AN OBLIGATION.— The powers conferred on Demetrio were exclusive only to selling and mortgaging the properties. Between these two specific powers, the power to sell is quite controversial because it is the sale transaction which bears close resemblance to the deal contemplated in the DAC. In fact, part of the testimony of Atty. Danilo Javier, counsel for respondent HIGC and head of its legal department at the time, is that in the execution of the DAC, respondents had relied on Demetrio's special power of attorney and also on his supposed agreement to be paid in kind, *i.e.*, in shares of stock, as consideration for the assignment and conveyance of the subject properties to the Asset Pool. What petitioners miss, however, is that the power conferred on Demetrio to sell "for such price or amount" is broad enough to cover the exchange contemplated in the DAC between the properties and the corresponding corporate shares in PMRDC, with the latter replacing the cash equivalent of the option money initially agreed to be paid by PMRDC under the MOA. Suffice it to say that "price" is understood to mean "the cost at which something is obtained, or something which one ordinarily accepts voluntarily in exchange for something else, or the consideration given for the purchase of a thing." Thus, it becomes clear that Demetrio's special power of attorney to sell is sufficient to enable him to make a binding commitment under the DAC in behalf of Carolina and Margarita. In particular, it does include the authority to extinguish PMRDC's obligation under the MOA to deliver option money and agree to a more flexible term by agreeing instead to receive shares of stock in lieu thereof and in consideration of the assignment and conveyance of the properties to the Asset Pool. Indeed, the terms of his special power of attorney allow much leeway to accommodate not only the terms of the MOA but also those of the subsequent agreement in the DAC which, in this case, necessarily and consequently has resulted in a novation of PMRDC's integral obligations.

3. POLITICAL LAW; ADMINISTRATIVE CODE; IT IS THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL WHICH HAS THE AUTHORITY TO REPRESENT LAND BANK OF THE PHILIPPINES IN ANY PROCEEDING.— Section 10, Book IV, Title III, Chapter 3 of the Revised Administrative Code of 1987 has designated the OGCC to act as the principal law office of government-owned or controlled corporations (GOCCs) in connection with any judicial or quasi-judicial proceeding. Yet between the two respondents GOCCs in this case – LBP and HIGC – it is only the latter for which the OGCC has entered its appearance. Nowhere in the records is it shown that the OGCC has ever entered its appearance in this case as principal legal counsel of respondent LBP, or that at the very least it has given express conformity to the LBP legal department's representation. In *Land Bank of the Philippines v. Martinez,* citing *Land Bank of the Philippines v. Panlilio-Luciano,* we explained that the legal department of LBP is not expressly authorized by its charter to appear in behalf of the corporation in any proceeding as the mandate of the law is explicit enough to place the said department under the OGCC's power of control and supervision.

APPEARANCES OF COUNSEL

Ray Anthony F. Fajarito for petitioners.

Legal Services Group (LBP) for Land Bank of the Philippines.

The Government Corporate Counsel for HGC and W. Hernandez.

Dennis M. Guerrero for PMRDC and Mario Villamor.

D E C I S I O N

PERALTA, *J.*:

This Rule 45 petition for review assails the October 19, 2005 Decision[1] of the Court of Appeals in CA-G.R. CV No. 83852,[2]

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[1] Penned by Associate Justice Juan Q. Enriquez, with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring; *rollo*, pp. 26-36.

[2] The case was entitled, *Carolina Hernandez-Nievera, Demetrio P. Hernandez, Jr. and Margarita H. Malvar v. Wilfredo F. Hernandez, Home*

as well as the January 11, 2006 Resolution[3] in the same case which denied reconsideration. The said decision had reversed and set aside the August 30, 2004 judgment[4] rendered by the Regional Trial Court (RTC) of San Pablo City, Laguna, Branch 32 in Civil Case No. SP-5742(2000) – one for rescission of a memorandum of agreement and declaration of nullity of a deed of assignment and conveyance, with prayer for preliminary injunction and damages.

The facts follow.

Project Movers Realty & Development Corporation (PMRDC), one of the respondents herein, is a duly organized domestic corporation engaged in real estate development. Sometime in 1995, it entered through its president, respondent Mario Villamor (Villamor), into various agreements with co-respondents Home Insurance & Guaranty Corporation (HIGC)[5] and Land Bank of the Philippines (LBP), in connection with the construction of the Isabel Homes housing project in Batangas and of the Monumento Plaza commercial and recreation complex in Caloocan City. In its Asset Pool Formation Agreement, PMRDC conveyed to HIGC the constituent assets of the two projects,[6] whereas LBP agreed to act as trustee of the resulting Asset Pool[7] for a consideration.[8] The execution of the projects would be funded largely through securitization, a method of sourcing development funds by the issuance of participation

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Insurance & Guaranty Corporation, Project Movers Realty & Development Corp., Mario P. Villamor and Land Bank of the Philippines.

[3] *Rollo*, pp. 38-39.

[4] The judgment was signed by Judge Zorayda Herradura-Salcedo, records, Vol. I, pp. 170-202.

[5] Now known as Home Guaranty Corporation.

[6] See Asset Pool Formation Agreement dated May 29, 1995, folder of exhibits, pp. 48-69.

[7] See Trust Agreement dated May 29, 1995, *id.* at 32-47.

[8] See Trustee Fee Agreement dated November 15, 1995 between PMRDC and LBP, *id.* at 81-84.

certificates against the direct backing assets of the projects,[9] whereby LBP would act as the nominal issuer of such certificates with the Asset Pool itself acting as the real issuer.[10] HIGC, in turn, would provide guaranty coverage to these participation certificates in accordance with its Contract of Guaranty with PMRDC and LBP. [11]

On November 13, 1997, PMRDC entered into a Memorandum of Agreement (MOA) whereby it was given the option to buy pieces of land owned by petitioners Carolina Hernandez-Nievera (Carolina), Margarita H. Malvar (Margarita) and Demetrio P. Hernandez, Jr. (Demetrio). Demetrio, under authority of a Special Power of Attorney to Sell or Mortgage,[12] signed the MOA also in behalf of Carolina and Margarita. In the aggregate, the realty measured 4,580,451 square meters and was segregated by agreement into Area I and Area II, respectively pertaining to the parcels covered by Transfer Certificate of Title (TCT) Nos. T-3137, T-3138, T-3139 and T-3140 on the one hand, and on the other by TCT Nos. T-3132, T-3133, T-3134, T-3135 and T-3136, all issued by the Register of Deeds of Laguna. The MOA materially provides:

1. THAT, the consideration for the sale of the parcels of land (Areas I and II) shall be TWENTY-FIVE PESOS (Php 25.00) per square meter or a total of PESOS: ONE HUNDRED FOURTEEN MILLION FIVE HUNDRED ELEVEN THOUSAND TWO HUNDRED SEVENTY (Php114,511,270.00);

2. THAT, **the VENDEE shall have the option to purchase the above-described parcels of land within a period of twelve (12) months from the date of this instrument and that the VENDEE shall pay the vendor option money in the following amounts and on the dates herein specified:**

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[9] See Trust Agreement dated May 29, 1995, *id.* at 32.

[10] Asset Pool Formation Agreement, *rollo*, p. 115.

[11] See Contract of Guaranty dated May 29, 1995, folder of exhibits, pp. 70-75.

[12] See Special Power of Attorney dated January 23, 1997; *id*. at 21-23.

Area I

PESOS: SIX MILLION (Php6,000,000.00) payable in two (2) equal installments of PESOS: THREE MILLION (Php3,000,000.00), the first installment due on or before November 20, 1997; the second installment due on or before December 15, 1997, both installments to be covered by postdated checks upon signing of this Agreement.

Area II

Option money of PESOS: EIGHT MILLION FIVE HUNDRED THOUSAND (Php8,500,000.00) payable within thirty (30) days after conveyance to the Isabel Homes Asset Pool.

3. THAT, should the VENDEE exercise the option to purchase the parcels of land within the stipulated period, the VENDEE shall complete the TWENTY-FIVE (25%) PERCENT downpayment inclusive of the option money within the said stipulated period. Balance of the TWENTY FIVE (25%) PERCENT downpayment exclusive of the option money for Area I is PESOS: TEN MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND TWO HUNDRED SIXTY-TWO (Php10,482,262.00) and for Area II is PESOS: THREE MILLION SIX HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED FIFTY- SIX (Php3,645,556.00).

The balance of the purchase price in the amount of PESOS: EIGHTY-FIVE MILLION EIGHT HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED FIFTY-SIX (Php85,883,456.00) shall be payable within two (2) years in eight (8) quarterly installments covered by postdated checks. Schedule of payments shall be as follows:

January 31, 1999	Php	10,735,432.00
April 30, 1999		10,735,432.00
July 31, 1999		10,735,432.00
October 31, 1999		10,735,432.00
January 31, 2000		10,735,432.00
April 30, 2000		10,735,432.00
July 30, 2000		10,735,432.00
October 31, 2000		10,735,432.00

4. THAT, **should the VENDEE fail to exercise its option to purchase the said described parcels of land within the stipulated period, the option money shall be forfeited in favor of the VENDOR and that**

the VENDEE shall return to the VENDOR all the Transfer Certificates of Title covering the said described parcels of land within a period of THIRTY (30) DAYS from the stipulated period, FREE FROM ALL LIENS AND ENCUMBRANCES;

5. THAT, the VENDOR, at the request of the VENDEE, shall agree to convey the parcels of land to any bank or financial institution by way of mortgage or to a Trustee by way of a Trust Agreement at any time from the date of this instrument, PROVIDED, HOWEVER, that the VENDOR is not liable for any mortgage or loans or obligations that will be incurred by way of mortgage of Trust Agreement that the VENDEE might enter into;

6. It is agreed that the VENDOR shall have the sole responsibility in the settlement of the tenants and eviction of the tenants and eviction of the occupants of the described parcels of land after all consideration have been fully paid by the VENDEE to the VENDOR;

7. THAT, all taxes including capital gains tax, transfer tax and documentary stamps tax shall be for the account of the VENDOR;

8. THAT, the VENDOR hereby warrants valid title to, and peaceful possession of the said described parcels of land after all considerations have been fully paid.[13]

As an implementation of the MOA, the lands within Area I were then mortgaged to Solid Bank for which petitioners received consideration from PMRDC.[14]

Later on, PMRDC saw the need to convey additional properties to and augment the value of its Asset Pool to support the collateralization of additional participation certificates to be issued.[15] Thus, on March 23, 1998, it entered with LBP and Demetrio – the latter purportedly acting under authority of the same special power of attorney as in the MOA – into a Deed of Assignment and Conveyance (DAC)[16] whereby the lands within Area II covered by TCT Nos. T-3132, T-3133, T-3134,

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[13] See Memorandum of Agreement, *id.* at 18-19. (Emphasis supplied.)

[14] TSN, September 6, 2000, pp. 19-21, 40-43; TSN, September 27, 2000, p. 5.

[15] PMRDC Board Resolution No. 7, 1998, folder of exhibits, p. 85.

[16] See Deed of Assignment and Conveyance, *id.* at 25-27.

T-3135 and T-3136 were transferred and assigned to the Asset Pool in exchange for a number of shares of stock which supposedly had already been issued in the name and in favor of Demetrio. These pieces of land are the subject of the present controversy as far as they are affected by the explicit provision in the DAC which dispensed with the stipulated obligation of PMRDC in the MOA to pay option money should it opt to buy the properties.[17]

PMRDC admittedly did not avail of its option to purchase the lands in Area II in the twelve months that passed after the execution of the MOA. Although PMRDC delivered to petitioners certain checks representing the money, the same however allegedly bounced.[18] Hence, on January 8, 1999, petitioners demanded the return of the corresponding TCTs.[19] In its January 21, 1999 letter to Demetrio, however, PMRDC, through Villamor, stated that the TCTs could no longer be delivered back to petitioners as the covered properties had already been conveyed and assigned to the Asset Pool pursuant to the March 23, 1998 DAC. In the correspondence that ensued, petitioners disowned Demetrio's signature in the DAC and labeled it a mere forgery. They explained that Demetrio could not have entered into the said agreement as his power of attorney was limited only to selling or mortgaging the properties and not conveying the same to the Asset Pool. Boldly, they asserted that the fraudulent execution of the DAC was made possible through the connivance of all the respondents.[20]

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[17] *Id.* at 25. It provides:

[WHEREAS], the LANDOWNER and PMRDC have agreed to revise and modify the said Memorandum of Agreement, whereby **the LANDOWNER shall dispense with the option money as a requisite to the sale and purchase of the properties by PMRDC**, and agreed to convey absolutely and unqualifiedly the same properties directly to the Isabel Homes Asset Pool for and in exchange of shares of stock or equity in PMRDC. (Emphasis supplied.)

[18] TSN, September 6, 2000, pp. 8-17. TSN, March 8, 2001, p. 13; TSN, December 7, 2000, pp. 28, 32.

[19] Records, Vol. I, pp. 29-30.

[20] CA *rollo*, pp. 202-221.

With that final word, petitioners instituted an action before the RTC of San Pablo City, Laguna, Branch 32 for the rescission of the MOA, as well as for the declaration of nullity of the DAC. They prayed for the issuance of a writ of preliminary injunction and for the payment of damages.[21]

Ruling for petitioners, the trial court, on August 30, 2004, declared the MOA to be an option contract and ordered its rescission. It, likewise, declared the DAC null and void as it made a definite finding of forgery of Demetrio's signature as well as fraud in its execution, and accordingly, adjudged respondents PMRDC and Villamor liable to petitioner for damages.[22] The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in the favor of the plaintiffs and against the defendants as follows:

1. Rescinding the Memorandum of Agreement (MOA) executed between the plaintiffs and Project Movers Realty [&] Development Corporation (PMRDC);

2. Declaring null and void the Deed of Assignment and Conveyance (DAC) executed between Project Movers Realty [&] Development Corporation, Land Bank of the Philippines and Demetrio Hernandez whose signature is forged;

3. Ordering Transfer Certificate of Title Nos. T-3132, T-3133, T-3134 and T-3135, all in the names of the plaintiffs, which are in the custody of the Court, to be delivered to plaintiffs immediately and the plaintiffs are ordered to issue a corresponding receipt of said certificates of title signed by all the plaintiffs to be submitted to the OIC-Branch Clerk of Court of this Court within five (5) days from receipt of said titles;

4. Ordering defendants Mario Villamor and Wilfredo Hernandez to pay plaintiffs, jointly and severally, the following:

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[21] Records, Vol. I, pp. 3-13. The trial court declined to issue a preliminary injunctive relief in view of the fact that the TCTs in question have already been put in *custodia legis,* (Records, Vol. II, pp. 38, 84-87).

[22] Records, Vol. II, pp. 199-200.

a. Actual damages of ₱500,000.00;

b. Moral damages of ₱200,000.00;

c. Exemplary damages of ₱200,000.00;

d. Attorney's fees in the amount of ₱300,000.00;

e. And the costs of the suit.

SO ORDERED.[23]

Aggrieved, respondents filed a notice of appeal and elevated the matter to the Court of Appeals. On October 19, 2005, the Court of Appeals issued the assailed Decision reversing and setting aside the trial court's decision as follows:

WHEREFORE, based on the foregoing, the appeal is GRANTED. The decision dated August 30, 2004 of the Regional Trial Court, Branch 32, San Pablo City in Civil Case No. SP-5742 (2000) is REVERSED and SET ASIDE and a new one is entered declaring the Deed of Conveyance valid and thus, the Transfer Certificates of Title subject of this case are ordered returned to HIGC. No costs.

SO ORDERED.[24]

Central to the ruling of the Court of Appeals is its contrary finding that the allegation of forgery of Demetrio's signature in the DAC was not established by the evidence and, hence, following the legal presumption of regularity in the execution of notarized deeds, it upheld the validity of the DAC.[25] The Court of Appeals noted that the incompatibility in the terms of the MOA and the DAC clearly signified the intention of the parties to have the MOA novated by subsequent agreement and have the properties conveyed to the Asset Pool in exchange for PMRDC shares to be issued to Demetrio. This, according to the appellate court, completely changed the original obligations of PMRDC as provided in the MOA. It noted further that it was premature to order the release of the subject TCTs to

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[23] *Id.* at 201-202.

[24] CA *rollo*, p. 212.

[25] *Id.*

petitioners at this stage of the proceedings, because that would amount to an execution of the decision.[26]

With the denial of their motion for reconsideration,[27] petitioners filed the instant petition for review attributing error to the Court of Appeals in declining to rescind the MOA and declare the DAC null and void.

Petitioners insist that the obligation of PMRDC to deliver back the TCTs arises on its failure to exercise the option to purchase the lands according to the terms of the MOA, and that the deliberate refusal of PMRDC to perform such obligation gives ground for the rescission of the MOA. This thesis is perched on petitioners' argument that the MOA could not have possibly been novated by the DAC because *first*, Demetrio's signature therein has been forged, and *second*, Demetrio could not have validly assented to the DAC in behalf of Carolina and Margarita because his special power was limited only to selling or mortgaging the properties and excludes conveying and assigning the said properties to the Asset Pool for consideration.[28] They also point out that the DAC itself is infirm insofar as it stipulated to convey the lands to the Asset Pool as the latter supposedly is neither a registered corporation nor a partnership and does not possess a legal personality.[29]

Commenting on the petition, PMRDC and Villamor advance that petitioners' allegation of fraud and forgery are all factual matters that are inappropriate in a Rule 45 petition.[30] More importantly, they aver that the novation of the MOA by the DAC is unmistakable as the DAC itself has made an express reference to the MOA provisions on the payment of option money and, hence, has expressly modified the pertinent terms thereof.[31]

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[26] *Id.* at 210-212.

[27] CA *rollo*, pp. 245-246.

[28] *Rollo*, pp. 15-16.

[29] *Id.* at 16-17.

[30] *Id.* at 43-44.

[31] *Id.* at 45.

HIGC and its president, Wilfredo Hernandez, both represented by the Office of the Government Corporate Counsel (OGCC),[32] and LBP[33] are of the same view.[34] In addition, HIGC explains that contrary to petitioners' belief, the transfer of the properties under the DAC is valid as the conveyance has been made to the Asset Pool with LBP, an entity with juridical entity, acting as trustee thereof.[35] Addressing the issue of forgery and fraud in the execution of the DAC, HIGC maintains that these factual matters remain to be mere allegations which nothing in the records of the case could conclusively prove, except the self-serving testimony of petitioners themselves.[36]

The Court denies the petition.

Petitioners' cause stems from the failure of PMRDC to restore to petitioners the possession of the TCTs of the lands within Area II upon its failure to exercise the option to purchase within the 12-month period stipulated in the MOA. Respondents maintain, however, that said obligation, dependent as it is on the exercise of the option to purchase, has altogether been expressly obliterated by the terms of the DAC whereby petitioners, through Demetrio as attorney-in-fact, have agreed to novate the terms of the MOA by extinguishing the core obligations of PMRDC on the payment of option money. This seems to suggest that with the execution of the DAC, PMRDC has already entered into the exercise of its option except that its obligation to deliver the option money has, by subsequent agreement embodied in the DAC, been substituted instead by the obligation to issue participation certificates in Demetrio's name but which, likewise, has not yet been performed by PMRDC. But petitioners stand against the validity of the DAC on the ground that the signature of Demetrio therein was spurious.

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[32] *Id.* at 68-69.

[33] Represented by its own Administrative Legal and Litigation Department; *id.* at 51-52.

[34] *Rollo*, pp. 55-56, 86, 89-92.

[35] *Id.* at 87-88.

[36] *Id.* at 92-101.

Firmly settled is the jurisprudential rule that forgery cannot be presumed from a mere allegation but rather must be proved by clear, positive and convincing evidence by the party alleging the same.[37] The burden to prove the allegation of forgery in this case has not been conclusively discharged by petitioners because *first*, nothing in the records supports the allegation except only perhaps Demetrio's explicit self-serving disavowal of his signature in open court.[38] *Second*, while in fact Demetrio at the trial of the case had committed to have the subject signature examined by an expert,[39] nevertheless, the trial had terminated without the results of the examination being submitted in evidence. *Third*, the claim of forgery, unsubstantiated as it is, becomes even more unremarkable in light of the fact that the DAC involved in this case is a notarized deed guaranteed by public attestation in accordance with law, such that the execution thereof enjoys the legal presumption of regularity in the absence of compelling proof to the contrary.[40]

Yet the inquiry on the validity of the DAC does not terminate with the finding alone of the genuineness of Demetrio's signature therein, because petitioners also stand against its validity on the ground of Demetrio's non-authority to execute the same. They claim that the execution of the DAC would be beyond the power of Demetrio to perform as his authority is limited only to selling or mortgaging the properties and does not include assigning and conveying said properties to the Asset Pool in consideration of shares of stocks for his lone benefit. For their

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[37] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc.*, G.R. No. 158144, July 31, 2008, 560 SCRA 704, 713; *Libres v. Delos Santos*, G.R. No. 176358, June 17, 2008, 554 SCRA 642, 655; *Fernandez v. Fernandez*, 416 Phil. 322, 342 (2001); *R.F. Navarro & Co., Inc. v. Hon. Vailoces*, 413 Phil. 432, 442 (2001); *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550, 558.

[38] TSN, August 29, 2000, p. 16; TSN, September 27, 2000, pp. 10-11, 19-20.

[39] TSN, August 29, 2000, p. 17.

[40] *Libres v. Delos Santos*, *supra* note 37; *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164.

part, respondents, who believe Demetrio's power of attorney was broad enough to effectuate a novation of PMRDC's core obligations in the MOA or, at the least, implement the provisions thereof through the DAC, invoke the 4th and 5th whereas-clauses in the DAC which, in relation to each other, supposedly pertain to that certain provision in the MOA which authorizes the conveyance of the properties to the Asset Pool in exchange for corporate shares.[41]

The 4th and 5th whereas-clauses in the DAC read as follows:

WHEREAS, **on November 3, 1997, PMRDC and LANDOWNER have entered into a Memorandum of Agreement whereby the former agreed to convey to the Isabel Homes Asset Pool certain real properties located at Sta. Maria, Laguna;**

[WHEREAS]**, the LANDOWNER and PMRDC have agreed to revise and modify the said Memorandum of Agreement, whereby the LANDOWNER shall dispense with the option money as a requisite to the sale and purchase of the properties by PMRDC, and agreed to convey absolutely and unqualifiedly the same properties directly to the Isabel Homes Asset Pool for and in exchange of shares of stock or equity in PMRDC**.[42]

While indeed we find no provision in the MOA such as that alluded to in the aforequoted 4th whereas-clause in the DAC which purportedly embodies an agreement by the parties to assign and convey the subject properties to the Asset Pool, we surmise that the clause could be referring to paragraph 5 of the MOA which stipulates a commitment on the part of petitioners to give their consent to an assignment and conveyance of the properties to the Asset Pool but only once a request therefor is made by PMRDC. Paragraph 5 reads:

5. THAT, **the VENDOR at the request of the VENDEE shall agree to convey the parcels of land to any bank or financial institution by way of mortgage or to a Trustee by way of a Trust Agreement at any time from the date of this instrument,** PROVIDED, HOWEVER, that the VENDOR is not liable for any mortgage or loans or obligations

[41] See Comment of HIGC, *rollo*, p. 98.

[42] *Rollo*, p. 162. (Emphasis supplied.)

that will be incurred by way of mortgage of Trust Agreement that the VENDEE might enter into;[43]

Petitioners profess, however, that no such request was ever intimated to them at any time during the subsistence of the PMRDC's right to exercise the option to buy. But respondents are quick to reason that a request is unnecessary because Demetrio has been legally enabled by his special power to give such consent and accordingly execute the DAC, effect a novation of the MOA, and extinguish the stipulated obligations of PMRDC therein, or at least that he could assent to the implementation of the MOA provisions in the way that transpired. We agree.

Demetrio's special power of attorney granting the powers to sell and/or mortgage reads in part:

1. **To sell and/or mortgage** in favor of any person, corporation, partnership, private banking or financial institution, government or semi-government banking or financial institution **for such price or amount and under such terms and conditions as our aforesaid attorney-in-fact may deem just and proper**, parcels of land more particularly described as follows:

x x x x x x x x x

2. To carry out the authority aforestated, to sign, execute and deliver such deeds, instruments and other papers that may be required or necessary;

3. To further attain the authority herein given, to do and perform such acts and things that may be necessary or incidental to fully carry out the authority herein granted.[44]

It is in the context of this vesture of power that Demetrio, representing his shared interest with Carolina and Margarita, entered into the MOA with PMRDC. It is likewise within this same context that Demetrio later on entered into the DAC and accordingly extinguished the previously subsisting obligation of PMRDC to deliver the stipulated option money and replaced

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[43] Folder of Exhibits, p. 19. (Emphasis supplied.)

[44] *Id.* at 1-3. (Emphasis supplied.)

said obligation with the delivery instead of participation certificates in favor of Demetrio.

The powers conferred on Demetrio were exclusive only to selling and mortgaging the properties. Between these two specific powers, the power to sell is quite controversial because it is the sale transaction which bears close resemblance to the deal contemplated in the DAC. In fact, part of the testimony of Atty. Danilo Javier, counsel for respondent HIGC and head of its legal department at the time, is that in the execution of the DAC, respondents had relied on Demetrio's special power of attorney and also on his supposed agreement to be paid in kind, *i.e.*, in shares of stock, as consideration for the assignment and conveyance of the subject properties to the Asset Pool.[45] What petitioners miss, however, is that the power conferred on Demetrio to sell "for such price or amount"[46] is broad enough to cover the exchange contemplated in the DAC between the properties and the corresponding corporate shares in PMRDC, with the latter replacing the cash equivalent of the option money initially agreed to be paid by PMRDC under the MOA. Suffice it to say that "price" is understood to mean "the cost at which something is obtained, or something which one ordinarily accepts voluntarily in exchange for something else, or the consideration given for the purchase of a thing."[47]

Thus, it becomes clear that Demetrio's special power of attorney to sell is sufficient to enable him to make a binding commitment under the DAC in behalf of Carolina and Margarita. In particular, it does include the authority to extinguish PMRDC's obligation under the MOA to deliver option money and agree to a more flexible term by agreeing instead to receive shares of stock in lieu thereof and in consideration of the assignment and conveyance of the properties to the Asset Pool. Indeed, the terms of his special power of attorney allow much leeway to accommodate not only the terms of the MOA but also those

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[45] TSN, December 7, 2000, pp. 23-34.

[46] *Id.*

[47] *Black's Law Dictionary*, 6th ed., pp. 1188-1189.

of the subsequent agreement in the DAC which, in this case, necessarily and consequently has resulted in a novation of PMRDC's integral obligations. On this score, we quote with approval the decision of the Court of Appeals, aptly citing the case of *California Bus Lines, Inc. v. State Investment House, Inc.*[48] thus –

> There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The first is when novation has been explicitly stated and declared in unequivocal terms. The second is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible, and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.[49]

In view of the foregoing, the Court finds no useful purpose in addressing all the other issues raised in this petition.

A final note. Section 10, Book IV, Title III, Chapter 3[50] of the Revised Administrative Code of 1987 has designated the

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[48] 463 Phil. 689 (2003).

[49] *Rollo*, p. 34.

[50] Section 10. *Office of the Government Corporate Counsel*. - The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

The OGCC is authorized to receive the attorney's fees adjudged in favor of their client government-owned or controlled corporations, their subsidiaries/

OGCC to act as the principal law office of government-owned or controlled corporations (GOCCs) in connection with any judicial or quasi-judicial proceeding. Yet between the two respondents GOCCs in this case – LBP and HIGC – it is only the latter for which the OGCC has entered its appearance. Nowhere in the records is it shown that the OGCC has ever entered its appearance in this case as principal legal counsel of respondent LBP, or that at the very least it has given express conformity to the LBP legal department's representation.[51]

In *Land Bank of the Philippines v. Martinez*,[52] citing *Land Bank of the Philippines v. Panlilio-Luciano*,[53] we explained that the legal department of LBP is not expressly authorized by its charter to appear in behalf of the corporation in any proceeding as the mandate of the law is explicit enough to place the said department under the OGCC's power of control and supervision. We held in that case:

> **[Section 10] mandates the OGCC, and not the LBP Legal Department, as the principal law office of the LBP. Moreover, it establishes the proper hierarchical order in that the LBP Legal Department remains under the control and supervision of the OGCC**. x x x

At the same time, the existence of the OGCC does not render the LBP Legal Department a superfluity. We do not doubt that the LBP Legal Department carries out vital legal services to LBP. However, the performance of such functions cannot deprive the OGCC's role as overseer of the LBP Legal Department and its mandate of exercising control and supervision over all GOCC legal departments. **For the purpose of filing petitions and making submissions before this Court,**

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other corporate offsprings and government acquired asset corporations. These attorney's fees shall accrue to a Special fund of the OGCC, and shall be deposited in an authorized government depository as trust liability and shall be made available for expenditure without the need for a Cash Disbursement Ceiling, for purposes of upgrading facilities and equipment, granting of employee's incentive pay and other benefits, and defraying such other incentive expenses not provided for in the General Appropriations Act as may be determined by the Government Corporate Counsel.

[51] See Entry of Appearance with Motion for Extension of Time to File Comment, *rollo*, pp. 51-52.

[52] G.R. No. 169008, August 14, 2007, 530 SCRA 158.

[53] G.R. No. 165428, July 13, 2005 (Resolution).

such control and supervision imply express participation by the OGCC as principal legal counsel of LBP. x x x

It should also be noted that the aforementioned Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987 authorizes the OGCC to receive the attorney's fees adjudged in favor of their client GOCCs, such fees accruing to a special fund of the OGCC. Evidently, the non-participation of the OGCC in litigations pursued by GOCCs would deprive the former of its due funding as authorized by law. Hence, this is another reason why we cannot sustain Attys. Beramo and Berbaño's position that the OGCC need not participate in litigations pursued by LBP.

It may strike as disruptive to the flow of a GOCC's daily grind to require the participation of the OGCC as its principal law office, or the exercise of control and supervision by the OGCC over the acts of the GOCC's legal departments. For reasons such as proximity and comfort, the GOCC may find it convenient to rely instead on its in-house legal departments, or more irregularly, on private practitioners. **Yet the statutory role of the OGCC as principal law office of GOCCs is one of long-standing, and we have to recognize such function as part of public policy. Since the jurisdiction of the OGCC includes all GOCCs, its perspective is less myopic than that maintained by a particular legal department of a GOCC. It is not inconceivable that left to its own devices, the legal department of a given GOCC may adopt a legal position inconsistent with or detrimental to other GOCCs. Since GOCCs fall within the same governmental framework, it would be detrimental to have GOCCs foisted into adversarial positions by their respective legal departments. Hence, there is indubitable wisdom in having one overseer over all these legal departments which would ensure that the legal positions adopted by the GOCCs would not conflict with each other or the government.**

x x x Certainly, Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987 can be invoked by adverse parties or by the courts in citing as deficient the exclusive representation of LBP by its Legal Department. Then again, if neither the adverse parties nor the courts of jurisdiction choose to contest this point, there would be no impediment to the litigation to maintain. x x x[54]

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[54] *Land Bank of the Philippines v. Martinez, supra* note 52, at 164-166, citing *Land Bank of the Philippines v. Panlilio-Luciano, supra* note 53. (Emphasis supplied.)

WHEREFORE, the Petition is *DENIED*. The October 19, 2005 Decision and January 11, 2006 Resolution of the Court of Appeals, in CA- G.R. CV No. 83852, are hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172203. February 14, 2011]

DIONISIO LOPEZ *y* ABERASTURI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SALVADOR G. ESCALANTE, JR.,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; DEFINED; REQUISITES.— A libel is defined as "a public and malicious imputation of a crime or of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridicial person or to blacken the memory of one who is dead." "For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable." Absent one of these elements precludes the commission of the crime of libel.

2. ID.; ID.; ID.; DEFAMATORY NATURE OF THE PRINTED PHRASE MUST BE PROVED.— Although all the elements must concur, the defamatory nature of the subject printed phrase must be proved first because this is so vital in a prosecution for libel. Where the words imputed are not defamatory in character, a libel charge will not prosper. Malice is necessarily rendered immaterial.

3. ID.; ID.; ID.; STANDARDS TO DETERMINE WHETHER A PHRASE OR A STATEMENT IS DEFAMATORY.— An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. To determine "whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense." Moreover, "[a] charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule."

4. ID.; ID.; ID.; THE WORD "NEVER" IN A PHRASE, NOT CONSIDERED DEFAMATORY.— [W]e cannot subscribe to the appellate court's finding that the phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of Cadiz City. There are no derogatory imputations of a crime, vice or defect or any act, omission, condition, status or circumstance tending, directly or indirectly, to cause his dishonor. Neither does the phrase in its entirety, employ any unpleasant language or somewhat harsh and uncalled for that would reflect on private respondent's integrity. Obviously, the controversial word "NEVER" used by petitioner was plain and simple. In its ordinary sense, the word did not cast aspersion upon private respondent's integrity and reputation much less convey the idea that he was guilty of any offense. Simply worded as it was with nary a notion of corruption and dishonesty in government service, it is our considered view to appropriately consider it as mere epithet or personal reaction on private respondent's performance of official duty and not purposely designed to malign and besmirch his reputation and dignity more so to deprive him of public confidence.

5. ID.; ID.; ID.; MERE WORDS OF GENERAL ABUSE DO NOT AUTOMATICALLY EQUATE TO DEFAMATION.— Truth be told that somehow the private respondent was not pleased with the controversial printed matter. But that is grossly insufficient to

make it actionable by itself. "[P]ersonal hurt or embarrassment or offense, even if real, is not automatically equivalent to defamation," "words which are merely insulting are not actionable as libel or slander *per se*, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself," as the Court ruled in *MVRS Publications, Inc. v. Islamic Da' Wah Council of the Phils., Inc.*

6. ID.; ID.; ID.; NO CRIMINAL LIABILITY ATTACHES WHERE THE DEFAMATORY STATEMENT IS MADE AGAINST A PUBLIC OFFICIAL WITH RESPECT TO THE DISCHARGE OF HIS OFFICIAL DUTIES AND THE TRUTH OF THE ALLEGATIONS IS SHOWN.— Pursuant to Article 361 of the Revised Penal Code, if the defamatory statement is made against a public official with respect to the discharge of his official duties and functions and the truth of the allegations is shown, the accused will be entitled to an acquittal even though he does not prove that the imputation was published with good motives and for justifiable ends. As the Court held in *United States v. Bustos*, the policy of a public official may be attacked, rightly or wrongly with every argument which ability can find or ingenuity invent. The public officer "may suffer under a hostile and an unjust accusation; the wound can be assuaged by the balm of a clear conscience. A public [official] must not be too thin-skinned with reference to comments upon his official acts."

APPEARANCES OF COUNSEL

Saguisag & Associates for petitioner.
The Solicitor General for public respondent.
Valencia Ciocon Dabao Valencia Dela Paz Dionela Ravina & Pandan Law Offices for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Freedom of expression enjoys an exalted place in the hierarchy of constitutional rights. Free expression however, "is not absolute

for it may be so regulated that [its exercise shall neither] be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society."[1] Libel stands as an exception to the enjoyment of that most guarded constitutional right.

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Dionisio Lopez (petitioner) assailing the Decision[2] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 28175. The CA affirmed with modification the Decision[3] rendered by the Regional Trial Court (RTC) of Cadiz City, Branch 60 finding petitioner guilty beyond reasonable doubt of the crime of libel.

Procedural and Factual Antecedents

On April 3, 2003, petitioner was indicted for libel in an Information dated March 31, 2003, the accusatory portion of which reads in full as follows:

> That on or about the early part of November 2002 in the City of Cadiz, Philippines and within the jurisdiction of this Honorable Court, the herein accused did then and there, willfully, unlawfully and feloniously with intent to impeach the integrity, reputation and putting to public ridicule and dishonor the offended party MAYOR SALVADOR G. ESCALANTE, JR., City Mayor of Cadiz City and with malice and intent to injure and expose the said offended party to public hatred, contempt and ridicule put up billboards/signboards at the fence of Cadiz Hotel, Villena Street, Cadiz City and at Gustilo Boulevard, Cadiz City, which billboards/signboards read as follows:
>
> "CADIZ FOREVER"
>
> "_____ NEVER"
>
> thereby deliberately titillating the curiosity of and drawing extraordinary attention from the residents of Cadiz City and passers-by over what would be placed before the word "NEVER". Later on

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[1] *Primicias v. Fugoso*, 80 Phil. 71, 75 (1948).

[2] *Rollo*, pp. 31-38; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas.

[3] Records, pp. 179-196; penned by Judge Renato D. Munez.

November 15, 2002, accused affixed the nickname of the herein private complainant "BADING" and the name of the City of "SAGAY" before the word "NEVER" thus making the billboard appear as follows:

"CADIZ FOREVER"
"BADING AND SAGAY NEVER"

For which the words in the signboards/billboards were obviously calculated to induce the readers/passers-by to suppose and understand that something fishy was going on, therefore maliciously impeaching the honesty, virtue and reputation of Mayor Salvador G. Escalante, Jr., and hence were highly libelous, offensive and defamatory to the good name, character and reputation of the offended party and his office and that the said billboards/signboards were read by thousands if not hundred[s] of thousands of persons, which caused damage and prejudice to the offended party by way of moral damages in the amount [of]:

₱5,000,000.00 – as moral damages.

ACT CONTRARY TO LAW.[4]

Upon arraignment on May 8, 2003, petitioner, as accused, entered a plea of "not guilty." During the pre-trial, the parties stipulated, among others, on the identity of the accused, that the private complainant is the incumbent City Mayor of Cadiz City and is popularly known by the nickname "Bading" and that the petitioner calls the private complainant "Bading." Thenceforth, trial on the merits commenced in due course.

Evidence introduced for the prosecution reveals that in the early part of November 2002, while exercising his official duties as Mayor of Cadiz City, private respondent saw billboards with the printed phrase "CADIZ FOREVER" with a blank space before the word "NEVER" directly under said phrase. Those billboards were posted on the corner of Gustilo and Villena streets, in front of Cadiz Hotel and beside the old Coca-Cola warehouse in Cadiz City. He became intrigued and wondered on what the message conveyed since it was incomplete.

Some days later, on November 15, 2002, private respondent received a phone call relating that the blank space preceding

[4] *Id.* at 1.

the word "NEVER" was filled up with the added words "BADING AND SAGAY." The next day, he saw the billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER" printed in full. Reacting and feeling that he was being maligned and dishonored with the printed phrase and of being a "*tuta*" of Sagay, private respondent, after consultation with the City Legal Officer, caused the filing of a complaint for libel against petitioner. He claimed that the incident resulted in mental anguish and sleepless nights for him and his family. He thus prayed for damages.

Jude Martin Jaropillo (Jude) is a licensing officer of the Permit and License Division of Cadiz City. While on a licensing campaign, he was able to read the message on the billboards. He wondered what fault the person alluded therein has done as the message is so negative. He felt that the message is an insult to the mayor since it creates a negative impression, as if he was being rejected by the people of Cadiz City. He claimed that he was giving his testimony voluntarily and he was not being rewarded, coerced or forced by anybody.

Nenita Bermeo (Nenita), a retired government employee of Cadiz City, was at Delilah's Coffee [Shop] in the morning of November 19, 2002 when she heard the petitioner shouting "Bading, Bading, Never, Never." She and the tricycle drivers drinking coffee were told by petitioner "You watch out I will add larger billboards." When she went around Cadiz City, she saw larger billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER," thus confirming what petitioner had said. With the message, she felt as if the people were trying to disown the private respondent. According to her, petitioner has an ax to grind against the mayor. Like Jude, she was not also forced or rewarded in giving her testimony.

Bernardita Villaceran (Bernardita) also found the message unpleasant because Mayor Escalante is an honorable and dignified resident of Cadiz City. According to her, the message is an insult not only to the person of the mayor but also to the people of Cadiz City.

Petitioner admitted having placed all the billboards because he is aware of all the things happening around Cadiz City. He mentioned "BADING" because he was not in conformity with the many things the mayor had done in Cadiz City. He insisted that he has no intention whatsoever of referring to "Bading" as the "*Tuta*" of Sagay. He contended that it was private respondent who referred to Bading as "*Tuta*" of Sagay. He further maintained that his personal belief and expression was that he will never love Bading and Sagay. He concluded that the message in the billboards is just a wake-up call for Cadiz City.

Ruling of the Regional Trial Court

On December 17, 2003, the RTC rendered judgment convicting petitioner of libel. The trial court ruled that from the totality of the evidence presented by the prosecution *vis-a-vis* that of the defense, all the elements of libel are present. The fallo of the Decision reads:

> WHEREFORE, in view of all the foregoing, this Court finds accused DIONISIO LOPEZ *y* ABERASTURI (bonded) GUILTY beyond reasonable doubt of the crime of Libel defined and penalized under Article 353 in relation to Article 355 of the Revised Penal Code and there being no mitigating or aggravating circumstances attendant thereto hereby sentences him to suffer an indeterminate penalty of imprisonment of FOUR MONTHS AND TWENTY DAYS of *Arresto Mayor* maximum as the minimum to TWO YEARS, ELEVEN MONTHS AND TEN DAYS of *Prision Correccional* Medium as the maximum and a FINE of ₱5,000.00 with subsidiary imprisonment in case of insolvency.
>
> The accused is further ordered to pay the private complainant the sum of ₱5,000,000.00 by way of moral damages.
>
> The cash bond posted by the accused is hereby ordered cancelled and returned to the accused, however the penalty of Fine adjudged against the accused is hereby ordered deducted from the cash bond posted by the accused pursuant to Section 22 of Rule 114 of the Rules of Court and the remaining balance ordered returned to the accused. The accused is hereby ordered immediately committed to the BJMP, Cadiz City for the service of his sentence.

Cost against the accused.

SO ORDERED.[5]

Ruling of the Court of Appeals

Petitioner appealed the Decision of the RTC to the CA which, as stated earlier, rendered judgment on August 31, 2005, affirming with modification the Decision of the RTC. Like the trial court, the appellate court found the presence of all the elements of the crime of libel. It reduced however, the amount of moral damages to ₱500,000.00. Petitioner then filed his Motion for Reconsideration, which the appellate court denied in its Resolution[6] dated April 7, 2006.

Disgruntled, petitioner is now before us *via* the instant petition. Per our directive, private respondent filed his Comment[7] on August 29, 2006 while the Office of the Solicitor General (OSG) representing public respondent People of the Philippines, submitted a Manifestation and Motion in Lieu of Comment[8] on even date. After the filing of petitioner's Reply to private respondent's Comment, we further requested the parties to submit their respective memoranda. The OSG filed a Manifestation in Lieu of Memorandum, adopting as its memorandum, the Manifestation and Motion in Lieu of Comment it earlier filed. Petitioner and private respondent submitted their respective memoranda as required.

Issues

Petitioner raised the following arguments in support of his petition:

I

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE WORDS "CADIZ FOREVER[,] BADING AND SAGAY

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[5] *Id*. at 195-196.

[6] *Rollo*, pp. 41-44.

[7] *Id*. at 91-100.

[8] *Id*. at 102-113.

NEVER" CONTAINED IN THE BILLBOARDS/SIGNBOARDS SHOW THE INJURIOUS NATURE OF THE IMPUTATIONS MADE AGAINST THE PRIVATE RESPONDENT AND TENDS TO INDUCE SUSPICION ON HIS CHARACTER, INTEGRITY AND REPUTATION AS MAYOR OF CADIZ CITY.

II

ASSUMING WITHOUT CONCEDING THAT THE WORDS "CADIZ FOREVER, BADING AND SAGAY NEVER" CONTAINED IN THE BILLBOARDS ERECTED BY PETITIONER ARE DEFAMATORY, DID THE COURT OF APPEALS ERR IN NOT HOLDING THAT THEY COMPRISE FAIR COMMENTARY ON MATTERS OF PUBLIC INTEREST WHICH ARE THEREFORE PRIVILEGED?

III

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE PRESUMPTION OF MALICE IN THE CASE AT BAR HAS NOT BEEN OVERTHROWN.

IV

WHETHER X X X THE COURT OF APPEALS ERRED IN NOT ACQUITTING PETITIONER OF THE CHARGE OF LIBEL AND IN HOLDING HIM LIABLE FOR MORAL DAMAGES IN THE AMOUNT OF ₱500,000.[9]

Summed up, the focal issues tendered in the present petition boil down to the following: 1) whether the printed phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" is libelous; and 2) whether the controversial words used constituted privileged communication.

Our Ruling

We ought to reverse the CA ruling.

At the outset, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The factual findings of the lower courts are final and conclusive and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

[9] *Id*. at 145.

1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
2. When the inference made is manifestly mistaken, absurd or impossible;
3. Where there is a grave abuse of discretion;
4. When the judgment is based on a misapprehension of facts;
5. When the findings of fact are conflicting;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and,
10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[10]

Indeed, the CA affirmed the factual findings of the RTC that all the elements of the crime of libel are present in this case. Thus, following the general rule, we are precluded from making further evaluation of the factual antecedents of the case. However, we cannot lose sight of the fact that both lower courts have greatly misapprehended the facts in arriving at their unanimous conclusion. Hence, we are constrained to apply one of the exceptions specifically paragraph 4 above, instead of the general rule.

Petitioner takes exception to the CA's ruling that the controversial phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of

[10] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

Cadiz City. He avers that there is nothing in said printed matter tending to defame and induce suspicion on the character, integrity and reputation of private respondent.

The OSG, in its Manifestation and Motion in Lieu of Comment, asserts that "there is nothing in the phrase "CADIZ FOREVER" and "BADING AND SAGAY NEVER" which ascribe to private respondent any crime, vice or defect, or any act, omission, condition, status or circumstance which will either dishonor, discredit, or put him into contempt."[11]

The prosecution maintains that the appellate court correctly sustained the trial court's finding of guilt on petitioner. Citing well-established jurisprudence[12] holding that "[w]ords calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made" and that "[i]ronical and metaphorical language is a favored vehicle for slander," it argued that the words printed on the billboards somehow bordered on the incomprehensible and the ludicrous yet they were so deliberately crafted solely to induce suspicion and cast aspersion against private respondent's honor and reputation.

A libel is defined as "a public and malicious imputation of a crime or of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridicial person or to blacken the memory of one who is dead."[13] "For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable."[14] Absent one of these elements precludes the commission of the crime of libel.

Although all the elements must concur, the defamatory nature of the subject printed phrase must be proved first because this

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[11] *Rollo,* p. 107.

[12] *United States v. O'Connell,* 37 Phil. 767, 772 (1918).

[13] REVISED PENAL CODE, Article 353.

[14] *Novicio v. Aggabao,* 463 Phil. 510, 516 (2003).

is so vital in a prosecution for libel. Where the words imputed are not defamatory in character, a libel charge will not prosper. Malice is necessarily rendered immaterial.

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. To determine "whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense."[15] Moreover, "[a] charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule."[16]

Tested under these established standards, we cannot subscribe to the appellate court's finding that the phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of Cadiz City. There are no derogatory imputations of a crime, vice or defect or any act, omission, condition, status or circumstance tending, directly or indirectly, to cause his dishonor. Neither does the phrase in its entirety, employ any unpleasant language or somewhat harsh and uncalled for that would reflect on private respondent's integrity. Obviously, the controversial word "NEVER" used by petitioner was plain and simple. In its ordinary sense, the word did not cast aspersion upon private respondent's integrity and reputation much less convey the idea that he was guilty of any offense. Simply worded as it was with nary a notion of corruption and dishonesty in

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[15] *Buatis, Jr. v. People*, G.R. No. 142509, March 24, 2006, 485 SCRA 275, 286.

[16] *United States v. O'Connel*, *supra* note 12 at 772.

government service, it is our considered view to appropriately consider it as mere epithet or personal reaction on private respondent's performance of official duty and not purposely designed to malign and besmirch his reputation and dignity more so to deprive him of public confidence.

Indeed, the prosecution witnesses were able to read the message printed in the billboards and gave a negative impression on what it says. They imply that the message conveys something as if the private respondent was being rejected as city mayor of Cadiz. But the trustworthiness of these witnesses is doubtful considering the moral ascendancy exercised over them by the private respondent such that it is quite easy for them to draw such negative impression. As observed by the OSG, at the time the billboards were erected and during the incumbency of private respondent as mayor of Cadiz City, these witnesses were either employed in the Cadiz City Hall or active in the project of the city government. Bernardita was a member of the Clean and Green Program of Cadiz City; Jude was employed as a licensing officer under the Permit and License Division of the Cadiz City Hall and Nenita held the position of Utility Worker II of the General Services Office of Cadiz City. These witnesses, according to the OSG, would naturally testify in his favor. They could have verbicide the meaning of the word "NEVER." Prudently, at the least, the prosecution could have presented witnesses within the community with more independent disposition than these witnesses who are beholden to private respondent.

According to the private respondent, the message in the billboards would like to convey to the people of Cadiz that he is a *tuta* of Sagay City.

We disagree. Strangely, the OSG adopted a position contrary to the interest of the People. In its Manifestation and Motion in Lieu of Comment, instead of contesting the arguments of the petitioner, the OSG surprisingly joined stance with him, vehemently praying for his acquittal. We quote with approval the OSG's analysis of the issue which was the basis for its observation, thus:

During the proceedings in the trial court, private respondent testified that the subject billboards maligned his character and portrayed him as a puppet of Sagay City, Thus:

Q: You do not know of course the intention of putting those billboards "BADING AND SAGAY NEVER"?

A: Definitely, I know the intention because to answer your question, it will not only require those "BADING AND SAGAY NEVER" billboard[s], it was after which additional billboards were put up. That strengthen, that I am being a "*Tuta* of Sagay. I am being maligned because of those billboards that states and I repeat: "*Ang Tubig san Cadiz, ginkuha sang Sagay*", "Welcome to Brgy. Cadiz" and there is a small word under it, Zone 2, very small, very very small, you cannot see it in [sic] a glance.

x x x x x x x x x

A: That is the meaning of the signboard[s]. The message that the signboards would like to convey to the people of Cadiz, that the Mayor of Cadiz City is a "*Tuta*" or Puppet of Sagay City.

x x x x x x x x x[17]

Contrary to private respondent's assertion, there is nothing in the subject billboards which state, either directly or indirectly, that he is, in his words, a "*tuta*" or "puppet" of Sagay City. Except for private respondent, not a single prosecution witness testified that the billboards portray Mayor Bading Escalante, Jr. as a "*tuta* or "puppet" of Sagay City. The billboards erected by petitioner simply say "CADIZ FOREVER", "BADING AND SAGAY NEVER."[18]

Apparently, private respondent refers to the circumstances mentioned in another billboard that is not the subject matter in the present charge. The aforesaid facts dismally failed to support the allegations in the instant information. Be that as it may, private respondent nevertheless did not specify any actionable wrong or particular act or omission on petitioner's part that could have defamed him or caused his alleged injury. While it may be that the Court is not bound by the analysis and observation of the OSG, still, the Court finds that it deserves meritorious

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[17] TSN, July 28, 2003, pp 62-63, 65.

[18] *Rollo*, p. 108.

consideration. The prosecution never indulged to give any reason persuasive enough for the court not to adopt it.

Truth be told that somehow the private respondent was not pleased with the controversial printed matter. But that is grossly insufficient to make it actionable by itself. "[P]ersonal hurt or embarrassment or offense, even if real, is not automatically equivalent to defamation,"[19] "words which are merely insulting are not actionable as libel or slander *per se*, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself," as the Court ruled in *MVRS Publications, Inc. v. Islamic Da' Wah Council of the Phils., Inc*.[20]

In arriving at an analogous finding of guilt on petitioner, both lower courts heavily relied on the testimony of the petitioner pertaining to the reasons behind the printing of the phrase "CADIZ FOREVER BADING AND SAGAY NEVER."[21] Our in-depth scrutiny of his testimony, however, reveals that the reasons elicited by the prosecution mainly relate to the discharge of private respondent's official duties as City Mayor of Cadiz City. For that matter, granting that the controversial phrase is considered defamatory, still, no liability attaches on petitioner. Pursuant to Article 361 of the Revised Penal Code, if the defamatory statement is made against a public official with respect to the discharge of his official duties and functions and the truth of the allegations is shown, the accused will be entitled to an acquittal even though he does not prove that the imputation was published with good motives and for justifiable ends. As

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[19] *GMA Network, Inc. v. Bustos*, G.R. No. 146848, October 17, 2006, 504 SCRA 638, 654.

[20] 444 Phil. 230, 241 (2003).

[21] For brevity, the Court shall refrain from quoting the relevant portion of the testimony of the petitioner as the same was reproduced in the assailed Decision.

the Court held in *United States v. Bustos*,[22] the policy of a public official may be attacked, rightly or wrongly with every argument which ability can find or ingenuity invent. The public officer "may suffer under a hostile and an unjust accusation; the wound can be assuaged by the balm of a clear conscience. A public [official] must not be too thin-skinned with reference to comments upon his official acts."

"In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt."[23] In this case, contrary to the conclusion of the trial court as affirmed by the appellate court, the prosecution failed to prove that the controversial phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" imputes derogatory remarks on private respondent's character, reputation and integrity. In this light, any discussion on the issue of malice is rendered moot.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals dated August 31, 2005 in CA-G.R. CR No. 28175 is *REVERSED and SET ASIDE* and the petitioner is *ACQUITTED* of the crime charged.

SO ORDERED.

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

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[22] 37 Phil. 731, 741 (1918).

[23] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 148.

SECOND DIVISION

[G.R. No. 174104. February 14, 2011]

INSURANCE OF THE PHILIPPINE ISLAND CORPORATION, *petitioner, vs.* **SPOUSES VIDAL S. GREGORIO and JULITA GREGORIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION; WHERE THE FOUR-YEAR PRESCRIPTIVE PERIOD WAS RECKONED FROM THE TIME OF ACTUAL DISCOVERY OF FRAUD AND NOT FROM THE TIME OF REGISTRATION OF TITLE.— The Court notes that what has been given by respondents to petitioner as evidence of their ownership of the subject properties at the time that they mortgaged the same are not certificates of title but tax declarations, in the guise that the said properties are unregistered. On the basis of the tax declarations alone and by reason of respondent's misrepresentations, petitioner could not have been reasonably expected to acquire knowledge of the fact that the said properties were already titled. As a consequence, petitioner may not be charged with any knowledge of any subsequent entry of an encumbrance which may have been annotated on the said titles, much less any change of ownership of the properties covered thereby. As such, the Court agrees with petitioner that the reckoning period for prescription of petitioner's action should be from the time of actual discovery of the fraud in 1995. Hence, petitioner's suit for damages, filed on February 20, 1996, is well within the four-year prescriptive period.

2. ID.; LACHES; ESSENCE.— The essence of laches or "stale demands" is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. It is not concerned with mere lapse of time; the fact of delay, standing alone, being insufficient to constitute laches. In addition, it is a rule of equity and applied not to penalize neglect or sleeping on one's rights,

but rather to avoid recognizing a right when to do so would result in a clearly unfair situation. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.

3. ID.; ID.; PRINCIPLE, NOT APPLICABLE IF IT WOULD RESULT IN INJUSTICE.— Neither may the principle of laches apply in the present case. x x x It is significant to point out at this juncture that the overriding consideration in the instant case is that petitioner was deprived of the subject properties which it should have rightly owned were it not for the fraud committed by respondents. Hence, it would be the height of injustice if respondents would be allowed to go scot-free simply because petitioner relied in good faith on the former's false representations. Besides, as earlier discussed, even in the exercise of due diligence, petitioner could not have been expected to immediately discover respondents' fraudulent scheme.

APPEARANCES OF COUNSEL

Law Firm of Tanjuatco & Partners for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and nullification of the Decision[1] of the Court of Appeals (CA), dated June 14,

[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Hakim S. Abdulwahid and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 28-40.

2006 and its Resolution[2] dated August 10, 2006 in CA-G.R. CV No. 82303. The assailed CA Decision reversed the Decision[3] of the Regional Trial Court (RTC) of Morong, Rizal, Branch 79, in Civil Case No. 748-M in favor of herein petitioner, while the questioned CA Resolution denied petitioner's motion for reconsideration.

The pertinent antecedent facts of the case, as summarized by the CA, are as follows:

> On January 10, 1968, the spouses Vidal Gregorio and Julita Gregorio [herein respondents] obtained a loan from the Insurance of the Philippine Islands Corporation [herein petitioner] (formerly known as Pyramid Insurance Co., Inc.) in the sum of ₱2,200.00, payable on or before January 10, 1969, with interest thereon at the rate of 12% per annum. By way of security for the said loan, [respondents] executed a Real Estate Mortgage in favor of [petitioner] over a parcel of land known as Lot 6186 of the Morong Cadastre, then covered by Tax Declaration No. 7899 issued by the Municipal Assessor's Office of Morong, Rizal.
>
> On February 14, 1968, [respondents] again obtained another loan from [petitioner] in the sum of ₱2,000.00, payable on or before February 14, 1969, with 12% interest per annum. Another Real Estate Mortgage, covering a parcel of land known as Lot No. 6190 of the Morong Cadastre under Tax Declaration No. 10518, was executed by [respondents] in favor of [petitioner].
>
> On April 10, 1968, [respondents] obtained, for the third time, another loan from [petitioner] in the amount of ₱4,500.00 payable on or before April 10, 1969 with 12% interest per annum. As a security for the loan, [respondents] again executed a Real Estate Mortgage, this time covering two parcels of land: Lot 3499 under Tax Declaration No. 10631-Rizal and a lot situated in Brgy. Kay Kuliat under Tax Declaration No. 3918.
>
> [Respondents] failed to pay their loans, as a result of which the [mortgaged] properties were extrajudicially foreclosed. The extrajudicial foreclosure sale was conducted on December 11, 1969 where [petitioner] was the highest bidder. Since [respondents] failed to

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[2] *Id.* at 42.

[3] *Rollo*, pp. 187-194.

redeem the property, [petitioner] consolidated its ownership over the properties. The corresponding Tax Declarations were thereafter issued in the name of [petitioner].[4]

On February 20, 1996, petitioner filed a Complaint[5] for damages against respondents alleging that in 1995, when it was in the process of gathering documents for the purpose of filing an application for the registration and confirmation of its title over the foreclosed properties, it discovered that the said lots were already registered in the names of third persons and transfer certificates of title (TCT) were issued to them.

Claiming that respondents acted in a fraudulent and malevolent manner in enticing it to grant their loan applications by misrepresenting ownership of the subject properties, petitioner prayed for the grant of actual and exemplary damages as well as attorney's fees and litigation expenses.

In their Amended Answer,[6] respondents contended that their obligations in favor of petitioner were all settled by the foreclosure of the properties given as security therefor. In the alternative, respondents argue that petitioner's cause of action and right of action are already barred by prescription and laches.

In its Decision dated February 23, 2004, the RTC of Morong, Rizal, ruled in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and as against the defendants, directing the latter to pay the plaintiff, jointly and severally, as follows:

a. Actual damages in the amount of ₱1,000,000.00, representing the fair market value of the real properties subject matter of this suit;

b. For defendants' deceit and bad faith, exemplary damage in the sum of ₱300,000.00;

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[4] *Id.* at 29-30.

[5] Records, pp. 1-12.

[6] *Id.* at 77-82.

c. Attorney's fees and litigation expenses in the amount of ₱200,000.00; and

d. Costs of suit.

SO ORDERED.[7]

Aggrieved, respondents appealed the judgment of the trial court to the CA.

On June 14, 2006, the CA rendered a Decision reversing and setting aside the decision of the RTC and dismissing the complaint of petitioner. It ruled that petitioner's action for damages is barred by prescription and laches.

Petitioner filed a Motion for Reconsideration but the CA denied it in its Resolution of August 10, 2006.

Hence, the instant petition.

Petitioner's main contention is that the CA erred in ruling that petitioner's right to any relief under the law has already prescribed or is barred by laches. Petitioner argues that the prescriptive period of its action for damages should be counted from 1995, which it alleges to be the time that it discovered the fraud committed by respondents against it.

On the other hand, the CA ruled that petitioner's right of action prescribed four years after the subject properties were registered with the Register of Deeds of Morong, Rizal and TCTs were subsequently issued in the names of third persons in the years 1970, 1973 and 1989.

The Court finds the petition meritorious.

Petitioner filed an action for damages on the ground of fraud committed against it by respondents. Under the provisions of Article 1146 of the Civil Code, actions upon an injury to the rights of the plaintiff or upon a quasi-delict must be instituted within four years from the time the cause of action accrued.[8]

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[7] *Id.* at 553-554.

[8] *Philippine Long Distance Telephone Company v. Dulay*, 254 Phil. 30, 36 (1989).

The Court finds no error in the ruling of the CA that petitioner's cause of action accrued at the time it discovered the alleged fraud committed by respondents. It is at this point that the four-year prescriptive period should be counted. However, the Court does not agree with the CA in its ruling that the discovery of the fraud should be reckoned from the time of registration of the titles covering the subject properties.

The Court notes that what has been given by respondents to petitioner as evidence of their ownership of the subject properties at the time that they mortgaged the same are not certificates of title but tax declarations, in the guise that the said properties are unregistered. On the basis of the tax declarations alone and by reason of respondent's misrepresentations, petitioner could not have been reasonably expected to acquire knowledge of the fact that the said properties were already titled. As a consequence, petitioner may not be charged with any knowledge of any subsequent entry of an encumbrance which may have been annotated on the said titles, much less any change of ownership of the properties covered thereby. As such, the Court agrees with petitioner that the reckoning period for prescription of petitioner's action should be from the time of actual discovery of the fraud in 1995. Hence, petitioner's suit for damages, filed on February 20, 1996, is well within the four-year prescriptive period.

Neither may the principle of laches apply in the present case.

The essence of laches or "stale demands" is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[9] It is not concerned with mere lapse of time; the fact of delay, standing alone, being insufficient to constitute laches.[10]

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[9] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 684-685.

[10] *GF Equity, Inc. v. Valenzona*, G.R. No. 156841, June 30, 2005, 462 SCRA 466, 480.

In addition, it is a rule of equity and applied not to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly unfair situation.[11] There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances.[12] Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.[13] It cannot be used to defeat justice or perpetrate fraud and injustice.[14] It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.[15]

It is significant to point out at this juncture that the overriding consideration in the instant case is that petitioner was deprived of the subject properties which it should have rightly owned were it not for the fraud committed by respondents. Hence, it would be the height of injustice if respondents would be allowed to go scot-free simply because petitioner relied in good faith on the former's false representations. Besides, as earlier discussed, even in the exercise of due diligence, petitioner could not have been expected to immediately discover respondents' fraudulent scheme.

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[11] *Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI) v. Obias*, G.R. No. 172077, October 9, 2009, 603 SCRA 173, 196; *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*, 455 Phil. 285, 303 (2003).

[12] *Department of Education, Division of Albay v. Oñate*, G.R. No. 161758, June 8, 2007, 524 SCRA 200, 216-217.

[13] *Placewell International Services Corporation v. Camote*, G.R. No. 169973, June 26, 2006, 492 SCRA 761, 769.

[14] *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, G.R. Nos. 167022 and 169678, August 31, 2007, 531 SCRA 705, 725; *Amoroso v. Alegre, Jr.*, G.R. No. 142766, June 15, 2007, 524 SCRA 641, 656; *Galicia v. Manliquez Vda. de Mindo*, G.R. No. 155785, April 13, 2007, 521 SCRA 85, 96.

[15] *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 503.

WHEREFORE, the instant petition is *GRANTED*. The Decision and Resolution, dated June 14, 2006 and August 10, 2006, respectively, of the Court of Appeals in CA-G.R. CV No. 82303, are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Morong, Rizal, Branch 79, dated February 23, 2004 in Civil Case No. 748-M, is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175514. February 14, 2011]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **SPOUSES JOSE C. GO and ELVY T. GO**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; WHEN RENDERED.— Under the Rules, following the filing of pleadings, if, on motion of a party and after hearing, the pleadings, supporting affidavits, depositions and admissions on file show that, "except as to the amount of damages, there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law," summary judgment may be rendered.

2. ID.; ID.; PLEADINGS; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; RULE.— Under the Rules, every pleading must contain, in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. x x x [I]n

drafting pleadings, members of the bar are enjoined to be clear and concise in their language, and to be organized and logical in their composition and structure in order to set forth their statements of fact and arguments of law in the most readily comprehensible manner possible. Failing such standard, allegations made in pleadings are not to be taken as stand-alone catchphrases in the interest of accuracy. They must be contextualized and interpreted in relation to the rest of the statements in the pleading.

3. ID.; ID.; ID.; ID.; SPECIFIC DENIAL; MODES.— To specifically deny a material allegation, a defendant must specify each material allegation of fact the truth of which he does not admit, and whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. Rule 8, Section 10 of the Rules of Civil Procedure contemplates three (3) modes of specific denial, namely: (1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.

4. ID.; ID.; ID.; ID.; ID.; PURPOSE.— The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.

5. ID.; ID.; SUMMARY JUDGMENT; GENUINE ISSUES; PRESENT IN CASE AT BAR.— [T]he admissions made by Spouses Go are to be read and taken together with the rest of

the allegations made in the Answer, including the special and affirmative defenses. For instance, on the fact of default, PBCom alleges in paragraph 8 of the Complaint that Go defaulted in the payment for both promissory notes, having paid only three interest installments covering the months of September, November, and December 1999. In paragraph 6 of the Answer, Spouses Go denied the said allegation, and further alleged in paragraphs 8 to 13 that Go made substantial payments on his monthly loan amortizations. x x x Moreover, in paragraph 10 of the Answer, Spouses Go also denied the existence of prior demand alleged by PBCom in paragraph 10 of the Complaint. They stated therein that they were not aware of any demand made by PBCom for the settlement of the whole obligation. x x x Finally, as to the amount of the outstanding obligation, PBCom alleged in paragraph 9 of the Complaint that the outstanding balance on the couples' obligations as of May 31, 2001 was ₱21,576,668.64 for the first loan and ₱95,991,111.11, for the second loan or a total of ₱117,567,779.75. In paragraph 9 of the Answer, however, Spouses Go, without stating any specific amount, averred that substantial monthly payments had been made, and there was a need to reconcile the accounting records of the parties. x x x Clearly then, when taken within the context of the entirety of the pleading, it becomes apparent that there was no implied admission and that there were indeed genuine issues to be addressed.

6. ID.; ID.; PLEADINGS; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; SPECIFIC DENIAL; AN ANSWER TO THE EFFECT THAT THE DEFENDANT HAS NO KNOWLEDGE OR INFORMATION SUFFICIENT TO FORM A BELIEF AS TO THE TRUTH OF AN AVERMENT, WHEN CONSIDERED INSUFFICIENT TO CONSTITUTE A SPECIFIC DENIAL.— It must also be pointed out that the cases cited by PBCom do not apply to this case. Those two cases involve denial of lack of knowledge of facts "so plainly and necessarily within [the knowledge of the party making such denial] that such averment of ignorance must be palpably untrue." Also, in both cases, the documents denied were the same documents or deeds sued upon or made the basis of, and attached to, the complaint. In *Philippine Bank of Communications v. Court of Appeals*, the Court ruled that the defendant's contention that it had no truth or information sufficient to form a belief as to the truth of the

deed of exchange was an invalid or ineffectual denial pursuant to the Rules of Court, as it could have easily asserted whether or not it had executed the deed of exchange attached to the petition. x x x The *Warner Barnes* case x x x sprung from a suit for foreclosure of mortgage, where the document that defendant denied was the deed of mortgage sued upon and attached to the complaint. The Court then ruled that it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage. Similarly, in *Capitol Motors* [*Corporations v. Yabut*], the document denied was the promissory note sued upon and attached to the complaint. In said case, the Court ruled that although a statement of lack of knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint was one of the modes of specific denial contemplated under the Rules, paragraph 2 of the Answer in the said case was insufficient to constitute a specific denial. Following the ruling in the *Warner Barnes* case, the Court held that it would have been easy for defendant to specifically allege in the Answer whether or not it had executed the promissory note attached to the Complaint. In *Morales v. Court of Appeals*, the matter denied was intervenor's knowledge of the plaintiff's having claimed ownership of the vehicle in contention. x x x Borrowing the phraseology of the Court in the *Capitol Motors* case, clearly, the fact of the parties' having executed the very documents sued upon, that is, the deed of exchange, deed or mortgage or promissory note, is so plainly and necessarily within the knowledge of the denying parties that any averment of ignorance as to such fact must be palpably untrue. In this case, however, Spouses Go are not disclaiming knowledge of the transaction or the execution of the promissory notes or the pledge agreements sued upon. The matters in contention are, as the CA stated, whether or not respondents were in default, whether there was prior demand, and the amount of the outstanding loan. These are the matters that the parties disagree on and by which reason they set forth vastly different allegations in their pleadings which each will have to prove by presenting relevant and admissible evidence during trial. Furthermore, in stark contrast to the cited cases where one of the parties disclaimed knowledge of something so patently within his knowledge, in this case, respondents Spouses Go categorically stated in the Answer that there was no prior demand, that they

were not in default, and that the amount of the outstanding loan would have to be ascertained based on official records.

APPEARANCES OF COUNSEL

M.Z. Bañaga, Jr. & Associates Law Offices for petitioner.
Pacheco Law Office for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 filed by petitioner Philippine Bank of Communications *(PBCom)* seeking to set aside the July 28, 2006 Decision,[1] and the November 27, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA G.R. CV No. 77714. The CA decision reversed and set aside the January 25, 2002 Decision of the Regional Trial Court, Branch 42, Manila *(RTC)*, which granted the motion for summary judgment and rendered judgment on the basis of the pleadings and attached documents.

THE FACTS

On September 30, 1999, respondent Jose C. Go *(Go)* obtained two loans from PBCom, evidenced by two promissory notes, embodying his commitment to pay ₱17,982,222.22 for the first loan, and ₱80 million for the second loan, within a ten-year period from September 30, 1999 to September 30, 2009.[3]

To secure the two loans, Go executed two (2) pledge agreements, both dated September 29, 1999, covering shares of stock in Ever Gotesco Resources and Holdings, Inc. The first pledge, valued at ₱27,827,122.22, was to secure payment of the first loan, while the second pledge, valued at ₱70,155,100.00, was to secure the second loan.[4]

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[1] *Rollo*, pp. 33-42.

[2] *Id.* at 44-45.

[3] *Id.* at 34.

[4] *Id.*

Two years later, however, the market value of the said shares of stock plunged to less than ₱0.04 per share. Thus, PBCom, as pledgee, notified Go in writing on June 15, 2001, that it was renouncing the pledge agreements.[5]

Later, PBCom filed before the RTC a complaint[6] for sum of money with prayer for a writ of preliminary attachment against Go and his wife, Elvy T. Go *(Spouses Go)*, docketed as Civil Case No. 01-101190. PBCom alleged that Spouses Go defaulted on the two (2) promissory notes, having paid only three (3) installments on interest payments—covering the months of September, November and December 1999. Consequently, the entire balance of the obligations of Go became immediately due and demandable. PBCom made repeated demands upon Spouses Go for the payment of said obligations, but the couple imposed conditions on the payment, such as the lifting of garnishment effected by the Bangko Sentral ng Pilipinas (BSP) on Go's accounts.[7]

Spouses Go filed their Answer with Counterclaim[8] denying the material allegations in the complaint and stating, among other matters, that:

> 8. The promissory note referred to in the complaint expressly state that the loan obligation is payable within the period of ten (10) years. Thus, from the execution date of September 30, 1999, its due date falls on September 30, 2009 (and not 2001 as erroneously stated in the complaint). Thus, prior to September 30, 2009, the loan obligations cannot be deemed due and demandable.
>
> In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (Article 1181, New Civil Code)
>
> 9. Contrary to the plaintiff's proferrence, defendant Jose C. Go had made substantial payments in terms of his monthly payments.

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[5] *Id*.

[6] *Id.* at 46-56.

[7] *Id.* at 35.

[8] *Id.* at 35-36.

There is, therefore, a need to do some accounting works (sic) to reconcile the records of both parties.

10. While demand is a necessary requirement to consider the defendant to be in delay/default, such has not been complied with by the plaintiff since the former is not aware of any demand made to him by the latter for the settlement of the whole obligation.

11. Undeniably, at the time the pledge of the shares of stock were executed, their total value is more than the amount of the loan or at the very least, equal to it. Thus, plaintiff was fully secured insofar as its exposure is concerned.

12. And even assuming without conceding, that the present value of said shares x x x went down, it cannot be considered as something permanent since the prices of stocks in the market either increases (sic) or decreases (sic) depending on the market forces. Thus, it is highly speculative for the plaintiff to consider said shares to have suffered tremendous decrease in its value. More so, it is unfair for the plaintiff to renounce or abandon the pledge agreements.

On September 28, 2001, PBCom filed a verified motion for summary judgment[9] anchored on the following grounds:

I. MATERIAL AVERMENTS OF THE COMPLAINT ADMITTED BY DEFENDANT-SPOUSES IN THEIR ANSWER TO OBVIATE THE NECESSITY OF TRIAL

II. NO REAL DEFENSES AND NO GENUINE ISSUES AS TO ANY MATERIAL FACT WERE TENDERED BY THE DEFENDANT-SPOUSES IN THEIR ANSWER

III. PLAINTIFF'S CAUSES OF ACTIONS ARE SUPPORTED BY VOLUNTARY ADMISSIONS AND AUTHENTIC DOCUMENTS WHICH MAY NOT BE CONTRADICTED.[10]

PBCom contended that the Answer interposed no specific denials on the material averments in paragraphs 8 to 11 of the complaint such as the fact of default, the entire amount being already due and demandable by reason of default, and the fact

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[9] *Id.* at 64.

[10] *Id.*

that the bank had made repeated demands for the payment of the obligations.[11]

Spouses Go opposed the motion for summary judgment arguing that they had tendered genuine factual issues calling for the presentation of evidence.[12]

The RTC granted PBCom's motion in its Judgment[13] dated January 25, 2002, the dispositive portion of which states:

> WHEREFORE, in view of all the foregoing, judgment is rendered for the plaintiff and against the defendants ordering them to pay plaintiff jointly and severally the following:
>
> 1. The total amount of ₱117,567,779.75, plus interests and penalties as stipulated in the two promissory notes;
> 2. A sum equivalent to 10% of the amount involved in this case, by way of attorney's fees; and
> 3. The costs of suit.
>
> SO ORDERED.[14]

Spouses Go moved for a reconsideration but the motion was denied in an order[15] dated March 20, 2002.

RULING OF THE COURT OF APPEALS

In its Decision dated July 28, 2006, the CA *reversed* and *set aside* the assailed judgment of the RTC, denied PBCom's motion for summary judgment, and ordered the remand of the records to the court of origin for trial on the merits. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the assailed judgment of the Regional Trial Court, Branch 42 of Manila in Civil Case No. 01-101190 is hereby **REVERSED and SET ASIDE**, and a new one entered denying plaintiff-appellee's motion for summary judgment.

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[11] *Id.* at 36.

[12] *Id*.

[13] *Id.* at 80-86.

[14] *Id.* at 86.

[15] *Id.* at 37.

Accordingly, the records of the case are hereby remanded to the court of origin for trial on the merits.

SO ORDERED.[16]

The CA could not agree with the conclusion of the RTC that Spouses Go admitted paragraphs 3, 4 and 7 of the complaint. It found the supposed admission to be insufficient to justify a rendition of summary judgment in the case for sum of money, since there were other allegations and defenses put up by Spouses Go in their Answer which raised genuine issues on the material facts in the action.[17]

The CA agreed with Spouses Go that paragraphs 3 and 4 of the complaint merely dwelt on the fact that a contract of loan was entered into by the parties, while paragraph 7 simply emphasized the terms of the promissory notes executed by Go in favor of PBCom. The fact of default, the amount of the outstanding obligation, and the existence of a prior demand, which were all material to PBCom's claim, were "hardly admitted"[18] by Spouses Go in their Answer and were, in fact, effectively questioned in the other allegations in the Answer.[19]

PBCom's motion for reconsideration was denied in a resolution[20] dated November 27, 2006.

Thus, this petition for review.

THE ISSUES

I

WHETHER THE COURT OF APPEALS ERRED OR ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK, OR

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[16] *Id.* at 41.

[17] *Id.* at 39.

[18] *Id.*

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

[20] *Id.* at 44-45. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo F. Sundiam and Apolinario D. Bruselas, Jr. (in lieu of Associate Justice Japar B. Dimaampao who was on leave per Office Order No. 300-06-RTR dated November 14, 2006), concurring.

EXCESS OF JURISDICTION IN RULING THAT THERE EXISTS A GENUINE ISSUE AS TO MATERIAL FACTS IN THE ACTION IN SPITE OF THE UNEQUIVOCAL ADMISSIONS MADE IN THE PLEADINGS BY RESPONDENTS; AND

II

WHETHER THE COURT OF APPEALS ERRED OR ACTED IN GRAVE ABUSE OF JURISDICTION [DISCRETION] IN HOLDING THAT ISSUES WERE RAISED ABOUT THE FACT OF DEFAULT, THE AMOUNT OF THE OBLIGATION, AND THE EXISTENCE OF PRIOR DEMAND, EVEN WHEN THE PLEADING CLEARLY POINTS TO THE CONTRARY.

Petitioner PBCom's Position: Summary judgment was proper, as there were no genuine issues raised as to any material fact.

PBCom argues that the material averments in the complaint categorically admitted by Spouses Go obviated the necessity of trial. In their Answer, Spouses Go admitted the allegations in paragraphs 3 and 4 of the Complaint pertaining to the security for the loans and the due execution of the promissory notes,[21] and those in paragraph 7 which set forth the acceleration clauses in the promissory note. Their denial of paragraph 5 of the Complaint pertaining to the Schedules of Payment for the liquidation of the two promissory notes did not constitute a specific denial required by the Rules.[22]

Even in the Comment[23] of Spouses Go, the clear, categorical and unequivocal admission of paragraphs 3, 4, and 7 of the Complaint had been conceded.[24]

PBCom faults the CA for having formulated non-existent issues pertaining to the fact of default, the amount of outstanding

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[21] *Id.* at 236.

[22] *Id.* at 237.

[23] *Id.* at 174.

[24] *Id.* at 240.

obligation and the existence of prior demand, none of which is borne by the pleadings or the records.[25]

The Spouses Go, PBCom argues, cannot negate or override the legal effect of the acceleration clauses embodied in each of the two promissory notes executed by Go. Moreover, the non-payment of arrearages constituting default was admitted by Go in his letters to PBCom dated March 3 and April 7, 2000, respectively.[26] Therefore, by such default, they have lost the benefit of the period in their favor, pursuant to Article 1198[27] of the Civil Code.

Further, PBCom claims that its causes of action are supported by authentic documents and voluntary admissions which cannot be contradicted. It cites the March 3 and April 7, 2000 letters of Go requesting deferment of interest payments on his past due loan obligations to PBCom, as his assets had been placed under attachment in a case filed by the BSP.[28] PBCom emphasizes that the said letters, in addition to its letters of demand duly acknowledged and received by Go, negated their claim that they were not aware of any demand having been made.[29]

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[25] *Id.* at 241.

[26] *Id.* at 242.

[27] Article 1198 of the Civil Code provides: "The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the debtor attempts to abscond."

[28] *Rollo*, pp. 242-243.

[29] *Id.* at 244.

Respondent spouses' position: Summary judgment was not proper.

The core contention of Spouses Go is that summary judgment was not proper under the attendant circumstances, as there exist genuine issues with respect to the fact of default, the amount of the outstanding obligation, and the existence of prior demand, which were duly questioned in the special and affirmative defenses set forth in the Answer. Spouses Go agree with the CA that the admissions in the pleadings pertained to the highlight of the terms of the contract. Such admissions merely recognized the existence of the contract of loan and emphasized its terms and conditions.[30] Moreover, although they admitted paragraphs 3, 4, and 7, the special and affirmative defenses contained in the Answer tendered genuine issues which could only be resolved in a full-blown trial.[31]

On the matter of specific denial, Spouses Go posit that the Court decisions cited by PBCom[32] do not apply on all fours in this case. Moreover, the substance of the repayment schedule was not set forth in the complaint. It, therefore, follows that the act of attaching copies to the complaint is insufficient to secure an implied admission. Assuming *arguendo* that it was impliedly admitted, the existence of said schedule and the promissory notes would not immediately make private respondents liable for the amount claimed by PBCom.[33] Before respondents may be held liable, it must be established, first, that they indeed defaulted; and second, that the obligations has remained outstanding.[34]

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[30] *Id.* at 210.

[31] *Id.* at 211.

[32] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 92067, March 22, 1991, 195 SCRA 567 and *Morales v. Court of Appeals*, 274 Phil. 674 (1991).

[33] *Rollo*, p. 215.

[34] *Id.*

Spouses Go also state that although they admitted paragraphs 3, 4 and 7 of the Complaint, the fact of default, the amount of outstanding obligation and the existence of prior demand were fully questioned in the special and affirmative defenses.[35]

RULING OF THE COURT

The Court agrees with the CA that "[t]he supposed admission of defendants-appellants on the x x x allegations in the complaint is clearly not sufficient to justify the rendition of summary judgment in the case for sum of money, considering that there are other allegations embodied and defenses raised by the defendants-appellants in their answer which raise a genuine issue as to the material facts in the action."[36]

The CA correctly ruled that there exist genuine issues as to three material facts, which have to be addressed during trial: *first*, the fact of default; *second*, the amount of the outstanding obligation, and *third*, the existence of prior demand.

Under the Rules, following the filing of pleadings, if, on motion of a party and after hearing, the pleadings, supporting affidavits, depositions and admissions on file show that, "except as to the amount of damages, there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law,"[37] summary judgment may be rendered. This rule was expounded in *Asian Construction and Development Corporation v. Philippine Commercial International Bank*,[38] where it was written:

> Under Rule 35 of the 1997 Rules of Procedure, as amended, except as to the amount of damages, when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed.[39] Summary or accelerated judgment is a procedural technique aimed at weeding

[35] *Id.* at 213.

[36] *Id.* at 39.

[37] Rule 35, Rules of Civil Procedure.

[38] G.R. No. 153827, April 25, 2006, 488 SCRA 192.

[39] Citing *Northwest Airlines v. CA*, 348 Phil. 438, 449 (1998).

out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial.[40]

Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.

A *"genuine issue"* is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[41] (Underscoring supplied.)

Juxtaposing the Complaint and the Answer discloses that the material facts here are *not* undisputed so as to call for the rendition of a summary judgment. While the denials of Spouses Go could have been phrased more strongly or more emphatically, and the Answer more coherently and logically structured in order to overthrow any shadow of doubt that such denials were indeed made, the pleadings show that they did in fact raise material issues that have to be addressed and threshed out in a full-blown trial.

PBCom anchors its arguments on the alleged implied admission by Spouses Go resulting from their failure to specifically deny

[40] Citing *Excelsa Industries, Inc. v. CA*, 317 Phil. 664, 671 (1995).

[41] *Supra* note 38 at 202-203, citing *Evadel Realty and Development Corporation v. Soriano*, 409 Phil. 450, 461 (2001).

the material allegations in the Complaint, citing as precedent *Philippine Bank of Communications v. Court of Appeals*,[42] and *Morales v. Court of Appeals*. Spouses Go, on the other hand, argue that although admissions were made in the Answer, the special and affirmative defenses contained therein tendered genuine issues.

Under the Rules, every pleading must contain, in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.[43]

To specifically deny a material allegation, a defendant must specify each material allegation of fact the truth of which he does not admit, and whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.[44]

Rule 8, Section 10 of the Rules of Civil Procedure contemplates three (3) modes of specific denial, namely: 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.[45]

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[42] G.R. No. 92067, March 22, 1991, 195 SCRA 567.

[43] Section 1, Rule 8, Rules of Civil Procedure.

[44] Section 10, Rule 8, Rules of Civil Procedure.

[45] *Spouses Gaza. v. Ramon J. Lim and Agnes J. Lim*, 443 Phil. 337, 345 (2003).

The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.[46]

Again, in drafting pleadings, members of the bar are enjoined to be clear and concise in their language, and to be organized and logical in their composition and structure in order to set forth their statements of fact and arguments of law in the most readily comprehensible manner possible. Failing such standard, allegations made in pleadings are not to be taken as stand-alone catchphrases in the interest of accuracy. They must be contextualized and interpreted in relation to the rest of the statements in the pleading.

In *Spouses Gaza v. Lim*, the Court ruled that the CA erred in declaring that the petitioners therein impliedly admitted respondents' allegation that they had prior and continuous possession of the property, as petitioners did in fact enumerate their special and affirmative defenses in their Answer. They also specified therein each allegation in the complaint being denied by them. The Court therein stated:

> The Court of Appeals held that spouses Gaza, petitioners, failed to deny specifically, in their answer, paragraphs 2, 3 and 5 of the complaint for forcible entry quoted as follows:
>
> x x x x x x x x x
>
> 2. That plaintiffs are the actual and joint occupants and in prior continuous physical possession since 1975 up to Nov. 28, 1993 of a certain commercial compound described as follows:
>
> A certain parcel of land situated in Bo. Sta. Maria, Calauag, Quezon. Bounded on the N., & E., by Julian de Claro; on the W., by Luis Urrutia. Containing an area of 5,270 square meters, more or less. Declared under Ramon J. Lim's Tax Dec. No. 4576 with an Ass. Value of ₱26,100.00

[46] *Aquintey v. Tibong*, G.R. No. 166704, December 20, 2006, 511 SCRA 414, 432.

> 3. That plaintiffs have been using the premises mentioned for combined lumber and copra business. Copies of plaintiffs' Lumber Certificate of Registration No. 2490 and PCA Copra Business Registration No. 6265/76 are hereto attached as Annexes "A" and "B" respectively; the Mayor's unnumbered copra dealer's permit dated Dec. 31, 1976 hereto attached as Annex "C";
>
> x x x x x x x x x
>
> 5. That defendants' invasion of plaintiffs' premises was accomplished illegally by detaining plaintiffs' caretaker Emilio Herrera and his daughter inside the compound, then proceeded to saw the chain that held plaintiffs' padlock on the main gate of the compound and then busted or destroyed the padlock that closes the backyard gate or exit. Later, they forcibly opened the lock in the upstairs room of plaintiff Agnes J. Lim's quarters and defendants immediately filled it with other occupants now. Copy of the caretaker's (Emilio Herrera) statement describing in detail is hereto attached as Annex "D";
>
> x x x x x x x x x

The Court of Appeals then concluded that since petitioners did not deny specifically in their answer the above-quoted allegations in the complaint, they judicially admitted that Ramon and Agnes Lim, respondents, "were in prior physical possession of the subject property, and the action for forcible entry which they filed against private respondents (spouses Gaza) must be decided in their favor. The defense of private respondents that they are the registered owners of the subject property is unavailing."

We observe that the Court of Appeals failed to consider paragraph 2 of petitioners' answer quoted as follows:

> 2. That defendants specifically deny the allegations in paragraph 2 and 3 of the complaint for want of knowledge or information sufficient to form a belief as to the truth thereof, the truth of the matter being those alleged in the special and affirmative defenses of the defendants;"

Clearly, petitioners specifically denied the allegations contained in paragraphs 2 and 3 of the complaint that respondents have prior and continuous possession of the disputed property which they used for their lumber and copra business. Petitioners did not merely allege

they have no knowledge or information sufficient to form a belief as to truth of those allegations in the complaint, but added the following:

SPECIAL AND AFFIRMATIVE DEFENSES

That defendants hereby reiterate, incorporate and restate the foregoing and further allege:

5. That the complaint states no cause of action;

"From the allegations of plaintiffs, it appears that their possession of the subject property was not supported by any concrete title or right, nowhere in the complaint that they alleged either as an owner or lessee, hence, the alleged possession of plaintiffs is questionable from all aspects. Defendants Sps. Napoleon Gaza and Evelyn Gaza being the registered owner of the subject property has all the right to enjoy the same, to use it, as an owner and in support thereof, a copy of the transfer certificate of title No. T-47263 is hereto attached and marked as Annex "A-Gaza" and a copy of the Declaration of Real Property is likewise attached and marked as Annex "B-Gaza" to form an integral part hereof;

6. That considering that the above-entitled case is an ejectment case, and considering further that the complaint did not state or there is no showing that the matter was referred to a *Lupon* for conciliation under the provisions of P.D. No. 1508, the Revised Rule on Summary Procedure of 1991, particularly Section 18 thereof provides that such a failure is jurisdictional, hence subject to dismissal;

7. That the Honorable Court has no jurisdiction over the subject of the action or suit;

The complaint is for forcible entry and the plaintiffs were praying for indemnification in the sum of ₱350,000.00 for those copra, lumber, tools, and machinery listed in par. 4 of the complaint and ₱100,000.00 for unrealized income in the use of the establishment, considering the foregoing amounts not to be rentals, Section 1 A (1) and (2) of the Revised Rule on Summary Procedure prohibits recovery of the same, hence, the Honorable Court can not acquire jurisdiction over the same. Besides, the defendants Napoleon Gaza and Evelyn Gaza being the owners of those properties cited in par. 4 of the complaint

except for those copra and two (2) live carabaos outside of the subject premises, plaintiffs have no rights whatsoever in claiming damages that it may suffer, as and by way of proof of ownership of said properties cited in paragraph 4 of the complaint attached herewith are bunche[s] of documents to form an integral part hereof;

8. That plaintiffs' allegation that Emilio Herrera was illegally detained together with his daughter was not true and in support thereof, attached herewith is a copy of said Herrera's statement and marked as Annex "C-Gaza."

x x x x x x x x x

The above-quoted paragraph 2 and Special and Affirmative Defenses contained in petitioners' answer glaringly show that petitioners did not admit impliedly that respondents have been in prior and actual physical possession of the property. Actually, petitioners are repudiating vehemently respondents' possession, stressing that they (petitioners) are the registered owners and lawful occupants thereof.

Respondents' reliance on *Warner Barnes and Co., Ltd. v. Reyes* in maintaining that petitioners made an implied admission in their answer is misplaced. In the cited case, the defendants' answer merely alleged that they were "without knowledge or information sufficient to form a belief as to the truth of the material averments of the remainder of the complaint" and "that they hereby reserve the right to present an amended answer with special defenses and counterclaim."[51] In the instant case, petitioners enumerated their special and affirmative defenses **in their answer**. They also specified therein each allegation in the complaint being denied by them. They particularly alleged they are the registered owners and lawful possessors of the land and denied having wrested possession of the premises from the respondents through force, intimidation, threat, strategy and stealth. They asserted that respondents' purported possession is "questionable from all aspects." They also averred that they own all the personal properties enumerated in respondents' complaint, except the two carabaos. Indeed, nowhere in the answer can we discern an implied admission of the allegations of the complaint, specifically the allegation that petitioners have priority of possession.

Thus, the Court of Appeals erred in declaring that herein petitioners impliedly admitted respondents' allegation that they have prior and continuous possession of the property.[47] (Underscoring supplied.)

In this case, as in *Gaza*, the admissions made by Spouses Go are to be read and taken together with the rest of the allegations made in the Answer, including the special and affirmative defenses.

For instance, on the fact of default, PBCom alleges in paragraph 8 of the Complaint that Go defaulted in the payment for both promissory notes, having paid only three interest installments covering the months of September, November, and December 1999.

In paragraph 6 of the Answer, Spouses Go denied the said allegation, and further alleged in paragraphs 8 to 13 that Go made substantial payments on his monthly loan amortizations.

The portions of the pleadings referred to are juxtaposed below:

Complaint	**Answer**
8. The defendant defaulted in the payment of the obligations on the two (2) promissory notes (Annexes "A" and "B" hereof) as he has paid only three (3) installments on interests (sic) payments covering the months of September, November and December, 1999, on both promissory notes, respectively. As a consequence of the default, the entire balance due on the obligations of the defendant to plaintiff on both promissory notes immediately became due and demandable pursuant to the terms and conditions embodied in the two (2) promissory notes;[48]	6. Defendants deny the allegations in paragraphs 8, 9, 10 and 11 of the Complaint; x x x 8. The promissory notes referred to in the complaint expressly state that the loan obligation is payable within the period of ten (10) years. Thus, from the execution date of September 30, 1999, its due date falls on September 30, 2009 (and not 2001 as erroneously stated in the complaint). Thus, prior to September 30, 2009, the loan

[47] *Supra* note 45.

[48] *Rollo*, p. 50.

	obligations cannot be deemed due and demandable. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (Article 1181, New Civil Code) 9. Contrary to the plaintiff's preference, defendant Jose C. Go has made substantial payments in terms of his monthly payments. There is therefore, a need to do some accounting works (sic) just to reconcile the records of both parties. 10. While demand is a necessary requirement to consider the defendant to be in delay/default, such has not been complied with by the plaintiff since the former is not aware of any demand made to him by the latter for the settlement of the whole obligation. 11. Undeniably, at the time the pledge of the shares of stocks were executed, their total value is more than the amount of the loan, or at the very least, equal to it. Thus, plaintiff was fully secured insofar as its exposure is concerned.[49]

[49] *Id.* at 59.

	12. And even assuming without conceding, that the present value of said shares has went (sic) down, it cannot be considered as something permanent since, the prices of stocks in the market either increases (sic) or (sic) decreases depending on the market forces. Thus, it is highly speculative for the plaintiff to consider said shares to have suffered tremendous decrease in its value. Moreso (sic), it is unfair for the plaintiff to renounce or abandon the pledge agreements. 13. As aptly stated, it is not aware of any termination of the pledge agreement initiated by the plaintiff.

Moreover, in paragraph 10 of the Answer, Spouses Go also denied the existence of prior demand alleged by PBCom in paragraph 10 of the Complaint. They stated therein that they were not aware of any demand made by PBCom for the settlement of the whole obligation. Both sections are quoted below:

Complaint	**Answer**
10. Plaintiff made repeated demands from (sic) defendant for the payment of the obligations which the latter acknowledged to have incurred however, defendant imposed conditions such as [that] his [effecting] payments shall depend upon the lifting of garnishment effected by the	10. While demand is a necessary requirement to consider the defendant to be in delay/default, such has not been complied with by the plaintiff since the former is not aware of any demand made to him by the latter for the settlement of the whole obligation.

Bangko Sentral on his accounts. Photocopies of defendant's communication dated March 3, 2000 and April 7, 2000, with plaintiff are hereto attached as **Annexes "F"** and **"G"** hereof, as well as its demand to pay dated April 18, 2000. Demand by plaintiff is hereto attached as **Annex "H"** hereof.[50] [Emphasis Supplied	

Finally, as to the amount of the outstanding obligation, PBCom alleged in paragraph 9 of the Complaint that the outstanding balance on the couples' obligations as of May 31, 2001 was ₱21,576,668.64 for the first loan and ₱95,991,111.11, for the second loan or a total of ₱117,567,779.75.

In paragraph 9 of the Answer, however, Spouses Go, without stating any specific amount, averred that substantial monthly payments had been made, and there was a need to reconcile the accounting records of the parties.

Complaint	**Answer**
9. Defendants' outstanding obligations under the two (2) promissory notes as of May 31, 2001 are: ₱21,576,668.64 (Annex "A") and ₱95,991,111.11 (Annex "B"), or a total of ₱117,567,779.75. Copy of the Statement of Account is hereto attached as **Annex "E"** hereof.[51]	9. Contrary to the plaintiff's preference, defendant Jose C. Go has made substantial payments in terms of his monthly payments. There is therefore, a need to do some accounting works just to reconcile the records of both parties.[52]

[50] *Id.* at 50.

[51] *Id.*

[52] *Id.* at 59.

Clearly then, when taken within the context of the entirety of the pleading, it becomes apparent that there was no implied admission and that there were indeed genuine issues to be addressed.

As to the attached March 3, 2000 letter, the Court is in accord with the CA when it wrote:

> The letter dated March 3, 2000 is insufficient to support the material averments in PBCom's complaint for being equivocal and capable of different interpretations. The contents of the letter do not address all the issues material to the bank's claim and thus do not conclusively establish the cause of action of PBCom against the spouses Go. As regards the letter dated April 7, 2000, the trial court itself ruled that such letter addressed to PBCom could not be considered against the defendants-appellants simply because it was not signed by defendant-appellant Jose Go.
>
> Notably, the trial court even agreed with the defendant-appellants on the following points:
>
> > The alleged default and outstanding obligations are based on the Statement of Account. This Court agrees with the defendants that since the substance of the document was not set forth in the complaint although a copy thereof was attached thereto, or the said document was not set forth verbatim in the pleading, the rule on implied admission does not apply.[53]

It must also be pointed out that the cases cited by PBCom do not apply to this case. Those two cases involve denial of lack of knowledge of facts "so plainly and necessarily within [the knowledge of the party making such denial] that such averment of ignorance must be palpably untrue."[54] Also, in both cases, the documents denied were the same documents or deeds sued upon or made the basis of, and attached to, the complaint.

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[53] *Id.* at 40.

[54] *Warner Barnes & Co., Ltd. v. Reyes*, 103 Phil. 662, 665 (1958), citing *Icle Plant Equipment Co. v. Marcello*, D.C. Pa. 1941, 43 F. Supp. 281.

In *Philippine Bank of Communications v. Court of Appeals*,[55] the Court ruled that the defendant's contention that it had no truth or information sufficient to form a belief as to the truth of the deed of exchange was an invalid or ineffectual denial pursuant to the Rules of Court,[56] as it could have easily asserted whether or not it had executed the deed of exchange attached to the petition. Citing *Capitol Motors Corporations v. Yabut*,[57] the Court stated that:

> x x x The rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue.[58]

The *Warner Barnes* case cited above sprung from a suit for foreclosure of mortgage, where the document that defendant denied was the deed of mortgage sued upon and attached to the complaint. The Court then ruled that it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage.

Similarly, in *Capitol Motors*, the document denied was the promissory note sued upon and attached to the complaint. In said case, the Court ruled that although a statement of lack of knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint was one of the modes of specific denial contemplated under the Rules, paragraph 2 of the Answer in the said case was insufficient to constitute a specific denial.[59] Following the ruling in the *Warner Barnes* case, the Court held that it would have been easy for defendant

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[55] *Philippine Bank of Communications v. Court of Appeals*, *supra* note 32.

[56] *Id.* at 574.

[57] *Id.*

[58] *Id.*, citing *Warner Barnes & Co., Ltd. v. Reyes*, 103 Phil. 662 (1958).

[59] *Id.*

to specifically allege in the Answer whether or not it had executed the promissory note attached to the Complaint.[60]

In *Morales v. Court of Appeals*,[61] the matter denied was intervenor's knowledge of the plaintiff's having claimed ownership of the vehicle in contention. The Court therein stated:

> Yet, despite the specific allegation as against him, petitioner, in his Answer in Intervention with Counterclaim and Crossclaim, answered the aforesaid paragraph 11, and other paragraphs, merely by saying that "he has no knowledge or information sufficient to form a belief as to its truth." While it may be true that under the Rules one could avail of this statement as a means of a specific denial, nevertheless, if an allegation directly and specifically charges a party to have done, performed or committed a particular act, but the latter had not in fact done, performed or committed it, a categorical and express denial must be made. In such a case, the occurrence or non-occurrence of the facts alleged may be said to be within the party's knowledge. In short, the petitioner herein could have simply expressly and in no uncertain terms denied the allegation if it were untrue. It has been held that when the matters of which a defendant alleges of having no knowledge or information sufficient to form a belief, are plainly and necessarily within his knowledge, his alleged ignorance or lack of information will not be considered as specific denial. His denial lacks the element of sincerity and good faith, hence, insufficient.[62]

Borrowing the phraseology of the Court in the *Capitol Motors* case, clearly, the fact of the parties' having executed the very documents sued upon, that is, the deed of exchange, deed or mortgage or promissory note, is so plainly and necessarily within the knowledge of the denying parties that any averment of ignorance as to such fact must be palpably untrue.

In this case, however, Spouses Go are not disclaiming knowledge of the transaction or the execution of the promissory notes or

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[60] *Id.*

[61] 274 Phil. 674, 686 (1991).

[62] *Id.* at 674, citing *Gutierrez v. Court of Appeals*, 165 Phil. 752 (1976) and *Warner Barnes & Co. v. Reyes*, 103 Phil. 662 (1958).

the pledge agreements sued upon. The matters in contention are, as the CA stated, whether or not respondents were in default, whether there was prior demand, and the amount of the outstanding loan. These are the matters that the parties disagree on and by which reason they set forth vastly different allegations in their pleadings which each will have to prove by presenting relevant and admissible evidence during trial.

Furthermore, in stark contrast to the cited cases where one of the parties disclaimed knowledge of something so patently within his knowledge, in this case, respondents Spouses Go categorically stated in the Answer that there was no prior demand, that they were not in default, and that the amount of the outstanding loan would have to be ascertained based on official records.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183906. February 14, 2011]

AFP MUTUAL BENEFIT ASSOCIATION, INC., *petitioner, vs.* **REGIONAL TRIAL COURT, MARIKINA CITY, BRANCH 193 and SOLID HOMES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION OR *MANDAMUS*; A MOTION FOR RECONSIDERATION IS REQUIRED PRIOR TO THE FILING OF A PETITION FOR PROHIBITION OR *MANDAMUS*; EXCEPTION.— Regarding AFPMBAI's failure to file a motion for reconsideration of the

assailed RTC order, which motion is required prior to the filing of a petition for prohibition or *mandamus*, the Court recognizes certain exceptions to such requirement as enumerated in *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*. These include situations, such as exists in this case, where the petition raises only pure questions of law and the questioned order is a patent nullity. The direct recourse to this Court rather than to the CA is also justified since the petition raises only questions of law. Section 4, Rule 65 of the Rules of Court states that a petition for prohibition and *mandamus* may be filed in the Supreme Court.

2. ID.; ID.; ID.; PROHIBITION; THE PROPER REMEDY IN CASE AT BAR.— Since AFPMBAI does not seek the performance by respondent RTC of some clearly defined ministerial duty, the Court agrees that the remedy of *mandamus* seems inappropriate in this case. Still the action is saved by the fact that it is also one for prohibition. AFPMBAI seeks to prevent the Marikina City RTC from hearing and adjudicating in excess of its jurisdiction Solid Homes' seriously flawed petition for relief from judgment. Prohibition is a correct remedy.

3. ID.; ID.; RELIEF FROM JUDGMENTS; MUST BE FILED WITHIN SIXTY DAYS FROM NOTICE OF JUDGMENT OR WITHIN SIX MONTHS FROM THE ENTRY OF JUDGMENT.— AFPMBAI points out that Solid Homes filed its petition for relief from judgment with the RTC beyond the period allowed by the rules. The Court agrees. Section 3, Rule 38 of the Rules of Civil Procedure provides that a petition for relief from judgment must be filed within 60 days from notice of such judgment or within six months from the entry of judgment. The RTC issued its order denying Solid Homes' original motion for reconsideration of its order dismissing its action on April 21, 2004. This means that the RTC's order of dismissal had long become final and executory when Solid Homes filed its petition for relief nearly 10 months later on February 14, 2005. The period cannot be counted from the RTC's order denying its second motion for reconsideration since such motion was a prohibited pleading.

4. ID.; ID.; ID.; EXTRINSIC FRAUD; REFERS TO THAT FRAUD WHICH THE PREVAILING PARTY CAUSED TO PREVENT THE LOSING PARTY FROM BEING HEARD ON HIS ACTION

OR DEFENSE.— [T]he extrinsic fraud that will justify a petition for relief from judgment is that fraud which the prevailing party caused to prevent the losing party from being heard on his action or defense. Such fraud concerns not the judgment itself but the manner in which it was obtained. For example, the petition of a defending party would be justified where the plaintiff deliberately caused with the process server's connivance the service of summons on defendant at the wrong address and thus succeeded in getting a judgment by default against him.

5. ID.; ID.; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; HOLDS THAT ISSUES ACTUALLY AND DIRECTLY RESOLVED IN A FORMER SUIT CANNOT BE RAISED IN ANY FUTURE CASE BETWEEN THE SAME PARTIES; CASE AT BAR.— Here, the fraud that Solid Homes proposed as ground for its petition for relief is Investco and AFPMBAI's alleged prior knowledge of the sale of the disputed lands to Solid Homes, which fraud goes into the merit of the case rather than on Solid Homes' right to be heard on its action. In effect the RTC will rehear the issue of whether or not AFPMBAI was a buyer in good faith, an issue barred by *res judicata* since the Court has already decided the same with finality in the latter's favor on March 3, 2000 in G.R. 104769 and G.R. 135016, *AFPMBAI v. CA*. The principle of *res judicata* holds that issues actually and directly resolved in a former suit cannot be raised in any future case between the same parties.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose and *Florentino & Esmaquel Law Office* for petitioner.
Jose C. Lachica for respondents.

D E C I S I O N

ABAD, *J.*:

This is about a trial court order that gave due course to a petition for relief from judgment that would litigate anew issues between the same parties that had already been once decided with finality.

The Facts and the Case

In 1976 Investco, Inc. (Investco) entered into a contract to sell to Solid Homes, Inc. (Solid Homes) certain properties in Quezon City and in Marikina City. But, because Solid Homes defaulted in payments, Investco sued for specific performance and damages. During the pendency of the action, Investco sold the properties to the Armed Forces of the Philippines Mutual Benefits Association, Inc. (AFPMBAI). Following full payment of the consideration of the sale, the Register of Deeds issued new certificates of title to AFPMBAI covering the properties.[1]

Subsequently, Solid Homes filed an action against the Register of Deeds, AFPMBAI, and Investco with the Regional Trial Court (RTC) of Marikina City for annotation of *lis pendens* and damages. When the matter reached this Court through two related cases, it rendered a decision, directing the Register of Deeds to cancel Solid Homes' notice of *lis pendens* on AFPMBAI's titles and declared AFPMBAI a buyer in good faith and for value.[2]

On August 26, 2003 Solid Homes filed another action with the RTC of Marikina City, Branch 193, to cancel the same certificates of title of AFPMBAI. On motion filed by the latter, however, the RTC issued an order dated January 23, 2004, dismissing the complaint on ground of *res judicata* in view of the decision in the previous actions. Solid Homes filed a motion for reconsideration but the RTC denied it. The RTC also denied as prohibited pleading Solid Homes' second motion for reconsideration.[3]

Undeterred, Solid Homes filed a petition for relief from judgment, that is, from the order of dismissal dated November 26, 2004, claiming that Investco and AFPMBAI committed extrinsic fraud in the proceedings that led to the judgment that the Court rendered against Solid Homes in G.R. 104769 and

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[1] *AFP Mutual Benefit Association, Inc. v. Court of Appeals*, 383 Phil. 959 (2000).

[2] *Id.* at 978.

[3] *Rollo*, p. 218.

G.R. 135016. This fraud consisted in AFPMBAI's alleged failure to disclose its knowledge of a prior sale between Investco and Solid Homes. Solid Homes claimed that it had evidence to prove this.[4]

Meantime, Solid Homes caused the annotation of notices of *lis pendens* on AFPMBAI's titles based on its pending petition for relief from judgment before the RTC.[5] After hearing or on July 18, 2008 the RTC issued an order, giving due course to Solid Homes' petition.[6]

Without filing a motion for reconsideration of the RTC's July 18, 2008 order, AFPMBAI filed the present petition for prohibition and *mandamus* with application for temporary restraining order and preliminary mandatory injunction directly with this Court.[7] On August 27, 2008 the Court issued a temporary restraining order, enjoining the Marikina City RTC from further proceeding in the case and Solid Homes from causing the annotation of notice of *lis pendens* on any of AFPMBAI's certificates of title.[8]

The petition alleged that the RTC gravely abused its discretion in giving due course to Solid Homes' petition for relief from judgment on several grounds:[9]

1. Solid Homes filed its petition for relief from judgment beyond the period allowed by the rules;[10]

2. Its petition for relief did not include an affidavit of merit showing the supposed fraud, accident, mistake, and excusable negligence it relied on;[11]

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[4] *Id*. at 43-44.

[5] *Id*. at 12.

[6] *Supra* note 4.

[7] *Id*. at 3.

[8] *Id*. at 316-317.

[9] *Id*. at 15.

[10] *Id*. at 19-21.

[11] *Id*. at 25-27.

3. The grounds that Solid Homes invoked—AFPMBAI's alleged fraud in acquiring the subject property—is not the fraud contemplated by Section 2, Rule 38 of the Rules of Civil Procedure;[12]

4. The grant of Solid Homes' petition for relief based on AFPMBAI's alleged fraud in acquiring its titles to the property subject of the March 3, 2000 decision of the Court in G.R. 104769 and G.R. 135016, *AFPMBAI v. CA*, is already barred by *res judicata*;[13] and

5. The annotation of a notice of *lis pendens* under Section 14, Rule 13 of the Rules of Civil Procedure is allowed only in actions affecting title to or possession of real property, not petitions for relief from judgment.[14]

Solid Homes' comment on the petition hardly answered the above grounds. It instead raised threshold issues involving technical defects in AFPMBAI's petition for prohibition and *mandamus*. Thus, Solid Homes claim that:

a. AFPMBAI did not file the required motion for reconsideration of the RTC order dated July 18, 2008 that it assails in its petition;[15]

b. *Mandamus* is not an appropriate remedy and the petition should have been filed with the Court of Appeals (CA) since it raised both questions of fact and law;[16]

c. The jurat in the petition's verification and certification erroneously used a community tax certificate as basis for identification;[17] and

d. The petition did not contain an affidavit of service and an explanation why personal mode of service was not observed.[18]

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

[13] *Id*. at 30-33.

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

[15] *Id*. at 347-348.

[16] *Id*. at 348-350.

[17] *Id*. at 354.

[18] *Id*. at 343-346.

Issues Presented

The case, thus, presents the following issues:

1. Whether or not the petition is technically deficient as Solid Homes points out, justifying its outright dismissal;

2. Whether or not Solid Homes filed its petition for relief from judgment with the RTC beyond the period allowed by the rules;

3. Whether or not such petition include an appropriate affidavit of merit that shows the supposed fraud, accident, mistake, and excusable negligence Solid Homes relied on;

4. Whether or not the fraud that Solid Homes invoked as ground for its petition for relief—AFPMBAI's alleged fraud in acquiring the subject property—is the fraud contemplated by the rules;

5. Whether or not the RTC's grant of Solid Homes' petition for relief based on AFPMBAI's alleged fraud in acquiring its titles to the subject property is barred by *res judicata*; and

6. Whether or not the annotation of a notice of *lis pendens* is allowed in connection with a pending petition for relief from judgment.

Rulings of the Court

One. Regarding AFPMBAI's failure to file a motion for reconsideration of the assailed RTC order, which motion is required prior to the filing of a petition for prohibition or *mandamus*, the Court recognizes certain exceptions to such requirement as enumerated in *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*.[19] These include situations, such as exists in this case, where the petition raises only pure questions of law and the questioned order is a patent nullity. The direct recourse to this Court rather than to the CA is also justified since the petition raises only questions of law. Section 4, Rule 65 of the Rules of Court states that a petition for prohibition and *mandamus* may be filed in the Supreme Court.

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[19] G.R. No. 171820, December 13, 2007, 540 SCRA 194, 210.

Since AFPMBAI does not seek the performance by respondent RTC of some clearly defined ministerial duty, the Court agrees that the remedy of *mandamus* seems inappropriate in this case. Still the action is saved by the fact that it is also one for prohibition. AFPMBAI seeks to prevent the Marikina City RTC from hearing and adjudicating in excess of its jurisdiction Solid Homes' seriously flawed petition for relief from judgment. Prohibition is a correct remedy.

On the matter of the petition's supposed lack of affidavit of service as well as an explanation regarding petitioner's resort to service by registered mail, the record of the case shows that such affidavit and explanation are on page 42-A of the petition filed with the Court.

As for the defective jurat, AFPMBAI cured the same by filing an amended verification and certification in compliance with the Court's resolution of August 27, 2008. The interest of justice in this case justified the correction.

Two. AFPMBAI points out that Solid Homes filed its petition for relief from judgment with the RTC beyond the period allowed by the rules.[20] The Court agrees. Section 3, Rule 38 of the Rules of Civil Procedure provides that a petition for relief from judgment must be filed within 60 days from notice of such judgment or within six months from the entry of judgment. The RTC issued its order denying Solid Homes' original motion for reconsideration of its order dismissing its action on April 21, 2004.[21] This means that the RTC's order of dismissal had long become final and executory when Solid Homes filed its petition for relief nearly 10 months later on February 14, 2005.[22] The period cannot be counted from the RTC's order denying its second motion for reconsideration since such motion was a prohibited pleading.

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[20] *Rollo*, pp. 19-21.

[21] *Id*. at 184.

[22] *Id*. at 221.

Three. AFPMBAI alleges that Solid Homes' affidavit of merit was fatally defective. But the Court cannot make a determination regarding this point since, although AFPMBAI attached Solid Homes' petition for relief as Annex "N",[23] it did not include a copy of Solid Homes' affidavit of merit.

Four. The RTC gave due course to Solid Homes' petition for relief from judgment based on AFPMBAI and Investco's alleged commission of extrinsic fraud in the proceedings that led to the judgment that the Court rendered against Solid Homes in G.R. 104769 and G.R. 135016.[24]

But the extrinsic fraud that will justify a petition for relief from judgment is that fraud which the prevailing party caused to prevent the losing party from being heard on his action or defense. Such fraud concerns not the judgment itself but the manner in which it was obtained.[25] For example, the petition of a defending party would be justified where the plaintiff deliberately caused with the process server's connivance the service of summons on defendant at the wrong address and thus succeeded in getting a judgment by default against him.

Here, the fraud that Solid Homes proposed as ground for its petition for relief is Investco and AFPMBAI's alleged prior knowledge of the sale of the disputed lands to Solid Homes, which fraud goes into the merit of the case rather than on Solid Homes' right to be heard on its action. In effect the RTC will rehear the issue of whether or not AFPMBAI was a buyer in good faith, an issue barred by *res judicata* since the Court has already decided the same with finality in the latter's favor on March 3, 2000 in G.R. 104769 and G.R. 135016, *AFPMBAI v. CA*. The principle of *res judicata* holds that issues actually

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[23] *Id*.

[24] *Supra* note 4; *supra* note 22.

[25] *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 495.

and directly resolved in a former suit cannot be raised in any future case between the same parties.[26]

With the Court's above rulings, Solid Homes is not entitled to notices of *lis pendens* in connection with Civil Case 2003-901-MK.

WHEREFORE, the Court:

1. *GRANTS* the petition;

2. *ORDERS* the permanent dismissal of Civil Case 2003-901-MK of the Regional Trial Court of Marikina City, Branch 193;

3. *SETS ASIDE* the order of that court dated July 18, 2008;

4. *MAKES PERMANENT* the temporary restraining order that this Court issued on August 27, 2008 which enjoined the same court from proceeding in the case; and

5. *ORDERS* the Register of Deeds of Marikina City to cancel Solid Homes' notices of *lis pendens* annotated on AFPMBAI's Transfer Certificates of Title 104941 to 104946, relative to Civil Case 2003-901-MK.

SO ORDERED.

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

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[26] *Heirs of Panfilo F. Abalos v. Bucal,* G.R. No. 156224, February 19, 2008, 546 SCRA 252, 271-272.

SECOND DIVISION

[G.R. No. 188487. February 14, 2011]

VAN D. LUSPO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

[G.R. No. 188541. February 14, 2011]

SUPT. ARTURO H. MONTANO and MARGARITA TUGAOEN, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

[G.R. No. 188556. February 14, 2011]

C/INSP. SALVADOR C. DURAN, SR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS.— Petitioners were found by the Sandiganbayan to have violated Section 3(e) of R.A. No. 3019 x x x. In *Cabrera v. Sandiganbayan*, we explained that there are two ways for a public official to violate this provision in the performance of his functions, namely: (a) by causing undue injury to any party, including the government; or (b) by giving any private party any unwarranted benefits, advantage, or preference. In that case, we enumerated the essential elements of the offense, *viz.*: 1. The accused must be a public officer discharging administrative, judicial, or official functions; 2. He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3. His action caused undue injury to any party, including the government, **or** gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

2. ID.; ID.; MAY BE COMMITTED BY A PRIVATE INDIVIDUAL.— There is no dispute that herein petitioners, except for Tugaoen, are all public officers at the time stated in the Information. On the other hand, the indictment against

Tugaoen, a private individual, is sanctioned by Section 1 of R.A. No. 3019 x x x.

3. ID.; ID.; MANIFEST PARTIALITY, EVIDENT BAD FAITH AND GROSS INEXCUSABLE NEGLIGENCE, DEFINED.— The second element provides the different modes by which the crime may be committed, which are "manifest partiality," "evident bad faith," or "gross inexcusable negligence." Manifest partiality and evident bad faith connote that the crime is committed by *dolo*, while gross inexcusable negligence indicates its commission through *culpa*. In the recent *Albert v. Sandiganbayan*, we reiterated the definitions of such modalities, *viz.*: "There is '**manifest partiality**' when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. '**Evident bad faith**' connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. 'Evident bad faith' contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. '**Gross inexcusable negligence**' refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE ANTI-GRAFT COURT ARE CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS.— Generally, factual findings of the anti-graft court are conclusive upon the Supreme Court, except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.

5. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 6975; PHILIPPINE NATIONAL POLICE (PNP); PNP CHIEF; VESTED WITH THE POWER TO SUB-ALLOCATE THE AGENCY'S FUNDS.— In general, national government agencies

(NGAs), such as the PNP, receive their yearly budgetary allocation from the DBM through an Advice of Allotment. The amount represented therein is, in turn, distributed/sub-allocated by NGAs to their support units or departments through the issuance of an ASA (also known as Sub-Allotment Advice). In the PNP, the power to sub-allocate the agency's funds is vested by R.A. 6975 in the PNP Chief x x x.

6. ID.; ID.; ID.; ID.; ID.; MAY DELEGATE HIS MYRIAD DUTIES AND AUTHORITY TO HIS SUBORDINATES; OFFICE OF THE DIRECTORATE FOR COMPTROLLERSHIP, FUNCTIONS.— x x x [R.A. 6975] also empowers the PNP Chief to delegate his myriad duties and authority to his subordinates, with respect to the units under their respective commands x x x. This was observed through the organizational structure of the PNP. Administrative and operational support units were put in place to assist the PNP Chief in the command and direction of the police force. One such unit is the ODC, which assists the PNP Chief with the management of the financial resources of the PNP. Among the specific functions of this office are: 1. To coordinate with the Directorial Staff of the National Headquarters (NHQ)-PNP for the supervision and preparation of different PNP projects and programs and for the integration of such projects and programs to the overall PNP program; and 2. To supervise and manage the preparation of the PNP budget estimates based on data submitted by Program Directors and to justify the same before reviewing authorities. Under the ODC's wing is the Fiscal Services and Budget Division, charged with the implementation of the plans, policies, rules, and regulations governing disbursement and collection of funds for the PNP. In sum, the Office of the Directorate for Comptrollership assists the PNP Chief in determining how the PNP funds will be sub-allocated to the regional commands and their support units. Any determination made would then be executed by the Fiscal Services and Budget Division by issuing an ASA with Nazareno's signature as the chief financial director of the PNP, in favor of the appropriate command or support unit.

7. ID.; ID.; ID.; ID.; ID.; HAS THE POWER TO ISSUE IMPLEMENTING POLICIES FOR THE MICROMANAGEMENT OF THE ENTIRE FORCE.— Section 26 of R.A. No. 6975 also empowers the PNP Chief to issue

implementing policies for the micromanagement of the entire force x x x. In the exercise of such power, Nazareno issued a letter-directive on March 20, 1992, entitled "Delegation of Authority," wherein he delegated to his subordinate officers several of his customary authority, ranging from the approval or disapproval of projects to the signing of correspondence and working papers in his behalf.

8. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISCRETIONARY AND MINISTERIAL DUTIES, DISTINGUISHED.— Public officers exercise discretionary and/or ministerial duties. A duty is discretionary if the officer is allowed to determine how and when it is to be performed and to decide this matter one way or the other and be right either way. It is not susceptible to delegation because it is imposed by law as such, and the public officer is expected to discharge it directly and not through the intervening mind of another. On the other hand, a ministerial duty is one that requires neither the exercise of official discretion nor judgment. It connotes an act wherein nothing is left to the discretion of the person executing it. It is practically a mechanical act; hence, what can be done by the delegate may be sub-delegated by him to others.

9. ID.; ID.; ID.; MINISTERIAL DUTY; MAY BE SUB-DELEGATED TO A SUBORDINATE; CASE AT BAR.— Based on x x x [the] provisions of Nazareno's letter-directive, the phrase "release funds for personnel services 01" should be construed to mean that the duty delegated to Domondon was merely to sign ASAs in behalf of Nazareno to effect the release of funds. Nazareno could not have referred to the actual authority of directing when and to whom the funds would be released because the same was already inherent in Domondon's functions as the former's aide in administering the funds of the PNP. x x x Domondon, as the Chief Director of the Office of the Directorate for Comptrollership, assists the PNP Chief in determining how the PNP funds would be sub-allocated to the regional commands and their support units. Any determination made by Domondon and Nazareno would then be implemented by Luspo, as the head of Fiscal Services and Budget Division, by preparing an ASA and then submitting the same to Nazareno for his signature. To shorten the process, Nazareno delegated the routine act of affixing his signature to the ASA to his financial assistant,

Domondon. Verily then, the duty delegated by Nazareno to Domondon was the ministerial duty of *signing* ASAs to effect the release of funds. Being merely ministerial, Domondon was allowed to sub-delegate, as he did sub-delegate, the task to his subordinate, Luspo. As such, the signature affixed by Luspo to the ASAs had the same effect as if it was made by Nazareno himself.

10. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENT OF BAD FAITH; EVIDENT IN THE FAILURE TO PREPARE AND SUBMIT THE REQUIRED DOCUMENTATION ORDINARILY ATTENDANT TO PROCUREMENT TRANSACTIONS AND GOVERNMENT EXPENDITURES; CASE AT BAR.— The essential element of bad faith is evident in Montano's and Duran's failure to prepare and submit the required documentation ordinarily attendant to procurement transactions and government expenditures, as mandated by Section 4(6) of P.D. No. 1445, which states that claims against government funds shall be supported by complete documentation. Among these requirements are: certification of availability of funds from the command's chief accountant; papers relating to public bidding, like the advertisement for bids and certification of the result of the bidding; purchase orders; delivery receipts; certificate of availability of fund signed by the chief accountant and verified by the auditor; and disbursement and requisition vouchers. Their absence in the disbursement of ₱10 million is supported by evidence on record.

11. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445; AN ACCOUNTABLE OFFICER WHO ACTS UNDER THE DIRECTION OF A SUPERIOR OFFICER IN PAYING OUT OR DISPOSING OF FUNDS IS NOT EXEMPT FROM LIABILITY; EXCEPTION.— Under Section 106 of P.D. No. 1445, an accountable officer who acts under the direction of a superior officer in paying out or disposing of funds is not exempt from liability unless he notified the superior officer in writing of the illegality of the payment or disposition. Duran made no such notification. Instead, he disregarded all disbursement, auditing, and accounting policies, effectively facilitating the illegal transaction. He did not require the submission of a procurement contract, a certificate of requisition, or vouchers before drawing and signing the checks.

He merely mechanically affixed his signature when he was supposed to act with discernment. As the Chief of the Regional Finance Service Unit of the North CAPCOM, he was an accountable officer and had control and supervision over the funds of the command against which the checks were drawn.

12. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENT OF BAD FAITH; ESTABLISHED IN CASE AT BAR.— [T]here is ample evidence proving beyond reasonable doubt that Duran and Montano were propelled by evident bad faith in preparing and issuing 100 checks to facilitate a fictitious and fraudulent transaction and Tugaoen, in accepting the checks and receiving their value without giving in exchange a single piece of CCIE. Duran's and Montano's palpable bias in favor of Tugaoen is shown by their failure to support and justify the checks issued to Tugaoen's enterprises with the obligatory paper trail relative to the conduct of public bidding or any procurement contract. As aptly discerned by the Sandiganbayan, the acts of Duran, Montano and Tugaoen evince a bold and unabashed conspiracy scheme to defraud the government of ₱10 million x x x. As defined in COA Circular No. 76-41 dated July 30, 1976, splitting, in its literal sense, means dividing or breaking up into separate parts or portions, or an act resulting in fissure, rupture, or breach. Within the sphere of government procurement, splitting is associated with requisitions, purchase orders, deliveries, and payments. One form of splitting is the breaking up of payments which consist in making two or more payments for one or more items involving one purchase order. Splitting is intended to do away with and circumvent control measure, such as the reviewing authority of a superior official. In this case, the ASA of ₱10,000,000.00 was split by Duran and Montano into 100 checks of ₱100,000.00 each to elude the reviewing authority of Director Sistoza.

13. ID.; ID.; ELEMENT OF DAMAGE OR INJURY; PRESENT IN CASE AT BAR.— The last essential element of the offense, damage or injury to the government, is amply substantiated by the certification executed by Romulo Tuscano of the PNP Logistic Support Service, indicating that there is no available record regarding the delivery of ₱10 million worth of CCIE for North CAPCOM in 1992. In fact, Tugaoen herself admitted that she did not deliver any CCIE in exchange for her receipt of

₱10 million. The admissibility of such statement was exhaustively discussed by the Sandiganbayan in its May 13, 2005 resolution, and we adopt its findings therein.

14. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL ADMISSION OR CONFESSION; ALLEGATIONS OF IMPROPRIETY COMMITTED DURING CUSTODIAL INVESTIGATION ARE MATERIAL ONLY WHEN THE EXTRAJUDICIAL ADMISSION OR CONFESSION IS THE BASIS OF CONVICTION.— [E]ven if we were to hold that the investigation conducted by the PNP was custodial in nature, the improprieties that Tugaoen bewail would not prevail against strong and overwhelming evidence showing her and her co-conspirators' guilt. Allegations of impropriety committed during custodial investigation are material only when an extrajudicial admission or confession is the basis of conviction. In the present case, the conviction of Montano, Duran, and Tugaoen was not deduced solely from Tugaoen's admission, but from the confluence of evidence showing their guilt beyond reasonable doubt.

15. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); PENALTY.— The penalty for violation of Section 3(e) of R.A. No. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office." Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein. There being no aggravating and mitigating circumstances in this case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office. Duran, Montano, and Tugaoen shall be solidarily liable for the restitution of the ₱10,000,00.00 that they defrauded from the funds of the PNP. An offense as a general rule causes two (2) classes of injuries - the first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of

the crime, which injury is sought to be compensated through indemnity, which is civil in nature.

APPEARANCES OF COUNSEL

Valdez Domondon & Associates for Van D. Luspo.
Barbadillo Law Office for Supt. Arturo H. Montano & Margarita B. Tugaoen.
Rodolfo U. Vejano for C/Insp. Salvador Duran, Sr.

D E C I S I O N

NACHURA, *J.*:

Petitioners, the accused in Sandiganbayan Criminal Case No. 20192, in this consolidated petition for review seek the reversal of the January 19, 2009 decision[1] of the Sandiganbayan, finding them guilty beyond reasonable doubt of violating Section 3(e) of Republic Act (R.A.) No. 3019. Likewise assailed is the Sandiganbayan's June 30, 2009 resolution[2] denying their motions for reconsideration.

The Facts

Acting on a report of the Commission on Audit (COA) regarding disbursement irregularities for combat, clothing, and individual equipment (CCIE) in Regions VII and VIII, North Capital Command (CAPCOM), the Philippine National Police-General Headquarters (PNP-GHQ), through the Office of the Inspector General (OIG), conducted an investigation of several officers of the PNP and of a private individual.

The investigation report[3] disclosed that, on August 11, 1992, the Office of the Directorate for Comptrollership (ODC) issued two (2) Advices of Sub-Allotment (ASAs), (001-500-138-92

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[1] *Rollo* (G.R. No. 188487), pp. 16-75.

[2] G.R. No. 188487, *id.* at 87-94.

[3] Common Exhibit for the parties; marked as Exhibit "F" for the prosecution and as Exhibit "7" for the defense.

SN 4361 and 001-500-139-92 SN 4362), each amounting to Five Million Pesos (₱5,000,000.00), purportedly for the purchase of CCIE for the North CAPCOM. The ASAs were approved "FOR THE CHIEF [Director General Cesar Nazareno (Nazareno)], PNP" by Director Guillermo Domondon (Domondon), Chief Director of ODC, and signed for him by Police Superintendent Van Luspo (Luspo), Chief, Fiscal Division, Budget and Fiscal Services of the ODC. The ASAs were issued without an approved personnel program from the Directorate for Personnel.[4]

Upon receipt of the ASAs, P/Supt. Arturo Montano (Montano), Chief Comptroller, North CAPCOM, directed Police Chief Inspector Salvador Duran, Sr. (Duran), Chief, Regional Finance Service Unit, North CAPCOM, to prepare and draw 100 checks of ₱100,000.00 each, for a total of ₱10,000,000.00.

The checks were all dated August 12, 1992 and payable respectively to DI-BEN Trading, MT Enterprises, J-MOS Enterprises, and Triple 888 Enterprises, each to receive 25 checks. All enterprises were owned and operated by Margarita Tugaoen (Tugaoen), who collected the proceeds of the checks from the United Coconut Planters Bank (UCPB), Cubao Branch, on August 12, 13, and 14, 1992.[5]

In a sworn statement dated March 5, 1993 taken by Insp. Felicidad Ramos, a member of the investigating committee, Tugaoen admitted that she did not deliver any CCIE in exchange for the ₱10 million worth of checks, because the amount was allegedly intended as payment for the previously accumulated debts of the PNP.[6]

The nondelivery was confirmed by P/CInsp. Isaias Braga (Braga), Chief Logistics Officer, North CAPCOM, and Rolando Flores, Supply Accountable Officer, North CAPCOM. Both declared that, while they received CCIE in 1992, the same

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[4] Exhibits "A" and "A-1".

[5] Exhibit "H" and its sub-markings.

[6] Exhibit "D" and its sub-markings.

came from the PNP Logistics Command and not from Tugaoen, and that the value of the items they received was just ₱5,900,778.80 and had no relation at all to the ₱10 million CCIE purchase under investigation.[7] Their statements were corroborated by P/Supt. Jesus Arceo, Chief of the Supply Center of PNP Logistics Command.[8]

On the basis of the foregoing findings, the investigating team recommended that appropriate complaints be filed against Nazareno, Domondon, Montano, Tugaoen, and Pedro Sistoza (Director Sistoza), Regional Director, North CAPCOM. No reasonable ground was found to implicate Duran in the anomalous transaction, but he was still impleaded in the letter-complaint subsequently filed before the Office of the Deputy Ombudsman for the Armed Forces of the Philippines (OMB-AFP)[9] (now OMB-Military and Other Law Enforcement Offices [MOLEO]) because he was a cosignatory to the 100 checks.

Although the investigative report did not mention Luspo's criminal or administrative liability, the OMB-AFP included him in the charge since his signature appeared on the questioned ASAs.

Upon a finding that the abovementioned PNP officials and the private individual conspired to swiftly and surreptitiously execute the "ghost purchase" of the CCIE, the OMB-AFP recommended the filing of the criminal information for 100 counts of Malversation of Public Funds under Article 217 of the Revised Penal Code against them. The OMB-AFP further found that the ASAs were charged against the "Personal Services Fund" instead of the "Maintenance and Other Operating Expense Fund" without the approval of the Department of Budget and Management (DBM). They were released to the North CAPCOM without

[7] Exhibits "F-14" to "F-14-B", and Exhibits "F-17" to "F-17-B".

[8] Exhibit "F-18".

[9] Presently referred to as OMB-MOLEO (Military and other Law Enforcement Offices.)

the corresponding requisition from the Directorate for Logistics of the North CAPCOM as normally observed.[10]

On January 26, 1994, the Office of the Special Prosecutor (OSP) approved the resolution of the OMB-AFP, with the modification that the proper offense to be charged was violation of Section 3(e) of R.A. No. 3019, as amended, for only one (1) count. The OSP also cleared Director Sistoza from any participation in the anomalous deal.[11] Thusly, the accusatory portion of the Information filed with the Sandiganbayan reads:

> That in or about August 1992, and for sometime subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named public officers, namely: Cesar P. Nazareno, being then the Director General; Guillermo T. Domondon, Director for Comptrollership; Van D. Luspo, Chief, Fiscal Services and Budget Division; Arturo H. Montano, Chief Comptroller, North Capcom and Salvador C. Duran, Sr., Chief, Regional Finance Services Unit (RFSU), North Capcom, all of the Philippine National Police (PNP), while in the performance of their respective official and administrative functions as such, acting with evident bad faith and manifest partiality, conspiring, confederating and mutually helping one another, together with private accused Margarita B. Tugaoen, did then and there willfully, unlawfully and criminally cause undue injury to the government (PNP), by causing the preparation, issuance, release and payment, without supporting documents, of TEN MILLION PESOS (₱10,000,000.00) to DI-BEN TRADING, MT ENTERPRISES, J-MOS ENTERPRISES and TRIPLE 888 ENTERPRISES, all owned and operated by accused Margarita B. Tugaoen, purportedly for the purchase of combat, clothing and individual equipment (CCIE) for use of North Capcom personnel, to which no actual delivery of said CCIE items were ever effected by accused supplier Margarita B. Tugaoen, thereby giving unwarranted benefits to the latter accused, to the damage and prejudice of the Philippine government in the total amount of TEN MILLION (₱10,000,000.00) PESOS, Philippine Currency.
>
> CONTRARY TO LAW.[12]

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[10] Resolution dated August 30, 1993, Records, Vol. I, pp. 10-22.

[11] *Id.* at 4-9.

[12] *Id.* at 1-2.

After numerous postponements caused by supervening procedural incidents, Nazareno, Domondon, Luspo, Montano, and Tugaoen were finally arraigned on October 12, 2001. They individually entered a "not guilty" plea.[13] Duran refused to make any plea during his arraignment on October 26, 2001 hence, a "not guilty" plea was entered for him.[14] During pre-trial, all accused agreed to the following stipulation of facts:

1. That except for accused Margarita Tugaoen, all the accused are public officers at the time stated in the Information;

2. That on August 11, 1992, the Office of the Directorate for Comptrollership of the PNP, issued two (2) Advices of Sub-Allotment (ASAs) in favor of the North CAPCOM in the amount of Five Million Pesos (₱5,000,000.00) each, making a total of TEN MILLION [PESOS] (₱10,000,000.00) for payment of Combat, Clothing, and Individual Equipment (CCIE) of PNP personnel.[15]

At the trial, the prosecution presented the following witnesses: 1) Evangeline Candia (Candia), Chief District Inspectorate of the Western Police District, and a member of the committee formed by the PNP to investigate the CCIE anomaly; 2) Felicidad Ramos, also a member of the PNP investigating committee and the one who took the sworn statement of Tugaoen during the investigation proceedings; 3) Romulo Tuscano, Supply Accountable Officer of the PNP; 4) Rafael Jayme, Acting Deputy Inspector General at the Office of the Inspector General of the PNP at the time material in the Information; 5) Emmanuel Barcena, executive employee of the Philippine Clearing House (PCH); 6) Atty. Ismael Andrew Pantua Isip, lawyer of UCPB; and 7) Ma. Cristina Sagritalo-Fortuna, Branch Operations Officer of UCPB, Cubao Branch.[16]

The foregoing witnesses' testimonies, together with documentary pieces of evidence marked as Exhibits "A" to

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[13] *Id.* at 335-339, 341.

[14] *Id.* at 350-352.

[15] *Id.* at 387.

[16] Prosecution's Formal Offer of Evidence, Records, Vol. II, pp. 150-159.

"H-4," sought to establish that Nazareno, Domondon, Luspo, Duran, and Montano acted with evident bad faith and manifest partiality when they failed to observe the logistic requirement of North CAPCOM prior to the preparation of the 2 ASAs; and that they violated GHQ-AFP Circular No. 8 issued on January 25, 1985 when they failed to make any budget proposal relative to the purchase of CCIE for North CAPCOM in 1992. GHQ-AFP Circular No. 8 mandates that the yearly funding requirement of combat clothing should be included in the budget proposals of the concerned unit.[17]

The prosecution further endeavored to prove that the vouchers and related documents pertaining to the procurement of the ₱10 million worth of CCIE did not pass the office of Abelardo Madridejo, Chief Accountant, North CAPCOM.[18] State Auditor Erlinda Cargo of the COA for PNP North CAPCOM also certified that, as of March 23, 1993, the direct payment voucher amounting to ₱10 million intended for the purchase of CCIE was not liquidated because the records thereof were not forwarded to the COA.[19]

To substantiate the allegation in the Information that the checks were delivered to Tugaoen and that she received their value, the prosecution submitted the sworn statements of Montano and Tugaoen, and the bank statement prepared by UCPB, Cubao Branch, relative to the account of Tugaoen, reflecting the transactions on August 12, 13, and 14, 1992.[20]

In a sworn statement executed during the investigation conducted by PNP-GHQ, Montano declared that the checks relative to the ₱10-million ASAs were delivered to Tugaoen who, in turn, acknowledged receipt thereof in her own sworn statement executed before Candia during the investigations conducted by PNP.[21] Tugaoen likewise admitted that she did

[17] Exhibit "G" inclusive of its sub-markings.

[18] Exhibit "F-19".

[19] Exhibit "F-20".

[20] Exhibit "H" inclusive of its sub-markings.

[21] Exhibit "F-13" inclusive of its sub-markings.

not deliver CCIE in exchange for the value of the checks because they were intended to cover the previously accumulated debts of the PNP.[22]

On December 16, 2004, the accused filed, upon leave of court,[23] a Consolidated Motion for Demurrer to Evidence,[24] arguing in the main the inadmissibility, under the best evidence rule, of the photocopies of the ASAs, the 100 checks, the original printout of the full master list and detail list of the checks from the PHC, and the bank statement prepared by the UCPB, respectively docketed as Exhibits A to A-1, C to C-27, C-28 to C-29c, H to H-4.

Claiming that the investigations conducted by the PNP were custodial in character and not merely administrative, the accused argued that the sworn statements of Tugaoen (Exhibits "D" to "D-5"), Duran (Exhibits "B" to "B-2"), and Montano (Exhibits "F-13" to "F-13-C") should not be admitted in evidence because they were not assisted by counsel when the same were elicited from them.

In its resolution dated May 13, 2005,[25] the Sandiganbayan denied the consolidated motion and ruled on the admissibility of the challenged exhibits in this wise:

> There have been several instances where the courts have accorded due credence to the admissibility of microfilm copies or photostatic copies of microfilmed documents such as checks and other commercial documents relying on the factual justification that these checks were microfilmed in the ordinary course of business and there is an ample showing that they were accurate and [have] not been substantially altered. x x x.
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> Thus, if the witnesses presented attested to the fact that the checks are microfilmed in the ordinary course of business and that the

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[22] Sworn Statement of Margarita Tugaoen executed on March 5, 1993, Exhibit "D" inclusive of its sub-markings.

[23] Records, Vol. II, p. 353.

[24] *Id.* at 369-396.

[25] Records, Vol. III, pp. 4-24.

photostats have attained acceptable degree of accuracy, the same are no doubt admissible in evidence in lieu of the original, not on the basis of the "best evidence" rule but because they may be considered as entries in the usual or regular course of business. This Court may also want to take judicial notice of the fact that one of the reliable means to preserve checks and other commercial papers and documents is by way of microfilm. x x x.

In his testimony, prosecution witness Emmanuel E. Barcena has sufficiently explained the procedure ordinarily adopted by the Philippine Clearing House when it receives checks from its various clients. According to him, once the Philippine Clearing House (PCH for brevity) receives the checks for processing and captures the same in a microfilm, it generates a report called the Master List and the Detail List. The data are then eventually stored in a tape and are submitted to Citron (a service provider) to enable the latter to transfer the contents of the tape to a microfiche which would then contain all the reports of the PCH. After the transfer of the contents of the tape from the tape or "disc" to microfiche, Citron returns the microfiche to PCH for archive and future purposes. In case of a request from the banks or from the courts for any data regarding past transactions involving checks received by PCH from its clients, the PCH will have a basis where to get the reproduction of the print-out.

Being a disinterested witness for the Prosecution, and there being no proof of any personal motive on his part to misrepresent the facts of the transactions, Barcena has made it clear, for the guidance and information of this Court, the process or procedure his company adopts or undertakes when it receives checks for clearing from different banks. As what he categorically stated, the microfilming of checks is just one of the regular or routinary functions being performed by PCH. Hence, the reproductions or copies of the preserved checks it issues, obtained from its existing records facility such as microfilms, may, therefore, be considered admissible in evidence.[26]

The court sustained the admissibility of the sworn statements of Tugaoen, Duran, and Montano, explaining that the investigations performed by the PNP were administrative and not custodial in nature because the accused gave their statements only as witnesses and not as individuals implicated in an offense.

[26] *Id.* at 16-18.

This inference was further based on the observations that the investigating committee also took the sworn statements of several PNP personnel who were not included in the charge, and that Nazareno and Domondon, who were not among those investigated, were criminally charged.

Trial then resumed for the presentation of evidence for the defense.

None of the accused took the witness stand. The defense did not dispute the events that transpired, but they stressed that they did not commit any prohibited act. To debunk the case for the prosecution, Luspo and his co-accused Domondon presented Leonilo Lapus Dalut (Dalut), Program and Budget Officer of the Directorate for Personnel, PNP, from 1989 until 1993.

Testifying for Luspo and Domondon, Dalut declared that Domondon, as the then Director for Comptrollership, was authorized to sign ASAs for personal services fund – which include CCIE - irrespective of amount and without any prior request from the Directorate for Personnel. This was allegedly shown in the Delegation of Authority[27] and its corresponding Schedule of Delegation[28] issued by Nazareno on March 20, 1992, pertinent portions of which state:

SUBJECT: Delegation of Authority

TO: All Concerned

x x x x x x x x x

(2) In order to free the Chief, Philippine National Police of routine decisions so that he can devote his time to more important functions and in order to prepare subordinate officers for greater responsibility so that police service will be delivered more efficiently and effectively, specific authorities of the Chief, PNP are hereby delegated to the Deputy Chief for Administration, Deputy Chief for Operations, The Chief of Directorial Staff, Directors of the Directorial Staff, Regional Directors and Directors of Support Units as per attached tabulation.

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[27] Exhibits "6" to "6-A".

[28] Exhibits "6-B" to "6-Q".

(3) Generally, the delegate will sign for the Chief, PNP but he may sign in his own name when appropriate, depending on the circumstances or nature of the communication. The name and signature of the delegate signing for C[/]PNP shall be preceded by "BY COMMAND OF DIRECTOR GENERAL NAZARENO" or "FOR THE CHIEF, PHILIPPINE NATIONAL POLICE," whichever is appropriate.

x x x x x x x x x

POWER/FUNCTIONS	APPROVING AUTHORITY							REMARKS
COMPTROLLERSHIP AND FINANCE	C. PNP	DCA	DCO	TCDS	DIR STAFF	REG'L DIR	D. ADM OPN SPT UNITS	
PNP Budget Proposal and Expenditures	X							
Working papers for the PBAC						DC		
C. Releases of allotment advices								
1. Releases from Comd Reserve regardless of amount	X							
2. Releases from Prog amount regardless of amount								
a. CMI		X						
b. Fixed Expenditures					DC			Upon request of Prog Dir
c. Program Director's Fund					DC			Upon request of Prog Dir
3. Releases for personnel services (01) irrespective of amount					DC			

Dalut explained that "DC" refers to the Directorate for Comptrollership, and that the phrase "Upon request of Prog Dir" means that the Directorate for Personnel requested the DC for the release of funds. But as clearly shown in the schedule of authority, request from the Directorate for Personnel is not a prerequisite to the release of funds for "personnel services 01," irrespective of amount. Dalut clarified that it was not the practice of anyone at the Office of the Director for Personnel to prepare a program chargeable against personnel services before the Director for Comptrollership could release ASAs for "personnel services 01."[29]

Domondon and Luspo also adopted the December 15, 1998 Order of the OSP[30] and the OMB's June 9, 1999 Memorandum,[31] both submitted in Criminal Case No. 20185 pending before the Sandiganbayan. Criminal Case No. 20185 pertained to the charge of illegal issuance of ASAs in favor of PNP Regional Command (RECOM) in Baguio, wherein Domondon was one of the co-accused. In that Order, the OMB recommended that Domondon be dropped from the criminal charge upon the finding that there was no need for the DBM's prior authority before the ODC could release funds for "personnel services 01." In the Memorandum dated June 9, 1999, approved by former Ombudsman Aniano Desierto, OMB's legal counsel, Sylvia Hazel, made a finding that CCIE purchases could be charged against either Personal Services Fund or Maintenance and Other Operating Expense Fund.

For their part, Montano and Tugaoen reiterated the inadmissibility of the latter's sworn statements on the ground that a lawyer did not assist her during the investigation proceedings. To buttress Montano and Tugaoen's claim, P/Supt. Felicidad Ramos Guinto, a member of the team that investigated the North CAPCOM CCIE anomaly, was put on the witness

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[29] Pages 51-54 of the Sandiganbayan's January 19, 2009 decision, *supra* note 1.

[30] Exhibit "9".

[31] Exhibit "10".

stand. She declared that Tugaoen expressed her desire to be assisted by a counsel of her choice, however, there was no more time for her to retain one.[32]

Montano tendered a copy of the provisions of Section 307, Article 5, Title 5, Book III, Volume I of the Government and Auditing Manual issued on January 2, 1992, to show that his acts were in accordance with the rules on expenditures as mandated in the manual.[33]

Duran failed to formally offer evidence despite the opportunity given him by the Sandiganbayan. As such, he was declared to have waived his right to do so in an Order dated July 13, 2007.[34]

The Ruling of the Sandiganbayan[35]

The anti-graft court found sufficient evidence inculpating Luspo, Duran, Montano, and Tugaoen for conspiring and confederating with one another to deprive the government/PNP of ₱10 million, *viz.*:

> Accused Luspo issued the two (2) ASAs (Exhibits "A", "A-1") without the authority from the Directorate for Comptrollership nor from the Chief PNP. These ASAs eventually became the basis in the drawing of the one hundred checks signed by accused Duran and Montano that effected the release of the funds intended for the purchase of CCIE items to accused Tugaoen. These series of acts spelled nothing but conspiracy which showed their common design in achieving their one common goal to the damage and prejudice of the government.[36]

Adopting the observations of the Ombudsman (AFP), the Sandiganbayan elaborated:

> The swiftness of how the supposed transaction of CCIE items at North CAPCOM was consummated at a record time of two (2) days

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[32] Pages 54-55 of the Sandiganbayan decision; *supra* note 1.

[33] Exhibit "12".

[34] Records, Vol. III, pp. 472-473.

[35] *Supra* note 1.

[36] *Id.* at 64.

from the issuance of the ASAs to the encashment of the checks which normally take weeks if not months (with all programming/requisition, the bidding process, series of deliveries, and inherent red tapes) only indicates signs of deep-rooted conspiracy, to wit: 1. issuance of ASA over and above the approved program of ₱6 M for CY 1992 and the charging of the same to funds for personal services (100-10) even without the approval of the DBM; 2. release of ASA to North CAPCOM even without the required programming or corresponding requisition/request therefrom; 3. splitting the supposed payments into 100 checks at ₱100,000.00 each to go around the rule that purchase order, vouchers and checks above ₱100,000.00 be signed by the Regional Director; and 4. the purported documents for the supposed purchases did not go to the usual process of passing to the Chief Accountant for recording/accounting, and the Regional Director for approval.[37]

The Information was dismissed as to Nazareno in a resolution dated March 20, 2007 on account of his death on December 8, 2005. Be that as it may, the Sandiganbayan discussed his accountability and was found to be blameless. The court ruled that the prosecution failed to substantiate by testimonial or documentary evidence Nazareno's direct or indirect participation in the anomalous CCIE transaction. There was likewise no showing that he had the opportunity to scrutinize the documents related to the release of the questioned ₱10 million, and that his issuance of the Delegation of Authority preceded the release of the questioned ASAs by a considerable length of time, so as to rule out any misgiving that the former was circulated in order to facilitate the irregular purchases. The Sandiganbayan added that Nazareno's indictment was only due to command responsibility under the doctrine *respondeat superior*, which, however, does not exist between police officers and their subordinates.

Domondon was also exonerated because, by virtue of the Delegation of Authority and Schedule of Delegation issued by Nazareno, he (Domondon) was authorized to charge CCIE to "personnel services 01" and to release funds therefor, irrespective of amount, without a request program from the Directorate of

[37] *Id.* at 65.

Personnel. Thus, he could no longer be faulted if the checks were eventually released to Tugaoen without the required supporting documents nor could he be held liable for the nondelivery of the CCIE. The Sandiganbayan took judicial notice of its September 17, 1999 resolution in Criminal Case No. 20185, dropping Domondon from the criminal information upon the finding that both the OSP's December 15, 1998 Order and the OMB's memorandum of June 9, 1999 negated Domondon's culpability for the crime charged.

Accordingly, the fallo of the January 19, 2009 decision of the Sandiganbayan reads:

> WHEREFORE, in the light of all the foregoing, the Court finds accused **VAN D. LUSPO, ARTURO H. MONTANO, SALVADOR C. DURAN, SR. and MARGARITA D. TUGAOEN, GUILTY** beyond reasonable doubt of the offense of Violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Philippine National Police or the government jointly or severally in the amount of Ten Million Pesos (Php 10 Million).
>
> Accused Luspo, Montano and Duran, Sr., being public officers, are henceforth perpetually disqualified from holding public office.
>
> The guilt of accused, GUILLERMO T. DOMONDON, not having been proven beyond reasonable doubt, he is hereby ACQUITTED of the same charge. (The case against accused, Cesar P. Nazareno, has earlier been dismissed in a Resolution dated March 20, 2007 due to his death). Accordingly, let the bond of accused Domondon posted for his provisional liberty be released to him, subject to the usual accounting and auditing procedures of this Court.
>
> The Hold Departure Order dated October 28, 2004, issued against accused Domondon is hereby lifted and set aside.
>
> SO ORDERED.[38]

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[38] *Id.* at 73-74.

Luspo,[39] Duran,[40] Montano and Tugaoen[41] separately moved for reconsideration, but their motions were denied in a consolidated Resolution dated June 30, 2009.[42]

On July 14, 2009 Luspo filed a petition for *certiorari* docketed as G.R. No. 118487. Montano, Tugaoen and Duran followed suit on July 21, 2009. Montano and Tugaoen's joint petition for *certiorari* was docketed as G.R. No. 188541, while Duran's petition was docketed as G.R. No. 188556. In our Resolution of August 19, 2009[43] the three petitions were consolidated, assailing as they do similar Sandiganbayan Decision and Resolution.

The Issues

In G.R. No. 188487, Luspo ascribes the following errors to the Sandiganbayan:

THE SANDIGANBAYAN'S FINDING THAT THE PETITIONER WAS GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019 WAS NOT SUPPORTED BY EVIDENCE ON RECORD.

THE PROSECUTION HAS NOT PRESENTED EVIDENCE WHICH COULD OVERCOME THE PETITIONER'S PRESUMPTION OF INNOCENCE.

THE SANDIGANBAYAN ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF ITS JANUARY 19, 2009 DECISION.[44]

In G.R. No. 188541, Montano and Tugaoen raise the following grounds for their exoneration:

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[39] Luspo's Motion for Reconsideration was filed on January 28, 2009; Records, Vol. IV, pp. 94-104.

[40] Duran's Motion for Reconsideration was filed on February 2, 2009; *id.* at 126-158.

[41] Montano and Tugaoen jointly filed a Motion for Reconsideration on January 28, 2009; *id.* at 105-125.

[42] *Rollo* (G.R. No. 188541), pp. 90-97.

[43] *Rollo* (G.R. No. 188487), pp. 95-96.

[44] *Id.* at 7.

THE SANDIGANBAYAN GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE PETITIONERS ARE DUTY-BOUND TO PROVE THAT THERE WERE DELIVERIES OF CCIE DESPITE THE PROSECUTION'S ALLEGATION IN THE INFORMATION THAT THERE WAS NO DELIVERY OF CCIE ITEMS, AND IN HOLDING THAT IT IS THE PETITIONERS' DUTY TO PROVE THAT THERE WERE DELIVERIES; AND IN SHIFTING ITS BURDEN OF PROVING THE ELEMENTS OF THE CRIME AS ALLEGED IN THE INFORMATION, AND IN HOLDING THAT ACCUSED WILLFULLY SUPPRESSED THEIR TESTIMONIES BECAUSE THOSE ARE ADVERSE TO THEM BY THEIR FAILURE TO TAKE THE WITNESS STAND;

THE SANDIGANBAYAN GRAVELY ERRED IN BASING ITS FINDING OF EXISTENCE OF CONSPIRACY AND ITS JUDGMENT OF CONVICTION ON THE BASIS OF SURMISES AND CONJECTURES BY ADOPTING AND RELYING UPON THE FINDINGS OF THE OMBUDSMAN DURING PRELIMINARY INVESTIGATIONS, IN UTTER DISREGARD OF THE CONSTITUTIONAL MANDATE THAT EVERY DECISION OF A COURT SHALL STATE EXPRESSLY AND DISTINCTLY, THE FACTS AND THE LAW UPON WHICH IT IS BASED;

THE SANDIGANBAYAN GRAVELY ERRED IN HOLDING THAT THE INVESTIGATIONS CONDUCTED ON PETITIONERS ARE NOT CUSTODIAL INVESTIGATION AND IN NOT HOLDING THAT THE SWORN STATEMENTS TAKEN BY THE INVESTIGATING OFFICERS DURING INVESTIGATIONS ARE INADMISSIBLE IN EVIDENCE FOR BEING VIOLATIVE OF THE CONSTITUTIONAL RIGHTS OF PETITIONERS, PARTICULARLY THEIR RIGHT TO COUNSEL;

THE SANDIGANBAYAN GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN ADMITTING IN EVIDENCE AND IN GIVING THE MERE XEROX COPIES OF THE CHECKS WHICH WERE MERELY CONDITIONALLY MARKED, PROVATIVE (SIC) VALUE, AND DESPITE PROSECUTION'S FAILURE TO COMPLY WITH ITS COMMITMENT TO SUBMIT OR PHYSICALLY PRODUCE THE ORIGINALS THEREOF;

THE SANDIGANBAYAN GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT ACQUITTING THE ACCUSED AND IN BASING THE JUDGMENT OF CONVICTION ON INSUFFICIENT EVIDENCE OR ON MERE *PRIMA FACIE* EVIDENCE, WHEN WHAT

IS MANDATORILY REQUIRED IS EVIDENCE THAT ESTABLISHES THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT;

THE SANDIGANBAYAN GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN ORDERING PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH LUSPO AND DURAN TO INDEMNIFY THE PHILIPPINE NATIONAL POLICE OR THE GOVERNMENT, IN THE SUM OF ₱10,000,000.00, DESPITE ABSENCE OF ANY FINDING WHO ACTUALLY APPROPRIATED THE ENTIRE SUM OR ANY PART OF SAID AMOUNT.[45]

In G.R. No. 188556, Duran faults the Sandiganbayan in this manner:

THE SANDIGANBAYAN GRAVELY ERRED IN RULING THAT PETITIONER WAS IN CONSPIRACY WITH HIS CO-ACCUSED.

THE SANDIGANBAYAN GRAVELY ERRED IN RULING THAT PETITIONER WAS NOT MERELY PERFORMING A MINISTERIAL FUNCTION AND AS SUCH INCURS NO CRIMINAL LIABILITY FOR SUCH MINISTERIAL ACT.

THE SANDIGANBAYAN GRAVELY ERRED IN NOT ADHERING TO THE FINDINGS OF THE PNP INVESTIGATING COMMITTEE, WHICH FOUND NO PROBABALE CAUSE AGAINST PETITIONER.

THE SANDIGANBAYAN GRAVELY ERRED IN FINDING PETITIONER GUILTY BEYOND REASONABLE DOUBT OF VIOLATING R.A. NO. 3019, AS AMENDED, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.[46]

The Ruling of the Court

Petitioners were found by the Sandiganbayan to have violated Section 3(e) of R.A. No. 3019, which provides, as follows:

Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

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[45] *Rollo* (G.R. No. 188541), pp. 11-26.

[46] *Rollo* (G.R. No. 188556), pp. 10-11.

(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 *Cabrera v. Sandiganbayan*,[47] we explained that there are two ways for a public official to violate this provision in the performance of his functions, namely: (a) by causing undue injury to any party, including the government; or (b) by giving any private party any unwarranted benefits, advantage, or preference. In that case, we enumerated the essential elements of the offense, *viz*.:

1. The accused must be a public officer discharging administrative, judicial, or official functions;

2. He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and

3. His action caused undue injury to any party, including the government, **or** gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

There is no dispute that herein petitioners, except for Tugaoen, are all public officers at the time stated in the Information. On the other hand, the indictment against Tugaoen, a private individual, is sanctioned by Section 1 of R.A. No. 3019, thus:

Section 1. *Statement of policy*. – It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of **public officers and private persons alike** which constitute graft or corrupt practices or which may lead thereto.

The second element provides the different modes by which the crime may be committed, which are "manifest partiality,"

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[47] G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377.

"evident bad faith," or "gross inexcusable negligence."[48] Manifest partiality and evident bad faith connote that the crime is committed by *dolo,* while gross inexcusable negligence indicates its commission through *culpa.*[49] In the recent *Albert v. Sandiganbayan*,[50] we reiterated the definitions of such modalities, *viz.*:

> There is **"manifest partiality"** when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. **"Evident bad faith"** connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. **"Gross inexcusable negligence"** refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[51]

Evident bad faith and manifest partiality are imputed to Luspo, Duran, and Montano when they caused the preparation, issuance, release, and payment of ₱10,000,000.00, without supporting documents, to DI-BEN Trading, MT Enterprises, J-MOS Enterprises, and Triple 888 Enterprises, all owned and operated by Tugaoen.

Owing to the different functions discharged by petitioners, it is imperative to discuss their individual participation in the scheme that siphoned ₱10 million from the PNP funds.

Luspo, the then Chief of the Fiscal Services and Budget Division of the ODC, is indicted for having allegedly issued the

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[48] *Albert v. Sandiganbayan,* G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290, *citing Gallego, et al. v. Sandiganbayan,* 201 Phil. 379, 383 (1982).

[49] See *Uriarte v. People,* G.R. No. 169251, December 20, 2006, 511 SCRA 471, 487.

[50] *Supra* note 48.

[51] *Id.* at 290. (Citations omitted.)

ASAs without prior authority from his superior, Domondon, Chief Directorate for Comptrollership. His issuance and signing thereof were allegedly made without a prior program request from the Office of the Directorate for Personnel as mandated by the logistic requirements of the PNP. Likewise, he supposedly violated GHQ-AFP Circular No. 8 issued on January 25, 1985 when he failed to make any budget proposal relative to the purchase of CCIE for North CAPCOM in 1992. He also allegedly charged the amount of the ASAs to "Personal Services Fund" without a realignment authority from the DBM. These, according to the prosecution, are badges of evident bad faith and of manifest partiality towards Tugaoen that led to a ₱10 million injury to the coffers of the PNP.

It bears emphasis that the charge against Luspo's co-accused Domondon consisted of the same omissions. Both offered similar documentary and testimonial pieces of evidence for their exoneration, but the same were appreciated only in Domondon's favor. The Sandiganbayan shelved Luspo's claim that he was authorized by Domondon to sign the ASAs in the former's behalf, and tagged the same as self-serving and unsubstantiated.

In its consolidated comment, respondent People of the Philippines, represented by the OMB through the OSP, harks back to the Sandiganbayan's conclusion and lobbies for its affirmation.

We disagree with the Sandiganbayan.

A perusal of the records at our and the Sandiganbayan's wherewithal reveals the contrary and had the trial court expanded the range of its probing, it would not have arrived at divergent conclusions regarding the two accused.

Generally, factual findings of the anti-graft court are conclusive upon the Supreme Court, except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the

Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.[52]

The last instance attends in the instant case. Clear and unmistakable in the August 30, 1993 resolution of the OMB-AFP[53] is the crucial detail that, on January 31, 1991, Domondon issued a Memorandum delegating to Luspo and a certain Supt. Reynold Osia (Osia) the authority to sign for him (Domondon) and on his behalf, allotments for personal services in the amount not exceeding Five Million Pesos (₱5,000,000.00), and in his absence, the amount of ₱20,000,000.00. This was, in fact, the hammer that drove the nail and linked Domondon to the conspiracy theory advanced by the prosecution.

As previously mentioned, the Sandiganbayan absolved Domondon of any liability in the issuance of the ASAs by virtue of the Delegation of Authority and Schedule of Delegation issued by Nazareno, authorizing him (Domondon) to charge CCIE to "personnel services 01," and to release funds therefor, irrespective of amount, without need for a prior request program from the Directorate of Personnel. The Sandiganbayan also took judicial notice of the OMB Order dated December 15, 1998 and Memorandum dated June 9, 1999 of the OMB's legal counsel in Criminal Case No. 20191, stating that Domondon committed no prohibited act in authorizing the issuance of the ASAs for RECOM since GHQ-AFP Circular No. 8 allowed the charging of CCIE to either the Personal Services Fund or Maintenance and Other Operating Expense Fund.

The Sandiganbayan ruled that these pieces of evidence debunked the prosecution's allegation that the ASAs were charged against Personal Services Fund without the necessary realignment authority from the DBM. As such, the court negated Domondon's culpability for the crime charged. We see no reason to treat Luspo differently because the authority delegated by

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[52] *Ong v. People*, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 53, citing *Suller v. Sandiganbayan,* G.R. No. 153686, July 22, 2003, 407 SCRA 201, 208.

[53] *Supra* note 10 at 14.

Nazareno to Domondon inevitably passed down to the latter's sub-delegate, Luspo.

The ensuing disquisitions should enlighten.

In general, national government agencies (NGAs), such as the PNP, receive their yearly budgetary allocation from the DBM through an Advice of Allotment.[54] The amount represented therein is, in turn, distributed/sub-allocated by NGAs to their support units or departments through the issuance of an ASA (also known as Sub-Allotment Advice). In the PNP, the power to sub-allocate the agency's funds is vested by R.A. 6975 in the PNP Chief, *viz.*:

> Sec. 26. *Powers, Functions and Term of Office of the PNP Chief.* — **The command and direction of the PNP shall be vested in the Chief of the PNP who shall have the power to direct and control** tactical as well as strategic movements, deployment, placement, **utilization of the PNP** or any of its units and personnel, including its equipment, facilities and other **resources**.[55] (Emphasis supplied.)

The law also empowers the PNP Chief to delegate his myriad duties and authority to his subordinates, with respect to the units under their respective commands:

> Such command and direction of the Chief of the PNP may be delegated to subordinate officials with respect to the units under their respective commands, in accordance with the rules and regulation prescribed by the Commission.[56]

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[54] Now called General Allotment Release Order (GARO) which is a comprehensive authority issued to all agencies in general, to incur obligations not exceeding an authorized amount during a specified period for the purpose indicated. It shall cover expenditures common to most, if not all, agencies without the need of special clearance or approval from a competent authority. National Budget Circular 440 dated January 3, 1995.

[55] In connection with Presidential Decree No. 1445: "Resources" refer to the actual assets of any agency of the government such as cash, instruments representing or convertible to money, receivables, lands, buildings, as well as contingent assets such as estimated revenues applying to the current fiscal period not accrued or collected and bonds authorized and unissued.

[56] R.A. No. 6975, Sec. 26.

This was observed through the organizational structure of the PNP. Administrative and operational support units were put in place to assist the PNP Chief in the command and direction of the police force. One such unit is the ODC, which assists the PNP Chief with the management of the financial resources of the PNP. Among the specific functions of this office are:[57]

1. To coordinate with the Directorial Staff of the National Headquarters (NHQ)-PNP for the supervision and preparation of different PNP projects and programs and for the integration of such projects and programs to the overall PNP program; and

2. To supervise and manage the preparation of the PNP budget estimates based on data submitted by Program Directors and to justify the same before reviewing authorities.

Under the ODC's wing is the Fiscal Services and Budget Division, charged with the implementation of the plans, policies,

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[57] 1. Responsible for the preparation of the Annual PNP Budget. The Director for Comptrollership is the principal liaison officer to the Executive Department and other government offices and agencies on fiscal matters.

2. Initiates projects in the furtherance of management improvement programs of the Command.

3. Plans and supervises the implementation of policies and procedures pertaining to auditing, accounting and statistical reporting in management activities.

4. Coordinates with the Directorial Staff of NHQ-PNP for the supervision and preparation of different PNP projects and programs and in the integration of such projects and programs to the over-all PNP program.

5. Supervises and manages the preparation of the PNP budget estimates based on data submitted by Program Directors and justifies the same before reviewing authorities.

6. Plans, implements and manages all policies and procedures concerning financial management, program review and analysis in management engineering and improvement activities of the organization.

7. Performs other financial duties or functions as the Chief, PNP and higher authorities may direct from time to time.

SOURCE: POLICE REGIONAL OFFICE 07 WEBSITE, <http://ishare.com.ph/pro7/index.php?option=com_content&view=article&id=55&Itemid=113> (visited January 28, 2011).

rules, and regulations governing disbursement and collection of funds for the PNP.[58]

In sum, the Office of the Directorate for Comptrollership assists the PNP Chief in determining how the PNP funds will be sub-allocated to the regional commands and their support units. Any determination made would then be executed by the Fiscal Services and Budget Division by issuing an ASA with Nazareno's signature as the chief financial director of the PNP, in favor of the appropriate command or support unit.

Section 26 of R.A. No. 6975 also empowers the PNP Chief to issue implementing policies for the micromanagement of the entire force, *viz.*:

The Chief of the PNP shall also have the power to issue detailed implementing policies and instructions regarding personnel, funds, properties, records, correspondence and such other matters as may be necessary to effectively carry out the functions, powers and duties of the Bureau. The Chief of the PNP shall be appointed by the President from among the senior officers down to the rank of chief superintendent, subject to confirmation by the Commission on Appointments: Provided, That the Chief of the PNP shall serve a term of office not to exceed four (4) years: Provided, further, That in times of war or other national emergency declared by Congress, the President may extend such term of office. (Emphasis supplied.)

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[58] 8. Maintains and supervises the operations of the Modified Disbursement System (MDS) Account for units in the PNP;

9. Coordinates with other office/units concerning the preparation and distribution of the pay and allowances of uniformed and non-uniformed personnel of the PNP;

10. Processes and settles claims for pay allowances/salaries, travel expenses and commutation of leave of PNP personnel.

11. Maintains financial records of the pay and allowances of uniformed and non-uniformed personnel and other PNP obligations; and,

12. Implements plans, policies, rules and regulations governing disbursement and collection of funds for the PNP.

SOURCE: POLICE REGIONAL OFFICE 07 WEBSITE, <http://ishare.com.ph/pro7/index.php?option=com_content&view=article&id=55&Itemid=113> (visited January 28, 2011).

In the exercise of such power, Nazareno issued a letter-directive on March 20, 1992, entitled "Delegation of Authority," wherein he delegated to his subordinate officers several of his customary authority, ranging from the approval or disapproval of projects to the signing of correspondence and working papers in his behalf.

Attached thereto is a tabulation of the delegatee-directors and the tasks entrusted to them. Pertinent to this controversy are pages 12 to 23 of the tabulation, showing, among others:

POWER/FUNCTIONS	APPROVING AUTHORITY							REMARKS
COMPTROLLERSHIP AND FINANCE	C. PNP	DCA	DCO	TCDS	DIR STAFF	REG'L DIR	D. ADM OPN SPT UNITS	
PNP Budget Proposal and Expenditures	X							
Working papers for the PBAC						DC		
C. Releases of allotment advices								
1. Releases from Comd Reserve regardless of amount	X							
2. Releases from Prog amount regardless of amount								
a. CMI		X						
b. Fixed Expenditures					DC			Upon request of Prog Dir
c. Program Director's Fund					DC			Upon request of Prog Dir
3. Releases for personnel services (01) irrespective of amount					DC			

As testified to by defense witness Dalut, "DC" referred to Director for Comptrollership, who, at that time, was Domondon.

Domondon thereafter sub-delegated such authority to his subordinates Luspo and Osia, through a memorandum dated January 31, 1991. Relying on the memorandum, Luspo signed ASA Nos. 001-500-138-92 SN 4361 and 001-500-139-92 SN 4362 on August 11, 1992, releasing ₱10 million from the Personal Services Fund in favor of North CAPCOM for the purchase of CCIE.

The OSP questions the validity of the sub-delegation, arguing that Domondon cannot further delegate an already delegated task. The contention is untenable.

We reckon the kind of duties discharged by public officers.

Public officers exercise discretionary and/or ministerial duties. A duty is discretionary if the officer is allowed to determine how and when it is to be performed and to decide this matter one way or the other and be right either way.[59] It is not susceptible to delegation because it is imposed by law as such, and the public officer is expected to discharge it directly and not through the intervening mind of another.[60]

On the other hand, a ministerial duty is one that requires neither the exercise of official discretion nor judgment.[61] It connotes an act wherein nothing is left to the discretion of the person executing it.[62] It is practically a mechanical act;[63] hence, what can be done by the delegate may be sub-delegated by him to others.[64]

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[59] *Asuncion v. De Yriarte*, 28 Phil. 67, 71 (1914).

[60] Isagani Cruz, *LAW OF PUBLIC OFFICERS* (1999 ed.), p. 102.

[61] *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661, 670.

[62] *Lamb v. Phipps*, 22 Phil. 456, 490 (1912), citing *Black's Law Dictionary* (8th ed., 2004).

[63] *Id.*

[64] *Supra* note 60 at 105.

Based on the foregoing yardstick, was the task delegated by Nazareno to Domondon discretionary or ministerial?

A reading of the significant provisions of the "Delegation of Authority" discloses that the duty delegated to Domondon was merely ministerial.

2. **In order to free the Chief, Philippine National Police of routine decisions so that he can devote his time to more important functions** and in order to prepare subordinate officers for greater responsibility so that police service will be delivered more efficiently and effectively, **specific authorities of the Chief, PNP** are hereby delegated to the Deputy Chief for Administration, Deputy Chief for Operations, The Chief of Directorial Staff, Directors of the Directorial Staff, Regional Directors and Directors of Support Units as per attached tabulation.

3. **Generally, the delegate will sign for the Chief, PNP but he may sign in his own name when appropriate, depending on the circumstances or nature of the communication. The name and signature of the delegate signing for C. PNP shall be preceded by "BY COMMAND OF DIRECTOR GENERAL NAZARENO" or "FOR THE CHIEF, PHILIPPINE NATIONAL POLICE", whichever is appropriate.**

7. For the purpose of this Letter-Directive, **the term authority shall be understood to mean authority to sign for the C. PNP**; the power to require and receive submission; the right to approve or disapprove; the right to give final decisions; and the right to direct and to expect compliance. **The authorities conferred/delegated in this Letter-Directive are those of the C. PNP, and therefore authorities inherent to the function of the delegatee are not covered by this publication.** x x x

8. **Decision/final actions on matters within the normal or inherent functions/authority of the Directorial Staff, Service Staff, PNP Administrative and Operational Support Units and Regional Directors shall be done at their respective levels.** In this connection, **the Directors of the Directorial Staff are reminded that they are inherently vested with authority to determine the actions to be taken by the Command in their specific fields of interest or responsibility**.[65]

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[65] *Supra* notes 27 & 28.

Based on these provisions of Nazareno's letter-directive, the phrase "release funds for personnel services 01" should be construed to mean that the duty delegated to Domondon was merely to sign ASAs in behalf of Nazareno to effect the release of funds.

Nazareno could not have referred to the actual authority of directing when and to whom the funds would be released because the same was already inherent in Domondon's functions as the former's aide in administering the funds of the PNP.

As mentioned earlier, Domondon, as the Chief Director of the Office of the Directorate for Comptrollership, assists the PNP Chief in determining how the PNP funds would be sub-allocated to the regional commands and their support units. Any determination made by Domondon and Nazareno would then be implemented by Luspo, as the head of Fiscal Services and Budget Division, by preparing an ASA and then submitting the same to Nazareno for his signature. To shorten the process, Nazareno delegated the routine act of affixing his signature to the ASA to his financial assistant, Domondon.

Verily then, the duty delegated by Nazareno to Domondon was the ministerial duty of *signing* ASAs to effect the release of funds. Being merely ministerial, Domondon was allowed to sub-delegate, as he did sub-delegate, the task to his subordinate, Luspo. As such, the signature affixed by Luspo to the ASAs had the same effect as if it was made by Nazareno himself.

Therefore, Luspo, in the same manner as Domondon, had satisfactorily adduced evidence of good faith to overturn and repudiate the imputation of evident bad faith against him. He committed no prohibited act in signing and issuing the assailed ASAs because there is ample documentary and testimonial evidence showing that:

(1) Luspo was duly authorized by Domondon to release personal services funds by signing ASAs in the latter's behalf. Luspo's signature in the ASAs is attributable to Domondon who, in turn, was authorized by Nazareno to release funds for personnel services through the issuance of an ASA.

(2) Contrary to the prosecution's contention, the issuance of ASAs by the ODC in favor of PNP regional commands did not have to be preceded by a program request from the Office of the Directorate for Personnel as shown in the Delegation of Authority and its Schedule of Delegation issued by Nazareno on March 20, 1992; and

(3) There is no need for the DBM's prior authority before the ODC can release funds for "personnel services 01," under which CCIE are categorized, as shown by GHQ Circular No. 8 dated October 24, 1985, issued by the then Acting Chief of the PNP, Fidel V. Ramos (Ramos). The circular was the basis of the OMB in recommending the dismissal of Criminal Case No. 20185 with respect to Domondon. The accusations in Criminal Case No. 20185 against Domondon read: *"accused Domondon, in conspiracy with his co-accused, without prior authority from the Department of Budget and Management (DBM), released or caused to be released sums of money for the purchase of Combat Clothing and Individual Equipment."* The Sandiganbayan adopted the OMB's recommendation and dropped Domondon as an accused in both cases, and took judicial notice of such ruling when it absolved Domondon from the charges in Criminal Case No. 20192, subject of the instant petition.

In addition, the Government Accounting and Auditing Manual[66] classifies combat clothing under the category of "personal services fund."

The prosecution alleged that Luspo failed to observe the logistic requirements of North CAPCOM in 1992 when he signed and issued the ASAs. To buttress this claim, Exhibits "F-15" to "F-16-E" were submitted.

Exhibit "F-15" is an undated "Logistics Assessment," while Exhibit "F-16" is a 6-page more detailed version dated January 4, 1993. Both were prepared for the North CAPCOM by Braga, then Assistant Regional Director, North CAPCOM. The assessment indicated that, in 1992, North CAPCOM received from PNP-GHQ, ₱2,067,123.00 in terms of Allotment Advices,

[66] Volume I, Title 4.

and ₱32,986,523.07 in terms of supplies and equipment. In particular, the acquired CCIE amounted to ₱5,900,778.80. We do not see the relevance of these exhibits to the purpose for which they were offered.

The logistical assessment prepared by Braga is a year-end review of the financial and material allotments received by the command. It is not an internal issuance or circular in the PNP that carries the obligatory force of duty. It is a mere report on the logistical conditions of North CAPCOM. Evident bad faith connotes more than a mere violation of a report.

The prosecution further averred that the issuance and signing of the ASAs had no budgetary basis and justification, because the purchase of CCIE was not included in North CAPCOM's budget proposal for 1992. GHQ-AFP Circular No. 8, issued on January 25, 1985, directs that the yearly funding requirement for combat clothing should be included in budget proposals.

GHQ-AFP Circular No. 8 was issued by Ramos on January 25, 1985 upon the order of the Minister of Defense. When the PNP was created in 1991, it was intended to be "civilian in character" and free from any military influence. Verily, the 1985 issuance of an AFP-Chief would no longer have any binding effect on the officials of PNP.

The finding of the Sandiganbayan that the ASAs were issued over and above the approved ₱6,000,000.00 CCIE budget for calendar year 1992 was not supported by evidence on record. The prosecution did not present any document showing the PNP or the North CAPCOM's budgetary program for 1992.

To repeat, bad faith does not simply connote bad moral judgment or negligence. It is a manifest deliberate intent on the part of an accused to do wrong or to cause damage.[67] There is nothing on record to show that Luspo was spurred by any corrupt motive or that he received any material benefit when he signed the ASAs.

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[67] *Republic v. Desierto,* G.R. No. 131397, January 31, 2006, 481 SCRA 153, 161.

There is likewise no proof that Luspo acted with palpable bias or favor towards Tugaoen. The prosecution failed to show that it was Luspo's duty to search for, negotiate and contract with suppliers. The only deduction extant from the prosecution's evidence is that, being then the Chief of the Fiscal Services and Budget Division of the Office of the Directorate for Comptrollership, it was Luspo's duty to distribute the funds allocated to the PNP by the DBM by the issuance of an ASA in favor of the force's regional commands. Once the funds were released from his custody through the ASAs, his responsibility ceased and it then devolved upon the recipients of the ASA to see to it that the funds were legally and properly disbursed for the purpose for which they were released. He had no control over the disbursement, and thus, he could not be blamed if the funds were eventually expended for unauthorized or illegal purposes.

Lastly, the prosecution cannot link Luspo as a conspirator to defraud the PNP/government on the strength merely of his signature, nor can a valid assumption be made that he connived with Duran and Montano, who subsequently disbursed the ASAs.

> Proof, not mere conjectures or assumptions, should be proferred to indicate that the accused had taken part in, x x x the "planning, preparation and perpetration of the alleged conspiracy to defraud the government" for, otherwise, any "careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for that irregularity.[68]

Again, Luspo committed no prohibited act; neither did he violate any law, rule, or internal order when he signed the ASAs. Logically, his signature in the ASAs cannot be considered as an overt act in furtherance of one common design to defraud the government.

Given the above premises, the acquittal of Luspo is inevitable.

Unfortunately, the immediately preceding disquisition does not apply to Duran, Montano, and Tugaoen.

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[68] *Sistoza v. Desierto*, 437 Phil. 117, 136 (2002).

After receiving the ASAs, Montano instructed Duran to prepare and draw 100 checks for ₱100,000.00 each for four (4) payees, DI-BEN Trading, MT Enterprises, J-MOS Enterprises, and Triple 888 Enterprises, the supposed suppliers of the CCIE. The checks were all dated August 12, 1992 and signed by both Montano and Duran. Montano thereafter released them to Tugaoen, the owner of the four enterprises, without the required liquidating and supporting documents mandated by Section 4(6) of Presidential Decree (P.D.) No. 1445, which provides that claims against government funds shall be supported by complete documentation. In the succeeding days, Tugaoen encashed the checks with UCPB, without delivering in exchange a single piece of CCIE for the uniformed personnel of North CAPCOM.

The Sandiganbayan found indications of bad faith and manifest partiality in Montano's and Duran's actions. We agree.

The essential element of bad faith is evident in Montano's and Duran's failure to prepare and submit the required documentation ordinarily attendant to procurement transactions and government expenditures, as mandated by Section 4(6) of P.D. No. 1445, which states that claims against government funds shall be supported by complete documentation.

Among these requirements are: certification of availability of funds from the command's chief accountant;[69] papers relating to public bidding, like the advertisement for bids and certification of the result of the bidding;[70] purchase orders; delivery receipts; certificate of availability of fund signed by the chief accountant

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[69] Sec. 40, Book VI, 1987 Administrative Code. No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized without first securing certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

[70] Sec. 1 of Executive Order No. 301 dated July 26, 1987 provides that no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding.

and verified by the auditor; and disbursement and requisition vouchers.[71] Their absence in the disbursement of ₱10 million is supported by evidence on record.

Abelardo F. Madridejo, Chief Accountant of North CAPCOM, in a Certification dated March 23, 1993, attested that "the vouchers and allied documents pertaining to the procurement of Combat, Clothing and Individual Equipment in the amount of ₱10,000,000.00 did not pass [his] office for appropriate action."[72]

The PNP Chief Directorate for Material Services, P/Supt. Jesus Arceo, likewise declared that no document was submitted to the PNP Logistics Services relative to the procurement of ₱10 million worth of CCIE for North CAPCOM.[73]

These statements were corroborated by State Auditor Erlinda Cargo of COA-PNP North CAPCOM when she stated that, as of March 23, 1993, no records pertaining to the purchase of ₱10 million CCIE were forwarded to the COA.[74]

More significantly, the February 11, 1993 sworn statement of Braga declared that North CAPCOM did not officially receive the ₱10,000,000.00 ASAs issued by the ODC, supposedly intended for the purchase of CCIE. As affirmed by Braga, North CAPCOM received CCIE allocations worth only ₱5,900,778.80 in 1992, and the same were received in kind and not in the form of ASAs.[75]

Duran avers that his signing of the checks was a mere ministerial act in compliance with Montano's directives and upon reliance on the latter's assurance that their issuance was supported by appropriate documents.

The contention has no merit. The 100 checks were made payable to only 4 enterprises at 25 checks each. This should

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[71] Adopted from July 7, 1997 of the OMB, page 2.

[72] Exhibit "F-19".

[73] Exhibit "F-18".

[74] Exhibit "F-20".

[75] Exhibits "F-14" to "F-14-B".

have sounded alarm bells in the mind of any reasonably judicious accountable officer, such as Duran, to inquire into the veracity of the transaction concerned. But he did not even bother to demand that the "alleged" supporting documents be forwarded to him, in conformity with disbursement rules, to verify the legality or propriety of the claim.

Under Section 106 of P.D. No. 1445, an accountable officer who acts under the direction of a superior officer in paying out or disposing of funds is not exempt from liability unless he notified the superior officer in writing of the illegality of the payment or disposition. Duran made no such notification. Instead, he disregarded all disbursement, auditing, and accounting policies, effectively facilitating the illegal transaction. He did not require the submission of a procurement contract, a certificate of requisition, or vouchers before drawing and signing the checks. He merely mechanically affixed his signature when he was supposed to act with discernment. As the Chief of the Regional Finance Service Unit of the North CAPCOM, he was an accountable officer and had control and supervision over the funds of the command against which the checks were drawn.

To support his claim of good faith, Montano tendered a copy of the provisions of Section 307, Article 5, Title 5, Book III, Volume I, of the Government and Auditing Manual issued on January 2, 1992, to show that he complied with the Rules on expenditures mandated in the manual. The Rule actually compounds his guilt. We quote the text in full:

Sec. 307. ***Combat clothing of military personnel and members of para-military forces assigned or detailed with combat units.*** - The issuance of combat clothing to personnel assigned to combat units shall be guided by the following:

a. Military personnel assigned in combat units are issued authorized combat clothing in kind (GHQ Cir. 3, Feb. 17, 1988).

b. To be entitled to initial combat clothing and subsequent annual combat clothing, military personnel and members of para-military forces must have completed at least six (6) consecutive months tour of duty with a unit engaged in actual combat operations. This additional clothing shall not be granted more often than once every twelve (12)

months. The individual clothing record of the military personnel shall be the basis to determine whether the individual was issued this combat clothing or not.

c. The unit commander shall attach a certification to the requisition and issue voucher (RIV), stating therein that the military personnel and members of his unit were actually engaged in combat operations for not less than forty five (45) days within the six (6)-month period for which combat clothing is claimed and have not received said clothing items during the period covered.

To evade culpability, Montano should have presented a "requisition and issue voucher" to justify his disbursement of ₱10,000,000.00 for the supposed purchase of CCIE. But this he did not do. He only advanced denials and roundabout alibis to surmount the concrete evidence of the prosecution.

Indeed, there is ample evidence proving beyond reasonable doubt that Duran and Montano were propelled by evident bad faith in preparing and issuing 100 checks to facilitate a fictitious and fraudulent transaction and Tugaoen, in accepting the checks and receiving their value without giving in exchange a single piece of CCIE.

Duran's and Montano's palpable bias in favor of Tugaoen is shown by their failure to support and justify the checks issued to Tugaoen's enterprises with the obligatory paper trail relative to the conduct of public bidding or any procurement contract.

As aptly discerned by the Sandiganbayan, the acts of Duran, Montano and Tugaoen evince a bold and unabashed conspiracy scheme to defraud the government of ₱10 million:

[T]he drawing of one hundred checks in the amount of one hundred thousand pesos each by [petitioners] Duran and Montano, on that same day of August 12, 1992, eloquently bespeaks of splitting of payments, too glaring to be ignored. These one hundred checks could have been consolidated into four (4) checks only considering that there were only four (4) business establishments with which they claim to have transacted with.[76]

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[76] *Supra* note 1, at 61-62.

As defined in COA Circular No. 76-41 dated July 30, 1976, splitting, in its literal sense, means dividing or breaking up into separate parts or portions, or an act resulting in fissure, rupture, or breach. Within the sphere of government procurement, splitting is associated with requisitions, purchase orders, deliveries, and payments. One form of splitting is the breaking up of payments which consist in making two or more payments for one or more items involving one purchase order. Splitting is intended to do away with and circumvent control measure, such as the reviewing authority of a superior official. In this case, the ASA of ₱10,000,000.00 was split by Duran and Montano into 100 checks of ₱100,000.00 each to elude the reviewing authority of Director Sistoza.

The last essential element of the offense, damage or injury to the government, is amply substantiated by the certification executed by Romulo Tuscano of the PNP Logistic Support Service, indicating that there is no available record regarding the delivery of ₱10 million worth of CCIE for North CAPCOM in 1992.[77]

In fact, Tugaoen herself admitted that she did not deliver any CCIE in exchange for her receipt of ₱10 million. The admissibility of such statement was exhaustively discussed by the Sandiganbayan in its May 13, 2005 resolution, and we adopt its findings therein.

At any rate, even if we were to hold that the investigation conducted by the PNP was custodial in nature, the improprieties that Tugaoen bewail would not prevail against strong and overwhelming evidence showing her and her co-conspirators' guilt. Allegations of impropriety committed during custodial investigation are material only when an extrajudicial admission or confession is the basis of conviction.[78] In the present case, the conviction of Montano, Duran, and Tugaoen was not deduced

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[77] Exhibit "E".

[78] *Bon v. People*, G.R. No. 152160, January 13, 2004, 419 SCRA 101, 112, citing *People v. Sabalones*, 356 Phil. 255, 294 (1998).

solely from Tugaoen's admission, but from the confluence of evidence showing their guilt beyond reasonable doubt.

In the same vein, the issue on the admissibility of the photocopies of the ASAs, the 100 checks, the original printout of the full master list and detail list of the checks from the PHC, and the bank statement prepared by UCPB[79] is of no moment.

Penal and Civil Liability For Violation of Section 3(e), R.A. No. 3019

The penalty for violation of Section 3(e) of R.A. No. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office."[80] Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.[81]

There being no aggravating and mitigating circumstances in this case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

Duran, Montano, and Tugaoen shall be solidarily liable for the restitution of the P10,000,000.00 that they defrauded from the funds of the PNP. An offense as a general rule causes two (2) classes of injuries - the first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury

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[79] Respectively docketed as Exhibits "A", "A-1", "C" to "C-27", "C-28" to "C-29", "H" to "H-4".

[80] R.A. No. 3019, Sec. 9.

[81] *Nacaytuna v. People*, G.R. No. 171144, November 24, 2006, 508 SCRA 128, 135.

is sought to be compensated through indemnity, which is civil in nature.[82]

WHEREFORE, foregoing considered, the conviction of Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen in Sandiganbayan Criminal Case No. 20192 is hereby *AFFIRMED*.

The conviction of Van Luspo in Criminal Case No. 20192 is *REVERSED* and *SET ASIDE*, and he is hereby *ACQUITTED*. The bailbond posted for his provisional liberty is hereby *CANCELLED*.

Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen are further *ORDERED* to jointly and severally indemnify the Philippine National Police of Ten Million Pesos (₱10,000,000.00).

SO ORDERED.

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

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[82] *Suller v. Sandiganbayan*, *supra* note 52, at 210, citing *Ramos v. Gonong*, G.R. No. L-42010, August 31, 1976, 164 Phil. 557, 563.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta, who took no part in the case due to prior participation in the initial proceedings before the Sandiganbayan.

THIRD DIVISION

[G.R. No. 188802. February 14, 2011]

REVELINA LIMSON, *petitioner, vs.* **WACK WACK CONDOMINIUM CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; REPUBLIC ACT NO. 4726 (THE CONDOMINIUM ACT); COMMON AREAS; UTILITY INSTALLATIONS FORM PART THEREOF.— Section 3 (e) of R.A. 4726 defines "common areas" as "the entire project except all units separately granted or held or reserved." Section 6 (a) of the same law provides: "a.) x x x **The following are not part of the unit**: x x x **utility installations, wherever located, except the outlets thereof when located within the unit."** The electrical panel's location inside the unit notwithstanding, it is not automatically considered as part of it. The above-quoted pertinent provisions of the law and the master deed contemplate that "common areas," *e.g.* utility installations, may be situated **within** the unit.

2. POLITICAL LAW; STATUTES; WHERE A STATUTE IS CLEAR, PLAIN AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT ATTEMPT TO INTERPRET.— Where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempt to interpret. *Verba legis non est recedendum, index animi sermo est.* There should be no departure from the words of the statute, for speech is the index of intention.

3. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; REPUBLIC ACT NO. 4726 (THE CONDOMINIUM ACT); IN A MULTI-OCCUPANCY DWELLING, LIMITATIONS ARE IMPOSED UNDER THE LAW IN ACCORDANCE WITH THE COMMON INTEREST AND SAFETY OF THE OCCUPANTS THEREIN.— In a multi-occupancy dwelling such as Apartments, limitations are imposed under R.A. 4726 in accordance with the common interest and safety of the occupants therein which at times may

curtail the exercise of ownership. To maintain safe, harmonious and secured living conditions, certain stipulations are embodied in the duly registered deed of restrictions, in this case the Master Deed, and in house rules which the condominium corporation, like respondent, is mandated to implement. Upon acquisition of a unit, the owner not only affixes his conformity to the sale; he also binds himself to a contract with other unit owners.

4. ID.; ID.; ID.; COMMON AREAS; THE FUSE BOX IS AN INTEGRAL COMPONENT OF A POWER UTILITY INSTALLATION; CASE AT BAR.— Unquestionably, the fuse box controls the supply of electricity into the unit. Power is sourced through jumper cables attached to the main switch which connects the unit's electrical line to the Apartment's common electrical line. It is an integral component of a power utility installation. Respondent cannot disclaim responsibility for the maintenance of the Apartments' electrical supply system solely because a component thereof is placed inside a unit. x x x [B]oth the law and the Master Deed refer to utility installations as forming part of the common areas, which reference is justified by practical considerations. Repairs to correct any defects in the electrical wiring should be under the control and supervision of respondent to ensure safety and compliance with the Philippine Electrical Code, not to mention security and peace of mind of the unit owners.

APPEARANCES OF COUNSEL

Bantog and Andaya Law Offices for petitioner.
Alberto B. Guevarra, Jr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On January 22, 1996, Revelina Limson[1] (Revelina) purchased from Conchita Benitez an apartment unit (Unit 703) at Wack Wack Apartments, Wack Wack Road, Mandaluyong City.

[1] The Condominium Certificate of Title is registered under the name of "Revelina R. Limson, of legal age, Filipino, married to Benjamin Limson, Filipino."

Upon moving in, Revelina noticed defects in the electrical main panel located inside the unit, drawing her to report them, by letter of February 22, 1996, to the Wack Wack Condominium Corporation (respondent), a non-stock corporation organized for the purpose of holding title to and managing the common areas of Wack Wack Apartments.

Racquel Gonzalez, who sits as Member of respondent's Board of Directors, replied by letter of February 23, 1996 that under Section 3 of the House Rules and Regulations, it is the duty of the unit owner to maintain the electrical and plumbing systems at his/her expense.

By still another letter dated February 28, 1996, Revelina informed respondent that the "switch board is such that No. 12 wire is protected by 30 ampere fuse" and that five appliances – refrigerator, freezer, iron, dryer and washing machine – are connected to only one fuse.

Revelina later sought professional assistance from a private electrical consultant, Romago, Incorporated. It was concluded that the wirings in Unit 703 are unsafe, hazardous and did not comply with the Philippine Electrical Code.

On Revelina's request, the City Building Office conducted an inspection of Unit 703 following which a Report dated January 21, 1997 was accomplished with the following findings and recommendations:

Findings:

1. The load center consists of 100 A 2 pst main switch and fusible cut out Blocks with 16 circuits. The fusible cut out block enclosure is not provided with cover, exposing electrical live part that makes it hazardous, unsafe and will be difficult to maintain because a portion was blocked by a shelf.

2. The jumper cable from main safety switch to fusible cut-out blocks used 2 #10 wire (Capt. 60 amp) per phase. This is undersized and would overheat.

3. The fusible current protective devise where all 30 Amp., sp., 240 v FOR 2 #12 TW (20 AMP. Capacity wire) this does not

comply with the provision of the Philippine Electrical Code that stipulates rating of the protective devise shall be the same as the conductor ampacity especially on a multi outlet circuit.

4. Power supply for water heaters was tapped to small appliance for convenience outlet circuit.

Recommendation:

1. Replacement of fusible load center with panel board and circuit breaker components to correct the problem as enumerated on items 2, 3, 4 of our findings.
2. Replace the embedded circular loom with conduit on moulding.
3. Check all grounded circuit for water heater lad.
4. Provide separate circuit for water heater lad.
5. Submit As Built Electrical Plan signed and sealed by a Professional Electrical Engineer together with the previous approved Electrical Plan. (emphasis and underscoring supplied)

The Report was sent by then Mayor Benjamin Abalos, Sr. to respondent by letter dated January 31, 1997. On February 3, 1997, respondent, through Architect Eugenio Gonzalez, wrote Revelina to demand that repairs in line with the above-stated recommendation of the City Building Office be undertaken within ten (10) days.

Before the deadline, respondent's Board of Directors convened on February 7, 1997 and resolved to impose a daily fine of ₱1,000.00 on Revelina and her husband Benjamin, to commence on February 14, 1997, should the latter fail to comply.

Revelina and her husband refused to undertake the repairs and to pay the fine. They claimed that the electrical main panel forms part of the common areas, citing Section 6 of Republic Act No. 4726,[2] "AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION AND GOVERNMENT OF ITS INCIDENTS," the pertinent provision of which reads:

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[2] Otherwise known as The Condominium Act.

Sec. 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:

a.) x x x **The following are not part of the unit**: bearing walls, columns, floors, roofs, foundations, and other common structural elements of the buildings; lobbies, stairways, hallways and other areas of common use, elevator equipment and shafts, central heating, central refrigeration and central air conditioning equipment, reservoir, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits wires and other **utility installations**, wherever located, **except** the outlets thereof **when located within the unit**. (emphasis and underscoring supplied)

They argued that an electrical main panel is in the nature of a utility installation.

Meanwhile, Revelina and her husband purchased an oversized whirlpool. In the process of installation, the 7th floor utility room which is adjacent to Unit 703 was damaged.

Revelina claimed that an agreement had been reached under which respondent would take charge of the repair of the utility room and would bill her for the cost incurred therefor but respondent failed to do so. Yet the Board of Directors assessed her and her husband a fine of ₱1,000.00 per day until the utility room is repaired.

Respondent thereupon filed a complaint for specific performance and damages against Revelina and Benjamin before the Securities and Exchange Commission (SEC) upon the following causes of action:

1. To compel the defendants (Spouses Limson) to undertake the necessary repairs of the defective and hazardous condition of the electrical wiring of their Unit 703 in accordance with the report and recommendation of the Office of the Building Official of Mandaluyong City;

2. To seek payment of liquidated damages from the defendants in accordance with the Resolution of the Board of Directors of plaintiff (respondent herein), starting February 15, 1997 until the defendants shall have complied with the aforestated report and recommendation of the building officials; and

3. To seek payment of [*sic*] from the defendants for the damages they have caused to the common area of Wack Wack Apartments due to their insistence to install in their unit an over-sized whirlpool.[3]

Pursuant to A.M. No. 00-11-03,[4] the complaint was transferred to the Regional Trial Court (RTC) of Mandaluyong City for disposition.

As of June 30, 1997, the assessments and penalties charged against the spouses had reached ₱569,736.94. On July 17, 1997, respondent filed a Notice of Assessment with the Register of Deeds, Mandaluyong City with application for foreclosure and public auction of Unit 703.

At the public auction held on August 28, 1997, respondent emerged as highest bidder and thereupon purchased Unit 703 in the amount of ₱569,736.94, on account of which it was issued a Certificate of Sale on September 15, 1997.

By Decision of December 22, 2003, Branch 214 of the Mandaluyong RTC dismissed respondent's complaint for lack of merit in this wise:

Guided by the findings and recommendation of the building official of Mandaluyong City, it would appear that the questioned electrical installations are to be considered as part of the common area and not of Unit 703, though the same are necessarily found inside the said unit. As contained in Section 6, par. 1 of the Condominium Act: "a) The boundary of the Unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. **The following are not part of the unit**: bearing walls, columns, floors, roofs, foundations, and other common structural elements of the buildings; lobbies, stairways, hallways and other areas of common use, elevator equipment and shafts, central heating, central refrigeration and central air conditioning equipment, reservoir, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits wires and **other utility installations, wherever**

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[3] CA *rollo*, p. 72.

[4] Otherwise known as the *"Interim Rules of Procedure for Intra-Corporate Controversies"*.

located, except the outlets thereof when located within the unit. (underscoring supplied; emphasis in the original)[5]

On appeal, the Court of Appeals, by Decision of December 19, 2008,[6] **reversed** the decision of the trial court, holding in the main that for the electrical main panel to be considered as part of the common areas, it should have been intended for communal use and benefit. The subject electrical main panel being located inside the unit and its principal function being to control the flow of electricity into the unit, the appellate court concluded that charges for its repair cannot be for respondent's account.

On the imposition of fine on the spouses Limson for failure to correct the faulty electrical wiring despite notice, the appellate court upheld respondent's authority to enforce the same. Finding, however, that the amount of ₱1,000 fine per day was excessive, it reduced the same to ₱200.

Respecting respondent's imposition of a fine of ₱1,000 per day on the spouses' alleged failure to repair the 7th floor utility room, the appellate court disallowed the same, however, it holding that respondent did not first seek reimbursement from them before assessment.

Finally, the appellate court denied respondent's prayer for actual damages in the amount of ₱5,000 representing repair expenses on the utility room, it having failed to present receipts therefor.

Her Motion for Reconsideration having been denied, Revelina filed the present petition for review.

The Court finds for Revelina.

The pertinent provisions of the Wack Wack Apartments Master Deed follow:

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[5] CA *rollo*, p. 77.

[6] Penned by the late Associate Justice Edgardo F. Sundiam, with the concurrence of Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., CA *rollo*, pp. 152-179.

Section 5. The Common Areas. – The common elements or areas of the Project (herein referred to as the "Common Areas") shall comprise all parts of the Project other than the Units, including without limitation the following:

x x x x x x x x x

(e) All central and appurtenant equipment and installations for common facilities and utilities such as power, light, sewerage, drainage, garbage chute, and water connections (including all outlets, pipes, ducts, wires, cables and conduits used in connection therewith, whether located in Common Areas or in Units); all elevators, elevator shafts, tanks, pumps, motors, fans, compressors, and control equipment; all common utility spaces and areas;

(f) All other parts of the Project and all apparatus, equipment and installations therein which are for common use or necessary or convenient for the existence, maintenance of safety of the Project. (emphasis and underscoring supplied)

Section 3. Maintenance, Repairs and Alterations. – (a) All maintenance of and repairs of any Unit (**other than** the maintenance of and repairs to any of the Common Areas contained therein not necessitated by the act or negligence of the owner, tenant or occupant of such Unit) shall be made [by], and **at the expense of,** the owner of such unit. Each Unit owner shall be responsible for all damages to any other Unit and to the Common Areas resulting from his failure to effect such maintenance and repairs. Each Unit owner shall also be responsible for promptly reporting to the Condominium Corporation any defect or need for repairs in any of the Common Areas in his Unit. (emphasis and underscoring supplied)

x x x x x x x x x

Section 3 (e) of R.A. 4726 defines "common areas" as "the entire project except all units separately granted or held or reserved." Section 6 (a) of the same law provides:

a.) x x x **The following are not part of the unit**: bearing walls, columns, floors, roofs, foundations, and other common structural elements of the buildings; lobbies, stairways, hallways and other areas of common use, elevator equipment and shafts, central heating, central refrigeration and central air conditioning

> equipment, reservoir, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits wires and other **utility installations, wherever located, except the outlets thereof when located within the unit.** (emphasis and underscoring supplied)

The electrical panel's location inside the unit notwithstanding, it is not automatically considered as part of it. The above-quoted pertinent provisions of the law and the master deed contemplate that "common areas," *e.g.* utility installations, may be situated **within** the unit.

Where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempt to interpret.[7] *Verba legis non est recedendum, index animi sermo est*. There should be no departure from the words of the statute, for speech is the index of intention.

An explanation of the Apartment's electrical supply system was presented by respondent, *viz***:**

a.) x x x [T]he electrical system of the Apartments commences with a common main electrical line (main line) provided by the Apartments, connected to a Meralco line outside the building. This common main line runs to the ground floor of the building, where the common meter station is located; from where individual secondary lines, are tapped to the common main line. There are as many individual secondary lines tapped to the common main line, as there are units. EVERY SECONDARY LINE TRAVELS VERTICALLY TO ITS DESIGNATED FLOOR AND LEADS TO AN INDIVIDUAL UNIT.

b.) The construction is such, that every secondary line is embedded within the wall of a unit, until it surfaces from the wall, ready to supply electricity to that unit; the UNIT, in this case, has two (2) metal boxes, inside the UNIT; both attached to the wall of the UNIT. The first of the two (2) metal boxes is the main switch box. (Annex "B" and "B-1" The main switch box has a hole, through which the secondary line enters and is attached to the upper end of two (2) big fuses, located in the

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[7] *Signey v. Social Security System*, G.R. No. 173582, January 28, 2008, 542 SCRA 629.

main switch box (Annex "B-1-a"). The upper end of the two (2) big fuses, where the secondary line (tapped to the main line) ends are indicated and marked as (Annex "B-1-b" and "B-1-c")

c.) At the lower end of these two (2) big fuses, there are separate electrical wires (technically called "jumper cables"). The jumper cables originate in the UNIT's second metal box which is the fusible cutout box (fuse box), and the jumper cables are connected to the lower end of the two (2) big fuses in the main switch box to draw electricity to feed the fuse box. x x x[8] (capitalization and underscoring in the original)

In a multi-occupancy dwelling such as Apartments, limitations are imposed under R.A. 4726[9] in accordance with the common interest and safety of the occupants therein which at times may curtail the exercise of ownership. To maintain safe, harmonious and secured living conditions, certain stipulations are embodied in the duly registered deed of restrictions, in this case the Master Deed, and in house rules which the condominium corporation, like respondent, is mandated to implement. Upon acquisition of a unit, the owner not only affixes his conformity to the sale; he also binds himself to a contract with other unit owners.[10]

Unquestionably, the fuse box controls the supply of electricity into the unit. Power is sourced through jumper cables attached to the main switch which connects the unit's electrical line to the Apartment's common electrical line. It is an integral component of a power utility installation. Respondent cannot disclaim responsibility for the maintenance of the Apartments' electrical supply system solely because a component thereof is placed inside a unit.

As earlier stated, both the law and the Master Deed refer to utility installations as forming part of the common areas,

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[8] CA *rollo*, Appellant's Brief, pp. 33-34

[9] *Vide* Section 9 and Section 18.

[10] *Twin Towers Condominium Corporation v. Court of Appeals*, G.R. No. 123552, February 27, 2003, 398 SCRA 203.

which reference is justified by practical considerations. Repairs to correct any defects in the electrical wiring should be under the control and supervision of respondent to ensure safety and compliance with the Philippine Electrical Code,[11] not to mention security and peace of mind of the unit owners.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of December 19, 2008 is *REVERSED* and *SET ASIDE*. The Decision of Branch 214 of the Mandaluyong Regional Trial Court dismissing the complaint of Wack Wack Condominium Corporation against Revelina and Benjamin Limson is, in light of the foregoing discussions, *REINSTATED*.

SO ORDERED.

Brion, Peralta,[*] *Villarama, Jr.,* and *Mendoza,*[**] *JJ.,* concur.

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[11] Section 1301 of the National Building Code provides: All electrical systems, equipment and installation mentioned in this Code shall conform to the provisions of the Philippine Electrical Code, as adopted by the Board of Electrical Engineering pursuant to Republic Act No. 184 as amended by Republic Act No. 7920 otherwise known as the "New Electrical Engineering Law."

[*] Additional member per Special Order No. 944 dated February 9, 2011 *vice* Associate Justice Ma. Lordes P.A. Sereno.

[**] Additional Member *vice* Associate Justice Lucas P. Bersamin who took no part due to prior action in a related Court of Appeals case, per Raffle dated June 2, 2010.

EN BANC

[A.M. No. MTJ-08-1710. February 15, 2011]
(Formerly A.M. OCA IPI No. 08-2029-MTJ)

RENE C. RICABLANCA, *complainant, vs.* **JUDGE HECTOR B. BARILLO,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; A JUDGE OWES IT TO HIMSELF AND HIS OFFICE TO KNOW BASIC LEGAL PRINCIPLES BY HEART AND TO HARNESS THAT KNOWLEDGE CORRECTLY AND JUSTLY.— A judge owes it to himself and his office to know basic legal principles by heart and to harness that knowledge correctly and justly, failing which public's confidence in the courts is eroded. In issuing the orders archiving the five x x x criminal cases, respondent failed to consider that he was acting not as a *trial* judge but an *investigating* judge of an MTC whose actions were thus governed by Section 5, Rule 112 of the Rules of Criminal Procedure on preliminary investigations. He ought to have known that after conducting preliminary investigation on the criminal cases, it was his duty to transmit his resolution thereon to the provincial or city prosecutor for appropriate action. His failure to do so betrays an utter lack of familiarity with the Rules.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; WHEN THE LAW IS SO ELEMENTARY, NOT TO BE AWARE OF IT CONSTITUTES GROSS IGNORANCE OF THE LAW.— The complaint against respondent is for gross ignorance of the law in which the acts complained of must not only be contrary to existing law and jurisprudence; it must have been motivated by bad faith, fraud, dishonesty or corruption the presence of which in the present case is not clear. Be that as it may, such leeway afforded a judge does not mean that he should not evince due care in the performance of his adjudicatory functions. Sanctions are still in order as such lapses in judgment cannot be countenanced. As the Court has repeatedly stressed, a judge, having applied for the position and appointed as such, is presumed to know the law. Thus, when the law is so

elementary, not to be aware of it constitutes gross ignorance of the law. Gross ignorance of the law is penalized by Section 11 (A), Rule 140 x x x.

D E C I S I O N

CARPIO MORALES, *J.*:

In a verified complaint[1] dated July 3, 2006, Rene C. Ricablanca (complainant), Court Stenographer I of the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental, charged Judge Hector Barillo, Presiding Judge of the Municipal Trial Court in Cities (MTCC), Canlaon City, with Grave Judicial Misconduct and Gross Ignorance of the Law. Before the filing of the complaint, respondent had administratively charged complainant for going on Absence Without Official Leave (AWOL).

It appears that while respondent was still Acting Presiding Judge of the MTC Guihulngan, he issued orders archiving the following criminal cases cognizable by the Regional Trial Court (RTC) of Guihulngan, instead of forwarding them to the Office of the Provincial Prosecutor for review and appropriate action.

a. Criminal Case No. 5216, entitled "*PP vs. Erlindo Bacatin a.k.a. Do Dela Cruz*" for Murder, archived per Order dated 22 November 1991 (Annex "C" of the Complaint);

b. Criminal Case No. 5220, entitled "*PP vs. Ka Rustan, Ka Arming, Ka Erboy, Ka Rechie, Ka Ford, Ka Radan, Ka Dindo, Ka Wen*, and three (3) John Does" for Robbery in Band per duplicate original copy of the Order dated 22 November 1991 (Annex "D" of the Complaint);

c. Criminal Case No. 6-00-054, entitled "*PP vs. Junie Pacion*" for Attempted Homicide, per duplicate copy of the Order dated 24 July 2001 (Annex "E" of the Complaint);

d. Criminal Case No. 9-00-113, entitled "*PP vs. Eduardo Flores, a.k.a. Eddie and Allan Flores*" for Violation of PD 1866 as amended by R.A. 8294 (archived on 26 August 2002) per

[1] *Rollo*, pp. 4-11.

duplicate original copy of the Order (Annex "F" of the Complaint); and

e. Criminal Case No. 5212, entitled "*PP vs. Edwin Barangyao*" for Murder (archived on 22 November 1991 (Annex "F-1" of the Complaint).[2]

By complainant's claim, respondent inhibited himself from hearing Criminal Case No. 2-01-173, "*People v. Benny Barillo*," but, to take his place, he (respondent) successfully recommended another judge whom he could influence as in fact the latter archived the case.

Still by complainant's claim, respondent refused to inhibit himself, in violation of the Code of Judicial Conduct, in Civil Case No. 04-1-178, "*Rural Bank of Guihulngan, Negros Oriental, Inc., represented by Renato Miguel Dionaldo Garcia v. Evangeline Ricablanca, et al.,*" despite the fact that the plaintiff Rural Bank's representative is a sister of respondent's wife and respondent's wife is in fact an employee of the bank; and that respondent rendered judgment based on a compromise agreement, without the defendant being assisted by counsel, which compromise agreement is contrary to law, morals, public order and public policy.

Complainant went on to relate that respondent's nephew, Renato Garcia, filed several cases in whose favor he (respondent) consistently rendered judgments in which exorbitant, iniquitous and excessive awards were made.

Furthermore, complainant stated that respondent allowed an MTCC aide, who is respondent's relative by consanguinity, to be detailed at the MTC Guihulngan to handle court collections; and in 2004, a Judicial Audit Team discovered a shortage of ₱90,000 in the collections and the aide was, along with the Clerk of Court, directed to "replenish" the same.

Finally, complainant stated that respondent held office at his residence in Guihulngan and drank beer while conducting court hearings; that on account of his strained relations with respondent,

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[2] *Id*. at 6.

he was detailed at the MTCC, Dumaguete City; and that after his detail, however, he was forced to go on leave but all his applications for the purpose were disapproved by respondent, hence, spawned the earlier-mentioned filing by respondent of an administrative case against complainant for going on AWOL.

In his Comment[3] to the Complaint, respondent alleged that as he is no longer the Presiding Judge of MTC Guihulngan, not to mention that complainant was not a party to any of the above-mentioned criminal and civil cases, he (respondent) has "no jurisdiction to comment" on the allegations of the complaint. Nevertheless, respondent gave a *general denial* of the charges and dwelt more on why he declared complainant on AWOL.

By Investigation Report[4] dated October 8, 2009, Judge Alejandro A. Bahonsua, Jr., Acting Presiding Judge of Branch 64/Executive Judge of the RTC of Negros Oriental who was, by this Court's Resolution of July 23, 2008,[5] directed to investigate the Complaint, found that the archiving of the criminal cases was not in compliance with the Rules.

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In the Orders, Respondent said he archived the cases without prejudice to subsequent prosecution if the accused would subsequently be arrested, anchored on the provisions of Administrative Circular No. 7-92 of the Supreme Court, the pertinent portion of which provides:

> *"1.a. A criminal case may be archived only if after the issuance of the warrant of arrest, the accused remains at large for six (6) months from the delivery of the warrant to the proper peace office. An order archiving the case shall require the peace officer to explain why the accused was not apprehended. The Court shall issue an alias warrant if the original warrant is returned by the peace officer together with the report. A copy of the order archiving the case shall be furnished to the complainant."*

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[3] *Id.* at 99-106.

[4] *Id.* at 420-434.

[5] *Id.* at 257.

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This defenses interposed by the Respondent are weak excuses that could not justify his failure to follow the Rules of Court. He was not correct in applying the provisions of Administrative Circular No. 7-92 because he was not acting as the **trial judge** but as the **investigating judge**, and thus his actions were governed by the rules on preliminary investigation under the 2000 Rules of Criminal Procedure, the pertinent provision of which is the first sentence of Sec. 5, Rule 112, which provides:

> *"Resolution of the investigating judge and its review. – Within ten (10) days after preliminary investigation,* ***the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor****, or the Ombudsman or his deputy in cases cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action, together with the record of the case which shall include: (a) the warrant if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order of his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail, if the resolution is for the dismissal of the complaint."*

Undisputedly, Respondent failed to follow the mandate of his office as **investigating judge,** and thus fittingly applied herein is the ruling in the case of ***Mayor Sotero C. Cantela vs. Judge Rafael S. Almoradie, A.M. No. MTJ-93-749, February 7, 1994,*** having substantially the same set of facts, where the Supreme Court found Judge Alradie of the Third Municipal Circular Trial Court of San Fenrando-Batuan, 5th Judicial Region, San Fernando, Masbate grossly ignorant of the correct criminal procedure and dismissed him from the service with prejudice to appointment to any government position or public office, including government-owned or controlled corporations, and with forfeiture of all his retirement benefits. x x x

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It is to be noted in the case extant that three of the five cases archived by the Respondent involved serious offenses: Criminal Case No. 5216 for Murder; Criminal Case No. 5220 for Robbery in Band; and; Criminal Case 5212 for Murder, hence, to borrow the language

of the Supreme Court, Respondent should have been prompted by the gravity of the offenses to forward the records of the cases within the required 10-day period to the Provincial Prosecutor for appropriate action.

As to the degree of perversity of the manner at the very least, the violations were committed, lies however a big difference between the two cases. In the case of ***Almoradie***, respondent judge made the practice, and continued the practice of archiving cases after preliminary investigation even after his attention was called by an Assistant Provincial Prosecutor and his acts were denounced by the Executive Judge. Thus the Supreme Court said:

> *In several resolutions of Assistant Provincial Prosecutor Danilo V. Ontog, the attention of respondent Judge had been called to the irregular practice of the latter of archiving criminal cases. Even RTC Executive Judge Ricardo Butalid in an article in the local newspaper "Panahon" (issue of 19 August 1990) denounced the irregular practice of respondent Judge of archiving criminal cases after preliminary investigation. Despite these efforts of judge Butalid and the Assistant Provincial Prosecutor to point out the wrong procedure being followed by respondent Judge, the latter remained unperturbed and continued with his irregular practice, This, in effect, facilitated the escape of several accused in the complainants, who have been seen moving freely. Respondent Judge has not therefore been of help in ridding the community of undesirable elements. He has contributed, through this ignorance of the law, to their mockery of the law."*

In the case extant, Respondent was only acting as Assisting Judge and then as Acting Presiding Judge of the Municipal Trial Court of Guihulngan, Negros Oriental when he issued the questioned Orders. This court is of the view that Respondent innocently thought that he could legally issue said Orders despite acting only as the Investigating Judge. Besides, nobody had called his attention about the errors he committed, not even the office of the Provincial Prosecutor of Negros Oriental, the Executive judge nor the regular Presiding Judge himself, the Hon. Judge Ricardo M. Garcia. Further, after he ceased to be the Acting Presiding Judge in July 2004, he lost the opportunity to rectify his errors. Hence this Court also believes that the ruling in the case of *Northcastle Properties and Estate Corporation vs. Acting Presiding Judge Estrellita M. Paas,*

MeTC, Branch 45, Pasay City, A.M. No. MTJ-99-1206 October 22, 1999, where the respondent judge was found guilty of gross ignorance of the law when she erred by applying the provisions of Sec. 19, Rule 70, Rules of Court instead of Sec. 21 of the same rule regarding the execution of the decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction in an ejectment case. The Supreme Court said that her utter lack of familiarity with the Rules undermined the public confidence in the competence of our courts and she was penalized to pay the fine of ₱5,000.00 with the warning that a repetition of the same or similar act would be dealt with more severely. *(emphasis and underscoring supplied)*

As to the claim of the Respondent that he had no more personality to comment the allegations in the complaint, particularly the archiving of cases because he is no longer the Acting Presiding Judge of the Municipal Trial Court since July 2004, this court also believes that such does not hold water. This is so because being an officer of the court he can always be held responsible for his previous official acts. In fact, even those who have already retired from the judiciary could still be held responsible for acts done during their incumbency.

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And, the fact that the Orders, as argued by the Respondent, were not questioned by the government prosecutors, the parties and their counsels, and the complainant was not a party to the cases, is of no moment because the Supreme Court, with or without complaint can look into his acts in view of its power of administrative supervision over all courts and the personnel thereof and to discipline judges of lower courts, or order their dismissal.

Finally, the claim of the Respondent that the questioned Orders were already final and executory and could only be correctible by appeal is also a misplaced argument because such were merely in the nature of the interlocutory order as the cases involved were not finally disposed of by reason thereof, and thus, not subject to appeal. Respondent invoking the ruling of the case of *Salcedo vs. Coquia, et al., A.M. MTJ-1328, February 11, 2004,* to the mind of the court is also not meritorious. This is so because in that case, the Supreme Court, citing the case of *Bello III vs. Diaz, AM-MTJ-00-1311, October 3, 2003,* ruled that:

> *"It is plain from the complaint that the error attributable to respondent Judge pertains to the exercise of his adjudicative functions.* ***Settled is the rule that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings****, but should instead be assailed through judicial remedies. In the recent case of Bello v. Diaz, we reiterated that disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies whether ordinary or extraordinary; an inquiry into their administrative liability arising from judicial acts may be made only after other available remedies have been settled."*

It is to be noted that herein Respondent is sued in the exercise of his executive functions. In the case of *Balagapo, Jr. v. Dequilla, 238 SCRA 645*, citing the case of *Crespo vs. Mogul, 151 SCRA 462*, it was ruled that:

> *"When a municipal judge conducts preliminary investigation he performs a* ***non-judicial function****, as an exception to his usual duties. The assignment of such* ***excecutive function*** *to the Municipal Judge under Rule 112 of the Rules of Court is dictated by the necessity and practical consideration. Consequently, the findings of an investigating judge are subject to review by the Provincial Prosecutor whose findings in turn may also be reviewed by the Secretary of Justice in appropriate cases."*

Further, citing the case of *People v. Gorospe, 53 Phils. 960 (1928)* the Supreme Court ruled that it is **ministerial duty** for an investigating judge, after conducting a preliminary investigation, to transmit the resolution of the case together with the entire records to the Provincial Prosecutor, regardless of his belief or opinion that the crime committed falls under the jurisdiction of his court.

The only remedy that was available in order that Respondent could be forced to perform his ministerial duty of transmitting the records of the cases to the office of the Provincial Prosecutor of Negros Oriental was an action for *Mandamus* under Sec. 3, Rule 65, Rules of Court, but such is not obtainable anymore because he has already ceased performing the function the office of an Acting Presiding judge in the Municipal Trial Court of Guihulngan, Negros Oriental long before the instant complaint was filed.

x x x[6] (citations omitted; italics, emphasis and underscoring in the original)

As for the rest of the charges against respondent, Judge Bahonsua found no merit thereon.

Judge Bahonsua thereupon concluded that respondent is guilty of Gross Ignorance of the Law in archiving the criminal cases and recommended that respondent be fined in the amount of ₱30,000.[7]

In their Memorandum[8] dated June 21, 2010, Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jesus Edwin A. Villasor found the recommendation of the investigating judge well-taken. They noted, however, as follows:

> Respondent Judge Barillo will compulsorily retire from the service on July 30, 2010 at the age of 70. We find that, although he committed an error in issuing the questioned orders, there was, however, no malice on his part and no one has ever called his attention on such error. We believe that he deserves some compassion especially considering his long years in the service. In the words of the investigating Judge, "[I]t would be equivalent to putting an abrupt end to his life if he is kicked out from the service and stripped of all the monetary benefits due him and/or he is disbarred from the law profession. Despite of [*sic*] what he has done, he still deserves to enjoy at best, the few remaining years of his life.[9]

The Court finds that, indeed, respondent is liable for gross ignorance of the law.

A judge owes it to himself and his office to know basic legal principles by heart and to harness that knowledge correctly and justly, failing which public's confidence in the courts is eroded.[10]

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[6] *Id.* at 424-430.

[7] *Id.* at 434.

[8] *Id.* at 472-478.

[9] *Id.* at 478.

[10] *Lucero v. Bangalan*, A.M. No. MTJ-04-1534, September 7, 2004, 437 SCRA 542.

In issuing the orders archiving the five above-cited criminal cases, respondent failed to consider that he was acting not as a *trial* judge but an *investigating* judge of an MTC whose actions were thus governed by Section 5, Rule 112 of the Rules of Criminal Procedure on preliminary investigations. He ought to have known that after conducting preliminary investigation on the criminal cases, it was his duty to transmit his resolution thereon to the provincial or city prosecutor for appropriate action. His failure to do so betrays an utter lack of familiarity with the Rules.

The complaint against respondent is for gross ignorance of the law in which the acts complained of must not only be contrary to existing law and jurisprudence; it must have been motivated by bad faith, fraud, dishonesty or corruption[11] the presence of which in the present case is not clear.

Be that as it may, such leeway afforded a judge does not mean that he should not evince due care in the performance of his adjudicatory functions. Sanctions are still in order as such lapses in judgment cannot be countenanced. As the Court has repeatedly stressed, a judge, having applied for the position and appointed as such, is presumed to know the law. Thus, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[12]

Gross ignorance of the law is penalized by Section 11 (A), Rule 140, *viz*:

SEC. 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed.

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

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[11] *Espino v. Salubre*, A.M. No. MTJ-00-1255, February 26, 2001, 352 SCRA 668, 674 citing *Alvarado v. Laquindanum*, 245 SCRA 501 (1995).

[12] *Espino v. Salubre*, *supra* at 675 citing *Cortes v. Bangalan*, A.M. No. MTJ-97-1129, January 19, 2000, 322 SCRA 249, *etc.*

government-owned or controlled corporations: *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from the 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 meting a penalty on respondent, the Court considers the fact that he, during the pendency of the case or on July 30, 2010, compulsory retired.

WHEREFORE, for Gross Ignorance of the Law, Judge Hector B. Barillo is meted a FINE of Thirty Thousand (₱30,000.00) Pesos, to be deducted from his retirement benefits.

Let a copy of this Decision be furnished the Fiscal Management and Budget Office, Office of the Court Administrator, for appropriate action.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

EN BANC

[A.M. No. RTJ-11-2266. February 15, 2011]
(Formerly A.M. OCA IPI No. 09-3320-RTJ)

JOSEPHINE JAZMINES TAN, *complainant, vs.* **JUDGE SIBANAH E. USMAN, Regional Trial Court, Branch 29, Catbalogan, Samar,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; FAILURE TO FOLLOW BASIC LEGAL COMMANDS AS PRESCRIBED BY LAW AND THE RULES, A CASE OF. — Failure to follow **basic** legal commands as prescribed by law and the rules is tantamount to gross ignorance of the law. By accepting the exalted position of a judge, respondent ought to have been familiar with the legal norms and precepts as well as the procedural rules. Contrary to respondent's claim, complainant has no remedy of appeal, as x x x Section 2 of Rule 71 [of the Rules of Court] shows. And the penalty for direct contempt if imprisonment is imposed should not, as Section 1 of Rule 71 provides, exceed 10 days. As stated earlier, complainant was detained for 19 days or 9 days more than the limit imposed by the Rules. More. Respondent did not fix the bond, in violation of the same Section 2 of Rule 71, which complainant could have posted had she desired to challenge the order. And on the same day the Order was issued, respondent ordered the confinement of complainant to the provincial jail.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIRECT CONTEMPT; A PERSON ADJUDGED IN DIRECT CONTEMPT BY ANY COURT MAY AVAIL HIMSELF OF THE REMEDIES OF *CERTIORARI* OR PROHIBITION.— *Oclarit v. Paderanga* instructs: "… [A]n order of direct contempt is not immediately executory or enforceable. The contemner must be afforded a reasonable remedy to extricate or purge himself of the contempt. Thus, in the 1997 Rules of Civil Procedure, as amended, the Court introduced a new provision granting a remedy to a person adjudged in direct contempt by any court. Such person may not appeal therefrom, but may avail himself of *certiorari* or prohibition. In such case, the execution of the judgment shall be suspended pending resolution of such petition provided the contemner files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him."

3. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW OR PROCEDURE; CLASSIFIED AS A SERIOUS CHARGE; PENALTY. — Under Section 8 (of Rule 140, gross ignorance of the law or procedure is classified as a serious

charge which is, under Section 11(A), punishable by: "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."

D E C I S I O N

CARPIO MORALES, *J.*:

By a verified November 22, 2009 Complaint,[1] Josephine Jazmines Tan (complainant) charges Judge Sibanah E. Usman (respondent), Presiding Judge of Branch 28,[2] Regional Trial Court, Catbalogan, Samar, with abuse of power and authority, conduct unbecoming a judicial officer, mental dishonesty, grave misconduct, gross ignorance of the law and knowingly rendering an unjust order, and bribery and corruption, in connection with Civil Case No. 7681[3] and Criminal Case No. 6536.[4]

It appears that complainant, together with his co-plaintiffs in the civil case/co-accused in the criminal case, filed a Motion for Inhibition[5] against respondent. The movants attached to their motion the Affidavit[6] of complainant.

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

[2] Branch 29 in some parts of the *rollo*.

[3] Entitled *Heirs of Soledad Jazmines Tan, et al. v. Vicente Tuazon, et al*. Complainant is one of the plaintiffs.

[4] Entitled *People of the Philippines v. Nilo Tan, et al*. Complainant is one of the accused.

[5] *Rollo*, pp. 6-8.

[6] *Id*. at 9.

Complainant alleged:

1. I am the accused in *Criminal Case No. 6536* filed by **Allan Tan** as private complainant and also I am one of the plaintiffs in

Complainant claims that during the hearing of the Motion for Inhibition, respondent became very emotional, coerced her to testify without the assistance of counsel and demanded a public apology from her; and that while she requested to refer the motion to the Executive Judge, respondent interrogated her relentlessly following which he issued an Order[7] of August 28, 2009 finding her guilty of Direct Contempt and ordered her detention. Thus respondent disposed in his Order:

IN VIEW THEREOF, premises considered, in order to set as an example for anyone not to make fabricated charges against the Court

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Civil Case No. 7681 filed by us against the same **Allan Tan** and others, with both cases now pending before the Regional Trial Court, Branch 28, presided by **Hon. Sibanah E. Usman**;

2. *Civil Case No. 7681*was originally docketed with Branch 29 presided by **Honorable Agerico Avila** who voluntarily inhibited on motion by our opponents;

3. At the time the aforesaid cases were raffled to RTC Branch 28, we were not informed nor notified beforehand, thereby spawning or generating the probability that said raffle was somehow rigged to suit the choice of our opponent to this particular RTC Branch presided by **Hon. Sibanah E. Usman**;

4. That probability became a reality to us in some way as we learned that **Jaime Cui, Jr.,** a known subaltern and loyal representative of **Allan Tan**, private complainant in the criminal case aforecited and one of the defendants in the civil case also aforecited, has been bragging that our convictions in the said criminal case and defeat in the said civil case are already a done deal because they have disbursed a substantial sum of money to the presiding judge above-named;

5. With the repetitious informative braggadocio of **Jaime Cui, Jr.,** corroborated by informations from employees of this Honorable Court, along with our own observations in the course of the proceedings in both cases aforecited, sad to say, we now honestly believe that we cannot expect a fair and/or just disposition and decision from the presiding judge above-named and that he is no longer capable to act with the desired cold neutrality and objectivity of an impartial judge;

6. I am executing this affidavit in the interest of truth and for all legal intents and purposes. (emphasis in the original; underscoring supplied)

[7] *Id*. at 10-12.

employees and judges, and also to restore the integrity of the Court, the affiant, Josephine Jazmines Tan is hereby cited of Direct Contempt of Court and thus ordered detained at the Samar Provincial Jail until she divulges the name of the informant/employee of the Court or publicly apologize to the employees of the Court, the Presiding Judge and the Executive Judge, but the period of **detention shall not exceed more than thirty (30) days** beginning from her service of confinement. Mrs. Perla Santiago, PO3 Marlon Villanueva and PO3 Doroteo Montejo are hereby directed to escort the affiant, Josephine Jazmines Tan, to the Samar Provincial Jail for detention.[8] (emphasis supplied; underscoring partly in the original, partly supplied)

Complainant was in fact detained from August 28, 2009 until September 16, 2009[9] or for a total of 19 days.

In his January 14, 2010 Answer[10] to the complaint, respondent explained that during the hearing of the Motion for Inhibition, the employees of the court appeared before complainant but she failed to name any of them as having allegedly told her that Jaime Cui, Jr. "was bragging that they have disbursed a substantial amount of money" to him (respondent); that Atty. Lee M. Zosa, the private prosecutor in the criminal case, and Atty. Benly Frederick Bergonio, counsel for the PNB in the civil case, moved that complainant be cited for Direct Contempt of Court and that she be detained until she divulges the name of her informant; and that Atty. Jose M. Mendiola, complainant's lawyer, failed to give any comment because, according to him, complainant did not consult him about the filing of the Motion for Inhibition.[11]

Respondent went on to explain that since he issued his August 28, 2009 Order in an official capacity, the remedy of complainant was to file a motion for reconsideration or an appeal, not an

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

[9] *Vide* September 15, 2009 Order of Judge Yolanda U. Dagandan ordering her release, citing Section 1 of Rule 71 of the Rules of Court, and Certificate of Discharge from Prison issued by the Office of the Provincial Warden, *id*. at 58-59.

[10] *Id*. at 82-85.

[11] *Id*. at 157.

administrative case; that he gave complainant a maximum of 30 days detention to give her "a wider opportunity to either apologize or divulge the name of her informant, so that even before the expiration of the period, the court can lift the Order of Contempt."[12]

By Report of November 25, 2010,[13] the Office of the Court Administrator (OCA) came up with the following evaluation of the Complaint:

> The instant administrative case is partly meritorious.
>
> Complainant Tan failed to prove that respondent Judge Usman committed an Act Unbecoming a Judge by shouting at her at the hearing on the *Motion for Inhibition*. Aside from her allegation, there is nothing on record to support her claim. The TSN did not contain any inappropriate language. Neither did it reflect any observation/ manifestation from the lawyers present, (who are presumably aware and vigilant of their duties as officers of the court) of any untoward incident. Complainant Tan countered that given the limitations of the TSN, *i.e.*, its inability to capture the nuance of speech and project emotions vividly, the fact that respondent Judge Usman shouted expletives cannot be erased or rendered inexistent by this limitation. Downplaying the TSN's significance by highlighting its limitation is not the same as saying that respondent Judge Usman did in fact shout at her. In other words, she cannot rely on the TSN's limitation and present it as proof that respondent Judge Usman shouted at her.
>
> The charge of Mental Dishonesty has no merit. When respondent Judge Usman included other court employees and the Executive Judge in his discourse on the charge of bribery/corruption against him, he was not twisting the facts but was merely discussing the projected overall effect of the complainant Tan's accusation. The perception that a particular employee of the judiciary is corrupt, eventually, engulfs the entire institution.
>
> Hence, complainant Tan failed to prove by substantial evidence her charge of Knowingly Rendering an Unjust Order. The records bear nothing to show that a competent court had previously adjudged

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[12] *Id*. at 84.

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

respondent Judge Usman guilty of the crime of Knowingly Rendering an Unjust Order in Civil Case No. 7681 and/or Criminal Case No. 6536.

Complainant Tan likewise failed to prove the charge of Bribery/ Corruption. Bare allegation alone is insufficient to hold respondent Judge Usman liable. Complainant Tan admitted the deficiency of her proof when, at the outset, she reserved her right to submit other proofs in support of this particular charge.

Based on the evidence presented, ***respondent Judge Usman gravely abused his authority and is grossly ignorant of the rule on Direct Contempt of Court****….*

x x x x x x x x x

. . . [I]n the Order dated 28 August 2009, respondent Judge Usman directed that complainant Tan be detained for a period not exceeding thirty (30) days. No amount of rationalization can reconcile the limit of the 10-day period of imprisonment for Direct Contempt of Court set in section 1, Rule 71 of the Rules of Court with the 30-day (maximum period of) imprisonment that respondent Judge Usman fixed in the *Order*. This Office finds nothing in the rule, which suggests, however remotely, the theory that the 10-day period of imprisonment in Section 1, Rule 71 is pliable enough to validly stretch to 30 days. By virtue of his office, respondent Judge Usman knows or should have known this so basic a rule. The glaring clarity of the rule tripped respondent Judge Usman to commit a glaring error, which was made even more flagrant by the fact that complainant Tan was **actually imprisoned for 19 days.**

Further, *respondent Judge Usman failed to indicate in the Order the amount of bond as required under Section 2, Rule 71 of the Rules of Court*. Due to this omission, complainant Tan's option to stay the execution of the judgment had been rendered nugatory, and a result thereof caused her immediate detention. An order of direct contempt is not immediately executory. Respondent Judge Usman's error, however, made it so.

Respondent Judge Usman wielded power abusively by depriving complainant Tan her liberty for **nine (9) days** without due process of law. Lest any misperception of this institution thrive, this regretful incident must be decisively addressed.[14] (emphasis partly in the original, partly supplied; italics in the original; underscoring supplied)

[14] *Id*. at 150-151.

In its Report, the OCA also listed the other administrative complaints filed against respondent[15] and their respective status, *viz*:

x x x Per Alphalist as of 30, June 2010, respondent Judge Usman was the subject of other administrative complaints, to wit:

RTJ-91-777	Irregular Financial Support	Complaint Dismissed (3.23.93) Fine 2 mos. Salary (3.5.02)
03-1744-RTJ w/ RTJ-02-1713	Violation of R.A. No. 3019, knowingly rendering unjust orders, bias and partiality, *etc*.	Suspension 2 mos. & Fine 10T (10.25.05)
RTJ-08-2098 (05-2170-RTJ)	Falsification of Certificate of Service and Dishonesty	Fine 2T (1.16.08)
RTJ-07-2053 (05-2171-RTJ)	Grave abuse of discretion, dishonesty	Suspension 1 mo. (11.27.08)
RTJ-02-1713 (01-1257-RTJ)	Graft and Corruption, incompetence, gross ignorance of the law, dishonesty, and partiality, absenteeism	Suspension 2 mos. & Fine 10T (10.25.05)
RTJ-05-1922 (02-12-18-SC)	(per instruction of Court *En Banc*)	Suspension 2 mos. & Fine 10T (10.25.05)

[15] *Id*. at 150.

RTJ-05-1923 (03-3-157-RTC)	(per instruction of Court *En Banc*)	Suspension 2 mos. & Fine 10T (10.25.05)

Thus, the OCA *recommended* that this case be re-docketed as a regular administrative matter and that

a. the administrative complaint . . . for Conduct Unbecoming a Judicial Officer, Mental Dishonesty, Grave Misconduct, Knowingly Rendering an Unjust Order and/or Bribery/Corruption be DISMISSED for lack of merit;

b. respondent Judge Usman be found guilty of Gross Ignorance of the Law for which he should be ordered to pay a FINE in the amount of TWENTY ONE THOUSAND PESOS (₱21,000.00) to be paid within fifteen (15) days from finality of the Resolution of the Court[.][16] (underscoring supplied)

Rule 71 of the Rules of Court provides:

SECTION. 1. *Direct contempt punished summarily.* — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or **imprisonment not exceeding ten (10) days**, or both, if it be a Regional Trial Court or a court of equivalent or higher rank; or by a fine not exceeding two hundred pesos or imprisonment not exceeding (1) day, or both, if it be a lower court.

SEC. 2. *Remedy therefrom.* — The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of *certiorari* or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person file **a bond** fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him. (emphasis and underscoring supplied)

[16] *Id.* at 152.

Failure to follow **basic** legal commands as prescribed by law and the rules is tantamount to gross ignorance of the law. By accepting the exalted position of a judge, respondent ought to have been familiar with the legal norms and precepts as well as the procedural rules.[17]

Contrary to respondent's claim, complainant has no remedy of appeal, as the above-quoted Section 2 of Rule 71 shows. And the penalty for direct contempt if imprisonment is imposed should not, as Section 1 of Rule 71 provides, exceed 10 days. As stated earlier, complainant was detained for 19 days or 9 days more than the limit imposed by the Rules.

More. Respondent did not fix the bond, in violation of the same Section 2 of Rule 71, which complainant could have posted had she desired to challenge the order. And on the same day the Order was issued, respondent ordered the confinement of complainant to the provincial jail.

Oclarit v. Paderanga[18] instructs:

> … [A]n order of direct contempt is not immediately executory or enforceable. The contemner must be afforded a reasonable remedy to extricate or purge himself of the contempt. Thus, in the 1997 Rules of Civil Procedure, as amended, the Court introduced a new provision granting a remedy to a person adjudged in direct contempt by any court. Such person may not appeal therefrom, but may avail himself of *certiorari* or prohibition. In such case, the execution of the judgment shall be suspended pending resolution of such petition provided the contemner files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.[19] (underscoring supplied)

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[17] *Vide* *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 79.

[18] 403 Phil. 146 (2001).

[19] *Id*. at 152. *Vide* *Tiongco v. Salao*, A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575.

Under Section 8 (of Rule 140, gross ignorance of the law or procedure is classified as a serious charge which is, under Section 11(A), punishable by:

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.

Respondent having been repeatedly penalized by this Court, with suspension and fine, as shown by the above-listed administrative charges, the recommended penalty of ₱21,000 should be increased to ₱30,000.

WHEREFORE, for gross ignorance of the law and procedure, Judge Sibanah Usman is *FINED* in the amount of Thirty Thousand (₱30,000) Pesos, with a *WARNING* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura, Bersamin, and *del Castillo, JJ.,* no part.

EN BANC

[G.R. No. 153690. February 15, 2011]

DAVID LU, *petitioner, vs.* **PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, and LUDO & LUYM DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 157381. February 15, 2011]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, and LUDO & LUYM DEVELOPMENT CORPORATION, *petitioners, vs.* **DAVID LU,** *respondent.*

[G.R. No. 170889. February 15, 2011]

JOHN LU YM and LUDO & LUYM DEVELOPMENT CORPORATION, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS OF CEBU CITY (FORMER TWENTIETH DIVISION), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; THE INTERNAL RULES OF THE SUPREME COURT; COURT *EN BANC*; TYPES OF CASES FOR CONSIDERATION BY THE COURT *EN BANC*.— The Internal Rules of the Supreme Court (IRSC) states that the Court *en banc* shall act on the following matters and cases: x x x "(i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division my be modified or reversed;" x x x (m) Subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*; (n) cases that the Court *en banc* deems of sufficient importance to merit its attention x x x." The present cases fall under at least three types of cases for consideration by the Court *En Banc*. At least three members

of the Court's Second Division (to which the present cases were transferred, they being assigned to a Member thereof) found, by Resolution of October 20, 2010, that the cases were appropriate for referral-transfer to the Court *En Banc* which subsequently accepted the referral in view of the sufficiently important reason **to resolve all doubts on the validity of the challenged resolutions as they appear to modify or reverse doctrines or principles of law.** In *Firestone Ceramics v. Court of Appeals*, the Court treated the consolidated cases as *En Banc* cases and set the therein petitioners' motion for oral argument, after finding that the cases were of sufficient importance to merit the Court *En Banc*'s attention. It ruled that the Court's action is a **legitimate and valid exercise of its residual power**.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF DECISIONS; APPLIES ONLY TO FINAL AND EXECUTORY DECISIONS.— The doctrine of *immutability of decisions* applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. x x x A decision rendered by a Division of this Court in violation of x x x [a] constitutional provision would be in excess of jurisdiction and, therefore, invalid. Any entry of judgment may thus be said to be "inefficacious" since the decision is void for being unconstitutional. x x x That a judgment must become final at some definite point at the risk of occasional error cannot be appreciated in a case that embroils not only a general allegation of "occasional error" but also a *serious* accusation of a violation of the Constitution, *viz.*, that doctrines or principles of law were modified or reversed by the Court's Special Third Division August 4, 2009 Resolution.

3. ID.; THE INTERNAL RULES OF THE SUPREME COURT; COURT *EN BANC*; TYPES OF CASES FOR CONSIDERATION BY THE COURT *EN BANC*; ACCEPTANCE OF THE REFERRAL TO THE COURT *EN BANC* OF A CASE FOR MODIFICATION OR REVERSAL OF A DOCTRINE SHALL BE DECIDED BY THE ENTIRE COURT.— The law allows a determination at first impression that a doctrine or principle laid down by the court *en banc* or in division **may be** modified or reversed in a case which would warrant a referral to the Court *En Banc*.

The use of the word "may" instead of "shall" connotes probability, not certainty, of modification or reversal of a doctrine, as may be deemed by the Court. Ultimately, it is the entire Court which shall decide on the acceptance of the referral and, if so, "to reconcile any seeming conflict, to reverse or modify an earlier decision, and to declare the Court's doctrine."

4. ID.; COURTS; SUPREME COURT; HAS THE POWER AND PREROGATIVE TO SUSPEND ITS OWN RULES AND TO EXEMPT A CASE FROM THEIR OPERATION IF AND WHEN JUSTICE REQUIRES IT.— The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it, as in the present circumstance where movant filed a motion for leave after the prompt submission of a second motion for reconsideration but, nonetheless, still within 15 days from receipt of the last assailed resolution.

5. ID.; ACTIONS; ACTIONS INCAPABLE OF PECUNIARY ESTIMATION; THE TEST IN DETERMINING WHETHER THE SUBJECT MATTER OF AN ACTION IS INCAPABLE OF PECUNIARY ESTIMATION IS BY ASCERTAINING THE NATURE OF THE PRINCIPAL ACTION OR REMEDY SOUGHT.— The complaint filed by David, *et al.* is one for **declaration of nullity of share issuance**. The main relief prayed for both in the original complaint and the amended complaint is the same, that is, to declare null and void the issuance of 600,000 unsubscribed and unissued shares to Lu Ym father and sons, *et al.* for a price of 1/18 of their real value, for being inequitable, having been done in breach of director's fiduciary's duty to stockholders, in violation of the minority stockholders' rights, and with unjust enrichment. As judiciously discussed in the Court's August 26, 2008 Decision, the test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the *nature* of the principal action or remedy sought. x x x Actions which the Court has recognized as being incapable of pecuniary estimation include legality of conveyances. In a case involving annulment of contract, the Court found it to be one which cannot be estimated x x x. [T]he Court holds that David Lu, *et al.*'s complaint is one incapable of pecuniary estimation, hence, the correct docket fees were paid.

6. ID.; ID.; PRINCIPLE OF ESTOPPEL; PREVENTS THE INEQUITY RESULTING FROM THE ABROGATION OF THE WHOLE PROCEEDINGS AT A LATE STAGE WHEN THE DECISION SUBSEQUENTLY RENDERED IS ADVERSE TO A PARTY; CASE AT BAR.— Assuming *arguendo* that the docket fees were insufficiently paid, the doctrine of estoppel already applies. x x x Lu Ym father and sons did not raise the issue before the trial court. The narration of facts in the Court's original decision shows that Lu Ym father and sons merely inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. They thereafter still "speculat[ed] on the fortune of litigation." Thirty-seven days later or on March 1, 2004 the trial court rendered its decision adverse to them. Meanwhile, Lu Ym father and sons attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance a writ of preliminary injunction filed with the Court of Appeals, they still failed to question the amount of docket fees paid by David Lu, *et al.* It was only in their Motion for Reconsideration of the denial by the appellate court of their application for injunctive writ that they raised such issue. Lu Ym father and sons' further inquiry from the OCA cannot redeem them. **A mere inquiry from an improper office at that, could not, by any stretch, be considered as an act of having raised the jurisdictional question *prior* to the rendition of the trial court's decision**. x x x The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to the father and sons is precisely the evil being avoided by the equitable principle of estoppel.

7. ID.; CIVIL PROCEDURE; COMMENCEMENT OF ACTIONS; PAYMENT OF DOCKET FEES; INSUFFICIENT PAYMENT OF DOCKET FEES DOES NOT WARRANT A DISMISSAL OF THE COMPLAINT WHERE THERE IS NO PROOF OF BAD FAITH.— Assuming *arguendo* that the docket fees paid were insufficient, there is no proof of bad faith to warrant a dismissal of the complaint x x x. All findings of fraud should begin the exposition with the presumption of good faith. The inquiry is not whether there was good faith on the part of David, *et al.*, but whether there was bad faith on their part. The erroneous annotation of a notice of *lis pendens* does not negate good faith. The overzealousness of a party in protecting *pendente*

lite his perceived interest, inchoate or otherwise, in the corporation's properties from depletion or dissipation, should not be lightly equated to bad faith.

8. ID.; LEGAL FEES; BASIS FOR COMPUTING THE FILING FEES IN INTRA-CORPORATE CASES; CASE AT BAR.— When David Lu, *et al*. filed the Complaint on August 14, 2000 or five days after the effectivity of the Securities Regulation Code or Republic Act No. 8799, the then Section 7 of Rule 141 was the applicable provision, without any restricted reference to paragraphs (a) and (b) 1 & 3 ***or*** paragraph (a) alone. x x x The new Section 21(k) of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC (July 20, 2004), *expressly provides* that "[f]or petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7(a) shall apply." *Notatu dignum* is that **paragraph (b) 1 & 3** of Section 7 thereof was **omitted** from the reference. Said paragraph refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property." By referring the computation of such docket fees to **paragraph (a)** only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for computing the applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books. If the complaint were filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies. In the present case, however, the original Complaint was filed on August 14, 2000 during which time Section 7, without qualification, was the applicable provision. Even the Amended Complaint was filed on March 31, 2003 during which time the applicable rule expressed that paragraphs (a) and (b) l & 3 shall be the basis for computing the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books. The immediate illustration shows that no mistake can even be attributed to the RTC clerk of court in the assessment of the docket fees.

9. ID.; CIVIL PROCEDURE; COMMENCEMENT OF ACTIONS; PAYMENT OF DOCKET FEES; WHERE THERE IS DEFICIENCY IN PAYING THE DOCKET FEES AND THERE IS NO INTENT TO DEFRAUD THE GOVERNMENT, THE DEFICIENCY MAY BE CONSIDERED A LIEN ON THE JUDGMENT THAT MAY BE RENDERED.— [A]ssuming there was deficiency in paying the docket fees and assuming further that there was a mistake in computation, the deficiency may be considered a lien on the judgment that may be rendered, there being no established intent to defraud the government.

PERALTA, *J., separate concurring opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; SECOND MOTION FOR RECONSIDERATION; GENERALLY CONSIDERED A PROHIBITED PLEADING.— While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby. Verily, the propriety of entertaining a second motion for reconsideration is not foreign in this jurisdiction, it would not be the first time that this Court would consider and actually grant the motion.

2. ID.; ID.; ID.; MOTION FOR RECONSIDERATION; MUST BE RESOLVED VIA A SIGNED RESOLUTION WHEN A DISSENTING OPINION IS REGISTERED AGAINST THE MAJORITY OPINION IN A DECISION.— [T]he first motion for reconsideration filed by David, *et al*. should not have been denied outright by a mere *minute resolution.* It should be pointed out that in the Resolution dated August 4, 2009, Madame Justice Conchita Carpio-Morales emphatically registered her disapproval to this Court's complete turnaround and departure from the earlier decision thru her Dissenting Opinion. However, when David, *et al*. filed a motion for reconsideration of the Resolution, the motion was not given much consideration and was merely brushed aside through a mere *minute resolution*. Considering that there was a standing dissent, David, *et al*.'s motion should not have been denied outright. When a dissenting opinion was registered against the majority opinion in a decision and, later on, a motion for reconsideration was filed by the aggrieved party, the Court should resolve the motion *via* a signed resolution. Hence, on this premise, it was

recommended that the Motion to Refer Resolution to the Court *En Banc* be granted. Consequently, in accordance with the Rules, the Second Division granted the motion and the cases were subsequently referred to the Court *En Banc*, which the latter accepted in the Resolution dated November 23, 2010. Thereafter, by the concurrence of the majority of the Members of the Court who took part in the deliberations on the issues involved, the Court granted the Motion for Reconsideration.

3. ID.; ACTIONS; ACTIONS INCAPABLE OF PECUNIARY ESTIMATION; THE TEST IN DETERMINING WHETHER THE SUBJECT MATTER OF AN ACTION IS INCAPABLE OF PECUNIARY ESTIMATION IS BY ASCERTAINING THE NATURE OF THE PRINCIPAL ACTION OR REMEDY SOUGHT.— In a long line of decisions, this Court has laid down the rule in order for an action to be considered one that is incapable of pecuniary estimation. The test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or the remedy sought. This Court has consistently held that for an action to be considered one capable of pecuniary estimation the action must have, as the principal remedy sought, the recovery of property or a sum of money. Otherwise, if the principal remedy sought is not the recovery of property or a sum of money, the action is one incapable of pecuniary estimation.

4. ID.; ID.; ID.; A COMPLAINT FOR DECLARATION OF NULLITY OF SHARE ISSUANCE IS AN ACTION INCAPABLE OF PECUNIARY ESTIMATION; CASE AT BAR.— In the case at bar, David Lu does not claim to be the owner of the subject shares of stocks and, as such, entitled to be its transferees. What is primarily being sought is the nullification of the issuance of the said shares of stocks and the dissolution of LLDC. Clearly, these remedies do not have for their principal purpose the recovery of property or a sum of money. However, in the eventuality that property, real or personal, will be distributed to the stockholders as a result of the annulment and dissolution, it would only be a consequence of the main action. Moreover, the mere mention of the value of the subject shares of stocks does not make the present action one capable of pecuniary estimation; it is merely a narrative to highlight the inequitable price at which the stocks were transferred.

Such narrative description of the value of the subject stocks should not be equated as making the action one that is capable of pecuniary estimation and used as the basis for fixing the docket fees. To conclude otherwise would certainly create an absurdity where the mere mention of property or a sum of money in an action would result in the action being classified as one that is capable of pecuniary estimation. In such case, all actions can be considered capable of pecuniary estimation, since every case involves the recovery or vindication of something to which the plaintiff or complainant can affix his own valuation.

5. ID.; ID.; ID.; THE ERRONEOUS ANNOTATION OF A NOTICE OF *LIS PENDENS* DOES NOT CHANGE THE NATURE OF AN ACTION FROM ONE INCAPABLE OF PECUNIARY ESTIMATION TO ONE CAPABLE OF PECUNIARY ESTIMATION; CASE AT BAR.— [N]ot even the erroneous annotation of a notice of *lis pendens* could belie the conclusion that the action is one not capable of pecuniary estimation. In the present action, as in most cases, it just so happens that real properties are involved. However, it does not necessarily follow that when a party in an action erroneously causes the annotation of a notice of *lis pendens* on real properties he changes the nature of an action from one incapable of pecuniary estimation to one capable of pecuniary estimation. In the case at bar, this does not make the action a real action for what is still being sought is the nullification of the issuance of the shares of stocks and the dissolution of LLDC, which is an action incapable of pecuniary estimation.

6. ID.; ID.; PRINCIPLE OF ESTOPPEL; APPLIES WHERE A PARTY AFTER HAVING ACTIVELY PARTICIPATED IN THE PROCEEDINGS SUBSEQUENTLY QUESTIONS THE COURT'S JURISDICTION SINCE THE JUDGMENT RENDERED IS ADVERSE TO HIM.— Lu Ym father and sons are already estopped from questioning the jurisdiction of the trial court. As properly observed in the earlier decision, Lu Ym father and sons belatedly raised the issue of insufficient payment of docket fees. In fact, the first time Lu Ym father and sons raised this matter was in their motion for reconsideration before the CA. Up to that stage of the action, Lu Ym father and sons actively participated in the proceedings before the CA and the trial court, never questioning the correct amount of docket fees paid by David, *et al*. Moreover, it cannot be said that Lu Ym

father and sons' inquiry with the Clerk of Court on the amount of docket fees paid by David, *et al.* and their subsequent inquiry with the Office of the Court Administrator (OCA), as to the correctness of the amount paid by David, *et al*., was the proper procedure to question the jurisdiction of the trial court. If Lu Ym father and sons really believed that the correct amount of docket fees was not paid, nothing was stopping them to question it before the trial court. Instead, Lu Ym father and sons speculated on the fortunes of litigation, which is clearly against the policy of the Court, and merely waited for a favorable judgment from the trial court. Verily, if a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case. Moreover, to question the jurisdiction of the trial court over the case due to the alleged non-payment of the correct amount of docket fees should be disallowed, having been raised for the first time on appeal. Much more when it was raised only in a motion for reconsideration as in the case at bar. x x x Indeed, while the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.

7. ID.; CIVIL PROCEDURE; COMMENCEMENT OF ACTIONS; PAYMENT OF DOCKET FEES; DEFICIENCY IN THE PAYMENT OF DOCKET FEES CONSTITUTES A LIEN ON THE JUDGMENT IN CASE AT BAR.— [B]ad faith is not present in the case at bar, since there was no intention on the part of David, *et al*. to defraud the government. David, *et al*. paid the docket fees for an action incapable of pecuniary estimation, as computed by the Clerk of Court. If there was, therefore, any error in the payment of the correct amount of docket fees the mistake could be imputed upon the Clerk of Court and not David, *et al*. x x x In the present controversy, David, *et al.* paid the exact amount of docket fees as instructed by the Clerk of Court. Moreover, even if the docket fees paid by David, *et al.* was not the proper amount to be paid, the deficiency in the payment of the docket fees would only constitute as a lien on the judgment, which can be remitted to the Clerk of Court of the court *a quo* upon the execution of the judgment.

BERSAMIN, *J., concurring opinion:*

1. REMEDIAL LAW; ACTIONS; ACTIONS INCAPABLE OF PECUNIARY ESTIMATION; AN ACTION FOR THE DETERMINATION OF THE PROPRIETY OR LEGALITY OF A PARTICULAR ACT IS ONE WHOSE SUBJECT MATTER IS NOT CAPABLE OF PECUNIARY ESTIMATION.— An action for the determination of the propriety or legality of a particular act is unquestionably one whose subject matter is not capable of pecuniary estimation, notwithstanding that some relief with monetary value is eventually awarded (*e.g.*, in cases of support, or of recovery of the price, or of return of the proceeds), or that some property whose value may be estimated is involved. In *Russell v. Vestil*, the Court cited actions for "specific performance, support, or foreclosure of mortgage or annulment of judgment, also actions questioning the validity of a mortgage, annulling a deed of sale or conveyance and to recover the price paid, and for rescission, which is a counterpart of specific performance" as *illustrative* examples of actions whose subject matter is not capable of pecuniary estimation.

2. ID.; ID.; ID.; THE ACTION IN CASE AT BAR IS ONE WHOSE SUBJECT MATTER IS NOT CAPABLE OF PECUNIARY ESTIMATION.— In SRC Case No. 021-CEB, the original and amended complaints show that the main objectives were twofold: *one*, to declare null and void the 600,000 shares issued for less than their real value, and *two*, to dissolve the corporation. Nowhere in their complaints did David Lu, *et al.* assert their entitlement to the 600,000 shares, or to the properties affected by the annotation of the notices of *lis pendens*. The mention of the value of the disputed shares was only to spotlight the inequitable price at which the defendants had effected the transfer. Rightly did the Decision of August 26, 2008 declare that such objectives of SRC Case No. 021-CEB "*do not consist in the recovery of a sum of money*." x x x Neither did the plainly erroneous and irrelevant annotation of the notice of *lis pendens* in the land records of LLCD's real properties estop David Lu, *et al.* from insisting that their action was one whose subject matter was not capable of pecuniary estimation. Although the annotation was proper only for an action affecting title to or right to possession of real properties, it has been an axiom of remedial law that the allegations of the complaint determined the nature of the action.

3. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; TRUST FUND DOCTRINE; UNDER THE DOCTRINE, THE CAPITAL STOCK, PROPERTIES, AND OTHER ASSETS OF A CORPORATION ARE REGARDED AS HELD IN TRUST FOR THE CORPORATE CREDITORS.— Under the *trust fund doctrine*, the capital stock, properties, and other assets of a corporation are regarded as held *in trust for* the corporate creditors, who, being preferred in the distribution of the corporate assets, must first be paid before any corporate assets may be distributed among the stockholders. In the event of the dissolution of LLDC, therefore, David Lu, *et al*. would get only the value of their minority number of shares, not the value of the 600,000 shares.

4. ID.; ID.; ID.; CORPORATE PROPERTIES; A SHAREHOLDER IS IN NO LEGAL SENSE THE OWNER THEREOF, WHICH ARE OWNED BY THE CORPORATION AS A DISTINCT LEGAL PERSON.— [A] basic concept in corporate law is that a shareholder's interest in corporate property, if it exists at all, is indirect, contingent, remote, conjectural, consequential, and collateral. A share of stock, although representing a *proportionate* or *aliquot* interest in the properties of the corporation, does not vest its holder with any legal right or title to any of the properties, such holder's interest in the properties being equitable or beneficial in nature. A shareholder is in no legal sense the owner of corporate properties, which are owned by the corporation as a distinct legal person.

5. REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; NOTICE OF *LIS PENDENS*; A WARNING TO THE WHOLE WORLD THAT ANYONE WHO BUYS THE PROPERTY *IN LITIS* DOES SO AT HIS OWN RISK AND SUBJECT TO THE OUTCOME OF THE LITIGATION.— *[L]is pendens* is a Latin phrase that means, literally, a pending suit. Accordingly, a notice of *lis pendens* is nothing more than a warning to the whole world that anyone who buys the property *in litis* does so at his own risk and subject to the outcome of the litigation; its purpose is to save innocent third persons from any involvement in any future litigation concerning the property.

6. ID.; ID.; COMMENCEMENT OF ACTION; PAYMENT OF DOCKET FEES; IF THE CORRECT AMOUNT OF DOCKET FEES IS NOT PAID AT THE TIME OF THE FILING OF THE COMPLAINT, THE TRIAL COURT STILL ACQUIRES JURISDICTION UPON FULL PAYMENT OF THE FEES WITHIN A REASONABLE TIME.— The prevailing rule is that if the correct amount of docket fees are not paid *at the time of filing*, the trial court still acquires jurisdiction upon full payment of the fees *within a reasonable time* as the court may grant, *barring prescription*. The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in every case the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the *Civil Code*, the principal law on prescription of actions.

7. ID.; ID.; ID.; ID.; WHERE THERE IS FAILURE TO PAY THE CORRECT DOCKET FEES DUE TO THE INADEQUATE ASSESSMENT BY THE CLERK OF COURT, JURISDICTION OVER THE COMPLAINT IS STILL VALIDLY ACQUIRED UPON THE FULL PAYMENT OF THE DOCKET FEES.— In *Rivera v. Del Rosario*, the Court, resolving the issue of the failure to pay the correct amount of docket fees due to the inadequate assessment by the Clerk of Court, ruled that jurisdiction over the complaint was still validly acquired upon the full payment of the docket fees assessed by the Clerk of Court. Relying on *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, the Court opined that the filing of the complaint or appropriate initiatory pleading *and* the payment of the prescribed docket fees vested a trial court with jurisdiction over the subject matter or nature of the action, and although the docket fees paid were insufficient on account of the amount of the claim, the Clerk of Court of the trial court involved or his duly authorized deputy retained the responsibility of making a *deficiency* assessment, and the party filing the action could be required to pay the deficiency, without jurisdiction being automatically lost. Even where the Clerk of Court fails to make a *deficiency assessment*, and the deficiency is not paid as a result, the trial court nonetheless *continues* to have jurisdiction over the complaint, unless the party liable is guilty of a fraud in that regard, considering that the deficiency will be collected

as a fee in lien within the contemplation of Section 2, Rule 141 (as revised by A.M. No. 00-2-01-SC). The reason is that to penalize the party for the omission of the Clerk of Court is not fair if the party has acted in good faith.

NACHURA, *J., dissenting opinion:*

1. REMEDIAL LAW; COURTS; PRINCIPLE OF *STARE DECISIS*; MEANS THAT A CONCLUSION REACHED IN ONE CASE SHOULD BE APPLIED TO THOSE THAT FOLLOW IF THE FACTS ARE SUBSTANTIALLY THE SAME, EVEN THOUGH THE PARTIES MAY BE DIFFERENT.— *Stare decisis* simply means that, for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. x x x The principle of *stare decisis* has no application to the factual setting of the instant case. The totality of the circumstances prevailing in this case had been considered in our August 4, 2009 Resolution and, unquestionably, we did not abandon or depart from the doctrines laid down in the cases cited by David Lu. We only applied the law and pertinent jurisprudence in accordance with the facts of this case.

2. ID.; ACTIONS; NATURE OF ACTIONS; THE CRITERIA IN DETERMINING THE NATURE OF THE ACTION ARE THE ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEFS SOUGHT; CASE AT BAR.— The criteria in determining the nature of the action are the allegations of the complaint and the character of the reliefs sought. The complaint and amended complaint readily show that the primary and ultimate intention of the plaintiffs therein was the return of the subject shares of stock to LLDC. Thus, the 600,000 shares were indeed the subject matter of the litigation. The shares of stock have an estimated value, which was declared by the plaintiffs themselves in their complaint to be ₱1,087,055,105. As this was the stated value of the property in litigation, the docket fees should have been computed based on this amount. Moreover, David Lu prayed for the liquidation

and distribution of the assets of the corporation so that he might receive his share therein. Among the assets of the corporation are real properties. Hence, the case was, in actuality, a real action which had for its objective the recovery of real property. That the case involved a real action was acknowledged by David Lu when he moved for the annotation of notices of *lis pendens* on the properties owned by LLDC. In a real action, the assessed value of the property, or if there is none, the estimated value thereof, shall be alleged by the claimant and shall be the basis in computing the docket fees.

3. ID.; COMMENCEMENT OF ACTION; PAYMENT OF DOCKET FEES; A COMPLAINT MAY NOT BE DISMISSED DESPITE THE INSUFFICIENT PAYMENT OF THE REQUIRED FEES WHERE THERE IS NO INTENTION TO DEFRAUD THE GOVERNMENT.— When David Lu sought the annotation of notices of *lis pendens* on the titles of LLDC, he acknowledged that the complaint affected a title or a right to the possession of the LLDC real properties. In other words, he affirmed that though the complaint was a declaration for the nullity of the issuance of share issue, the action was indeed one which affected the real properties of the corporation. This being so, he must have been fully aware that the docket fees would be based on the value of the realties involved. The silence or inaction to point this out to the Clerk of Court, who computed the docket fees, becomes highly suspect. Therefore, the non-payment of the correct docket fees was not only the result of the erroneous computation of the fees by the Clerk of Court; rather, it was the consequence of David Lu's non-declaration of the true nature of the action. This may be characterized as an act of bad faith, indicating an attempt to defraud the government by avoiding the payment of the correct docket fees. Indeed, in a number of cases, this Court refrained from dismissing the complaint/petition despite the insufficient payment of the required fees. However, in those cases, there was no intention to defraud the government. Considering that there was bad faith on the part of David Lu and a clear intent to avoid payment of the correct docket fees, the strict rule set forth in *Manchester Development Corporation v. Court of Appeals* is applicable warranting the dismissal of the complaint.

4. ID.; ACTIONS; ESTOPPEL; NATURE.— Anent the issue of estoppel, respondents are not estopped from challenging the

jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous, they should not be deemed to have waived their right to assail the jurisdiction of the trial court. Estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely – only from necessity and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be the most effective weapon for the accomplishment of injustice.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad & Tolentino Law Offices, Sycip Salazar Hernandez & Gatmaitan, and *Alvarez Nuez Galang Espina and Lopez* for David Lu.

Lim Villanueva & Associates Law Offices and *Villanueva Tabucanon and Associates* for Kelly L. Lu Ym, *et al.*

Pepito & Ventura Law Offices and *Law Office of Antonio R. Bautista and Partners* for Ludo and Lu Ym Development Corporation.

Rex J.M.A. Fernandez for respondent in G.R. No. 153690 & petitioners in G.R. No. 157381 except John Lu Ym and Ludo and Lu Ym Development Corp.

R E S O L U T I O N

CARPIO MORALES, *J.*:

By Decision of August 26, 2008, the Court[1] unanimously disposed of the three present petitions as follows:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the

[1] **Third Division**: Ynares-Santiago (chairperson), Carpio Morales (additional member), Chico-Nazario, Nachura (*ponente*), and Reyes, *JJ.*

petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby LIFTED.

The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED[,][2]

which Decision was, on motion for reconsideration, the Court voting 4-1,[3] *reversed* by Resolution of August 4, 2009, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is GRANTED. The Decision of this Court dated August 26, 2008 is RECONSIDERED and SET ASIDE. The Complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA-G.R. CV No. 81163, is DISMISSED.

All interlocutory matters challenged in these consolidated petitions are DENIED for being moot and academic.

SO ORDERED.[4]

David Lu's Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc* was denied by minute Resolution of September 23, 2009.

Following his receipt on October 19, 2009 of the minute Resolution, David Lu personally filed on October 30, 2009 a Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*. On even date, he filed through registered mail an "Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*." And

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[2] *Lu v. Lu Ym, Sr.*, G.R. No. 153690, August 26, 2008, 563 SCRA 254, 280-281.

[3] Special Third Division: Ynares-Santiago (chairperson), Carpio Morales (dissenting), Chico-Nazario, Velasco, Jr. (additional member), Nachura (*ponente*), *JJ.*

[4] *Lu v. Lu Ym, Sr.*, G.R. No. 153690, August 4, 2009, 595 SCRA 79, 95.

on November 3, 2009, he filed a "Motion for Leave to File [a] Motion for Clarification[, and the] Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*." He later also filed a "Supplement to Second Motion for Reconsideration with Motion to Dismiss" dated January 6, 2010.

John Lu Ym and Ludo & Luym Development Corporation (LLDC), meanwhile, filed with leave a Motion[5] for the Issuance of an Entry of Judgment of February 2, 2010, which merited an Opposition from David Lu.

In compliance with the Court's Resolution of January 11, 2010, Kelly Lu Ym, Victor Lu Ym and Paterno Lu Ym, Jr. filed a Comment/Opposition of March 20, 2010, while John Lu Ym and LLDC filed a Consolidated Comment of March 25, 2010, a Supplement thereto of April 20, 2010, and a Manifestation of May 24, 2010.

The present cases were later referred to the Court *en banc* by Resolution of October 20, 2010.

Brief Statement of the Antecedents

The three consolidated cases stemmed from the complaint for "Declaration of Nullity of Share Issue, Receivership and Dissolution" filed on August 14, 2000 before the Regional Trial Court (RTC) of Cebu City by David Lu, *et al.* against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and LLDC.

By Decision of March 1, 2004, Branch 12 of the RTC ruled in favor of David *et al.* by annulling the issuance of the shares of stock subscribed and paid by Lu Ym father and sons at less than par value, and ordering the dissolution and asset liquidation of LLDC. The appeal of the trial court's Decision remains pending with the appellate court in CA-G.R. CV No. 81163.

Several incidents arising from the complaint reached the Court through the present three petitions.

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[5] With Supplement of February 25, 2010.

In **G.R. No. 153690** wherein David, *et al*. assailed the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and consequently annulling the placing of the subject corporation under receivership *pendente lite*, the Court, by Decision of August 26, 2008, found the issue to have been mooted by the admission by the trial court of David *et al.*'s Amended Complaint, filed by them pursuant to the trial court's order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

Since an amended pleading supersedes the pleading that it amends, the original complaint of David, *et al*. was deemed withdrawn from the records.

The Court noted in G.R. No. 153690 that both parties admitted the mootness of the issue and that the trial court had already rendered a decision on the merits of the case. It added that the Amended Complaint stands since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.

In **G.R. No. 157381** wherein Lu Ym father and sons challenged the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court, by Decision of August 26, 2008 resolved that the issue was mooted by the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, the Court held that there was nothing more to enjoin.

G.R. No. 170889 involved the denial by the appellate court of Lu Ym father and sons' application in CA-G.R. CV No. 81163 for a writ of preliminary injunction. By August 26, 2008 Decision, the Court dismissed the petition after finding no merit on their argument – which they raised for the *first* time in their motion for reconsideration before the appellate court – of lack of jurisdiction for non-payment of the correct RTC docket fees.

As reflected early on, the Court, in a turnaround, by Resolution of August 4, 2009, reconsidered its position on the matter of docket fees. It ruled that the trial court did not acquire jurisdiction over the case for David Lu, *et al.*'s failure to pay the correct docket fees, hence, all interlocutory matters and incidents subject of the present petitions must consequently be denied.

Taking Cognizance of the Present Incidents

The Internal Rules of the Supreme Court (IRSC) states that the Court *en banc* shall act on the following matters and cases:

(a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

(b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;

(c) cases raising novel questions of law;

(d) cases affecting ambassadors, other public ministers, and consuls;

(e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;

(f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;

(g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;

(i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division my be modified or reversed;

(j) cases involving conflicting decisions of two or more divisions;

(k) cases where three votes in a Division cannot be obtained;

(l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;

(m) Subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;

(n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and

(o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[6] (underscoring supplied)

The enumeration is an amalgamation of SC Circular No. 2-89 (February 7, 1989), as amended by *En Banc* Resolution of November 18, 1993, and the amplifications introduced by Resolution of January 18, 2000 in A.M. No. 99-12-08-SC with respect to administrative cases and matters.

The present cases fall under at least three types of cases for consideration by the Court *En Banc*. At least three members of the Court's Second Division (to which the present cases were transferred,[7] they being assigned to a Member thereof) found, by Resolution of October 20, 2010, that the cases were appropriate for referral-transfer to the Court *En Banc* which subsequently accepted[8] the referral in view of the sufficiently important reason **to resolve all doubts on the validity of the challenged resolutions as they appear to modify or reverse doctrines or principles of law.**

In *Firestone Ceramics v. Court of Appeals*,[9] the Court treated the consolidated cases as *En Banc* cases and set the therein petitioners' motion for oral argument, after finding that the cases were of sufficient importance to merit the Court *En*

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[6] A.M. No. 10-4-20-SC (May 4, 2010), Rule 2, Sec. 3.

[7] Internal Resolution of June 15, 2010.

[8] IRSC, Rule 2, Sec. 11(b).

[9] G.R. No. 127022, June 28, 2000, 334 SCRA 465.

Banc's attention. It ruled that the Court's action is a **legitimate and valid exercise of its residual power**.[10]

In *Limketkai Sons Milling, Inc. v. Court of Appeals*, the Court conceded that it is not infallible. Should any error of judgment be perceived, it does not blindly adhere to such error, and the parties adversely affected thereby are not precluded from seeking relief therefrom, by way of a motion for reconsideration. In this jurisdiction, rectification of an error, more than anything else, is of paramount importance.

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It bears stressing that where, as in the present case, the Court *En Banc* entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of rendering objective and fair justice. The action of the Court simply means that the nature of the cases calls for *en banc* attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It was merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership– that, indeed, subject cases are of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of this highest Court of the land are always embued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and Resolutions of the Court– to the end that public interest be duly safeguarded and rule of law be observed.[11]

It is argued that the assailed Resolutions in the present cases have already become final,[12] since a *second* motion for

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[10] *Id.* at 473.

[11] *Id.* at 473-474; *vide People v. Ebio*, G.R. No. 147750, September 29, 2004, 439 SCRA 421, where the Court, on motion for reconsideration raising a question of quorum, recalled a Decision rendered *en banc* and resubmitted the case to the Court *en banc* for re-deliberation.

[12] Unlike *Firestone* which involved a timely motion for reconsideration. Likewise differentiated from *Firestone* is the Sumilao case, *Fortich v. Corona* (G.R. No. 131457). In the latter case, however, before the "matter" of the motion for reconsideration was brought to the Banc *en consulta*, it had already been voted upon by the Second Division with a vote of 2-2, a stalemate constituting a denial of the motion.

reconsideration is prohibited except for extraordinarily persuasive reasons and only upon express leave first obtained;[13] and that once a judgment attains finality, it thereby becomes immutable and unalterable, however unjust the result of error may appear.

The contention, however, misses an important point. The doctrine of *immutability of decisions* applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. It finds mooring in the deliberations of the framers of the Constitution:

> On proposed Section 3(4), Commissioner Natividad asked what the effect would be of a decision that violates the proviso that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court *en banc*." The answer given was that **such a decision would be invalid**. Following up, Father Bernas asked whether the decision, if not challenged, could become final and binding at least on the parties. Romulo answered that, **since such a decision would be in excess of jurisdiction, the decision on the case could be reopened anytime**.[14] (emphasis and underscoring supplied)

A decision rendered by a Division of this Court in violation of this constitutional provision would be in excess of jurisdiction and, therefore, invalid.[15] Any entry of judgment may thus be said to be "inefficacious"[16] since the decision is void for being unconstitutional.

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[13] *Rollo* (G.R. No. 170889), pp. 1481 & 1507 *et seq*., citing *Ortigas and Company Limited Partnership v. Velasco*, G.R. No. 109645, March 4, 1996, 254 SCRA 234, as reiterated in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 776.

[14] Bernas, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, (1995), p. 517.

[15] *Group Commander, Intelligence and Security Group, Philippine Army v. Dr. Malvar*, 438 Phil. 252, 279 (2002).

[16] *Manila Electric Company v. Barlis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11, 29 where a third motion for reconsideration was acted upon

While it is true that the Court *en banc* exercises no appellate jurisdiction over its Divisions, Justice Minerva Gonzaga-Reyes opined in *Firestone* and concededly recognized that "[t]he only constraint is that any doctrine or principle of law laid down by the Court, either rendered *en banc* or in division, may be overturned or reversed only by the Court sitting *en banc*."[17]

That a judgment must become final at some definite point at the risk of occasional error cannot be appreciated in a case that embroils not only a general allegation of "occasional error" but also a *serious* accusation of a violation of the Constitution, *viz.*, that doctrines or principles of law were modified or reversed by the Court's Special Third Division August 4, 2009 Resolution.

The law allows a determination at first impression that a doctrine or principle laid down by the court *en banc* or in division **may be** modified or reversed in a case which would warrant a referral to the Court *En Banc*. The use of the word "may" instead of "shall" connotes probability, not certainty, of modification or reversal of a doctrine, as may be deemed by the Court. Ultimately, it is the entire Court which shall decide on the acceptance of the referral and, if so, "to reconcile any seeming conflict, to reverse or modify an earlier decision, and to declare the Court's doctrine."[18]

The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it,[19] as in the present circumstance where movant

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favorably after recalling the entry of judgment. *Vide* also *Tan Tiac Ching v. Cosico*, A.M. No. CA-02-33, July 31, 2002, 385 SCRA 509, 517, stating that "[t]he recall of entries of judgments, albeit rare, is not novelty," citing *Muñoz v. Court of Appeals* (G.R. No. 125451, January 20, 2000, 322 SCRA 741). For instances when the Court relaxed the rule on finality of judgments, *vide Barnes v. Padilla,* G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687.

[17] *Firestone Ceramics v. Court of Appeals, supra* at 478.

[18] *Vir-jen Shipping and Marine Services, Inc. v. NLRC,* G.R. Nos. 58011-12, November 18, 1983, 125 SCRA 577, 585.

[19] *Destileria Limtuaco & Co, Inc. v. IAC,* G.R. No. 74369, January 29, 1988, 157 SCRA 706.

filed a motion for leave after the prompt submission of a second motion for reconsideration but, nonetheless, still within 15 days from receipt of the last assailed resolution.

Well-entrenched doctrines or principles of law that went astray need to be steered back to their proper course. Specifically, as David Lu correctly points out, it is necessary to reconcile and declare the legal doctrines regarding actions that are incapable of pecuniary estimation, application of estoppel by *laches* in raising an objection of lack of jurisdiction, and whether bad faith can be deduced from the erroneous annotation of *lis pendens*.

Upon a considered, thorough reexamination, the Court grants David Lu's Motion for Reconsideration. The assailed Resolutions of August 4, 2009 and September 23, 2009, which turn turtle settled doctrines, must be overturned. The Court thus reinstates the August 26, 2008 Decision wherein a three-tiered approach was utilized to analyze the issue on docket fees:

> In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First*, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, **the correct docket fees were paid**. *Second*, John and LLDC are **estopped from questioning the jurisdiction** of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly*, assuming that the docket fees paid were truly inadequate, **the mistake was committed by the Clerk of Court who assessed the same and not imputable to David**; and **as to the deficiency, if any, the same may instead be considered a lien on the judgment** that may thereafter be rendered.[20] (italics in the original; emphasis and underscoring supplied)

The Value of the Subject Matter Cannot be Estimated

On the claim that the complaint had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC,

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[20] *Supra* note 2 at 274.

the real value of which based on underlying real estate values, as alleged in the complaint, stands at ₱1,087,055,105, the Court's assailed August 4, 2009 Resolution found:

> Upon deeper reflection, we find that the movants' [Lu Ym father & sons] claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, *et al.*, are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, **the action they filed can be characterized as one capable of pecuniary estimation**. The shares of stock have a definite value, which was declared by plaintiffs [David Lu, *et al*.] themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from the following version of Rule 141, Section 7, which was in effect at the time the complaint was filed[.][21] (emphasis and underscoring supplied)

The said Resolution added that the value of the 600,000 shares of stock, which are the properties in litigation, should be the basis for the computation of the filing fees. It bears noting, however, that David, *et al.* are *not* claiming to own these shares. They do not claim to be the owners thereof entitled to be the transferees of the shares of stock. The mention of the real value of the shares of stock, **over which David*, et al. do not, it bears emphasis, interpose a claim of right to recovery***, is merely narrative or descriptive in order to emphasize the inequitable price at which the transfer was effected.

The assailed August 4, 2009 Resolution also stated that "to the extent of the damage or injury [David, *et al*.] allegedly have suffered from this sale," the action "can be characterized as one capable of pecuniary estimation." The Resolution does not, however, explore the value of the extent of the damage or injury. Could it be the *pro rata* decrease (*e.g.*, from 20% to 15%) of the percentage shareholding of David, *et al. vis-à-vis* to the whole?

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[21] *Supra* note 4 at 88-89.

Whatever property, real or personal, that would be distributed to the stockholders would be a mere consequence of the main action. In the end, in the event LLDC is dissolved, David, *et al.* would not be getting the value of the 600,000 shares, but only the value of their minority number of shares, which are theirs to begin with.

The complaint filed by David, *et al.* is one for **declaration of nullity of share issuance**. The main relief prayed for both in the original complaint and the amended complaint is the same, that is, to declare null and void the issuance of 600,000 unsubscribed and unissued shares to Lu Ym father and sons, *et al.* for a price of 1/18 of their real value, for being inequitable, having been done in breach of director's fiduciary's duty to stockholders, in violation of the minority stockholders' rights, and with unjust enrichment.

As judiciously discussed in the Court's August 26, 2008 Decision, the test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the *nature* of the principal action or remedy sought. It explained:

> x x x To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which **do not consist in the recovery** of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action. Therefore, the case before the RTC was *incapable of pecuniary estimation*.[22] (italics in the original, emphasis and underscoring supplied)

Actions which the Court has recognized as being incapable of pecuniary estimation include legality of conveyances. In a case involving annulment of contract, the Court found it to be one which cannot be estimated:

> Petitioners argue that an action for annulment or rescission of a contract of sale of real property is a real action and, therefore, the amount of the docket fees to be paid by private respondent should

[22] *Supra* note 2 at 275-276.

be based either on the assessed value of the property, subject matter of the action, or its estimated value as alleged in the complaint, pursuant to the last paragraph of §7(b) of Rule 141, as amended by the Resolution of the Court dated September 12, 1990. Since private respondents alleged that the land, in which they claimed an interest as heirs, had been sold for ₱4,378,000.00 to petitioners, this amount should be considered the estimated value of the land for the purpose of determining the docket fees.

On the other hand, private respondents counter that an action for annulment or rescission of a contract of sale of real property is incapable of pecuniary estimation and, so, the docket fees should be the fixed amount of ₱400.00 in Rule 141, §7(b)(1). In support of their argument, they cite the cases of *Lapitan v. Scandia, Inc.* and *Bautista v. Lim*. In *Lapitan* this Court, in an opinion by Justice J.B.L. Reyes, held:

> A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the **basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought,** like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation **may not be estimated in terms of money,** and are cognizable exclusively by courts of first instance. **The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance**, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction (Act 136 of the Philippine Commission of June 11, 1901).

> Actions for specific performance of contracts have been expressly pronounced to be exclusively cognizable by courts of first instance: *De Jesus vs. Judge Garcia*, L-26816, February 28, 1967; *Manufacturer's Distributors, Inc. vs. Yu Siu Liong*, L-21285, April 29, 1966. And **no cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of "specific performance". In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract**, in the same manner that courts of first instance would have to make findings of fact and law in actions not capable of pecuniary estimation expressly held to be so by this Court, arising from issues like those raised in *Arroz v. Alojado, et al.*, L-22153, March 31, 1967 (**the legality or illegality of the conveyance** sought for and the determination of the validity of the money deposit made); *De Ursua v. Pelayo*, L-13285, April 18, 1950 (validity of a judgment); *Bunayog v. Tunas*, L-12707, December 23, 1959 (validity of a mortgage); *Baito v. Sarmiento*, L-13105, August 25, 1960 (the relations of the parties, the right to support created by the relation, *etc*., in actions for support), *De Rivera, et al. v. Halili*, L-15159, September 30, 1963 (the validity or nullity of documents upon which claims are predicated). Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits.[23] (emphasis and underscoring supplied)

IN FINE, the Court holds that David Lu, *et al.*'s complaint is one incapable of pecuniary estimation, hence, the correct

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[23] *De Leon v. CA*, 350 Phil. 535, 540-542 (1998).

docket fees were paid. The Court thus proceeds to tackle the arguments on *estoppel* and *lien,* mindful that the succeeding discussions rest merely on a contrary assumption, *viz.*, that there was deficient payment.

Estoppel Has Set In

Assuming *arguendo* that the docket fees were insufficiently paid, the doctrine of estoppel already applies.

The assailed August 4, 2009 Resolution cited *Vargas v. Caminas*[24] on the non-applicability of the *Tijam* doctrine where the issue of jurisdiction was, in fact, raised before the trial court rendered its decision. Thus the Resolution explained:

> Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, *et al.*, brought the matter up to the CA even before the trial court could resolve the motion. Thereafter, David, *et al.*, filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym father and sons raised the question of the amount of filing fees paid. They also raised this point again in the CA when they appealed the trial court's decision in the case below.
>
> We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They **raised the insufficiency of the docket fees before the trial court rendered judgment** and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous – they should have addressed this issue directly to the trial court instead of the OCA – they should not be deemed to have waived their right to assail the jurisdiction of the trial court.[25] (emphasis and underscoring supplied)

Lu Ym father and sons did not raise the issue before the trial court. The narration of facts in the Court's original decision shows that Lu Ym father and sons merely inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. They thereafter still "speculat[ed] on the fortune of

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[24] G.R. Nos. 137869 & 137940, June 12, 2008, 554 SCRA 303.

[25] *Supra* note 4 at 94.

litigation."[26] Thirty-seven days later or on March 1, 2004 the trial court rendered its decision adverse to them.

Meanwhile, Lu Ym father and sons attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance of a writ of preliminary injunction filed with the Court of Appeals, they still failed to question the amount of docket fees paid by David Lu, *et al.* It was only in their Motion for Reconsideration of the denial by the appellate court of their application for injunctive writ that they raised such issue.

Lu Ym father and sons' further inquiry from the OCA cannot redeem them. **A mere inquiry from an improper office at that, could not, by any stretch, be considered as an act of having raised the jurisdictional question *prior* to the rendition of the trial court's decision**. In one case, it was held:

> Here it is beyond dispute that respondents paid the full amount of docket fees as assessed by the Clerk of Court of the Regional Trial Court of Malolos, Bulacan, Branch 17, where they filed the complaint. If petitioners believed that the assessment was incorrect, they should have questioned it before the trial court. Instead, petitioners belatedly question the alleged underpayment of docket fees through this petition, **attempting to support their position with the opinion and certification of the Clerk of Court of another judicial region. Needless to state, such certification has no bearing on the instant case**.[27] (italics in the original; emphasis and underscoring in the original)

The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to the father and sons is precisely the evil being avoided by the equitable principle of estoppel.

No Intent to Defraud the Government

Assuming *arguendo* that the docket fees paid were insufficient, there is no proof of bad faith to warrant a

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[26] *Supra* note 2 at 277.

[27] *Rivera v. del Rosario*, 464 Phil. 783, 797 (2004).

dismissal of the complaint, hence, the following doctrine applies:

> x x x In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, this Court ruled that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of the action. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly authorized deputy has the responsibility of making a deficiency assessment. The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost.[28] (underscoring supplied)

The assailed Resolution of August 4, 2009 held, however, that the above-quoted doctrine does not apply since there was intent to defraud the government, citing one attendant circumstance– the annotation of notices of *lis pendens* on real properties owned by LLDC. It deduced:

> From the foregoing, it is clear that a notice of *lis pendens* is availed of mainly in real actions. Hence, when David, *et al.*, sought the annotation of notices of *lis pendens* on the titles of LLDC, they acknowledged that the complaint they had filed affected a title to or a right to possession of real properties. At the very least, they must have been fully aware that the docket fees would be based on the value of the realties involved. Their silence or inaction to point this out to the Clerk of Court who computed their docket fees, therefore, becomes highly suspect, and thus, sufficient for this Court to conclude that they have crossed beyond the threshold of good faith and into the area of fraud. Clearly, there was an effort to defraud the government in avoiding to pay the correct docket fees. Consequently, the trial court did not acquire jurisdiction over the case.[29]

All findings of fraud should begin the exposition with the presumption of good faith. The inquiry is not whether there was good faith on the part of David, *et al.*, but whether there was bad faith on their part.

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[28] *Ibid.*

[29] *Supra* note 4 at 92.

The erroneous annotation of a notice of *lis pendens* does not negate good faith. The overzealousness of a party in protecting *pendente lite* his perceived interest, inchoate or otherwise, in the corporation's properties from depletion or dissipation, should not be lightly equated to bad faith.

That notices of *lis pendens* were erroneously annotated on the titles does not have the effect of changing the nature of the action. The aggrieved party is not left without a remedy, for they can move to cancel the annotations. The assailed August 4, 2009 Resolution, however, deemed such act as an acknowledgement that the case they filed was a real action, concerning as it indirectly does the corporate realties, the titles of which were allegedly annotated. This conclusion does not help much in ascertaining the filing fees because the value of these real properties and the value of the 600,000 shares of stock are different.

Further, good faith can be gathered from the series of amendments on the provisions on filing fees, that the Court was even prompted to make a clarification.

When David Lu, *et al.* filed the Complaint on August 14, 2000 or five days after the effectivity of the Securities Regulation Code or Republic Act No. 8799,[30] the then Section 7 of Rule 141 was the applicable provision, without any restricted reference to paragraphs (a) and (b) 1 & 3 ***or*** paragraph (a) alone. Said section then provided:

SEC. 7. *Clerks of Regional Trial Courts.* –

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, *etc*. complaint, or a complaint in intervention, and for all clerical services in the same, **if the total sum claimed**, exclusive of interest, **or** the **stated value of the property in litigation**, is:

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[30] The statute was issued on July 19, 2000 and took effect on August 9, 2000, pursuant to its Sec. 78; *vide International Broadcasting Corporation v. Jalandoon*, G.R. No. 148152, November 18, 2005, 475 SCRA 446.

x x x x x x x x x

(b) For filing:

1. **Actions where the value of the subject matter cannot be estimated** ..... x x x

2. Special civil actions except judicial foreclosure of mortgage which shall be governed by paragraph (a) above ..... x x x

3. All other actions not involving property ..... x x x

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

x x x x x x x x x[31] (emphasis supplied)

The Court, by Resolution of September 4, 2001 in A. M. No. 00-8-10-SC,[32] clarified the matter of legal fees to be collected in cases formerly cognizable by the Securities and Exchange Commission following their transfer to the RTC.

Clarification has been sought on the legal fees to be collected and the period of appeal applicable in cases formerly cognizable by the Securities and Exchange Commission. It appears that the Interim Rules of Procedure on Corporate Rehabilitation and the Interim Rules of Procedure for Intra-Corporate Controversies do not provide the basis for the assessment of filing fees and the period of appeal in cases transferred from the Securities and Exchange Commission to particular Regional Trial Courts.

The nature of the above mentioned cases should first be ascertained. Section 3(a), Rule 1 of the 1997 Rules of Civil Procedure defines civil action as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It further states that a civil action may either be ordinary or special, both being governed by the rules for ordinary civil actions subject to the special rules prescribed for special civil actions. Section 3(c) of the same Rule, defines a special proceeding as a remedy by which a party seeks to establish a status, a right, or a particular fact.

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[31] *Vide* A.M. No. 00-2-01-SC (March 1, 2000).

[32] Effective October 1, 2001.

Applying these definitions, **the cases covered by the Interim Rules for Intra-Corporate Controversies should be considered as ordinary civil actions. These cases either seek the recovery of damages/ property or specific performance of an act against a party for the violation or protection of a right**. These cases are:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.

Section 7 of Rule 141 (Legal Fees) of the Revised Rules of Court lays the amount of filing fees to be assessed for actions or proceedings filed with the Regional Trial Court. **Section 7(a) and (b) apply to ordinary civil actions** while 7(d) and (g) apply to special proceedings.

In fine, the basis for computing the filing fees in intra-corporate cases shall be Section 7(a) and (b) l & 3 of Rule 141. For petitions

for rehabilitation, section 7(d) shall be applied. (emphasis and underscoring supplied)

The new Section 21(k) of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC[33] (July 20, 2004), expressly provides that "[f]or petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7(a) shall apply." *Notatu dignum* is that **paragraph (b) 1 & 3** of Section 7 thereof was **omitted** from the reference. Said paragraph[34] refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property."

By referring the computation of such docket fees to **paragraph (a)** only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for computing the applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books.

If the complaint were filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies.

In the present case, however, the original Complaint was filed on August 14, 2000 during which time Section 7, without qualification, was the applicable provision. Even the Amended Complaint was filed on March 31, 2003 during which time the applicable rule expressed that paragraphs (a) and (b) l & 3 shall be the basis for computing the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books. The immediate illustration shows that no mistake can even be

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[33] The amendments took effect on August 16, 2004.

[34] Sub-paragraphs (1) and (3) remain unchanged except for the increase in the amounts of fees.

attributed to the RTC clerk of court in the assessment of the docket fees.

Finally, assuming there was deficiency in paying the docket fees and assuming further that there was a mistake in computation, the deficiency may be considered a lien on the judgment that may be rendered, there being no established intent to defraud the government.

WHEREFORE, the assailed Resolutions of August 4, 2009 and September 23, 2009 are *REVERSED* and *SET ASIDE*. The Court's Decision of August 26, 2008 is *REINSTATED*.

The Court of Appeals is *DIRECTED* to resume the proceedings and resolve the remaining issues with utmost dispatch in CA-G.R. CV No. 81163.

SO ORDERED.

Carpio, Velasco, Jr., Brion, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Peralta and *Bersamin, JJ.,* see concurring opinions.

Nachura, J., see dissenting opinion.

Corona, C.J. and *Leonardo-de Castro, J.,* join the dissent of *J.* Nachura.

Del Castillo, J., no part.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

It is axiomatic that this Court's decision form part of the law of the land to which the entire citizenry adheres. It is, therefore, righteous that this Court had reconsidered and reassessed its pronouncements in the Resolution dated August 4, 2009, otherwise set precedents and iron-clad doctrines on jurisdiction of the Courts would have been drastically affected and may have been inadvertently laid aside.

At the outset, a brief narration of the factual and procedural antecedents that transpired and lead to the filing of these cases is in order.

The consolidated cases emanated from the complaint filed by David Lu, *et al.* (David, *et al*.) against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and Ludo and Lu Ym Development Corporation (LLDC) for "Declaration of Nullity of Share Issue, Receivership and Dissolution" way back in August 14, 2000.

On March 1, 2004, the trial court rendered a Decision in favor of David, *et al*., wherein it categorically annulled the issuance of the shares of stock paid and subscribed by Lu Ym father and sons at less than par value, and ordered the dissolution and liquidation of the asset of LLDC. Lu Ym father and sons appealed the decision before the CA, docketed as CA-G.R. CV No. 81163.

Meanwhile, several matters which stemmed from the complaint were brought before this Court *via* three petitions. Eventually, on August 26, 2008, the Court rendered a Decision in favor David, *et al*., the decretal portion of which reads:

> WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are **DENIED** for being moot and academic; while the petition in G.R. No. 170889 is **DISMISSED** for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby **LIFTED**.
>
> The Court of Appeals is **DIRECTED** to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.
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> SO ORDERED.

In **G.R. No 153690**, with David, *et al*. assailing the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and, consequently, annulling the placing of the subject corporation under receivership *pendente lite*, the Court found the same to be moot with the admission by the trial court of David, *et al*.'s Amended Complaint filed by them, pursuant to the trial court's

order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies. Since the amended pleading supersedes the pleading that it amends, the original complaint was deemed withdrawn from the records. The Court noted that both parties admitted the mootness of the issue and that the trial court already rendered a decision on the merits in said case. It added that the Amended Complaint stands, since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.[1]

In **G.R. No. 157381**, with Lu Ym father and sons challenging the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court resolved that the propriety of such injunction was mooted by the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, there is thus nothing more to enjoin.[2]

G.R. No. 170889 involves the denial of Lu Ym father and sons' application for a writ of preliminary injunction by the appellate court that is handling CA-G.R. CV No. 81163. In dismissing the petition, the Court found no merit on their claim of lack of jurisdiction for David, *et al*.'s non-payment of the correct docket fees.[3] The Court systematically belied the arguments raised by Lu Ym father and sons as follows:

> In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First*, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. *Second*, John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of

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[1] Dissenting Opinion of Madame Justice Conchita Carpio Morales, p. 2.

[2] *Id*.

[3] *Id*. at 3.

payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly*, assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered.[4]

On August 4, 2009, however, despite the firm and sound *rationale* enunciated and methodically pronounced in the decision, this Court issued a Resolution completely vacating and departing from the logic and reasoning of the earlier decision.

David Lu then filed a Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*. On September 23, 2009, We issued a Resolution denying the motion with finality for lack of merit. Aggrieved, David Lu now comes before this Court on Second Motion for Reconsideration.

While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby.[5] Verily, the propriety of entertaining a second motion for reconsideration is not foreign in this jurisdiction, it would not be the first time that this Court would consider and actually grant the motion. In the case of *Valeroso v. Court of Appeals*,[6] We elucidated that:

This is not the first time that this Court is suspending its own rules or excepting a particular case from the operation of the rules. In *De Guzman v. Sandiganbayan*, despite the denial of De Guzman's motion for reconsideration, we still entertained his Omnibus Motion, which was actually a second motion for reconsideration. Eventually, we reconsidered our earlier decision and remanded the case to the

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[4] *Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381, and 170889, August 26, 2008, 563 SCRA 254, 274.

[5] *Valeroso v. Court of Appeals*, G.R. No. 164815, September 3, 2009, 598 SCRA 41, 51, citing *Astorga v. People*, 437 SCRA 152, 155 (2004).

[6] G.R. No. 164815, September 3, 2009, 598 SCRA 41.

Sandiganbayan for reception and appreciation of petitioner's evidence. In that case, we said that if we would not compassionately bend backwards and flex technicalities, petitioner would surely experience the disgrace and misery of incarceration for a crime which he might not have committed after all. Also in *Astorga v. People*, on a second motion for reconsideration, we set aside our earlier decision, re-examined the records of the case, then finally acquitted Benito Astorga of the crime of Arbitrary Detention on the ground of reasonable doubt. And in *Sta. Rosa Realty Development Corporation v. Amante*, by virtue of the January 13, 2004 *En Banc* Resolution, the Court authorized the Special First Division to suspend the Rules, so as to allow it to consider and resolve respondent's second motion for reconsideration after the motion was heard on oral arguments. After a re-examination of the merits of the case, we granted the second motion for reconsideration and set aside our earlier decision.

Clearly, suspension of the rules of procedure, to pave the way for the re-examination of the findings of fact and conclusions of law earlier made, is not without basis.

We would like to stress that rules of procedure are merely tools designed to facilitate the attainment of justice. They are conceived and promulgated to effectively aid the courts in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat to substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than to promote justice, it would always be within our power to suspend the rules or except a particular case from its operation.[7]

Besides, the first motion for reconsideration filed by David, *et al*. should not have been denied outright by a mere *minute resolution*.

It should be pointed out that in the Resolution dated August 4, 2009, Madame Justice Conchita Carpio Morales emphatically registered her disapproval to this Court's complete turnaround and departure from the earlier decision thru her Dissenting Opinion.

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

However, when David, *et al*. filed a motion for reconsideration of the Resolution, the motion was not given much consideration and was merely brushed aside through a mere *minute resolution*. Considering that there was a standing dissent, David, *et al*.'s motion should not have been denied outright. When a dissenting opinion was registered against the majority opinion in a decision and, later on, a motion for reconsideration was filed by the aggrieved party, the Court should resolve the motion *via* a signed resolution.

Hence, on this premise, it was recommended[8] that the Motion to Refer Resolution to the Court *En Banc* be granted. Consequently, in accordance with the Rules, the Second Division granted the motion and the cases were subsequently referred to the Court *En Banc*, which the latter accepted in the Resolution dated November 23, 2010.[9] Thereafter, by the concurrence of the majority of the Members of the Court who took part in the deliberations on the issues involved, the Court granted the Motion for Reconsideration.

Anent, the substantive aspect, as aptly argued by David, *et al*., this Court's pronouncements in the August 4, 2009 Resolution abandoned, reversed, and departed from well-settled jurisprudence, which warrant a second hard look by this Court.

First, the subject matter of the action is incapable of pecuniary estimation.

In a long line of decisions,[10] this Court has laid down the rule in order for an action to be considered one that is incapable

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[8] *Reflections* of Justice Diosdado M. Peralta dated December 14, 2009.

[9] The Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC), Rule 12, Sec. 1.

[10] *See Iniego v. Purganan*, G.R. No. 166876, March 4, 2006, 485 SCRA 394, 400-401; *Spouses Huguete v. Spouses Embudo*, 453 Phil. 170, 176-177 (2003); *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 66 (2002); *Barangay San Roque, Talisay, Cebu v. Heirs of Pastor*, 389 Phil. 466, 471 (2000*); Russell v. Vestil*, 364 Phil. 392, 400 (1999); *De Leon v. Court of Appeals*, 350 Phil. 535, 541 (1998); *Raymundo v. Court of Appeals*, G.R. No. 97805, September 5, 1992, 213 SCRA 457,

of pecuniary estimation. The test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or the remedy sought. This Court has consistently held that for an action to be considered one capable of pecuniary estimation the action must have, as the principal remedy sought, the recovery of property or a sum of money. Otherwise, if the principal remedy sought is not the recovery of property or a sum of money, the action is one incapable of pecuniary estimation.

As early as in the case of *Lapitan v. Scandia, Inc., et al.*,[11] this Court has laid down the guide in determining whether the subject matter of an action is capable or incapable of pecuniary estimation. Said this Court:

> x x x [I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. *If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance [now Regional Trial Courts] would depend on the amount of the claim.* **However**, *where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought* like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, *this court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance [now Regional Trial Courts].* x x x.[12]

In the case at bar, David Lu does not claim to be the owner of the subject shares of stocks and, as such, entitled to be its transferees. What is primarily being sought is the nullification

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460-461; *Amorganda v. Court of Appeals*, 248 Phil. 442, 453 (1988); *Singson v. Isabela Sawmill*, 177 Phil. 575, 588 (1979); *Lapitan v. Scandia, Inc., et al.*, 133 Phil. 526 (1968).

[11] *Lapitan v. Scandia, Inc., et al.*, *supra*.

[12] *Id.* at 528. (Emphasis supplied.)

of the issuance of the said shares of stocks and the dissolution of LLDC. Clearly, these remedies do not have for their principal purpose the recovery of property or a sum of money. However, in the eventuality that property, real or personal, will be distributed to the stockholders as a result of the annulment and dissolution, it would only be a consequence of the main action.

Moreover, the mere mention of the value of the subject shares of stocks does not make the present action one capable of pecuniary estimation; it is merely a narrative to highlight the inequitable price at which the stocks were transferred. Such narrative description of the value of the subject stocks should not be equated as making the action one that is capable of pecuniary estimation and used as the basis for fixing the docket fees.

To conclude otherwise would certainly create an absurdity where the mere mention of property or a sum of money in an action would result in the action being classified as one that is capable of pecuniary estimation. In such case, all actions can be considered capable of pecuniary estimation, since every case involves the recovery or vindication of something to which the plaintiff or complainant can affix his own valuation.

To maintain this line of reasoning would certainly have far reaching effects on established jurisprudential precepts.

Moreover, not even the erroneous annotation of a notice of *lis pendens* could belie the conclusion that the action is one not capable of pecuniary estimation. In the present action, as in most cases, it just so happens that real properties are involved. However, it does not necessarily follow that when a party in an action erroneously causes the annotation of a notice of *lis pendens* on real properties he changes the nature of an action from one incapable of pecuniary estimation to one capable of pecuniary estimation. In the case at bar, this does not make the action a real action for what is still being sought is the nullification of the issuance of the shares of stocks and the dissolution of LLDC, which is an action incapable of pecuniary estimation.

Second, Lu Ym father and sons are already estopped from questioning the jurisdiction of the trial court.

As properly observed in the earlier decision, Lu Ym father and sons belatedly raised the issue of insufficient payment of docket fees. In fact, the first time Lu Ym father and sons raised this matter was in their motion for reconsideration before the CA. Up to that stage of the action, Lu Ym father and sons actively participated in the proceedings before the CA and the trial court, never questioning the correct amount of docket fees paid by David, *et al*.

Moreover, it cannot be said that Lu Ym father and sons' inquiry with the Clerk of Court on the amount of docket fees paid by David, *et al*. and their subsequent inquiry with the Office of the Court Administrator (OCA), as to the correctness of the amount paid by David, *et al*., was the proper procedure to question the jurisdiction of the trial court. If Lu Ym father and sons really believed that the correct amount of docket fees was not paid, nothing was stopping them to question it before the trial court. Instead, Lu Ym father and sons speculated on the fortunes of litigation, which is clearly against the policy of the Court, and merely waited for a favorable judgment from the trial court. Verily, if a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case.[13] Moreover, to question the jurisdiction of the trial court over the case due to the alleged non-payment of the correct amount of docket fees should be disallowed, having been raised for the first time on appeal.[14] Much more when it was raised only in a motion for reconsideration as in the case at bar.

In the case of *National Steel Corporation v. Court of Appeals*,[15] this Court held that:

The court acquires jurisdiction over the action if the filing of the initiatory pleading is accompanied by the payment of the requisite

[13] *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 434 (2005)

[14] *Idolor v. Court of Appeals*, 490 Phil. 808, 816 (2005)

[15] 362 Phil. 150 (1999).

fees, or, if the fees are not paid at the time of the filing of the pleading, as of the time of full payment of the fees within such reasonable time as the court may grant, unless, of course, prescription has set in the meantime.

It does not follow, however, that the trial court should have dismissed the complaint for failure of private respondent to pay the correct amount of docket fees. Although the payment of the proper docket fees is a jurisdictional requirement, the trial court may allow the plaintiff in an action to pay the same within a reasonable time before the expiration of the applicable prescriptive or reglementary period. *If the plaintiff fails to comply within this requirement, the defendant should timely raise the issue of jurisdiction or else he would be considered in estoppel*. In the latter case, the balance between the appropriate docket fees and the amount actually paid by the plaintiff will be considered a lien or any award he may obtain in his favor.[16]

Thus, Lu Ym father and sons are now estopped from raising this issue. Indeed, while the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.

Third, bad faith is not present in the case at bar, since there was no intention on the part of David, *et al*. to defraud the government.

David, *et al*. paid the docket fees for an action incapable of pecuniary estimation, as computed by the Clerk of Court. If there was, therefore, any error in the payment of the correct amount of docket fees the mistake could be imputed upon the Clerk of Court and not David, *et al*. As aptly observed in the earlier decision:

It may be recalled that despite the payment of insufficient fees, this Court refrained from dismissing the complaint/petition in *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-*

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[16] *Id*. at 159. (Italics supplied.)

Legasto, Yambao v. Court of Appeals and *Ayala Land, Inc. v. Carpo*. In those cases, the inadequate payment was caused by the erroneous assessment made by the Clerk of Court. In *Intercontinental*, we declared that the payment of the docket fees, as assessed, negates any imputation of bad faith to the respondent or any intent of the latter to defraud the government. Thus, when insufficient filing fees were initially paid by the respondent, and there was no intention to defraud the government, the *Manchester* rule does not apply. In *Yambao*, this Court concluded that petitioners cannot be faulted for their failure to pay the required docket fees for, given the prevailing circumstances, such failure was clearly not a dilatory tactic or intended to circumvent the Rules of Court. In *Ayala Land*, the Court held that despite the jurisdictional nature of the rule on payment of docket fees, the appellate court still has the discretion to relax the rule in meritorious cases.

In the instant case, David paid the docket fees as assessed by the Clerk of Court. Even if the amount was insufficient, as claimed by John and LLDC, fraud and bad faith cannot be attributed to David to warrant the dismissal of his complaint. Consistent with the principle of liberality in the interpretation of the Rules, in the interest of substantial justice, this Court had repeatedly refrained from dismissing the case on that ground alone. Instead, it considered the deficiency in the payment of the docket fees as a lien on the judgment which must be remitted to the Clerk of Court of the court *a quo* upon the execution of the judgment.

To be sure, this Court in *Ayala Land, Inc. v. Spouses Carpo*,[17] citing *Segovia v. Barrios*,[18] held that:

x x x As early as 1946, in the case of *Segovia v. Barrios*, we ruled that where an appellant in good faith paid less than the correct amount for the docket fee because that was the amount he was required to pay by the clerk of court, and he promptly paid the balance, it is error to dismiss his appeal because –

> every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with law. To penalize such citizen

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[17] 399 Phil. 327, 334 (2000).

[18] 75 Phil. 764 (1946).

for relying upon said officer in all good faith is repugnant to justice.

Despite the passage of time, the ruling in *Segovia* is still good law which courts, in the exercise of its discretion, can still apply. In the present controversy, David, *et al.* paid the exact amount of docket fees as instructed by the Clerk of Court. Moreover, even if the docket fees paid by David, *et al*. was not the proper amount to be paid, the deficiency in the payment of the docket fees would only constitute as a lien on the judgment, which can be remitted to the Clerk of Court of the court *a quo* upon the execution of the judgment.

I, therefore, concur with the majority opinion.

CONCURRING OPINION

BERSAMIN, *J.*:

I concur with Associate Justice Conchita Carpio Morales, whose lucid opinion for the Majority presents a most thorough consideration and apt resolution of the issues.

In writing this concurring opinion, I only desire to express some thoughts, hoping to contribute to the elucidation of decisive matters.

G.R. No. 153690

On August 14, 2000, David Lu, Rosa Go, Silvano Ludo, and CL Corporation filed a complaint in the Regional Trial Court (RTC) in Cebu City (docketed as Civil Case No. CEB-25502 and assigned to Branch 5), praying for the nullification of the issuance of the 600,000 *unsubscribed* and *unissued* shares of the Ludo and Luym Development Corporation (LLDC) for allegedly less than their real value in order to favor Lu Ym father and sons. The plaintiffs maintained that Lu Ym father and sons had gravely abused their powers as members of LLDC's Board of Directors in issuing such shares to the former's prejudice, thereby warranting as an ultimate remedy the dissolution of LLDC. The complaint sought the following reliefs, *viz*:

WHEREFORE**,** based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

1. Declare null and void the issuance of 600,000 unsubscribed and unissued shares to Defendants Lu Ym father and sons and their spouses, children and holding companies, for a price of only one-eighteenth of their real value, as having been done in breach of directors' fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority/controlling stockholders/directors, at the expense of their cousins, the other stockholders.

2. Order the dissolution of Defendant Ludo and LuYm Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;

3. During the pendency of the instant case, order the appointment of a receiver *pendente lite* for LuDo and LuYm Development Corporation.

Such other reliefs as may be just and equitable on the premises are likewise prayed for.[1]

Defendants Lu Ym father and sons filed a *motion to dismiss*, citing as grounds that only one of the plaintiffs had signed the complaint, thereby violating the rule against forum shopping; and that the parties did not exert earnest efforts towards a compromise.

The RTC denied the *motion to dismiss*, holding that the signature of one of the plaintiffs was a substantial compliance.

On February 16, 2001, the RTC, upon motion of the plaintiffs, placed LLDC under receivership *pendente lite*. The RTC subsequently appointed two receivers.

Lu Ym father and sons then filed a petition for *certiorari* in the Court of Appeals (CA) to assail the denial of their *motion to dismiss* and the placing of LLDC under receivership (C.A.-G.R. SP No. 64154). However, the CA dismissed the petition

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[1] *Rollo*, G.R. No. 170889, pp. 84-85.

because only two petitioners had signed the verification and the certification against forum shopping.

Lu Ym father and sons refiled the petition (C.A.-G.R. SP No. 64523). Although initially dismissing the refiled petition upon finding no grave abuse of discretion on the part of the RTC in denying the *motion to dismiss* and because of the prematurity of the challenge against the receivership (due to the pendency of the petitioners' *motion for reconsideration* thereon in the RTC), the CA reconsidered and reinstated the petition upon the petitioners' *motion for reconsideration*. The petitioners later presented a supplement to their petition.

On December 20, 2001, the CA granted the petition for *certiorari* of Lu Ym father and sons; dismissed the complaint of David Lu, *et al.* on the ground of their failure to sign the certificate of non-forum shopping; and annulled the placing of LLDC under receivership as a consequence of the dismissal of the complaint.

After the CA denied their *motion for reconsideration*, David Lu, *et al.* elevated the decision of the CA to this Court (G.R. No. 153690).

G.R. No. 157381

In the meanwhile, in Civil Case No. CEB-25502, Lu Ym father and sons sought the inhibition of the Presiding Judge of Branch 5 of the RTC. After the inhibition was granted on October 1, 2002, Civil Case No. CEB-25502 was re-raffled to Branch 11, presided by Judge Isaias Dicdican (now a Member of the CA), who directed the parties to amend their respective pleadings in order to conform with the *Interim Rules of Procedure Governing Intra-Corporate Disputes* promulgated pursuant to Republic Act No. 8799. Thus, Civil Case No. CEB-25502 was re-docketed as SRC Case No. 021-CEB.

On October 8, 2002, Lu Ym father and sons moved for the lifting of the receivership, the motion for which the RTC immediately set for hearing. As a result, David Lu, *et al.* brought a petition for *certiorari* and prohibition in the CA to assail the

RTC's proceeding to hear the motion to lift the receivership (C.A.-G.R. SP No. 73383). The CA issued a temporary restraining order (TRO) to stop the RTC's hearing of the motion.

On February 27, 2003, the CA granted the petition and ordered the RTC to desist from conducting any proceedings relating to the receivership over LLDC, holding that the proceedings on receivership could not proceed without the parties first amending their pleadings pursuant to the order to that effect. The CA explained that the propriety of the appointment of a receiver could not be determined because the RTC would have to base its resolution on the amended pleadings; and that the pendency of G.R. No. 153690 also required the deferment of any action on the motion for the lifting of the receivership.

Dissatisfied with the CA's decision, Lu Ym father and sons appealed to this Court (G.R. No. 157381).

G.R. No. 170889

On March 31, 2003, David Lu, *et al.* filed their motion to admit their amended complaint, which the RTC granted on July 18, 2003.[2]

The amended complaint contained the following reliefs, *viz*:

WHEREFORE, based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

1. Declare null and void the issuance of 600,000 unsubscribed and unissued shares of the defendant corporation to Defendants Lu Ym father and sons and their spouses, children, and holding companies, for a price of one-eighteenth of their real value, for being inequitable, having been done in breach of director's fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority controlling stockholders/directors, at the expense of their cousins, the other stockholders.

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[2] Judge Dicdican of Branch 11 meanwhile inhibited himself, and the case was again re-raffled to Branch 12 of the RTC in Cebu City.

2. Order the dissolution of Defendant Ludo and Luym Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;

3. Order the creation of a management committee *pendente lite*, and order receiver Luis Cañete to turn over all assets and records to the management committee.

Such other relief as may be just and equitable on the premises are likewise prayed for.[3]

On January 23, 2004, Lu Ym father and sons inquired from the Clerk of Court on the amount paid by David Lu, *et al*. as docket fees. John Lu Ym further inquired from the Office of the Court Administrator (OCA) on the correctness of the docket fees thus paid. After a series of letters sent to it, the OCA informed John Lu Ym that the matter of docket fees should be brought to the RTC's attention, because the OCA was not in the position to give any opinion on the matter.

On March 1, 2004, the RTC decided SRC Case No. 021-CEB on the merits. It annulled the issuance of the 600,000 shares, thereby divesting Lu Ym father and sons of their shares, and cancelled their certificates of stock. It ordered the dissolution of LLDC and the liquidation of its assets. It declared the decision *immediately executory*. A management committee was created to take over LLDC and the corporate officers were stripped of their powers.

Lu Ym father and sons timely appealed to the CA (C.A.-G.R. CV No. 81163), where they applied for a TRO to defeat the executory nature of the RTC decision. David Lu, *et al.* opposed the application for TRO.

Although it issued a TRO, the CA denied the application for a writ of preliminary injunction on September 6, 2004. Lu Ym father and sons moved for the reconsideration of the denial of their application for injunction, citing, in addition, the insufficiency of the docket fees paid in the RTC.

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[3] *Rollo* (G.R. No. 153690), pp. 689-690.

On December 8, 2005, the CA denied the *motion for reconsideration* of Lu Ym father and sons, and ruled that they should raise the sufficiency of the docket fees in their *appellant's brief* and that the issue should be resolved in the appeal.

Dissatisfied, Lu Ym father and sons initiated a special action for *certiorari* and prohibition (G.R. No. 170889).

Decision dated August 26, 2008

The Court consolidated G.R. No. 153690, G.R. No. 157381 and G.R. No. 170889.

On August 26, 2008, the Court (Third Division) promulgated its decision,[4] disposing:

> WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby LIFTED.
>
> The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.
>
> SO ORDERED.

In the main, the Court (Third Division) ruled that it could not dismiss the initial complaint on the ground of lack of jurisdiction based on the insufficiency of the docket fees because: (*a*) the suit instituted in the RTC was an action whose subject matter was not capable of pecuniary estimation, for which the correct docket fees had been paid; (*b*) John Lu and LLDC were estopped from questioning the jurisdiction of the RTC by their active participation in the case and by their having belatedly raised the issue of docket fees in the CA through their *motion for reconsideration*; and (*c*) on the assumption that the docket

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[4] Penned by Associate Justice Antonio Eduardo B. Nachura, and concurred in by Associate Justice Consuelo Ynares-Santiago (retired), Associate Justice Conchita Carpio Morales, Associate Justice Minita V. Chico-Nazario (retired), and Associate Justice Ruben T. Reyes (retired).

fees were insufficient, the insufficiency was the Clerk of Court's mistake and the deficiency might be considered as a lien on the judgment.[5]

Resolution dated August 4, 2009

Through its Resolution dated August 4, 2009,[6] however, the Court (Special Third Division), by a vote of 4 to 1,[7] executed a complete turnabout (upon a "*deeper reflection*"), and declared that the RTC did not acquire jurisdiction for failure of David Lu, *et al.* to pay the correct amount of docket fees, *viz*:

> WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is GRANTED. The Decision of this Court dated August 26, 2008 is RECONSIDERED and SET ASIDE. The complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA G.R. CV No. 81163, is DISMISSED.
>
> All interlocutory matters challenged in these consolidated petitions are DENIED for being moot and academic.
>
> SO ORDERED.[8]

The Majority in the Special Third Division held that the extent of the damage or injury allegedly suffered by David Lu, *et al.* could be characterized as capable of pecuniary estimation; that the 600,000 shares of stock were properties in litigation, whose definite value should be the basis for computing the docket fees; and that the RTC did not acquire jurisdiction over the action without their payment of the correct amount of docket fees.[9] In addition, they noted John Lu and LLCD's argument

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[5] G.R. No. 153690, August 26, 2008, 563 SCRA 254, 274.

[6] G.R. No. 153690, August 4, 2009, 595 SCRA 79.

[7] The majority included Associate Justice Nachura (*ponente*), Associate Justice Ynares-Santiago, Associate Justice Chico-Nazario, and Associate Justice Presbitero J. Velasco, Jr. The lone dissenter was Associate Justice Carpio Morales.

[8] Note 6, at p. 95.

[9] G.R. No. 153690, August 4, 2009, 595 SCRA 79, 88-89.

that David Lu, *et al.* were guilty of fraud by failing to mention any real property in their complaint despite annotating the notices of *lis pendens* on LLCD's properties; that their doing so reflected their objective of recovering real property, indicating the nature of the case as a real action affecting title to or the right to possession of real properties; that their silence or inaction to point this out to the Clerk of Court who had computed the docket fees constituted fraud; that Lu Ym father and sons were not estopped from challenging the RTC's jurisdiction because they had raised the insufficiency of the docket fees — albeit with the OCA and not directly with the RTC — before the RTC rendered its decision; and that the erroneous manner of their challenge as to the sufficiency of the docket fees should not be deemed a waiver of their right to assail the jurisdiction of the RTC.

In her Dissent, Justice Carpio Morales reiterated the wisdom and soundness of the Decision promulgated on August 26, 2008. She emphasized that the subject matter of the action was not capable of pecuniary estimation despite the mention of the value of the shares of stock, or the annotation of the notice of *lis pendens* on corporate properties; that the mere inquiry on the propriety of the docket fees paid by David Lu, *et al*. in the action made by Lu Ym and sons to an improper office like the OCA was not the act to raise the jurisdictional question prior to the rendition of the RTC's decision; that the erroneous annotation of the notice of *lis pendens* by David Lu, *et al*. did not negate good faith, and did not have the effect of changing the nature of the action; that a review of the rules on legal fees prevailing at the time of the commencement of the action indicated that an intra-corporate controversy like the action of David Lu, *et al*. constituted an action whose subject matter was incapable of pecuniary estimation, rendering it to be still wise and sound to adhere to the Court's earlier position (August 26, 2008) that even if the docket fees were inadequate, the mistake was attributable to the Clerk of Court, not to David Lu, *et al*.; and that the deficiency, if any, should be considered as a lien on the judgment.

David Lu, *et al.*'s *Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc* was denied with finality on September 23, 2009.

Matters for Resolution

Undeterred, David Lu, *et al.* have filed the following, to wit: (*a*) *Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc*; (*b*) *Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc*; (*c*) *Motion for Leave to File Motion for Clarification, Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc*; (*d*) *Motion for Clarification, and Supplement to the Second Motion for Reconsideration with Motion to Dismiss.*

Submissions

I humbly submit the following in support of my concurrence with the Majority.

A.

Subject matter of action of David Lu, *et al.* is not capable of pecuniary estimation; Hence, filing fee actually paid was correct

The decisive question is whether SRC Case No. 021-CEB could overcome the challenge from Lu Ym father and sons to the effect that jurisdiction over the claim did not vest in the RTC due to the failure of David Lu, *et al.*, as plaintiffs, to pay the correct amount of docket fees at the time of the filing of their complaint. The resolution of the question depends on the correct determination of whether or not the action of David Lu, *et al.* was one whose subject matter was capable of pecuniary estimation.

To me, the Decision promulgated on August 26, 2008 soundly found and correctly held that because David Lu, *et al.* had "paid the docket fees for an action the subject of which was incapable of pecuniary estimation, as computed by the Clerk of Court, the (RTC) validly acquired jurisdiction over the case." The following excerpts of pertinent portions of the Decision

promulgated on August 26, 2008 demonstrate the soundness and correctness of the Decision, *viz*:

A court acquires jurisdiction over a case only upon the payment of the prescribed fees. The importance of filing fees cannot be gainsaid for these are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries and fringe benefits of personnel, and others, computed as to man-hours used in the handling of each case. Hence, the non-payment or insufficient payment of docket fees can entail tremendous losses to the government in general and to the judiciary in particular.

In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First,* the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. *Second,* John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly,* assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered.

The Court had, in the past, laid down the test in determining whether the subject matter of an action is incapable of pecuniary estimation by ascertaining the nature of the principal action or remedy sought. If the action is primarily for recovery of a sum of money, the claim is considered capable of pecuniary estimation. However, where the basic issue is something other than the right to recover a sum of money, the money claim being only incidental to or merely a consequence of, the principal relief sought, the action is incapable of pecuniary estimation.

In the current controversy, the main purpose of the complaint filed before the RTC was the annulment of the issuance of the 600,000 LLDC shares of stocks because they had been allegedly issued for less than their par value. Thus, David sought the dissolution of the corporation and the appointment of receivers/management committee. To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum

of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action. Therefore, the case before the RTC was *incapable of pecuniary estimation*. Accordingly, John's and LLDC's contention cannot be sustained. And since David paid the docket fees for an action the subject of which was incapable of pecuniary estimation, as computed by the Clerk of Court, the trial court validly acquired jurisdiction over the case.

The aforequoted rationalization is backstopped by long-standing jurisprudence, including one contributed in 1968 by the revered Justice J.B.L. Reyes in *Lapitan v. Scandia, Inc.*:[10]

> xxx [I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. xxx

An action for the determination of the propriety or legality of a particular act is unquestionably one whose subject matter is not capable of pecuniary estimation, notwithstanding that some relief with monetary value is eventually awarded (*e.g.*, in cases of support, or of recovery of the price, or of return of the proceeds), or that some property whose value may be estimated is involved. In *Russell v. Vestil*,[11] the Court cited actions for "specific performance, support, or foreclosure of mortgage or annulment of judgment, also actions questioning

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[10] G.R. No. L-24668, July 31, 1968, 24 SCRA 479. See also *Singsong v. Isabela Sawmill*, G.R. No. L- 27343, February 28, 1979, 88 SCRA 623; *De Galicia v. Mercado*, G.R. No. 146744, March 6, 2006, 484 SCRA 131; *De Leon v. Court of Appeal*s, G.R. No. 104796, March 6, 1998, 287 SCRA 94.

[11] G.R. No. 119347, March 17, 1999, 304 SCRA 738.

the validity of a mortgage, annulling a deed of sale or conveyance and to recover the price paid, and for rescission, which is a counterpart of specific performance" as *illustrative* examples of actions whose subject matter is not capable of pecuniary estimation.

In SRC Case No. 021-CEB, the original and amended complaints show that the main objectives were twofold: *one*, to declare null and void the 600,000 shares issued for less than their real value, and *two*, to dissolve the corporation. Nowhere in their complaints did David Lu, *et al.* assert their entitlement to the 600,000 shares, or to the properties affected by the annotation of the notices of *lis pendens*. The mention of the value of the disputed shares was only to spotlight the inequitable price at which the defendants had effected the transfer. Rightly did the Decision of August 26, 2008 declare that such objectives of SRC Case No. 021-CEB "*do not consist in the recovery of a sum of money*."[12]

To suggest at all that David Lu, *et al.* were seeking to recover specific properties of LLDC through Civil Case No. CEB-25502 was even absolutely fallacious. Under the *trust fund doctrine*, the capital stock, properties, and other assets of a corporation are regarded as held *in trust for* the corporate creditors, who, being preferred in the distribution of the corporate assets, must first be paid before any corporate assets may be distributed among the stockholders.[13] In the event of the dissolution of LLDC, therefore, David Lu, *et al*. would get only the value of their minority number of shares, not the value of the 600,000 shares. Indeed, a basic concept in corporate law is that a shareholder's interest in corporate property, if it exists at all, is indirect, contingent, remote, conjectural, consequential, and collateral. A share of stock, although representing a *proportionate* or *aliquot* interest in the properties of the corporation, does not vest its holder with any legal right or title

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[12] G.R. No. 153690, August 26, 2008, 563 SCRA 254, 275-276.

[13] *Boman Environmental Development Corporation v. Court of Appeals*, G.R. No. 77860 November 22, 1988, 167 SCRA 540; citing *Steinberg vs. Velasco*, 52 Phil. 953.

to any of the properties, such holder's interest in the properties being equitable or beneficial in nature. A shareholder is in no legal sense the owner of corporate properties, which are owned by the corporation as a distinct legal person.[14]

Neither did the plainly erroneous and irrelevant annotation of the notice of *lis pendens* in the land records of LLCD's real properties estop David Lu, *et al*. from insisting that their action was one whose subject matter was not capable of pecuniary estimation. Although the annotation was proper only for an action affecting title to or right to possession of real properties, it has been an axiom of remedial law that the allegations of the complaint determined the nature of the action. Also, *lis pendens* is a Latin phrase that means, literally, a pending suit. Accordingly, a notice of *lis pendens* is nothing more than a warning to the whole world that anyone who buys the property *in litis* does so at his own risk and subject to the outcome of the litigation; its purpose is to save innocent third persons from any involvement in any future litigation concerning the property.[15]

B.

Even if correct amount of filing fees were not paid, RTC did not thereby automatically lose jurisdiction

It is not disputed that the amount paid by David Lu, *et al.* was the correct docket fees for an action whose subject matter was not capable of pecuniary estimation.

Nonetheless, even assuming, for the sake of argument, that David Lu, *et al*. did not pay the *correct* amount of docket fees at the time of filing the original complaint, as Lu Ym father and sons posited, the RTC did not automatically lose jurisdiction over the complaint.

The prevailing rule is that if the correct amount of docket fees is not paid *at the time of filing,* the trial court still acquires

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[14] *Magsaysay-Labrador v. Court of Appeals*, G.R. No. 58168, December 19, 1989, 180 SCRA 266, 271-272.

[15] *Lim v. Vera Cruz, G*.R. No. 143646, April 4, 2001, 356 SCRA 386.

jurisdiction upon full payment of the fees *within a reasonable time* as the court may grant, *barring prescription*.[16] The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in every case the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the *Civil Code*, the principal law on prescription of actions.[17]

In *Rivera v. Del Rosario*,[18] the Court, resolving the issue of the failure to pay the correct amount of docket fees due to the inadequate assessment by the Clerk of Court, ruled that jurisdiction over the complaint was still validly acquired upon the full payment of the docket fees assessed by the Clerk of Court. Relying on *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*,[19] the Court opined that the filing of the complaint or appropriate initiatory pleading *and* the payment of the prescribed docket fees vested a trial court with jurisdiction over the subject matter or nature of the action, and although the docket fees paid were insufficient on account of the amount of the claim, the Clerk of Court of the trial court involved or his duly authorized deputy retained the responsibility of making a *deficiency* assessment, and the party filing the action could be required to pay the deficiency, without jurisdiction being automatically lost.

Even where the Clerk of Court fails to make a *deficiency assessment*, and the deficiency is not paid as a result, the trial court nonetheless *continues* to have jurisdiction over the

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[16] *Ballatan v. Court of Appeals*, G.R. No. 125683, March 2, 1999, 304 SCRA 34; citing *Tacay v. RTC of Tagum, Davao del Norte*, G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433, 444; *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

[17] *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 88353, May 8, 1992, 208 SCRA 652; *Pantranco North Express, Inc. v. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477.

[18] G.R. No. 144934, January 15, 2004, 419 SCRA 626, 634-635.

[19] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

complaint, unless the party liable is guilty of a fraud in that regard, considering that the deficiency will be collected as a fee in lien within the contemplation of Section 2,[20] Rule 141 (as revised by A.M. No. 00-2-01-SC).[21] The reason is that to penalize the party for the omission of the Clerk of Court is not fair if the party has acted in good faith.

ACCORDINGLY, I vote to reinstate the Decision promulgated on August 26, 2008.

DISSENTING OPINION

NACHURA, *J.*:

For resolution are the following motions filed by David Lu against respondents Paterno Lu Ym, Sr., Paterno Lu Ym, Jr., Victor Lu Ym, John Lu Ym, Kelly Lu Ym, and Ludo and LuYm Development Corporation (LLDC): 1) Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*;[1] 2) Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*;[2] 3) Motion for Leave to File Motion for Clarification, Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*;[3] 4) Motion for Clarification;[4] and 5) Supplement to the Second Motion for Reconsideration with Motion to Dismiss.[5]

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[20] Section 2. *Fees in lien*. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. (n)

[21] *Resolution Amending Rule 141 (Legal Fees) of the Rules of Court*; effective March 1, 2000.

[1] *Rollo* (G.R. No. 157381), pp. 1421-1451.

[2] *Id*. at 1457-1487.

[3] *Id*. at 1488-1497.

[4] *Id*. at 1529-1541.

[5] *Id*. at 1573-1585.

Also before this Court are six motions filed by respondents John Lu Ym and LLDC, namely: 1) Motion for Leave to File and Admit Motion for the Issuance of an Entry of Judgment;[6] 2) Motion for the Issuance of an Entry of Judgment;[7] 3) Motion for Leave to File and Admit Supplement to Motion for the Issuance of an Entry of Judgment;[8] 4) Supplement to Motion for the Issuance of an Entry of Judgment;[9] 5) Motion for Leave to File and Admit Attached Manifestation;[10] and 6) Manifestation.[11]

The relevant factual and procedural antecedents that gave rise to the parties' respective motions are as follows:

On August 26, 2008, this Court denied the petitions in G.R. Nos. 153690 and 157381 for being moot and academic; dismissed the petition of John Lu Ym and LLDC in G.R. No. 170889; and consequently lifted the status quo order dated January 23, 2006. The Court further directed the Court of Appeals (CA) to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.[12]

On more thorough reflection, in a Resolution[13] dated August 4, 2009, we granted John Lu Ym and LLDC's motion for reconsideration, and set aside our August 26, 2008 Decision. Consequently, we dismissed the complaint in SRC Case No. 021-CEB then on appeal with the CA in CA-G.R. CV No. 81163. Moreover, we denied all interlocutory matters challenged in the consolidated petitions for being moot and academic.[14]

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[6] *Id*. at 1586-1589.

[7] *Id*. at 1590-1594.

[8] *Id*. at 1595-1598.

[9] *Id*. at 1599-1606.

[10] Motion for Leave to File and Admit Attached Manifestation dated May 24, 2010, pp. 1-4; *id*.

[11] Manifestation dated May 24, 2010, pp. 1-6; *id*.

[12] *Id*. at 1013.

[13] *Id*. at 1362-1390.

[14] *Id*. at 1375.

Aggrieved, David Lu filed a Motion for Reconsideration and Motion to Refer Resolution to the Court *En Banc*.[15] In a Resolution[16] dated September 23, 2009, we denied the motion with finality for lack of merit.

Undaunted, David Lu successively filed the above-mentioned motions now submitted for resolution. In a Resolution dated October 20, 2010, the Court's Second Division voted to submit the pending incidents to the Court *En Banc*, and the latter accepted the referral.

In support of his motions, David Lu advances the following arguments:

23.1. *First*, ***by changing the determinative test as to when an action is or is not capable of pecuniary interest, the August 4 Resolution will effectively result in practically all actions being capable of pecuniary interest.*** By deviating from the well-established rule that it is only when the principal remedy is for recovery of property that an action becomes capable of pecuniary interest; and by holding that the Complaint is capable of pecuniary estimation simply because *[a]* it involves property the value of which was described by Respondent Lu; *[b]* Respondent Lu alleged that he has suffered damage or injury from which his cause of action arose, **the Resolution purports to make practically all cases capable of pecuniary estimation because *[a]* all actions would necessarily involve an allegation of damage or injury because that allegation is an indispensable element of a cause of action; and *[b]* numerous cases involve property with specific values even if actual recovery of that property is not sought.**

23.2. *Second*, the August 4 Resolution, by concluding that Lu Ym [f]ather and sons is not estopped from assailing the trial court's jurisdiction despite them having raised that issue for the first time on appeal and only after an adverse decision has been rendered, will effectively allow unscrupulous litigants to "gamble on the results of litigation" and to wait until the proceedings are at an advanced stage and for an adverse decision to be rendered before assailing the trial court's jurisdiction. The August 4 Resolution thus effectively condones the wastage of the limited time and resources of the courts and of the other litigants as well.

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[15] *Id*. at 1391-1417.

[16] *Id*. at 1418-1419.

23.3. *Third*, the August 4 Resolution, by making a finding of bad faith from the innocuous act of annotating notices of *lis pendens*, effectively puts the public at risk of being held to have acted in bad faith for acts done innocently but perhaps erroneously. This effect becomes even worse when doubtful or disputed questions of law involved – since the effect of the August 4 Resolution is that mere error in judgment amounts to bad faith.[17]

Looking into the merits of David Lu's arguments, his motions are doomed to fail.

David Lu insists that our August 4, 2009 Resolution abandoned, reversed, and modified well-established legal principles on the determinative test as to whether an action is one capable of pecuniary estimation or not, and on findings of good faith and bad faith, and the principle of estoppel. He further claims that, in so doing, the Court violated the principle of *stare decisis*.

I disagree.

Stare decisis simply means that, for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[18]

David Lu faults the Court in not applying our pronouncement in *Lapitan v. Scandia Inc., et al.*[19] and subsequent cases in the determination of whether an action is one incapable of pecuniary estimation. He further questions the non-application of established jurisprudence on the principle of estoppel in failing to raise the issue of non-payment of docket fees at

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[17] *Id.* at 1445.

[18] *Grand Placement and General Services Corporation v. Court of Appeals*, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204.

[19] 133 Phil. 526 (1968).

the first opportunity. Finally, he assails the non-application of the presumption of good faith and the burden to prove bad faith.

Suffice it to state that the cited cases are not on all fours with the present case. The principle of *stare decisis* has no application to the factual setting of the instant case.[20] The totality of the circumstances prevailing in this case had been considered in our August 4, 2009 Resolution and, unquestionably, we did not abandon or depart from the doctrines laid down in the cases cited by David Lu. We only applied the law and pertinent jurisprudence in accordance with the facts of this case. To be sure, the issues have been thoroughly discussed in the above Resolution which I now reiterate.

The criteria in determining the nature of the action are the allegations of the complaint and the character of the reliefs sought.

The complaint and amended complaint readily show that the primary and ultimate intention of the plaintiffs therein was the return of the subject shares of stock to LLDC. Thus, the 600,000 shares were indeed the subject matter of the litigation. The shares of stock have an estimated value, which was declared by the plaintiffs themselves in their complaint to be ₱1,087,055,105. As this was the stated value of the property in litigation, the docket fees should have been computed based on this amount.

Moreover, David Lu prayed for the liquidation and distribution of the assets of the corporation so that he might receive his share therein. Among the assets of the corporation are real properties. Hence, the case was, in actuality, a real action which had for its objective the recovery of real property. That the case involved a real action was acknowledged by David Lu when he moved for the annotation of notices of *lis pendens* on the properties owned by LLDC. In a real action, the assessed value of the property, or if there is none, the estimated value

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[20] *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 290.

thereof, shall be alleged by the claimant and shall be the basis in computing the docket fees.

When David Lu sought the annotation of notices of *lis pendens* on the titles of LLDC, he acknowledged that the complaint affected a title or a right to the possession of the LLDC real properties. In other words, he affirmed that though the complaint was a declaration for the nullity of the issuance of share issue, the action was indeed one which affected the real properties of the corporation. This being so, he must have been fully aware that the docket fees would be based on the value of the realties involved. The silence or inaction to point this out to the Clerk of Court, who computed the docket fees, becomes highly suspect. Therefore, the non-payment of the correct docket fees was not only the result of the erroneous computation of the fees by the Clerk of Court; rather, it was the consequence of David Lu's non-declaration of the true nature of the action. This may be characterized as an act of bad faith, indicating an attempt to defraud the government by avoiding the payment of the correct docket fees.

Indeed, in a number of cases, this Court refrained from dismissing the complaint/petition despite the insufficient payment of the required fees.[21] However, in those cases, there was no intention to defraud the government. Considering that there was bad faith on the part of David Lu and a clear intent to avoid payment of the correct docket fees, the strict rule set forth in *Manchester Development Corporation v. Court of Appeals*[22] is applicable warranting the dismissal of the complaint.

Anent the issue of estoppel, respondents are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on

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[21] *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339; *Yambao v. Court of Appeals*, G.R. No. 140894, November 27, 2000, 346 SCRA 141; *Ayala Land, Inc. v. Carpo*, G.R. No. 140162, November 22, 2000, 345 SCRA 579.

[22] 233 Phil. 579 (1987).

appeal to the CA. Although the manner of challenge was erroneous, they should not be deemed to have waived their right to assail the jurisdiction of the trial court.

Estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely – only from necessity and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be the most effective weapon for the accomplishment of injustice.[23]

Clearly, the RTC did not acquire jurisdiction and the complaint before it should be dismissed. Consequently, the decision rendered therein is null and void. With the foregoing disquisition, there is no need to further discuss the other issues raised by David Lu. As prayed for by respondents, an entry of judgment must be issued.

One final note. As can be gleaned from the discussion above, there is no abandonment, modification, or reversal of well-established doctrines. I maintain that there is no extraordinarily persuasive reason to refer the case to the Court *En Banc*. To be sure, the Court *En Banc* is not an appellate court to which decisions or resolutions of a Division may be appealed.[24]

Premises considered, I vote to **DENY** David Lu's motions.

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[23] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63.

[24] *United Planters Sugar Milling Co., Inc. (UPSUMCO) v. The Honorable Court of Appeals, Philippine National Bank (PNB) and Asset Privatization Trust (APT), as Trustee of the Republic of the Philippines*, G.R. No. 126890, March 9, 2010.

EN BANC

[G.R. Nos. 171947-48. February 15, 2011]

METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS,[1] **DEPARTMENT OF HEALTH, DEPARTMENT OF AGRICULTURE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DEPARTMENT OF BUDGET AND MANAGEMENT, PHILIPPINE COAST GUARD, PHILIPPINE NATIONAL POLICE MARITIME GROUP, and DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT,** *petitioners, vs.* **CONCERNED RESIDENTS OF MANILA BAY, represented and joined by DIVINA V. ILAS, SABINIANO ALBARRACIN, MANUEL SANTOS, JR., DINAH DELA PEÑA, PAUL DENNIS QUINTERO, MA. VICTORIA LLENOS, DONNA CALOZA, FATIMA QUITAIN, VENICE SEGARRA, FRITZIE TANGKIA, SARAH JOELLE LINTAG, HANNIBAL AUGUSTUS BOBIS, FELIMON SANTIAGUEL, and JAIME AGUSTIN R. OPOSA,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; FINAL JUDGMENT INCLUDES NOT ONLY WHAT APPEARS UPON ITS FACE TO HAVE BEEN SO ADJUDGED BUT ALSO THOSE MATTERS ACTUALLY AND NECESSARILY INCLUDED THEREIN OR NECESSARY THERETO.— The issuance of subsequent resolutions by the Court is simply an exercise of judicial power under Art. VIII of the Constitution, because the execution of the Decision is but an integral part of the adjudicative function of the Court. None of the agencies ever questioned

[1] Now the Department of Education (DepEd).

the power of the Court to implement the December 18, 2008 Decision nor has any of them raised the alleged encroachment by the Court over executive functions. While additional activities are required of the agencies like submission of plans of action, data or status reports, these directives are but part and parcel of the execution stage of a final decision under Rule 39 of the Rules of Court. x x x [T]he final judgment includes not only what appears upon its face to have been so adjudged but also those matters "actually and necessarily included therein or necessary thereto." Certainly, any activity that is needed to fully implement a final judgment is necessarily encompassed by said judgment. Moreover, the submission of periodic reports is sanctioned by Secs. 7 and 8, Rule 8 of the Rules of Procedure for Environmental cases x x x.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE POWER AND POWER OF CONTROL OR SUPERVISION OVER EXECUTIVE OFFICIALS; CANNOT BE EXERCISED BY THE JUDICIARY.— The Resolution contains the proposed directives of the Manila Bay Advisory Committee to the concerned agencies and local government units (LGUs) for the implementation of the 18 December 2008 Decision of the Court in this case. Among the directives stated in the Resolution is for the affected agencies to submit to the Court their plans of action and status reports x x x. What is the purpose of requiring these agencies to submit to the Court their plans of action and status reports? Are these plans to be approved or disapproved by the Court? The Court does not have the competence or even the jurisdiction to evaluate these plans which involves technical matters best left to the expertise of the concerned agencies. The Resolution also requires that the concerned agencies shall "**submit [to the Court] their quarterly reports electronically x x x.**" Thus, the directive for the concerned agencies to submit to the Court their quarterly reports is a continuing obligation which extends even beyond the year 2011. The Court is now arrogating unto itself two constitutional powers exclusively vested in the President. First, the Constitution provides that "**executive power shall be vested in the President**." This means that neither the Judiciary

nor the Legislature can exercise executive power for executive power is the exclusive domain of the President. Second, the Constitution provides that the President shall "**have control of all the executive departments, bureaus, and offices**." Neither the Judiciary nor the Legislature can exercise control or even supervision over executive departments, bureaus, and offices. Clearly, the Resolution constitutes an intrusion of the Judiciary into the exclusive domain of the Executive. In the guise of implementing the 18 December 2008 Decision through the Resolution, the Court is in effect supervising and directing the different government agencies and LGUs concerned.

2. REMEDIAL LAW; COURTS; SUPREME COURT; SHOULD ONLY EXERCISE JUDICIAL POWER AND SHOULD NOT ASSUME ANY DUTY WHICH DOES NOT PERTAIN TO THE ADMINISTERING OF JUDICIAL FUNCTIONS.— In *Noblejas v. Teehankee*, it was held that the Court cannot be required to exercise administrative functions such as supervision over executive officials. x x x Likewise, in this case, the directives in the Resolution are administrative in nature and circumvent the constitutional provision which prohibits Supreme Court members from performing quasi-judicial or administrative functions. x x x Thus, in the case of *In Re: Designation of Judge Manzano as Member of the Ilocos Norte Provincial Committee on Justice*, the Court invalidated the designation of a judge as member of the Ilocos Norte Provincial Committee on Justice, which was tasked to receive complaints and to make recommendations for the speedy disposition of cases of detainees. The Court held that the committee performs administrative functions which are prohibited under Section 12, Article VIII of the Constitution. As early as the 1932 case of *Manila Electric Co. v. Pasay Transportation Co.*, this Court has already emphasized that the Supreme Court should only exercise judicial power and should not assume any duty which does not pertain to the administering of judicial functions.

3. POLITICAL LAW; LOCAL GOVERNMENT; LOCAL GOVERNMENT UNITS; THE PRESIDENT OF THE PHILIPPINES EXERCISES GENERAL SUPERVISION OVER LOCAL GOVERNMENT UNITS.— [T]he Resolution

orders some LGU officials to inspect the establishments and houses along major river banks and to **"take appropriate action to ensure compliance by non-complying factories, commercial establishments and private homes with said law, rules and regulations requiring the construction or installment of wastewater treatment facilities or hygienic septic tanks."** The LGU officials are also directed to "submit to the DILG on or before December 31, 2011 their respective compliance reports which shall contain the names and addresses or offices of the owners of all the non-complying factories, commercial establishments and private homes." Furthermore, the Resolution mandates that on or before 30 June 2011, the DILG and the mayors of all cities in Metro Manila should "consider providing land for the wastewater facilities of the Metropolitan Waterworks and Sewerage System (MWSS) or its concessionaires (Maynilad and Manila Water Inc.) within their respective jurisdictions." **The Court is in effect ordering these LGU officials how to do their job and even gives a deadline for their compliance.** Again, this is a usurpation of the power of the President to supervise LGUs under the Constitution and existing laws. Section 4, Article X of the 1987 Constitution provides that: "**The President of the Philippines shall exercise general supervision over local governments** x x x." Under the Local Government Code of 1991, the President exercises general supervision over LGUs x x x.

4. ID.; STATE; SYSTEM OF SEPARATION OF POWERS; VIOLATED WHERE THERE IS A JUDICIAL ENCROACHMENT OF AN EXECUTIVE FUNCTION; CASE AT BAR.— The Resolution constitutes judicial overreach by usurping and performing executive functions. The Court must refrain from overstepping its boundaries by taking over the functions of an equal branch of the government – the Executive. The Court should abstain from exercising any function which is not strictly judicial in character and is not clearly conferred on it by the Constitution. Indeed, as stated by Justice J.B.L. Reyes in *Noblejas v. Teehankee*, "the Supreme Court of the Philippines and its members should not and can not be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions." The directives in the

Resolution constitute a judicial encroachment of an executive function which clearly violates the system of separation of powers that inheres in our democratic republican government. The principle of separation of powers between the Executive, Legislative, and Judicial branches of government is part of the basic structure of the Philippine Constitution. Thus, the 1987 Constitution provides that: (a) the legislative power shall be vested in the Congress of the Philippines; (b) the executive power shall be vested in the President of the Philippines; and (c) the judicial power shall be vested in one Supreme Court and in such lower courts as may be established. x x x [A]dherence to the principle of separation of powers which is enshrined in our Constitution is essential to prevent tyranny by prohibiting the concentration of the sovereign powers of state in one body. Considering that executive power is **exclusively** vested in the President of the Philippines, the Judiciary should neither undermine such exercise of executive power by the President nor arrogate executive power unto itself. The Judiciary must confine itself to the exercise of judicial functions and not encroach upon the functions of the other branches of the government.

5. ID.; JUDICIAL DEPARTMENT; JUDICIAL POWER; DEFINED.— Since the Supreme Court is only granted judicial power, it should not attempt to assume or be compelled to perform non-judicial functions. Judicial power is defined under Section 1, Article VIII of the 1987 Constitution as that which "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

SERENO, *J., dissenting opinion:*

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; THE ENFORCEMENT OF ALL LAWS IS THE SOLE DOMAIN OF THE EXECUTIVE.— [T]he Court has no authority to issue these directives. They fall squarely under the domain of the executive branch of the state. The issuance of specific instructions to subordinate agencies in the implementation of

policy mandates in all laws, not just those that protect the environment, is an exercise of the power of supervision and control – the sole province of the Office of the President. x x x In *Anak Mindanao Party-list Group v. Executive Secretary*, this Court has already asserted that the enforcement of all laws is the sole domain of the Executive. The Court pronounced that the express constitutional grant of authority to the Executive is broad and encompassing, such that it justifies reorganization measures initiated by the President.

2. ID.; ID.; OFFICE OF THE PRESIDENT; HAS THE EXCLUSIVE POWER TO ISSUE ADMINISTRATIVE ORDERS.— To herein petitioner agencies impleaded below, this Court has given very specific instructions to report the progress and status of their operations directly to the latter. The Court also required the agencies to apprise it of any noncompliance with the standards set forth by different laws as to environment protection. This move is tantamount to making these agencies accountable to the Court instead of the President. The very occupation streamlined especially for the technical and practical expertise of the Executive Branch is being usurped without regard for the delineations of power in the Constitution. In fact, the issuance of the Resolution itself is in direct contravention of the President's exclusive power to issue administrative orders x x x. The implementation of the policy laid out by the legislature – in the Philippine Clean Water Act of 2004, the Toxic and Hazardous Waste Act or Republic Act 6969, the Environment Code, and other laws geared towards environment protection – is under the competence of the President. Achieved thereby is a uniform standard of administrative efficiency. And since it is through administrative orders promulgated by the President that specific operational aspects for these policies are laid out, the Resolution of this Court overlaps with the President's administrative power. No matter how urgent and laudatory the cause of environment protection has become, it cannot but yield to the higher mandate of separation of powers and the mechanisms laid out by the people through the Constitution.

3. ID.; ID.; ID.; EXERCISES GENERAL SUPERVISORY AUTHORITY OVER LOCAL GOVERNMENTS.— One of the directives is that which requires local governments to

conduct inspection of homes and establishments along the riverbanks, and to submit a plan for the removal of certain informal settlers. Not content with arrogating unto itself the powers of "control" and "supervision" granted by the Administrative Code to the President over said petitioner administrative agencies, the Court is also violating the latter's general supervisory authority over local governments x x x.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE DUTY BEING ENJOINED THEREIN MUST BE ONE ACCORDING TO THE TERMS DEFINED IN THE LAW ITSELF.— In its revised Resolution, the Court is now ***setting deadlines for the implementation of policy formulations which require decision-making by the agencies.*** It has confused an order enjoining a *duty,* with an order outlining *specific technical rules on how to perform* such a duty. Assuming without conceding that *mandamus* were availing under Rule 65, the Court can only require a particular action, but it cannot provide for the means to accomplish such action. It is at this point where the demarcation of the general act of "cleaning up the Manila Bay" has become blurred, so much so that the Court now engages in the slippery slope of overseeing technical details. x x x Discretion x x x is a faculty conferred upon a court or official by which he may decide the question either way and still be right. The duty being enjoined in *mandamus* must be one according to the terms defined in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, *but not to act one way or the other*. This is the end of any participation by the Court, if it is authorized to participate at all. In setting a deadline for the accomplishment of these directives, not only has the Court provided the means of accomplishing the task required, it has actually gone beyond the standards set by the law. There is nothing in the Environment Code, the Administrative Code, or the Constitution which grants this authority to the judiciary. It is already settled that, "If the law imposes a duty upon a public officer and gives him the right to decide *when* and *how* the duty shall be performed, such duty is not ministerial."

5. ID.; COURTS; SUPREME COURT; HAS NO POWER TO ISSUE ADVISORY OPINIONS OR DIRECTIVES

REQUIRING PROGRESS REPORTS FROM THE PARTIES RESPECTING THE EXECUTION OF ITS DECISIONS.— It is an oft-repeated rule that the Court has no power to issue advisory opinions, much less "directives" requiring progress reports from the parties respecting the execution of its decisions. The requirements of "actual case or controversy" and "justiciability" have long been established in order to limit the exercise of judicial review. While its dedication to the implementation of the *fallo* in G.R. Nos. 171947-48 is admirable, the Court's power cannot spill over to actual encroachment upon both the "control" and police powers of the State under the guise of a "continuing *mandamus*." In G.R. Nos. 171947-48, the Court said: "Under what other judicial discipline describes as 'continuing *mandamus*,' the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference." Needless to say, the "continuing *mandamus*" in this case runs counter to principles of "actual case or controversy" and other requisites for judicial review. In fact, the Supreme Court is in danger of acting as a "super-administrator" – the scenario presently unfolding in India where the supposed remedy originated. There the remedy was first used in *Vineet Narain and Others v. Union of India*, a public interest case for corruption filed against high-level officials. Since then, the remedy has been applied to environmental cases as an oversight and control power by which the Supreme Court of India has created committees (*i.e.* the Environment Pollution Authority and the Central Empowered Committee in forest cases) and allowed these committees to act as the policing agencies. But the most significant judicial intervention in this regard was the series of orders promulgated by the Court in *T.N. Godavarman v. Union of India.* x x x Thus, while it was originally intended to assert public rights in the face of government inaction and neglect, the remedy is now facing serious criticism as it has spiraled out of control.

6. ID.; ID.; MUST ACT WITHIN JURISDICTIONAL LIMITS FOUNDED UPON THE TRADITIONAL REQUIREMENT OF A CAUSE OF ACTION.— "[O]ver nothing but cases and controversies can courts exercise jurisdiction, and it is to make the exercise of that jurisdiction effective that they are allowed to pass upon constitutional questions." Admirable though the sentiments of the Court may be, it must act within jurisdictional

limits. These limits are founded upon the traditional requirement of a *cause of action*: "the act or omission by which a party violates a right of another." In constitutional cases, for every writ or remedy, there must be a clear pronouncement of the corresponding right which has been infringed. Only then can there surface that "clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests."

7. POLITICAL LAW; LEGISLATIVE DEPARTMENT; POWER OF CONGRESSIONAL OVERSIGHT; THE "CONTINUING *MANDAMUS*" IN CASE AT BAR OVERLAPS WITH THE MONITORING POWER UNDER CONGRESSIONAL OVERSIGHT.— Article 6, Section 22 of the 1987 Constitution x x x pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress' oversight function. *Macalintal v. Comelec* discussed the scope of congressional oversight in full. *Oversight* refers to the power of the legislative department to check, monitor and ensure that the laws it has enacted are enforced x x x. *Macalintal v. Comelec* further discusses that legislative supervision under the oversight power connotes a continuing and informed awareness on the part of Congress regarding executive operations in a given administrative area. Because the power to legislate includes the power to ensure that the laws are enforced, this monitoring power has been granted by the Constitution to the legislature. In cases of executive non-implementation of statutes, the courts cannot justify the use of "continuing *mandamus*," as it would by its very definition overlap with the monitoring power under *congressional oversight*. The Resolution does not only encroach upon the general supervisory function of the Executive, it also diminished and arrogated unto itself the power of congressional oversight.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Emmanuel A. De Castro & Richelle T. Macapili for MMDA.

Rowena Candice M. Ruiz & Ryan S. Lita for the Secretary of Department of Budget & Management.

Lissa Belle M. Villanueva for Philippine Coast Guard.

Antonio A. Oposa, Jr., Karl Arian Castillo, Rogelio A. Vinluan, Rico Agcaoili and *Fortun Narvasa and Salazar* for respondents.

Jobert I. Pahilga for intervenor Sentro para sa Tunay na Repormang Agraryo.

St. Thomas More Law Center, Sentro ng Alternatibong Lingap Panligal, Bienvenido A. Salinas, Jr. and *Ritchie I. Esponilla* for movants.

R E S O L U T I O N

VELASCO, JR., *J.*:

On December 18, 2008, this Court rendered a Decision in G.R. Nos. 171947-48 ordering petitioners to clean up, rehabilitate and preserve Manila Bay in their different capacities. The *fallo* reads:

> WHEREFORE, the petition is DENIED. The September 28, 2005 Decision of the CA in CA-G.R. CV No. 76528 and SP No. 74944 and the September 13, 2002 Decision of the RTC in Civil Case No. 1851-99 are AFFIRMED but with MODIFICATIONS in view of subsequent developments or supervening events in the case. The fallo of the RTC Decision shall now read:
>
> WHEREFORE, judgment is hereby rendered ordering the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.
>
> In particular:
>
> (1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its

Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, *esteros*, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275, the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275, the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550, the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and *esteros* in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan, Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and *esteros* that discharge wastewater into the Manila Bay.

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial

jurisdiction and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003, Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152, Sec. 118 of RA 8550, and Sec. 56 of RA 9003, the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing *mandamus*," shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

SO ORDERED.

The government agencies did not file any motion for reconsideration and the Decision became final in January 2009.

The case is now in the execution phase of the final and executory December 18, 2008 Decision. The Manila Bay Advisory Committee was created to receive and evaluate the quarterly progressive reports on the activities undertaken by the agencies in accordance with said decision and to monitor the execution phase.

In the absence of specific completion periods, the Committee recommended that time frames be set for the agencies to perform their assigned tasks. This may be viewed as an encroachment over the powers and functions of the Executive Branch headed by the President of the Philippines.

This view is misplaced.

The issuance of subsequent resolutions by the Court is simply an exercise of judicial power under Art. VIII of the Constitution, because the execution of the Decision is but an integral part of the adjudicative function of the Court. None of the agencies ever questioned the power of the Court to implement the December 18, 2008 Decision nor has any of them raised the alleged encroachment by the Court over executive functions.

While additional activities are required of the agencies like submission of plans of action, data or status reports, these directives are but part and parcel of the execution stage of a final decision under Rule 39 of the Rules of Court. Section 47 of Rule 39 reads:

> Section 47. Effect of judgments or final orders.—The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (c) In any other litigation between the same parties of their successors in interest, **that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto**. (Emphasis

supplied.)

It is clear that the final judgment includes not only what appears upon its face to have been so adjudged but also those matters "actually and necessarily included therein or necessary thereto." Certainly, any activity that is needed to fully implement a final judgment is necessarily encompassed by said judgment.

Moreover, the submission of periodic reports is sanctioned by Secs. 7 and 8, Rule 8 of the Rules of Procedure for Environmental cases:

> Sec. 7. Judgment.—If warranted, the court shall grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. **The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance**. The petitioner may submit its comments or observations on the execution of the judgment.
>
> Sec. 8. Return of the writ.—The periodic reports submitted by the respondent detailing compliance with the judgment shall be contained in partial returns of the writ. Upon full satisfaction of the judgment, a final return of the writ shall be made to the court by the respondent. If the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket. (Emphasis supplied.)

With the final and executory judgment in *MMDA*, the writ of continuing *mandamus* issued in *MMDA* means that until petitioner-agencies have shown full compliance with the Court's orders,

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[2] On February 10, 2009, the Court *En Banc* approved a resolution creating an Advisory Committee "that will verify the reports of the government agencies tasked to clean up the Manila Bay." It is composed of two members of the Court and three technical experts:

Hon. Presbitero J. Velasco, Jr.

Chairperson and *ponente* of *MMDA vs. Concerned Residents of Manila*

the Court exercises continuing jurisdiction over them until full execution of the judgment.

There being no encroachment over executive functions to speak of, We shall now proceed to the recommendation of the Manila Bay Advisory Committee.

Several problems were encountered by the Manila Bay Advisory Committee.[2] An evaluation of the quarterly progressive reports has shown that (1) there are voluminous quarterly progressive reports that are being submitted; (2) petitioner-agencies do not have a uniform manner of reporting their cleanup, rehabilitation and preservation activities; (3) as yet no definite deadlines have been set by petitioner DENR as to petitioner-agencies' timeframe for their respective duties; (4) as of June 2010 there has been a change in leadership in both the national and local levels; and (5) some agencies have encountered difficulties in complying with the Court's directives.

In order to implement the afore-quoted Decision, certain directives have to be issued by the Court to address the said concerns.

Acting on the recommendation of the Manila Bay Advisory Committee, the Court hereby resolves to **ORDER** the following:

(1) The Department of Environment and Natural Resources

Hon. Jose Midas P. Marquez
Court Administrator
Vice-Chairperson

Members/Technical Experts:

Dr. Gil S. Jacinto
Former Director, UP Marine Science Institute

Dr. Elisea G. Gozun
Chair of Earth Day Network and Former DENR Secretary

Dr. Antonio G.M. La Viña
Former DENR Undersecretary
Dean of the Ateneo School of Government

(DENR), as lead agency in the *Philippine Clean Water Act of 2004*, shall submit to the Court on or before June 30, 2011 the updated *Operational Plan for the Manila Bay Coastal Strategy*.

The DENR is ordered to submit summarized data on the overall quality of Manila Bay waters for all four quarters of 2010 on or before June 30, 2011.

The DENR is further ordered to submit the names and addresses of persons and companies in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga and Bataan that generate toxic and hazardous waste on or before September 30, 2011.

(2) On or before June 30, 2011, the Department of the Interior and Local Government (DILG) shall order the Mayors of all cities in Metro Manila; the Governors of Rizal, Laguna, Cavite, Bulacan, Pampanga and Bataan; and the Mayors of all the cities and towns in said provinces to inspect all factories, commercial establishments and private homes along the banks of the major river systems—such as but not limited to the Pasig-Marikina-San Juan Rivers, the National Capital Region (Paranaque-Zapote, Las Pinas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, and the Laguna De Bay—and other minor rivers and waterways within their jurisdiction that eventually discharge water into the Manila Bay and the lands abutting it, to determine if they have wastewater treatment facilities and/or hygienic septic tanks, as prescribed by existing laws, ordinances, rules and regulations. Said local government unit (LGU) officials are given up to September 30, 2011 to finish the inspection of said establishments and houses.

In case of non-compliance, the LGU officials shall take appropriate action to ensure compliance by non-complying factories, commercial establishments and private homes with said law, rules and regulations requiring the construction or installment of wastewater treatment facilities or hygienic septic tanks.

The aforementioned governors and mayors shall submit to

the DILG on or before December 31, 2011 their respective compliance reports which will contain the names and addresses or offices of the owners of all the non-complying factories, commercial establishments and private homes, copy furnished the concerned environmental agency, be it the local DENR office or the Laguna Lake Development Authority.

The DILG is required to submit a five-year plan of action that will contain measures intended to ensure compliance of all non-complying factories, commercial establishments, and private homes.

On or before June 30, 2011, the DILG and the mayors of all cities in Metro Manila shall consider providing land for the wastewater facilities of the Metropolitan Waterworks and Sewerage System (MWSS) or its concessionaires (Maynilad and Manila Water, Inc.) within their respective jurisdictions.

(3) The MWSS shall submit to the Court on or before June 30, 2011 the list of areas in Metro Manila, Rizal and Cavite that do not have the necessary wastewater treatment facilities. Within the same period, the concessionaires of the MWSS shall submit their plans and projects for the construction of wastewater treatment facilities in all the aforesaid areas and the completion period for said facilities, which shall not go beyond 2037.

On or before June 30, 2011, the MWSS is further required to have its two concessionaires submit a report on the amount collected as sewerage fees in their respective areas of operation as of December 31, 2010.

(4) The Local Water Utilities Administration is ordered to submit on or before September 30, 2011 its plan to provide, install, operate and maintain sewerage and sanitation facilities in said cities and towns and the completion period for said works, which shall be fully implemented by December 31, 2020.

(5) The Department of Agriculture (DA), through the Bureau of Fisheries and Aquatic Resources, shall submit to the Court on or before June 30, 2011 a report on areas in Manila Bay where marine life has to be restored or improved and the assistance

it has extended to the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga and Bataan in developing the fisheries and aquatic resources in Manila Bay. The report shall contain monitoring data on the marine life in said areas. Within the same period, it shall submit its five-year plan to restore and improve the marine life in Manila Bay, its future activities to assist the aforementioned LGUs for that purpose, and the completion period for said undertakings.

The DA shall submit to the Court on or before September 30, 2011 the baseline data as of September 30, 2010 on the pollution loading into the Manila Bay system from agricultural and livestock sources.

(6) The Philippine Ports Authority (PPA) shall incorporate in its quarterly reports the list of violators it has apprehended and the status of their cases. The PPA is further ordered to include in its report the names, make and capacity of the ships that dock in PPA ports. The PPA shall submit to the Court on or before June 30, 2011 the measures it intends to undertake to implement its compliance with paragraph 7 of the dispositive portion of the MMDA Decision and the completion dates of such measures.

The PPA should include in its report the activities of its concessionaire that collects and disposes of the solid and liquid wastes and other ship-generated wastes, which shall state the names, make and capacity of the ships serviced by it since August 2003 up to the present date, the dates the ships docked at PPA ports, the number of days the ship was at sea with the corresponding number of passengers and crew per trip, the volume of solid, liquid and other wastes collected from said ships, the treatment undertaken and the disposal site for said wastes.

(7) The Philippine National Police (PNP) Maritime Group shall submit on or before June 30, 2011 its five-year plan of action on the measures and activities it intends to undertake to apprehend the violators of Republic Act No. (RA) 8550 or the *Philippine Fisheries Code of 1998* and other pertinent laws, ordinances and regulations to prevent marine pollution in Manila

Bay and to ensure the successful prosecution of violators.

The Philippine Coast Guard shall likewise submit on or before June 30, 2011 its five-year plan of action on the measures and activities they intend to undertake to apprehend the violators of Presidential Decree No. 979 or the *Marine Pollution Decree of 1976* and RA 9993 or the *Philippine Coast Guard Law of 2009* and other pertinent laws and regulations to prevent marine pollution in Manila Bay and to ensure the successful prosecution of violators.

(8) The Metropolitan Manila Development Authority (MMDA) shall submit to the Court on or before June 30, 2011 the names and addresses of the informal settlers in Metro Manila who, as of December 31, 2010, own and occupy houses, structures, constructions and other encroachments established or built along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and *estero*s, in violation of RA 7279 and other applicable laws. On or before June 30, 2011, the MMDA shall submit its plan for the removal of said informal settlers and the demolition of the aforesaid houses, structures, constructions and encroachments, as well as the completion dates for said activities, which shall be fully implemented not later than December 31, 2015.

The MMDA is ordered to submit a status report, within thirty (30) days from receipt of this Resolution, on the establishment of a sanitary landfill facility for Metro Manila in compliance with the standards under RA 9003 or the *Ecological Solid Waste Management Act*.

On or before June 30, 2011, the MMDA shall submit a report

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[3] Our Decision in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661, 690, states: "**RA 9003 took effect on February 15, 2001 and the adverted grace period of five (5) years [in Sec. 37 of RA 9003] which ended on February 21, 2006** has come and gone, but no single sanitary landfill which strictly complies with the prescribed standards under RA 9003 has yet been set up." (Emphasis supplied.)

of the location of open and controlled dumps in Metro Manila whose operations are illegal after February 21, 2006,[3] pursuant to Secs. 36 and 37 of RA 9003, and its plan for the closure of these open and controlled dumps to be accomplished not later than December 31, 2012. Also, on or before June 30, 2011, the DENR Secretary, as Chairperson of the National Solid Waste Management Commission (NSWMC), shall submit a report on the location of all open and controlled dumps in Rizal, Cavite, Laguna, Bulacan, Pampanga and Bataan.

On or before June 30, 2011, the DENR Secretary, in his capacity as NSWMC Chairperson, shall submit a report on whether or not the following landfills strictly comply with Secs. 41 and 42 of RA 9003 on the establishment and operation of sanitary landfills, to wit:

National Capital Region

1. Navotas SLF (PhilEco), Brgy. Tanza (New Site), Navotas City
2. Payatas Controlled Dumpsite, Barangay Payatas, Quezon City

Region III

3. Sitio Coral, Brgy. Matictic, Norzagaray, Bulacan
4. Sitio Tiakad, Brgy. San Mateo, Norzagaray, Bulacan
5. Brgy. Minuyan, San Jose del Monte City, Bulacan
6. Brgy. Mapalad, Santa Rosa, Nueva Ecija
7. Sub-zone Kalangitan, Clark Capas, Tarlac Special Economic Zone

Region IV-A

8. Kalayaan (Longos), Laguna
9. Brgy. Sto. Nino, San Pablo City, Laguna
10. Brgy. San Antonio (Pilotage SLF), San Pedro, Laguna
11. Morong, Rizal
12. Sitio Lukutan, Brgy. San Isidro, Rodriguez (Montalban), Rizal (ISWIMS)

13. Brgy. Pintong Bukawe, San Mateo, Rizal (SMSLFDC)

On or before June 30, 2011, the MMDA and the seventeen (17) LGUs in Metro Manila are ordered to jointly submit a report on the average amount of garbage collected monthly per district in all the cities in Metro Manila from January 2009 up to December 31, 2010 *vis-à-vis* the average amount of garbage disposed monthly in landfills and dumpsites. In its quarterly report for the last quarter of 2010 and thereafter, MMDA shall report on the apprehensions for violations of the penal provisions of RA 9003, RA 9275 and other laws on pollution for the said period.

On or before June 30, 2011, the DPWH and the LGUs in Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan shall submit the names and addresses of the informal settlers in their respective areas who, as of September 30, 2010, own or occupy houses, structures, constructions, and other encroachments built along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna de Bay, and other rivers, connecting waterways and *estero*s that discharge wastewater into the Manila Bay, in breach of RA 7279 and other applicable laws. On or before June 30, 2011, the DPWH and the aforesaid LGUs shall jointly submit their plan for the removal of said informal settlers and the demolition of the aforesaid structures, constructions and encroachments, as well as the completion dates for such activities which shall be implemented not later than December 31, 2012.

(9) The Department of Health (DOH) shall submit to the Court on or before June 30, 2011 the names and addresses of the owners of septic and sludge companies including those that do not have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks.

The DOH shall implement rules and regulations on Environmental Sanitation Clearances and shall require companies to procure a license to operate from the DOH.

The DOH and DENR-Environmental Management Bureau shall develop a toxic and hazardous waste management system

by June 30, 2011 which will implement segregation of hospital/ toxic/hazardous wastes and prevent mixing with municipal solid waste.

On or before June 30, 2011, the DOH shall submit a plan of action to ensure that the said companies have proper disposal facilities and the completion dates of compliance.

(10) The Department of Education (DepEd) shall submit to the Court on or before May 31, 2011 a report on the specific subjects on pollution prevention, waste management, environmental protection, environmental laws and the like that it has integrated into the school curricula in all levels for the school year 2011-2012.

On or before June 30, 2011, the DepEd shall also submit its plan of action to ensure compliance of all the schools under its supervision with respect to the integration of the aforementioned subjects in the school curricula which shall be fully implemented by June 30, 2012.

(11) All the agencies are required to submit their quarterly reports electronically using the forms below. The agencies may add other key performance indicators that they have identified.

SO ORDERED.

Corona, C.J., Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio and *Sereno, JJ.,* see dissenting opinions.

Carpio Morales and *Brion, JJ.,* join the dissent of *J.* Carpio.

DISSENTING OPINION

[1] Department of Environment and Natural Resources (DENR), Department of Interior and Local Government (DILG), Metropolitan Waterworks and Sewerage System (MWSS), Local Water Utilities Administration (LWUA), Department of Agriculture (DA), Philippine Ports Authority (PPA), Philippine National Police (PNP), Metropolitan Manila Development Authority (MMDA), Department of Health (DOH), Department of Education (DepEd), and Department of Budget and Management (DBM).

CARPIO, *J.*:

The Resolution contains the proposed directives of the Manila Bay Advisory Committee to the concerned agencies[1] and local government units (LGUs) for the implementation of the 18 December 2008 Decision of the Court in this case.

Among the directives stated in the Resolution is for the affected agencies to submit to the Court their plans of action and status reports, thus:

> The Department of Environment and Natural Resources (DENR), as lead agency in the *Philippine Clean Water Act of 2004*, shall submit to the Court on or before June 30, 2011 the updated *Operational Plan for the Manila Bay Coastal Strategy* (OPMBCS);[2]
>
> **The DILG is required to submit a five-year plan of action that will contain measures intended to ensure compliance of all non-complying factories, commercial establishments, and private homes**;[3]
>
> The MWSS shall submit to the Court on or before June 30, 2011 the list of areas in Metro Manila, Rizal and Cavite that do not have the necessary wastewater treatment facilities. **Within the same period, the concessionaires of the MWSS shall submit their plans and projects for the construction of wastewater treatment facilities in all the aforesaid areas and the completion period for said facilities, which shall not go beyond 2020**;[4]
>
> The Local Water Utilities Administration (LWUA) shall submit to the Court on or before June 30, 2011 the list of cities and towns in Laguna, Cavite, Bulacan, Pampanga, and Bataan that do not have sewerage and sanitation facilities. **LWUA is further ordered to submit on or before September 30, 2011 its plan to provide, install, operate and maintain sewerage and sanitation facilities in said cities and towns and the completion period for said works**

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[2] Resolution, p. 4.

[3] Resolution, p. 6.

[4] Resolution, p. 6.

[5] Resolution, pp. 6-7.

which shall be fully implemented by December 31, 2020;[5]

The Department of Agriculture (DA), through the Bureau of Fisheries and Aquatic Resources (BFAR), shall submit to the Court on or before June 30, 2011 a report on areas in Manila Bay where marine life has to be restored or improved and the assistance it has extended to the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga and Bataan in developing the fisheries and aquatic resources in Manila Bay. The report shall contain monitoring data on the marine life in said areas. **Within the same period, it shall submit its five-year plan to restore and improve the marine life in Manila Bay, its future activities to assist the aforementioned LGUs for that purpose, and the completion period for said undertakings**;[6]

The Philippine Ports Authority (PPA) shall incorporate in its quarterly reports the list of violators it has apprehended and the status of their cases. The PPA is further ordered to include in its report the names, make and capacity of the ships that dock in PPA ports. **The PPA shall submit to the Court on or before June 30, 2011 the measures it intends to undertake to implement its compliance with paragraph 7 of the dispositive portion of the MMDA Decision and the completion dates of such measures**;[7]

The Philippine National Police (PNP) – Maritime Group shall **submit on or before June 30, 2011 its five-year plan of action on the measures and activities they intend to undertake to apprehend the violators** of RA 8550 or the *Philippine Fisheries Code of 1998* and other pertinent laws, ordinances and regulations to prevent marine pollution in Manila Bay and to ensure the successful prosecution of violators;[8]

The Philippine Coast Guard (PCG) shall likewise **submit on or before June 30, 2011 its five-year plan of action on the measures and activities they intend to undertake to apprehend the violators** of Presidential Decree (PD) 979 or the *Marine Pollution Decree of 1976* and RA 9993 or the *Philippine Coast Guard Law of 2009*

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6 Resolution, p. 7.

7 Resolution, p. 7.

8 Resolution, p. 8.

9 Resolution, p. 8.

and other pertinent laws and regulations to prevent marine pollution in Manila Bay and to ensure the successful prosecution of violators;[9]

The Metropolitan Manila Development Authority (MMDA) shall **submit to the Court on or before June 30, 2011 the names and addresses of the informal settlers in Metro Manila who own and occupy houses, structures, constructions and other encroachments established or built in violation of RA 7279 and other applicable laws** along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and *esteros* as of December 31, 2010. On or before the same date, **the MMDA shall submit its plan for the removal of said informal settlers and the demolition of the aforesaid houses, structures, constructions and encroachments, as well as the completion dates for said activities which shall be fully implemented not later than December 31, 2015**;[10]

[T]he DPWH and the aforesaid LGUs shall jointly **submit its plan for the removal of said informal settlers and the demolition of the aforesaid structures, constructions and encroachments, as well as the completion dates for such activities which shall be implemented not later than December 31, 2012**;[11]

[T]he DOH shall **submit a plan of action to ensure that the said companies have proper disposal facilities and the completion dates of compliance**;[12]

On or before June 30, 2011, the DepEd shall also **submit its plan of action to ensure compliance of all the schools under its supervision with respect to the integration of the aforementioned subjects in the school curricula which shall**

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[10] Resolution, p. 8.

[11] Resolution, p. 10.

[12] Resolution, p. 11.

[13] Resolution, p. 11.

[14] For instance, the Resolution orders the PPA to "include in its report the activities of the concessionaire that collects and disposes of the solid and liquid wastes and other ship-generated wastes, which shall state the names, make and capacity of the ships serviced by it since August 2003 up to the present date, the dates the ships docked at PPA ports, the number

be fully implemented by June 30, 2012;[13] (Emphasis supplied)

What is the purpose of requiring these agencies to submit to the Court their plans of action and status reports? Are these plans to be approved or disapproved by the Court? The Court does not have the competence or even the jurisdiction to evaluate these plans which involves technical matters[14] best left to the expertise of the concerned agencies.

The Resolution also requires that the concerned agencies shall "**submit [to the Court] their quarterly reports electronically x x x.**"[15] Thus, the directive for the concerned agencies to submit to the Court their quarterly reports is a continuing obligation which extends even beyond the year 2011.[16]

The Court is now arrogating unto itself two constitutional powers exclusively vested in the President. First, the Constitution provides that "**executive power shall be vested in the President**."[17] This means that neither the Judiciary nor the Legislature can exercise executive power for executive power is the exclusive domain of the President. Second, the Constitution provides that the President shall "**have control of all the executive departments, bureaus, and offices**."[18] Neither the Judiciary nor the Legislature can exercise control or even supervision over executive departments, bureaus, and offices.

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of days the ship was at sea with the corresponding number of passengers and crew per trip, the volume of solid, liquid and ship-generated wastes collected from said ships, the treatment undertaken and the disposal site for said wastes;" Resolution, pp. 7-8.

[15] Resolution, p.11.

[16] For example, the Resolution directs that "[i]n its **quarterly report for the last quarter of 2010 and <u>thereafter</u>**, MMDA shall report on the apprehensions for violations of the penal provisions of RA 9003, RA 9275 and other laws on pollution for the said period; Resolution, p. 10. (Emphasis supplied.)

[17] Constitution, Art. VII, Sec. 1.

[18] Constitution, Art. VII, Sec. 17.

[19] 131 Phil. 931 (1968).

Clearly, the Resolution constitutes an intrusion of the Judiciary into the exclusive domain of the Executive. In the guise of implementing the 18 December 2008 Decision through the Resolution, the Court is in effect supervising and directing the different government agencies and LGUs concerned.

In *Noblejas v. Teehankee*,[19] it was held that the Court cannot be required to exercise administrative functions such as supervision over executive officials. The issue in that case was whether the Commissioner of Land Registration may only be investigated by the Supreme Court, in view of the conferment upon him by law (Republic Act No. 1151) of the rank and privileges of a Judge of the Court of First Instance. The Court, answering in the negative, stated:

> To adopt petitioner's theory, therefore, would mean placing upon the Supreme Court the duty of investigating and disciplining all these officials whose functions are plainly executive and the consequent curtailment by *mere implication* from the Legislative grant, of the President's power to discipline and remove administrative officials who are presidential appointees, and which the Constitution expressly place under the President's supervision and control.
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> x x x x x x x x x
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> But the more fundamental objection to the stand of petitioner Noblejas is that, if the Legislature had really intended to include in the general grant of "privileges" or "rank and privileges of Judges of the Court of First Instance" the right to be investigated by the Supreme Court, and to be suspended or removed only upon recommendation of that Court, then **such grant of privilege would be unconstitutional, since it would violate the fundamental doctrine of separation of powers, by charging this court with the administrative function of supervisory control over executive officials, and simultaneously reducing *pro tanto* the control of the Chief Executive over such officials.**[20] (Boldfacing supplied)

Likewise, in this case, the directives in the Resolution are administrative in nature and circumvent the constitutional provision which prohibits Supreme Court members from performing quasi-

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[20] *Id.* at 934-935.

judicial or administrative functions. Section 12, Article VIII of the 1987 Constitution provides:

> SEC. 12. The members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

Thus, in the case of *In Re: Designation of Judge Manzano as Member of the Ilocos Norte Provincial Committee on Justice*,[21] the Court invalidated the designation of a judge as member of the Ilocos Norte Provincial Committee on Justice, which was tasked to receive complaints and to make recommendations for the speedy disposition of cases of detainees. The Court held that the committee performs administrative functions[22] which are prohibited under Section 12, Article VIII of the Constitution.

As early as the 1932 case of *Manila Electric Co. v. Pasay Transportation Co.*,[23] this Court has already emphasized that the Supreme Court should only exercise judicial power and should not assume any duty which does not pertain to the administering of judicial functions. In that case, a petition was filed requesting the members of the Supreme Court, sitting as a board of arbitrators, to fix the terms and the compensation to be paid to Manila Electric Company for the use of right of way. The Court held that it would be improper and illegal for the members of the Supreme Court, sitting as a board of arbitrators, whose decision of a majority shall be final, to act on the petition of Manila Electric Company. The Court explained:

> We run counter to this dilemma. Either the members of the Supreme Court, sitting as a board of arbitrators, exercise judicial functions, or as members of the Supreme Court, sitting as a board of arbitrators,

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[21] 248 Phil. 487 (1988).

[22] Administrative functions are "those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence." *Id.* at 491.

[23] 57 Phil. 600 (1932).

exercise administrative or *quasi* judicial functions. The first case would appear not to fall within the jurisdiction granted the Supreme Court. Even conceding that it does, it would presuppose the right to bring the matter in dispute before the courts, for any other construction would tend to oust the courts of jurisdiction and render the award a nullity. But if this be the proper construction, we would then have the anomaly of a decision by the members of the Supreme Court, sitting as a board of arbitrators, taken therefrom to the courts and eventually coming before the Supreme Court, where the Supreme Court would review the decision of its members acting as arbitrators. Or in the second case, if the functions performed by the members of the Supreme Court, sitting as a board of arbitrators, be considered as administrative or *quasi* judicial in nature, that would result in the performance of duties which the members of the Supreme Court could not lawfully take it upon themselves to perform. The present petition also furnishes an apt illustration of another anomaly, for we find the Supreme Court as a court asked to determine if the members of the court may be constituted a board of arbitrators, which is not a court at all.

The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions.[24]

Furthermore, the Resolution orders some LGU officials to inspect the establishments and houses along major river banks and to **"take appropriate action to ensure compliance by non-complying factories, commercial establishments and private homes with said law, rules and regulations requiring**

[24] *Id.* at 604-605.

[25] Resolution, p. 5.

[26] Resolution, p. 6.

the construction or installment of wastewater treatment facilities or hygienic septic tanks."[25] The LGU officials are also directed to "submit to the DILG on or before December 31, 2011 their respective compliance reports which shall contain the names and addresses or offices of the owners of all the non-complying factories, commercial establishments and private homes."[26] Furthermore, the Resolution mandates that on or before 30 June 2011, the DILG and the mayors of all cities in Metro Manila should "consider providing land for the wastewater facilities of the Metropolitan Waterworks and Sewerage System (MWSS) or its concessionaires (Maynilad and Manila Water Inc.) within their respective jurisdictions."[27] **The Court is in effect ordering these LGU officials how to do their job and even gives a deadline for their compliance.** Again, this is a usurpation of the power of the President to supervise LGUs under the Constitution and existing laws.

Section 4, Article X of the 1987 Constitution provides that: "**The President of the Philippines shall exercise general supervision over local governments** x x x."[28] Under the Local Government Code of 1991,[29] the President exercises general supervision over LGUs, thus:

> SECTION 25. *National Supervision over Local Government Units*.— (a) Consistent with the basic policy on local autonomy, **the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.**
>
> The President shall exercise supervisory authority directly over provinces, highly urbanized cities and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to *barangays*. (Emphasis supplied)

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[27] Resolution, p. 6.

[28] Emphasis supplied.

[29] Republic Act No. 7160.

[30] *Manila Electric Co. v. Pasay Transportation Co., supra* note 23.

The Resolution constitutes judicial overreach by usurping and performing executive functions. The Court must refrain from overstepping its boundaries by taking over the functions of an equal branch of the government – the Executive. The Court should abstain from exercising any function which is not strictly judicial in character and is not clearly conferred on it by the Constitution.[30] Indeed, as stated by Justice J.B.L. Reyes in *Noblejas v. Teehankee*,[31] "the Supreme Court of the Philippines and its members should not and can not be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions."[32]

The directives in the Resolution constitute a judicial encroachment of an executive function which clearly violates the system of separation of powers that inheres in our democratic republican government. The principle of separation of powers between the Executive, Legislative, and Judicial branches of government is part of the basic structure of the Philippine Constitution. Thus, the 1987 Constitution provides that: (a) the legislative power shall be vested in the Congress of the Philippines;[33] (b) the executive power shall be vested in the President of the Philippines;[34] and (c) the judicial power shall be vested in one Supreme Court and in such lower courts as may be established.[35]

Since the Supreme Court is only granted judicial power, it should not attempt to assume or be compelled to perform non-judicial functions.[36] Judicial power is defined under Section 1, Article VIII of the 1987 Constitution as that which "includes

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[31] *Supra* note 19.

[32] *Id.* at 936, citing *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, 605 (1932).

[33] Constitution, Art. VI, Sec. 1.

[34] Constitution, Art. VII, Sec. 1.

[35] Constitution, Art. VIII, Sec. 1.

[36] J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 828 (1996).

the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." The Resolution contains directives which are outside the ambit of the Court's judicial functions.

The principle of separation of powers is explained by the Court in the leading case of *Angara v. Electoral Commission*:[37]

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other department in its exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[38]

Even the *ponente* is passionate about according respect to the system of separation of powers between the three equal branches of the government. In his dissenting opinion in the 2008 case of *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,[39] Justice Velasco emphatically stated:

> ***Separation of Powers to be Guarded***
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> Over and above the foregoing considerations, however, is the matter

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[37] 63 Phil. 139 (1936).

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

[39] G.R. Nos. 183591, 183752, 183893, 183951 & 183962, 14 October 2008, 568 SCRA 402.

of separation of powers which would likely be disturbed should the Court meander into alien territory of the executive and dictate how the final shape of the peace agreement with the MILF should look like. **The system of separation of powers contemplates the division of the functions of government into its three (3) branches: the legislative which is empowered to make laws; the executive which is required to carry out the law; and the judiciary which is charged with interpreting the law. Consequent to actual delineation of power, each branch of government is entitled to be left alone to discharge its duties as it sees fit. Being one such branch, the judiciary, as Justice Laurel asserted in *Planas v. Gil*, "will neither direct nor restrain executive [or legislative action]." Expressed in another perspective, the system of separated powers is designed to restrain one branch from inappropriate interference in the business, or intruding upon the central prerogatives, of another branch; it is a blend of courtesy and caution, "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."** x x x

Under our constitutional set up, there cannot be any serious dispute that the maintenance of the peace, insuring domestic tranquility and the suppression of violence are the domain and responsibility of the executive. **Now then, if it be important to restrict the great departments of government to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that one branch should be left completely independent of the others, independent not in the sense that the three shall not cooperate in the common end of carrying into effect the purposes of the constitution, but in the sense that the acts of each shall never be controlled by or subjected to the influence of either of the branches**.[40] (Emphasis supplied)

Indeed, adherence to the principle of separation of powers which is enshrined in our Constitution is essential to prevent

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[40] Dissenting Opinion, *id.* at 669-670. (Citations omitted)

[41] S. Carlota, *The Three Most Important Features of the Philippine Legal System that Others Should Understand*, in IALS CONFERENCE LEARNING FROM EACH OTHER: ENRICHING THE LAW SCHOOL CURRICULUM IN AN INTERRELATED WORLD 177 <www.ialsnet.org/meeting/enriching/carlota.pdf> (visited 5 November 2010).

tyranny by prohibiting the concentration of the sovereign powers of state in one body.[41] Considering that executive power is **exclusively** vested in the President of the Philippines, the Judiciary should neither undermine such exercise of executive power by the President nor arrogate executive power unto itself. The Judiciary must confine itself to the exercise of judicial functions and not encroach upon the functions of the other branches of the government.

ACCORDINGLY, I vote against the approval of the Resolution.

DISSENTING OPINION

SERENO, *J.*:

> *"The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that the Court cannot run the government. The Court has the duty of implementing constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation."*[1]

These are the words of Justice Anand of the Supreme Court of India, from which court the idea of a continuing mandatory injunction for environmental cases was drawn by the Philippine Supreme Court. These words express alarm that the Indian judiciary has already taken on the role of running the government in environmental cases. A similar situation would result in the Philippines were the majority Resolution to be adopted. Despite having the best of intentions to ensure compliance by petitioners with their corresponding statutory mandates in an urgent manner, this Court has unfortunately encroached upon prerogatives solely to be exercised by the President and by Congress.

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[1] JUSTICE DR. A.S. ANAND, Supreme Court of India, "*Judicial Review – Judicial Activism – Need for Caution,*" in *SOLI SORABJEE'S LAW AND JUSTICE: AN ANTHOLOGY,* Universal Law Publishing Company, (2003), at 377. Also in Justice A.S. Anand, *Millenium Law Lecture Series,* Thursday, October 21, 1999, Kochi, Kerala, *available at http://airwebworld.com/articles/index.php.* (visited 17 November 2010)

On 18 December 2008, the Court promulgated its decision in *MMDA v. Concerned Residents of Manila Bay,* G.R. Nos. 171947-48, denying the petition of the government agencies, defendants in Civil Case No. 1851-99. It held that the Court of Appeals, subject to some modifications, was correct in affirming the 13 September 2002 Decision of the Regional Trial Court in

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[2] "In particular: (1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its *Operational Plan for the Manila Bay Coastal Strategy* for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, *esteros,* and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275, the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

Civil Case No. 1851-99. It ordered "the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila

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(4) Pursuant to RA 9275, the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550, the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and *esteros* in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan, Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and *esteros* that discharge wastewater into the Manila Bay.

Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation."

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial jurisdiction and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003, Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152, Sec. 118 of RA 8550, and Sec. 56 of RA 9003, the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing *mandamus*," shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

No costs.

SO ORDERED."

The Court further issued each of the aforementioned agencies specific orders to comply with their statutory mandate.[2] Pursuant to the judgment above, the Court established its own *Manila Bay Advisory Committee*. Upon the recommendations of the said Committee, the present Resolution was issued. It encompasses several of the specific instructions laid out by the court in the original case, but also goes further by requiring reports and updates from the said government agencies, and setting deadlines for the submission thereof.

I find these directives in the Majority Resolution patently irreconcilable with basic constitutional doctrines and with the legislative mechanisms already in place, such as the Administrative Code and the Local Government Code, which explicitly grant control and supervision over these agencies *to the President alone, and to no one else*. For these reasons, I respectfully dissent from the Majority Resolution.

In issuing these directives, the Court has encroached upon the exclusive authority of the Executive Department and violated the doctrine of Separation of Powers

The Resolution assigned the Department of Natural Resources as the primary agency for environment protection and required the implementation of its Operational Plan for the Manila Bay Coastal Strategy. It ordered the DENR to submit the updated operational plan directly to the Court; to summarize data on the quality of Manila Bay waters; and to "submit the names and addresses of persons and companies…that generate toxic or hazardous waste on or before September 30, 2011."

The Department of the Interior and Local Government is directed to "order the Mayors of all cities in Metro Manila; the Governors of Rizal, Laguna, Cavite, Bulacan, Pampanga and Bataan; and the Mayors of all the cities and towns in said provinces to inspect all factories, commercial establishments and private homes along the banks of the major river systems…" to determine if they have wastewater treatment facilities, on or before 30

June 2011. The LGUs are given a deadline of 30 September 2011 to finish the inspection. In cooperation with the Department of Public Works and Highways (DPWH), these local governments are required to submit their plan for the removal of informal settlers and encroachments which are in violation of Republic Act No. 7279. The said demolition must take place not later than 31 December 2012.

The Metropolitan Waterworks and Sewerage System (MWSS) is required to submit its plans for the construction of wastewater treatment facilities in areas where needed, the completion period for which shall not go beyond the year 2020. On or before 30 June 2011, the MWSS is further required to have its two concessionaires submit a report on the amount collected as sewerage fees. The Local Water Utilities Administration (LWUA) is ordered to submit on or before 30 September 2011 its plan to install and operate sewerage and sanitation facilities in the towns and cities where needed, which must be fully implemented by 31 December 2020.

The Department of Agriculture and the Bureau of Aquatic Fisheries and Resources are ordered to submit on or before 30 June 2011 a list of areas where marine life in Manila Bay has improved, and the assistance extended to different Local Government Units in this regard. The Philippine Ports Authority (PPA) is ordered to report the names, make, and capacity of each ship that would dock in PPA ports; the days they docked and the days they were at sea; the activities of the concessionaire that would collect solid and liquid ship-generated waste, the volume, treatment and disposal sites for such wastes; and the violators that PPA has apprehended.

The Department of Health (DOH) is required to submit the names and addresses of septic and sludge companies that have no treatment facilities. The said agency must also require companies to procure a "license to operate" issued by the DOH. The Metropolitan Manila Development Authority (MMDA) and the seventeen (17) LGUs in Metro Manila must submit a report on the "amount of garbage collected per district…*vis-à-vis* the

average amount of garbage disposed monthly in landfills and dumpsites." MMDA must also submit a plan for the removal of informal settlers and encroachments along NCR Rivers which violate R.A. No. 7279.

Clearly, the Court has no authority to issue these directives. They fall squarely under the domain of the executive branch of the state. The issuance of specific instructions to subordinate agencies in the implementation of policy mandates in all laws, not just those that protect the environment, is an exercise of the power of supervision and control – the sole province of the Office of the President.

Both the 1987 Constitution and Executive Order No. 292, or the Administrative Code of the Philippines, state:

> Exercise of Executive Power. - The Executive power shall be vested in the President.[3]
>
> Power of Control.- The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.[4]

In *Anak Mindanao Party-list Group v. Executive Secretary*,[5] this Court has already asserted that the enforcement of all laws is the sole domain of the Executive. The Court pronounced that the express constitutional grant of authority to the Executive is broad and encompassing, such that it justifies reorganization measures[6] initiated by the President. The Court said:

> While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President.

[3] E.O. 292, Book II, Chapter 3, Sec. 11; and 1987 Constitution, Art. 7, Sec. 1.

[4] E.O. 292, Book III, Chapter 1, Sec. 1; and 1987 Constitution, Art. 7, Sec. 17.

[5] G.R. No. 166052, 29 August 2007, 531 SCRA 583.

[6] E.O. 379 and 364 were promulgated, placing the Presidential Commission for the Urban Poor (PCUP) under the supervision and control of the DAR, and the National Commission on Indigenous Peoples (NCIP) as an attached agency under the Department of Agrarian Reform.

It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising and enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.

To herein petitioner agencies impleaded below, this Court has given very specific instructions to report the progress and status of their operations directly to the latter. The Court also required the agencies to apprise it of any noncompliance with the standards set forth by different laws as to environment protection. This move is tantamount to making these agencies accountable to the Court instead of the President. The very occupation streamlined especially for the technical and practical expertise of the Executive Branch is being usurped without regard for the delineations of power in the Constitution. In fact, the issuance of the Resolution itself is in direct contravention of the President's exclusive power to issue administrative orders, as shown thus:

Administrative Orders. - Acts of the President which relate to particular aspect of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.[7]

The Court's discussion in *Ople v. Torres*[8] pertaining to the extent and breadth of administrative power bestowed upon the

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[7] E.O. 292, Book 3, Title 1, Chapter 2, Sec 3.

[8] G.R. No. 127685, 23 July 1998, 293 SCRA 141.

President is apt:

> Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.
>
> … … …
>
> An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.

The implementation of the policy laid out by the legislature – in the Philippine Clean Water Act of 2004, the Toxic and Hazardous Waste Act or Republic Act 6969, the Environment Code, and other laws geared towards environment protection – is under the competence of the President. Achieved thereby is a uniform standard of administrative efficiency. And since it is through administrative orders promulgated by the President that specific operational aspects for these policies are laid out, the Resolution of this Court overlaps with the President's administrative power. No matter how urgent and laudatory the cause of environment protection has become, it cannot but yield to the higher mandate of separation of powers and the mechanisms laid out by the people through the Constitution.

One of the directives is that which requires local governments to conduct inspection of homes and establishments along the riverbanks, and to submit a plan for the removal of certain informal settlers. Not content with arrogating unto itself the powers of "control" and "supervision" granted by the Administrative Code to the President over said petitioner administrative agencies, the Court is also violating the latter's general supervisory authority over local governments:

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[9] 1987 Constitution, Art. 2 on State Policies.

[10] E.O. 292, Book 3, Title 1, Chapter 6, Sec. 25.

Sec. 18. General Supervision Over Local Governments. - The President shall exercise general supervision over local governments.[9]

Sec. 25. *National Supervision over Local Government Units*.––(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.[10]

The powers expressly vested in any branch of the Government shall not be exercised by, nor delegated to, any other branch of the Government, except to the extent authorized by the Constitution.[11]

As has often been repeated by this Court, the doctrine of separation of powers is the very wellspring from which the Court draws its legitimacy. Former Chief Justice Reynato S. Puno has traced its origin and rationale as inhering in the republican system of government:

The principle of separation of powers prevents the **concentration** of legislative, executive, and judicial powers to a single branch of government by deftly allocating their exercise to the three branches of government...

In his famed treatise, **The Spirit of the Laws**, Montesquieu authoritatively analyzed the nature of executive, legislative and judicial powers and with a formidable foresight counselled that any combination of these powers would create a system with an inherent tendency towards tyrannical actions…

Again, there is no liberty, if the judiciary power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public

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[11] E.O. 292, Book 2, Chapter 1, Sec 1(8).

[12] *C.J.* Reynato S. Puno, Separate Concurring Opinion, *Macalintal v. Comelec*, G.R. No. 157013, 10 July 2003, 405 SCRA 614.

resolutions, and that of trying the causes of individuals.[12]

Nor is there merit in the contention that these directives will speed up the rehabilitation of Manila Bay better than if said rehabilitation were left to the appropriate agencies. Expediency is never a reason to abandon legitimacy. "The Separation of Powers often impairs efficiency, in terms of dispatch and the immediate functioning of government. It is the *long-term staying power* of government that is enhanced by the mutual accommodation required by the separation of powers."[13]

Mandamus does not lie to compel a discretionary act.

In G.R. Nos. 171947-48, the Court explicitly admitted that "[w]hile the implementation of the MMDA's mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by *mandamus*."[14] In denying the appeal of petitioners and affirming the Decision of the RTC, the Court of Appeals stressed that the trial court's Decision did not require petitioners to do tasks outside of their usual basic functions under existing laws.[15]

In its revised Resolution, the Court is now ***setting deadlines for the implementation of policy formulations which require decision-making by the agencies.*** It has confused an order enjoining a *duty*, with an order outlining *specific technical rules on how to perform* such a duty. Assuming without conceding that *mandamus* were availing under Rule 65, the Court can only require a particular action, but it cannot provide for the means to accomplish such action. It is at this point where the

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[13] *United States v. American Tel. & Tel Co.*, 567 F 2d 121 (1977), citing J. Brandeis, Separate Dissenting Opinion, *Myers v. United States*, US 52 293, 47 (1926).

[14] P. 12, *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, 15 December 2008, 574 SCRA 661.

[15] *Id.* at 9.

[16] G.R. No. 147044, 24 August 2007, 531 SCRA 56, 62-63.

demarcation of the general act of "cleaning up the Manila Bay" has become blurred, so much so that the Court now engages in the slippery slope of overseeing technical details.

In *Sps. Abaga v. Sps. Panes*[16] the Court said:

> From the foregoing Rule, there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person **unlawfully neglects the performance of an act which the law specifically enjoins** as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled. The "duty" mentioned in the first situation is a ministerial duty, not a discretionary duty, requiring the exercise of judgment…In short, for *mandamus* to lie, the duty sought to be compelled to be performed must be a **ministerial duty**, not a discretionary duty, and the petitioner must show that he has a well-defined, clear and certain right.

Discretion, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right.[17]

The duty being enjoined in *mandamus* must be one according to the terms defined in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, *but not to act one way or the other*. This is the end of any participation by the Court, if it is authorized to participate at all.

In setting a deadline for the accomplishment of these directives, not only has the Court provided the means of accomplishing the task required, it has actually gone beyond the standards set by the law. There is nothing in the Environment Code, the Administrative Code, or the Constitution which grants this

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[17] *Asuncion v. De Yriarte*, 28 Phil. 67.

[18] *Meralco Securities v. Savellano*, L-36748, 23 October 1982, 117 SCRA 804.

[19] G.R. No. 162243, 29 November 2006, 508 SCRA 498.

authority to the judiciary. It is already settled that, "If the law imposes a duty upon a public officer and gives him the right to decide *when* and *how* the duty shall be performed, such duty is not ministerial."[18]

In *Alvarez v. PICOP Resources*,[19] the Court ruled that,

> As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a *ministerial* duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

The Constitution does not authorize the courts to "monitor" the execution of their decisions.

It is an oft-repeated rule that the Court has no power to issue advisory opinions, much less "directives" requiring progress reports from the parties respecting the execution of its decisions. The requirements of "actual case or controversy" and "justiciability" have long been established in order to limit the exercise of judicial review. While its dedication to the implementation of the *fallo* in G.R. 171947-48 is admirable, the Court's power cannot spill over to actual encroachment upon both the "control" and police powers of the State under the guise of a "continuing *mandamus*."

In G.R. 171947-48, the Court said: "Under what other judicial discipline describes as 'continuing *mandamus*,' the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference."

[20] A term used by *Manu Nair*, correspondent of *The International Environment News*, describing the Supreme Court of India in the Forest Conservation Case. Available at http://www.abanet.org/intlaw/committees/business_regulation/environment/nairreportjune05.pdf. (visited 17 November 2010)

[21] 1996 SC (2) 199 JT 1996 (1) 708 1996 SCALE (1) SP 31.

Needless to say, the "continuing *mandamus*" in this case runs counter to principles of "actual case or controversy" and other requisites for judicial review. In fact, the Supreme Court is in danger of acting as a "super-administrator"[20] – the scenario presently unfolding in India where the supposed remedy originated. There the remedy was first used in *Vineet Narain and Others v. Union of India,*[21] a public interest case for corruption filed against high-level officials. Since then, the remedy has been applied to environmental cases as an oversight and control power by which the Supreme Court of India has created committees (*i.e.* the Environment Pollution Authority and the Central Empowered Committee in forest cases) and allowed these committees to act as the policing agencies.[22] But the most significant judicial intervention in this regard was the series of orders promulgated by the Court in *T.N. Godavarman v. Union of India.*[23]

Although the Writ Petition filed by *Godavarman* was an attempt to seek directions from the Court regarding curbing the illegal felling of trees, the Supreme Court went further to make policy determinations in an attempt to improve the country's forests. The Court Order suspending felling of trees that did not adhere to state government working plans resulted in effectively freezing the country's timber industry. The Supreme Court completely banned tree felling in certain north-eastern states to any part of the country. The court's role was even more pronounced in its later directions. While maintaining the ban on felling of trees in the seven northeast states, the court directed the state governments to gather, process, sell, and otherwise manage the already felled timber in the manner its specified the Supreme Court became the supervisor of all forest issues, ranging from controlling, pricing and transport of timber to

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[22] RAJEEV DAVAN, Supreme Court advocate, Supreme Court of India, *Judicial Excessivism*, available at http://www.indiaenvironmentportal.org.in/content/judicialexcessivism. (visited 17 November 2010)

[23] *T.N. Godavarman Thirumulkpad v. Union of India & Ors* (1997) 2 SCC 267.

[24] *Supra* note 20 at page 2.

[25] ABHAYKUMAR DILIP OSTWAL, Supreme Court advocate, Supreme Court of India, *Judicial Activism and Self-Restraint*, available at http://airwebworld.com/articles/index.php. (visited 17 November 2010)

management of forest revenue, as well as implementation of its orders.[24]

Thus, while it was originally intended to assert public rights in the face of government inaction and neglect, the remedy is now facing serious criticism as it has spiraled out of control.[25] In fact, even Justice J. S. Verma, who penned the majority opinion in *Vineet Narain* in which 'continuing *mandamus*' first made its appearance, subsequently pronounced that *"judicial activism should be neither judicial ad hocism nor judicial tyranny."*[26] Justice B.N. Srikrishna observed that judges now seem to want to engage themselves with boundless enthusiasm in complex socio-economic issues raising myriads of facts and ideological issues that cannot be managed by "judicially manageable standards."[27] Even Former Chief Justice A. S. Anand, a known defender of judicial activism, has warned against the tendency towards "judicial adventurism," reiterating the principle that "the role of the judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."[28]

Unless our own Supreme Court learns to curb its excesses and apply to this case the standards for judicial review it has developed over the years and applied to co-equal branches, the scenario in India could very well play out in the Philippines. The Court must try to maintain a healthy balance between the departments, precisely as the Constitution mandates, by delineating

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[26] JUSTICE J.S. VERMA, "Judicial activism should be neither judicial *ad hocism* nor judicial tyranny", as published in *The Indian Express*, 06th April 2007 (http://www.indianexpress.com).

[27] JUSTICE B.N. SRIKRISHNA, "*Skinning a Cat*" (2005) 8 SCC (J) 3.

[28] *Supra* note 1.

[29] A phrase used by Justice Laurel in *Angara v. Electoral Commission*, 63 Phil. 130 (1936).

[30] G.R. No. 115525, 25 August 1994, 435 SCRA 630, holding that judicial inquiry whether the formal requirements for the enactment of statutes — beyond those prescribed by the Constitution — have been observed, is precluded by the principle of separation of powers.

its "deft strokes and bold lines,"[29] ever so conscious of the requirements of actual case and controversy. While, admittedly, there are certain flaws in the operation and implementation of the laws, the judiciary cannot take the initiative to compensate for such perceived inaction.

The Court stated in *Tolentino v. Secretary of Finance*:[30]

> Disregard of the essential limits imposed by the case and controversy requirement can in the long run only result in undermining our authority as a court of law. For, as judges, what we are called upon to render is judgment according to law, not according to what may appear to be the opinion of the day…

Hence, "over nothing but cases and controversies can courts exercise jurisdiction, and it is to make the exercise of that jurisdiction effective that they are allowed to pass upon constitutional questions."[31] Admirable though the sentiments of the Court may be, it must act within jurisdictional limits. These limits are founded upon the traditional requirement of a *cause of action*: "the act or omission by which a party violates a right of another."[32] In constitutional cases, for every writ or remedy, there must be a clear pronouncement of the corresponding right which has been infringed. Only then can there surface that "clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests."[33]

Unfortunately, the Court fails to distinguish between a pronouncement on violation of rights on one hand, and non-performance of duties *vis-à-vis* operational instructions, on the other. Moreover, it also dabbles in an interpretation of constitutional rights in a manner that is dangerously pre-emptive of legally available remedies.

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[31] VICENTE V. MENDOZA, "*The Nature and Function of Judicial Review*," 31 IBP Journal 1 (2005).

[32] Rules of Court, Rule 2, Sec. 2.

[33] *United States v. Fruehauf*, 365 U.S. 146, 157 (1968).

The "continuing mandamus" palpably overlaps with the power of congressional oversight.

Article 6, Section 22 of the 1987 Constitution states:

> The heads of department may upon their own initiative, with the consent of the President, or upon the request of either House, or as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the state or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

This provision pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress' oversight function. *Macalintal v. Comelec*[34] discussed the scope of congressional oversight in full. *Oversight* refers to the power of the legislative department to check, monitor and ensure that the laws it has enacted are enforced:

> **The power of Congress does not end with the finished task of legislation**. **Concomitant with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed**. As well stressed by one scholar, the legislature "fixes the main lines of substantive policy and is entitled to see that administrative policy is in harmony with it; it establishes the volume and purpose of public expenditures and ensures their legality and propriety; it must be satisfied that internal administrative controls are operating to secure economy and efficiency; and it informs itself of the conditions of administration of remedial measure.
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> … … …

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[34] *Macalintal v. Comelec*, G.R. No. 157013, 10 July 2003, 405 SCRA 614.

Clearly, oversight concerns **post-enactment** measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (e) to assess executive conformity with the congressional perception of public interest.

… … …

Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

Macalintal v. Comelec further discusses that legislative supervision under the oversight power connotes a continuing and informed awareness on the part of Congress regarding executive operations in a given administrative area. Because the power to legislate includes the power to ensure that the laws are enforced, this monitoring power has been granted by the Constitution to the legislature. In cases of executive non-implementation of statutes, the courts cannot justify the use of "continuing *mandamus*," as it would by its very definition overlap with the monitoring power under *congressional oversight*. The Resolution does not only encroach upon the general supervisory function of the Executive, it also diminished and arrogated unto itself the power of congressional oversight.

Conclusion

This Court cannot nobly defend the environmental rights of generations of Filipinos enshrined in the Constitution while in the same breath eroding the foundations of that very instrument from which it draws its power. While the remedy of "continuing *mandamus*" has evolved out of a Third World jurisdiction similar to ours, we cannot overstep the boundaries laid down by the rule of law. Otherwise, this Court would rush recklessly beyond the delimitations precisely put in place to safeguard excesses of power. The tribunal, considered by many citizens as the last guardian of fundamental rights, would then resemble nothing more than an idol with feet of clay: strong in appearance, but weak in foundation.

> *…The Court becomes a conscience by acting to remind us of limitation on power, even judicial power, and the interrelation of good purposes with good means. Morality is not an end dissociated from means. There is a morality of morality, which respects the limitation of office and the fallibility of the human mind…self-limitation is the first*

mark of the master. That, too is part of the role of the conscience.[35]

The majority Resolution would, at the same time, cast the light of scrutiny more harshly on judicial action in which the Court's timely exercise of its powers is called for – as in the cases of prisoners languishing in jail whose cases await speedy resolution by this Court. There would then be nothing to stop the executive and the legislative departments from considering as fair game the judiciary's own accountability in its clearly delineated department.

EN BANC

[G.R. No. 176951. February 15, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.*

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[35] PAUL FREUND, quoting Justice Brandeis, *in Law and Justice* 36 (1968).

[G.R. No. 177499. February 15, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; AND MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL,** *respondents.*

[G.R. No. 178056. February 15, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; MUNICIPALITY OF EL SALVADOR, PROVINCE OF MISAMIS ORIENTAL; MUNICIPALITY OF NAGA, CEBU; and DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; LEGISLATIVE POWER; REFERS TO THE AUTHORITY,

UNDER THE CONSTITUTION, TO MAKE LAWS, AND TO ALTER AND REPEAL THEM.— The enactment of the Cityhood Laws is an exercise by Congress of its legislative power. Legislative power is the authority, under the Constitution, to make laws, and to alter and repeal them. The Constitution, as the expression of the will of the people in their original, sovereign, and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general, and comprehensive. The legislative body possesses plenary powers for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects, and extends to matters of general concern or common interest.

2. ID.; ID.; ID.; THE LOCAL GOVERNMENT CODE IS A CREATION OF CONGRESS THROUGH ITS LAW-MAKING POWERS.— Without doubt, the LGC is a creation of Congress through its law-making powers. Congress has the power to alter or modify it as it did when it enacted R.A. No. 9009. Such power of amendment of laws was again exercised when Congress enacted the Cityhood Laws. When Congress enacted the LGC in 1991, it provided for quantifiable indicators of economic viability for the creation of local government units—income, population, and land area. Congress deemed it fit to modify the income requirement with respect to the conversion of municipalities into component cities when it enacted R.A. No. 9009, imposing an amount of ₱100 million, computed only from locally-generated sources. However, Congress deemed it wiser to exempt respondent municipalities from such a belatedly imposed modified income requirement in order to uphold its higher calling of putting flesh and blood to the very intent and thrust of the LGC, which is countryside development and autonomy, especially accounting for these municipalities as engines for economic growth in their respective provinces. Undeniably, R.A. No. 9009 amended the LGC. But it is also true that, in effect, the Cityhood Laws amended R.A. No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory R.A. No. 9009, such Cityhood Laws are, therefore,

also amendments to the LGC itself. For this reason, we reverse the November 18, 2008 Decision and the August 24, 2010 Resolution on their strained and stringent view that the Cityhood Laws, particularly their exemption clauses, are not found in the LGC.

3. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; VALID CLASSIFICATION; REQUISITES.— [T]he equal protection clause of the 1987 Constitution permits a valid classification, provided that it: (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.

4. ID.; ID.; ID.; ID.; ID.; SUBSTANTIAL DISTINCTION; PRESENT IN CASE AT BAR.— [T]he determination of the existence of substantial distinction with respect to respondent municipalities does not simply lie on the mere pendency of their cityhood bills during the 11th Congress. This Court sees the bigger picture. The existence of substantial distinction with respect to respondent municipalities covered by the Cityhood Laws is measured by the purpose of the law, not by R.A. No. 9009, but by the very purpose of the LGC, as provided in its Section 2 (a) x x x. Indeed, substantial distinction lies in the capacity and viability of respondent municipalities to become component cities of their respective provinces. Congress, by enacting the Cityhood Laws, recognized this capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC, manifested by the pendency of their cityhood bills during the 11th Congress and their relentless pursuit for cityhood up to the present. Truly, the urgent need to become a component city arose way back in the 11th Congress, and such condition continues to exist.

5. ID.; LEGISLATIVE DEPARTMENT; CONGRESS; ENACTMENT OF THE CITYHOOD LAWS, EFFECT.— In the enactment of the Cityhood Laws, Congress merely took the 16 municipalities covered thereby from the disadvantaged position brought about by the abrupt increase in the income requirement of R.A. No. 9009, acknowledging the "privilege" that they have already given to those newly-converted component

cities, which prior to the enactment of R.A. No. 9009, were undeniably in the same footing or "class" as the respondent municipalities. Congress merely recognized the capacity and readiness of respondent municipalities to become component cities of their respective provinces. x x x Congress, who holds the power of the purse, in enacting the Cityhood Laws, only sought the well-being of respondent municipalities, having seen their respective capacities to become component cities of their provinces, temporarily stunted by the enactment of R.A. No. 9009. By allowing respondent municipalities to convert into component cities, Congress desired only to uphold the very purpose of the LGC, *i.e.*, to make the local government units "enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals," which is the very mandate of the Constitution.

6. REMEDIAL LAW; COURTS; SUPREME COURT; SHOULD NOT BE RESTRICTED BY TECHNICAL RULES OF PROCEDURE AT THE EXPENSE OF THE TRANSCENDENTAL INTEREST OF JUSTICE AND EQUITY.— [W]e should not be restricted by technical rules of procedure at the expense of the transcendental interest of justice and equity. While it is true that litigation must end, even at the expense of errors in judgment, it is nobler rather for this Court of last resort, as vanguard of truth, to toil in order to dispel apprehensions and doubt x x x.

ABAD, *J., concurring opinion:*

1. POLITICAL LAW; LOCAL GOVERNMENT; LOCAL GOVERNMENT UNITS; CREATION OF CITIES; INCOME REQUIREMENT; THE SUBJECT MUNICIPALITIES IN CASE AT BAR ARE EXEMPT FROM THE INCREASED INCOME REQUIREMENT.— [T]he legislature intended to exempt from the amended income requirement of R.A. 9009 the municipalities that had pending cityhood bills during the 11th Congress. As a matter of fact, such legislative intent was carried over to the 12th and the 13th Congress when the House of Representatives adopted Joint Resolutions that sought the exemption of twenty-four municipalities, including the sixteen, from the application

of R.A. 9009. The continuing intent of Congress culminated in the inclusion of the exemption clause in the cityhood bills and their subsequent passage. x x x Congress did not anymore insert an exemption clause from the income requirement of R.A. 9009 since such exchanges, when read by the Court, would already reveal the lawmakers' intent regarding such matter. Besides, the exemption clause found in each of the cityhood laws serves as an affirmation of Congress' intent to exempt them from the increased income requirement of R.A. 9009. These new cities have not altogether been exempted from the operation of the Local Government Code covering income requirement. They have been expressly made subject to the lower income requirement of the old code. There remains, therefore, substantial compliance with the provision of Section 10, Article X of the Constitution which provides that no city may be created "except in accordance with the criteria established in the local government code." The above interpretation accommodates the "primary" intention of Congress in preventing the mad rush of municipalities wanting to be converted into cities and the other intention of Congress to exempt the municipalities which have pending cityhood bills before the enactment of R.A. 9009.

2. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; NOT VIOLATED IN CASE AT BAR.— The equal protection clause of the Constitution seeks to protect persons from being deprived of life, liberty, or property by the uneven application of statutes. In invoking this protection, it is incumbent on petitioner League of Cities to show, not only that the exemption granted to the sixteen cities amounted to arbitrary classification but, that the League or their members have been deprived of life, liberty or property, by reason of the exemption. The League of Cities has failed to discharge this burden. x x x Far from baselessly favoring the sixteen municipalities, Congress gave them exemptions from the application of R.A. 9009 based on its sense of justice and fairness. x x x What makes the injustice quite bitter is the fact that the sixteen cities did not merely have pending cityhood bills during the 11th Congress. They also met at that time the income criteria set under Section 450 of the then Local Government Code. The Court owes to these cities the considerations that justice and fair play demands. It can not

be denied that substantial distinction sets them apart from the other cities. Further, petitioner League of Cities failed to show that the creation of the sixteen new cities discriminated against other cities. As the respondent cities point out, the majority of the present cities in our midst do not meet the ₱100 million minimum income requirement of the Local Government Code. It boggles the mind how these deficient cities can complain of denial of equal protection of the law. Besides, assuming an improper classification in the case of the sixteen cities, petitioner League of Cities can not invoke the equal protection clause since it has failed to show that it will suffer deprivation of life, liberty, or property by reason of such classification. Actually, the existing cities would not cease to exist nor would their liberties suffer by reason of the enactment of the sixteen cityhood laws. That their Internal Revenue Allotment (IRA) will be diminished does not amount to deprivation of property since the IRA is not their property until it has been automatically released. Mere expectancy in the receipt of IRA can not be regarded as the "property" envisioned in the Bill of Rights.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENTS; THE SUPREME COURT HAS UNDER EXTRAORDINARY CIRCUMSTANCES RECONSIDERED ITS RULING DESPITE AN ENTRY OF JUDGMENT.— The majority maintain that the Court did not properly set aside its original decision dated November 18, 2008, which earlier invalidated the Cityhood laws since, procedurally, the Court had previously declared such decision already final. But a question had been raised regarding the propriety of such declaration of finality, given a pending question respecting the consequence of a 6-6 vote on the constitutionality of the cityhood laws. At any rate, the Court has under extraordinary circumstances reconsidered its ruling despite an entry of judgment. It will not allow the technical rules to hinder it from rendering just and equitable relief. The issues presented in this case do not only involve rights and obligations of some parties but the constitutionality of the exercise by Congress of its power to make laws. There is no reason to uphold the November 18, 2008 decision since the petitioner League of Cities has failed to overcome the strong presumption in favor of the cityhood laws' constitutionality.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; LOCAL GOVERNMENT; LOCAL GOVERNMENT UNITS; THE CREATION THEREOF MUST FOLLOW THE CRITERIA ESTABLISHED IN THE LOCAL GOVERNMENT CODE.— [T]he 16 Cityhood Laws violate Section 10, Article X of the 1987 Constitution. x x x The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code. The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws. RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from ₱20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the ₱100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement. x x x Section 10, Article X of the Constitution expressly provides that **"no x x x city shall be created x x x except in accordance with the criteria established in the local government code."** This provision can only be interpreted in one way, that is, all the criteria for the creation of cities must be embodied exclusively in the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws other than the Local Government Code, provided an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution.

2. ID.; ID.; ID.; CREATION OF CITIES; INCOME REQUIREMENT; THE EXEMPTION FROM THE INCREASED INCOME REQUIREMENT MUST BE WRITTEN IN THE LOCAL GOVERNMENT CODE AND NOT IN ANY OTHER LAW.— In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills

were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

3. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; VALID CLASSIFICATION; CONDITIONS; NOT COMPLIED WITH IN CASE AT BAR.— [T]he 16 Cityhood Laws violate the equal protection clause of the Constitution. "The equal protection clause of the 1987 Constitution permits a valid classification under the following conditions: 1. The classification must rest on substantial distinctions; 2. The classification must be germane to the purpose of the law; 3. The classification must not be limited to existing conditions only; and 4. The classification must apply equally to all members of the same class." x x x [T]here is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality.** Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. **In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.** Moreover, the fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. **That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.** Further, the exemption provision in the Cityhood Laws gives the 16

municipalities a unique advantage based on an arbitrary date — the filing of their cityhood bills before the end of the 11th Congress – as against all other municipalities that want to convert into cities after the effectivity of RA 9009. In addition, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded, the exemption provision found in the Cityhood Laws, even if it were written in Section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause.

APPEARANCES OF COUNSEL

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Lionel A. Titong for Municipality of Borongan.
Noel T. Tiampong for Municipalities of Catbalogan, Samar & Lamitan, Basilan.
Rodolfo R. Zabella, Jr. for Municipality of Batac,
Estelito P. Mendoza for the Cities of Baybay, Bogo (Cebu), *et al.*
Immanuel M. Garde for Himamaylan City.
Vicente V. Dangazo for Gingoog City.
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Cesar E. Malazarte for City Government of Legaspi.
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Francisco C. Geronilla for Mayor of Mati.
Francisco V. Mijares, Jr. & Socorro D'Marie T. Inting for Municipality of Guihulngan.
Randy B. Bulwayan for Municipality of Tabuk.
Jose Augusto J. Salvacion for City of Tayabas.
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City Legal Officer for petitioner-intervenor City of Tagum.

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Raoul C. Creencia and *Edwin M. Carillo* for the Cities of Mati, Davao and Carcar, Cebu.

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Manuel M. Lepardo for petitioner in intervention Ludivina T. Mas, *et al*.

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R E S O L U T I O N

BERSAMIN, *J.*:

For consideration of this Court are the following pleadings:

1. Motion for Reconsideration of the "Resolution" dated August 24, 2010 dated and filed on September 14, 2010 by respondents Municipality of Baybay, *et al*.; and

2. Opposition [To the "Motion for Reconsideration of the 'Resolution' dated August 24, 2010"].

Meanwhile, respondents also filed on September 20, 2010 a Motion to Set "Motion for Reconsideration of the 'Resolution' dated August 24, 2010" for Hearing. This motion was, however, already denied by the Court *En Banc*.

A brief background —

These cases were initiated by the consolidated petitions for prohibition filed by the League of Cities of the Philippines (LCP), City of Iloilo, City of Calbayog, and Jerry P. Treñas, assailing the constitutionality of the sixteen (16) laws,[1] each converting the municipality covered thereby into a component city (Cityhood Laws), and seeking to enjoin the Commission on Elections (COMELEC) from conducting plebiscites pursuant to the subject laws.

In the Decision dated November 18, 2008, the Court *En Banc*, by a 6-5 vote,[2] granted the petitions and struck down the Cityhood Laws as unconstitutional for violating Sections 10 and 6, Article X, and the equal protection clause.

In the Resolution dated March 31, 2009, the Court *En Banc*, by a 7-5 vote,[3] denied the first motion for reconsideration.

On April 28, 2009, the Court *En Banc* issued a Resolution, with a vote of 6-6,[4] which denied the second motion for reconsideration for being a prohibited pleading.

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[1] Republic Acts 9389 [Baybay City, Leyte], 9390 [Bogo City, Cebu], 9391 [Catbalogan City, Samar], 9392 [Tandag City, Surigao del Sur], 9393 [Lamitan City, Basilan], 9394 [Borongan City, Samar], 9398 [Tayabas City, Quezon], 9404 [Tabuk City, Kalinga], 9405 [Bayugan City, Agusan del Sur], 9407 [Batac City, Ilocos Norte], 9408 [Mati City, Davao Oriental], 9409 [Guihulngan City, Negros Oriental], 9434 [Cabadbaran City, Agusan del Norte], 9435 [El Salvador City, Misamis Oriental], 9436 [Carcar City, Cebu], and 9491 [Naga City, Cebu].

[2] Penned by J. Carpio, with JJ. Quisumbing, Austria-Martinez, Carpio Morales, Velasco, Jr., and Brion, concurring; dissenting, J. Reyes, joined by JJ. Corona, Azcuna, Chico-Nazario, and Leonardo-De Castro; C.J. Puno, and JJ. Nachura and Tinga took no part; J. Ynares-Santiago was on leave.

[3] Justice Velasco, Jr. wrote a Dissenting Opinion, joined by Justices Ynares-Santiago, Corona, Chico-Nazario, and Leonardo-De Castro. Chief Justice Puno and Justice Nachura took no part.

[4] Justice Velasco, Jr. wrote a Dissenting Opinion, joined by Justices Ynares-Santiago, Corona, Chico-Nazario, Leonardo-De Castro, and Bersamin. Chief Justice Puno and Justice Nachura took no part. Justice Quisumbing was on leave.

In its June 2, 2009 Resolution, the Court *En Banc* clarified its April 28, 2009 Resolution in this wise—

> As a rule, a second motion for reconsideration is a prohibited pleading pursuant to Section 2, Rule 52 of the Rules of Civil Procedure which provides that: "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Thus, a decision becomes final and executory after 15 days from receipt of the denial of the first motion for reconsideration.
>
> However, when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading.
>
> In the present case, the Court voted on the second motion for reconsideration filed by respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus, the second motion for reconsideration was no longer a prohibited pleading. However, for lack of the required number of votes to overturn the 18 November 2008 Decision and 31 March 2009 Resolution, the Court denied the second motion for reconsideration in its 28 April 2009 Resolution.[5]

Then, in another Decision dated December 21, 2009, the Court *En Banc*, by a vote of 6-4,[6] declared the Cityhood Laws as constitutional.

On August 24, 2010, the Court *En Banc*, through a Resolution, by a vote of 7-6,[7] resolved the *Ad Cautelam* Motion for Reconsideration and Motion to Annul the Decision of December 21, 2009, both filed by petitioners, and the *Ad Cautelam* Motion

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[5] Citations omitted.

[6] Penned by J. Velasco, Jr., with JJ. Corona, Leonardo-De Castro, Bersamin, Abad, and Villarama, concurring; dissenting, J. Carpio, joined by JJ. Carpio Morales, Brion, and Peralta; C.J. Puno and JJ. Nachura and Del Castillo took no part.

[7] Penned by J. Carpio, with JJ. Carpio Morales, Brion, Peralta, Villarama, Mendoza, and Sereno, concurring; dissenting, J. Velasco, Jr., joined by C.J. Corona, and JJ. Leonardo-De Castro, Bersamin, Abad, and Perez; JJ. Nachura and Del Castillo took no part.

for Reconsideration filed by petitioners-in-intervention Batangas City, Santiago City, Legazpi City, Iriga City, Cadiz City, and Oroquieta City, reinstating the November 18, 2008 Decision. Hence, the aforementioned pleadings.

Considering these circumstances where the Court *En Banc* has twice changed its position on the constitutionality of the 16 Cityhood Laws, and especially taking note of the novelty of the issues involved in these cases, the Motion for Reconsideration of the "Resolution" dated August 24, 2010 deserves favorable action by this Court on the basis of the following cogent points:

1.
The 16 Cityhood Bills do not violate Article X, Section 10 of the Constitution.

Article X, Section 10 provides—

> Section 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

The tenor of the *ponencias* of the November 18, 2008 Decision and the August 24, 2010 Resolution is that the exemption clauses in the 16 Cityhood Laws are unconstitutional because they are not written in the Local Government Code of 1991 (LGC), particularly Section 450 thereof, as amended by Republic Act (R.A.) No. 9009, which took effect on June 30, 2001, *viz.*—

> Section 450. *Requisites for Creation.* –a) A municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated annual income, as certified by the Department of Finance, of at least **One Hundred Million Pesos (₱100,000,000.00) for at least two (2) consecutive years** based on 2000 constant prices, and if it has either of the following requisites:
>
> x x x x x x x x x
>
> (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income. (Emphasis supplied)

Prior to the amendment, Section 450 of the LGC required only an average annual income, as certified by the Department of Finance, of at least ₱20,000,000.00 for the last two (2) consecutive years, based on 1991 constant prices.

Before Senate Bill No. 2157, now R.A. No. 9009, was introduced by Senator Aquilino Pimentel, there were 57 bills filed for conversion of 57 municipalities into component cities. During the 11th Congress (June 1998-June 2001), 33 of these bills were enacted into law, while 24 remained as pending bills. Among these 24 were the 16 municipalities that were converted into component cities through the Cityhood Laws.

The rationale for the enactment of R.A. No. 9009 can be gleaned from the sponsorship speech of Senator Pimentel on Senate Bill No. 2157, to wit—

Senator Pimentel. Mr. President, I would have wanted this bill to be included in the whole set of proposed amendments that we have introduced to precisely amend the Local Government Code. However, it is a fact that there is a **mad rush of municipalities wanting to be converted into cities.** Whereas in 1991, when the Local Government was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion to the same status. **At the rate we are going, I am apprehensive that before long this nation will be a nation of all cities and no municipalities.**

It is for that reason, Mr. President, that we are proposing among other things, that the financial requirement, which, under the Local Government Code, is fixed at ₱20 million, be raised to ₱100 million to enable a municipality to have the right to be converted into a city, and the ₱100 million should be sourced from locally generated funds.

What has been happening, Mr. President, is, the municipalities aspiring to become cities say that they qualify in terms of financial requirements by incorporating the Internal Revenue share of the taxes of the nation on to their regularly generated revenue. Under that requirement, it looks clear to me that practically all municipalities in this country would qualify to become cities.

It is precisely for that reason, therefore, that we are seeking the approval of this Chamber to amend, particularly Section 450 of

Republic Act No. 7160, the requisite for the average annual income of a municipality to be converted into a city or cluster of *barangays* which seek to be converted into a city, raising that revenue requirement from ₱20 million to ₱100 million for the last two consecutive years based on 2000 constant prices.[8]

While R.A. No. 9009 was being deliberated upon, Congress was well aware of the pendency of conversion bills of several municipalities, including those covered by the Cityhood Laws, desiring to become component cities which qualified under the ₱20 million income requirement of the old Section 450 of the LGC. The interpellation of Senate President Franklin Drilon of Senator Pimentel is revealing, thus—

THE PRESIDENT. The Chair would like to ask for some clarificatory point.

SENATOR PIMENTEL. Yes, Mr. President.

THE PRESIDENT. This is just on the point of the **pending bills in the Senate which propose the conversion of a number of municipalities into cities and which qualify under the present standard.**

We would like to know the view of the sponsor: **Assuming that this bill becomes a law, will the Chamber apply the standard as proposed in this bill to those bills which are pending for consideration?**

SENATOR PIMENTEL. Mr. President, **it might not be fair to make this bill, on the assumption that it is approved, retroact to the bills that are pending in the Senate conversion from municipalities to cities.**

THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber, assuming that this bill becomes a law tomorrow, that it will apply to those bills which are already approved by the House under the old version of the Local Government Code and are now pending in the Senate? The Chair does not know if we can craft a language which will limit the application to those which are not yet in the Senate. Or is that a policy that the Chamber will adopt?

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[8] II Record, Senate, 13th Congress, p. 164 (October 5, 2000); *rollo* (G.R. No. 176951), Vol. 5, p. 3765.

SENATOR PIMENTEL. Mr. President, personally, **I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.**

THE PRESIDENT. **So the understanding is that those bills which are already pending in the Chamber will not be affected.**

SENATOR PIMENTEL. **These will not be affected, Mr. President.**

THE PRESIDENT. Thank you Mr. Chairman.[9]

Clearly, based on the above exchange, Congress intended that those with pending cityhood bills during the 11th Congress would not be covered by the new and higher income requirement of ₱100 million imposed by R.A. No. 9009. When the LGC was amended by R.A. No. 9009, the amendment carried with it both the letter and the intent of the law, and such were incorporated in the LGC by which the compliance of the Cityhood Laws was gauged.

Notwithstanding that both the 11th and 12th Congress failed to act upon the pending cityhood bills, both the letter and intent of Section 450 of the LGC, as amended by R.A. No. 9009, were carried on until the 13th Congress, when the Cityhood Laws were enacted. The exemption clauses found in the individual Cityhood Laws are the express articulation of that intent to exempt respondent municipalities from the coverage of R.A. No. 9009.

Even if we were to ignore the above quoted exchange between then Senate President Drilon and Senator Pimentel, it cannot be denied that Congress saw the wisdom of exempting respondent municipalities from complying with the higher income requirement imposed by the amendatory R.A. No. 9009. Indeed, these municipalities have proven themselves viable and capable to become component cities of their respective provinces. It is also acknowledged that they were centers of trade and commerce, points of convergence of transportation, rich havens of agricultural, mineral, and other natural resources, and flourishing tourism

[9] *Id*. at 167-168; *id*. at 3768-3769.

spots. In this regard, it is worthy to mention the distinctive traits of each respondent municipality, *viz*—

Batac, Ilocos Norte – It is the biggest municipality of the 2nd District of Ilocos Norte, 2nd largest and most progressive town in the province of Ilocos Norte and the natural convergence point for the neighboring towns to transact their commercial ventures and other daily activities. A growing metropolis, Batac is equipped with amenities of modern living like banking institutions, satellite cable systems, telecommunications systems. Adequate roads, markets, hospitals, public transport systems, sports, and entertainment facilities. [Explanatory Note of House Bill No. 5941, introduced by Rep. Imee R. Marcos.]

El Salvador, Misamis Oriental – It is located at the center of the Cagayan-Iligan Industrial Corridor and home to a number of industrial companies and corporations. Investment and financial affluence of El Salvador is aptly credited to its industrious and preserving people. Thus, it has become the growing investment choice even besting nearby cities and municipalities. It is home to Asia Brewery as distribution port of their product in Mindanao. The Gokongwei Group of Companies is also doing business in the area. So, the conversion is primarily envisioned to spur economic and financial prosperity to this coastal place in North-Western Misamis Oriental. [Explanatory Note of House Bill No. 6003, introduced by Rep. Augusto H. Bacullo.]

Cabadbaran, Agusan del Norte – It is the largest of the eleven (11) municipalities in the province of Agusan del Norte. It plays strategic importance to the administrative and socio-economic life and development of Agusan del Norte. It is the foremost in terms of trade, commerce, and industry. Hence, the municipality was declared as the new seat and capital of the provincial government of Agusan del Norte pursuant to Republic Act No. 8811 enacted into law on August 16, 2000. Its conversion will certainly promote, invigorate, and reinforce the economic potential of the province in establishing itself as an agro-industrial center in the Caraga region and accelerate the development of the area. [Explanatory Note of House Bill No. 3094, introduced by Rep. Ma. Angelica Rosedell M. Amante.]

Borongan, Eastern Samar – It is the capital town of Eastern Samar and the development of Eastern Samar will depend to a certain degree of its urbanization. It will serve as a catalyst for the modernization and progress of adjacent towns considering the frequent interactions

between the populace. [Explanatory Note of House Bill No. 2640, introduced by Rep. Marcelino C. Libanan.]

Lamitan, Basilan – Before Basilan City was converted into a separate province, Lamitan was the most progressive part of the city. It has been for centuries the center of commerce and the seat of the Sultanate of the Yakan people of Basilan. The source of its income is agro-industrial and others notably copra, rubber, coffee and host of income generating ventures. As the most progressive town in Basilan, Lamitan continues to be the center of commerce catering to the municipalities of Tuburan, Tipo-Tipo and Sumisip. [Explanatory Note of House Bill No. 5786, introduced by Rep. Gerry A. Salapuddin.]

Catbalogan, Samar – It has always been the socio-economic-political capital of the Island of Samar even during the Spanish era. It is the seat of government of the two congressional districts of Samar. Ideally located at the crossroad between Northern and Eastern Samar, Catbalogan also hosts trade and commerce activates among the more prosperous cities of the Visayas like Tacloban City, Cebu City and the cities of Bicol region. The numerous banks and telecommunication facilities showcases the healthy economic environment of the municipality. The preeminent and sustainable economic situation of Catbalogan has further boosted the call of residents for a more vigorous involvement of governance of the municipal government that is inherent in a city government. [Explanatory Note of House Bill No. 2088, introduced by Rep. Catalino V. Figueroa.]

Bogo, Cebu – Bogo is very qualified for a city in terms of income, population and area among others. It has been elevated to the Hall of Fame being a five-time winner nationwide in the clean and green program. [Explanatory Note of House Bill No. 3042, introduced by Rep. Clavel A. Martinez.]

Tandag, Surigao del Sur – This over 350 year old capital town the province has long sought its conversion into a city that will pave the way not only for its own growth and advancement but also help in the development of its neighboring municipalities and the province as a whole. Furthermore, it can enhance its role as the province's trade, financial and government center. [Explanatory Note of House Bill No. 5940, introduced by Rep. Prospero A. Pichay, Jr.]

Bayugan, Agusan del Sur – It is a first class municipality and the biggest in terms of population in the entire province. It has the most progressive and thickly populated area among the 14 municipalities that comprise the province. Thus, it has become the

center for trade and commerce in Agusan del Sur. It has a more developed infrastructure and facilities than other municipalities in the province. [Explanatory Note of House Bill No. 1899, introduced by Rep. Rodolfo "Ompong" G. Plaza.]

Carcar, Cebu – Through the years, Carcar metamorphosed from rural to urban and now boast of its manufacturing industry, agricultural farming, fishing and prawn industry and its thousands of large and small commercial establishments contributing to the bulk of economic activities in the municipality. Based on consultation with multi-sectoral groups, political and non-government agencies, residents and common folk in Carcar, they expressed their desire for the conversion of the municipality into a component city. [Explanatory Note of House Bill No. 3990, introduced by Rep. Eduardo R. Gullas.]

Guihulngan, Negros Oriental – Its population is second highest in the province, next only to the provincial capital and higher than Canlaon City and Bais City. Agriculture contributes heavily to its economy. There are very good prospects in agricultural production brought about by its favorable climate. It has also the Tanon Strait that provides a good fishing ground for its numerous fishermen. Its potential to grow commercially is certain. Its strategic location brought about by its existing linkage networks and the major transportation corridors traversing the municipality has established Guihulngan as the center of commerce and trade in this part of Negros Oriental with the first congressional district as its immediate area of influence. Moreover, it has beautiful tourist spots that are being availed of by local and foreign tourists. [Explanatory Note of House Bill No. 3628, introduced by Rep. Jacinto V. Paras.]

Tayabas, Quezon – It flourished and expanded into an important politico-cultural center in [the] Tagalog region. For 131 years (1179-1910), it served as the *cabecera* of the province which originally carried the *cabecera*'s own name, Tayabas. The locality is rich in culture, heritage and trade. It was at the outset one of the more active centers of coordination and delivery of basic, regular and diverse goods and services within the first district of Quezon Province. [Explanatory Note of House Bill No. 3348, introduced by Rep. Rafael P. Nantes.]

Tabuk, Kalinga – It not only serves as the main hub of commerce and trade, but also the cultural center of the rich customs and traditions of the different municipalities in the province. For the past several years, the income of Tabuk has been steadily increasing, which is

an indication that its economy is likewise progressively growing. [Explanatory Note of House Bill No. 3068, introduced by Rep. Laurence P. Wacnang.]

Available information on **Baybay, Leyte; Mati, Davao Oriental;** and **Naga, Cebu** shows their economic viability, thus:

Covering an area of 46,050 hectares, **Baybay [Leyte]** is composed of 92 *barangays*, 23 of which are in the *poblacion*. The remaining 69 are rural *barangays*. Baybay City is classified as a first class city. It is situated on the western coast of the province of Leyte. It has a Type 4 climate, which is generally wet. Its topography is generally mountainous in the eastern portion as it slopes down west towards the shore line. Generally an agricultural city, the common means of livelihood are farming and fishing. Some are engaged in hunting and in forestall activities. The most common crops grown are rice, corn, root crops, fruits, and vegetables. Industries operating include the Specialty Products Manufacturing, Inc. and the Visayan Oil Mill. Various cottage industries can also be found in the city such as bamboo and rattan craft, ceramics, dress-making, fiber craft, food preservation, mat weaving, metal craft, fine Philippine furniture manufacturing and other related activities. Baybay has great potential as a tourist destination, especially for tennis players. It is not only rich in biodiversity and history, but it also houses the campus of the Visayas State University (formerly the Leyte State University/Visayas State College of Agriculture/Visayas Agricultural College/Baybay National Agricultural School/Baybay Agricultural High School and the Jungle Valley Park.) Likewise, it has river systems fit for river cruising, numerous caves for spelunking, forests, beaches, and marine treasures. This richness, coupled with the friendly Baybayanos, will be an element of a successful tourism program. Considering the role of tourism in development, Baybay City intends to harness its tourism potential. (<http://en.wikipedia.org/wiki/Baybay City> visited September 19, 2008)

Mati [Davao Oriental] is located on the eastern part of the island of Mindanao. It is one hundred sixty-five (165) kilometers away from Davao City, a one and a half-hour drive from Tagum City. Visitors can travel from Davao City through the Madaum diversion road, which is shorter than taking the Davao-Tagum highway. Travels by air and sea are possible, with the existence of an airport and seaport. Mati boasts of being the coconut capital of Mindanao if not the whole country. A large portion of its fertile land is planted to

coconuts, and a significant number of its population is largely dependent on it. Other agricultural crops such as mango, banana, corn, coffee and cacao are also being cultivated, as well as the famous Menzi *pomelo* and Valencia oranges. Mati has a long stretch of shoreline and one can find beaches of pure, powder-like white sand. A number of resorts have been developed and are now open to serve both local and international tourists. Some of these resorts are situated along the coast of Pujada Bay and the Pacific Ocean. Along the western coast of the bay lies Mt. Hamiguitan, the home of the pygmy forest, where bonsai plants and trees grow, some of which are believed to be a hundred years old or more. On its peak is a lake, called "Tinagong Dagat," or hidden sea, so covered by dense vegetation a climber has to hike trails for hours to reach it. The mountain is also host to rare species of flora and fauna, thus becoming a wildlife sanctuary for these life forms. (<http://mati.wetpain.com/?t=anon> accessed on September 19, 2008.)

Mati is abundant with nickel, chromite, and copper. Louie Rabat, Chamber President of the Davao Oriental Eastern Chamber of Commerce and Industry, emphasized the big potential of the mining industry in the province of Davao Oriental. As such, he strongly recommends Mati as the mining hub in the Region.

(<http://www.pia.gov.ph/default.asp?m=12&sec=reader&rp=1&fi=p080115.htm&no.=9&date>, accessed on September 19, 2008)

Naga [Cebu]: Historical Background—In the early times, the place now known as Naga was full of huge trees locally called as "Narra." The first settlers referred to this place as Narra, derived from the huge trees, which later simply became Naga. Considered as one of the oldest settlements in the Province of Cebu, Naga became a municipality on June 12, 1829. The municipality has gone through a series of classifications as its economic development has undergone changes and growth. The tranquil farming and fishing villages of the natives were agitated as the Spaniards came and discovered coal in the uplands. Coal was the first export of the municipality, as the Spaniards mined and sent it to Spain. The mining industry triggered the industrial development of Naga. As the years progressed, manufacturing and other industries followed, making Naga one of the industrialized municipalities in the Province of Cebu.

Class of Municipality	1st class
Province	Cebu

Distance from Cebu City	22 kms.
Number of *Barangays*	28
No. of Registered Voters	44,643 as of May 14, 2007
Total No. of Precincts	237 (as of May 14, 2007)
Ann. Income (as of Dec. 31, 2006)	Php112,219,718.35 Agricultural, Industrial, Agro-Industrial, Mining Product

(<http://www.nagacebu.com/index.php?option=com.content&view=article id=53:naga-facts-and-figures&catid=51:naga-facts-and-figures&Itemid=75> visited September 19, 2008)

The enactment of the Cityhood Laws is an exercise by Congress of its legislative power. Legislative power is the authority, under the Constitution, to make laws, and to alter and repeal them.[10] The Constitution, as the expression of the will of the people in their original, sovereign, and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general, and comprehensive. The legislative body possesses plenary powers for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects, and extends to matters of general concern or common interest.[11]

Without doubt, the LGC is a creation of Congress through its law-making powers. Congress has the power to alter or modify it as it did when it enacted R.A. No. 9009. Such power of amendment of laws was again exercised when Congress enacted the Cityhood Laws. When Congress enacted the LGC in 1991,

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[10] *Review Center Association of the Philippines v. Ermita*, G.R. No. 180046, April 2, 2009, 583 SCRA 428, 450, citing *Kilusang Mayo Uno v. Director-General, National Economic Development Authority*, G.R. No. 167798, April 19, 2006, 487 SCRA 623.

[11] *Id.*, citing *Ople v. Torres*, 354 Phil. 948 (1998).

it provided for quantifiable indicators of economic viability for the creation of local government units—income, population, and land area. Congress deemed it fit to modify the income requirement with respect to the conversion of municipalities into component cities when it enacted R.A. No. 9009, imposing an amount of ₱100 million, computed only from locally-generated sources. However, Congress deemed it wiser to exempt respondent municipalities from such a belatedly imposed modified income requirement in order to uphold its higher calling of putting flesh and blood to the very intent and thrust of the LGC, which is countryside development and autonomy, especially accounting for these municipalities as engines for economic growth in their respective provinces.

Undeniably, R.A. No. 9009 amended the LGC. But it is also true that, in effect, the Cityhood Laws amended R.A. No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory R.A. No. 9009, such Cityhood Laws are, therefore, also amendments to the LGC itself. For this reason, we reverse the November 18, 2008 Decision and the August 24, 2010 Resolution on their strained and stringent view that the Cityhood Laws, particularly their exemption clauses, are not found in the LGC.

2.

The Cityhood Laws do not violate Section 6, Article X and the equal protection clause of the Constitution.

Both the November 18, 2008 Decision and the August 24, 2010 Resolution impress that the Cityhood Laws violate the equal protection clause enshrined in the Constitution. Further, it was also ruled that Section 6, Article X was violated because the Cityhood Laws infringed on the "just share" that petitioner and petitioners-in-intervention shall receive from the national taxes (IRA) to be automatically released to them.

Upon more profound reflection and deliberation, we declare that there was valid classification, and the Cityhood Laws do not violate the equal protection clause.

As this Court has ruled, the equal protection clause of the 1987 Constitution permits a valid classification, provided that it: (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.[12]

The petitioners argue that there is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills, such that the mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. This contention misses the point.

It should be recalled from the above quoted portions of the interpellation by Senate President Drilon of Senator Pimentel that the purpose of the enactment of R.A. No. 9009 was merely to stop the "mad rush of municipalities wanting to be converted into cities" and the apprehension that before long the country will be a country of cities and without municipalities. It should be pointed out that the imposition of the ₱100 million average annual income requirement for the creation of component cities was arbitrarily made. To be sure, there was no evidence or empirical data, such as inflation rates, to support the choice of this amount. The imposition of a very high income requirement of ₱100 million, increased from ₱20 million, was simply to make it extremely difficult for municipalities to become component cities. And to highlight such arbitrariness and the absurdity of the situation created thereby, R.A. No. 9009 has, in effect, placed component cities at a higher standing than highly urbanized cities under Section 452 of the LGC, to wit—

> Section 452. *Highly Urbanized Cities.* – (a) Cities with a minimum population of two hundred thousand (200,000) inhabitants, as certified by the National Statistics Office, and **with the latest annual income of at least Fifty Million Pesos (₱50,000,000.00) based on 1991 constant prices**, as certified by the city treasurer, shall be classified as highly urbanized cities.

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[12] *De Guzman, Jr. v. Commission on Elections*, 391 Phil. 70, 79 (2000); *Tiu v. Court of Tax Appeals*, 361 Phil. 229, 242 (1999).

(b) **Cities which do not meet above requirements shall be considered component cities of the province in which they are geographically located.** (Emphasis supplied)

The ₱100 million income requirement imposed by R.A. No. 9009, being an arbitrary amount, cannot be conclusively said to be the only amount "sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population," per Section 7[13] of the LGC. It was imposed merely because it is difficult to comply with. While it could be argued that ₱100 million, being more than ₱20 million, could, of course, provide the essential government facilities, services, and special functions *vis-à-vis* the population of a municipality wanting to become a component city, it cannot be said that the minimum amount of ₱20 million would be insufficient. This is evident from the existing cities whose income, up to now, do not comply with the ₱100 million income requirement, some of which have lower than the ₱20 million average annual income. Consider the list[14] below—

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[13] SECTION 7. ***Creation and Conversion.* —** As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) ***Income*. — It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;**

(b) *Population.*— It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) *Land Area.*— It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bound with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). (*Emphasis supplied.*)

[14] The figures reflect the actual income of the cities for 2006. If R.A. No. 9009 is to be applied such that the figures are expressed in 2000 constant

CITY	AVERAGE ANNUAL INCOME
1. Marawi City	5,291,522.10
2. Palayan City	6,714,651.77
3. Sipalay City	9,713,120.00
4. Canlaon City	13,552,493.79
5. Himamaylan City	15,808,530.00
6. Isabela City	16,811,246.79
7. Munoz City	19,693,358.61
8. Dapitan City	20,529,181.08
9. Tangub City	20,943,810.04
10. Bayawan City	22,943,810.04
11. Island Garden City of Samal	23,034,731.83
12. Tanjay City	23,723,612.44
13. Tabaco City	24,152,853.71
14. Oroquieta City	24,279,966.51
15. Ligao City	28,326,745.86
16. Sorsogon City	30,403,324.59
17. Maasin City	30,572,113.65
18. Escalante City	32,113,970.00
19. Iriga City	32,757,871.44
20. Gapan City	34,254,986.47
21. Candon City	36,327,705.86
22. Gingoog City	37,327,705.86

prices, the income of the cities will even be lower. (Certification from the Bureau of Local Government Finance dated December 5, 2008; *rollo* [G.R. No. 176951], Vol. 5, pp. 3731-3734.)

23. Masbate City	39,454,508.28
24. Passi City	40,314,620.00
25. Calbayog City	40,943,128.73
26. Calapan City	41,870,239.21
27. Cadiz City	43,827,060.00
28. Alaminos City	44,352,501.00
29. Bais City	44,646,826.48
30. San Carlos City	46,306,129.13
31. Silay City	47,351,730.00
32. Bislig City	47,360,716.24
33. Tacurong City	49,026,281.56
34. Talisay City (Negros Occidental)	52,609,790.00
35. Kabankalan City	53,560,580.00
36. Malaybalay City	54,423,408.55
37. La Carlota City	54,760,290.00
38. Vigan City	56,831,797.19
39. Balanga City	61,556,700.49
40. Sagay City	64,266,350.00
41. Cavite City	64,566,079.05
42. Koronadal City	66,231,717.19
43. Cotabato City	66,302,114.52
44. Toledo City	70,157,331.12
45. San Jose City	70,309,233.43
46. Danao City	72,621,955.30
47. Bago City	74,305,000.00
48. Valencia City	74,557,298.92
49. Victorias City	75,757,298.92

50. Cauayan City	82,949,135.46
51. Santiago City	83,816,025.89
52. Roxas City	85,397,830.00
53. Dipolog City	85,503,262.85
54. Trece Martires City	87,413,786.64
55. Talisay City (Cebu)	87,964,972.97
56. Ozamis city	89,054,056.12
57. Surigao City	89,960,971.33
58. Panabo City	91,425,301.39
59. Digos City	92,647,699.13

The undeniable fact that these cities remain viable as component cities of their respective provinces emphasizes the arbitrariness of the amount of ₱100 million as the new income requirement for the conversion of municipalities into component cities. This arbitrariness can also be clearly gleaned from the respective distinctive traits and level of economic development of the individual respondent municipalities as above submitted.

Verily, the determination of the existence of substantial distinction with respect to respondent municipalities does not simply lie on the mere pendency of their cityhood bills during the 11th Congress. This Court sees the bigger picture. The existence of substantial distinction with respect to respondent municipalities covered by the Cityhood Laws is measured by the purpose of the law, not by R.A. No. 9009, but by the very purpose of the LGC, as provided in its Section 2 (a), thus—

SECTION 2. ***Declaration of Policy***.—(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted

through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities and resources. The process of decentralization shall proceed from the National Government to the local government units.

Indeed, substantial distinction lies in the capacity and viability of respondent municipalities to become component cities of their respective provinces. Congress, by enacting the Cityhood Laws, recognized this capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC, manifested by the pendency of their cityhood bills during the 11th Congress and their relentless pursuit for cityhood up to the present. Truly, the urgent need to become a component city arose way back in the 11th Congress, and such condition continues to exist.

Petitioners in these cases complain about the purported reduction of their "just share" in the IRA. To be sure, petitioners are entitled to a "just share," not a specific amount. But the feared reduction proved to be false when, after the implementation of the Cityhood Laws, their respective shares increased, not decreased. Consider the table[15] below—

CITY	**CY 2006 IRA** (Before Implementation of Sixteen [16] Cityhood Laws)	**CY 2008 IRA** (Actual Release After Implementation of Sixteen [16] Cityhood Laws)
Bais	219,338,056.00	242,193,156.00
Batangas	334,371,984.00	388,871,770.00
Bayawan	353,150,158.00	388,840,062.00
Cadiz	329,491,285.00	361,019,211.00

[15] Based on the letter dated December 9, 2008 of the Department of Budget and Management; *rollo* (G.R. No. 176951), Vol. 5, pp. 3978-3986.

Calapan	227,772,199.00	252,587,779.00
Calbayog	438,603,378.00	485,653,769.00
Cauayan	250,477,157.00	277,120,828.00
Gen. Santos	518,388,557.00	631,864,977.00
Gingoog	314,425,637.00	347,207,725.00
Himamaylan	248,154,381.00	277,532,458.00
Iloilo	358,394,268.00	412,506,278.00
Iriga	183,132,036.00	203,072,932.00
Legaspi	235,314,016.00	266,537,785.00
Ligao	215,608,112.00	239,696,441.00
Oroquieta	191,803,213.00	211,449,720.00
Pagadian	292,788,255.00	327,401,672.00
San Carlos	239,524,249.00	260,515,711.00
San Fernando	182,320,356.00	204,140,940.00
Santiago	508,326,072.00	563,679,572.00
Silay	216,372,314.00	241,363,845.00
Surigao	233,968,119.00	260,708,071.00
Tacurong	179,795,271.00	197,880,665.00
Tagaytay	130,159,136.00	152,445,295.00
Tarlac	348,186,756.00	405,611,581.00
Tangub	162,248,610.00	180,640,621.00
Urdaneta	187,721,031.00	207,129,386.00
Victorias	176,367,959.00	194,162,687.00
Zamboanga	918,013,016.00	1,009,972,704.00

What these petitioner cities were stating as a reduction of their respective IRA shares was based on a computation of what they would receive if respondent municipalities were not

to become component cities at all. Of course, that would mean a bigger amount to which they have staked their claim. After considering these, it all boils down to money and how much more they would receive if respondent municipalities remain as municipalities and not share in the 23% fixed IRA from the national government for cities.

Moreover, the debates in the Senate on R.A. No. 9009, should prove enlightening:

SENATOR SOTTO. Mr. President, we just want to be enlightened again on the previous qualification and the present one being proposed. Before there were three…

SENATOR PIMENTEL. There are three requisites for a municipality to become a city. Let us start with the finance.

SENATOR SOTTO. Will the distinguished sponsor please refresh us? I used to be the chairman of the Committee on Local Government, but the new job that was given to me by the Senate has erased completely my memory as far as the Local Government Code is concerned.

SENATOR PIMENTEL. Yes, Mr. President, with pleasure. There are three requirements. One is financial.

SENATOR SOTTO. All right. It used to be ₱20 million.

SENATOR PIMENTEL. It is ₱20 million. Now we are raising it to ₱100 million of locally generated funds.

SENATOR SOTTO. **In other words, the ₱20 million before includes the IRA.**

SENATOR PIMENTEL. **No, Mr. President.**

SENATOR SOTTO. **It should not have been included?**

SENATOR PIMENTEL. **The internal revenue share should never have been included. That was not the intention when we first crafted the Local Government Code. The financial capacity was supposed to be demonstrated by the municipality wishing to become a city by its own effort, meaning to say, it should not rely on the internal revenue share that comes from the government. Unfortunately, I think what happened in past conversions of municipalities into cities was, the Department**

of Budget and Management, along with the Department of Finance, had included the internal revenue share as a part of the municipality, demonstration that they are now financially capable and can measure up to the requirement of the Local Government Code of having a revenue of at least ₱20 million.

SENATOR SOTTO. I am glad that the sponsor, Mr. President, has spread that into the *Record* because otherwise, if he did not mention the Department of Finance and the Department of Budget and Management, then I would have been blamed for the misinterpretation. But anyway, the gentleman is correct. That was the interpretation given to us during the hearings.

So now, from ₱20 million, we make it ₱100 million from locally generated income as far as population is concerned.

SENATOR PIMENTEL. As far as population is concerned, there will be no change, Mr. President. Still 150,000.

SENATOR SOTTO. Still 150,000?

SENATOR PIMENTEL. Yes.

SENATOR SOTTO. And then the land area?

SENATOR PIMENTEL. As to the land area, there is no change; it is still 100 square kilometers.

SENATOR SOTTO. But before it was "either/or"?

SENATOR PIMENTEL. That is correct. As long as it has one of the three requirements, basically, as long as it meets the financial requirement, then it may meet the territorial requirement or the population requirement.

SENATOR SOTTO. So, it remains "or"?

SENATOR PIMENTEL. We are now changing it into AND.

SENATOR SOTTO. AND?

SENATOR PIMENTEL. Yes.

SENATOR SOTTO. I see.

SENATOR PIMENTEL. That is the proposal, Mr. President. In other words…

SENATOR SOTTO. Does the gentleman not think there will no longer be any municipality that will qualify, Mr. President?

SENATOR PIMENTEL. **There may still be municipalities which can qualify, but it will take a little time. They will have to produce more babies. I do not know—expand their territories, whatever, by reclamation or otherwise. But the whole proposal is geared towards making it difficult for municipalities to convert into cities.**

On the other hand, I would like to advert to the fact that in the amendments that we are proposing for the entire Local Government Code, we are also raising the internal revenue share of the municipalities.

SENATOR SOTTO. I see.

SENATOR PIMENTEL. **So that, more or less, *hindi naman sila dehado* in this particular instance.**

SENATOR SOTTO. **Well, then, because of that information, Mr. President, I throw my full support behind the measure.**

Thank you, Mr. President.

SENATOR PIMENTEL. Thank you very much, Mr. President. (Emphasis supplied)[16]

From the foregoing, the justness in the act of Congress in enacting the Cityhood Laws becomes obvious, especially considering that 33 municipalities were converted into component cities almost immediately prior to the enactment of R.A. No. 9009. In the enactment of the Cityhood Laws, Congress merely took the 16 municipalities covered thereby from the disadvantaged position brought about by the abrupt increase in the income requirement of R.A. No. 9009, acknowledging the "privilege" that they have already given to those newly-converted component cities, which prior to the enactment of R.A. No. 9009, were undeniably in the same footing or "class" as the respondent municipalities. Congress merely recognized the capacity and readiness of respondent municipalities to become component cities of their respective provinces.

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[16] Committee Amendments re S. No. 2157, Records of the Senate, Vol. II, No. 24, October 5, 2000, pp. 165-166; *id*. at 3766-3767.

Petitioners complain of the projects that they would not be able to pursue and the expenditures that they would not be able to meet, but totally ignored the respondent municipalities' obligations arising from the contracts they have already entered into, the employees that they have already hired, and the projects that they have already initiated and completed as component cities. Petitioners have completely overlooked the need of respondent municipalities to become effective vehicles intending to accelerate economic growth in the countryside. It is like the elder siblings wanting to kill the newly-borns so that their inheritance would not be diminished.

Apropos is the following parable:

There was a landowner who went out at dawn to hire workmen for his vineyard. After reaching an agreement with them for the usual daily wage, he sent them out to his vineyard. He came out about midmorning and saw other men standing around the marketplace without work, so he said to them, "You too go along to my vineyard and I will pay you whatever is fair." They went. He came out again around noon and mid-afternoon and did the same. Finally, going out in late afternoon he found still others standing around. To these he said, "Why have you been standing here idle all day?" "No one has hired us," they told him. He said, "You go to the vineyard too." When evening came, the owner of the vineyard said to his foreman, "Call the workmen and give them their pay, but begin with the last group and end with the first." When those hired late in the afternoon came up they received a full day's pay, and when the first group appeared they thought they would get more, yet they received the same daily wage. Thereupon they complained to the owner, "This last group did only an hour's work, but you have paid them on the same basis as us who have worked a full day in the scorching heat." "My friend," he said to one in reply, "I do you no injustice. You agreed on the usual wage, did you not? Take your pay and go home. I intend to give this man who was hired last the same pay as you.

I am free to do as I please with my money, am I not? Or are you envious because I am generous?"[17]

Congress, who holds the power of the purse, in enacting the Cityhood Laws, only sought the well-being of respondent municipalities, having seen their respective capacities to become component cities of their provinces, temporarily stunted by the enactment of R.A. No. 9009. By allowing respondent municipalities to convert into component cities, Congress desired only to uphold the very purpose of the LGC, *i.e.*, to make the local government units "enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals," which is the very mandate of the Constitution.

Finally, we should not be restricted by technical rules of procedure at the expense of the transcendental interest of justice and equity. While it is true that litigation must end, even at the expense of errors in judgment, it is nobler rather for this Court of last resort, as vanguard of truth, to toil in order to dispel apprehensions and doubt, as the following pronouncement of this Court instructs:

> The right and power of judicial tribunals to declare whether enactments of the legislature exceed the constitutional limitations and are invalid has always been considered a grave responsibility, as well as a solemn duty. The courts invariably give the most careful consideration to questions involving the interpretation and application of the Constitution, and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance; and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt. To justify a court in pronouncing a legislative act unconstitutional, or a provision of a state constitution to be in contravention of the Constitution x x x, the case must be so clear to be free from doubt, and the conflict of the statute with the constitution must be irreconcilable, because it is but a decent respect to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt. Therefore, in

[17] Mat. 20: 1-15.

no doubtful case will the judiciary pronounce a legislative act to be contrary to the constitution. To doubt the constitutionality of a law is to resolve the doubt in favor of its validity.[18]

WHEREFORE, the Motion for Reconsideration of the "Resolution" dated August 24, 2010, dated and filed on September 14, 2010 by respondents Municipality of Baybay, *et al.* is *GRANTED*. The Resolution dated August 24, 2010 is *REVERSED* and *SET ASIDE*. The Cityhood Laws—Republic Acts Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491—are declared *CONSTITUTIONAL*.

SO ORDERED.

Corona C.J., Velasco, Jr., Perez, and *Mendoza, JJ.,* concur.

Leonardo-de Castro, J., C.J. Corona certifies that she left her vote concurring with *J.* Bersamin.

Abad, J., see concurring opinion.

Carpio, J., see dissenting opinion.

*Carpio Morales, J.,*maintains her vote in the original *ponencia*. Hence, she concurs with the dissent of *J.* Carpio.

Brion, Peralta, Villarama, Jr., and *Sereno, JJ.,* join the dissent of *J.* Carpio.

Nachura and *del Castillo, JJ.,* no part.

CONCURRING OPINION

ABAD, *J.*:

The Court has received flak on this case for supposed "flip-flopping." But its shifting views are understandable because of the nearly even soundness of the opposing advocacies of the two groups of cities over the validity of the sixteen cityhood laws.[1] It also does not help that the membership of the Court has been altered by retirements and replacements at various

[18] *Churchill v. Rafferty,* 32 Phil. 580, 584 (1915).

[1] Republic Acts 9389, 9390, 9391, 9392, 9394, 9398, 9393, 9404, 9405, 9407, 9408, 9409, 9434, 9436, 9435 and 9491.

stages from when it first decided to annul the laws, to when it reconsidered and upheld their validity, and to when it reverted to the original position and declared the laws involved unconstitutional. This to me is a healthy sign of democracy at work, the members being blind to the need to conform.

In its Resolution of August 24, 2010, the Court reversed its December 21, 2009 *Decision* and denied the quest for cityhood of sixteen municipalities on the ground that the laws creating them violated Section 10, Article X of the 1987 Constitution[2] and the equal protection clause.[3] By that resolution, the majority also held that the Court erred in setting aside its November 18, 2008 decision since this latter had attained finality after the Court's denial of the second motion for reconsideration of the respondent cities, albeit the 6-6 deadlock vote and the corresponding entry of judgment.

The Issues Presented

The motion for reconsideration of respondent cities presents the following issues:

1. Whether or not the sixteen cityhood laws violate Section 10, Article X of the 1987 Constitution;

2. Whether or not such laws violate the equal protection clause; and

3. Whether or not the Court could still modify its decision dated November 18, 2008.

Discussions

One. In ruling that the sixteen cityhood laws violated Section 10 of Article X, the majority in the Court held that the creation

[2] Section 10: No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

[3] Section 1, Article III: No person shall be deprived of life, liberty and property without due process of law nor shall any person be denied the equal protection of the laws. (Emphasis Supplied)

of local government units must conform to the criterion prescribed in Section 450 of the Local Government Code.[4] Since those laws, which were passed *after* the enactment of Republic Act (R.A.) 9009,[5] covered municipalities that did not comply with the amended income requirement set by the Local Government Code, their conversion into cities were constitutionally infirm. The majority held that R.A. 9009 did not provide exemptions from its application. Although the provisions in the sixteen cityhood laws established exemptions from such requirement for the subject municipalities, the same can not be considered without violating Section 10, Article X, taking into account the legislature's primary intent in passing R.A. 9009.[6]

I take exception on how the majority of the Court selectively chose to focus on the sponsorship speech of Senator Aquilino Pimentel to come up with a "primary intent" theory for R.A. 9009. Surely, the intent of R.A. 9009 can not be based solely on that speech. The Court should not ignore the legislative history of R.A. 9009, including the pertinent exchanges during the interpellation of Senator Pimentel and Senate President Franklin Drilon, thus:

THE PRESIDENT. The Chair would like to ask for some clarificatory point. x x x

THE PRESIDENT. This is just on the point of the pending bills in the Senate which propose the conversion of a number of municipalities into cities and which qualify under the present standard.

We would like to know the view of the sponsor: Assuming that this bill becomes a law, will the Chamber apply the standard as

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[4] Republic Act 7160, as amended.

[5] *An Act Amending Section 450 of Republic Act No. 7160, Otherwise Known as The Local Government Code of 1991, by Increasing the Average Annual Income Requirement for a Municipality or Cluster of Barangay to be Converted into a Component City*.

[6] To restrain "the mad rush of municipalities wanting to be converted into cities." Sponsorship speech of Senator Aquilino Pimintel, October 5, 2000.

proposed in this bill to those bills which are pending for consideration?

SENATOR PIMENTEL. Mr. President, it might not be fair to make this bill x x x [if] approved, retroact to the bills that are pending in the Senate for conversion from municipalities to cities.

THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber, assuming that this bill becomes a law x x x that it will apply to those bills which are already approved by the House under the old version of the [LGC] and are now pending in the Senate? The Chair does not know if we can craft a language which will limit the application to those which are not yet in the Senate. Or is that a policy that the Chamber will adopt?

SENATOR PIMENTEL. Mr. President, personally, I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.

THE PRESIDENT. So the understanding is that those bills which are already pending in the Chamber will not be affected.

SENATOR PIMENTEL. These will not be affected Mr. President.[7] (Emphasis supplied)

Two things are clear from the above exchanges. First, the legislature intended to exempt from the amended income requirement of R.A. 9009 the municipalities that had pending cityhood bills during the 11th Congress. As a matter of fact, such legislative intent was carried over to the 12th and the 13th Congress when the House of Representatives adopted Joint Resolutions[8] that sought the exemption of twenty-four

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[7] *See* Justice Ruben T. Reyes' Dissent promulgated on November 18, 2008; citing II Record, Senate, 13th Congress, pp. 167-168.

[8] Joint Resolution No. 29 entitled: "*Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the coverage of Republic Act No. 9009"* and Joint Resolution No. 1, readopting Joint Resolution No. 29.

municipalities, including the sixteen, from the application of R.A. 9009. The continuing intent of Congress culminated in the inclusion of the exemption clause in the cityhood bills and their subsequent passage.

Second, it is also clear from the above exchanges between Senators Pimentel and Drilon that Congress did not anymore insert an exemption clause from the income requirement of R.A. 9009 since such exchanges, when read by the Court, would already reveal the lawmakers' intent regarding such matter.

Besides, the exemption clause found in each of the cityhood laws serves as an affirmation of Congress' intent to exempt them from the increased income requirement of R.A. 9009. These new cities have not altogether been exempted from the operation of the Local Government Code covering income requirement. They have been expressly made subject to the lower income requirement of the old code. There remains, therefore, substantial compliance with the provision of Section 10, Article X of the Constitution which provides that no city may be created "except in accordance with the criteria established in the local government code."

The above interpretation accommodates the "primary" intention of Congress in preventing the mad rush of municipalities wanting to be converted into cities and the other intention of Congress to exempt the municipalities which have pending cityhood bills before the enactment of R.A. 9009.

This is not to say that the views of the majority in the Court are absolutely illogical or wrong. They are admittedly plausible. But, given the unstable footing of such views as evidenced by its shifting positions on the issue, the Court should have adopted an attitude of becoming humility, upholding the constitutionality of the acts of a co-equal branch of government regarding a matter that properly fell within its powers.

Two. The equal protection clause of the Constitution seeks to protect persons from being deprived of life, liberty, or property

by the uneven application of statutes. In invoking this protection, it is incumbent on petitioner League of Cities to show, not only that the exemption granted to the sixteen cities amounted to arbitrary classification but, that the League or their members have been deprived of life, liberty or property, by reason of the exemption. The League of Cities has failed to discharge this burden.

The Court explained in *Ichong v. Hernandez*[9] the limits of the equal protection clause, thus:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exists (*sic*) for making a distinction between those who fall within such class and those who do not. (Emphasis supplied)

Far from baselessly favoring the sixteen municipalities, Congress gave them exemptions from the application of R.A. 9009 based on its sense of justice and fairness. Senator Alfredo Lim explained this in his sponsorship speech on House Joint Resolution No. 1, thus:

x x x The imposition of a much higher income requirement for the creation of a city virtually delivered a lethal blow to the aspirations of the 24 municipalities to attain economic growth and progress. To them, it was unfair; like any sport – changing the rules in the middle of the game.

x x x x x x x x x

[9] G.R. No. L-7995, 101 Phil. 1155 (1952), citing 2 Cooley, Constitutional Limitations, 824-825.

I, for one, share their view that fairness dictates that they should be given a legal remedy by which they could be allowed to prove that they have all the necessary qualifications for city status using the criteria set forth under the Local Government Code prior to its amendment by R.A. 9009.

x x x x x x x x x

In essence, the Cityhood bills now under consideration will have the same effect as that of House Joint Resolution No. 1 because each of the 12 bills seeks exemption from the higher income requirement of R.A. 9009. The proponents are invoking the exemption on the basis of justice and fairness. x x x[10] (Emphasis supplied)

What makes the injustice quite bitter is the fact that the sixteen cities did not merely have pending cityhood bills during the 11th Congress. They also met at that time the income criteria set under Section 450 of the then Local Government Code. The Court owes to these cities the considerations that justice and fair play demands. It can not be denied that substantial distinction sets them apart from the other cities.

Further, petitioner League of Cities failed to show that the creation of the sixteen new cities discriminated against other cities. As the respondent cities point out, the majority of the present cities in our midst do not meet the ₱100 million minimum income requirement of the Local Government Code.[11] It boggles the mind how these deficient cities can complain of denial of equal protection of the law.

Besides, assuming an improper classification in the case of the sixteen cities, petitioner League of Cities can not invoke the equal protection clause since it has failed to show that it will suffer deprivation of life, liberty, or property by reason of such classification.

Actually, the existing cities would not cease to exist nor would their liberties suffer by reason of the enactment of the sixteen

[10] Journal, Senate 13th Congress, 59th Session, 1238 -1240 cited in Justice Ruben T. Reyes' Dissent promulgated on November 18, 2008.

[11] Motion for Reconsideration of respondent cities, p. 49.

cityhood laws. That their Internal Revenue Allotment (IRA) will be diminished does not amount to deprivation of property since the IRA is not their property until it has been automatically released.[12] Mere expectancy in the receipt of IRA can not be regarded as the "property" envisioned in the Bill of Rights.

Three. The majority maintain that the Court did not properly set aside its original decision dated November 18, 2008, which earlier invalidated the Cityhood laws since, procedurally, the Court had previously declared such decision already final.[13] But a question had been raised regarding the propriety of such declaration of finality, given a pending question respecting the consequence of a 6-6 vote on the constitutionality of the cityhood laws. At any rate, the Court has under extraordinary circumstances[14] reconsidered its ruling despite an entry of judgment. It will not allow the technical rules to hinder it from rendering just and equitable relief.[15]

The issues presented in this case do not only involve rights and obligations of some parties but the constitutionality of the exercise by Congress of its power to make laws. There is no reason to uphold the November 18, 2008 decision since the petitioner League of Cities has failed to overcome the strong presumption in favor of the cityhood laws' constitutionality.

I vote to **GRANT** the motion for reconsideration of the respondent cities, **REVERSE AND SET ASIDE** the Resolution of the Court dated August 24, 2010, **REINSTATE** the Decision of the Court dated December 21, 2009, and **DISMISS** the Consolidated petitions of the League of Cities.

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[12] *Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000.

[13] The Entry of Judgment of the Decision dated November 18, 2008 was made on May 21, 2009 as per Resolution of the Court dated June 2, 2009.

[14] See *Manotok IV v. Heirs of Barque*, G.R. Nos. 162335 & 162605, December 18, 2008.

[15] *Javier v. Commission on Elections*, G.R. Nos. 68379-81, September 22, 1986.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

In their motion for reconsideration, respondents argue that: (1) the petitions on their face do not call for the exercise of judicial power considering that the share of local government units in the Internal Revenue Allotments does not constitute rights which are legally demandable and enforceable; (2) the 16 Cityhood Laws are not unconstitutional; and (3) there was no violation of the equal protection clause.

The crux of the controversy is whether the 16 Cityhood Laws are constitutional.[1]

As I have consistently opined, which opinion is concurred in by the majority members of this Court in the reinstated Decision of 18 November 2008 and in the assailed Resolution of 24 August 2010, **the 16 Cityhood Laws are unconstitutional.**

First, the 16 Cityhood Laws violate Section 10, Article X of the 1987 Constitution. This provision reads:

> No province, city, municipality, or *barangay* shall be created, divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one

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[1] In paragraph 93 of the motion for reconsideration, respondents state:

93. Thus, in this motion for reconsideration of the "Resolution" of August 24, 2010, what is in issue is the correctness of the ruling of the Majority on [the] merits of the case, particularly the constitutionality of the Cityhood Laws.

Local Government Code.[2] The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from ₱20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the ₱100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement.

In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

Second, the 16 Cityhood Laws violate the equal protection clause of the Constitution.

The equal protection clause of the 1987 Constitution permits a valid classification under the following conditions:

1. The classification must rest on substantial distinctions;
2. The classification must be germane to the purpose of the law;
3. The classification must not be limited to existing conditions only; and

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[2] Republic Act No. 7160, as amended.

4. The classification must apply equally to all members of the same class.[3]

As I have previously stressed, there is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality.** Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. **In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.**

Moreover, the fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. **That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.**

Further, the exemption provision in the Cityhood Laws gives the 16 municipalities a unique advantage based on an arbitrary date — the filing of their cityhood bills before the end of the 11th Congress – as against all other municipalities that want to convert into cities after the effectivity of RA 9009.

In addition, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded, the exemption provision found in the Cityhood Laws, even if it

[3] *De Guzman, Jr. v. COMELEC*, 391 Phil. 70, 79 (2000); *Tiu v. Court of Tax Appeals*, 361 Phil. 229, 242 (1999).

were written in Section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause.

I repeat, Section 10, Article X of the Constitution expressly provides that "**no x x x city shall be created x x x except in accordance with the criteria established in the local government code.**" This provision can only be interpreted in one way, that is, all the criteria for the creation of cities must be embodied exclusively in the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws other than the Local Government Code, provided an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution.

Accordingly, I vote to **DENY** the motion for reconsideration of the Resolution dated 24 August 2010.

EN BANC

[G.R. No. 193459. February 15, 2011]

MA. MERCEDITAS N. GUTIERREZ, *petitioner, vs.* **THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE, RISA HONTIVEROS-BARAQUEL, DANILO D. LIM, FELIPE PESTAÑO, EVELYN PESTAÑO, RENATO M. REYES, JR., SECRETARY GENERAL OF BAGONG ALYANSANG MAKABAYAN (BAYAN); MOTHER MARY JOHN MANANZAN, CO-CHAIRPERSON OF PAGBABAGO; DANILO RAMOS, SECRETARY-GENERAL OF KILUSANG MAGBUBUKID NG**

PILIPINAS (KMP); ATTY. EDRE OLALIA, ACTING SECRETARY GENERAL OF THE NATIONAL UNION OF PEOPLE'S LAWYERS (NUPL); FERDINAND R. GAITE, CHAIRPERSON, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE); and JAMES TERRY RIDON OF THE LEAGUE OF FILIPINO STUDENTS (LFS), *respondents.*

FELICIANO BELMONTE, JR., *respondent-intervenor.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; INCLUDES THE POWER TO DETERMINE WHETHER OR NOT THERE HAS BEEN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT.— Respondents raise the impropriety of the remedies of *certiorari* and prohibition. They argue that public respondent was not exercising any judicial, quasi-judicial or ministerial function in taking cognizance of the two impeachment complaints as it was exercising a political act that is discretionary in nature, and that its function is inquisitorial that is akin to a preliminary investigation. These same arguments were raised in *Francisco, Jr. v. House of Representatives.* The argument that impeachment proceedings are beyond the reach of judicial review was debunked x x x. *Francisco* characterizes the power of judicial review as a duty which, as the expanded *certiorari* jurisdiction of this Court reflects, includes the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In the present case, petitioner invokes the Court's expanded *certiorari* jurisdiction, using the special civil actions of *certiorari* and prohibition as procedural vehicles. The Court finds it well-within its power to determine whether public respondent committed a violation of the Constitution or gravely abused its discretion in the exercise

of its functions and prerogatives that could translate as lack or excess of jurisdiction, which would require corrective measures from the Court. Indubitably, the Court is not asserting its ascendancy over the Legislature in this instance, but simply upholding the supremacy of the Constitution as the repository of the sovereign will.

2. ID.; ID.; ID.; "CASE-OR-CONTROVERSY" REQUIREMENT; THE QUESTION OF RIPENESS IS ESPECIALLY RELEVANT IN LIGHT OF THE DIRECT, ADVERSE EFFECT ON AN INDIVIDUAL BY THE CHALLENGED CONDUCT.— An aspect of the "case-or-controversy" requirement is the requisite of ripeness. The question of ripeness is especially relevant in light of the direct, adverse effect on an individual by the challenged conduct. In the present petition, there is no doubt that questions on, *inter alia*, the validity of the simultaneous referral of the two complaints and on the need to publish as a mode of promulgating the Rules of Procedure in Impeachment Proceedings of the House (Impeachment Rules) present constitutional vagaries which call for immediate interpretation. The unusual act of *simultaneously* referring to public respondent two impeachment complaints presents a novel situation to invoke judicial power. Petitioner cannot thus be considered to have acted prematurely when she took the cue from the constitutional limitation that only one impeachment proceeding should be initiated against an impeachable officer within a period of one year.

3. REMEDIAL LAW; EVIDENCE; MERE SUSPICION OF PARTIALITY DOES NOT SUFFICE.— The Court finds petitioner's allegations of bias and vindictiveness bereft of merit, there being hardly any indication thereof. Mere suspicion of partiality does not suffice. The act of the head of a collegial body cannot be considered as that of the entire body itself. x x x In the present case, Rep. Tupas, public respondent informs, did not, in fact, vote and merely presided over the proceedings when it decided on the sufficiency of form and substance of the complaints. Even petitioner's counsel conceded during the oral arguments that there are no grounds to compel the inhibition of Rep. Tupas. x x x An abbreviated pace in the conduct of proceedings is not *per se* an indication of bias, however.

4. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES; THE PARTICIPATION OF THE IMPEACHABLE OFFICER STARTS WITH THE FILING OF AN ANSWER.— As mandated by the Impeachment Rules x x x and as, in fact, conceded by petitioner's counsel, the participation of the impeachable officer starts with the filing of an answer. x x x Rule III(A) of the Impeachment Rules of the 15th Congress reflects the impeachment procedure at the Committee-level, particularly Section 5 which denotes that petitioner's *initial* participation in the impeachment proceedings – the opportunity to file an Answer – starts *after* the Committee on Justice finds the complaint sufficient in form and substance. That the Committee refused to accept petitioner's motion for reconsideration from its finding of sufficiency of form of the impeachment complaints is apposite, conformably with the Impeachment Rules.

5. ID.; ID.; ID.; ID.; PROVIDES FOR THE ADDITIONAL REQUIREMENT OF A FINDING OF SUFFICIENCY OF FORM AND SUBSTANCE IN AN IMPEACHMENT COMPLAINT TO EFFECTIVELY CARRY OUT THE IMPEACHMENT PROCESS.— The determination of sufficiency of form and substance of an impeachment complaint is an exponent of the express constitutional grant of rule-making powers of the House of Representatives which committed such determinative function to public respondent. In the discharge of that power and in the exercise of its discretion, the House has formulated determinable standards as to the form and substance of an impeachment complaint. Prudential considerations behoove the Court to respect the compliance by the House of its duty to effectively carry out the constitutional purpose, absent any contravention of the minimum constitutional guidelines. x x x [T]he Impeachment Rules are clear in echoing the constitutional requirements and providing that there must be a "verified complaint or resolution," and that the substance requirement is met if there is "a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee." *Notatu dignum* is the fact that it is only in the Impeachment Rules where a determination of sufficiency of form and substance of an impeachment complaint is made necessary.

This requirement is not explicitly found in the organic law, as Section 3(2), Article XI of the Constitution basically merely requires a "hearing." In the discharge of its constitutional duty, the House deemed that a finding of sufficiency of form and substance in an impeachment complaint is vital **"to effectively carry out"** the impeachment process, hence, such *additional* requirement in the Impeachment Rules.

6. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOES NOT INCLUDE THE DETERMINATION OF A PURELY POLITICAL QUESTION.— Petitioner urges the Court to look into the narration of facts constitutive of the offenses *vis-à-vis* her submissions disclaiming the allegations in the complaints. This the Court cannot do. *Francisco* instructs that this issue would "require the Court to make a determination of what constitutes an impeachable offense. Such a determination is a purely political question which the Constitution has left to the sound discretion of the legislature. Such an intent is clear from the deliberations of the Constitutional Commission. x x x Clearly, the issue calls upon this court to decide a non-justiciable political question which is beyond the scope of its judicial power[.]" Worse, petitioner urges the Court to make a preliminary assessment of certain grounds raised, upon a hypothetical admission of the facts alleged in the complaints, which involve matters of defense.

7. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES; THE MODE OF PROMULGATION THEREOF IS WITHIN THE DISCRETION OF CONGRESS.— Promulgation must x x x be used in the context in which it is generally understood—that is, to make known. *Generalia verba sunt generaliter inteligencia*. What is generally spoken shall be generally understood. Between the restricted sense and the general meaning of a word, the general must prevail unless it was clearly intended that the restricted sense was to be used. Since the Constitutional Commission did not restrict "promulgation" to "publication," the former should be understood to have been used in its general sense. It is within the discretion of Congress to determine on *how* to promulgate its Impeachment Rules, in much the same way that the Judiciary

is permitted to determine that to promulgate a decision means to deliver the decision to the clerk of court for filing and publication. It is not for this Court to tell a co-equal branch of government *how* to promulgate when the Constitution itself has not prescribed a specific method of promulgation. **The Court is in no position to dictate a mode of promulgation beyond the dictates of the Constitution.** Publication in the Official Gazette or a newspaper of general circulation is but one avenue for Congress to make known its rules. x x x Had the Constitution intended to have the Impeachment Rules published, it could have stated so as categorically as it did in the case of the rules of procedure in legislative inquiries, per *Neri*. Other than "promulgate," there is no other single formal term in the English language to appropriately refer to an issuance without need of it being published.

8. ID.; ID.; ID.; THE PROVISIONAL ADOPTION OF THE PREVIOUS CONGRESS' IMPEACHMENT RULES IS WITHIN THE POWER OF THE HOUSE OF REPRESENTATIVES TO PROMULGATE ITS RULES ON IMPEACHMENT TO EFFECTIVELY CARRY OUT THE AVOWED PURPOSE.— Given that the Constitution itself states that any promulgation of the rules on impeachment is aimed at "effectively carry[ing] out the purpose" of impeachment proceedings, the Court finds no grave abuse of discretion when the House deemed it proper to *provisionally* adopt the Rules on Impeachment of the 14th Congress, to meet the exigency in such situation of early filing and in keeping with the "effective" implementation of the "purpose" of the impeachment provisions. In other words, the provisional adoption of the previous Congress' Impeachment Rules is within the power of the House to promulgate its rules on impeachment to effectively carry out the avowed purpose.

9. ID.; ID.; ID.; THE RULES ON IMPEACHMENT IS PROCEDURAL IN NATURE WHICH MAY BE GIVEN RETROACTIVE APPLICATION TO PENDING ACTIONS.— [T]he rules on impeachment, as contemplated by the framers of the Constitution, merely aid or supplement the *procedural* aspects of impeachment. Being procedural in nature, they may be given retroactive application to pending actions. "It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected,

nor is it constitutionally objectionable. The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws."

10. ID.; ID.; ID.; INTENDED PRIMARILY FOR THE PROTECTION OF THE PEOPLE AS A BODY POLITIC AND NOT FOR THE PUNISHMENT OF THE OFFENDER.— [U]nlike the process of inquiry in aid of legislation where the rights of witnesses are involved, ***impeachment is primarily for the protection of the people as a body politic***, and not for the punishment of the offender.

11. ID.; ID.; ID.; INITIATION OF IMPEACHMENT PROCEEDINGS; REFERS TO THE FILING AND REFERRAL OF THE COMPLAINT TO THE COMMITTEE ON JUSTICE FOR ACTION.— Article XI, Section 3, paragraph (5) of the Constitution reads: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year." x x x *Francisco* states that the term "initiate" means to file the complaint and take initial action on it. The initiation starts with the filing of the complaint which must be accompanied with an action to set the complaint moving. It refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint. The initial action taken by the House on the complaint is the referral of the complaint to the Committee on Justice. x x x Bernas and Regalado, who both acted as *amici curiae* in *Francisco*, affirmed that the act of initiating includes the act of taking initial action on the complaint. x x x The Court, in *Francisco*, thus found that the assailed provisions of the 12th Congress' Rules of Procedure in Impeachment Proceedings — Sections 16 and 17 of Rule V thereof — "clearly contravene Section 3(5) of Article XI since they g[a]ve the term 'initiate' a meaning different from filing and referral." x x x To the next logical question of what *ends or completes* the initiation, Commissioners Bernas and Regalado lucidly explained that the filing of the complaint must be accompanied by the referral to the Committee on Justice, which is the action that sets the complaint moving. *Francisco* cannot be any clearer in pointing out the material dates. x x x As pointed out in *Francisco*, the impeachment proceeding is not initiated "when the House deliberates on the resolution passed on to it by the Committee, because something prior to

that has already been done. The action of the House is already a further step in the proceeding, not its initiation or beginning. Rather, the proceeding is initiated or begins, when a verified complaint is filed *and* referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow." Allowing an expansive construction of the term "initiate" beyond the act of referral allows the unmitigated influx of successive complaints, each having their own respective 60-session-day period of disposition from referral. Worse, the Committee shall conduct overlapping hearings until and unless the disposition of one of the complaints ends with the affirmance of a resolution for impeachment or the overriding of a contrary resolution (as espoused by public respondent), or the House transmits the Articles of Impeachment (as advocated by the Reyes group), or the Committee on Justice concludes its first report to the House plenary regardless of the recommendation (as posited by respondent-intervenor). Each of these scenarios runs roughshod the very purpose behind the constitutionally imposed one-year bar. Opening the floodgates too loosely would disrupt the series of steps operating in unison under one proceeding.

12. ID.; ID.; ID.; ID.; THE HOUSE OF REPRESENTATIVES MUST DELIBERATELY DECIDE TO INITIATE AN IMPEACHMENT PROCEEDING, SUBJECT TO THE TIME FRAME AND OTHER LIMITATIONS IMPOSED BY THE CONSTITUTION.— The question as to who should administer or pronounce that an impeachment proceeding has been initiated rests also on the body that administers the proceedings prior to the impeachment trial. As gathered from Commissioner Bernas' disquisition in *Francisco*, a proceeding which "takes place not in the Senate but in the House" precedes the bringing of an impeachment case to the Senate. In fact, petitioner concedes that the *initiation* of impeachment proceedings is within the sole and absolute control of the House of Representatives. Conscious of the legal import of each step, the House, in taking charge of its own proceedings, must deliberately decide to initiate an impeachment proceeding, subject to the time frame and other limitations imposed by the Constitution. This chamber of Congress alone, not its officers or members or any private individual, should own up to its processes. The Constitution

did not place the power of the "final say" on the lips of the House Secretary General who would otherwise be calling the shots in forwarding or freezing any impeachment complaint. Referral of the complaint to the proper committee is not done by the House Speaker alone either, which explains why there is a need to include it in the Order of Business of the House. It is the House of Representatives, in public plenary session, which has the power to set its own chamber into special operation by referring the complaint or to otherwise guard against the initiation of a second impeachment proceeding by rejecting a patently unconstitutional complaint.

13. ID.; ID.; ID.; ID.; A PERIOD OF DELIBERATION IS REQUIRED BEFORE THE REFERRAL STAGE.— Under the Rules of the House, a motion to refer is not among those motions that shall be decided without debate, but any debate thereon is only made subject to the five-minute rule. Moreover, it is common parliamentary practice that a motion to refer a matter or question to a committee may be debated upon, not as to the merits thereof, but only as to the propriety of the referral. With respect to complaints for impeachment, the House has the discretion not to refer a subsequent impeachment complaint to the Committee on Justice where official records and further debate show that an impeachment complaint filed against the same impeachable officer has already been referred to the said committee *and* the one year period has not yet expired, lest it becomes instrumental in perpetrating a constitutionally prohibited second impeachment proceeding. Far from being mechanical, before the referral stage, a period of deliberation is afforded the House, as the Constitution, in fact, grants a maximum of three session days within which to make the proper referral.

14. ID.; ID.; ID.; ID.; REFERRAL OF THE FIRST IMPEACHMENT COMPLAINT IN CASE AT BAR IS WITHIN THE TIME LIMIT.— [O]ne limitation imposed on the House in initiating an impeachment proceeding deals with deadlines. The Constitution states that "[a] verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter." In the present case,

petitioner failed to establish grave abuse of discretion on the allegedly "belated" referral of the first impeachment complaint filed by the Baraquel group. For while the said complaint was filed on July 22, 2010, there was yet then no session in Congress. It was only four days later or on July 26, 2010 that the 15th Congress opened from which date the 10-day session period started to run. When, by Memorandum of August 2, 2010, Speaker Belmonte directed the Committee on Rules to include the complaint in its Order of Business, it was well within the said 10-day session period. There is no evident point in rushing at closing the door the moment an impeachment complaint is filed. Depriving the people (recall that impeachment is primarily for the protection of the people as a body politic) of reasonable access to the limited political vent simply prolongs the agony and frustrates the collective rage of an entire citizenry whose trust has been betrayed by an impeachable officer. It shortchanges the promise of reasonable opportunity to remove an impeachable officer through the mechanism enshrined in the Constitution.

15. ID.; ID.; ID.; ONE-YEAR BAR RULE; THE PURPOSE THEREOF IS DEFEATED WHEN AN EXPANSIVE CONSTRUCTION OF THE TERM "INITIATE" IS ALLOWED.— The Court does not lose sight of the salutary reason of confining only one impeachment proceeding in a year. Petitioner concededly cites Justice Adolfo Azcuna's separate opinion that concurred with the *Francisco* ruling. Justice Azcuna stated that the purpose of the one-year bar is two-fold: 1) "to prevent undue or too frequent harassment; and 2) to allow the legislature to do its principal task [of] legislation." x x x It becomes clear that the consideration behind the intended limitation refers to the element of time, and *not* the number of complaints. The impeachable officer should defend himself in only one impeachment *proceeding*, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing *and* referral remains congruent to the rationale of the constitutional provision.

16. ID.; ID.; ID.; ID.; SIGNIFICANCE.— What the Constitution assures an impeachable officer is not freedom from arduous

effort to defend oneself, which depends on the qualitative assessment of the charges and evidence and not on the quantitative aspect of complaints or offenses. In considering the side of the impeachable officers, the Constitution does not promise an absolutely smooth ride for them, especially if the charges entail genuine and grave issues. The framers of the Constitution did not concern themselves with the media tolerance level or internal disposition of an impeachable officer when they deliberated on the impairment of performance of official functions. The measure of protection afforded by the Constitution is that if the impeachable officer is made to undergo such ride, he or she should be made to traverse it just once. Similarly, if Congress is called upon to operate itself as a vehicle, it should do so just once. There is no repeat ride for one full year. This is the whole import of the constitutional safeguard of one-year bar rule.

17. ID.; ID.; ID.; AN IMPEACHMENT COMPLAINT NEED NOT ALLEGE ONLY ONE IMPEACHABLE OFFENSE.— Without going into the effectiveness of the suppletory application of the *Rules on Criminal Procedure* in carrying out the relevant constitutional provisions, which prerogative the Constitution vests on Congress, and without delving into the practicability of the application of the *one offense per complaint* rule, the initial determination of which must be made by the House which has yet to pass upon the question, the Court finds that petitioner's invocation of that particular rule of Criminal Procedure does not lie. Suffice it to state that the Constitution allows the indictment for multiple impeachment offenses, with each charge representing an article of impeachment, assembled in one set known as the "Articles of Impeachment." It, therefore, follows that an impeachment complaint need not allege only one impeachable offense.

18. ID.; ID.; ID.; RULE ON CONSOLIDATION; A DETERMINATION ON THE ISSUE ON CONSOLIDATION IN CASE AT BAR IS PREMATURE.— In rejecting a consolidation, petitioner maintains that the Constitution allows only one impeachment complaint against her within one year. Records show that public respondent disavowed any immediate need to consolidate. Its chairperson Rep. Tupas stated that "[c]onsolidation depends on the Committee whether

to consolidate[; c]onsolidation may come today or may come later on after determination of the sufficiency in form and substance," and that "for purposes of consolidation, the Committee will decide when is the time to consolidate[, a]nd if, indeed, we need to consolidate." Petitioner's petition, in fact, initially describes the consolidation as merely "contemplated." Since public respondent, whether *motu proprio* or upon motion, did not yet order a consolidation, the Court will not venture to make a determination on this matter, as it would be premature, conjectural or anticipatory. Even if the Court assumes petitioner's change of stance that the two impeachment complaints were *deemed* consolidated, her claim that consolidation is a legal anomaly fails. Petitioner's theory obviously springs from her "proceeding = complaint" equation which the Court already brushed aside.

CARPIO*, J., concurring opinion:*

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; THE TERM "TO INITIATE"; REFERS TO THE FILING OF THE IMPEACHMENT COMPLAINT AND THE REFERRAL BY THE HOUSE PLENARY TO THE COMMITTEE ON JUSTICE.— Section 3(5), Article XI of the 1987 Constitution provides that "(n)o impeachment proceedings shall be initiated against the same official more than once within a period of one year." x x x In *Francisco, Jr. v. House of Representatives*, the Court had the occasion to discuss the meaning of the term "to initiate" as applied to impeachment proceedings. x x x [T]here are two components of the act of initiating the complaint: the filing of the impeachment complaint **and** the referral by the House Plenary to the Committee on Justice. The Court ruled that once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period.

2. ID.; ID.; ID.; ONE-YEAR BAR RULE; NOT VIOLATED WHEN TWO IMPEACHMENT COMPLAINTS WERE REFERRED BY THE HOUSE PLENARY TO THE COMMITTEE ON JUSTICE AT THE SAME TIME; CASE AT BAR.— On 11 August 2010, the two complaints were referred by the House Plenary to the Committee on Justice **at the same time**. The Committee on Justice acted on the two complaints, ruling on the sufficiency of form,

and later of substance, at the same time. The prohibition against filing of another impeachment complaint within a one year period would apply if the First Complaint was referred by the House Plenary to the Committee on Justice ahead of the Second Complaint. There is nothing in the Constitution that prohibits the consolidation of the First and Second Complaints since they were referred by the House Plenary to the Committee on Justice **at the same time**. Neither the First nor the Second Complaint is prior to the other in terms of action of the House Plenary in referring the two complaints to the Committee on Justice. The Constitutional bar, therefore, will not apply in this case.

3. ID.; ID.; ID.; IMPEACHMENT COMPLAINTS; THE FACT THAT THE ACTS COMPLAINED OF ARE ENUMERATED THEREIN, COUPLED WITH THE FACT THAT THEY ARE VERIFIED AND ENDORSED, IS ENOUGH TO DETERMINE WHETHER THE COMPLAINTS ARE SUFFICIENT IN FORM.— The Rules of Procedure provides that "[t]he Rules of Criminal Procedure under the Rules of Court shall, as far as practicable, apply to impeachment proceedings before the House." Section 7, Rule 117 of the Revised Rules of Criminal Procedure provides that a complaint or information is sufficient if it states, among other things, the name of the accused and the acts or omissions complained of as constituting the offense. Following Section 16 of the Rules of Procedure, Section 7, Rule 117 of the Revised Rules of Criminal Procedure suppletorily applies to the Rules of Procedure to determine whether the impeachment complaints are sufficient in form. The fact that the acts complained of are enumerated in the impeachment complaints, coupled with the fact that they were verified and endorsed, is enough to determine whether the complaints were sufficient in form.

4. ID.; ID.; ID.; A STRICT APPLICATION OF THE RULES OF CRIMINAL PROCEDURE IS NOT REQUIRED IN IMPEACHMENT PROCEEDINGS.— The impeachment procedure is analogous to a criminal trial but is not a criminal prosecution *per se*. While the Rules of Procedure provide for the suppletory application of the Rules of Criminal Procedure in an impeachment proceedings, a strict application of the Rules of Criminal Procedure is not required in impeachment proceedings x x x.

5. ID.; ID.; ID.; ARTICLES OF IMPEACHMENT; MAY HAVE SEVERAL ARTICLES EACH CHARGING ONE SPECIFIC OFFENSE.— [T]he impeachment complaint is not the same as the Articles of Impeachment. The impeachment complaint is analogous to the affidavit-complaint of the private complainant filed before the prosecutor for purposes of the preliminary investigation. Such affidavit-complaint, prepared by the complainant, may allege several offenses. On the other hand, Section 13, Rule 110 of the Revised Rules of Criminal Procedure refers to the formal complaint or information prepared by the prosecutor and filed before the court after the preliminary investigation. Such formal complaint or information must charge only one offense against an accused. The Articles of Impeachment is prepared by the Committee after it votes to recommend to the House Plenary the filing of impeachment charges. The only requirement in preparing the Articles of Impeachment is that there is only **one specific charge for each article**. The Articles of Impeachment, as its name imply, may have several articles, each charging one specific offense. The proceedings before the Committee on Justice is like a preliminary investigation in a criminal case where there is no complaint or information yet.

6. ID.; ID.; ID.; THE IMPEACHMENT PROCEEDING COVERS NOT ONLY CRIMINAL ACTS BUT ALSO NON-CRIMINAL ACTS.— The impeachment proceeding covers not only criminal acts but also non-criminal acts, such as betrayal of public trust, which is the main charge against petitioner in both the First and Second Complaints. In *Francisco*, the Court noted that the framers of the Constitution could find no better way to approximate the boundaries of betrayal of public trust than by alluding to positive and negative examples. x x x [T]he framers of the Constitution recognized that an impeachment proceeding covers non-criminal offenses. They included betrayal of public trust as a catchall provision to cover non-criminal acts. The framers of the Constitution intended to leave it to the members of the House of Representatives to determine what would constitute betrayal of public trust as a ground for impeachment.

7. REMEDIAL LAW; COURTS; SUPREME COURT; CANNOT REVIEW THE SUFFICIENCY OF THE SUBSTANCE OF THE IMPEACHMENT COMPLAINTS.— [T]he Court cannot review

the sufficiency of the substance of the impeachment complaints. The sufficiency of the substance will delve into the merits of the impeachment complaints over which this Court has no jurisdiction. The Court can only rule on whether there is a gross violation of the Constitution in filing the impeachment complaint, in particular, whether the complaint was filed in violation of the one-year ban. The Court cannot review the decision of the Committee on Justice to impeach.

8. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; CHARACTERIZED AS A POLITICAL PROCESS.— Impeachment is a political process. Thus, the decision to impeach lies exclusively on Congress. The most important thing in an impeachment proceeding is the vote by the House Plenary. Section 10 of the Rules of Procedure states that "[a] vote of at least one-third (1/3) of all Members of the House is necessary for the approval of the resolution setting forth the Articles of Impeachment. If the resolution is approved by the required vote, it shall then be endorsed to the Senate for its trial." The Rule is based on Section 3 (4), Article XI of the 1987 Constitution x x x. The Constitution is clear. After the vote of one-third of all the Members of the House is achieved, the Articles of Impeachment will automatically be forwarded to the Senate for trial. The Constitution only requires the vote of one-third of all the Members of the House for the Articles of Impeachment to be forwarded to the Senate whether or not the complaint is sufficient in form and substance.

9. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; A PUBLIC OFFICE IS NOT A PROPERTY RIGHT WITHIN THE SENSE OF THE CONSTITUTIONAL GUARANTIES OF DUE PROCESS OF LAW.— [T]here is no violation of petitioner's right to due process. Nobody can claim a vested right to public office. A public office is not a property right, and no one has a vested right to any public office.

NACHURA, *J., separate opinion:*

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUIRES THAT THE ISSUES PRESENTED ARE RIPE FOR ADJUDICATION.— The power of judicial review is not boundless and not without limitation. The expanded jurisdiction of this Court, notwithstanding, invocation of

judicial review requires that the issues presented are ripe for adjudication. Unfortunately, it is my view that the facts obtaining herein do not, as yet, permit judicial intervention. The supplications contained in the petition are premature and ought to be brought first before the House Committee on Justice.

2. ID.; ID.; ID.; ID.; THE ISSUES PRESENTED IN CASE AT BAR ARE NOT RIPE FOR ADJUDICATION.— Petitioner has yet to formally answer and appear before the House Committee on Justice. The House Committee on Justice has not been given opportunity to address the points raised by petitioner in her petition before us, which the latter could very well raise before public respondent. Applying the rule on the two-fold aspect of ripeness used in other jurisdictions and the demonstration of actual injury to pass the test of ripeness in this jurisdiction, it is quite obvious to me that, at this juncture, petitioner has not established the fitness of the issues for our decision, hardship if we withhold consideration, much less actual injury to petitioner. A juxtaposition of the timeline for the initiation of impeachment complaints mapped out in Section 3(2), Article XI of the Constitution x x x and Sections 2 and 3, Rule II of the Rules of Procedure in Impeachment Proceedings x x x do not indicate any deviation from the constitutional mandate. It cannot be overemphasized that petitioner has yet to formally appear before public respondent, and the latter has not yet terminated its hearing of the impeachment complaints. Clearly, there is no constitutional violation justifying this Court's intervention even without delving into the burning question of whether the initiation proceedings are deemed initiated with the mere filing of a complaint, and its referral to the House Committee on Justice, or should await the submission of a report by the House Committee on Justice. x x x [A] contingent event is still about to unfold, specifically, the Answer to be filed by petitioner, which public respondent has yet to hear and rule on. The Constitution, in no uncertain terms, declares that the Committee should hear the complaint, and **after hearing**, submit a report to the House within sixty (60) days from referral thereof. A co-equal branch of government has not committed a positive act, *i.e.*, to hear the defenses raised by petitioner in her Answer; we have no business to interfere, especially at this stage. Public respondent House Committee on Justice must be allowed to conduct and continue its hearing of the impeachment complaints

against petitioner. At that stage, petitioner's apprehensions of the Committee's partiality and vindictiveness would, perhaps, become justified.

ABAD, *J., separate concurring opinion:*

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; ESTABLISHED FOR REMOVING OTHERWISE CONSTITUTIONALLY TENURED AND INDEPENDENT PUBLIC OFFICIALS; GROUNDS.— The impeachment of public officials has been established for removing otherwise constitutionally tenured and independent public officials—the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman—for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. The power to initiate impeachment cases rests with the House while the power to try the same rests with the Senate.

2. ID.; ID.; ID.; STEPS THAT LEAD TO THE IMPEACHMENT OF A PUBLIC OFFICIAL.— The pertinent provisions of Section 3, Article XI of the 1987 Constitution summarizes the steps that lead to the impeachment of x x x public officials x x x. To sum up the various steps leading to the impeachment of a public official are: **One**. A verified complaint for impeachment is filed by a member of the House or endorsed by him; **Two**. The complaint is included in the order of business of the House; **Three**. The House refers the complaint to the proper Committee; **Four**. The Committee holds a hearing, approves the resolution calling for impeachment, and submits the same to the House; **Five**. The House considers the resolution and votes to approve it by at least onethird of all its members, which resolution becomes the article of impeachment to be filed with the Senate when approved; and **Six**. The Senate tries the public official under the article.

3. ID.; ID.; ID.; IMPEACHMENT PROCEEDINGS; SHOULD BE UNDERSTOOD TO REFER TO THE ACTION OR CASE INSTITUTED IN THE SENATE IN WHICH THE POWER TO HEAR AND DECIDE SUCH PROCEEDINGS IS ULTIMATELY LODGED.— Based on common usage in this jurisdiction, a "proceeding" described in the terms of an initiated action refers

to a proceeding filed before the court, body, or tribunal that ultimately has the jurisdiction to hear and decide such action. x x x [W]hen the Constitution speaks of "impeachment proceedings" it should be understood to refer to the action or case instituted in the Senate in which the power to hear and decide such proceedings is ultimately lodged. In this jurisdiction, the terms "case" and "proceeding" are often interchangeably used. A "case" is a legal action or suit. "Proceeding" means the carrying on of an action or course of action. The Constitution does not appear to draw any distinction between these two terms. At any rate, the power that the Constitution gives the House is only the power to initiate all cases of impeachment, not the ultimate power to hear and decide such cases. x x x For the above reason, it cannot be said that it is the party who files a verified complaint against the public official that initiates an impeachment case or proceeding. It is the House that does. Actually, the House exercises this power of initiation by filing the article of impeachment with the Senate. The power to initiate belongs to the House, not to any of its committees, provided the House is able to muster at least one-third vote of all its members in session assembled as the Constitution requires when the impeachment resolution is taken up.

4. ID.; ID.; ID.; ID.; INITIATION PROCEEDING; PROCEDURE.— The initiation of an impeachment case by the House of course follows a process: the filing of the complaint, the referral to the Justice Committee, the hearing by such committee, the committee voting over its resolution, the submission of the committee report to the plenary, and the vote to initiate an impeachment case. But this process should be correctly characterized as the House "initiation proceeding," not the "impeachment proceeding" itself.

5. ID.; ID.; ID.; ID.; THE INITIATION OF THE IMPEACHMENT PROCEEDING IN THE HOUSE OF REPRESENTATIVES IS INTENDED TO BE A PRELIMINARY STEP FOR THE DETERMINATION OF THE SUFFICIENCY OF THE ALLEGATIONS AGAINST THE IMPEACHABLE PUBLIC OFFICIAL.— The initiation of the impeachment proceeding in the House is intended to be a preliminary step for the determination of the sufficiency of the allegations against

the impeachable public official. It is akin to a preliminary investigation in a criminal case where probable cause is determined against the accused. If there is probable cause to indict the impeachable public official, then the Articles of Impeachment is transmitted to the Senate. In a criminal case, a criminal complaint or information is then filed in court against the accused.

6. ID.; ID.; ID.; ONE-YEAR BAR RULE; TO INTERPRET THE ONE YEAR BAR TO COMMENCE FROM THE DISPOSITION BY THE VOTE OF AT LEAST ONE-THIRD OF ALL THE MEMBERS OF THE HOUSE OF REPRESENTATIVES GIVES THE CONSTITUTIONAL PROVISION ON IMPEACHMENT MORE MEANING AND EFFECTIVENESS.— It is a settled principle that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. While the one year bar was provided to ensure that the public official is not subjected to considerable harassment and to allow the legislature to do its principal task of legislation, the constitutional provision on impeachment must be viewed, foremost, as a means to protect the State and the people from erring and abusive high ranking public officials. To interpret the one year bar to commence from the disposition by the vote of at least one-third of all the members of the House gives the constitutional provision on impeachment more meaning and effectiveness. It affords more protection to the public interests since the initiation of impeachment complaints would no longer be a race against time. A slippery impeachable public official would not be able to pre-empt the filing within the year of a meritorious impeachment complaint against him by the simple expedience of colluding with someone to file first a baseless impeachment complaint against him.

SERENO, *J., concurring opinion:*

1. POLITICAL LAW; STATE; DOCTRINE OF SEPARATION OF POWERS; PERTAINS TO THE APPORTIONMENT OF STATE POWERS AMONG COEQUAL BRANCHES.— The doctrine of separation of powers in our theory of government pertains to the apportionment of state powers among coequal branches; namely, the Executive, the Legislature and the Judiciary. In establishing the structures of government, the ideal that the

Constitution seeks to achieve is one of balance among the three great departments of government —with each department undertaking its constitutionally assigned task as a check against the exercise of power by the others, while all three departments move forward in working for the progress of the nation. The system of checks and balances has been carefully calibrated by the Constitution to temper the official acts of each of these three branches.

2. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; THE POWER OF IMPEACHMENT IS THE LEGISLATURE'S CHECK AGAINST THE ABUSES OF IMPEACHABLE OFFICERS.— The power of impeachment is the Legislature's check against the abuses of the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman. Having been elected or appointed for fixed terms, these impeachable officers enjoy security of tenure, which is intended to enhance their capability to perform their governmental functions efficiently and independently. However, their tenure, arising from either direct election by the people or indirect appointment by the people's representatives, is not *carte blanche* authority for them to abuse their powers. In the face of gross governmental abuse, the people have not been made so powerless by the Constitution as to suffer until the impeachable officer's term or appointment expires. The Legislature's impeachment power is the very solution provided by the fundamental law to remove, in the interim, public officers who have failed to uphold the public's trust. The Ombudsman is the public official constitutionally tasked to investigate and prosecute complaints against other public officials except for impeachable officers and members of the national legislature. She is continually required by the Constitution to be of recognized probity and independence, and must maintain this public trust during her term of office. Avoidance of the prospect of impeachment is the negative incentive for the Ombudsman, and all other impeachable officers, to keep that public trust.

3. ID.; ID.; ID.; A POLITICAL ACT EXERCISED BY THE LEGISLATURE.— Within the limitations set forth in the Constitution, impeachment is inarguably a **political act** exercised by the Legislature, a political body elected by and directly

accountable to the people. This power "is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot easily be reached by an ordinary tribunal." Full discretion is vested in Congress, both the House and the Senate, to determine whether or not an officer should be impeached, subject only to constitutionally provided limits. Even if the expanded *certiorari* jurisdiction allows the Court to review legislative acts that contravene the express provisions of the Constitution, the Court cannot supplant with its own determination, that of Congress in finding whether a public officer has performed acts that are grounds for impeachment. The political character of the process is underscored by a degree of imprecision in the offenses subject of impeachment, thus allowing Congress sufficient leeway to describe the acts as impeachable or not.

4. ID.; ID.; ID.; THE TIME BAR LIMITATION MUST BE COUNTED FROM A DISCRETIONARY, AND NOT A MINISTERIAL ACT, SINCE THE POWER OF IMPEACHMENT IS INHERENTLY DISCRETIONARY, OWING TO ITS POLITICAL CHARACTER.— Since the power of impeachment is inherently discretionary, owing to its political character, then the time bar limitation imposed by the Constitution on this legislative discretion must likewise be counted from a discretionary, and not a ministerial, act. The one-year period was meant to be a restraint on the discretionary power of impeachment; otherwise, the Legislature would have been allowed to exercise that discretion at will repeatedly and continuously, to the detriment of the discharge of functions of impeachable officers. It is counterintuitive and illogical to place a limitation on discretionary powers, which is triggered not by the exercise of the discretion sought to be limited, but by a mere ministerial, ceremonial act perfunctorily performed preparatory to such exercise.

5. ID.; ID.; ID.; IMPEACHMENT PROCEEDINGS; THE CONSTITUTIONAL DEADLINES FOR THE EXECUTION OF IMPEACHMENT STEPS REGULATE ONLY THE SPEED AT WHICH THE PROCEEDING IS TO TAKE PLACE.— We observe that the Constitution has placed time conditions on the performance of acts (both discretionary and ministerial in nature) in pursuit of the House's exclusive power to initiate

impeachment proceedings. These specific time conditions in the form of session days, however, have primarily been imposed for the purpose of avoiding delays or filibusters, which members of the House may resort to in order to prolong or even defeat the impeachment process. Whether the step is discretionary or ministerial, the constitutional deadlines for the execution of impeachment steps regulate only the **speed** at which the proceeding is to take place.

6. ID.; ID.; ID.; ID.; THE RULE AGAINST THE INITIATION OF MORE THAN ONE IMPEACHMENT PROCEEDING AGAINST THE SAME IMPEACHABLE OFFICER IN A SPAN OF ONE YEAR IS A TIME CONSTRAINT ON THE FREQUENCY WITH WHICH THE DISCRETIONARY ACT OF IMPEACHMENT IS TO BE EXERCISED.— [T]he rule against the initiation of more than one impeachment proceeding against the same impeachable officer in a span of one year is a time constraint on the **frequency** with which the discretionary act of impeachment is to be exercised. The time bar regulates how often this power can be exercised by the House of Representatives. The rationale is that the extreme measure of removal of an impeachable officer cannot be used as Congress' perennial bargaining chip to intimidate and undermine the impeachable officer's independence.

7. REMEDIAL LAW; ACTIONS; PROCEEDINGS; DEFINED.— Proceedings, as understood in law, include "any and all of the steps or measures adopted or taken, or required to be taken in the prosecution or defense of an action, from the commencement of the action to its termination, such as the execution of the judgment." "Proceedings, both in common parlance and in legal acception, imply action, procedure, prosecution. If it is a progressive course, it must be advancing; and cannot be satisfied by remaining at rest."

8. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; ONE-YEAR BAR RULE; WHEN COMMENCED.— [T]he term "impeachment proceedings" should include the entire gamut of the impeachment process in the House – from the filing of the verified complaint, to its referral to the appropriate committee, to the committee's deliberations and report, up to the very vote of the House in plenary on the same report. **It is only at the time that the House**

of Representatives as a whole either affirms or overrides the Report, by a vote of one third of all the members, that the initiation of the impeachment proceedings in the House is completed and the one-year bar rule commences. This is because the plenary House vote is the first discretionary act exercised by the House in whom the power of initiating impeachment proceedings repose. x x x The plenary vote by the House on the committee report is definite, determinable, and not ministerial; it is precisely the discretionary exercise of the power to initiate impeachments.

9. ID.; ID.; ID.; ID.; RECKONING THE BEGINNING OF THE TIME BAR FROM A MINISTERIAL ACT, INSTEAD OF THE EXERCISE OF THE DISCRETIONARY POWER OF IMPEACHMENT, TENDS TO FOCUS ATTENTION ON THE PROCEDURAL LOOPHOLES.— Reckoning the beginning of the time bar from a ministerial and preparatory act, instead of the exercise of the discretionary power of impeachment, tends to focus attention on the procedural loopholes. Thus, impeachable officers subject of the proceedings, as well as their counsel, abuse these technical gaps in the legal framework of impeachment. Their purpose is to escape removal or perpetual disqualification despite the serious and grave charges leveled against them. Questions on the number of complaints filed, the date or even the time of filing, and whether the complaints have been consolidated or even simultaneously referred become monkey wrenches that impede the entire process and frustrate the mechanism of impeachment to the point of infeasibility.

10. ID.; ID.; ID.; THE POWER TO INITIATE IMPEACHMENT PROCEEDINGS IS A POWER THAT IS REPOSED UPON THE HOUSE OF REPRESENTATIVES AS A WHOLE BODY, IN REPRESENTATION OF THE SOVEREIGN.— The power to initiate all cases of impeachment is an extraordinary exercise of the sovereign people through its elected representatives to immediately remove those found to have committed impeachable offenses. Therefore, the power to initiate impeachment proceedings is a power that is reposed upon the House of Representatives as a whole body, in representation of the sovereign, and this power cannot be taken over by a mere Committee. Irrespective of the Committee's findings, the impeachment proceeding will rise or fall or continue

up to the impeachment case in the Senate on the basis of the one-third vote of the House. Hence, the one-year period is a limitation on the discretionary power of the entire House to initiate impeachment proceedings, and not on the committee's deliberations or recommendations with respect to the impeachment complaint/s.

11. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; EXERCISE THEREOF IN CASE AT BAR HAS REQUIRED THE SUPREME COURT TO DO WHAT HAS BEEN DESCRIBED AS A BALANCING ACT.— Judicial review serves an affirmative function vital to a government of limited powers – the function of maintaining a satisfactorily high public feeling that the government has obeyed the law of its own Constitution and stands ready to obey it as it may be declared by a tribunal of independence. In this instance, in exercising the power of judicial review over the exclusive and sole power of the House to initiate impeachment cases, the Court must remember that it is also performing a legitimating function – validating how the House exercises its power in the light of constitutional limitations. The Court in the present constitutional dilemma is tasked with doing what has been described as a "balancing act," in determining the appropriate operation of the one-year time bar on the initiation of subsequent impeachment proceedings *vis-à-vis* the need to allow Congress to exercise its constitutional prerogatives in the matter of impeachment proceedings. On the one hand, the undisputed *raison d'être* of the time bar is to prevent the continuous and undue harassment of impeachable officers, such as petitioner Gutierrez, in a way that prevents them from performing their offices' functions effectively. On the other hand, the protection afforded to petitioner and other impeachable officers against harassment is not a blanket mechanical safety device that would defeat altogether any complaint of wrongdoing, of which she and other impeachable officers may be accused. Therefore, the power to initiate impeachment proceedings should not be so effortlessly and expeditiously achieved by disgruntled politicians to pressure impeachable officers to submission and undermine the latter's institutional independence. But neither should the power of impeachment be too unreasonably restrictive or filled with technical loopholes as to defeat legitimate and substantiated claims of gross wrongdoing. I submit that a balance of these

two interests is better achieved if the time bar for the initiation of impeachment proceedings commences from the voting of the House on the committee report. Briefly, a subsequent impeachment proceeding against the same officer cannot be initiated until and unless one year lapses from the time the House in plenary votes either to approve or to disapprove the recommendations of the committee on impeachment complaint/s.

12. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; CONGRESS, THE POLITICAL BRANCH OF GOVERNMENT, IS ENTRUSTED WITH THE POWER OF IMPEACHMENT, AS THE OBJECTIVES AND QUESTIONS TO BE RESOLVED ARE POLITICAL.— What the Court is deciding herein is merely the scope of the constitutional limits on the power to initiate impeachment proceedings, and how the delineation of that scope would affect the second Impeachment Complaint filed by private respondent Reyes. This Court does not arrogate unto itself the power to determine the innocence or guilt of petitioner Gutierrez with respect to the allegations contained in the impeachment complaints of private respondents. Congress, the political branch of government, was entrusted with the power of impeachment, specifically, "because the objectives and the questions to be resolved are political." In the Constitution, the impeachment power is an extraordinary political tool to oust a public officer. It must, therefore, be exercised by those whose functions are most directly and immediately responsive to the broad spectrum of the Filipino people, rather than by the Courts.

DEL CASTILLO, *J., concurring and dissenting opinion:*

1. REMEDIAL LAW; ACTIONS; PROCEEDING; DEFINED.— The word "proceeding" has been defined as "the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment; any procedural means for seeking redress from a tribunal or agency; an act or step that is part of a larger action." This is in contradistinction with a "complaint," which is "[t]he initial pleading that starts a[n] x x x action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief."

2. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; IMPEACHMENT PROCEEDINGS; THE FILING AND REFERRAL OF THE FIRST COMPLAINT PRECLUDED THE COMMITTEE ON JUSTICE FROM TAKING COGNIZANCE OF THE SECOND COMPLAINT; CASE AT BAR.— Here, both the First and Second Complaint separately went through these steps – they were filed, referred to the Speaker of the House, included in the Order of Business, referred to the House Committee on Justice, and separately considered by the Committee. In fact, the records bear out that each individual complaint was separately scrutinized to determine whether each was sufficient in form and substance, and the petitioner was required to answer both complaints. In all respects, there were two proceedings. x x x These two complaints have, in all respects, been treated separately by the House, and each stands alone. In fact, the complaints have been treated in separate proceedings, as indicated by the fact that there was no identity in the votes received by each complaint. x x x To summarize, notwithstanding simultaneous referral, once the First Complaint was initiated, that is to say, filed and referred to the Committee on Justice, no other proceeding could be initiated against the petitioner. This protection granted by the Constitution cannot be waved away merely by reference to the "layers of protection for an impeachable officer" and the likelihood that the number of complaints may be reduced during hearings before the Committee on Justice. As such, the filing and referral of the First Complaint against the petitioner precluded the Committee on Justice from taking cognizance of the Second Complaint.

3. ID.; ID.; ID.; ID.; THE COMMITTEE ON JUSTICE SHOULD BE ALLOWED TO PROCEED WITH ITS HEARING ON THE FIRST COMPLAINT, THOUGH THE SECOND COMPLAINT IS BARRED BY THE CONSTITUTION; CASE AT BAR.— [T]hough the Second Complaint is barred by Section 3(5) of the Constitution, the House Committee on Justice should be allowed to proceed with its hearing on the First Complaint. I believe the Members of this Court are well aware of the tension here between the clamor for public accountability and claims of judicial overreach *vis-à-vis* the demand that governmental action be exercised only within Constitutional limits. In fact, our work here has been called unjustifiable arrogance by an unelected minority who condescends to supplant its will for that of the sovereign people and its elected

representatives. Nonetheless, try as we might, we cannot shirk from our duty to "say what the law is." Particularly, if one conceives of the law as both the reflection of society's most cherished values as well as the means by which we, as a nation, secure those values, then this Court can do no less than ensure that any impeachment proceedings stand on unassailable legal ground, lest the provisions of our fundamental law be used to work an evil which may not be fully measured from where we stand.

PEREZ, *J.*, *separate concurring and dissenting opinion:*

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; ONE-YEAR BAR RULE; CONDITIONS.— Section 3(5), Article XI of the Constitution succinctly states: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year." In practical terms, the provision operates to bar the initiation of an impeachment proceeding against an official, when the following conditions are present: an impeachment proceeding against such official was **previously initiated**; and one year has not yet elapsed from the time of the previous initiation.

2. ID.; ID.; ID.; ID.; REFERRAL TO THE HOUSE COMMITTEE ON JUSTICE OF THE SECOND COMPLAINT IN CASE AT BAR CANNOT BE GIVEN FORCE AND EFFECT.— To begin with, there never was a "*single*" or "*simultaneous*" referral of the two (2) impeachment complaints against the petitioner. Contrary to what the respondents adamantly profess, the complaints were not referred to the House Committee on Justice "*at exactly the same time*." A perusal of the records of the House of Representatives plenary proceedings on 11 August 2010 reveals that the two (2) impeachment complaints were actually referred to the House Committee on Justice **one after the other**. x x x True, the impeachment complaints were referred to the House Committee on Justice on the same date and during the same session, but there can be no mistake that **each complaint was, nevertheless, the subject of a separate and distinct referral**. This fact has immense constitutional consequences. A prior referral of the First Complaint to the House Committee on Justice would mean that an impeachment proceeding against the petitioner was, by then, already completely initiated. This, by the ***Francisco*** ruling, renders

inutile the succeeding referral of the Second Complaint and makes such referral together with its subject, which is the Second Complaint, unconstitutional excesses that can be given neither force nor effect. ***Francisco*** prohibits rather than justifies a second referral. x x x The recorded reality is that the First Complaint was referred to the House Committee on Justice before the Second Complaint. An impeachment proceeding was already initiated against the petitioner even before a single word about the Second Complaint was read before the plenary. On this score alone, the Second Complaint should be held barred.

3. ID.; ID.; ID.; ID.; SIMULTANEOUS REFERRAL OR SINGLE REFERRAL TO THE HOUSE COMMITTEE ON JUSTICE OF MULTIPLE IMPEACHMENT COMPLAINTS IS NOT ALLOWED.— The fact as big as the recorded successive referrals is that the contrived simultaneous referral or single referral to the House Committee on Justice of multiple impeachment complaints is not allowed under Section 3(5), Article XI of the Constitution. The initiatory act of "**filing and referral**," envisioned in the ***Francisco*** case, can only have one (1) impeachment complaint as its subject. Allowing a referral to the House Committee on Justice of multiple complaints would not only amount to a distortion of both ***Francisco*** and the constitutional provision it interprets, but would also circumvent the very purpose of the one-year impeachment ban.

4. ID.; ID.; ID.; ID.; ONLY ONE COMPLAINT IS ALLOWED TO BE FILED AND REFERRED WITHIN A PERIOD OF ONE YEAR.— Section 3(5), Article XI of the Constitution x x x serves to curb two (2) possibilities that may arise should several impeachment proceedings against the same official be initiated within a one-year period: a.) the possibility of harassment on the part of the impeachable officer; and b.) the possibility that the legislative work of Congress would be compromised. Construing the initiatory acts of "**filing and referral**" as able to encompass multiple impeachment complaints would encourage, rather than discourage, the occurrence of these possibilities. There is no practical difference, at least in terms of their deleterious effects, between a simultaneous institution of multiple impeachment complaints against the same official and the initiation of separate impeachment proceedings against

him within a one-year period. *First*. Allowing the House Committee on Justice, under the guise of a single referral, to take cognizance of more than one complaint against the same official would undoubtedly expose the latter to the risks of undue harassment. Without a cap on the number of complaints that can be the subject of an impeachment proceeding, the charges against an impeachable officer can easily become limitless. The situation permits political opportunists to hurl a plethora of charges against an impeachable officer who, in the midst of answering those charges, must also perform vital governmental duties. *Second*. An impeachment proceeding saddled with multiple complaints draws the prospect of a protracted impeachment process. A long drawn-out impeachment proceeding would require the House of Representatives to spend more time as a prosecutorial body, effectively distracting it from the exercise of its law-making functions. This contradicts the very nature of the legislature. I am, as a result, constrained to read the "and referral" part of the ***Francisco*** definition of impeachment initiation as pertaining to one and only one complaint that is allowed to be filed and referred within a period of one year.

5. ID.; ID.; ID.; AFTER THE REFERRAL IN DUE COURSE, THE ONE-YEAR BAN ON ANOTHER INITIATION STARTS; CASE AT BAR.— The observation that the Constitution affords the House a period of deliberation and grants it a maximum period of three session days within which to make the proper referral is of utmost significance. For one, it underscores the validity of my opinion that while referral is a step subsequent to the filing of a complaint, a referral is not an unavoidable consequence of such filing. I agree with Justice Carpio Morales that referral is not a mechanical action. It is a deliberate act, and, may I add, with or without debate. The House ought to have been cognizant of this considering that it adopted as its own rules the ***Francisco*** definition of initiation of impeachment as filing and referral of the complaint. It is during the three-day allowable period of pre-referral deliberation that the House should decide which of the two complaints should be referred to the proper committee. The First Complaint was referred after a decision that it was proper for referral. This must be assumed, it having been done by no less than the House in plenary. The assumption is now an unassailable fact since there was no

recorded objection to the referral. After that referral in due course, the one-year ban on another initiation started. The referral of the Second Complaint subsequent to the first officially recorded and undebatable referral is a constitutionally prohibited second initiation of an impeachment proceeding against the same impeachable officer.

6. ID.; ID.; ID.; IMPEACHMENT PROCEEDING; THE INITIATION THEREOF MUST BE RECKONED FROM THE FILING AND SUBSEQUENT REFERRAL OF THE VERIFIED COMPLAINT TO THE PROPER COMMITTEE.— I find no sufficient and cogent reason to deviate from ***Francisco***. That the initiation of an impeachment proceeding must be reckoned from the filing and subsequent referral of the verified complaint is an interpretation of the Constitution anchored on the very intent of its framers and the honored principles of statutory construction. It is, without a hint of doubt, what the Constitution conveys. Neither can ***Francisco*** simply be disregarded out of the fear that it will allow erring officials - who, the respondents say, may just cause a frivolous complaint to be filed ahead of more meritorious ones - to easily escape impeachment. This fear is not grounded on reason. The Constitution already provides ample safeguards to prevent the filing of sham impeachment complaints. For one thing, impeachment complaints are required to be verified. The complainants are, under the pain of perjury, mandated to guarantee that the allegations embodied in the complaint are true and within their personal knowledge. Moreover, the requirement of verification is supplemented by another constitutional safeguard, *i.e.* the condition that every impeachment complaint, unless filed by at least one third (1/3) of the members of the House of Representatives, must be endorsed by a member thereof. The endorsement of a representative seeks to ensure that the allegations of the complaint are at least, on first glance, serious enough to merit consideration by the plenary. And, to reiterate, a three-day pre-referral proceeding can be availed of by the House in plenary to determine the propriety of referral. Needless to state, an unreferred complaint does not initiate an impeachment proceeding. Indeed, the ***Francisco*** doctrine is not as arbitrary or reckless as the respondents portray it to be. In marking initiation of an impeachment proceeding from

the filing of the verified complaint and its referral to the proper committee, ***Francisco*** did not destroy the effectiveness and integrity of the impeachment procedure. It only applied the Constitution.

BRION, *J., dissenting opinion:*

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE SUPREME COURT CAN ACT AND HAS THE DUTY TO STRIKE DOWN ANY ACTION COMMITTED WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS OF JURISDICTION.— Impeachment proceedings are political processes that the Constitution places within the exclusive domain of the legislature. Section 3(1), Article XI of the Constitution plainly states that: "*The House of Representatives shall have the exclusive power to initiate all cases of impeachment.*" Section 3(6) of the same article grants to the Senate the sole power to try and decide all cases of impeachment. Even the drafting of the impeachment rules is specifically entrusted to the House of Representatives. At the same time that it entrusts the impeachment process to the House of Representatives, the Constitution also provides clear standards and guidelines for the House of Representatives to follow to ensure that it does not act arbitrarily. Among these are: the specification of the grounds for impeachment, the periods within which an impeachment complaint should be acted on, the voting requirements, the one year bar on initiating an impeachment process, and the promulgation of the impeachment rules. Unwritten in the article on impeachment but, nevertheless, fully applicable are the guaranteed individual rights that the House of Representatives must absolutely respect. To the extent of these standards and guidelines, the Court – otherwise excluded from the impeachment process – plays a part in its traditional role as interpreter and protector of the Constitution. The House of Representatives must act within the limits the Constitution has defined; otherwise, the Court, in the exercise of judicial review, can act and has the duty to strike down any action committed with grave abuse of discretion or in excess of jurisdiction.

2. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; RULE ON PUBLICATION; PUBLICATION IS REQUIRED AS A

CONDITION PRECEDENT TO THE EFFECTIVITY OF A LAW.— The Constitution specifically provides that the House of Representatives must *promulgate* its rules on impeachment to effectively carry out the purpose of Section 3, Article XI that, together with Section 2, deals specifically with the House of Representatives' power of impeachment. To "promulgate" means to publish or to announce officially. By law, publication is necessary for a statute, law or rule to become effective; Article 2 of the Civil Code provides that laws shall take effect after 15 days following their publication, *unless the law provides for another period.* Publication is required as a condition precedent to the effectivity of a law to inform the public of the contents of the law, rules or regulations before these enactments take effect and affect the public's rights and interests. As a matter of basic fairness, "notice" is required before the public's rights and interests are placed at risk. In constitutional law terms, this is the guarantee of due process.

3. ID.; ID.; ID.; FAILURE TO PUBLISH A LAW OR RULE OFFENDS DUE PROCESS; EXCEPTION.— We explained in *Lorenzo M. Tañada, et al. v. Hon. Juan C. Tuvera, etc., et al.* that the ***failure to publish a law or rule offends due process***; it denies the public knowledge of the laws that affect them and removes the basis for the presumption that every person knows the law. The term "law" covers laws of general, as well as local, application; it embraces legislative enactments as well as executive orders, presidential decrees, and administrative rules. The only exceptions to the rule on publication are interpretative regulations and those that are merely internal in nature, *i.e.*, those regulating only the personnel of an administrative agency and not the public.

4. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; THE IMPEACHMENT RULES WHICH INTERPRET, IMPLEMENT AND FILL IN THE DETAILS OF THE CONSTITUTIONAL IMPEACHMENT PROVISIONS MUST BE PUBLISHED.— Like the Monetary Board circulars that do not only interpret but also "fill in the details" of the Central Bank Act, the impeachment rules which interpret, implement and fill in the details of the constitutional impeachment provisions must also be published. Significantly, even the *ponencia* states that the impeachment rules mandated by Section

3(8), Article XI of the Constitution were intended "to fill the gaps in the impeachment process." These rules cannot be considered as internal rules that merely regulate the performance of subordinates and, hence, are exempted from publication. They are rules that gravely affect the rights of impeachable officials; an impeachment conviction results in the public official's removal from office and disqualification to hold any public office in the Philippines. The impeachment rules likewise affect a public right; it is a matter of public interest to uphold standards applicable to public officials in the highest positions in the performance of their duties; they are the balancing measures to ensure that our public officials are continually held accountable in the performance of their functions. The fact that the Constitution itself allows "any citizen" to file an impeachment complaint already draws the public as a party with an interest to protect in the impeachment process.

5. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; RULE ON PUBLICATION; COMPLIANCE THEREWITH CANNOT BE EXCUSED BASED ON ALLEGATIONS THAT THE PARTY INVOLVED HAD BEEN NOTIFIED OF THE EXISTENCE OF THE RULES.— Compliance with the requirements of publication cannot be excused based on allegations that the party or parties involved had been notified of the existence of the rules. In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission*, the participation of the parties involved in a previous public consultation and their submission of comments on the proposed rules did not do away with the requirement to publish these rules before they could take effect. The plain and obvious reason for this ruling, of course, is that the binding effect of laws, rules and regulations cannot be made to depend on the *actual knowledge* of their terms by the affected individuals and entities. The fact of publication assumes, by legal fiction, that all affected parties have been notified and are aware of applicable laws, rules and regulations; thereafter, the published enactments govern affected parties and their actions.

6. ID.; ID.; ID.; APPLIES TO IMPEACHMENT RULES; RATIONALE.— The comparison of impeachment rules with court rulings is far from apt. Court rulings are pronouncements by the judicial branch of government on *specific* cases affecting

specific parties on *defined* issues. As a rule, these rulings affect only the immediate parties to the case and their successors-in-interest; hence, the public has no immediate interest that may be directly affected, and need not be informed about the court rulings. In contrast, laws, rules and regulations, as a rule, affect the public in general and for this reason, they must be brought to the attention of the public. This reason underlies the rule on publication under Article 2 of the Civil Code and the rule under the complementary Article 3 that ignorance of the law excuses no one from compliance with its terms. These provisions fully apply to impeachment rules as these rules affect everyone – the impeachable officials; the House of Representatives itself as the constitutional body charged with the initiation of the impeachment process; the members of the House of Representatives; the citizenry who can bring impeachment complaints; and the public at large who have a stake in the due performance of duties by their public officers.

7. ID.; ID.; ID.; PUBLICATION IS A CONDITION PRECEDENT TO THE EFFECTIVITY OF THE LAW.— [The] belated publication of the Rules cannot have the retroactive effect of curing the infirmity that existed before the publication took place; the guarantee of due process is not served by a belated notice as a violation has by then already occurred. Precisely, publication is a **condition precedent** to the effectivity of the law.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE DUE PROCESS GUARANTEE DOES NOT STRICTLY REQUIRE THAT THE TIME GAP BETWEEN THE PUBLICATION AND THE EFFECTIVITY OF AN ENACTMENT BE FIFTEEN DAYS.— [T]he due process guarantee does not strictly require that the time gap between the publication and the effectivity of an enactment be fifteen (15) days. The clear terms of Article 2 of the Civil Code show that the House of Representatives has the discretion to specify a period lesser than 15 days before a statute, law or rule becomes effective. Thus, it could have provided for a shorter period if its intent had been to ensure compliance with the impeachment periods imposed by the Constitution. Unfortunately, *it did not so provide* and this failure cannot now be used as an argument against the application of the publication requirement.

9. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; IMPEACHMENT PROCEEDINGS; THREE PERIODS THAT REGULATE THE ACTIONS OF THE HOUSE OF REPRESENTATIVES, EXPLAINED.— [T]hree (3) periods regulate the actions of the House of Representatives on the impeachment proceedings. The *first* is the inclusion in the Order of Business which shall be made within 10 session days from the filing of the impeachment complaint. The *second* is the three-session-day period within which to refer the complaint to the proper committee. The *third* is the sixty-session-day period for the committee to report out its actions and recommendations to the plenary. All these are mandatory periods. But of these periods, the first two involve *specific actions* of the House of Representatives that are required by the Constitution itself and cannot, thus, be affected by the Rules. The committee actions, on the other hand, have been left by the Constitution for the House of Representatives to determine and undertake at its discretion, subject only to the requirement of a hearing; to the vote required to decide at the committee; and to the general provisions of the Constitution on the protection of the constitutional rights of the impeachable official. The temporal constitutional limitation is on the period given to the committee to act – it must complete its proceedings and report back to the House of Representatives in plenary within 60 session days from the referral.

10. ID.; ID.; ID.; ID.; THE MANDATORY SIXTY-SESSION-DAY PERIOD GIVEN TO THE JUSTICE COMMITTEE AND THE FIFTEEN-DAY PERIOD OF PUBLICATION OF THE IMPEACHMENT RULES MAY BE APPLIED SIMULTANEOUSLY IN CASE AT BAR.— Under the attendant facts of the case where the publication of the adopted Rules of Impeachment came *after* the impeachment complaints had been referred to the Justice Committee for action, the required 15-day period before it took effect necessarily fell within the mandatory 60-session-day period given to the Committee. Thus, the opportunity to act within the mandatory 60-session-day period was lessened by the 15-day waiting time for the impeachment rules to take effect. The intrusion of the publication period on the mandatory period for action by the Justice Committee, however, does not necessarily mean that the publication requirement must give way to the constitutional

mandatory period because the mandatory 60-session-day period has not repealed or modified, impliedly or expressly, the publication requirement. No facial repeal is evident from Section 3(8) of Article XI of the Constitution, nor is there any plain intent to do away with the publication requirement discernible from the terms of the constitutional provision. Neither is there any irreconcilable inconsistency or repugnancy between the two legal provisions. Thus, no reason exists in law preventing the two legal requirements from standing side by side and from being applied to the attendant facts of the case. An important consideration in the above conclusion relates to the length of the respective mandatory periods. The Justice Committee is given 60 *session* days (*i.e.*, not only 60 *calendar* days) within which to act, while the period involved under Article 2 of the Civil Code is 15 calendar days. Under these terms, the simultaneous application of the two requirements is not an impossibility, considering especially that the Justice Committee has control over the impeachment proceedings and can make adjustments as it sees fit to ensure compliance with the required 60-session-day period.

11. ID.; ID.; ID.; ID.; THE HOUSE OF REPRESENTATIVES' INITIAL FAILURE TO PUBLISH ITS IMPEACHMENT RULES RENDERS ALL THE PROCEEDINGS PRIOR TO THE EFFECTIVITY OF THE SUBSEQUENTLY-PUBLISHED RULES VOID FOR VIOLATION OF DUE PROCESS; CASE AT BAR.— In light of the House of Representatives' initial failure to publish its impeachment rules, all the proceedings prior to the effectivity of the subsequently-published rules must necessarily be ***void for violation of due process***. This is a conclusion the Court cannot shy away from; it must, as a duty, declare the nullity of laws, rules and regulations affecting individual rights that are not published. This is not the first time, in fact, that this Court will so act; jurisprudential history is replete with instances of laws, rules and regulations that the Court has voided for lack of the required publication. x x x For clarity, ***nullity applies to all the proceedings so far taken before the Justice Committee.*** These are the hearing on the sufficiency of form and the vote thereon taken on September 1, 2010, and the hearing on the sufficiency of the substance and the vote thereon taken on September 7, 2010. All other committee actions necessarily drew their strength from these

early actions and are, therefore, affected also by the lack of publication. ***The invalidity does not attach to actions taken by the House of Representatives itself*** – *i.e.*, the inclusion in the Order of Business and the referral to committees – as these are specific actions taken pursuant to the terms of the Constitution. Given that published rules of impeachment now exist and have been effective starting September 17, 2010, ***nothing should now prevent the House of Representatives from resuming its proceedings from its last valid action – the Speaker's referral of the impeachment complaints to the Justice Committee which can now undertake its constitutional role on impeachment.***

12. ID.; CONSTITUTIONAL LAW; CONSTITUTION; HOW CONSTRUED.— Basic in construing a constitution is the ascertainment of the intent or purpose of the framers in framing the provision under consideration. This should include, aside from the reason which induced the framers to enact the particular provision, the particular purpose/s intended to be accomplished and the evils, if any, sought to be prevented or remedied. Constitutional interpretation must consider the whole instrument and its various parts in a manner that would align the understanding of the words of the Constitution with the identified underlying intents and purposes.

13. ID.; ID.; ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; ONE-YEAR BAR RULE; THE BAR AGAINST IMPEACHMENT CANNOT SIMPLY BE CONFINED TO THE MECHANICAL ACT OF FILING AN IMPEACHMENT COMPLAINT.— The one-year bar rule and its purposes and effects, once considered, unavoidably introduce into the word "initiate" the idea of knowing and meaningful action sufficient to have the effect of preventing the filing of another impeachment complaint within one year. The import of what the bar signifies can be gleaned from the importance the Constitution gives public accountability and the impeachment process; public accountability is a primary constitutional interest that merits no less than one complete and separate Article in the Constitution, while impeachment is one of the defined means of holding the highest government officials accountable. They are prominent, not only in the Constitution, but in the public mind as well. In this light, the

bar against impeachment that Section 3(5), Article XI of the Constitution speaks of cannot simply be confined to the mechanical act of filing an impeachment complaint. As every citizen enjoys the right to file a complaint, a bar triggered by the mere physical act of filing one complaint is practically a negation of the granted right without a meaningful basis. Thus, the initiation of an impeachment complaint, understood in the sense used in Section 3(5), Article XI of the Constitution, must involve a process that goes beyond this physical act of filing; initiation must be a participatory act that involves the receiving entity, in this case, the House of Representatives.

14. ID.; ID.; ID.; ID.; ONLY A VALID IMPEACHMENT COMPLAINT SHOULD SERVE AS A BAR.— To be consistent with the nature and effects of the bar, the participation of the House of Representatives in the initiation phase must itself be meaningful; it must be an act characterized by the exercise of discretion in determining that the filed impeachment complaint is valid and can be the basis for the impeachment proceedings to follow, subject to supporting and duly admitted evidence. To state the obvious, only a valid impeachment complaint should serve as a bar; otherwise, no meaningful balance would exist between the impeachment and the bar that can frustrate it.

15. ID.; ID.; ID.; IMPEACHMENT PROCEEDINGS; THE ACT OF RECEIVING AN IMPEACHMENT COMPLAINT CANNOT BE DIVORCED FROM THE ACT OF REFERRAL.— The receipt by the House of Representatives of the filed impeachment complaint, like the filing of the complaint, involves a mechanical act x x x; a filed complaint must be received as the filing of the complaint is in the exercise of a right granted by the Constitution. In like manner, the initial overt action by the House of Representatives – the referral of the impeachment complaint to the appropriate committee – is no different from the prior act of receiving the complaint. It is essentially a mandatory act that the Constitution commands. In fact, the act of receiving an impeachment complaint cannot really be divorced from the act of referral since both acts are products of constitutional directives couched in the mandatory language of Section 3(2), Article XI of the Constitution.

16. ID.; ID.; ID.; ONE-YEAR BAR RULE; THE DETERMINATION OF THE SUFFICIENCY OF THE IMPEACHMENT COMPLAINT WOULD JUSTIFY THE IMPOSITION OF A BAR.— The next action following the referral of the impeachment complaint to the Justice Committee is the latter's consideration of the complaint for sufficiency in form and substance. The determination of sufficiency is essentially a test for validity and is the first opportunity for a meaningful action, involving the exercise of discretion, that would justify the imposition of a bar. It is at this level, with the complaint declared as valid, that impeachment proceedings can be fully recognized to be *validly* initiated.

17. ID.; ID.; ID.; ID.; THE CONSTITUTION BARS A SECOND COMPLAINT WITHIN A YEAR FROM THE INITIATION OF THE FIRST COMPLAINT ON THE PRESUMPTION THAT THE SECOND COMPLAINT ONLY SERVES TO HARASS AN IMPEACHABLE OFFICER. — From the perspective of the purposes of the one-year bar rule, it should be noted that up to the point of the referral by the House of Representatives, nothing is expected to be done by the public official against whom the complaint is filed. In fact, both the Constitution and the impeachment rules do not require that the complainant furnish the official sought to be impeached a copy of the verified impeachment complaint. Only after the Justice Committee finds the complaint sufficient in form and substance that the respondent official is formally furnished a copy of the verified complaint. It should be considered, too, that the mere filing of an impeachment complaint is not *per se* an act of harassment. The filing of an impeachment complaint is a remedy that the Constitution itself provides and defines. The concept of harassment only enters the picture in any subsequent complaint filed; the Constitution itself bars a second complaint within a year from the initiation of the first complaint on the presumption that the second complaint only serves to harass an impeachable officer.

18. ID.; ID.; ID.; ID.; UNDUE HARASSMENT AS A LEGAL JUSTIFICATION THEREFOR, ELUCIDATED.— Since "undue harassment" is practically a legal reason or justification for the one-year bar rule, it can only be understood in terms of the legal effects that the filing of an impeachment complaint carries

with it. As against the impeachable official against whom a complaint is filed, legal effects start only from the time a valid complaint is recognized. The mere referral of a complaint by the House of Representatives to the proper committee does not in any way legally affect the public official against whom a complaint is filed; at this point, he/she is only a passive participant in the proceedings – a person named in a complaint that may not even prosper. Legal effect takes place only when the complaint is found valid for sufficiency in form and substance, and the public official is formally furnished a copy and is required to answer. At this point – *i.e.*, when the House of Representatives, through its appropriate committee, has exercised its discretion in taking concrete action against an impeachable public official – a valid complaint can be said to have been formally recognized by and fully "initiated" in the House of Representatives. It is at this point, too, that the constitutional intent of preventing undue harassment of an impeachable officer is triggered. Beyond this point, a second impeachment complaint, whether valid or invalid, becomes too many for an impeachable official to face within a year.

19. ID.; ID.; ID.; IMPEACHMENT PROCEEDINGS; THE DETERMINATION OF THE SUFFICIENCY OF THE IMPEACHMENT COMPLAINT IN FORM AND SUBSTANCE DOES NOT REQUIRE ANY FORMAL HEARING OR ANY EXPLANATION FROM THE RESPONDENT.— From the perspective of interference in the House of Representatives proceedings, note that the determination of sufficiency of the verified complaint in form and substance requires committee action but not any hearing where the respondent official must be present as a matter of due process. Sufficiency in form only requires a facial consideration of the complaint based on the mandated formal requirements. The Constitution requires the bare minimum of verification of the complaint, and the allegation that it is filed by a Member of the House of Representatives or the endorsement by a Member if the complaint is filed by a citizen. Additionally, following the Rules of Criminal Procedure of the Rules of Court that applies as suppletory rules, ***the form*** should be appropriate if a proper respondent, occupying an office subject to impeachment, is named in the complaint, and if specific acts or omissions are charged under one of the grounds for impeachment defined

by the Constitution. The complaint should be considered sufficient ***in substance*** if the acts or omissions charged are appropriate under the cited grounds and can serve as basis to hear and to bring the Articles of Impeachment forward to the Senate. It is at this point that the Justice Committee can determine, as a matter of substance, if the impeachment complaint is one that – because of its validity – can serve as a bar to a second complaint within a one-year period. Notably, all these would only require the examination of the verified complaint and whatever component annexes it may contain, *without need for any formal hearing or any explanation from the respondent* whose opportunity to explain and dispute the case against him/her only comes after an Answer. It is at this hearing before the Justice Committee that the determination of "probable cause" transpires. Incidentally, the Constitution expressly requires that there be a hearing before the Justice Committee submits its resolution on the Articles of Impeachment. Notably, too, the Constitution requires a hearing only at this point, not at any other stage, particularly at the determination of the sufficiency in form and substance stage, although no law prohibits the Justice Committee from calling the parties to a "sufficiency" hearing.

20. ID.; ID.; ID.; ID.; ALTERNATIVE VIEW OF FRANCISCO RULING, EXPLAINED.— [T]he *Francisco* ruling can indeed encourage naughty effects; a meritorious impeachment case can effectively be barred by the filing of a *prior* unmeritorious impeachment complaint whose mere referral to the Justice Committee already bars the recognition of the meritorious complaint. Its disregard of the purposes of Section 3(5), Article XI of the Constitution leaves the impeachment process highly susceptible to manipulation. In contrast, this naughty effect can be minimized with the adoption of the alternative view that fully takes the purposes of Section 3(5), Article XI of the Constitution into account, as the alternative: a. recognizes that the referral is a mandatory non-discretionary act on the part of the Speaker or the leadership of the House of Representatives; all complaints must be referred to the Justice Committee for its action and recommendation; and b. recognizes that the Constitution grants the Justice Committee the initial discretionary authority to act on all matters of form and substance of impeachment complaints, including the finding

and recommendation that a second complaint is barred by the one-year bar rule. To be sure, an unmeritorious complaint can still be filed ahead of time under the alternative view and be recognized as sufficient in form and substance by the Justice Committee in order to bar an expected meritorious complaint. This is a political dimension of the impeachment process that neither this Court nor the public can directly remedy under the terms of the present Constitution. The alternative view, however, would prevent the *unilateral refusal* at the level of the Speaker or leadership of the House of Representatives to refer the complaint to the Justice Committee on the ground of the one-year bar rule. Once a second complaint is referred, the Justice Committee – as the body granted by the Constitution with the initial authority and duty to rule – would then have to rule on the applicability of a bar and, subsequently, report this out to the plenary for its consideration. At both levels, debates can take place that can effectively bring the matter of public opinion to the bar where the political act of the House of Representatives can properly be adjudged.

21. ID.; ID.; ID.; ID.; THE CONSTITUTIONAL DIRECTIVE TO REFER AN IMPEACHMENT COMPLAINT TO THE COMMITTEE ON JUSTICE DOES NOT SET TERMS OR PROCEDURE AND PROVIDES ONLY A PERIOD.— [T]he constitutional directive to refer an impeachment complaint to the Committee is clear and unequivocal; it does not set terms or procedures and provides only for a period. Also, the House of Representatives itself does not appear – from the terms of Section 3, Article XI of the Constitution – to have the authority *at the first instance* to undertake any direct action on subsequently-filed impeachment complaints other than to refer them to the proper committee. The House of Representatives, therefore, must refer a filed impeachment complaint to the Justice Committee within the mandated period. Any attempt to read into the Constitution any procedure other than what it clearly provides is to introduce further complications into the impeachment process, and is an intervention inconsistent with the terms of the Constitution.

22. ID.; ID.; ID.; ID.; NO HEARING IS REQUIRED UNTIL THE JUSTICE COMMITTEE FINDS THE IMPEACHMENT COMPLAINT SUFFICIENT IN FORM AND SUBSTANCE.—

> [T]he question that the *ponencia* has not even ventured to answer is when an impeachment proceeding is initiated *in light of the purposes of the one-year bar*. x x x [U]ntil the Justice Committee finds the impeachment complaint or complaints sufficient in form *and* substance, no "hearing" is required under the terms of the Constitution and it is pointless to claim that overlapping hearings will take place. The Justice Committee acts as the constitutional sentry through its power to determine the validity of the complaints' form and substance; the judicious exercise of this power is enough to avoid the feared "overlapping hearings." Any subsequent complaint filed while an impeachment proceeding, based on a valid impeachment complaint, is in progress, or within a year from the declaration of the validity of an impeachment complaint's form and substance, can only be **dismissed for insufficiency of substance as the consideration of its substance is barred by the one-year bar rule.**

APPEARANCES OF COUNSEL

Law Firm of Diaz Del Rosario & Associates and *Cuevas Law Office* for petitioner.

Ibarra M. Gutierrez III, Esq for Risa Hontiveros-Baraquel, *et al.*

Julius Garcia Matibag for Renato M. Reyes, Jr. *et al.*

Justice Vicente V. Mendoza for House of Representatives Committee on Justice.

Marvic Mario Victor F. Leonen for Feliciano R. Belmonte, Jr.

D E C I S I O N

CARPIO MORALES, *J.*:

The Ombudsman, Ma. Merceditas Gutierrez (petitioner), challenges *via* petition for *certiorari* and prohibition the Resolutions of September 1 and 7, 2010 of the House of Representatives Committee on Justice (public respondent).

Before the 15th Congress opened its first session on July 26, 2010 (the fourth Monday of July, in accordance with Section

15, Article VI of the Constitution) or on **July 22, 2010**, private respondents Risa Hontiveros-Baraquel, Danilo Lim, and spouses Felipe and Evelyn Pestaño (Baraquel group) filed an impeachment complaint[1] against petitioner, upon the endorsement of Party-List Representatives Arlene Bag-ao and Walden Bello.[2]

A day after the opening of the 15th Congress or on July 27, 2010, Atty. Marilyn Barua-Yap, Secretary General of the House of Representatives, transmitted the impeachment complaint to House Speaker Feliciano Belmonte, Jr.[3] who, by Memorandum of August 2, 2010, directed the Committee on Rules to include it in the Order of Business.[4]

On **August 3, 2010,** private respondents Renato Reyes, Jr., Mother Mary John Mananzan, Danilo Ramos, Edre Olalia, Ferdinand Gaite and James Terry Ridon (Reyes group) filed another impeachment complaint[5] against petitioner with a resolution of endorsement by Party-List Representatives Neri Javier Colmenares, Teodoro Casiño, Rafael Mariano, Luzviminda Ilagan, Antonio Tinio and Emerenciana de Jesus.[6] On even date, the House of Representatives *provisionally* adopted the Rules of Procedure in Impeachment Proceedings of the 14th Congress. By letter still of even date,[7] the Secretary General transmitted the Reyes group's complaint to Speaker Belmonte who, by Memorandum of August 9, 2010,[8] also directed the Committee on Rules to include it in the Order of Business.

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[1] *Rollo*, pp. 93-111.

[2] *Id.* at 91-92.

[3] *Id.* at 561.

[4] *Id.* at 562.

[5] *Id.* at 136-169.

[6] *Id.* at 133-135.

[7] *Id.* at 563.

[8] *Id.* at 564.

On August 10, 2010, House Majority Leader Neptali Gonzales II, as chairperson of the Committee on Rules,[9] instructed Atty. Artemio Adasa, Jr., Deputy Secretary General for Operations, through Atty. Cesar Pareja, Executive Director of the Plenary Affairs Department, to include the two complaints in the Order of Business,[10] which was complied with by their inclusion in the Order of Business for the following day, August 11, 2010.

On **August 11, 2010** at 4:47 p.m., during its plenary session, the House of Representatives simultaneously referred both complaints to public respondent.[11]

After hearing, public respondent, by Resolution of September 1, 2010, found both complaints sufficient in *form*, which complaints it considered to have been referred to it at exactly the same time.

Meanwhile, the Rules of Procedure in Impeachment Proceedings of the 15th Congress was published on September 2, 2010.

On September 6, 2010, petitioner tried to file a motion to reconsider the September 1, 2010 Resolution of public respondent. Public respondent refused to accept the motion, however, for prematurity; instead, it advised petitioner to await the notice for her to file an answer to the complaints, drawing petitioner to furnish copies of her motion to each of the 55 members of public respondent.

After hearing, public respondent, by Resolution of September 7, 2010, found the two complaints, which both allege culpable violation of the Constitution and betrayal of public trust,[12] sufficient

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[9] RULES OF THE HOUSE OF REPRESENTATIVES, Rule IX, Sec. 27, par. (ss).

[10] *Rollo*, p. 565.

[11] Journal of the House of Representatives (15th Congress), Journal No. 9, August 11, 2010 (*rollo*, p. 576).

[12] As gathered from the pleadings, the two impeachment complaints are summarized as follows:

FIRST COMPLAINT	SECOND COMPLAINT
A. *Betrayal of Public Trust*:	
1. The dismal and unconscionable low conviction rate of the Ombudsman from 2008 onwards	1. gross inexcusable delay in investigating and failure in prosecuting those involved in the anomalous Fertilizer Fund Scam despite the COA & Senate findings and the complaints filed against them.
2. The failure to take prompt and immediate action against PGMA and FG with regard to the NBN-ZTE Broadband project	2. she did not prosecute Gen. Eliseo de la Paz for violating BSP rules that prohibit the taking out of the country of currency in excess of US$10,000 without declaring the same to the Phil. Customs, despite his admission under oath before the Senate Blue Ribbon Committee
3. The delay in conducting and concluding an investigation on the death of Ensign Andrew Pestaño aboard a Philippine Navy vessel	3. gross inexcusable delay or inaction by acting in deliberate disregard of the Court's findings and directive in *Information Technology Foundation of the Philippines v. Comelec*
4. The decision upholding the legality of the arrest and detention of Rep. Hontiveros -Baraquel by the PNP in March 2006.	
5. The failure to conduct an investigation regarding the ₱1M dinner at Le Cirque Restaurant in New York	
B. *Culpable Violation of the Constitution*:	
6. The repeated delays and failure to take action on cases impressed with public interest	4. through her repeated failure and inexcusable delay in acting upon matters, she violated Sec. 12 and Sec. 13, pars. 1-3 of Art. XI and Sec. 16 of Art. III of the Constitution which mandates prompt action and speedy disposition of cases
7. The refusal to grant ready access to public records like SALNW	

in *substance*. The determination of the sufficiency of substance of the complaints by public respondent, which assumed hypothetically the truth of their allegations, hinged on the issue of whether valid judgment to impeach could be rendered thereon. Petitioner was served also on September 7, 2010 a notice directing her to file an answer to the complaints within 10 days.[13]

Six days following her receipt of the notice to file answer or on September 13, 2010, petitioner filed with this Court the present petition with application for injunctive reliefs. The following day or on September 14, 2010, the Court *En Banc* RESOLVED to direct the issuance of a *status quo ante* order[14] and to require respondents to comment on the petition in 10 days. The Court subsequently, by Resolution of September 21, 2010, directed the Office of the Solicitor General (OSG) to file in 10 days its Comment on the petition.

The Baraquel group which filed the first complaint, the Reyes group which filed the second complaint, and public respondent (through the OSG and private counsel) filed their respective Comments on September 27, 29 and 30, 2010.

Speaker Belmonte filed a Motion for Leave to Intervene dated October 4, 2010 which the Court granted by Resolution of October 5, 2010.

Under an Advisory[15] issued by the Court, oral arguments were conducted on October 5 and 12, 2010, followed by petitioner's filing of a Consolidated Reply of October 15, 2010 and the filing by the parties of Memoranda within the given 15-day period.

The petition is harangued by **procedural** objections which the Court shall first resolve.

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[13] *Rollo*, p. 261.

[14] *Id.* at 262-263. Justices Carpio, Carpio Morales, and Sereno dissented; Justices Nachura, Leonardo-De Castro, Brion, and Mendoza were on official business.

[15] *Id.* at 623-625.

Respondents raise the impropriety of the remedies of *certiorari* and prohibition. They argue that public respondent was not exercising any judicial, quasi-judicial or ministerial function in taking cognizance of the two impeachment complaints as it was exercising a political act that is discretionary in nature,[16] and that its function is inquisitorial that is akin to a preliminary investigation.[17]

These same arguments were raised in *Francisco, Jr. v. House of Representatives*.[18] The argument that impeachment proceedings are beyond the reach of judicial review was debunked in this wise:

> The major difference between the judicial power of the Philippine Supreme Court and that of the U.S. Supreme Court is that while the power of judicial review is only *impliedly* granted to the U.S. Supreme Court and is discretionary in nature, that granted to the Philippine Supreme Court and lower courts, *as expressly provided for in the Constitution*, is not just a power but also a *duty*, and it was *given an expanded definition* to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.
>
> There are also glaring distinctions between the U.S. Constitution and the Philippine Constitution with respect to the power of the House of Representatives over impeachment proceedings. While the U.S. Constitution bestows sole power of impeachment to the House of Representatives without limitation, our Constitution, though vesting in the House of Representatives the exclusive power to initiate impeachment cases, provides for several limitations to the exercise of such power as embodied in Section 3(2), (3), (4) and (5), Article XI thereof. These limitations include the manner of filing, required vote to impeach, and the one year bar on the impeachment of one and the same official.
>
> Respondents are also of the view that judicial review of impeachments undermines their finality and may also lead to conflicts between Congress and the judiciary. Thus, they call upon this Court

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[16] Reyes Group's Memorandum, pp. 5-8 (*rollo*, pp. 1064-1067).

[17] The Committee's Memorandum, pp. 22-25 (*id.* at 915-918).

[18] 460 Phil. 830 (2003).

to exercise judicial statesmanship on the principle that "whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride."

But did not the people also express their will when they instituted the above-mentioned safeguards in the Constitution? This shows that the Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits, or in the language of *Baker v. Carr*, "judicially discoverable standards" for determining the validity of the exercise of such discretion, through the power of judicial review.

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There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.*, this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. In *Tañada v. Angara,* in seeking to nullify an act of the Philippine Senate on the ground that it contravened the Constitution, it held that the petition raises a justiciable controversy and that when an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In *Bondoc v. Pineda,* this Court declared null and void a resolution of the House of Representatives withdrawing the nomination, and rescinding the election, of a congressman as a member of the House Electoral Tribunal for being violative of Section 17, Article VI of the Constitution. In *Coseteng v. Mitra*, it held that the resolution of whether the House representation in the Commission on Appointments was based on proportional representation of the political parties as provided in Section 18, Article VI of the Constitution is subject to judicial review. In *Daza v. Singson,* it held that the act of the House of Representatives in removing the petitioner from the Commission on Appointments is subject to judicial review. In *Tañada v. Cuenco,* it held that although under the Constitution, the legislative power is vested exclusively in Congress, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress. In *Angara v. Electoral Commission,* it ruled that confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested, is not essential before such

member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

Finally, there exists no constitutional basis for the contention that the exercise of judicial review over impeachment proceedings would upset the system of checks and balances. Verily, the Constitution is to be interpreted as a whole and "one section is not to be allowed to defeat another." Both are integral components of the calibrated system of independence and interdependence that insures that no branch of government act beyond the powers assigned to it by the Constitution.[19] (citations omitted; italics in the original; underscoring supplied)

Francisco characterizes the power of judicial review as a duty which, as the expanded *certiorari* jurisdiction[20] of this Court reflects, includes the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[21]

In the present case, petitioner invokes the Court's expanded *certiorari* jurisdiction, using the special civil actions of *certiorari* and prohibition as procedural vehicles. The Court finds it well-within its power to determine whether public respondent committed a violation of the Constitution or gravely abused its discretion in the exercise of its functions and prerogatives that could translate as lack or excess of jurisdiction, which would require corrective measures from the Court.

Indubitably, the Court is not asserting its ascendancy over the Legislature in this instance, but simply upholding the supremacy of the Constitution as the repository of the sovereign will.[22]

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[19] *Id.* at 889-892.

[20] *Id.* at 883, which reads: "To ensure the potency of the power of judicial review to curb grave abuse of discretion by '**any branch or instrumentalities of government**,' the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called 'expanded *certiorari* jurisdiction' of this Court[.]"

[21] CONSTITUTION, Art. VIII, Sec. 1.

[22] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

Respondents do not seriously contest all the essential requisites for the exercise of judicial review, as they only assert that the petition is premature and not yet ripe for adjudication since petitioner has at her disposal a plain, speedy and adequate remedy in the course of the proceedings before public respondent. Public respondent argues that when petitioner filed the present petition[23] on September 13, 2010, it had not gone beyond the determination of the sufficiency of form and substance of the two complaints.

An aspect of the "case-or-controversy" requirement is the requisite of ripeness.[24] The question of ripeness is especially relevant in light of the direct, adverse effect on an individual by the challenged conduct.[25] In the present petition, there is no doubt that questions on, *inter alia*, the validity of the simultaneous referral of the two complaints and on the need to publish as a mode of promulgating the Rules of Procedure in Impeachment Proceedings of the House (Impeachment Rules) present constitutional vagaries which call for immediate interpretation.

The unusual act of *simultaneously* referring to public respondent two impeachment complaints presents a novel situation to invoke judicial power. Petitioner cannot thus be considered to have acted prematurely when she took the cue from the constitutional limitation that only one impeachment proceeding should be initiated against an impeachable officer within a period of one year.

And so the Court proceeds to resolve the **substantive issue** — whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its two assailed Resolutions. Petitioner basically anchors her claim on alleged violation of the due process clause (Art. III, Sec. 1) and of the one-year bar provision (Art. XI, Sec 3, par. 5) of the Constitution.

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[23] The Committee's Memorandum, p. 28 (*rollo*, p. 921).

[24] *Lozano v. Nograles*, G.R. No. 187883, June 16, 2009, 589 SCRA 356, 358.

[25] *Guingona Jr. v. Court of Appeals*, 354 Phil. 415, 427-428 (1998).

Due process of law

Petitioner alleges that public respondent's chairperson, Representative Niel Tupas, Jr. (Rep. Tupas), is the subject of an investigation she is conducting, while his father, former Iloilo Governor Niel Tupas, Sr., had been charged by her with violation of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan. To petitioner, the actions taken by her office against Rep. Tupas and his father influenced the proceedings taken by public respondent in such a way that bias and vindictiveness played a big part in arriving at the finding of sufficiency of form and substance of the complaints against her.

The Court finds petitioner's allegations of bias and vindictiveness bereft of merit, there being hardly any indication thereof. Mere suspicion of partiality does not suffice.[26]

The act of the head of a collegial body cannot be considered as that of the entire body itself. So *GMCR, Inc. v. Bell Telecommunications Phils.*[27] teaches:

> First. We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.
>
> Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak and in behalf of the NTC. The NTC acts through a three-man body x x x.[28]

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[26] *Casimiro v. Tandog*, 498 Phil. 660, 667 (2005).

[27] G.R. No. 126496, April 30, 1997, 271 SCRA 790.

[28] *Id.* at 804.

In the present case, Rep. Tupas, public respondent informs, did not, in fact, vote and merely presided over the proceedings when it decided on the sufficiency of form and substance of the complaints.[29]

Even petitioner's counsel conceded during the oral arguments that there are no grounds to compel the inhibition of Rep. Tupas.

JUSTICE CUEVAS:

Well, the Committee is headed by a gentleman who happened to be a respondent in the charges that the Ombudsman filed. In addition to that[,] his father was likewise a respondent in another case. How can he be expected to act with impartiality, in fairness and in accordance with law under that matter, he is only human we grant him that benefit.

JUSTICE MORALES:

Is he a one-man committee?

JUSTICE CUEVAS:

He is not a one-man committee, Your Honor, but he decides.

JUSTICE MORALES:

Do we presume good faith or we presume bad faith?

JUSTICE CUEVAS:

We presume that he is acting in good faith, Your Honor, but then (interrupted)

JUSTICE MORALES:

So, that he was found liable for violation of the Anti Graft and Corrupt Practices Act, does that mean that your client will be deprived of due process of law?

JUSTICE CUEVAS:

No, what we are stating, Your Honor, is that expectation of a client goes with the Ombudsman, which goes with the element of due process is the lack of impartiality that may be expected of him.

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[29] The Committee's Memorandum, p. 36 (*rollo*, p. 929).

JUSTICE MORALES:

But as you admitted the Committee is not a one-man committee?

JUSTICE CUEVAS:

That is correct, Your Honor.

JUSTICE MORALES:

So, why do you say then that there is a lack of impartiality?

JUSTICE CUEVAS:

Because if anything before anything goes (sic) he is the presiding officer of the committee as in this case there were objections relative to the existence of the implementing rules not heard, there was objection made by Congressman Golez to the effect that this may give rise to a constitutional crisis.

JUSTICE MORALES:

That called for a voluntary inhibition**. Is there any law or rule you can cite which makes it mandatory for the chair of the committee to inhibit given that he had previously been found liable for violation of a law**[?]

JUSTICE CUEVAS:

There is nothing, Your Honor. In our jurisprudence which deals with the situation whereby with that background as the material or pertinent antecedent that there could be no violation of the right of the petitioner to due process. What is the effect of notice, hearing if the judgment cannot come from an impartial adjudicator.[30] (emphasis and underscoring supplied)

Petitioner contends that the "indecent and precipitate haste" of public respondent in finding the two complaints sufficient in form and substance is a clear indication of bias, she pointing out that it only took public respondent five minutes to arrive thereat.

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[30] Transcript of Stenographic Notes (TSN), Oral Arguments, October 5, 2010, pp. 47-50.

An abbreviated pace in the conduct of proceedings is not *per se* an indication of bias, however. So *Santos-Concio v. Department of Justice*[31] holds:

> Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. **For one's prompt dispatch may be another's undue haste.** The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case.
>
> The presumption of regularity includes the public officer's official actuations in all phases of work. **Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a mere tallying of days or numerical calculation. This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or shady without discounting the presumably regular performance of not just one but five state prosecutors**.[32] (italics in the original; emphasis and underscoring supplied)

Petitioner goes on to contend that her participation in the determination of sufficiency of form and substance was indispensable. As mandated by the Impeachment Rules, however, and as, in fact, conceded by petitioner's counsel, the participation of the impeachable officer starts with the filing of an answer.

JUSTICE MORALES:

Is it not that the Committee should first determine that there is sufficiency in form and substance before she is asked to file her answer (interrupted)

JUSTICE CUEVAS:

That is correct, Your Honor.

JUSTICE MORALES:

During which she can raise any defenses she can assail the regularity of the proceedings and related irregularities?

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[31] G.R. No. 175057, January 29, 2008, 543 SCRA 70.

[32] *Id.* at 89-90.

JUSTICE CUEVAS:

Yes. We are in total conformity and in full accord with that statement, Your Honor, because it is only after a determination that the complaint is sufficient in form and substance that a complaint may be filed, Your Honor, without that but it may be asked, how is not your action premature, Your Honor, our answer is- no, because of the other violations involved and that is (interrupted).[33] (emphasis and underscoring supplied)

Rule III(A) of the Impeachment Rules of the 15th Congress reflects the impeachment procedure at the Committee-level, particularly Section 5[34] which denotes that petitioner's *initial* participation in the impeachment proceedings – the opportunity to file an Answer – starts *after* the Committee on Justice finds

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[33] TSN, Oral Arguments, October 5, 2010, pp. 54-55.

[34] **Section 5. Notice to Respondents and Time to Plead**.– If the committee finds the complaint sufficient in form and substance, it shall immediately furnish the respondent(s) with a copy of the resolution and/or verified complaint, as the case may be, with written notice that he/she shall answer the complaint within ten (10) days from receipt of notice thereof and serve a copy of the answer to the complainant(s). No motion to dismiss shall be allowed within the period to answer the complaint.

The answer, which shall be under oath, may include affirmative defenses. If the respondent fails or refuses to file an answer within the reglementary period, he/she is deemed to have interposed a general denial to the complaint. Within three (3) days from receipt of the answer, the complainant may file a reply, serving a copy thereof to the respondent who may file a rejoinder within three (3) days from receipt of the reply, serving a copy thereof to the complainant. If the complainant fails to file a reply, all the material allegations in the answer are deemed controverted. Together with their pleadings, the parties shall file their affidavits or counter-affidavits, as the case may be, with their documentary evidence. Such affidavits or counter-affidavits shall be subscribed before the Chairperson of the Committee on Justice or the Secretary General. Notwithstanding all the foregoing, failure presenting evidence in support of his/her defenses.

When there are more than one respondent, each shall be furnished with copy of the verified complaint from a Member of the House or a copy of the verified complaint from a private citizen together with the resolution of endorsement by a Member of the House of Representatives and a written notice to answer and in that case, reference to respondent in these Rules shall be understood as respondents. (underscoring supplied)

the complaint sufficient in form and substance. That the Committee refused to accept petitioner's motion for reconsideration from its finding of sufficiency of form of the impeachment complaints is apposite, conformably with the Impeachment Rules.

Petitioner further claims that public respondent failed to ascertain the sufficiency of form and substance of the complaints on the basis of the standards set by the Constitution and its own Impeachment Rules.[35]

The claim fails.

The determination of sufficiency of form and substance of an impeachment complaint is an exponent of the express constitutional grant of rule-making powers of the House of Representatives which committed such determinative function to public respondent. In the discharge of that power and in the exercise of its discretion, the House has formulated determinable standards as to the form and substance of an impeachment complaint. Prudential considerations behoove the Court to respect the compliance by the House of its duty to effectively carry out the constitutional purpose, absent any contravention of the minimum constitutional guidelines.

Contrary to petitioner's position that the Impeachment Rules do not provide for comprehensible standards in determining the sufficiency of form and substance, the Impeachment Rules are clear in echoing the constitutional requirements and providing that there must be a "verified complaint or resolution,"[36] and that the substance requirement is met if there is "a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee."[37]

Notatu dignum is the fact that it is only in the Impeachment Rules where a determination of sufficiency of form and substance

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[35] Petitioner's Memorandum, pp. 66-73 (*rollo*, pp. 829-836).

[36] *Vide* CONSTITUTION, Art. XI, Sec. 3 (2).

[37] *Vide* RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule III, Sec. 4.

of an impeachment complaint is made necessary. This requirement is not explicitly found in the organic law, as Section 3(2), Article XI of the Constitution basically merely requires a "hearing."[38] In the discharge of its constitutional duty, the House deemed that a finding of sufficiency of form and substance in an impeachment complaint is vital **"to effectively carry out"** the impeachment process, hence, such *additional* requirement in the Impeachment Rules.

Petitioner urges the Court to look into the narration of facts constitutive of the offenses *vis-à-vis* her submissions disclaiming the allegations in the complaints.

This the Court cannot do.

Francisco instructs that this issue would "require the Court to make a determination of what constitutes an impeachable offense. Such a determination is a purely political question which the Constitution has left to the sound discretion of the legislature. Such an intent is clear from the deliberations of the Constitutional Commission. x x x Clearly, the issue calls upon this court to decide a non-justiciable political question which is beyond the scope of its judicial power[.]"[39] Worse, petitioner urges the Court to make a preliminary assessment of certain grounds raised, upon a hypothetical admission of the facts alleged in the complaints, which involve matters of defense.

In another vein, petitioner, pursuing her claim of denial of due process, questions the lack of or, more accurately, delay in the publication of the Impeachment Rules.

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[38] A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. **The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution**. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof. (emphasis and underscoring supplied)

[39] *Francisco, Jr. v. House of Representatives*, *supra* at 913.

To recall, days after the 15th Congress opened on July 26, 2010 or on August 3, 2010, public respondent provisionally adopted the Impeachment Rules of the 14th Congress and thereafter published on September 2, 2010 its Impeachment Rules, admittedly *substantially identical* with that of the 14th Congress, in two newspapers of general circulation.[40]

Citing *Tañada v. Tuvera*,[41] petitioner contends that she was deprived of due process since the Impeachment Rules was published only on September 2, 2010 a day after public respondent ruled on the sufficiency of *form* of the complaints. She likewise tacks her contention on Section 3(8), Article XI of the Constitution which directs that "Congress shall **promulgate** its rules on impeachment to effectively carry out the purpose of this section."

Public respondent counters that "promulgation" in this case refers to "the publication of rules in any medium of information, not necessarily in the Official Gazette or newspaper of general circulation."[42]

Differentiating *Neri v. Senate Committee on Accountability of Public Officers and Investigations*[43] which held that the Constitution categorically requires publication of the rules of procedure in legislative inquiries, public respondent explains that the Impeachment Rules is intended to merely enable Congress to effectively carry out the purpose of Section 3(8), Art. XI of Constitution.

Black's Law Dictionary broadly defines *promulgate* as

To publish; to announce officially; to make public as important or obligatory. The formal act of announcing a statute or rule of

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[40] Philippine Daily Inquirer and Philippine Star.

[41] 230 Phil. 528 (1986).

[42] The Committee's Memorandum, p. 58 (*rollo*, p. 951).

[43] G.R. No. 180643, March 25, 2008, 549 SCRA 77; and September 4, 2008, 564 SCRA 152, 230, where the Court resolved: "The language of Section 21, Article VI of the Constitution requiring that the inquiry be conducted in accordance with the **duly published rules of procedure** is categorical. (emphasis in the original; underscoring supplied).

court. An administrative order that is given to cause an agency law or regulation to become known or obligatory.[44] (emphasis supplied)

While "*promulgation*" would seem synonymous to "*publication,*" there is a statutory difference in their usage.

The Constitution notably uses the word "promulgate" 12 times.[45] A number of those instances involves the promulgation of various rules, reports and issuances emanating from Congress, this Court, the Office of the Ombudsman as well as other constitutional offices.

To appreciate the statutory difference in the usage of the terms "promulgate" and "publish," the case of the Judiciary is in point. In promulgating rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the Court has invariably required the publication of these rules for their *effectivity*. As far as promulgation of judgments is concerned, however, promulgation means "the delivery of the decision to the clerk of court for filing and publication."[46]

Section 4, Article VII of the Constitution contains a similar provision directing Congress to "promulgate its rules for the canvassing of the certificates" in the presidential and vice presidential elections. Notably, when Congress approved its canvassing rules for the May 14, 2010 national elections on May 25, 2010,[47] it did not require the publication thereof for its

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[44] *BLACK'S LAW DICTIONARY* (6th ed.), p. 1214.

[45] The words "promulgate" and "promulgated" appear in the following sections: a) Preamble; b) Section 2 of Article V; c) Section 4 of Article VII (twice); d) Section 18 of Article VII; e) Section 5 of Article VIII; f) Section 6 of Article IX-A; g) Section 3 of Article IX-C; h) Section 2 of Article IX-D; i) Section 3 (8) of Article XI; j) Section 13 (8) of Article XI; and k) Section 8 of Article XIV.

[46] *Heritage Park Management Corp. v. CIAC*, G.R. No. 148133, October 8, 2008, 568 SCRA 108, 120, citing *Neria v. Commissioner on Immigration*, 23 SCRA 806, 812.

[47] http://www.congress.gov.ph/download/elections2010/acr.signed.05262010.pdf> [Last visited November 22, 2010].

effectivity. Rather, Congress made the canvassing rules effective upon its adoption.

In the case of administrative agencies, "promulgation" and "publication" likewise take on different meanings as they are part of a multi-stage procedure in quasi-legislation. As detailed in one case,[48] the publication of implementing rules occurs *after* their promulgation or adoption.

Promulgation must thus be used in the context in which it is generally understood—that is, to make known. *Generalia verba sunt generaliter inteligencia*. What is generally spoken shall be generally understood. Between the restricted sense and the general meaning of a word, the general must prevail unless it was clearly intended that the restricted sense was to be used.[49]

Since the Constitutional Commission did not restrict "promulgation" to "publication," the former should be understood to have been used in its general sense. It is within the discretion of Congress to determine on *how* to promulgate its Impeachment Rules, in much the same way that the Judiciary is permitted to determine that to promulgate a decision means to deliver the decision to the clerk of court for filing and publication.

It is not for this Court to tell a co-equal branch of government *how* to promulgate when the Constitution itself has not prescribed a specific method of promulgation. **The Court is in no position to dictate a mode of promulgation beyond the dictates of the Constitution.**

Publication in the Official Gazette or a newspaper of general circulation is but one avenue for Congress to make known its rules. Jurisprudence emphatically teaches that

x x x *in the absence of constitutional or statutory guidelines or specific rules, this Court is devoid of any basis upon which to*

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[48] *National Association of Electricity Consumers for Reform v. Energy Regulatory Commission*, G.R. No. 163935, February 2, 2006, 481 SCRA 480, 522.

[49] *Marcos v. Chief of Staff, AFP*, 89 Phil. 239 (1951).

determine the legality of the acts of the Senate relative thereto. On grounds of respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province of courts to direct Congress how to do its work. In the words of Justice Florentino P. Feliciano, this Court is of the opinion that **where no specific, operable norms and standards are shown to exist, then the legislature must be given a real and effective opportunity to fashion and promulgate as well as to implement them**, before the courts may intervene.[50] (italics in the original; emphasis and underscoring supplied; citations omitted)

Had the Constitution intended to have the Impeachment Rules published, it could have stated so as categorically as it did in the case of the rules of procedure in legislative inquiries, per *Neri*. Other than "promulgate," there is no other single formal term in the English language to appropriately refer to an issuance without need of it being published.

IN FINE, petitioner cannot take refuge in *Neri* since inquiries in aid of legislation under Section 21, Article VI of the Constitution is the *sole* instance in the Constitution where there is a **categorical directive** to duly publish a set of rules of procedure. Significantly notable in *Neri* is that with respect to the issue of publication, the Court anchored its ruling on the **1987** Constitution's directive, without any reliance on or reference to the **1986** case of *Tañada v. Tuvera*.[51] *Tañada* naturally could neither have interpreted a forthcoming 1987 Constitution nor had kept a tight rein on the Constitution's intentions as expressed through the allowance of either a categorical term or a general sense of making known the issuances.

From the deliberations of the Constitutional Commission, then Commissioner, now retired Associate Justice Florenz Regalado intended Section 3(8), Article XI to be the vehicle for the House to fill the gaps in the impeachment process.

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[50] *Sen. Defensor Santiago v. Sen. Guingona, Jr.*, 359 Phil. 276, 300 (1998).

[51] *Supra* note 41.

MR. REGALADO. Mr. Presiding Officer, I have decided to put in an additional section because, for instance, under Section 3 (2), there is mention of indorsing a verified complaint for impeachment by any citizen alleging ultimate facts constituting a ground or grounds for impeachment. In other words, it is just like a provision in the rules of court. Instead, I propose that this procedural requirement, like indorsement of a complaint by a citizen to avoid harassment or crank complaints, could very well be taken up in a new section 4 which shall read as follows: THE CONGRESS SHALL PROMULGATE ITS RULES ON IMPEACHMENT TO EFFECTIVELY CARRY OUT THE PURPOSES THEREOF. I think all these other **procedural** requirements could be **taken care of by the Rules of Congress**.[52] (emphasis and underscoring supplied)

The discussion clearly rejects the notion that the impeachment provisions are not self-executing. Section 3(8) does not, in any circumstance, operate to suspend the entire impeachment mechanism which the Constitutional Commission took pains in designing even its details.

As against constitutions of the past, modern constitutions have been generally drafted upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. **Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing**. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —

> . . . **in case of doubt, the Constitution should be considered self-executing rather than non-self-executing** . . . . Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when,

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[52] II RECORD OF THE CONSTITUTIONAL COMMISSION, p. 372 (July 28, 1986).

> or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.[53] (emphasis and underscoring supplied)

Even assuming *arguendo* that publication is required, lack of it does not nullify the proceedings taken prior to the effectivity of the Impeachment Rules which faithfully comply with the relevant self-executing provisions of the Constitution. Otherwise, in cases where impeachment complaints are filed at the start of each Congress, the mandated periods under Section 3, Article XI of the Constitution would already run or even lapse while awaiting the expiration of the 15-day period of publication prior to the effectivity of the Impeachment Rules. In effect, the House would already violate the Constitution for its inaction on the impeachment complaints pending the completion of the publication requirement.

Given that the Constitution itself states that any promulgation of the rules on impeachment is aimed at "effectively carry[ing] out the purpose" of impeachment proceedings, the Court finds no grave abuse of discretion when the House deemed it proper to *provisionally* adopt the Rules on Impeachment of the 14th Congress, to meet the exigency in such situation of early filing and in keeping with the "effective" implementation of the "purpose" of the impeachment provisions. In other words, the provisional adoption of the previous Congress' Impeachment Rules is within the power of the House to promulgate its rules on impeachment to effectively carry out the avowed purpose.

Moreover, the rules on impeachment, as contemplated by the framers of the Constitution, merely aid or supplement the *procedural* aspects of impeachment. Being procedural in nature, they may be given retroactive application to pending actions. "It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected, nor is it constitutionally objectionable.

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[53] *Manila Prince Hotel v. GSIS*, 335 Phil. 82, 102 (1997).

The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws."[54] In the present case, petitioner fails to allege any impairment of vested rights.

It bears stressing that, unlike the process of inquiry in aid of legislation where the rights of witnesses are involved, ***impeachment is primarily for the protection of the people as a body politic***, and not for the punishment of the offender.[55]

Even *Neri* concedes that the unpublished rules of legislative inquiries were not considered null and void in its entirety. Rather,

> x x x **[o]nly those that result in violation of the rights of witnesses should be considered null and void, considering that the rationale for the publication is to protect the rights of witnesses** as expressed in Section 21, Article VI of the Constitution. Sans such violation, orders and proceedings are considered valid and effective.[56] (emphasis and underscoring supplied)

Petitioner in fact does not deny that she was fully apprised of the proper procedure. She even availed of and invoked certain provisions[57] of the Impeachment Rules when she, on September 7, 2010, filed the motion for reconsideration and later filed the present petition. The Court thus finds no violation of the due process clause.

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[54] *Cheng v. Sy*, G.R. No. 174238, July 7, 2009, 592 SCRA 155, 164-165.

[55] DE LEON AND DE LEON, JR., *THE LAW ON PUBLIC OFFICERS AND ELECTION LAW* (2003 ed.), p. 467, citing SINCO, *Philippine Political Law*, 11th ed. (1962), p. 374.

[56] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, *supra* at 231.

[57] 1) Rule III, Section 4 thereof, on the finding of insufficiency in form, where petitioner prayed that the complaint be returned to the Secretary General within three session days with a written explanation of the insufficiency, who shall, in turn, return the same to the complainants together with the written explanation within three session days from receipt of the committee resolution.

2) Rule VII, Sec. 16 thereof, on the applicability of the rules of criminal procedure, where petitioner invokes the rule against duplicity of offense under Section 13, Rule 110 of the Rules of Court.

The one-year bar rule

Article XI, Section 3, paragraph (5) of the Constitution reads: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year."

Petitioner reckons the start of the one-year bar from the filing of the first impeachment complaint against her on July 22, 2010 or four days *before* the opening on July 26, 2010 of the 15th Congress. She posits that within one year from July 22, 2010, no second impeachment complaint may be accepted and referred to public respondent.

On the other hand, public respondent, respondent Reyes group and respondent-intervenor submit that the initiation starts with the filing of the impeachment complaint and ends with the referral to the Committee, following *Francisco*, but venture to alternatively proffer that the initiation ends somewhere between the conclusion of the Committee Report and the transmittal of the Articles of Impeachment to the Senate. Respondent Baraquel group, meanwhile, essentially maintains that under either the prevailing doctrine or the parties' interpretation, its impeachment complaint could withstand constitutional scrutiny.

Contrary to petitioner's asseveration, *Francisco*[58] states that the term "initiate" means to file the complaint and take initial action on it.[59] The initiation starts with the filing of the complaint which must be accompanied with an action to set the complaint moving. It refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint. The initial action taken by the House on the complaint is the referral of the complaint to the Committee on Justice.

Petitioner misreads the remark of Commissioner Joaquin Bernas, S.J. that "no second verified impeachment may be accepted and referred to the Committee on Justice for action"[60] which contemplates a situation where a first impeachment

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[58] 460 Phil. 830 (2003).

[59] *Id.* at 927.

[60] *Francisco*, *supra* at 932.

complaint had already been referred. Bernas and Regalado, who both acted as *amici curiae* in *Francisco*, affirmed that the act of initiating includes the act of taking initial action on the complaint.

From the records of the Constitutional Commission, to the *amicus curiae* briefs of two former Constitutional Commissioners, it is without a doubt that the term "to initiate" refers to the filing of the impeachment complaint **coupled with** Congress' taking initial action of said complaint.

Having concluded that the initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third[61] of the members of the House of Representatives with the Secretary General of the House, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period.[62] (emphasis and underscoring supplied)

The Court, in *Francisco*, thus found that the assailed provisions of the 12th Congress' Rules of Procedure in Impeachment Proceedings — Sections 16[63] and 17[64] of Rule V thereof —

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[61] In case of a direct filing by at least one-third (1/3) of all the members of the House of Representatives under paragraph (4), Section 3, Article XI of the Constitution, there occurs an abbreviated mode of initiation wherein the filing of the complaint and the taking of initial action are merged into a single act.

[62] *Francisco, supra* at 932-933.

[63] Section 16. ***Impeachment Proceedings Deemed Initiated***. — In cases *where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer,* impeachment proceedings against such official are *deemed initiated on the day the Committee on Justice finds that the verified complaint and or resolution against such official*, as the case may be, is *sufficient in substance, or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and or resolution, as the case may be, is not sufficient in substance.*

In cases *where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the*

"clearly contravene Section 3(5) of Article XI since they g[a]ve the term 'initiate' a meaning different from filing and referral."[65]

Petitioner highlights certain portions of *Francisco* which delve on the relevant records of the Constitutional Commission, particularly Commissioner Maambong's statements[66] that the initiation starts with the filing of the complaint.

Petitioner fails to consider the verb "starts" as the operative word. Commissioner Maambong was all too keen to stress that the filing of the complaint indeed *starts* the initiation and that the House's action on the committee report/resolution is *not* part of that initiation phase.

Commissioner Maambong saw the need "to be very technical about this,"[67] for certain exchanges in the Constitutional Commission deliberations loosely used the term, as shown in the following exchanges.

MR. DAVIDE. That is for conviction, but not for initiation. Initiation of impeachment proceedings still requires a vote of one-fifth of the membership of the House under the 1935 Constitution.

MR. MONSOD. A two-thirds vote of the membership of the House is required to initiate proceedings.

MR. DAVIDE. No. for initiation of impeachment proceedings, only one-fifth **vote of the membership of the House** is required; for conviction, a two-thirds vote of the membership is required.

Members of the House, **impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.** (emphasis, underscoring and italics supplied)

[64] Section 17. ***Bar Against Initiation of Impeachment Proceedings***.— "**Within a period of one (1) year from the date impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official.** (emphasis, underscoring and italics supplied)

[65] *Francisco*, *supra* at 933.

[66] Petitioner's Memorandum, pp. 30-36 (*rollo*, pp. 793-799).

[67] II RECORD OF THE CONSTITUTIONAL COMMISSION, p. 376 (July 28, 1986).

x x x x x x x x x

MR. DAVIDE. However, if we allow one-fifth of the membership of the legislature to overturn a report of the committee, we have here Section 3 (4) which reads:

> No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

So, necessarily, under this particular subsection, we will, in effect, disallow one-fifth of the members of the National Assembly to revive an impeachment move by an individual or an ordinary Member.

MR. ROMULO. Yes. May I say that Section 3 (4) is there to look towards the possibility of a very liberal impeachment proceeding. Second, we were ourselves struggling with that problem where we are faced with just a verified complaint rather than the signatures of one-fifth, or whatever it is we decide, of the Members of the House. So whether to put a period for the Committee to report, whether we should not allow the Committee to overrule a mere verified complaint, are some of the questions we would like to be discussed.

MR. DAVIDE. We can probably overrule a rejection by the Committee by providing that it can be overturned by, say, one-half or a majority, or one-fifth of the members of the legislature, and that such overturning will not amount to a **refiling** which is prohibited under Section 3 (4).

Another point, Madam President. x x x[68] (emphasis and underscoring supplied)

An apparent effort to clarify the term "initiate" was made by Commissioner Teodulo Natividad:

MR. NATIVIDAD. How many votes are needed to initiate?

MR. BENGZON. One-third.

MR. NATIVIDAD. **To initiate is different from to impeach**; to impeach is different from to convict. To impeach means to file the case before the Senate.

MR. REGALADO. **When we speak of "initiative," we refer here to the Articles of Impeachment**.

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[68] *Id.* at 279-280.

MR. NATIVIDAD. So, **that is the impeachment itself**, because when we impeach, we are charging him with the Articles of Impeachment. That is my understanding.[69] (emphasis and underscoring supplied)

Capping these above-quoted discussions was the explanation of Commissioner Maambong delivered on at least two occasions:

[I]

MR. MAAMBONG. Mr. Presiding Officer, I am not moving for a reconsideration of the approval of the amendment submitted by Commissioner Regalado, but I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation **starts** with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body.

As the phraseology now runs, which may be corrected by the Committee on Style, it appears that the initiation starts on the floor. If we only have time, I could cite examples in the case of the impeachment proceedings of President Richard Nixon wherein the Committee on the Judiciary submitted the recommendation, the resolution, and the Articles of Impeachment to the body, and it was the body who approved the resolution. It is not the body which initiates it. It only approves or disapproves the resolution. So, on that score, probably the Committee on Style could help in rearranging the words because we have to be very technical about this. I have been bringing with me The *Rules of the House of Representatives* of the U.S. Congress. The Senate Rules are with me. The proceedings on the case of Richard Nixon are with me. I have submitted my proposal, but the Committee has already decided. Nevertheless, I just want to indicate this on record.

Thank you, Mr. Presiding Officer.[70] (italics in the original; emphasis and underscoring supplied)

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[69] *Id.* at 374-375.

[70] *Id.* at 375-376.

[II]

MR. MAAMBONG. I would just like to move for a reconsideration of the approval of Section 3 (3). My reconsideration will not at all affect the substance, but it is only with keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.

I am proposing, Madam President, without doing damage to any of its provision, that on page 2, Section 3 (3), from lines 17 to 18, we delete the words which read: "to initiate impeachment proceedings" and the comma (,) and insert on line 19 after the word "resolution" the phrase WITH THE ARTICLES, and then capitalize the letter "i" in "impeachment" and replace the word "by" with OF, so that the whole section will now read: "A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of impeachment OF the committee or to override its contrary resolution. The vote of each Member shall be recorded."

I already mentioned earlier yesterday that the initiation, as far as the House of Representatives of the United States is concerned, really **starts** from the filing of the verified complaint and every resolution to impeach always carries with it the Articles of Impeachment. As a matter of fact, the words "Articles of Impeachment" are mentioned on line 25 in the case of the direct filing of a verified complaint of one-third of all the Members of the House. I will mention again, Madam President, that my amendment will not vary the substance in any way. It is only in keeping with the uniform procedure of the House of Representatives of the United States Congress.

Thank you, Madam President.[71] (emphasis and underscoring supplied)

To the next logical question of what *ends or completes* the initiation, Commissioners Bernas and Regalado lucidly explained that the filing of the complaint must be accompanied by the referral to the Committee on Justice, which is the action that sets the complaint moving. *Francisco* cannot be any clearer in pointing out the material dates.

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[71] *Id.* at 416.

Having concluded that the initiation takes place by the act of filing of the impeachment complaint *and* referral to the House Committee on Justice, the initial action taken thereon, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated in the foregoing manner, another may not be filed against the same official within a one year period following Article XI, Section 3(5) of the Constitution.

In fine, considering that the *first* impeachment complaint was filed by former President Estrada against Chief Justice Hilario G. Davide, Jr., along with seven associate justices of this Court, on **June 2, 2003** and referred to the House Committee on Justice on **August 5, 2003**, the *second* impeachment complaint filed by Representatives Gilberto C. Teodoro, Jr. and Felix William Fuentebella against the Chief Justice on **October 23, 2003** violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within a one-year period.[72] (emphasis, italics and underscoring supplied)

These clear pronouncements notwithstanding, petitioner posits that the date of referral was considered irrelevant in *Francisco*. She submits that referral could not be the reckoning point of initiation because "something prior to that had already been done,"[73] apparently citing Bernas' discussion.

The Court cannot countenance any attempt at obscurantism.

What the cited discussion was rejecting was the view that the House's action on the committee report initiates the impeachment proceedings. It did not state that to determine the initiating step, absolutely nothing prior to it must be done. Following petitioner's line of reasoning, the verification of the complaint or the endorsement by a member of the House – steps done *prior* to the filing – would already initiate the impeachment proceedings.

Contrary to petitioner's emphasis on impeachment *complaint*, what the Constitution mentions is impeachment "*proceedings*." **Her reliance on the singular tense of the word**

[72] *Francisco, supra* at 940.

[73] *Francisco, supra* at 931.

"complaint"[74] **to denote the limit prescribed by the Constitution goes against the basic rule of statutory construction that a word covers its enlarged and plural sense**.[75]

The Court, of course, does not downplay the importance of an impeachment complaint, for it is the matchstick that kindles the candle of impeachment proceedings. The filing of an impeachment complaint is like the lighting of a matchstick. Lighting the matchstick alone, however, cannot light up the candle, unless the lighted matchstick reaches or torches the candle wick. Referring the complaint to the proper committee ignites the impeachment proceeding. With a *simultaneous* referral of multiple complaints filed, more than one lighted matchsticks light the candle at the same time. **What is important is that there should only be ONE CANDLE that is kindled in a year, such that once the candle starts burning, subsequent matchsticks can no longer rekindle the candle**.

A restrictive interpretation renders the impeachment mechanism both illusive and illusory.

For one, it puts premium on senseless haste. Petitioner's stance suggests that whoever files the first impeachment complaint exclusively gets the attention of Congress which sets in motion an exceptional once-a-year mechanism wherein government resources are devoted. A prospective complainant, regardless of ill motives or best intentions, can wittingly or

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[74] *Section 3.* x x x

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

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[75] *Vide Gatchalian, etc. v. COMELEC*, 146 Phil. 435, 442-443 (1970).

unwittingly desecrate the entire process by the expediency of submitting a haphazard complaint out of sheer hope to be the first in line. It also puts to naught the effort of other prospective complainants who, after diligently gathering evidence first to buttress the case, would be barred days or even hours later from filing an impeachment complaint.

Placing an exceedingly narrow gateway to the avenue of impeachment proceedings turns its laudable purpose into a laughable matter. One needs only to be an early bird even without seriously intending to catch the worm, when the process is precisely intended to effectively weed out "worms" in high offices which could otherwise be ably caught by other prompt birds within the ultra-limited season.

Moreover, the first-to-file scheme places undue strain on the part of the actual complainants, injured party or principal witnesses who, by mere happenstance of an almost always unforeseeable filing of a first impeachment complaint, would be brushed aside and restricted from directly participating in the impeachment process.

Further, prospective complainants, along with their counsel and members of the House of Representatives who sign, endorse and file subsequent impeachment complaints against the same impeachable officer run the risk of violating the Constitution since they would have already initiated a second impeachment proceeding within the same year. Virtually anybody can initiate a second or third impeachment proceeding by the mere filing of endorsed impeachment complaints. Without any public notice that could charge them with knowledge, even members of the House of Representatives could not readily ascertain whether no other impeachment complaint has been filed at the time of committing their endorsement.

The question as to who should administer or pronounce that an impeachment proceeding has been initiated rests also on the body that administers the proceedings prior to the impeachment trial. As gathered from Commissioner Bernas'

disquisition[76] in *Francisco*, a proceeding which "takes place not in the Senate but in the House"[77] precedes the bringing of an impeachment case to the Senate. In fact, petitioner concedes that the *initiation* of impeachment proceedings is within the sole and absolute control of the House of Representatives.[78] Conscious of the legal import of each step, the House, in taking charge of its own proceedings, must deliberately decide to initiate an impeachment proceeding, subject to the time frame and other limitations imposed by the Constitution. This chamber of Congress alone, not its officers or members or any private individual, should own up to its processes.

The Constitution did not place the power of the "final say" on the lips of the House Secretary General who would otherwise be calling the shots in forwarding or freezing any impeachment complaint. Referral of the complaint to the proper committee is not done by the House Speaker alone either, which explains why there is a need to include it in the Order of Business of the House. It is the House of Representatives, in public plenary session, which has the power to set its own chamber into special operation by referring the complaint or to otherwise guard against the initiation of a second impeachment proceeding by rejecting a patently unconstitutional complaint.

Under the Rules of the House, a motion to refer is not among those motions that shall be decided without debate, but any debate thereon is only made subject to the five-minute rule.[79] Moreover, it is common parliamentary practice that a motion

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[76] x x x An impeachment case is the legal controversy that must be decided by the Senate. Above-quoted first provision provides that the House, by a vote of one-third of all its members, can bring a case to the Senate. It is in that sense that the House has "exclusive power" to initiate all cases of impeachment. No other body can do it. However, before a decision is made to initiate a case in the Senate, a "proceeding" must be followed to arrive at a conclusion. x x x (*Francisco, supra* at 930-931).

[77] *Francisco, supra* at 931.

[78] Petitioner's Memorandum, p. 55 (*rollo*, p. 818).

[79] RULES OF THE HOUSE OF REPRESENTATIVES, Rule XIII, Sec. 96.

to refer a matter or question to a committee may be debated upon, not as to the merits thereof, but only as to the propriety of the referral.[80] With respect to complaints for impeachment, the House has the discretion not to refer a subsequent impeachment complaint to the Committee on Justice where official records and further debate show that an impeachment complaint filed against the same impeachable officer has already been referred to the said committee *and* the one year period has not yet expired, lest it becomes instrumental in perpetrating a constitutionally prohibited second impeachment proceeding. Far from being mechanical, before the referral stage, a period of deliberation is afforded the House, as the Constitution, in fact, grants a maximum of three session days within which to make the proper referral.

As mentioned, one limitation imposed on the House in initiating an impeachment proceeding deals with deadlines. The Constitution states that "[a] verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter."

In the present case, petitioner failed to establish grave abuse of discretion on the allegedly "belated" referral of the first impeachment complaint filed by the Baraquel group. For while the said complaint was filed on July 22, 2010, there was yet then no session in Congress. It was only four days later or on July 26, 2010 that the 15th Congress opened from which date the 10-day session period started to run. When, by Memorandum

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[80] <http://www.rulesonline.com/rror-05.htm> (visited: November 12, 2010), which further explains:

"The *Object* of the motion to refer to a standing or special committee is usually to enable a question to be more carefully investigated and put into better shape for the assembly to consider, than can be done in the assembly itself. Where an assembly is large and has a very large amount of business it is safer to have every main question go to a committee before final action on it is taken." (underscoring supplied).

of August 2, 2010, Speaker Belmonte directed the Committee on Rules to include the complaint in its Order of Business, it was well within the said 10-day session period.[81]

There is no evident point in rushing at closing the door the moment an impeachment complaint is filed. Depriving the people (recall that impeachment is primarily for the protection of the people as a body politic) of reasonable access to the limited political vent simply prolongs the agony and frustrates the collective rage of an entire citizenry whose trust has been betrayed by an impeachable officer. It shortchanges the promise of reasonable opportunity to remove an impeachable officer through the mechanism enshrined in the Constitution.

But neither does the Court find merit in respondents' alternative contention that the initiation of the impeachment proceedings, which sets into motion the one-year bar, should include or await, at the earliest, the Committee on Justice report. To public respondent, the reckoning point of initiation should refer to the disposition of the complaint by the vote of at least one-third (1/3) of all the members of the House.[82] To the Reyes group, initiation means the act of transmitting the Articles of Impeachment to the Senate.[83] To respondent-intervenor, it should last until the Committee on Justice's recommendation to the House plenary.[84]

The Court, in *Francisco,* rejected a parallel thesis in which a related proposition was inputed in the therein assailed provisions of the Impeachment Rules of the 12th Congress. The present case involving an impeachment proceeding against the Ombudsman offers no cogent reason for the Court to deviate from what was settled in *Francisco* that dealt with the

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[81] *Vide* RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule II, Sec. 2. Note also that Section 3 (2), Article XI of the Constitution did not use the terms "calendar days" or "working days."

[82] Respondent Committee's Memorandum, p. 78 (*rollo*, p. 971).

[83] Respondent Reyes group's Memorandum, p. 26 (*id.* at 1085).

[84] Respondent-Intervenor's Memorandum, p. 22 (*id.* at 1131).

impeachment proceeding against the then Chief Justice. To change the reckoning point of initiation on no other basis but to accommodate the socio-political considerations of respondents does not sit well in a court of law.

x x x We ought to be guided by the doctrine of *stare decisis et non quieta movere*. This doctrine, which is really "adherence to precedents," mandates that once a case has been decided one way, then another case involving exactly the same point at issue should be decided in the same manner. This doctrine is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As the renowned jurist Benjamin Cardozo stated in his treatise The Nature of the Judicial Process:

> It will not do to decide the same question one way between one set of litigants and the opposite way between another. "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights." Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.[85]

As pointed out in *Francisco*, the impeachment proceeding is not initiated "when the House deliberates on the resolution passed on to it by the Committee, because something prior to that has already been done. The action of the House is already a further step in the proceeding, not its initiation or beginning. Rather, the proceeding is initiated or begins, when a verified complaint is filed *and* referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow."[86]

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[85] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010.

[86] *Francisco*, *supra* at 931.

Allowing an expansive construction of the term "initiate" beyond the act of referral allows the unmitigated influx of successive complaints, each having their own respective 60-session-day period of disposition from referral. Worse, the Committee shall conduct overlapping hearings until and unless the disposition of one of the complaints ends with the affirmance of a resolution for impeachment or the overriding[87] of a contrary resolution (as espoused by public respondent), or the House transmits the Articles of Impeachment (as advocated by the Reyes group),[88] or the Committee on Justice concludes its first report to the House plenary regardless of the recommendation (as posited by respondent-intervenor). Each of these scenarios runs roughshod the very purpose behind the constitutionally imposed one-year bar. Opening the floodgates too loosely would disrupt the series of steps operating in unison under one proceeding.

The Court does not lose sight of the salutary reason of confining only one impeachment proceeding in a year. Petitioner concededly cites Justice Adolfo Azcuna's separate opinion that concurred with the *Francisco* ruling.[89] Justice Azcuna stated that the purpose of the one-year bar is two-fold: "to prevent undue or too frequent harassment; and 2) to allow the legislature to do its principal task [of] legislation," with main reference to the records of the Constitutional Commission, that reads:

> MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the

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[87] It was made of record that "whenever the body will override the resolution of impeachment of the Committee, it is understood that the body itself will prepare the Articles of Impeachment." [II RECORD OF THE CONSTITUTIONAL COMMISSION, p. 416 (July 29, 1986)].

[88] To respondents Committee and Reyes Group, any House action of dismissal of the complaint would not set in the one-year bar rule.

[89] Petitioner's Memorandum, p. 38 (*rollo*, p. 801), citing the Separate Opinion of Justice Adolf Azcuna in *Francisco*.

same individual to take place, the legislature will do nothing else but that.[90] (underscoring supplied)

It becomes clear that the consideration behind the intended limitation refers to the element of time, and *not* the number of complaints. The impeachable officer should defend himself in only one impeachment *proceeding*, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing *and* referral remains congruent to the rationale of the constitutional provision.

Petitioner complains that an impeachable officer may be subjected to harassment by the filing of multiple impeachment complaints during the intervening period of a maximum of 13 session days between the date of the filing of the first impeachment complaint to the date of referral.

As pointed out during the oral arguments[91] by the counsel for respondent-intervenor, the framework of privilege and layers of protection for an impeachable officer abound. The requirements or restrictions of a one-year bar, a single proceeding, verification of complaint, endorsement by a House member, and a finding of sufficiency of form and substance – all these must be met before bothering a respondent to answer – already weigh heavily in favor of an impeachable officer.

Aside from the probability of an early referral and the improbability of inclusion in the agenda of a complaint filed on the 11th hour (owing to pre-agenda standard operating procedure), the number of complaints may still be filtered or reduced to nil after the Committee decides once and for all on the sufficiency of form and substance. Besides, if only to douse petitioner's fear, a complaint will not last the primary stage if it does not have the stated preliminary requisites.

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[90] II RECORD OF THE CONSTITUTIONAL COMMISSION, p. 282 (July 26, 1986).

[91] TSN, October 12, 2010, p. 212.

To petitioner, disturbance of her performance of official duties and the deleterious effects of bad publicity are enough oppression.

Petitioner's claim is based on the premise that the exertion of time, energy and other resources runs directly proportional to the number of complaints filed. This is *non sequitur*. What the Constitution assures an impeachable officer is not freedom from arduous effort to defend oneself, which depends on the qualitative assessment of the charges and evidence and not on the quantitative aspect of complaints or offenses. In considering the side of the impeachable officers, the Constitution does not promise an absolutely smooth ride for them, especially if the charges entail genuine and grave issues. The framers of the Constitution did not concern themselves with the media tolerance level or internal disposition of an impeachable officer when they deliberated on the impairment of performance of official functions. The measure of protection afforded by the Constitution is that if the impeachable officer is made to undergo such ride, he or she should be made to traverse it just once. Similarly, if Congress is called upon to operate itself as a vehicle, it should do so just once. There is no repeat ride for one full year. This is the whole import of the constitutional safeguard of one-year bar rule.

Applicability of the Rules on Criminal Procedure

On another plane, petitioner posits that public respondent gravely abused its discretion when it disregarded its own Impeachment Rules, the same rules she earlier chastised.

In the exercise of the power to promulgate rules "to effectively carry out" the provisions of Section 3, Article XI of the Constitution, the House promulgated the Impeachment Rules, **Section 16** of which provides that "the Rules of *Criminal* Procedure under the Rules of Court shall, as far as practicable, apply to impeachment proceedings before the House."

Finding that the Constitution, by express grant, permits the application of additional adjective rules that Congress may

consider in effectively carrying out its mandate, petitioner either asserts or rejects two procedural devices.

First is on the "one offense, one complaint" rule. By way of reference to Section 16 of the Impeachment Rules, petitioner invokes the application of Section 13, Rule 110 of the Rules on Criminal Procedure which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." To petitioner, the two impeachment complaints are insufficient in form and substance since each charges her with both culpable violation of the Constitution and betrayal of public trust. She concludes that public respondent gravely abused its discretion when it disregarded its own rules.

Petitioner adds that heaping two or more charges in one complaint will confuse her in preparing her defense; expose her to the grave dangers of the highly political nature of the impeachment process; constitute a whimsical disregard of certain rules; impair her performance of official functions as well as that of the House; and prevent public respondent from completing its report within the deadline.

Public respondent counters that there is no requirement in the Constitution that an impeachment complaint must charge only one offense, and the nature of impeachable offenses precludes the application of the above-said Rule on Criminal Procedure since the broad terms cannot be defined with the same precision required in defining crimes. It adds that the determination of the grounds for impeachment is an exercise of political judgment, which issue respondent-intervenor also considers as non-justiciable, and to which the Baraquel group adds that impeachment is a political process and not a criminal prosecution, during which criminal prosecution stage the complaint or information referred thereto and cited by petitioner, unlike an impeachment complaint, must already be in the name of the People of the Philippines.

The Baraquel group deems that there are provisions[92] outside the Rules on Criminal Procedure that are more relevant to the issue. Both the Baraquel and Reyes groups point out that even if Sec. 13 of Rule 110 is made to apply, petitioner's case falls under the exception since impeachment prescribes a single punishment – removal from office and disqualification to hold any public office – even for various offenses. Both groups also observe that petitioner concededly and admittedly was not keen on pursuing this issue during the oral arguments.

Petitioner's claim deserves scant consideration.

Without going into the effectiveness of the suppletory application of the *Rules on Criminal Procedure* in carrying out the relevant constitutional provisions, which prerogative the Constitution vests on Congress, and without delving into the practicability of the application of the *one offense per complaint* rule, the initial determination of which must be made by the House[93] which has yet to pass upon the question, the Court finds that petitioner's invocation of that particular rule of Criminal Procedure does not lie. Suffice it to state that the Constitution allows the indictment for multiple impeachment offenses, with each charge representing an article of impeachment, assembled in one set known as the "Articles of Impeachment."[94] It, therefore, follows that an impeachment complaint need not allege only one impeachable offense.

The *second* procedural matter deals with the rule on consolidation. In rejecting a consolidation, petitioner maintains that the Constitution allows only one impeachment complaint against her within one year.

Records show that public respondent disavowed any immediate need to consolidate. Its chairperson Rep. Tupas stated that

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[92] Citing RULES OF COURT, Rule 2, Sec. 5 & Rule 140, Sec. 1.

[93] Or by the Committee if the question is first raised therein.

[94] This is not to say, however, that it must always contain two or more charges. In *Santillon v. Miranda, et al,* [121 Phil. 1351, 1355 (1965)], it was held that the plural can be understood to include the singular.

"[c]onsolidation depends on the Committee whether to consolidate[; c]onsolidation may come today or may come later on after determination of the sufficiency in form and substance," and that "for purposes of consolidation, the Committee will decide when is the time to consolidate[, a]nd if, indeed, we need to consolidate."[95] Petitioner's petition, in fact, initially describes the consolidation as merely "contemplated."[96]

Since public respondent, whether *motu proprio* or upon motion, did not yet order a consolidation, the Court will not venture to make a determination on this matter, as it would be premature, conjectural or anticipatory.[97]

Even if the Court assumes petitioner's change of stance that the two impeachment complaints were *deemed* consolidated,[98] her claim that consolidation is a legal anomaly fails. Petitioner's theory obviously springs from her "proceeding = complaint" equation which the Court already brushed aside.

WHEREFORE, the petition is *DISMISSED*. The assailed Resolutions of September 1, 2010 and September 7, 2010 of public respondent, the House of Representatives Committee on Justice, are *NOT UNCONSTITUTIONAL*. The *Status Quo Ante* Order issued by the Court on September 14, 2010 is *LIFTED*.

SO ORDERED.

Villarama, Jr. and *Mendoza, JJ.*, concur.

Carpio, Nachura, Abad, and *Sereno, JJ.*, see concurring opinions.

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[95] Petitioner cites that the Committee stated that "although two complaints were filed against petitioner, the two were in effect merged in one proceeding by their referral on the same day to the Committee." (TSN, Committee Hearing, September 1, 2010; *rollo*, pp. 528-529).

[96] *Id.* at 48.

[97] *Vide San Luis v. Rojas*, G.R. No. 159127, March 3, 2008, 547 SCRA 345, 367.

[98] The Committee's Comment, p. 29 (*rollo*, p. 430).

Del Castillo and *Perez, JJ.*, see separate concurring and dissenting opinions.

Corona, C.J., *Leonardo-de Castro,* and *Peralta, JJ.*, join the dissent of *J.* Brion.

Brion, J., see dissenting opinion.

Bersamin, J., the *C.J.* certifies that Justice Bersamin sent in his vote joining the dissenting opinion of Mr. *J.* Brion.

Velasco, Jr., J., no part.

CONCURRING OPINION

CARPIO, *J.*:

On 22 July 2010, Risa Hontiveros-Baraquel, Danilo D. Lim, Felipe Pestaño and Evelyn Pestaño (Baraquel, *et al*.) filed an impeachment complaint (First Complaint) against Ombudsman Ma. Merceditas N. Gutierrez (petitioner) based on the following grounds:

I. Ombudsman Ma. Merceditas Navarro-Gutierrez betrayed the public trust.

i. The dismal and unconscionably low conviction rates achieved by the Office of the Ombudsman from 2008 onward indicate a criminal level of incompetence amounting to grave dereliction of duty which constitutes a clear betrayal of public trust.

ii. The unreasonable failure of the Ombudsman to take prompt and immediate action, in violation of its own rules of procedure, on the complaints filed against various public officials including former President Gloria Macapagal-Arroyo, and her husband Jose Miguel T. Arroyo with regard to the NBN-ZTE Broadband Project constitutes betrayal of public trust.

iii. The inexcusable delay of the Ombudsman in conducting and concluding its investigation into the wrongful death of Ensign Philip Andrew Pestaño aboard a Philippine Navy vessel constitutes a betrayal of public trust.

iv. The decision of the Ombudsman upholding the "legality" of the arrest and involuntary detention of then Representative Risa Hontiveros-Baraquel by the Philippine National Police in March 2006 in violation of the explicit rules provided in the Revised Penal Code and as established by jurisprudence constitutes a betrayal of public trust.

v. The failure of the Ombudsman to conduct an investigation into the possible wrongdoing or impropriety with regard to the ₱1,000,000.00 dinner for the Presidential Party at Le Cirque Restaurant in New York in August 2009 despite widespread media coverage and media clamor, and a formal letter from Representative Walden F. Bello calling for an inquiry constitutes betrayal of public trust.

II. Ombudsman Ma. Merceditas Navarro-Gutierrez performed acts amounting to culpable violation of the Constitution.

vi. The repeated failure of the Ombudsman to take prompt action on a wide variety of cases involving official abuse and corruption violates Article XI, Section 12 and Article III, Section 16 of the Constitution, which mandate prompt action and speedy disposition of cases.

vii. The refusal of the Ombudsman to grant ready access to public records such as the Statement of Assets and Liabilities and Net Worth (SALN) required of all public officers under Republic Act No. 6713 constitutes a culpable violation of Article XI, Section 13(6) and Article III, Section 7 of the Constitution.

The First Complaint was endorsed by AKBAYAN Party-list Representatives Kaka Bag-ao and Walden Bello.

On 3 August 2010, Renato Reyes, Secretary General of BAYAN, Mo. Mary John Mananzan of PAGBABAGO, Danilo Ramos, Secretary General of Kilusang Magbubukid ng Pilipinas, Atty. Edre Olalia, Acting Secretary General of National Union of People's Lawyers, Ferdinand Gaite, Chairperson of COURAGE, and James Terry Ridon, Chairperson of League of Filipino Students (Reyes, *et al.*) filed a Verified Impeachment Complaint (Second Complaint) against petitioner on the following grounds:

I. Betrayal of Public Trust

(1) Ombudsman Gutierrez committed betrayal of public trust through her gross inexcusable delay in investigating and failure in prosecuting any one of [those] involved on the anomalous transactions arising from the Fertilizer Fund Scam despite the blatant anomalous transactions revealed in the COA findings, Senate Committee Report 54 and the complaints filed with respondent on the "Fertilizer Scam."

(2) Ombudsman Gutierrez committed betrayal of public trust when she did not prosecute Gen. Eliseo De la Paz for violating BSP Circular 98 (1995), as amended by BSP Circular 507 (2006), in relation to Republic Act 6713, which prohibits the taking out of the country of currency in excess of US $10,000.00 without declaring the same to the Philippine customs, despite the fact that Gen. Eliseo De la Paz publicly admitted under oath before the Senate Blue Ribbon Committee that he took out of the country currency in excess of US $ 10,000.00 without declaring the same with the Philippine Customs.

(3) Ombudsman Gutierrez betrayed the public trust through her gross inexcusable delay or inaction by acting in deliberate disregard of the Supreme Court's findings and directive in its decision and resolution in *Information Technology Foundation of the Philippines, et al. v. Commission on Elections, et al.*

II. Culpable violation of the Constitution

The Second Complaint was endorsed by Representatives Neri Javier Colmenares, Teodoro A. Casiño, Rafael V. Mariano, Luzviminda C. Ilagan, Raymond V. Palatino, Antonio L. Tinio, and Emerenciana A. De Jesus.

On 3 August 2010, the House of Representatives Committee on Justice (Committee on Justice) provisionally adopted the Rules of Procedure in Impeachment Proceedings of the Fourteenth Congress (Rules of Procedure).

On 11 August 2010, the First and Second Complaints were referred by the Plenary to the Committee on Justice.

On 1 September 2010, the Committee on Justice found the First and Second Complaints sufficient in form by a vote of 39 in favor and 1 against, and 31 in favor and 9 against, respectively.

On 2 September 2010, the Rules of Procedure was published.

On 7 September 2010, the Committee on Justice, voting 40 in favor and 10 against, affirmed that the First and Second Complaints were sufficient in form. Thereafter, the Committee on Justice found the First and Second Complaints sufficient in substance, by a vote of 41 in favor and 14 against and 41 in favor and 16 against, respectively. Petitioner was directed to file an answer to the complaints within 10 days from receipt of notice.

On 13 September 2010, petitioner filed a petition for *certiorari* and prohibition[1] before this Court seeking to enjoin the Committee on Justice from proceeding with the impeachment proceedings. The petition prayed for a temporary restraining order. The petition is based on the following grounds:

I. In gross and wanton disregard of the rudimentary requirements of due process of law, the Committee acted with indecent and precipitate haste in issuing its assailed Resolutions, dated 1 September 2010 and 7 September 2010 which found the two (2) impeachment complaints filed against petitioner Ombudsman sufficient in form and substance.

II. The Rules of Procedure in impeachment proceedings lack comprehensive standards in determining as to what amounts to sufficiency in form of an impeachment complaint and gives the members of the Committee unfettered discretion in carrying out its provisions. Thus, it contravenes the Constitution and violates petitioner Ombudsman's cardinal and primary right to due process, thereby tainting the hearing conducted before the Committee on 1 September 2010 in relation to the sufficiency in form of the two (2) impeachment complaints with illegality and nullity.

III. The Committee's finding that the two (2) impeachment complaints filed against petitioner Ombudsman are sufficient in form violate Section 3(5), Article XI of the 1987 Constitution which provides that no impeachment proceedings shall be initiated against the same official more than once within a period of one (1) year. In the *Francisco* case, the Honorable Court reckoned the start of the one (1) year bar on the impeachment of an impeachable officer from the date of the

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

filing of the complaint. In the instant case, the first complaint was filed on 22 July 2010. Thus, the filing of the second complaint on 3 August 2010, a mere twelve (12) days after the filing of the first complaint, violates the one (1) year bar under the 1987 Constitution. The second complaint should, therefore, not have been accepted and referred to the Committee for action.

IV. The contemplated consolidation of the two (2) impeachment complaints constitutes a contravention of the one (1) year bar. If the Committee would follow through on such course of action, it would be arrogating unto itself the power to alter or amend the meaning of the Constitution without need of referendum, a power denied to it by the 1987 Constitution and its very own rules. The Committee would also be allowed to wantonly exercise unbridled discretion in carrying out the letter and spirit of the Constitution and to arbitrarily wield the two (2) impeachment complaints as instruments of harassment and oppression against petitioner Ombudsman.

V. The Rules of Procedure in impeachable proceedings do not prescribe the form or standards in order for an impeachment complaint to be deemed sufficient in form. However, Section 16, Rule VII of the same rules provides that the Rules of Criminal Procedure under the Rules of Court shall, as far as practicable, apply to the impeachment proceedings before the House. In this regard, Section 13, Rule 110 of the 2000 Rules of Criminal Procedure mandates that a complaint must charge only one (1) offense. The Committee, in finding that the two (2) impeachable complaints charging petitioner Ombudsman with the offenses of culpable violation of the Constitution and betrayal of public trust sufficient in form, violated the cardinal rule that a complaint must charge only one (1) offense. Thus, the two (2) impeachment complaints cannot be sufficient in form.

VI. The two (2) impeachment complaints filed against petitioner Ombudsman do not meet the standards laid down by the Committee itself for the determination of "sufficiency of substance."

A. Assuming as true the allegations of the two (2) impeachment complaints, none of them can be deemed of the same nature as the other grounds for impeachment under the Constitution.

B. There is no legal right on the part of the complainants to compel petitioner Ombudsman to file and prosecute offenses committed by public officials and employees. On the other hand, there is no legal

duty on the part of petitioner Ombudsman to file an Information when she believes that there is no *prima facie* evidence to do so. Thus, there can be no "violation of any legal right of the complainants" to speak of that can be the basis of a finding of "sufficiency in substance" of the two (2) impeachment complaints.

The following day, during the *en banc* morning session of 14 September 2010, over the objections of Justices Carpio, Carpio Morales and Sereno who asked for time to read the petition, the majority of this Court voted to issue a *status quo ante* order suspending the impeachment proceedings against petitioner. The petition, with Urgent Motion for Immediate Raffle, was filed at 9:01 a.m. of 13 September 2010. I received a copy of the petition only in the afternoon of 14 September 2010, *after* the *en banc* morning session of that day. The petition consists of 60 pages, excluding the annexes. All the Justices should have been given time, at least an hour or two as is the practice in such urgent cases, to read the petition before voting on the issuance of the *status quo ante* order. Unfortunately, this was not done.

Section 3(5), Article XI of the 1987 Constitution provides that "(n)o impeachment proceedings shall be initiated against the same official more than once within a period of one year." There are two impeachment complaints filed against petitioner, filed within days from each other. The First Complaint was filed on 22 July 2010 while the Second Complaint was filed on 3 August 2010.

In *Francisco, Jr. v. House of Representatives*,[2] the Court had the occasion to discuss the meaning of the term "to initiate" as applied to impeachment proceedings. The Court ruled:

> From the records of the Constitutional Commission, to the *amicus curiae* briefs of two former Constitutional Commissioners, it is without doubt that the term "to initiate" refers **to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint**.

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[2] 460 Phil. 830 (2003).

x x x the initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House x x x.[3] (Emphasis supplied)

Thus, there are two components of the act of initiating the complaint: the filing of the impeachment complaint **and** the referral by the House Plenary to the Committee on Justice. The Court ruled that once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period.[4]

On 11 August 2010, the two complaints were referred by the House Plenary to the Committee on Justice **at the same time**. The Committee on Justice acted on the two complaints, ruling on the sufficiency of form, and later of substance, at the same time. The prohibition against filing of another impeachment complaint within a one year period would apply if the First Complaint was referred by the House Plenary to the Committee on Justice ahead of the Second Complaint. There is nothing in the Constitution that prohibits the consolidation of the First and Second Complaints since they were referred by the House Plenary to the Committee on Justice **at the same time**. Neither the First nor the Second Complaint is prior to the other in terms of action of the House Plenary in referring the two complaints to the Committee on Justice. The Constitutional bar, therefore, will not apply in this case.

Petitioner alleges that the Rules of Procedure lack comprehensible standards as to what amounts to sufficiency in form. Petitioner asserts that the determination of the sufficiency in form must rest on something more substantial than a mere ascertainment of whether the complaint was verified by the complainants and whether it was properly referred to the Committee for action.

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[3] *Id.* at 932. Emphasis supplied.

[4] *Supra*, note 2.

Section 4, Rule III of the Rules of Procedure provides:

> Section 4. *Determination of Sufficiency in Form and Substance.* – Upon due referral, the Committee on Justice shall determine whether the complaint is sufficient in form and substance. If the committee finds that the complaint is insufficient in form, it shall return the same to the Secretary General within three (3) session days with a written explanation of the insufficiency. The Secretary General shall return the same to the complainant(s) together with the committee's written explanation within three (3) session days from receipt of the committee resolution finding the complaint insufficient in form.
>
> Should the committee find the complaint sufficient in form, it shall then determine if the complaint is sufficient in substance. The requirement of substance is met if there is a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee. If the committee finds that the complaint is not sufficient in substance, it shall dismiss the complaint and shall submit its report as provided hereunder.

Section 4 is not vague as petitioner asserts. The Rules of Procedure provides that "[t]he Rules of Criminal Procedure under the Rules of Court shall, as far as practicable, apply to impeachment proceedings before the House."[5] Section 7, Rule 117 of the Revised Rules of Criminal Procedure provides that a complaint or information is sufficient if it states, among other things, the name of the accused and the acts or omissions complained of as constituting the offense. Following Section 16 of the Rules of Procedure, Section 7, Rule 117 of the Revised Rules of Criminal Procedure suppletorily applies to the Rules of Procedure to determine whether the impeachment complaints are sufficient in form. The fact that the acts complained of are enumerated in the impeachment complaints, coupled with the fact that they were verified and endorsed, is enough to determine whether the complaints were sufficient in form.

Petitioner also asserts that the complaints violate Section 13, Rule 110 of the Revised Rules of Criminal Procedure[6] which

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[5] Section 16.

[6] Section 13. *Duplicity of the offense*.—A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

provides that a complaint or information must charge only one offense. Petitioner alleges that the Committee on Justice found the impeachment complaints sufficient in form although the impeachment complaints charge petitioner with the offenses of culpable violation of the Constitution and betrayal of public trust. Petitioner argues that the impeachment complaints allege duplicitous offenses.

The argument has no merit.

The impeachment procedure is analogous to a criminal trial but is not a criminal prosecution *per se*.[7] While the Rules of Procedure provide for the suppletory application of the Rules of Criminal Procedure in an impeachment proceedings, a strict application of the Rules of Criminal Procedure is not required in impeachment proceedings, as can be gleaned from the deliberations of the Constitutional Commission, thus:

MR. MAAMBONG. Let us go to a bottom-line question then. When the Senate acting as body will now try the impeachment case, will it conduct the proceeding using principles of criminal procedure?

MR. ROMULO. I do not think so, strictly speaking, that it need be criminal procedures. The important thing, I believe, is that the involved party should know the charges and the proceedings must be, in total, fair and impartial. I do not think we have to go to the minutiae of a criminal proceeding because that is not the intention. This is not a criminal proceeding per se.

MR. MAAMBONG. In the matter of presentation for example, of evidence, when it comes to treason and bribery, would the rules on criminal procedure be applied, considering that I am no particularizing on the ground which is punishable by the Revised Penal Code, like treason or bribery?

MR. ROMULO. Yes, but we will notice that, strictly speaking for the crime of treason under the Revised Penal Code, he is answerable for that crime somewhere else. So my conclusion is that obviously, it is in the criminal court where we will apply all the minutiae of evidence and proceedings and all these due processes. But we can be more liberal when it comes to the impeachment proceedings, for

[7] 2 RECORD OF THE CONSTITUTIONAL PROCEEDINGS AND DEBATES, 277.

instance, in the Senate, because we are after the removal of that fellow, and conviction in that case really amounts to his removal from office. The courts of justice will take care of the criminal and civil aspects.[8]

Further, the impeachment complaint is not the same as the Articles of Impeachment. The impeachment complaint is analogous to the affidavit-complaint of the private complainant filed before the prosecutor for purposes of the preliminary investigation.Such affidavit-complaint, prepared by the complainant, may allege several offenses. On the other hand, Section 13, Rule 110 of the Revised Rules of Criminal Procedure refers to the formal complaint or information prepared by the prosecutor and filed before the court after the preliminary investigation. Such formal complaint or information must charge only one offense against an accused. The Articles of Impeachment is prepared by the Committee after it votes to recommend to the House Plenary the filing of impeachment charges. The only requirement in preparing the Articles of Impeachment is that there is only **one specific charge for each article**. The Articles of Impeachment, as its name imply, may have several articles, each charging one specific offense. The proceedings before the Committee on Justice is like a preliminary investigation in a criminal case where there is no complaint or information yet.

As pointed out in the deliberations of the Constitutional Commission, the impeachment proceeding is not a criminal prosecution. **The impeachment proceeding covers not only criminal acts but also non-criminal acts, such as betrayal of public trust, which is the main charge against petitioner in both the First and Second Complaints.** In *Francisco,* the Court noted that the framers of the Constitution could find no better way to approximate the boundaries of betrayal of public trust than by alluding to positive and negative examples.[9] Thus:

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[8] *Id*.

[9] *Francisco, Jr. v. House of Representatives, supra* note 2.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Thank you, Madam President.

I have a series of questions here, some for clarifications, some for the cogitative and reading pleasure of the members of the Committee over a happy weekend without prejudice later to proposing amendments at the proper stage.

First, this is with respect to Section 2, on the grounds for impeachment, and I quote:

. . . culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of public trust.

Just for the record, what would the Committee envision as a betrayal of public trust which is not otherwise covered by by (sic) other terms antecedent thereto?

MR. ROMULO. I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed the trust.

MR. REGALADO. Thank you.

MR. MONSOD. Madam President, may I ask Commissioner de los Reyes to perhaps add to those remarks.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa where there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. **And so the term "betrayal of public trust," as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, *etc*. to the**

prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.

Thank you.

MR. ROMULO. If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man; so if he does anything that obstructs justice, it could be construed as a betrayal of public trust.

Thank you.

MR. NOLLEDO. In pursuing that statement of Commissioner Romulo, Madam President, we will notice that in the presidential oath of then President Marcos, he stated that he will do justice to every man. If he appoints a Minister of Justice and orders him to issue or to prepare repressive decrees denying justice to a common man without the President being held liable, I think this act will not fall near the category of treason, nor will it fall under bribery of other high crimes, neither will it fall under graft and corruption. And so when the President tolerates violations of human rights through the repressive decrees authored by his Minister of Justice, the President betrays the public trust.[10]

Clearly, the framers of the Constitution recognized that an impeachment proceeding covers non-criminal offenses. They included betrayal of public trust as a catchall provision to cover non-criminal acts. The framers of the Constitution intended to leave it to the members of the House of Representatives to determine what would constitute betrayal of public trust as a ground for impeachment.

Even the United States Senate recognizes that the Articles of Impeachment can contain various offenses. On 20 October 1989, the United States Senate impeached Judge Alcee Hastings (Hastings).[11] Hastings was charged with 17 Articles of Impeachment ranging from corrupt conspiracy, knowingly making a false statement intended to mislead the trier of fact, fabrication

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[10] 2 Record of the Constitutional Proceedings and Debates, 272.

[11] http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm#4.

of false documents, and improper disclosure by revealing highly confidential information that he learned as a supervising judge in a wiretap.[12] Hastings was convicted in 8 of the Articles of Impeachment and was removed from office. Hence, there is nothing that would prevent the impeachment of petitioner for various offenses contained in the Articles of Impeachment.

Moreover, the Court cannot review the sufficiency of the substance of the impeachment complaints. The sufficiency of the substance will delve into the merits of the impeachment complaints over which this Court has no jurisdiction.[13] The Court can only rule on whether there is a gross violation of the Constitution in filing the impeachment complaint, in particular, whether the complaint was filed in violation of the one-year ban. The Court cannot review the decision of the Committee on Justice to impeach. The Court ruled in *Francisco*:

> The first issue[14] goes into the merits of the second impeachment complaint over which this Court has no jurisdicuion. More importantly, any discussion of this issue would require this Court to make a determination of what constitutes an impeachable offense. Such a determination is a purely political question which the Constitution has left to the sound discretion of the legislation. Such an intent is clear from the deliberations of the Constitutional Commission.[15]

Impeachment is a political process. Thus, the decision to impeach lies exclusively on Congress. The most important thing in an impeachment proceeding is the vote by the House Plenary. Section 10 of the Rules of Procedure states that "[a] vote of at least one-third (1/3) of all Members of the House is necessary for the approval of the resolution setting forth the Articles of Impeachment. If the resolution is approved by the required vote, it shall then be endorsed to the Senate for its trial." The

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[12] http://www.senate.gov/artandhistory/history/common/briefing/Impeachment_Hastings.htm.

[13] *Francisco, Jr. v. House of Representatives*, *supra* note 2.

[14] Whether the offenses alleged in the Second impeachment complaint constitute valid impeachable offense under the Constitution.

[15] *Francisco, Jr. v. House of Representatives*, *supra* note 2, at 913.

Rule is based on Section 3 (4), Article XI of the 1987 Constitution which states:

> Sec. 3. x x x
>
> (4) In case the verified complaint or resolution of impeachment is filed by at least one-third of the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

The Constitution is clear. After the vote of one-third of all the Members of the House is achieved, the Articles of Impeachment will automatically be forwarded to the Senate for trial. The Constitution only requires the vote of one-third of all the Members of the House for the Articles of Impeachment to be forwarded to the Senate whether or not the complaint is sufficient in form and substance.

Finally, there is no violation of petitioner's right to due process. Nobody can claim a vested right to public office. A public office is not a property right, and no one has a vested right to any public office.[16] Thus:

> Again, for this petition to come under the due process of law prohibition, it would necessary to consider an office a "property." *It is, however, well settled x x x that a public office is not property within the sense of the constitutional guaranties of due process of law,* but is a public trust or agency. x x x The basic idea of the government x x x is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people he represents.[17]

Accordingly, I vote for the dismissal of the petition and the lifting of the *status quo ante* order issued by this Court against the House of Representatives.

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[16] *Montesclaros v. Comelec*, 433 Phil. 620 (2002).

[17] *Id.* at 637-638, citing *Cornejo v. Gabriel*, 41 Phil. 188 (1920). Emphasis in the original text.

SEPARATE CONCURRING OPINION

ABAD, *J.*:

The Facts and the Case

On July 22, 2010 respondents Risa Hontiveros-Baraquel and others filed with the Secretary General of respondent House of Representatives (*the House*) a verified impeachment complaint (*First Complaint*) against petitioner Ombudsman Ma. Merceditas N. Gutierrez for betrayal of public trust and culpable violation of the Constitution. Two members of the House endorsed this complaint. To sum up, the complaint alleges:

1. Betrayal of Public Trust

a. The dismal and unconscionably low conviction rates by the Office of the Ombudsman from 2008 onwards;

b. The failure to take prompt and immediate action on the complaints filed against former President Gloria Macapagal-Arroyo and her husband, Jose Miguel T. Arroyo, with regard to the NBN-ZTE Broadband Project;

c. The inexcusable delay in conducting and concluding an investigation on the death of Ensign Philip Andrew Pestaño aboard a Philippine Navy vessel;

d. The decision upholding the legality of the arrest and involuntary detention of Risa Hontiveros-Baraquel by the PNP in March 2006; and

e. The failure to conduct an investigation with regard to the ₱1,000,000 presidential party dinner at Le Cirque Restaurant in New York in August 2009;

2. Culpable Violation of the Constitution

a. The repeated failures to take prompt action on cases involving official abuse and corruption in violation of Section 12, Article XI, and Section 16, Article III, of the Constitution; and

b. The refusal to grant ready access to public records such as the Statement of Assets and Liabilities and Net Worth in violation of Section 13(6), Article XI and Section 7, Article III of the Constitution.

On July 23, 2010 the 15th Congress opened its regular session. Shortly after or on August 3, 2010 respondents Renato M. Reyes, Jr. and others filed with the Secretary General of the House another verified impeachment complaint (*Second Complaint*) against Ombudsman Gutierrez also for betrayal of public trust and culpable violation of the Constitution. Seven members of the House endorsed the complaint, which alleges:

1. Betrayal of Public Trust

a. The gross inexcusable delay in investigating and failure in prosecuting those involved in the anomalous transactions arising from the Fertilizer Fund Scam despite the blatant anomalous transactions revealed in the COA Findings, Senate Committee Report 54 and the Complaints filed with the Ombudsman on the said Fertilizer Fund Scam;

b. The failure to prosecute General Eliseo De La Paz for violating BSP Circular 98 (1995), as amended by BSP Circular 507 (2006), in relation to Republic Act 6713, which prohibits the taking out of the country of currency in excess of US$10,000 without declaring the same to the Philippine Customs, despite the public admission under oath by General De La Paz before the Senate Blue Ribbon Committee; and

c. The gross inexcusable delay or inaction by acting in deliberate disregard of the Supreme Court's findings and directive in its Decision and Resolution in *Information Technology Foundation of the Philippine, et al. v. Commission on Elections, et al.*

2. Culpable Violation of the Constitution

a. The repeated failures and inexcusable delay in acting upon matters brought before her office, thus violating Sections 12 and 13(1)(2)(3), Article XI and Section 16, Article III of the Constitution, which mandates prompt action and speedy disposition of cases.

On even date, the House provisionally adopted the Rules of Procedure in Impeachment Proceedings of the 14th Congress.[1] On August 11, 2010 it simultaneously referred the first and

[1] On **September 2, 2010** the 15th Congress published its Rules of Procedure in Impeachment Proceedings.

second complaints to the House Committee on Justice (*the Justice Committee*).

During its hearing on September 1, 2010 the Justice Committee found the first and second complaints sufficient in form. On September 6, 2010 Ombudsman Gutierrez filed a motion for reconsideration of the committee's finding on the grounds that:

1. Such finding violates Section 3(5), Article XI of the 1987 Constitution which bars more than one impeachment proceeding against the same impeachable officer within a period of one year;

2. The contemplated consolidation of the two complaints also violates Section 3(5), Article XI of the 1987 Constitution and would permit Congress to do indirectly what it is proscribed from doing directly; and

3. The finding of the Justice Committee violates Section 13, Rule 110 of the Rules of Court which provides that a complaint must charge only one offense.

The Justice Committee declined to accept Ombudsman Gutierrez's motion for reconsideration for being premature. It advised her instead to just include in her answer the grounds she cited in her motion.

During its hearing on September 7, 2010 the Justice Committee found the two complaints sufficient in substance. On even date, it caused the service of summons and copies of the two complaints on Ombudsman Gutierrez with a directive for her to file her answer to the same within ten days. This prompted her to file the present action, assailing the constitutionality of the Justice Committee's action in finding the two complaints sufficient in form and substance.

The Key Issue Presented

The key issue in this case is whether or not the House Justice Committee's findings that the two complaints against Ombudsman Gutierrez are sufficient in form and substance violate Section 3(5), Article XI of the 1987 Constitution which provides that no impeachment proceedings shall be initiated against the same official more than once within a year.

Discussion

The impeachment of public officials has been established for removing otherwise constitutionally tenured and independent public officials—the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman—for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[2] The power to initiate impeachment cases rests with the House while the power to try the same rests with the Senate.[3]

The pertinent provisions of Section 3, Article XI of the 1987 Constitution summarizes the steps that lead to the impeachment of the above public officials:

Sec. 3. x x x

(2) A verified complaint may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least onethird of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least onethird of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

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[2] Section 2, Article XI. Accountability of Public Officers, 1987 Constitution.

[3] Section 3 (1) and (4), *id*.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

To sum up the various steps leading to the impeachment of a public official are:

One. A verified complaint for impeachment is filed by a member of the House or endorsed by him;

Two. The complaint is included in the order of business of the House.

Three. The House refers the complaint to the proper Committee;

Four. The Committee holds a hearing, approves the resolution calling for impeachment, and submits the same to the House.

Five. The House considers the resolution and votes to approve it by at least one third of all its members, which resolution becomes the article of impeachment to be filed with the Senate when approved; and

Six. The Senate tries the public official under the article.

The root of the present problem is that the impeachment of a public official may be said to be "initiated" in two ways under the above steps. The first is the complaint "initiated" in the House under Step One. Section 3 (1) of Article XI provides that the House of Representatives shall have the exclusive power to "initiate" all cases of impeachment. The second is the article of impeachment "initiated" in the Senate under Step Five following a favorable vote in the House.

Ombudsman Gutierrez's view is that there is just one impeachment proceeding and this covers the actions of both the House and the Senate in one unified process. She infers from this that it is actually the filing of the complaint in the

House that initiates the one "impeachment proceeding" and this bars a second one filed within the year. In the *Francisco case*, the Court interpreted the term "to initiate" under Section 3(5) as the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint.[4] Such initial action consists of the referral or endorsement of the impeachment complaint to the Committee.[5]

As *amicus curiae*, Fr. Bernas said in the *Francisco case* that "the Constitution is ratified by the people, both ordinary and sophisticated, as they understand it; and that ordinary people read ordinary meaning into ordinary words and not abstruse meaning, they ratify words as they understand it and not as sophisticated lawyers confuse it."[6]

Based on common usage in this jurisdiction, a "proceeding" described in the terms of an initiated action refers to a proceeding filed before the court, body, or tribunal that ultimately has the jurisdiction to hear and decide such action. For example, an "expropriation proceeding" is one instituted in the court that can hear and decide it, namely, the Regional Trial Court.[7] It is the same with an "escheat or reversion proceeding,"[8] an "ejectment proceeding," an "estate proceeding," or an "adoption proceeding." Each of these proceedings or actions is lodged in the body or tribunal in which the law ultimately vests the power to hear and decide it.

Thus, when the Constitution speaks of "impeachment proceedings" it should be understood to refer to the action or case instituted in the Senate in which the power to hear and decide such proceedings is ultimately lodged. In this jurisdiction, the terms "case" and "proceeding" are often interchangeably used. A "case" is a legal action or suit.[9] "Proceeding" means

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[4] 415 SCRA 44, 169.

[5] *Id*. at 169-170.

[6] *Id*. at 169.

[7] Section 12, Chapter 4, Title, Book III.

[8] Section 13, *id*.

[9] *Webster's New World College Dictionary*, 3rd Edition, p. 217.

the carrying on of an action or course of action.[10] The Constitution does not appear to draw any distinction between these two terms. At any rate, the power that the Constitution gives the House is only the power to initiate all cases of impeachment, not the ultimate power to hear and decide such cases. Thus:

Sec. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

For the above reason, it cannot be said that it is the party who files a verified complaint against the public official that initiates an impeachment case or proceeding. It is the House that does. Actually, the House exercises this power of initiation by filing the article of impeachment with the Senate. The power to initiate belongs to the House, not to any of its committees, provided the House is able to muster at least one-third vote of all its members in session assembled as the Constitution requires when the impeachment resolution is taken up.

The initiation of an impeachment case by the House of course follows a process: the filing of the complaint, the referral to the Justice Committee, the hearing by such committee, the committee voting over its resolution, the submission of the committee report to the plenary, and the vote to initiate an impeachment case. But this process should be correctly characterized as the House "initiation proceeding," not the "impeachment proceeding" itself.

Besides, one needs to be guided only by the purpose of this constitutional provision. The initiation of the impeachment proceeding in the House is intended to be a preliminary step for the determination of the sufficiency of the allegations against the impeachable public official. It is akin to a preliminary investigation in a criminal case where probable cause is determined against the accused. If there is probable cause to indict the impeachable public official, then the Articles of Impeachment is transmitted to the Senate. In a criminal case,

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[10] *Webster's New World College Dictionary*, 3rd Edition, p. 1072.

a criminal complaint or information is then filed in court against the accused.

It is a settled principle that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary.[11] While the one year bar was provided to ensure that the public official is not subjected to considerable harassment and to allow the legislature to do its principal task of legislation, the constitutional provision on impeachment must be viewed, foremost, as a means to protect the State and the people from erring and abusive high ranking public officials. To interpret the one year bar to commence from the disposition by the vote of at least one-third of all the members of the House gives the constitutional provision on impeachment more meaning and effectiveness. It affords more protection to the public interests since the initiation of impeachment complaints would no longer be a race against time. A slippery impeachable public official would not be able to pre-empt the filing within the year of a meritorious impeachment complaint against him by the simple expedience of colluding with someone to file first a baseless impeachment complaint against him.

In the end, the protection of the vast majority must be of paramount importance over and above any perceived inconvenience on the part of any impeachable public official.

At any rate, the issue of whether or not a case of impeachment initiated in the Senate can embody multiple of unrelated charges is not before this Court. I reserve my view on such issue when it arises.

I vote to dismiss the petition based on the above reasons.

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[11] *Cecilleville Realty and Service Corp. v. Court of Appeals*, G.R. No. 120363, September 5, 1997, 278 SCRA 819, 826.

SEPARATE OPINION

NACHURA, *J.*:

Justice Conchita Carpio Morales once again impresses with her incisive and tightly written *ponencia*. While I agree with the defenestration[1] of the petition, I am constrained to express my views on the ripeness of the issues posed by petitioner.

Before anything else, however, the antecedents.

Taking the cue from "*matuwid na landas*," the theme of President Benigno C. Aquino III's inaugural address, private respondents Risa Hontiveros-Baraquel, Danilo Lim, and spouses Felipe and Evelyn Pestaño filed an impeachment complaint (Baraquel Complaint) on July 22, 2010, against petitioner Ombudsman Ma. Merceditas Gutierrez.

On July 26, 2010, the 15th Congress opened its first session, and representative Feliciano Belmonte was elected Speaker of the House of Representatives. The very next day, or on July 27, 2010, Atty. Marilyn Barua-Yap, Secretary-General of the House of Representatives, transmitted the impeachment complaint to House Speaker Feliciano Belmonte. In a Memorandum dated August 2, 2010, Speaker Belmonte directed the Committee on Rules to include the complaint in the Order of Business.

On August 3, 2010, the House of Representatives received yet another impeachment complaint against petitioner, which was filed by private respondents Renato Reyes, Jr., Mother Mary John Mananzan, Danilo Ramos, Edre Olalia, Ferdinand

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[1] The act of throwing someone or something out of a window. The term is associated with political dissidence and political assassinations in 15th to 17th century Prague where rioters made a habit of it. There was one in 1419 at the Town Hall where a mob, demanding the release of prisoners, threw councillors out, and a more famous one – known as the *Defenestration of Prague* – in 1618 which heralded the 30-Year War when a gang of Protestant nobles threw two Catholic governors out of the window of the Royal Palace. (See <http://www.thefreedictionary.com/Defenestration+of+Prague> [visited February 14, 2011].)

Gaite, and James Terry Ridon (Reyes Complaint). On even date, the Secretary-General transmitted the Reyes Complaint to Speaker Belmonte. In turn, as he had done with the previous complaint, Speaker Belmonte directed the Committee on Rules to include the Reyes Complaint in the Order of Business. Further, on even date, the House of Representatives provisionally adopted the Rules of Procedure in Impeachment Proceedings of the 14th Congress.

Parenthetically, both the Baraquel[2] and Reyes[3] Complaints were endorsed by Members of the House of Representatives, as mandated in the Constitution.[4] The two complaints separately alleged betrayal of public trust and culpable violation of the Constitution, to wit:

1. Baraquel Complaint

I.

OMBUDSMAN MA. MERCEDITA[S] NAVARRO-GUTIERREZ BETRAYED THE PUBLIC TRUST.

i.

THE DISMAL AND UNCONSCIONABLY LOW CONVICTION RATES ACHIEVED BY THE OFFICE OF THE OMBUDSMAN FROM 2008 ONWARD INDICATE A CRIMINAL LEVEL OF INCOMPETENCE AMOUNTING TO GRAVE DERELICTION OF DUTY x x x.

ii.

THE UNREASONABLE FAILURE OF THE OMBUDSMAN TO TAKE PROMPT AND IMMEDIATE ACTION, IN VIOLATION OF ITS OWN RULES OF PROCEDURE, ON THE COMPLAINTS FILED AGAINST VARIOUS PUBLIC OFFICIALS INCLUDING FORMER PRESIDENT GLORIA MACAPAGAL-ARROYO, AND HER HUSBAND JOSE

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[2] Endorsed by Party-list Representatives, Kaka Bag-ao and Walden Bello of the Akbayan Party-list.

[3] Endorsed by Party-list Representatives Neri Javier Colmenares of Bayan Muna, Teodor Casiño of Bayan Muna, Rafael Mariano of Anakpawis, Luzviminda C. Ilagan of Gabriela, Raymond V. Palatino, Antonio L. Tinio of Act Teacher, Emerenciana A. De Jesus of Gabriela.

[4] Art. XI, Sec. 3(2).

MIGUEL T. ARROYO WITH REGARD TO THE NBN-ZTE BROADBAND PROJECT x x x.

iii.

THE INEXCUSABLE DELAY OF THE OMBUDSMAN IN CONDUCTING AND CONCLUDING ITS INVESTIGATION INTO THE WRONGFUL DEATH OF ENSIGN PHILIP ANDREW PESTAÑO ABOARD A PHILIPPINE NAVY VESSEL x x x.

iv.

THE DECISION OF THE OMBUDSMAN UPHOLDING THE "LEGALITY" OF THE ARREST AND INVOLUNTARY DETENTION OF THEN REPRESENTATIVE RISA HONTIVEROS-BARAQUEL BY THE PHILIPPINE NATIONAL POLICE IN MARCH 2006 IN VIOLATION OF THE EXPLICIT RULES PROVIDED IN THE REVISED PENAL CODE AND AS ESTABLISHED BY JURISPRUDENCE x x x.

v.

THE FAILURE OF THE OMBUDSMAN TO CONDUCT AN INVESTIGATION INTO POSSIBLE WRONGDOING OR IMPROPRIETY WITH REGARD TO THE ₱1,000,000.00 DINNER FOR THE PRESIDENTIAL PARTY AT *LE CIRQUE RESTAURANT* IN NEW YORK IN AUGUST 2009 DESPITE WIDESPREAD MEDIA COVERAGE AND PUBLIC CLAMOR, AND A FORMAL LETTER FROM REPRESENTATIVE WALDEN F. BELLO CALLING FOR AN INQUIRY CONSTITUTES BETRAYAL OF THE PUBLIC TRUST.

II.

OMBUDSMAN MA. MERCEDITAS NAVARRO-GUTIERREZ PERFORMED ACTS AMOUNTING TO CULPABLE VIOLATION OF THE CONSTITUTION

vi.

THE REPEATED FAILURES OF THE OMBUDSMAN TO TAKE PROMPT ACTION ON A WIDE VARIETY OF CASES INVOLVING OFFICIAL ABUSE AND CORRUPTION VIOLATES (sic) ARTICLE XI, SECTION 12 AND ARTICLE III, SECTION 16 OF THE CONSTITUTION, WHICH MANDATE PROMPT ACTION AND SPEEDY DISPOSITION OF CASES.

vii.

THE REFUSAL OF THE OMBUDSMAN TO GRANT READY ACCESS TO PUBLIC RECORDS SUCH AS THE STATEMENT OF ASSETS AND LIABILITIES AND NET WORTH (SALN) REQUIRED OF ALL PUBLIC OFFICERS UNDER REPUBLIC ACT NO. 6713 CONSTITUTES A CULPABLE VIOLATION OF ARTICLE XI, SECTION 13(6) AND ARTICLE III, SECTION 7 OF THE CONSTITUTION.[5]

2. Reyes Complaint

I. BETRAYAL OF TRUST

(1) OMBUDSMAN GUTIERREZ COMMITTED BETRAYAL OF PUBLIC TRUST THROUGH HER GROSS INEXCUSABLE DELAY IN INVESTIGATING AND FAILURE IN PROSECUTING ANY ONE OF THOSE INVOLVED [I]N THE ANOMALOUS TRANSACTIONS ARISING FROM THE FERTILIZER FUND SCAM DESPITE THE BLATANT ANOMALOUS TRANSACTIONS REVEALED IN THE COA FINDINGS, SENATE COMMITTEE REPORT 54 AND THE COMPLAINTS FILED WITH [PETITIONER] ON THE "FERTILIZER SCAM."

(2) OMBUDSMAN GUTIERREZ COMMITTED BETRAYAL OF PUBLIC TRUST WHEN SHE DID NOT PROSECUTE GEN. ELISEO DE LA PAZ FOR VIOLATING BSP CIRCULAR 98 (1995), AS AMENDED BY BSP CIRCULAR 507 (2006), IN RELATION TO REPUBLIC ACT 6713, WHICH PROHIBITS THE TAKING OUT OF THE COUNTRY OF CURRENCY IN EXCESS OF US$10,000.00 WITHOUT DECLARING THE SAME TO THE PHILIPPINE CUSTOMS, DESPITE THE FACT THAT GEN. ELISEO DE LA PAZ PUBLICLY ADMITTED UNDER OATH BEFORE THE SENATE BLUE RIBBON COMMITTEE THAT HE TOOK OUT OF THE COUNTRY CURRENCY IN EXCESS OF US$10,000.00 WITHOUT DECLARING THE SAME [TO] THE PHILIPPINES CUSTOMS.

(3) OMBUDSMAN GUTIERREZ BETRAYED THE PUBLIC TRUST THROUGH HER GROSS INEXCUSABLE DELAY OR INACTION BY ACTING IN DELIBERATE DISREGARD OF THE SUPREME COURT'S FINDINGS AND DIRECTIVE IN ITS DECISION AND RESOLUTION IN *INFORMATION TECHNOLOGY FOUNDATION OF THE PHILIPPINES, ET AL. V. COMMISSION ON ELECTIONS, ET AL.*

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[5] Annex "F" of the Petition.

II. CULPABLE VIOLATION OF THE CONSTITUTION

THROUGH HER REPEATED FAILURES AND INEXCUSABLE DELAY IN ACTING UPON THE MATTERS BROUGHT BEFORE HER OFFICE, OMBUDSMAN GUTIERREZ VIOLATED SECTION 12 AND SECTION 13, PARAGRAPHS 1, 2 AND 3, ARTICLE XI ON WHICH HER CONSTITUTIONAL DUTY IS ENSHRINED, AS WELL AS SECTION 16, ARTICLE III OF THE CONSTITUTION, WHICH MANDATES PROMPT ACTION AND SPEEDY DISPOSITION OF CASES.[6]

On August 10, 2010, upon the instruction of House Majority Leader Neptali Gonzales II, Chairperson of the Committee on Rules, the two impeachment complaints were included in the Order of Business for the following day, August 11, 2010.

On August 11, 2010, during its plenary session, the House of Representatives simultaneously referred both complaints to public respondent House Committee on Justice.

In a Resolution dated September 1, 2010, the House Committee on Justice found both complaints sufficient in *form*.

On September 2, 2010, the Rules of Procedure in Impeachment Proceedings of the 15th Congress was published.

On September 6, 2010, petitioner attempted to file a motion for reconsideration of the September 1, 2010 Resolution of public respondent House Committee on Justice, which found both complaints sufficient in form. However, the House Committee on Justice, did not accept the motion, and informed petitioner that she should instead file her answer to the complaints upon her receipt of notice thereof, along with copies of both complaints.

At the hearing on September 7, 2010, public respondent House Committee on Justice issued a Resolution finding both complaints sufficient in substance. Posthaste, on the same date, petitioner was served notice directing her to file an answer within ten (10) days.

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[6] Annex "G" of the Petition.

Alleging grave abuse of discretion amounting to excess of jurisdiction by public respondent House Committee on Justice in issuing the Resolutions dated September 1 and 7, 2010, which found the impeachment complaints sufficient in form and substance, respectively, petitioner filed the present petition for *certiorari* and prohibition with prayer for the issuance of injunctive reliefs.

Foremost in petitioner's arguments is the invocation of our ruling in the trailblazing case of *Francisco, Jr. v. The House of Representatives*.[7] Petitioner points out that in taking cognizance of the two (2) complaints and requiring her to file an answer thereto, public respondent violated the constitutional prohibition against the initiation of impeachment proceedings against the same official more than once within a period of one year.[8] Not unexpectedly, petitioner advances that the ruling in *Francisco* definitively declares that the initiation of impeachment proceedings plainly refers to the filing alone of an impeachment complaint. In all, petitioner is of the view that the sole act of filing one (1) impeachment complaint forecloses all situations for the filing of another impeachment complaint within a given year.

Petitioner likewise raises the alleged violation of her right to due process of law, in both its substantive and procedural aspects.

Essentially, petitioner claims that the House Committee on Justice committed various violations equivalent to grave abuse of discretion amounting to excess of jurisdiction. In other words, the House Committee on Justice violated the Constitution; hence, the Court must intervene.

I believe that the issue for resolution is not yet upon us; the issues, as presented by petitioner, are palpably not ripe for adjudication.

Curiously, despite the effusive petition before us, petitioner did not file an answer to the complaints despite receipt of notice

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[7] 460 Phil. 830 (2003).

[8] CONSTITUTION, Art. XI, Sec. 3(5).

to do so. Instead, petitioner came directly for succour to this Court.

The power of judicial review is not boundless and not without limitation. The expanded jurisdiction of this Court, notwithstanding, invocation of judicial review requires that the issues presented are ripe for adjudication. Unfortunately, it is my view that the facts obtaining herein do not, as yet, permit judicial intervention. The supplications contained in the petition are premature and ought to be brought first before the House Committee on Justice.

Lozano v. Nograles[9] instructs us on the two-fold aspect of ripeness:

> An aspect of the "case-or-controversy" requirement is the requisite of "**ripeness**." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.

Hewing closely to the foregoing is the second, albeit less popular, case of *Francisco v. The House Committee on Justice*,[10] where we dismissed the petition on the ground of prematurity:

> Ripeness and prematurity are correlated matters. For a case to be considered ripe for adjudication, it is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture. Only then may the courts pass

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[9] G.R. Nos. 187883 and 187910, June 16, 2009, 589 SCRA 356, 358-359.

[10] Extended Resolution, G.R. No. 169244, September 1, 2005.

on the validity of what was done, if and when the latter is challenged in an appropriate legal proceeding. On the other hand, prematurity deals with the question of whether all remedies have been exhausted before resort to the courts could be had.

In this case, the resolution of the Committee on Justice to treat the Amended Complaint as a second impeachment complaint is yet to be passed upon by the House in a plenary session.

x x x x x x x x x

Thus, the Committee on Justice should submit to the House a report on its action to treat the Amended Complaint as a second impeachment complaint and also on its determinations on the sufficiency in form and substance of the impeachment complaint. Then, the report shall be deliberated and acted upon by the House. The Court should, therefore, wait until after all the remedies in the House are exhausted. Indeed, this is not yet the auspicious time to resolve the issues raised in the petition.

We find striking similarities between the second *Francisco* and the case at bar. Petitioner has yet to formally answer and appear before the House Committee on Justice. The House Committee on Justice has not been given opportunity to address the points raised by petitioner in her petition before us, which the latter could very well raise before public respondent.

Applying the rule on the two-fold aspect of ripeness used in other jurisdictions and the demonstration of actual injury to pass the test of ripeness in this jurisdiction, it is quite obvious to me that, at this juncture, petitioner has not established the fitness of the issues for our decision, hardship if we withhold consideration, much less actual injury to petitioner.

A juxtaposition of the timeline for the initiation of impeachment complaints mapped out in Section 3(2), Article XI of the Constitution, which provides:

SEC. 3. (1) x x x.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and

referred to the proper Committee within three session days thereafter. The Committee, **after hearing**, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

and Sections 2 and 3, Rule II of the Rules of Procedure in Impeachment Proceedings which read:

RULE II
INITIATING IMPEACHMENT

Section 2. *Mode of Initiating Impeachment*. – Impeachment shall be initiated by the filing and subsequent referral to the Committee on Justice of:

(a) a verified complaint for impeachment filed by any Member of the House of Representatives; or

(b) a verified complaint filed by any citizen upon a resolution of endorsement by any member thereof; or

(c) a verified complaint or resolution of impeachment filed by at least one-third (1/3) of all Members of the House.

Section 3. *Filing and Referral of Verified Complaints*. – A verified complaint for impeachment by a Member of the House or by any citizen upon a resolution of endorsement by any member thereof shall be filed with the Office of the Secretary-General and immediately referred to the Speaker.

The Speaker shall have it included in the Order of Business within ten (10) session days from receipt. It shall then be referred to the Committee on Justice within three (3) session days thereafter.

do not indicate any deviation from the constitutional mandate. It cannot be overemphasized that petitioner has yet to formally appear before public respondent, and the latter has not yet terminated its hearing of the impeachment complaints. Clearly, there is no constitutional violation justifying this Court's intervention even without delving into the burning question of whether the initiation proceedings are deemed initiated with the mere filing of a complaint, and its referral to the House

Committee on Justice, or should await the submission of a report by the House Committee on Justice.

In fact, during oral arguments, the following was limned:

JUSTICE NACHURA:

In fact, I would like to believe, therefore, Justice Cuevas, that when you make a reference to a violation of due process in this particular case, it is really a violation of the procedural aspect of due process, primarily the first requisite of due process which is that there must be an impartial court or tribunal with authority to hear and decide a case. And that was the first statement you made. The Committee on Justice deprived the petitioner of due process because of its haste, its partiality and its vindictiveness. Those were your words.

RET. JUSTICE CUEVAS:

Right, Your Honor.

JUSTICE NACHURA:

All right. However, when you developed this, you said there was delay in the filing or in the referral of the first complaint because the first complaint was filed on July 22…

RET. JUSTICE CUEVAS:

July 22, 2010, Your Honor.

JUSTICE NACHURA:

The second complaint was filed on August 3, 2010?

RET. JUSTICE CUEVAS:

Yes, Your Honor.

JUSTICE NACHURA:

And both complaints were referred only to the Committee on Justice on August 11, 2010?

RET. JUSTICE CUEVAS:

On the same day at the same time.

JUSTICE NACHURA:

The same day at the same time on August 11, 2010?

RET. JUSTICE CUEVAS:

We do not want to believe, Your Honor, that this was intentional. But it cannot be accidental. Same day, same time, Your Honor. Why will it take the Speaker of the House twenty (20) days before a referral of the impeachment complaint number 1 is made to the Committee on Justice and only eight days (8) days insofar as the second impeachment complaint?

JUSTICE NACHURA:

Justice Cuevas, I am looking at a calendar right now. On July 22, Congress had not yet started its sessions. It was only on July 26 that sessions in Congress started with the delivery by the President of the State of the Nation Address. And in the House, I am sure, there was still no organization of the committees by then. It would have taken, perhaps, at least a week, maybe two (2) weeks, before the committees could be truly organized by the leadership of the House. And if you count two (2) weeks from July 26, you would go to around August 9 and that would be near August 11. Obviously, we cannot impute vindictiveness or partiality on the basis of this alleged delay in the referral of the complaints.

x x x x x x x x x

RET. JUSTICE CUEVAS:

Our charge of impartiality does not merely gravitate on that particular aspect, Your Honor. x x x.[11]

On that point, counsel for petitioner obviously yielded.

Very apparent from all the foregoing is that a contingent event is still about to unfold, specifically, the Answer to be filed by petitioner, which public respondent has yet to hear and rule on. The Constitution, in no uncertain terms, declares that the Committee should hear the complaint, and **after hearing**, submit a report to the House within sixty (60) days from referral thereof. A co-equal branch of government has not committed a positive act, *i.e.*, to hear the defenses raised by petitioner in her Answer; we have no business to interfere, especially at this stage. Public respondent House Committee on Justice must

[11] TSN, October 5, 2010, pp. 88-91.

be allowed to conduct and continue its hearing of the impeachment complaints against petitioner. At that stage, petitioner's apprehensions of the Committee's partiality and vindictiveness would, perhaps, become justified.

I vote to **DISMISS** the petition.

CONCURRING OPINION

SERENO, *J.*:

> "No point is of more importance than that right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice."
> – *George Mason, Delegate from Virginia*[1]

I concur with the *ponencia* of Justice Conchita Carpio Morales particularly with respect to the following rulings:

1. The expanded *certiorari* jurisdiction of the Court allows it to review the acts of Congress and measure them against standards expressed in the Constitution. The power to arrive at a determination of whether or not there has been a grave abuse of discretion on the part of the Legislature in the exercise of its functions and prerogatives under the Constitution is vested in the Court.

2. The instant Petition is not premature; it raises issues that are ripe for adjudication. The Court is presented with "constitutional vagaries" that must be resolved forthwith – with respect to the legal meaning of the simultaneous referral of two impeachment complaints by the Speaker of the House of Representatives to its Committee on Justice (public respondent Committee), and the extent of the legal need to publish the House Rules of Procedure in Impeachment Proceedings.

[1] THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA, REPORTED BY JAMES MADISON (International Edition), Gaillard Hunt and James Brown N. Scott (ed.) 1970 reprint, at 290.

3. There was no violation of petitioner Merceditas Gutierrez's right to due process of law.

4. The "one offense, one complaint" rule in ordinary rules of criminal procedure cannot work to bar multiple complaints in impeachment proceedings, as the Constitution allows indictment for multiple impeachment offenses.

5. The determination of the permissibility of the consolidation of impeachment complaints is at the moment premature, conjectural or anticipatory; public respondent Committee has yet to rule on the consolidation.

I diverge however, from the *ponencia* of the highly-respected Justice Conchita Carpio Morales, on the reckoning point of the one-year time bar on subsequent impeachment proceedings under the Constitution. I believe this Court, despite its several decisions on impeachment, has not paid sufficient attention to the full implication of the inherently discretionary character of the power of impeachment.

The Court has straitjacketed its interpretation of the one-year bar by failing to go beyond the records of the deliberations of the Commissioners of the 1986 Constitutional Commission. It has a duty to look beyond, when the records demonstrate that the Commissioners were so inordinately pressed to declare a starting point for "initiation of impeachment proceedings" during the deliberations to the unfortunate extent that they appear to have forgotten the nature of the power of impeachment. I refer to the deliberations during which Commissioner Maambong attempted to define the "initiation of impeachment proceedings." The Commissioners were unable to recognize during the deliberations that the entirety of steps involved in the process of impeachment is a mix of clerical/ministerial and discretionary acts, even while the power of impeachment itself is wholly discretionary. The apparent failure of one of the Commissioners to remember the inherently discretionary nature of the power of impeachment while being interpellated, such that he reckons the "initiation" to start with the filing of an impeachment complaint, however, should not be followed by this Court's own failure to look at the right place for an answer – at the essential character

of the power of impeachment. Reason is the foundation of all legal interpretation, including that of constitutional interpretation. And the most powerful tool of reason is reflecting on the essence of things. This is most especially needed when the Commissioners of the Constitutional Commission failed at an important time to articulate an interpretation of the constitution that is founded on reason; rather, they chose an interpretation that on the surface seemed reasonable, but on examination, turns out to have been arbitrary and highly problematic.

The Constitution provides: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year."[2]

The impeachment proceedings in the House of Representatives[3] are constitutionally defined to consist of the following steps:

A. **Filing of the Verified Complaint**. A verified complaint for impeachment is filed by either: (a) a Member of the House of Representatives; or (b) any citizen upon a resolution of endorsement by any Member thereof.[4]

B. **Inclusion in the Order of Business**. After filing, the complaint shall be included in the Order of Business within ten session days.[5]

C. **Referral to the Committee**. During the House Session when the complaint is calendared to be taken up, the Speaker of the House shall refer the complaint for impeachment to the proper committee within three session days.[6]

D. **Committee Report**. The Committee, after hearing, and by a majority vote of all its Members shall submit its report to the House within sixty (60) session days from the referral, together with the

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[2] CONSTITUTION, Art. XI, Sec. 3 (4).

[3] *Id.*, Sec. 3 (1).

[4] *Id.*, Sec. 3 (2). The verified complaint is filed with the Office of the Secretary General of the House of Representatives. (15th Congress Rules of Procedure in Impeachment Proceedings, Rule II, Section 3)

[5] *Id*.

[6] *Id*.

corresponding resolution.[7] The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.[8]

E. **House Plenary Vote**. A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution.[9]

F. **Transmittal of Articles of Impeachment**. In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.[10]

Since these are the only constitutionally described steps in the process of impeachment in the House of Representatives, the starting point for the one-year bar must be among these steps; the question is, where? Note that none of these steps is constitutionally described as the "initiation of the impeachment proceedings." The parties to the case have advocated their positions on this issue in their respective Memoranda.[11]

Petitioner Gutierrez espouses the view that the very "act of filing the complaint is the actual initiation – beginning or commencement – of impeachment proceedings" that would commence the one-year time-bar.[12]

On the other hand, public respondent Committee, through the Office of the Solicitor General (OSG), argues that the

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[7] *Id*.

[8] *Id*.

[9] CONSTITUTION, Art. XI, Sec. 3 (3).

[10] *Id*. Sec. 3 (4).

[11] Private respondents Risa Hontiveros-Baraquel, Danilo D. Lim, Felipe Pestaño and Evelyn Pestaño (private respondents Baraquel) argue that the one-year time-bar rule under the Constitution is inapplicable to the first Impeachment Complaint that they filed against petitioner Gutierrez. (Private respondent Baraquel's Memorandum dated 27 October 2010, at 5-6)

[12] Petitioner Gutierrez's Memorandum dated 21 October 2010, at 27-40.

"impeachment is a process beginning with the filing of a complaint and terminating in its disposition by the vote of at least one-third of all the members of the House"; and that the one-year period should be counted from the plenary action of the House on the Committee's report.[13]

Meanwhile, private respondents Renato Reyes, Mother Mary John Mananzan, Danilo Ramos, Atty. Edre Olalia, Ferdinand Gaite and James Terry Ridon (private respondents Reyes) claim that the "term 'initiated' therein takes place by the act of the House of Representatives of transmitting the Articles of Impeachment to the Senate for the conduct of the impeachment trial proceedings"; and, thus, the one-year period should commence from the transmittal by the House of Representatives of the Articles of Impeachment to the Senate.[14]

Finally, respondent-intervenor Feliciano R. Belmonte, Jr., as Speaker of the House, theorizes that the better interpretation of the constitutional time bar should be reckoned from the recommendation of the Committee to the House of Representatives.[15]

All the parties to the case, and the Court, are keenly aware of the latter's ruling in *Francisco v. Nagmamalasakit na mga Mananganggol ng mga Manggagawang Pilipino, Inc.*[16] That ruling was categorical in stating that the impeachment proceeding is "initiated or begins, when a verified complaint is filed **and** referred to the Committee on Justice for action."[17] Considering

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[13] Public respondent's Memorandum dated 26 October 2010, at 61-85. *See also* public respondent's Reply Memorandum dated 15 November 2010, at 21-34.

[14] Private respondents Reyes's Memorandum dated 26 October 2010, at 26-44.

[15] Respondent-intervenor Belmonte's Memorandum for the Intervenor *Ex Abundanti Cautela* dated 27 October 2010, at 19-25.

[16] G.R. Nos. 160261, 160262-63, 160277, 160292, 160295, 160310, 160318, 160342-43, 160360, 160365, 160370, 160376, 160392, 160397, 160403, 160405, 10 November 2003, 415 SCRA 44.

[17] *Id.* at 169.

the factual circumstances of the instant case, and the experiences of the country with impeachment proceedings in the House since the *Francisco* ruling, the Court is faced with a good opportunity to reexamine its earlier disposition.

Petitioner Gutierrez's argument that the one-year time bar on a second impeachment complaint should be counted from the mechanical act of filing the complaint alone[18] is pregnant with a multitude of problems. Congress' exclusive power to initiate impeachment cases would be effectively rendered inutile. This country's experience with impeachment in the past decade has shown that pegging the time bar to the mechanical act of filing has transformed impeachment into a race on who gets to file a complaint the fastest – regardless of whether such a first complaint is valid, proper, substantial or supported by evidence. Enterprising yet unscrupulous individuals have filed patently sham, frivolous or defective complaints in the House in order to commence the one-year period and thus bar the subsequent filing of "legitimate" complaints against the same impeachable officer. In embracing the provisions of the 1987 Constitution, the Filipino people certainly did not countenance a technical loophole that would be misused to negate the only available and effective mechanism against abuse of power by impeachable officers.

The opposite extreme propounded by private respondents Reyes that the period of the time bar starts from the filing of the Articles of Impeachment in the Senate is likewise untenable. Following their proposition, the one-year period will only commence when the report of the Committee favoring impeachment is approved by the required vote of the House,

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[18] "The filing of an impeachment complaint constitutes the only true and actual initiation of impeachment proceedings. This operative and immutable fact cannot be downplayed or trivialized as being the mere solitary act which 'begins the initiation process.' That the filing of the complaint admittedly 'begins the process of initiation' only underscores the plain and inescapable fact that it is the very start, the very inception, the very origin of an impeachment proceeding." (Petitioner Gutierrez's Consolidated Reply dated 15 October 2010, at 15)

and the Articles of Impeachment are transmitted to the Senate. Consequently, if there is no transmittal of the Articles of Impeachment, then there is no one-year time bar. As a result, multiple parties may continue to file numerous complaints, until Articles of Impeachment are transmitted by the House to the Senate.

This scenario of persistent filing until there is a transmittal of the Articles of Impeachment is equally abhorrent to the constitutional prohibition on multiple, successive and never-ending impeachment proceedings (not complaints). The machine-gun approach to the filing of an impeachment complaint until there is a successful transmittal to the Senate will greatly impede the discharge of functions of impeachable officers, who are not given any refuge from such repetitive proceedings. Justice and the efficient administration of government would be defeated, if the impeachment time bar is made to commence **solely from the favorable transmittal** of the Articles of Impeachment. The time consumed by impeachable officers fending off impeachment proceedings is the same, regardless of the result – the time bar, therefore, must equally apply to unsuccessful impeachment attempts voted down by the House.

Finally, the Court is confronted with the positions of public respondent Committee and respondent-intervenor Belmonte as opposed to the Court's ruling in *Francisco*. In *Francisco*, the time bar is counted from the acts of filing the impeachment complaint **and** its referral to a Committee,[19] where the latter is a purely **ministerial act** of the Speaker of the House. On the other hand, both public respondent Committee and respondent-intervenor Belmonte propose that the period of one year begin from **discretionary acts**, namely, from the submission of the

[19] "Having concluded that the initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period." (*Francisco, supra* note 15, at 169)

Committee report on the complaint according to the Speaker, and from the one-third House plenary action on the report according to the public respondent Committee. With all due respect to the Court's ruling in *Francisco*, I uphold the position of the public respondent Committee. The doctrine of separation of powers in our theory of government pertains to the apportionment of state powers among coequal branches; namely, the Executive, the Legislature and the Judiciary. In establishing the structures of government, the ideal that the Constitution seeks to achieve is one of balance among the three great departments of government — with each department undertaking its constitutionally assigned task as a check against the exercise of power by the others, while all three departments move forward in working for the progress of the nation.[20] The system of checks and balances has been carefully calibrated by the Constitution to temper the official acts of each of these three branches.[21]

The power of impeachment is the Legislature's check against the abuses of the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman.[22] Having been elected or appointed for fixed terms, these impeachable officers enjoy security of tenure, which is intended to enhance their capability to perform their governmental functions efficiently and independently. However, their tenure, arising from either direct election by the people or indirect appointment by the people's representatives, is not *carte blanche* authority for them to abuse their powers. In the face of gross governmental abuse, the people have not been made so powerless by the Constitution as to suffer until the impeachable officer's term or appointment expires. The Legislature's impeachment power is the very solution provided by the fundamental law to remove, in the interim, public officers who have failed to uphold the public's

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[20] Carpio Morales, Dissenting Opinion, *De Castro v. Judicial and Bar Council*, G.R. Nos. 191002, 191032, 191057, 191149, 191342, 191420 & A.M. No. 10-2-5-SC, 20 April 2010.

[21] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 04 September 2008, 549 SCRA 77.

[22] CONSTITUTION, Art. XI, Sec. 2.

trust. The Ombudsman is the public official constitutionally tasked to investigate and prosecute complaints against other public officials[23] except for impeachable officers and members of the national legislature. She is continually required by the Constitution to be of recognized probity and independence,[24] and must maintain this public trust during her term of office. Avoidance of the prospect of impeachment is the negative incentive for the Ombudsman, and all other impeachable officers, to keep that public trust.

Within the limitations set forth in the Constitution, impeachment is inarguably a **political act** exercised by the Legislature, a political body elected by and directly accountable to the people. This power "is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot easily be reached by an ordinary tribunal."[25]

Full discretion is vested in Congress, both the House and the Senate, to determine whether or not an officer should be impeached, subject only to constitutionally provided limits. Even if the expanded *certiorari* jurisdiction allows the Court to review legislative acts that contravene the express provisions of the Constitution, the Court cannot supplant with its own determination, that of Congress in finding whether a public officer has performed acts that are grounds for impeachment. The political character of the process is underscored by a degree of imprecision in the offenses subject of impeachment,[26] thus allowing Congress sufficient leeway to describe the acts as impeachable or not.[27]

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[23] CONSTITUTION, Art. XI, Sec. 12.

[24] *Id.*, Sec. 8.

[25] LABOVITZ, JOHN R., *PRESIDENTIAL IMPEACHMENT*, 20 (1978).

[26] The grounds for impeachment are culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. (CONSTITUTION, Art. XI, Sec. 2)

[27] Although some of the grounds for impeachment are specifically defined under penal laws (treason, bribery, graft and corruption), those laws and

Since the power of impeachment is inherently discretionary, owing to its political character, then the time bar limitation imposed by the Constitution on this legislative discretion must likewise be counted from a discretionary, and not a ministerial, act. The one-year period was meant to be a restraint on the discretionary power of impeachment; otherwise, the Legislature would have been allowed to exercise that discretion at will repeatedly and continuously, to the detriment of the discharge of functions of impeachable officers. It is counterintuitive and illogical to place a limitation on discretionary powers, which is triggered not by the exercise of the discretion sought to be limited, but by a mere ministerial, ceremonial act perfunctorily performed preparatory to such exercise.

We observe that the Constitution has placed time conditions on the performance of acts (both discretionary and ministerial in nature) in pursuit of the House's exclusive power to initiate impeachment proceedings.[28] These specific time conditions in the form of session days, however, have primarily been imposed for the purpose of avoiding delays or filibusters, which members of the House may resort to in order to prolong or even defeat the impeachment process. Whether the step is discretionary or ministerial, the constitutional deadlines for the execution of impeachment steps regulate only the **speed** at which the proceeding is to take place.

In contrast, the rule against the initiation of more than one impeachment proceeding against the same impeachable officer in a span of one year is a time constraint on the **frequency** with which the discretionary act of impeachment is to be

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their concomitant jurisprudence are mere guides for the members of Congress and are not exactly bound to these definitions, given the discretionary power vested in them.

[28] The Constitution provides a specific time conditions for several acts in the impeachment process, namely: (a) inclusion of the impeachment complaint in the Order of Business (ten session days); (b) referral to the Committee (three session days); (c) report of the Committee (sixty session days); and (d) calendar of the Committee report to the plenary (ten session days).

exercised. The time bar regulates how often this power can be exercised by the House of Representatives. The rationale is that the extreme measure of removal of an impeachable officer cannot be used as Congress' perennial bargaining chip to intimidate and undermine the impeachable officer's independence.

While each chamber of Congress is constitutionally empowered to determine its rules of proceedings, it may not by its rules ignore constitutional restraints or violate fundamental rights.[29] Further, there should be a reasonable relation between the mode or method of proceeding established by the rule and the result that is sought to be attained.[30]

I respectfully differ from my colleagues when in effect they rule that the one-year limitation on a discretionary power is to begin from the ministerial act of the Speaker in referring the impeachment complaint to the appropriate committee of the House of Representatives. I cannot reconcile the incongruity between the constitutional largeness of the power of impeachment – an inherently discretionary power lodged in the entire Congress – and the controlling effect that a small act of the Speaker in referring a complaint to the Committee has, over this large power of impeachment. Retired Justice Serafin Cuevas, counsel for petitioner Gutierrez, goes so far as to characterize the Speaker's ministerial referral of the complaint as merely "ceremonial in character:"

JUSTICE SERENO:

And you are basically … your contention if [I] understand it is that this is the initiation? This is the act of initiating an impeachment complaint?

RET. JUSTICE CUEVAS:

Yes, we subscribed to the view or we uphold the view that upon the filing thereof, it was already initiated **because the referral to the**

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[29] *Arroyo v. De Venecia,* G.R No. 127255, 14 August 1997, 277 SCRA 268 citing *U.S. v. Ballin, Joseph & Co.,* 144 U.S. at 5.36 L.Ed. at 324-25.

[30] *Id*.

Committee on Justice is only ceremonial in character. The Secretary of Justice cannot do anything with it except to refer or not. Why did it take him twenty two (22) days?[31] (Emphasis supplied)

Even on the part of the Speaker of the House, there is no exercise of discretion over the referral of the complaint to the Committee on Justice.[32] The Speaker simply performs a ministerial function under the Constitution.[33] The Speaker cannot evaluate the complaint as to its sufficiency in form and substance. And even if there is a technical defect in the impeachment complaint, the Speaker is duty-bound to refer the matter to the committee within three session days from its inclusion in the Order of Business. Moreover, as pointed out by Justice Carpio Morales, members of the House cannot even raise issues against the propriety or substance of the impeachment complaint during the referral, as in fact the only objection that can be entertained is the propriety of the committee to which the complaint is referred. There is a dissonance on how the House Speaker's clerical/ministerial act of referring the complaint can commence the time bar on the discretionary power of the entire House to initiate an impeachment proceeding.

The stark incompatibility between a small ministerial act controlling the substantive right of the House to initiate impeachment proceedings is viewed with concern by no less

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[31] TSN, 05 October 2010, at 119-120.

[32] "aa. Justice, 55 Members. **All matters directly and principally relating to the administration of justice,** the Judiciary, the practice of law and integration of the Bar, legal aid, penitentiaries and reform schools, adult probation, **impeachment proceedings**, registration of land titles, immigration, deporation, naturalization, and the definition of crimes and other offenses punishable by law and their penalties." (House Rules of Procedure, Rule IX The Committees, Sec. 27 [aa])

[33] "A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done." (Callejo, Concurring Opinion, *Lambino v. COMELEC*, G.R. No. 174153 & 174299, 25 October 2006, 505 SCRA 160, citing *Codilla, Sr. v. De Venecia*, G.R. No. 150605, 10 December 2002, 393 SCRA 639)

than retired Justice Cuevas, counsel for petitioner Gutierrez, who agrees with me in this wise:

ASSOCIATE JUSTICE SERENO:

I am sure, sir. But let us now go to the real question of the constitutional right of the House on impeachment and the clerical act of receiving impeachment complaints. **Which is superior and which should be given more weight, the substantive right of the House to exercise its right to initiate impeachment complaints or is it the mere clerical act of finding out which complaint on its face bears the stamp, the first the earliest of stamp?**

RET. JUSTICE CUEVAS:

I am not aware of any law, Your Honor, that authorizes a mere clerk to do what you are trying to tell us, Your Honor. It is the House, that is the responsibility of the House.

ASSOCIATE JUSTICE SERENO:

Yes, thank you.

RET. JUSTICE CUEVAS:

If they were designated by the Secretary General, the physical acceptance of the complaint lies there.

ASSOCIATE JUSTICE SERENO:

Correct.

RET. JUSTICE CUEVAS:

But that acceptance does not automatically …

ASSOCIATE JUSTICE SERENO:

Correct.

RET. JUSTICE CUEVAS:

... initiate the impeachment proceedings.

ASSOCIATE JUSTICE SERENO:

Thank you very much, that is exactly what I wanted to hear *viz-a-viz* **the substantive right of the House to initiate impeachment proceedings, this cannot be defeated by the clerical act of accepting an impeachment complaint**.

RET. JUSTICE CUEVAS:

I agree, Your Honor. (Emphasis supplied)[34]

Proceedings, as understood in law, include "any and all of the steps or measures adopted or taken, or required to be taken in the prosecution or defense of an action, from the commencement of the action to its termination, such as to the execution of the judgment."[35] "Proceedings, both in common parlance and in legal acception, imply action, procedure, prosecution. If it is a progressive course, it must be advancing; and cannot be satisfied by remaining at rest."[36]

In *Macondray & Co., Inc., v. Bernabe*,[37] the Court ordered the payment of fees by the custodian of the attached properties, since the plaintiff's recovery of the costs includes any lawful fees paid by him or her for the "service of the summons and other process in the action." The Court defined the word "process" in this wise:

> As a legal term, process is a generic word of very comprehensive signification and many meanings. In its broadest sense process, it is **equivalent to, or synonymous with, 'proceedings' or procedure and embraces all steps and proceedings in a cause from its commencement to its conclusion**. Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands.[38] (Emphasis supplied.)

Therefore, the term "impeachment proceedings" should include the entire gamut of the impeachment process in the House – from the filing of the verified complaint, to its referral to the appropriate committee, to the committee's deliberations and

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[34] TSN, 05 October 2010, at 142-143.

[35] 1 C.J.S. Actions § 1(h)(1)(a), at 955.

[36] 34 WORDS AND PHRASES 142 (1957), citing *Beers v. Haughton*, 34 U.S. 329, 368, 9 Pet. 329, 368, 9 L.Ed. 145.

[37] G.R. No. L-45410, 67 Phil. 661(1939).

[38] *Macondray & Co., Inc., v. Bernabe*, 67 Phil. 661 (1939), *citing* 50 C.J., 441; *cf*. PHILIPPINE LAW DICTIONARY, 748 (Federico B. Moreno ed., 3rd ed. 1988).

report, up to the very vote of the House in plenary on the same report. **It is only at the time that the House of Representatives as a whole either affirms or overrides the Report, by a vote of one third of all the members, that the initiation of the impeachment proceedings in the House is completed** and the one-year bar rule commences. This is because the plenary House vote is the first discretionary act exercised by the House in whom the power of initiating impeachment proceedings repose.

When the Court pegged, in *Francisco,* the time bar on the initiation of impeachment proceedings to the filing of the complaint and its referral to the appropriate committee, it may have failed to anticipate the actions of parties who would subvert the impeachment process by racing to be the first to file sham and frivolous impeachment complaints. These unintended consequences, which make a mockery of the power of impeachment, justify a second look at the premises considered in *Francisco*.

Reckoning the beginning of the time bar from a ministerial and preparatory act, instead of the exercise of the discretionary power of impeachment, tends to focus attention on the procedural loopholes. Thus, impeachable officers subject of the proceedings, as well as their counsel, abuse these technical gaps in the legal framework of impeachment. Their purpose is to escape removal or perpetual disqualification despite the serious and grave charges leveled against them. Questions on the number of complaints filed, the date or even the time of filing, and whether the complaints have been consolidated or even simultaneously referred become monkey wrenches that impede the entire process and frustrate the mechanism of impeachment to the point of infeasibility.

As argued by public respondent Committee through retired Justice Vicente Mendoza during oral argument,[39] these technical loopholes can be cured by rendering the plenary vote of the entire House on the report of the committee as the starting

[39] TSN, 12 October 2010, at 88-90.

point of the one-year ban. The intensity of legal wrangling over the definition of the words "proceedings" and "initiate" diminishes in significance if the Court is to focus its attention on the sole, discretionary and exclusive power granted to the House as a whole body to initiate all impeachment cases. Aside from the fact that the plenary vote pertains to the very discretionary act of impeachment, which requires the vote of one-third of its members, the difficulties inherent in pegging the period to ministerial acts are lessened, if not eliminated. Let us look at some problems that this approach eliminates.

First, whether there is a single complaint or multiple complaints filed before the House or taken up by the committee, the House in plenary will only vote once, in one impeachment proceeding, on whether to approve or disapprove the committee's resolution.

Second, the proposal also removes the undesired proclivity of parties to be the first to file or the first to be referred, since the ban regulates not the speed of filing, but the frequency of the exercise by the House plenary of voting on the impeachment complaint/s.

Third, it makes no difference whether the complaint is filed and/or referred successively or simultaneously, as was being deliberated upon in the public respondent Committee.[40] The excessive emphasis on the physical time and date of filing or referral becomes inconsequential, if not absurd.

[40] "Rep. Datumanong raised again the issue of having two impeachment complaint referred to the Committee. According to him, the journal of the House on August 11 reflects the successive, and not simultaneous, referral to the two complaints to the Committee. This position was later reiterated by Re. Rufus Rodriguez, who stated that it is a physical impossibility to refer two complaints to the Committee at exactly the same time. Rep. Neptali Gonzales II answered Rep. Datumanong's query, and maintained that in the same journal, both complaints were referred to the Committee on Justice at exactly the same time, which shows the intention of the House to refer the complaints simultaneously and not successively. Rep. Gonzales also stated that there is nothing in the Constitution or the Rules on Impeachment that prevents the Committee from consolidating the two complaints against an impeachable officer." (Minutes of the Meeting of the Committee on Justice, 07 September 2010 at 5; *cf.* petitioner Gutierrez's Compliance and Manifestation dated 30 September 2010)

Finally, the time limitation is reckoned from a discretionary act, which embraces a deliberate, informed and debated process, and not from the ministerial act of a single public officer. The one-year period from the plenary vote of the House on the committee report eliminates even the possibility, however remote, that the Speaker of the House and/or the Majority Floor Leader would include a sham impeachment complaint in the Order of Business and refer the complaint to the Committee on Justice in just a single session day, in order to bar any other subsequent impeachment complaint/s.

The plenary vote by the House on the committee report is definite, determinable, and not ministerial; it is precisely the discretionary exercise of the power to initiate impeachments. As elucidated by retired Justice Mendoza during the oral argument:

ASSOCIATE JUSTICE NACHURA:

Justice Mendoza, just two things, I agree with you that the impeachment proceeding is really a process, is really a process. And I am open, my mind is at least open, to your suggestion that the initiation should be the entire proceedings in the House of Representatives. This would mean of course that the Committee would have prepared its report and submitted the report to the House of representatives in plenary. That would end the initiation, is that your position?

RET. JUSTICE MENDOZA:

Yes, Sir.

ASSOCIATE JUSTICE NACHURA:

Irrespective of the action taken by plenary do we have to await the action of the plenary on the report of the Committee on Justice before we say that these (sic) have been initiation on the impeachment?

RET. JUSTICE MENDOZA:

It is actually the action on the House because the power to initiate is vested in the House not to the Committee of the House. Up to the submission of the report there is only action by the Committee. Action by the House to initiate the proceedings is the action on the Committee

report. The point Mr. Justice is this, **the House delegates the task of screening good from bad complaints so that its time will not be wasted to a Committee also and to protect the public officials from unnecessarily being made to face impeachment proceedings**. So what is given to the Committee is the task of investigating and recommending action on the complaints. **So unless action is taken therefore finally by the House, the exclusive power to initiate impeachment proceedings has not been discharged**. (Emphasis supplied)[41]

Of course, there still exists the possibility that the complaining parties would file multiple complaints at the 11th hour before the entire House votes on the committee report. This last minute maneuver is presumably intended to delay the voting, until the belated complaint is referred and deliberated upon by the committee within the number of session days enumerated under the Constitution. However, the deadlines for the committee report and the subsequent voting by the plenary should be counted from the date of the complaint/s first referred, regardless of any subsequent complaints. Any pending impeachment complaint will be immediately barred once the House votes on the committee report. This rule will prevent the filing of subsequent complaints (albeit sham or frivolous), which would continually reset the sixty-session day period and, thus, result in the circumvention of the constitutional deadlines.

A party who has a legitimate grievance supported by evidence against an impeachable officer will ordinarily not wait until the last minute to lodge the complaint. Ordinary diligence and good faith dictate that a person who has sufficient proof of wrongdoing and abuse against an impeachable officer will join and lend support to an impeachment complaint that is already being deliberated upon by the House committee, at the soonest possible time. Hence, it is natural that all complaints with valid grounds and sufficient evidence will be collectively or separately raised at the first opportunity, in order that the committee and eventually the House will be able to perform its deliberative function and exercise discretion within the specified number of session days.

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[41] TSN, 12 October 2010, at 133-135.

Contrary to the position of respondent-intervenor Belmonte,[42] the mere submission of the committee report to the plenary is not a good reckoning point for the one-year period. Undoubtedly, while the committee exercises a degree of discretion in deciding upon and coming up with the report, as when it determines whether the impeachment complaint/s is/are sufficient in form and substance,[43] this discretion is exercised by a mere subset of the entire House, however, and is but preliminary. Although of persuasive value, the recommendations of the committee, which is composed of approximately fifty-five (55) members,[44] are not binding on the entire House in plenary, which counts two hundred eighty-three (283) members.[45]

The power to initiate all cases of impeachment is an extraordinary exercise of the sovereign people through its elected representatives to immediately remove those found to have

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[42] "102. The moment when an impeachment is 'initiated' therefore is a process that starts from the filing up until the recommendation of the House Committee on Justice to the House of Representatives. It is still a process and a continuum, but it is a process that allows democratically elected forums to weigh in." (Respondent-intervenor Belmonte's Memorandum dated 27 October 2010, at 22)

[43] "Section 4. *Determination of Sufficiency in Form and Substance*. - Upon due referral, the Committee on Justice shall determine whether the complaint is sufficient in from and substance. If the committee finds that the complaint is insufficient in form, it shall return the same to the Secretary General within three (3) session days with a written explanation of the insufficiency. The Secretary General shall return the same to the complaint(s) together with the committee's written explanation within three (3) session days from receipt of the committee resolution finding the complaint insufficient in form."

"Should the committee find the complaint sufficient in form, it shall then determine if the complaint is sufficient in substance. The requirement of substance is met if there is a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee. If the committee finds that the complaint is not sufficient in substance, it shall dismiss the complaint and shall submit its report as provided hereunder." (House Rules of Procedure in Impeachment Proceedings, Sec. 4)

[44] House Rules of Procedure, Rule IX (The Committees), Sec. 27 (aa).

[45] <http://www.congress.gov.ph/members/> (Last accessed on 24 January 2011)

committed impeachable offenses.[46] Therefore, the power to initiate impeachment proceedings is a power that is reposed upon the House of Representatives as a whole body, in representation of the sovereign, and this power cannot be taken over by a mere Committee.

Irrespective of the Committee's findings, the impeachment proceeding will rise or fall or continue up to the impeachment case in the Senate on the basis of the one-third vote of the House. Hence, the one-year period is a limitation on the discretionary power of the entire House to initiate impeachment proceedings, and not on the committee's deliberations or recommendations with respect to the impeachment complaint/s.

In summary, the following principles support the position that the time bar should be counted from the House of Representative's plenary action on the report of the Committee on Justice:

> 1. The time bar on impeachment proceedings cannot be counted from the filing of the complaint; otherwise the absurdity of individuals racing to file the first complaint would ensue, regardless of the complaint's propriety or substance.
>
> 2. The time bar must equally apply, whether the impeachment complaint is successful or not.
>
> 3. The time bar, which is a limitation on the House's exclusive power to initiate impeachment, must be counted from a discretionary act, not from a mechanical or ministerial

[46] "On a more fundamental level, the impeachment power is, in fact, an exercise of sovereignty. It is a choice by the representatives of the people to immediately remove those unfit for public service. Impeachment involves conviction and removal of government officers of the highest level and, hence, is an extreme measure. So, it is but appropriate that it is the Congress – the direct representatives of the people – which should wield the power of impeachment. Therefore, the power to 'initiate' impeachment proceedings may not be exercised by a lone congressman or by a citizen by the sheer act of filing an impeachment complaint." (TAMANO, ADEL A., *HANDBOOK ON IMPEACHMENT UNDER THE 1987 CONSTITUTION* [1st Ed., 2004], at 21)

act, especially not from acts that trivialize the impeachment process.

4. The time bar can only be reckoned from the plenary action of the House on the report of the committee (regardless of the outcome), since such action is done by the constitutional body in which the power is vested, and not by a mere subset that makes a preliminary finding that has only persuasive value.

Judicial review serves an affirmative function vital to a government of limited powers – the function of maintaining a satisfactorily high public feeling that the government has obeyed the law of its own Constitution and stands ready to obey it as it may be declared by a tribunal of independence.[47]

In this instance, in exercising the power of judicial review over the exclusive and sole power of the House to initiate impeachment cases, the Court must remember that it is also performing a legitimating function – validating how the House exercises its power in the light of constitutional limitations. The Court in the present constitutional dilemma is tasked with doing what has been described as a "balancing act,"[48] in determining the appropriate operation of the one-year time bar on the initiation of subsequent impeachment proceedings *vis-à-vis* the need to allow Congress to exercise its constitutional prerogatives in the matter of impeachment proceedings.

On the one hand, the undisputed *raison d'être* of the time bar is to prevent the continuous and undue harassment of impeachable officers, such as petitioner Gutierrez, in a way that prevents them from performing their offices' functions effectively. On the other hand, the protection afforded to petitioner

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[47] CHARLES L. BLACK, JR., *THE PEOPLE AND THE COURT: JUDICIAL REVIEW IN A DEMOCRACY*, 86 (1960).

[48] "… So, that is why I am saying now that we should not only consider the rights of the accused we should also consider the rights of the State. We should try to do a balancing act such that we will come out with a favorable decision which is fair to both parties." (Justice Carpio Morales, TSN, 05 October 2010, at 335)

and other impeachable officers against harassment is not a blanket mechanical safety device that would defeat altogether any complaint of wrongdoing, of which she and other impeachable officers may be accused. Therefore, the power to initiate impeachment proceedings should not be so effortlessly and expeditiously achieved by disgruntled politicians to pressure impeachable officers to submission and undermine the latter's institutional independence. But neither should the power of impeachment be too unreasonably restrictive or filled with technical loopholes as to defeat legitimate and substantiated claims of gross wrongdoing.

I submit that a balance of these two interests is better achieved if the time bar for the initiation of impeachment proceedings commences from the voting of the House on the committee report. Briefly, a subsequent impeachment proceeding against the same officer cannot be initiated until and unless one year lapses from the time the House in plenary votes either to approve or to disapprove the recommendations of the committee on impeachment complaint/s.

What the Court is deciding herein is merely the scope of the constitutional limits on the power to initiate impeachment proceedings, and how the delineation of that scope would affect the second Impeachment Complaint filed by private respondent Reyes. This Court does not arrogate unto itself the power to determine the innocence or guilt of petitioner Gutierrez with respect to the allegations contained in the impeachment complaints of private respondents. Congress, the political branch of government, was entrusted with the power of impeachment, specifically, "because the objectives and the questions to be resolved are political."[49] In the Constitution, the impeachment power is an extraordinary political tool to oust a public officer. It must, therefore, be exercised by those whose functions are most directly and immediately responsive to the broad spectrum of the Filipino people, rather than by the Courts.

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[49] JOHN R. LABOVITZ, PRESIDENTIAL IMPEACHMENT 251 (1978).

In expounding on the rationale for excluding the power of impeachment from the courts, Alexander Hamilton succinctly wrote:

> … The awful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons.
>
> These considerations seem alone sufficient to authorise a conclusion, that the Supreme Court would have been an improper substitute for the Senate, as a court of impeachments. …[50]

On a final note, the issuance of the Status Quo *Ante* Order in this case was most unfortunate. It was issued over the objections of Justices Antonio Carpio, Conchita Carpio Morales, and myself. I believed then, as I believe now, that the Court, in issuing the said order, was overly intrusive with respect to a power that does not belong to it by restraining without hearing a co-equal branch of Government. This belief was made more acute by the fact that the order was voted upon in the morning of 14 September 2010, without the benefit of a genuinely informed debate, since several members of the Court, myself included, had not yet then received a copy of the Petition. No one should henceforth presume to tell the House of Representatives that any form of restraining order is still in effect and thereby seek to extend the effectivity of the Status Quo *Ante* Order. This is the legal import of the majority Decision.

Premises considered, I vote to **DISMISS** the Petition in its entirety, and, consequently, the Status Quo *Ante* Order is immediately lifted.

CONCURRING AND DISSENTING OPINION

DEL CASTILLO, *J.*:

The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms

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[50] FEDERALIST No. 65, at 439-45 (07 March 1788).

and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become.

Oliver Wendell Holmes, Jr.
The Common Law, Lecture 1 (1881)

At the heart of this controversy is the interpretation of the rule enshrined in Article XI, Sec. 3(5) of our Constitution, that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year." With due respect to my esteemed colleague, Mme. Justice Conchita Carpio Morales, I do not agree that there may be multiple complaints embraced in only one impeachment proceeding.

Recall that *Francisco, Jr. v. The House of Representatives*[1] involved two impeachment complaints filed on separate occasions, the first of which had been resolved long before the second complaint was filed. The first complaint was filed on June 2, 2003 by former President Joseph E. Estrada against then Chief Justice Hilario G. Davide, Jr. and Associate Justices Artemio V. Panganiban, Josue N. Bellosillo, Reynato S. Puno, Antonio T. Carpio, Renato C. Corona, Jose C. Vitug, and Leonardo A. Quisumbing. Upon referral to the House Committee on Justice, the Committee ruled that the complaint was sufficient in form, but voted for the dismissal of the complaint for being insufficient in substance. Subsequently, a second complaint was filed on October 23, 2003 against Chief Justice Hilario G. Davide, Jr., accompanied by the endorsement of at least one-third (1/3) of all the Members of the House of Representatives.

The Court in *Francisco* faced this question: when a first impeachment complaint is filed against an impeachable officer, subsequently referred to the House Committee on Justice, and then dismissed, may another impeachment complaint prosper? We said then that from the moment that the first complaint was referred to the proper committee, the filing of a second impeachment complaint was prohibited under paragraph 5, Section 3 of Article XI of the Constitution. Though the first

[1] 460 Phil. 830 (2003).

impeachment complaint was found to be insufficient in substance, it still served as a bar to a subsequent complaint within the same year.

The Court ruled that "initiation [of an impeachment proceeding] takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House x x x"[2] Thus, "[o]nce an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period."[3] It was on that basis that the Supreme Court invalidated Sections 16 and 17 of the Rules of Procedure in Impeachment Proceedings of the 12th Congress, and declared that the second impeachment complaint filed against Chief Justice Davide was barred under paragraph 5, section 3 of Article XI of the Constitution.

The rule seems simple enough, and has since been readily applied. But what of a case where two impeachment complaints are separately filed and then simultaneously referred to the Committee on Justice. Does it then follow that only one *proceeding* has been initiated? To put it differently, is it possible to have two impeachment complaints but just one proceeding?

Mme. Justice Carpio Morales posits that multiple complaints within one proceeding are possible, because the purposes of the one-year ban as enunciated by the framers of our Constitution – to prevent harassment of the impeachable officials and to allow the legislature to focus on its principal task of legislation[4] – reveal that the consideration behind the one-year ban is *time* and not *the number of complaints*.

Unfortunately, while we are in agreement as to the reckoning point of initiation, I cannot find any reasonable justification for

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[2] *Id.* at 932.

[3] *Id.* at 933.

[4] See *Francisco, Jr. v. The House of Representatives* (Azcuna, Separate Opinion), *id.* at 1053, citing the deliberations of the 1986 Constitutional

the conclusion that there can be multiple complaints in one proceeding. I posit this view for two reasons: first, it does not appear to be entirely accurate that both complaints were simultaneously referred to the Committee on Justice. Second, even assuming that there was simultaneous referral, upon referral of the First Complaint[5] to the Committee, an impeachment proceeding had already been initiated, so as to bar any further proceedings on the Second Complaint.[6]

As regards the simultaneous referral, as shown in the Congressional records,[7] and acknowledged by counsel for the respondents during the October 12, 2010 Oral Arguments (interpellation of Mr. Justice Antonio Eduardo Nachura), it appears that during the House plenary session on August 11, 2010, each complaint was read separately by the Secretary General and individually referred to the Committee on Justice

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Commission. During said deliberations, Mr. Romulo, in response to queries regarding the one-year limitation, stated:

MR. ROMULO: Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.

[5] Used here to refer to the Verified Complaint for the Impeachment of Ombudsman Ma. Merceditas Navarro-Gutierrez filed by Ms. Risa Hontiveros-Baraquel, Mr. Danilo Lim, Mr. Felipe Pestaño, and Ms. Evelyn Pestaño with the Resolutions of Endorsement filed by Representatives Bag-ao and Bello filed on July 22, 2010.

[6] Used here to refer to the Verified Complaint for the Impeachment of Ombudsman Ma. Merceditas Navarro-Gutierrez filed by Mr. Renato Reyes, Mo. Mary John Mananzan, Mr. Danilo Ramos and Atty. Edre Olalia with the Resolutions of Endorsement filed by Representatives Colmenares, Casiño, Mariano, Ilagan, Tinio and De Jesus filed on August 3, 2010.

[7] House of Representatives (15th Congress of the Philippines), Journal No. 9, August 11, 2010, *available online* at http://www.congress.gov.ph/download/journals_15/J09.pdf.

REFERENCE OF BUSINESS

On motion of Rep. Romulo, the Body proceeded to the Reference of Business, and the Chair directed the Secretary General to read the following

by the Chair.[8] Thus, there was, strictly speaking, no simultaneous referral.

No doubt this Court should be more concerned with overarching principles rather than the ephemeral passing of minutes or seconds. But even if we were to assume that

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House Bills and Resolutions on First Reading, which were referred to the appropriate Committees hereunder indicated:

x x x x x x x x x

ADDITIONAL REFERENCE OF BUSINESS

Verified complaint for the Impeachment of Ombudsman Ma. Merceditas Navarro-Gutierrez filed by Ms. Risa Hontiveros-Baraquel, Mr. Danilo Lim, Mr. Felipe Pestano, and Ms. Evelyn Pestano with the Resolutions of Endorsement filed by Representatives Bag-ao and Bello

TO THE COMMITTEE ON JUSTICE

Verified complaint for the Impeachment of Ombudsman Ma. Merceditas Navarro-Gutierrez filed by Mr. Renato Reyes, Mo. Mary John Mananzan, Mr. Danilo Ramos and Atty. Edre Olalia with the Resolutions of Endorsement filed by Representatives Colmenares, Casiño, Mariano, Ilagan, Tinio and De Jesus

TO THE COMMITTEE ON JUSTICE (*Rollo*, p. 576)

See also, the Congressional Record of the Plenary Proceedings of the 15th Congress, First Regular Session, Volume 1, No. 9, Wednesday, August 11, 2010, *available online* at http://www.congress.gov.ph/download/congrec/15th/1st/15C_1RS-09-081110.pdf. The records indicate that "[t]he Secretary General read the following House Bills and Resolutions on First Reading, and the Deputy Speaker made the corresponding references."

[8] The TSN of the Oral Arguments before this Court dated October 12, 2010, pages 146-150 states:

Associate Justice Nachura: Ah, one final thing, if this Court should decide not to revisit Francisco, a question I asked Assistant Solicitor General Laragan is that, when there are two complaints, [is it] the second complaint that is [infirm] if the second complaint is referred [to] the House Committee, after the first complaint shall have been referred? [Thus] the second complaint that will now be [infirm] and barred by Francisco.

there was, indeed, simultaneous referral, it would be no less true that the filing and referral of each individual impeachment

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Ret. Justice Mendoza:	Yes with particular reference to the facts of this case, it would be the second complaint (interrupted)
Associate Justice Nachura:	The second complaint (interrupted)
Ret. Justice Mendoza:	That would have [to] be dropped, if Your Honor please, for the simple reason that in the proceedings of the (interrupted)
Associate Justice Nachura:	House
Ret. Justice Mendoza:	. . . House, on August 11 (interrupted).
Associate Justice Nachura:	Eleven
Ret. Justice Mendoza:	… 2010, the Order of Business. If you look just at the Order of Business listed the first complaint filed by Risa Hontiveros-Baraquiel and three others ahead of the second complaint, and not only that, set or, rather, shows after reading the (interrupted)
Associate Justice Nachura:	Order of Business
Ret. Justice Mendoza:	… title of the complaint, this is the action taken by the Speaker, refer it to the Committee on Justice accompanied by the banging of the gavel, so that if we have to be (interrupted)
Associate Justice Nachura:	Technical
Ret. Justice Mendoza:	Concerned with, not only our second, ah, minute and seconds of what is done, then I would say just looking at these, that there are time difference between the action taken here in referring the first complaint and the action taken in referring the second complaint which was similarly, read afterward, and then the Speaker said to the Committee on Justice accompanied or followed by the banging of the gavel to signify the action of the Chair.
Associate Justice Nachura:	That - that is what?
Ret. Justice Mendoza:	But – But that's not [a] concern and I am sure that this Court did not intend that when it wrote the Francisco ruling.

complaint amounts to the initiation of two separate impeachment proceedings.

The word "proceeding" has been defined as "the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment; any procedural means for seeking redress from a tribunal or agency; an act or step that is part of a larger action."[9] This is in contradistinction with a "complaint," which is "[t]he initial pleading that starts a[n] x x x action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief."[10]

In *Francisco,* this Court stated that the impeachment "proceeding" consists of the following steps:

> (1) there is the filing of a verified complaint either by a Member of the House of Representatives or by a private citizen endorsed by a Member of the House of the Representatives; (2) there is the processing of this complaint by the proper Committee which may either reject the complaint or uphold it; (3) whether the resolution of the Committee rejects or upholds the complaint, the resolution must be forwarded to the House for further processing; and (4) there is the processing of the same complaint by the House of Representatives which either affirms a favorable resolution of the

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Associate Justice Nachura: Ah, that is precisely what I asked Assistant Solicitor General Laragan, that it would not[have] been possible to say that both complaints were referred at the same time, because the House in plenary would have acted on each individual complaint in the Order of Business separately. And the referral technically could not have happened at the same time, to the exact minute and the exact second. And so if we were to x x x apply Francisco very strictly the second complaint would be barred.

Ret. Justice Mendoza: Yes.

[9] *Black's Law Dictionary* (9th ed. 2009) (*available online at www.westlaw.com*).

[10] *Id.*

Committee or overrides a contrary resolution by a vote of one-third of all the members. x x x[11]

Here, both the First and Second Complaint separately went through these steps – they were filed, referred to the Speaker of the House, included in the Order of Business, referred to the House Committee on Justice, and separately considered by the Committee. In fact, the records bear out that each individual complaint was separately scrutinized to determine whether each was sufficient in form and substance, and the petitioner was required to answer both complaints. In all respects, there were two proceedings.

To summarize:

	First Complaint	**Second Complaint**
Date of Filing	July 22, 2010[12]	August 3, 2010[13]
Complainants	Risa Hontiveros-Baraquel, Danilo Lim, Felipe Pestaño, and Evelyn Pestaño	Renato Reyes, Mother Mary John Mananzan, Danilo Ramos, Atty. Edre Olalio, Ferdinand Gaite, and James Terry Ridon
Endorsers from the House of Representatives	A K B A Y A N Representatives Hon. Arlene Bag-ao and Walden Bello	Hon. Representatives Neri Javier Colmenares, Rafael Mariano, Teodoro Casino, Luzviminda Ilagan, Antonio Tinio, and Emeranciana A. De Jesus

[11] *Supra* note 1 at 931, adopting the explanation of Fr. Joaquin G. Bernas, S.J.

[12] *Rollo*, p. 91.

[13] *Id*. at 133.

Grounds raised	**Betrayal of Public Trust** 1. dismal conviction rate of the Ombudsman from 2008 onwards 2. failure to take prompt and immediate action re former President Arroyo and her husband, Jose Miguel T. Arroyo with regard to the NBN-ZTE Broadband Project 3. delay in conducting and concluding the investigation on the death of Ensign Philip Andrew Pestano 4. decision upholding the legality of the arrest and detention of Rep. Risa Hontiveros-Baraquel by the Philippine National Police in 2006 5. failure to conduct an investigation into the PhP1,000,000.00	**Betrayal of Public Trust** 1. the delay and failure in prosecuting those involved in the Fertilizer Fund Scam 2. the failure to prosecute "Euro General" PNP Director Eliseo de la Paz for violating BSP regulations on taking out of the country currency in excess of US$10,000,000 without declaring the funds to the Philippine Bureau of Customs **Culpable Violation of the Constitution** 1. the delay or inaction in conducting the investigations and filing criminal cases against responsible COMELEC

	dinner at Le Cirque in New York **Culpable Violation of the Constitution** 1. repeated delays and failure to take action on cases impressed with public interest 2. refusal to grant access to public records such as the Statement of Assets Liabilities and Net Worth	officials pursuant to the directive given by the Supreme Court in *Information Technology Foundation of the Philippines, et al. v. COMELEC, et al.*
Transmittal to the Speaker of the House	July 27, 2010[14]	August 4, 2010[15]
Directive regarding inclusion in the Order of Business	August 2, 2010[16]	August 9, 2010[17]
Referral by the Speaker of the House to the Committee on Justice	August 11, 2010	August 11, 2010

[14] *Id*. at 561.

[15] *Id*. at 563.

[16] *Id*. at 562.

[17] *Id*. at 564

Results of Vote on whether or not the complaint was Sufficient in Form (September 1, 2010)	39 in favor, 1 against	31 in favor, 9 against
Results of vote on whether or not the Complaint was sufficient in substance (September 7, 2010)	41 in favor, 14 against	41 in favor, 16 against

These two complaints have, in all respects, been treated separately by the House, and each stands alone. In fact, the complaints have been treated in separate proceedings, as indicated by the fact that there was no identity in the votes received by each complaint.[18]

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[18] On the question of sufficiency in form, the Minutes of the Meeting of the Committee on Justice held on September 1, 2010, Wednesday, 9:30 AM (*Id.* at 76-82), provide:

x x x x x x x x x

> Rep. Fariñas then moved to declare the first impeachment complaint filed [sic] Risa Hontiveros-Baraquel as sufficient in form. The motion was duly seconded. x x x
>
> x x x x x x x x x
>
> With 39 votes in favor and 1 against, the Chair declared the first impeachment complaint filed by Risa Hontiveros-Baraquel as sufficient in form.
>
> Rep. Casiño also moved that the Committee likewise vote to declare the second complaint file [sic] by Mr. Renato Reyes, *et al*. sufficient in form. The motion was duly seconded. With 31 members in favor of the motion and 9 members against, the motion to declare the second impeachment complaint sufficient in form was carried. (*Id*. at 80-81)

On the question of sufficiency in substance, the Minutes of the Meeting of the Committee on Justice held on September 7, 2010, Tuesday, 9:30 AM (*Id.* at 555-560), provide:

To use the analogy of the candle, each matchstick is a separate impeachment complaint, and referral may ignite the wick. But in reality, only one matchstick will cause the candle to melt; the other may feed the flame, but a candle, once lit, stays lit, the second matchstick becomes superfluous. In Shakespeare's immortal words, "what's done is done."[19] In truth, each matchstick ignites a separate candle, because separate and distinct proceedings are contemplated.

But perhaps we need not venture so far for an analogy. Just like in a regular lawsuit, different parties may prepare their initiatory complaints and file them in court. The Clerk of Court then refers the complaints to the branch for appropriate action. Even if the Clerk of Court refers two complaints to the same branch at exactly the same time, this does not detract from the fact that two proceedings have been initiated, particularly where each complaint alleges different causes of action. And though the branch may hear the two complaints in one hearing, the two proceedings remain separate and distinct.

To summarize, notwithstanding simultaneous referral, once the First Complaint was initiated, that is to say, filed and referred to the Committee on Justice, no other proceeding could be initiated against the petitioner. This protection granted by the Constitution cannot be waved away merely by reference to the "layers of protection for an impeachable officer" and the likelihood that

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x x x x x x x x x

Thereafter Rep. Fariñas repeated his previous motion to find the Hontiveros complaint sufficient in substance, which was duly seconded by Rep. Remulla. The Chairman proceeded with the voting on the motion, and with forty-one (41) members in favor and only fourteen (14) against, the Chairman declared the impeachment complaint of Hontiveros, *et al.* sufficient in substance.

Rep. Fariñas then made a motion to find the impeachment complaint filed by Reyes, *et al.* sufficient in substance. x x x (*Id.* at 560)

x x x x x x x x x

With forty one (41) votes in favor of the motion, and sixteen (16) against, and one (1) refusal to vote, the Chairman declared the impeachment complaint filed by Reyes, *et al.* sufficient in substance.

[19] *Macbeth,* act 3, scene 2, line 12.

the number of complaints may be reduced during hearings before the Committee on Justice. As such, the filing and referral of the First Complaint against the petitioner precluded the Committee on Justice from taking cognizance of the Second Complaint.

However, though the Second Complaint is barred by Section 3(5) of the Constitution, the House Committee on Justice should be allowed to proceed with its hearing on the First Complaint.

I believe the Members of this Court are well aware of the tension here between the clamor for public accountability and claims of judicial overreach *vis-à-vis* the demand that governmental action be exercised only within Constitutional limits. In fact, our work here has been called unjustifiable arrogance by an unelected minority who condescends to supplant its will for that of the sovereign people and its elected representatives.[20] Nonetheless, try as we might, we cannot shirk from our duty to "say what the law is."[21] Particularly, if one conceives of the law as both the reflection of society's most cherished values as well as the means by which we, as a nation, secure those values, then this Court can do no less than ensure that any impeachment proceedings stand on unassailable legal ground, lest the provisions of our fundamental law be used to work an evil which may not be fully measured from where we stand.

ACCORDINGLY, I vote that: (1) the status quo ante order should be **LIFTED**; and (2) the proceedings on the First Impeachment Complaint should be allowed to continue. However, proceedings on the Second Complaint are barred by Section 3(5), Article XI of the Constitution.

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[20] The phrase "counter-majoritarian difficulty" as an issue in constitutional law theory is widely attributed to Alexander Bickel's 1962 book entitled *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS*.

[21] *Marbury v. Madison*, 5 U.S. 137, 177 (1803), 1803 WL 893.

SEPARATE CONCURRING AND DISSENTING OPINION

PEREZ, *J.*:

The present case asks: *Did the referral to the House of Representatives Committee on Justice of two complaints for the impeachment of the petitioner violate Section 3(5), Article XI of the Constitution?* I respectfully submit that the successive referrals of the complaints are constitutionally prohibited.

The Impeachment Complaints

Petitioner Ma. Merceditas N. Gutierrez is the incumbent Ombudsman of the Republic of the Philippines.[1]

On 22 July 2010, an Impeachment Complaint against the petitioner was filed before the House of Representatives[2] by private respondents Risa Hontiveros-Baraquel, Danilo D. Lim, Felipe Pestaño and Evelyn Pestaño.[3] The complaint (*First Complaint*) charges the petitioner of Betrayal of Public Trust and Culpable Violation of the Constitution, allegedly committed thru the following acts and omissions:

A. Betrayal of Public Trust

1. The dismal and unconscionable low conviction rate of the Ombudsman from 2008 onwards;

2. The failure to take prompt and immediate action against former President Gloria Macapagal-Arroyo and her husband, Jose Miguel T. Arroyo, with regard to the NBN-ZTE Broadband project;

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[1] Petitioner assumed as Ombudsman on 1 December 2005.

[2] The complaint was received by the Secretary General of the House of Representatives.

[3] The First Complaint was endorsed by representatives Arlene Bag-ao and Walden Bello.

3. The delay in conducting and concluding an investigation on the death of Ensign Philip Andrew Pestaño aboard a Philippine Navy vessel;

4. The decision upholding the legality of the arrest and detention of Rep. Risa Hontiveros-Baraquel by the PNP in March 2006;

5. The failure to conduct an investigation with regard to the Php 1,000,000.00 dinner at *Le Cirque* Restaurant in New York in August 2009;

B. Culpable Violation of the Constitution

6. The repeated delays and failures to take action on cases impressed with public interest; and

7. The refusal to grant ready access to public records such as the Statement of Assets and Liabilities.

The First Complaint was referred to the Speaker of the House of Representatives, Feliciano R. Belmonte, Jr., on 27 July 2010.[4] On 2 August 2010, Speaker Belmonte, Jr. forwarded the First Complaint to the House Committee on Rules for its inclusion in the Order of Business.

On 3 August 2010, another impeachment complaint (Second Complaint) against the petitioner was filed with the House of Representatives. This time around, the complainants were private respondents Renato M. Reyes, Jr., Mother Mary John Mananzan, Danilo Ramos, Atty. Edre Olalia, Ferdinand Gaite and James Terry Ridon.[5]

The Second Complaint, like the First Complaint, also accuses the petitioner of Betrayal of Public Trust and Culpable Violation of the Constitution, but is premised on different acts and omissions. Thus:

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[4] The Fifteenth (15th) Congress formally opened its sessions on 26 July 2010.

[5] The Second Complaint was endorsed by representatives Neri Javier Colmenares, Rafael V. Mariano, Teodoro A. Casiño, Luzviminda C. Ilagan, Antonio L. Tinio and Emerancia A. de Jesus.

A. Betrayal of Public Trust

1. Ombudsman Gutierrez committed gross inexcusable delay in investigating and failure in prosecuting those involved in the anomalous transactions arising from the Fertilizer Fund Scam despite the blatant anomalous transactions revealed in the COA Findings, Senate Report 54 and the Complaints filed with respondent on the said Fertilizer Scam;

2. Ombudsman Gutierrez did not prosecute General Eliseo de la Paz for violating BSP Circular 98 (1995), as amended by BSP Circular 507 (2006), in relation to Republic Act 6713, which prohibits the taking out of the country of currency in excess of US$10,000.00 without declaring the same to the Philippine Customs, despite the fact that General Eliseo de la Paz publicly admitted under oath before the Senate Blue Ribbon Committee that he took out of the country currency in excess of US$10,000.00 without declaring the same to the Philippine Customs;

3. Ombudsman Gutierrez committed gross inexcusable delay or inaction by acting in deliberate disregard of the Supreme Court's finding and directive in its Decision and Resolution in *Information Technology Foundation of the Philippines, et al. v. Commission on Elections, et al.*; and

B. Culpable Violation of the Constitution

Through her repeated failures and inexcusable delay in acting upon the matters brought before her Office, Ombudsman Gutierrez violated Section 12 and Section 13, Paragraphs 1, 2 and 3, Article XI on which her constitutional duty is enshrined, as well as Section 16, Article III of the Constitution, which mandates prompt action and speedy disposition of cases.

The Second Complaint reached the desk of Speaker Belmonte, Jr. on the same day it was filed. On 9 August 2010, Speaker Belmonte, Jr. forwarded the Second Complaint to the House Committee on Rules.

Then, on 11 August 2010, the plenary simultaneously referred the First and Second Complaints to the public respondent House Committee on Justice.

The Proceedings Before the House Committee on Justice

On 1 September 2010, the House Committee on Justice conducted a hearing to determine whether the First and Second Complaints were sufficient in form. The hearing was presided by the Chairman of the House Committee on Justice, Representative Niel C. Tupas, Jr.

After taking up preliminary matters,[6] the House Committee on Justice found the First Complaint sufficient in form by a vote of 39 in favor and 1 against. Upon a separate vote of 31 in favor and 9 against, the House Committee on Justice also found the Second Complaint to be formally valid. In assessing formal validity, the House Committee on Justice took into account the fact that the two (2) complaints were referred to it at exactly the same time and that both were duly verified.

On 6 September 2010, the petitioner attempted to file a Motion for Reconsideration with the House Committee on Justice. In it, she sought to question the authority of the House Committee on Justice to take cognizance of two (2) impeachment complaints against her—in light of the constitutional proscription against the initiation of multiple impeachment proceedings against the same official within a one-year period. The House Committee on Justice, however, refused to receive this motion.[7]

On 7 September 2010, the House Committee on Justice reconvened to determine the sufficiency in substance of the First and Second Complaints. By votes of 41 in favor and 14 against for the First Complaint and 41 in favor and 16 against

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[6] Representatives Marc Douglas C. Cagas IV and Fernejel G. Biron, both members of the HCJ, initially called for the inhibition of Chairman Tupas, Jr. from the proceedings. As it turned out, the father of Chairman Tupas, Jr., former Iloilo Governor Niel Tupas, Sr., was the subject of a previous investigation of the petitioner and was, in fact, charged by the latter with violations of Republic Act No. 3019 before the Sandiganbayan. The case against Tupas, Sr. is still pending before the Sandiganbayan. Chairman Tupas, Jr., however, refused to inhibit from the proceedings and, instead, assured the other HCJ members of his utmost impartiality.

[7] The petitioner, instead, caused her motion to be served personally upon each member of the HCJ.

for the Second Complaint, the House Committee on Justice declared both to be sufficient in substance. The House Committee on Justice, thereafter, issued summons directing the petitioner to file an answer within ten (10) days from its receipt. The summons, as well as copies of the First and Second Complaints, was served upon the petitioner at 5:05 in the afternoon of the very same day.

The petitioner did not file an answer.

Resort to the Supreme Court and the Status Quo Ante Order

Aggrieved by the actions of the House Committee on Justice, the petitioner came to this Court *via* the instant Petition for *Certiorari* and Prohibition with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. In sum, the petition asks for the nullification of the House Committee on Justice's findings that the First and Second Complaints were sufficient in form and substance.

On 14 September 2010, this Court issued a Resolution directing the parties to observe the *status quo* prevailing before the House Committee on Justice made the contested findings.

DISCUSSION

The submission of the petitioner may be summarized into two principal issues.

The *first* is whether the House Committee on Justice, in taking cognizance of two (2) impeachment complaints against the petitioner, violated Section 3(5), Article XI of the Constitution. It is the primary contention of the petitioner that the House Committee on Justice is already precluded from acting upon the Second Complaint—the same having been barred under the Constitution by virtue of the filing of the First Complaint.

The *second* is whether the hearings conducted by the House Committee on Justice violated the petitioner's right to due process.[8]

[8] The due process concerns are: (a) the lack of a published Rules of Procedure for Impeachment cases; (b) the perceived partiality of Chairman

In this opinion, however, I only wish to articulate my reflections on the *first*.

Section 3(5), Article XI of the Constitution succinctly states:

> No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

In practical terms, the provision operates to bar the initiation of an impeachment proceeding against an official, when the following conditions are present:

a.) an impeachment proceeding against such official was **previously initiated**; and

b.) one year has not yet elapsed from the time of the previous initiation.

Initiation of an impeachment proceeding was, in turn, the subject of the landmark case ***Francisco, Jr. v. The House of Representatives, represented by Speaker Jose G. De Venecia.***[9] In that case, this Court laid down the rule that, unless the verified complaint is filed by at least 1/3 of the members of the House of Representatives, initiation takes place upon the **filing of the complaint** *coupled* by its **referral to the proper committee**.[10]

Invoking ***Francisco*** as their guide, the respondents proffer the position that the House Committee on Justice may validly act on both the First and Second Complaints. The filing of the First Complaint did not bar the Second Complaint because the mere filing of a verified complaint does not mark the initiation of an impeachment proceeding. The respondents emphasized that ***Francisco*** associated the initiation of an impeachment proceeding not only with the filing of a complaint but also with the referral thereof to the proper committee.

Tupas, Jr.; (c) the apparent haste with which the HCJ determined that both complaints were sufficient in form and substance; and (d) the refusal of the HCJ to receive petitioner's motion for reconsideration.

[9] 460 Phil. 830 (2003).

[10] *Id*. at 940.

It is argued that since there was, in this case, but a single referral of the two (2) complaints to the House Committee on Justice—the logic of ***Francisco*** dictates that there was also only one impeachment proceeding initiated. Thus, the respondents concluded, there can be no violation of Section 3(5), Article XI of the Constitution.

I disagree.

No Simultaneous Referral of Two Complaints

To begin with, there never was a "*single*" or "*simultaneous*" referral of the two (2) impeachment complaints against the petitioner. Contrary to what the respondents adamantly profess, the complaints were not referred to the House Committee on Justice "*at exactly the same time*." A perusal of the records of the House of Representatives plenary proceedings on 11 August 2010[11] reveals that the two (2) impeachment complaints were actually referred to the House Committee on Justice **one after the other**. Thus:[12]

ADDITIONAL REFERENCE OF BUSINESS

Verified Complaint for the Impeachment of Ombudsman Ma. Merceditas Navarro-Gutierrez filed by Ms. Risa Hontiveros-Baraquel, Mr. Danilo Lim, Mr. Felipe Pestaño, and Ms. Evelyn Pestaño with the Resolutions of Endorsement filed by Representatives Bag-ao and Bello
TO THE COMMITTEE ON JUSTICE

Verified Complaint for the Impeachment of Ombudsman Mr. Renato Reyes, Mo. Mary John Mananzan, Mr. Danilo Ramos at Atty. Edre Olalia with the Resolutions of Endorsement filed by Representatives Colmenares, Casiño, Mariano, Ilagan, Tinio and De Jesus
TO THE COMMITTEE ON JUSTICE

The above entries plainly attest that, in fact, the reading and referral of the First Complaint preceded that of the Second

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[11] *Congressional Record*, Plenary Proceedings of the 15th Congress, First Regular Session, House of Representatives, Vol. 1, No. 9, 11 August 2010.

[12] *Id*. at 13.

Complaint. True, the impeachment complaints were referred to the House Committee on Justice on the same date and during the same session, but there can be no mistake that **each complaint was, nevertheless, the subject of a separate and distinct referral**.

This fact has immense constitutional consequences. A prior referral of the First Complaint to the House Committee on Justice would mean that an impeachment proceeding against the petitioner was, by then, already completely initiated. This, by the ***Francisco*** ruling, renders inutile the succeeding referral of the Second Complaint and makes such referral together with its subject, which is the Second Complaint, unconstitutional excesses that can be given neither force nor effect. ***Francisco*** prohibits rather than justifies a second referral.

Cognizance of this fact necessitated the creation of the fiction that the referrals of the impeachment complaints were done "*at the same time*." This is shown by the floor exchanges following the successive referrals of the complaints.

Representative Tupas rose on a parliamentary inquiry to seek, among others, a clarification on "**what was the exact time the two impeachment complaints were referred to the Committee on Justice**."[13] The answer would become the battlecry of the respondents:

THE DEPUTY SPEAKER (Rep. Daza). The Dep. Majority Leader is recognized.

REP. TUPAS. Mr. Speaker, parliamentary inquiry.

THE DEPUTY SPEAKER (Rep. Daza). The Gentleman may state his inquiry.

REP. TUPAS. Mr. Speaker, with respect to the impeachment complaints, may this Representation know: number one, Mr. Speaker, when were the complaints filed; number two, when were they referred to the Committee on Rules; and number three, Mr. Speaker, **what was the exact time the two impeachment complaints were referred to the Committee on Justice**?

[13] *Id*.

THE DEPUTY SPEAKER (Rep. Daza). The Dep. Majority Leader will please respond.

REP. ROMULO. Mr. Speaker, in response to the query of the Honorable Tupas, the Committee on Rules received the verified complaint for impeachment from the Speaker of the House yesterday. The date of the first verified complaint filed by Miss Risa Hontiveros-Baraquel, *et al.*, based on the letter of the Speaker, was dated July 22. The complaint filed by Mr. Renato Reyes, *et al.*, based on the date of the letter of the Speaker, was dated August 3. Both letters were received during the Committee on Rules' meeting on August 10 at the same time at 2:00 p.m. yesterday, and both complaints were jointly referred by the Committee on Rules to the Committee on Justice.

THE DEPUTY SPEAKER (Rep. Daza). Is the Gentleman from Iloilo satisfied with the response of the Dep. Majority Leader?

REP. TUPAS. Partly, Mr. Speaker, but the third question is: what is the exact time of the referral to the Committee on Justice? This Representation would like to know the exact time the two complaints were referred to the Committee on Justice, Mr. Speaker.

THE DEPUTY SPEAKER (Rep. Daza). Is the Dep. Majority Leader prepared to answer the query now? The Gentleman from Iloilo, the Chairman of the Committee on Justice, is querying with regard to a time frame, schedule or a cut-off time.

REP. TUPAS. Mr. Speaker, what I am asking is the exact time of the referral to the Committee on Justice.

THE DEPUTY SPEAKER (Rep. Daza). Yes. The Dep. Majority Leader will please respond.

REP. ROMULO. **Mr. Speaker, the complaints were referred to the Committee on Justice <u>at the same time</u> at 4:47 p.m. today**.

REP. TUPAS. Thank you very much, Mr. Speaker.[14] [Emphasis and underscoring supplied].

I cannot, however, accept as possible, in fact or fiction, that the First and Second Complaints have been "*referred to the Committee at the same time.*" The announcement of simultaneity

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[14] *Id*.

did not alter the true manner of the referrals as clearly reflected in the records of the plenary session.

Interestingly, during the Oral Arguments on 12 October 2010, even the esteemed collaborating counsel for respondent House Committee on Justice, former Supreme Court Associate Justice Vicente Mendoza, admitted the "physical impossibility" of referring two (2) separate complaints at the same time, as shown by the following exchange:

Associate Justice Nachura:

Ah, that is precisely what I asked Assistant Solicitor General Laragan, that **it would not had** [*sic*] **been possible to say that both complaints were referred at the same, because the House in plenary would have acted on each individual complaint in the Order of Business separately**. **And the referral technically could not have happened at the same time, to the exact minute and the exact second**. And so if we were to in – aah, wait, if we were to apply Francisco very strictly the second complaint would be barred.

Ret. Justice Mendoza:

Yes.[15] (Emphasis supplied).

The recorded reality is that the First Complaint was referred to the House Committee on Justice before the Second Complaint. An impeachment proceeding was already initiated against the petitioner even before a single word about the Second Complaint was read before the plenary. On this score alone, the Second Complaint should be held barred.

One Complaint, One Impeachment Proceeding

The fact as big as the recorded successive referrals is that the contrived simultaneous referral or single referral to the House Committee on Justice of multiple impeachment complaints is not allowed under Section 3(5), Article XI of the Constitution.

The initiatory act of "**filing and referral**," envisioned in the ***Francisco*** case, can only have one (1) impeachment complaint as its subject. Allowing a referral to the House Committee on

[15] TSN, Oral Arguments, 12 October 2010, p. 150.

Justice of multiple complaints would not only amount to a distortion of both ***Francisco*** and the constitutional provision it interprets, but would also circumvent the very purpose of the one-year impeachment ban.

The Proper Context of Francisco

While ***Francisco*** may have identified what "*acts*" make up the initiation of an impeachment proceeding, it was far from being categorical as to just how many complaints can be the "*subject*" thereof. Indeed, other than defining what "*acts*" are necessary to accomplish initiation, ***Francisco*** never really ventured on the possibility of several complaints being the subject of only one referral to the House Committee on Justice and, for that matter, of only one impeachment proceeding.

In ***Francisco***, a second impeachment complaint[16] against then Chief Justice Hilario G. Davide, Jr. was filed with the House of Representatives after a first complaint,[17] which concerns him and seven other justices of the Supreme Court,[18] was already filed, referred to, and even dismissed by the House Committee on Justice.

Under those facts, ***Francisco*** simply ruled that an impeachment proceeding against Chief Justice Davide was already initiated upon the **filing** and **referral** to the House Committee on Justice of the first complaint.[19] Consequently, the second impeachment complaint was held barred because it was filed within one year from the filing of the first.[20]

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[16] This complaint was filed by then Representatives Gilbert C. Teodoro, Jr. and Felix William B. Fuentebella, and was accompanied by an endorsement of at least one-third (1/3) of the members of the House of Representatives.

[17] This complaint was filed by former President Joseph E. Estrada and was endorsed by then Representatives Rolex T. Suplico, Ronaldo B. Zamora and Didagen Piang Dilangalen.

[18] The other justices implicated in Estrada's complaint were then Associate Justices Artemio V. Panganiban, Josue N. Bellosillo, Reynato S. Puno, Antonio T. Carpio, Renato C. Corona, Jose C. Vitug and Leonardo A. Quisumbing.

[19] *Supra* note 9 at 940.

[20] *Id*.

The impeachment complaints in ***Francisco***, it may be observed, were never parts of only a single proceeding. Each complaint was the subject of a separate proceeding—precisely the reason why the second complaint was held barred under the one-year impeachment ban. Verily, the limited factual context of ***Francisco*** offers no support to the conclusion that an impeachment proceeding may be driven by more than one (1) complaint. There is simply nothing in ***Francisco*** from which that may be derived.

The Underlying Purposes of Section 3(5), Article XI of the Constitution

The discussion in ***Francisco*** of the underlying purposes of the one-year impeachment ban renders unquestionable that it cannot be relied upon to sanction a simultaneous referral of multiple complaints to the House Committee on Justice. This is because an impeachment proceeding based on more than one (1) complaint brings about exactly the evils the constitutional proscription seeks to avoid.

The framers of our Constitution formulated the one-year ban in order to forestall possible abuses of the impeachment process. The deliberations of the 1986 Constitutional Commission so divulge:

MR. VILLACORTA. Madam President, I would just like to ask the Committee three questions.

On Section 3, page 2, lines 12 to 14, the last paragraph reads as follows: '**No impeachment proceedings shall be initiated against the same official more than once within a period of one year**.' Does this mean that even if an evidence is discovered to support another charge or ground for impeachment, a second or subsequent proceeding cannot be initiated against the same official within a period of one year? In other words, one year has to elapse before a second or subsequent charge or proceeding can be initiated. **The intention may be to protect the public official from undue harassment.** On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?

MR. ROMULO. Yes, the intention here really is to limit. **This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.**[21] [Emphasis and underscoring supplied].

Section 3(5), Article XI of the Constitution, therefore, serves to curb two (2) possibilities that may arise should several impeachment proceedings against the same official be initiated within a one-year period:

a.) the possibility of harassment on the part of the impeachable officer; and

b.) the possibility that the legislative work of Congress would be compromised.

Construing the initiatory acts of "**filing and referral**" as able to encompass multiple impeachment complaints would encourage, rather than discourage, the occurrence of these possibilities. There is no practical difference, at least in terms of their deleterious effects, between a simultaneous institution of multiple impeachment complaints against the same official and the initiation of separate impeachment proceedings against him within a one-year period.

First. Allowing the House Committee on Justice, under the guise of a single referral, to take cognizance of more than one complaint against the same official would undoubtedly expose the latter to the risks of undue harassment. Without a cap on the number of complaints that can be the subject of an impeachment proceeding, the charges against an impeachable officer can easily become limitless. The situation permits political opportunists to hurl a plethora of charges against an impeachable officer who, in the midst of answering those charges, must also perform vital governmental duties.

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[21] 2 RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 282 (1986).

Second. An impeachment proceeding saddled with multiple complaints draws the prospect of a protracted impeachment process. A long drawn-out impeachment proceeding would require the House of Representatives to spend more time as a prosecutorial body, effectively distracting it from the exercise of its law-making functions.[22] This contradicts the very nature of the legislature.

I am, as a result, constrained to read the "and referral" part of the ***Francisco*** definition of impeachment initiation as pertaining to one and only one complaint that is allowed to be filed and referred within a period of one year.

Consistent with the proposition I have accepted, that the initiation of impeachment consists of the filing of the complaint coupled by its referral to the proper committee, I accept likewise the delineation that while referral is the logical step that follows the filing of a complaint, a referral does not necessarily happen once a complaint is filed. I agree with the *ponencia* of my senior, Justice Conchita Carpio Morales, that the House of Representatives has the power to "guard against the initiation of a second impeachment proceeding by rejecting a patently unconstitutional complaint." May I incorporate into mine, the position in the *ponencia* of Justice Morales that:

> Under the Rules of the House, a motion to refer is not among those motions that shall be decided without debate, but any debate thereon is only made subject to the five-minute rule. Moreover, it is common parliamentary practice that a motion to refer a matter or question to a committee may be debated upon, not as to the merits thereof, but only as to the propriety of the referral. With respect to complaints for impeachment, the House has the discretion not to refer a subsequent impeachment complaint to the Committee on Justice where official records and further debate show that an impeachment complaint filed against the same impeachable officer has already been referred [to] the said committee and the one year period has not yet expired, lest it becomes instrumental in perpetrating a constitutionally prohibited second impeachment proceeding. Far from being mechanical,

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[22] See Separate and Concurring Opinion of Associate Justice Angelina Sandoval-Gutierrez in the *Francisco* case, *supra* note 9 at 983-1006.

before the referral stage, a period of deliberation is afforded the House, as the Constitution, in fact, grants a maximum of three session days within which to make the proper referral.[23]

In this case, the First Complaint was, by the House in plenary session, referred to the Committee on Justice such referral having been included in the Order of Business of the House. There appears to be no record of a debate on the propriety of the referral obviously because the official records at that point do not show that an impeachment complaint filed against the same impeachable officer has already been referred to the Committee; and the one year period has not even started. It is precisely the referral of the First Complaint that started the one-year period of the ban against the Second Complaint. The subsequent impeachment complaint, or the Second Complaint, could no longer be referred because the first referral was already on record and no further debate is needed to prove the documented fact nor can such debate disprove the fact.

The observation that the Constitution affords the House a period of deliberation and grants it a maximum period of three session days within which to make the proper referral is of utmost significance. For one, it underscores the validity of my opinion that while referral is a step subsequent to the filing of a complaint, a referral is not an unavoidable consequence of such filing. I agree with Justice Carpio Morales that referral is not a mechanical action. It is a deliberate act, and, may I add, with or without debate. The House ought to have been cognizant of this considering that it adopted as its own rules the ***Francisco*** definition of initiation of impeachment as filing and referral of the complaint. It is during the three-day allowable period of pre-referral deliberation that the House should decide which of the two complaints should be referred to the proper committee. The First Complaint was referred after a decision that it was proper for referral. This must be assumed, it having been done by no less than the House in plenary. The assumption is now an unassailable fact since there was no recorded objection to the referral. After that referral in due course, the one-year

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[23] In the majority opinion in G.R. No. 193459.

ban on another initiation started. The referral of the Second Complaint subsequent to the first officially recorded and undebatable referral is a constitutionally prohibited second initiation of an impeachment proceeding against the same impeachable officer.

The clear conclusion cannot be avoided, proceeding as it does from the fact of first and prior referral. Thus, the effort to avoid the fact. This cannot be done as adverted to above, simply because a "simultaneous" referral, which did not happen and cannot happen, was obviously resorted to in order to cure a constitutional defect. The Constitution cannot be violated directly or indirectly.

Indeed, the existence of two complaints and of their separate referrals are further pronounced by the facts that there were separate votings on the sufficiency in form of the First and then the Second Complaints; and there were different numbers of votes for and against the sufficiency in form of the two complaints. The same separate acts and different results transpired in the determination of the sufficiency in substance of the First and Second Complaints. So separate were the complaints that the possibility of consolidation was even discussed at the committee level – a matter that can no longer be done at that stage because of patent, even implicitly admitted, unconstitutionality.

Alternative Theory of Initiation

Perhaps foreseeing that ***Francisco*** will give them no refuge, the respondents have alternatively asked for its abandonment in favor of the theory that an impeachment proceeding is only initiated once the House of Representatives, as one body, acts on either the report of the House Committee on Justice or, when applicable, on the complaint filed by one-third (1/3) of its members. In brief, the initiation of an impeachment proceeding ought to mean the entire proceedings in the House of Representatives.

The respondents insist on equating the initiation of an impeachment proceeding with the power given to the House

of Representatives to "initiate all *cases* of impeachment" under Section 3(1), Article XI of the Constitution.[24] Filing and referral could not be the initiation of the proceeding because at that point the plenary has not yet determined whether to file an impeachment case with the Senate or not. Unless and until such a determination is made, an impeachment proceeding cannot be validly considered as initiated.

Finally, the respondents expressed their fear that, should the ***Francisco*** formula be upheld, frivolous impeachment complaints may be used to bar more meritorious complaints against erring public officials.

These are desperate arguments.

The alternative position espoused by the respondents had already been dealt with quite incisively in ***Francisco***. In the main *ponencia*, Justice Carpio Morales dismissed the very same position because it gives the term "*initiated*" found in Section 3(5), Article XI of the Constitution, a meaning other than the actual commencement of an impeachment proceeding.[25] The lengthy disquisition of ***Francisco*** provides:

> "Initiate" of course is understood by ordinary men to mean, as dictionaries do, to begin, to commence, or set going. As Webster's Third New International Dictionary of the English Language concisely puts it, it means "to perform or facilitate the first action," which jibes with Justice Regalado's position, and that of Father Bernas, who elucidated during the oral arguments of the instant petitions on November 5, 2003 in this wise:
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> Briefly then, an impeachment proceeding is not a single act. It is a comlexus of acts consisting of a beginning, a middle and an end. The end is the transmittal of the articles of impeachment to the Senate. The middle consists of those deliberative moments leading to the formulation of the articles of impeachment. The beginning or the initiation is the filing of the complaint and its referral to the Committee on Justice.

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[24] Section 3(1), Article XI of the Constitution provides: "The House of Representatives shall have the exclusive power to initiate all cases of impeachment."

[25] *Supra* note 9 at 940.

> Finally, it should be noted that the House Rule relied upon by Representatives Cojuangco and Fuentebella says that impeachment is "deemed initiated" when the Justice Committee votes in favor of impeachment or when the House reverses a contrary vote of the Committee. Note that the Rule does not say "impeachment proceedings" are initiated but rather are "**deemed initiated**." The language is recognition that initiation happened earlier, but by legal fiction there is an attempt to postpone it to a time after actual initiation. (Emphasis and underscoring supplied).

As stated earlier, one of the means of interpreting the Constitution is looking into the intent of the law. Fortunately, the intent of the framers of the 1987 Constitution can be pried from its records:

> MR. MAAMBONG. With reference to Section 3, regarding the procedure and the substantive provisions on impeachment, I understand there have been many proposals and, I think, these would need some time for Committee action.
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> However, I would just like to indicate that I submitted to the Committee a resolution on impeachment proceedings, copies of which have been furnished the Members of this body. This is borne out of my experience as a member of the Committee on Justice, Human Rights and Good Government which took charge of the last impeachment resolution filed before the First Batasang Pambansa. **For the information of the Committee, the resolution covers several steps in the impeachment proceedings starting with initiation, action of the Speaker committee action, calendaring of report, voting on the report, transmittal referral to the Senate, trial and judgment by the Senate.**
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> x x x x x x x x x
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> MR. MAAMBONG. Mr. Presiding Officer, I am not moving for a reconsideration of the approval of the amendment submitted by Commissioner Regalado, but I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. **The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body.**

As the phraseology now runs, which may be corrected by the Committee on Style, it appears that the initiation starts on the floor. If we only have time, I could cite examples in the case of the impeachment proceedings of President Richard Nixon wherein the Committee on the Judiciary submitted the recommendation, the resolution, and the Articles of Impeachment to the body, and it was the body who approved the resolution. **It is not the body which initiates it. It only approves or disapproves the resolution.** So, on that score, probably the Committee on Style could help in rearranging these words because we have to be very technical about this. I have been bringing with me *The Rules of the House of Representatives* of the U.S. Congress. The Senate Rules are with me. The proceedings on the case of Richard Nixon are with me. I have submitted my proposal, but the Committee has already decided. Nevertheless, I just want to indicate this on record.

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MR. MAAMBONG. I would just like to move for a reconsideration of the approval of Section 3 (3). My reconsideration will not at all affect the substance, but it is only in keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.

I am proposing, Madam President, without doing damage to any of this provision, that on page 2, Section 3 (3), from lines 17 to 18, **we delete the words which read: "to initiate impeachment proceedings"** and the comma (,) and insert on line 19 after the word "resolution" the phrase WITH THE ARTICLES, and then capitalize the letter "i" in "impeachment" and replace the word "by" with OF, so that the whole section will now read: "A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of Impeachment of the Committee or to override its contrary resolution. The vote of each Member shall be recorded."

I already mentioned earlier yesterday that the initiation, as far as the House of Representatives of the United States is concerned, **really starts from the filing of the verified complaint** and every resolution to impeach always carries with it the Articles of Impeachment. As a matter of fact, the words "Articles of Impeachment" are mentioned on line 25 in the case of the direct filing of a verified complaint of one-third of all the Members of the House. I will mention again, Madam President, that my

> amendment will not vary the substance in any way. It is only in keeping with the uniform procedure of the House of Representatives of the United States Congress. Thank you, Madam President.[26] (Italics in the original; emphasis and underscoring supplied).

This amendment proposed by Commissioner Maambong was clarified and accepted by the Committee on the Accountability of Public Officers.[27]

It is thus clear that the framers intended "initiation" to start with the filing of the complaint. In his *amicus curiae* brief, Commissioner Maambong explained that "the obvious reason in deleting the phrase "**to initiate impeachment proceedings**" as contained in the text of the provision of Section 3 (3) was to **settle and make it understood once and for all that the initiation of impeachment proceedings starts with the filing of the complaint**, and the vote of one-third of the House in a resolution of impeachment **does not initiate** the impeachment proceedings **which was already initiated by the filing of a verified complaint under Section 3, paragraph (2), Article XI of the Constitution.**[28]

Amicus curiae Constitutional Commissioner Regalado is of the same view as is Father Bernas, who was also a member of the 1986 Constitutional Commission, that the word "initiate" as used in Article XI, Section 3(5) means to file, both adding, however, that the filing must be accompanied by an action to set the complaint moving.[29] [Italics, emphasis and underscoring in the original].

In ***Francisco***, this Court also clarified that the initiation of an impeachment *proceeding* is vastly different from the initiation of an impeachment *case* by the House of Representatives.[30] Thus:

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[26] 2 RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 342-416 (1986).

[27] *Id*. at 416.

[28] Commissioner Maambong's *Amicus Curiae* Brief, p. 15 (submitted in the *Francisco* case, *supra* note 9).

[29] *Supra* note 9 at 927-930.

[30] *Id*. at 932.

During the oral arguments before this Court, Father Bernas clarified that the word "initiate," appearing in the constitutional provision on impeachment, *viz*:

> Section 3 (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
>
> x x x x x x x x x
>
> (5) No **impeachment proceedings** shall be initiated against the same official more than once within a period of one year. (Emphasis supplied).

refers to two objects, "impeachment case" and "impeachment proceeding."

Father Bernas explains that in these two provisions, the common verb is "to initiate." The object in the first sentence is "impeachment case." The object in the second sentence is "impeachment proceeding." Following the principle of *reddendo singula singulis*, the term "cases" must be distinguished from the term "proceedings." An impeachment case is the legal controversy that must be decided by the Senate. Above-quoted first provision provides that the House, by a vote of one-third of all its members, can bring a case to the Senate. It is in that sense that the House has "exclusive power" to initiate all cases of impeachment. No other body can do it. However, before a decision is made to initiate a case in the Senate, a "proceeding" must be followed to arrive at a conclusion. A proceeding must be "initiated." To initiate, which comes from the Latin word *initium*, means to begin. On the other hand, proceeding is a progressive noun. It has a beginning, a middle, and an end. It takes place not in the Senate but in the House and consists of several steps: (1) there is the filing of a verified complaint either by a Member of the House of Representatives or by a private citizen endorsed by a Member of the House of the Representatives; (2) there is the processing of this complaint by the proper Committee which may either reject the complaint or uphold it; (3) whether the resolution of the Committee rejects or upholds the complaint, the resolution must be forwarded to the House for further processing; and (4) there is the processing of the same complaint by the House of Representatives which either affirms a favorable resolution of the Committee or overrides a contrary resolution by a vote of one-third of all the members. If at least one third of all the Members upholds the complaint, Articles of Impeachment are prepared and transmitted

to the Senate. It is at this point that the House "initiates an impeachment **case**." It is at this point that an impeachable public official is successfully impeached. That is, he or she is successfully charged with an impeachment "case" before the Senate as impeachment court.

Father Bernas further explains: The "impeachment proceeding" is not initiated when the complaint is transmitted to the Senate for trial because that is the end of the House proceeding and the beginning of another proceeding, namely the trial. Neither is the "impeachment proceeding" initiated when the House deliberates on the resolution passed on to it by the Committee, because something prior to that has already been done. The action of the House is already a further step in the proceeding, not its initiation or beginning. Rather, the proceeding is initiated or begins, when a verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow.

The framers of the Constitution also understood initiation in its ordinary meaning. Thus when a proposal reached the floor proposing that "A vote of at least one-third of all the Members of the House shall be necessary… to *initiate impeachment proceedings*," this was met by a proposal to delete the line on the ground that the vote of the House does not initiate impeachment proceeding but rather the filing of a complaint does.[31] Thus the line was deleted and is not found in the present Constitution.

Father Bernas concludes that when Section 3 (5) says, "No impeachment proceeding shall be initiated against the same official more than once within a period of one year," it means that no second verified complaint may be accepted and referred to the Committee on Justice for action. By his explanation, this interpretation is founded on the common understanding of the meaning of "to initiate" which means to begin. He reminds that the Constitution is ratified by the people, both ordinary and sophisticated, as they understand it; and that ordinary people read ordinary meaning into ordinary words and not abstruse meaning, they ratify words as they understand it and not as sophisticated lawyers confuse it.

To the argument that only the House of Representatives as a body can initiate impeachment proceedings because Section 3 (1) says "The

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[31] 2 RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 416 (1986).

House of Representatives shall have the exclusive power to initiate all cases of impeachment," This is a misreading of said provision and is contrary to the principle of *reddendo singula singulis* by equating "impeachment cases" with "impeachment proceeding."

From the records of the Constitutional Commission, to the *amicus curiae* briefs of two former Constitutional Commissioners, it is without a doubt that the term "to initiate" refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint.[32] [Italics, emphasis and underscoring in the original].

I find no sufficient and cogent reason to deviate from ***Francisco***. That the initiation of an impeachment proceeding must be reckoned from the filing and subsequent referral of the verified complaint is an interpretation of the Constitution anchored on the very intent of its framers and the honored principles of statutory construction. It is, without a hint of doubt, what the Constitution conveys.

Neither can ***Francisco*** simply be disregarded out of the fear that it will allow erring officials - who, the respondents say, may just cause a frivolous complaint to be filed ahead of more meritorious ones - to easily escape impeachment. This fear is not grounded on reason. The Constitution already provides ample safeguards to prevent the filing of sham impeachment complaints.

For one thing, impeachment complaints are required to be verified.[33] The complainants are, under the pain of perjury, mandated to guarantee that the allegations embodied in the complaint are true and within their personal knowledge.

Moreover, the requirement of verification is supplemented by another constitutional safeguard, *i.e.* the condition that every impeachment complaint, unless filed by at least one third (1/3) of the members of the House of Representatives, must be endorsed by a member thereof.[34] The endorsement of a representative

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[32] *Supra* note 9 at 930-932.

[33] *See* CONSTITUTION, Article XI, Section 3(2).

[34] *Id*.

seeks to ensure that the allegations of the complaint are at least, on first glance, serious enough to merit consideration by the plenary.

And, to reiterate, a three-day pre-referral proceeding can be availed of by the House in plenary to determine the propriety of referral. Needless to state, an unreferred complaint does not initiate an impeachment proceeding.

Indeed, the ***Francisco*** doctrine is not as arbitrary or reckless as the respondents portray it to be. In marking initiation of an impeachment proceeding from the filing of the verified complaint and its referral to the proper committee, ***Francisco*** did not destroy the effectiveness and integrity of the impeachment procedure. It only applied the Constitution.

IN LIGHT OF ALL THE FOREGOING, **I VOTE** to **GRANT** the petition **IN PART**. The Second Complaint against the petitioner is **BARRED** under Article XI, Section 3(5) of the Constitution. Accordingly, the actions taken by the House Committee on Justice relative to the Second Complaint, including the finding that it was sufficient in form and substance, are hereby declared **NULL and VOID.**

DISSENTING OPINION

BRION, *J.*:

I dissent from the *ponencia's* conclusion that the proceedings before the House of Representatives Committee on Justice (*Justice Committee*) are constitutional. These proceedings were undertaken without the benefit of duly published and fully effective rules of impeachment and are, thus, fatally infirm for violation of the petitioner's right to due process.

I believe, too, that we should revisit our ruling in *Francisco v. House of Representatives*[1] as we did not apply the proper consideration when we determined the back-end of the initiation phase of the impeachment proceedings. The initiation phase

[1] 460 Phil. 830 (2003).

should start at the filing of the impeachment complaint and end when the Justice Committee determines that the impeachment is sufficient in form and substance.

Thus, I vote to grant the petition.

I. Publication and Due Process

a. The Due Process Objection

In the course of assailing the actions of the House of Representatives in its impeachment proceedings, the petitioner raised various due process grounds, both substantive and procedural. The threshold issue, however, that must be met before any substantive due process consideration can be made, is whether there were valid and effective rules of impeachment in place, as required by Section 3(8) of Article XI of the Constitution, when the House of Representatives embarked on the impeachment process.

To the petitioner, the Justice Committee failed to properly determine the sufficiency *in form* of the two impeachment complaints against her since no valid and effective rules of impeachment were in place when the Justice Committee ruled on these matters; the impeachment rules of the 15th Congress were published a day after the Justice Committee ruled that the complaints were sufficient *in form.* While the impeachment rules were published on September 2, 2010, they were not yet effective when the Justice Committee ruled that the impeachment complaints were sufficient *in substance* on September 7, 2010. ***Because no valid rules were in place when the Justice Committee initially acted and ruled on the impeachment complaints, a fatal transgression of the petitioner's right to due process occurred.***

b. Justification for Judicial Intervention

Impeachment proceedings are political processes that the Constitution places within the exclusive domain of the legislature. Section 3(1), Article XI of the Constitution plainly states that: *"The House of Representatives shall have the exclusive power to initiate all cases of impeachment."* Section 3(6) of

the same article grants to the Senate the sole power to try and decide all cases of impeachment. Even the drafting of the impeachment rules is specifically entrusted to the House of Representatives.

At the same time that it entrusts the impeachment process to the House of Representatives, the Constitution also provides clear standards and guidelines for the House of Representatives to follow to ensure that it does not act arbitrarily. Among these are: the specification of the grounds for impeachment,[2] the periods within which an impeachment complaint should be acted on,[3] the voting requirements,[4] the one year bar on initiating an impeachment process,[5] and the promulgation of the impeachment rules.[6] Unwritten in the article on impeachment but, nevertheless, fully applicable are the guaranteed individual rights that the House of Representatives must absolutely respect.[7] To the extent of these standards and guidelines, the Court – otherwise excluded from the impeachment process – plays a part in its traditional role as interpreter and protector of the Constitution.[8] The House of Representatives must act within the limits the Constitution has defined; otherwise, the Court, in the exercise of judicial review, can act and has the duty to strike down any action committed with grave abuse of discretion or in excess of jurisdiction.[9]

c. The Need for Prior Publication

The Constitution specifically provides that the House of Representatives must *promulgate* its rules on impeachment to

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[2] Section 2, Article XI of the Constitution.

[3] Section 3(2), Article XI of the Constitution.

[4] Section 3(3), (4) and (6), Article XI of the Constitution.

[5] Section 3(5), Article XI of the Constitution.

[6] Section 3(8), Article XI of the Constitution.

[7] Article III of the Constitution.

[8] *IBP v. Zamora*, G.R. No. 141284, August 5, 2000, 338 SCRA 81.

[9] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 271.

effectively carry out the purpose of Section 3, Article XI that, together with Section 2, deals specifically with the House of Representatives' power of impeachment.

To "promulgate" means to publish or to announce officially.[10] By law, publication is necessary for a statute, law or rule to become effective;[11] Article 2 of the Civil Code provides that laws shall take effect after 15 days following their publication, *unless the law provides for another period.* Publication is required as a condition precedent to the effectivity of a law to inform the public of the contents of the law, rules or regulations before these enactments take effect and affect the public's rights and interests.[12] As a matter of basic fairness, "notice" is required before the public's rights and interests are placed at risk. In constitutional law terms, this is the guarantee of due process.[13]

We explained in *Lorenzo M. Tañada, et al. v. Hon. Juan C. Tuvera, etc., et al.*[14] that the ***failure to publish a law or rule offends due process***; it denies the public knowledge of the laws that affect them and removes the basis for the presumption that every person knows the law. The term "law" covers laws of general, as well as local, application; it embraces legislative enactments as well as executive orders, presidential decrees, and administrative rules. The only exceptions to the rule on publication are interpretative regulations and those that

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[10] *Black's Law Dictionary,* 5th edition.

[11] *Republic v. Express Telecommunications Co., Inc.,* 424 Phil. 372, 393 (2002); and *Pilipinas Kao, Inc. v. Court of Appeals,* 423 Phil. 834, 859 (2001). Article 2 of the Civil Code reads:

> Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.

[12] *Philippine International Trading Corporation v. Commission on Audit,* 368 Phil. 478, 491 (1999).

[13] See *Senate v. Ermita,* G.R. Nos. 168777, 169659, 169660, 169667, 169834 and 171246, April 20, 2006, 488 SCRA 1, 72.

[14] 230 Phil. 528, 534-535 (1986).

are merely internal in nature, *i.e.*, those regulating only the personnel of an administrative agency and not the public.

The impeachment rules do not fall under the exceptions. Like the Monetary Board circulars that do not only interpret but also "fill in the details" of the Central Bank Act, the impeachment rules which interpret, implement and fill in the details of the constitutional impeachment provisions must also be published.[15] Significantly, even the *ponencia* states that the impeachment rules mandated by Section 3(8), Article XI of the Constitution were intended "to fill the gaps in the impeachment process."[16] These rules cannot be considered as internal rules that merely regulate the performance of subordinates and, hence, are exempted from publication. They are rules that gravely affect the rights of impeachable officials; an impeachment conviction results in the public official's removal from office and disqualification to hold any public office in the Philippines. The impeachment rules likewise affect a public right; it is a matter of public interest to uphold standards applicable to public officials in the highest positions in the performance of their duties; they are the balancing measures to ensure that our public officials are continually held accountable in the performance of their functions. The fact that the Constitution itself allows "any citizen" to file an impeachment complaint already draws the public as a party with an interest to protect in the impeachment process.

It is a matter of record that the House of Representatives of the 15th Congress has seen it fit and proper to publish the rules of impeachment, *although the publication came too late for the proceedings before the Justice Committee.* Records show that the Rules of Procedure in Impeachment Proceedings of the Fifteenth Congress (Rules of Impeachment) was published on September 2, 2010. Under Article 2 of the Civil Code, these Rules became valid and binding only on September 17, 2010. However, both parties admit that before

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[15] *Id.*

[16] *Ponencia*, p. 19.

September 17, 2010, the two impeachment complaints had already been filed[17] and referred to the Justice Committee;[18] that it had already held a hearing and voted that both complaints were sufficient in form; and that it had subsequently conducted another hearing and voted that both complaints were sufficient in substance.[19]

To rebut the petitioner's allegation of due process violation for non-publication of the impeachment rules, the *ponencia* asserts that the petitioner was fully apprised of the impeachment procedure and had even invoked the rules. This justification, however, cannot fully suffice to do away with full publication.[20] Compliance with the requirements of publication cannot be excused based on allegations that the party or parties involved had been notified of the existence of the rules.[21] In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission*,[22] the participation of the parties involved in a previous public consultation and their submission of comments on the proposed rules did not do away with the requirement to publish these rules before they could take effect. The plain and obvious reason for this ruling, of course, is that the binding

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[17] Memorandum of the House of Representatives Committee on Justice dated October 26, 2010, pp. 6-7; and Memorandum of petitioner dated October 21, 2010, pp. 4-7. The two complaints were filed on July 22, 2010 and on August 3, 2010.

[18] Memorandum of the House of Representatives Committee on Justice dated October 26, 2010, p.7; and Memorandum of petitioner dated October 21, 2010, p. 8. Both complaints were referred to the Justice Committee on August 11, 2010.

[19] Memorandum of the House of Representatives Committee on Justice dated October 26, 2010, pp.7-8; and Memorandum of petitioner dated October 21, 2010, pp. 8-16. On September 1, 2010, the Justice Committee conducted a hearing on the sufficiency in form of both complaints. On September 7, 2010, the Justice Committee conducted a hearing on the sufficiency in substance of both complaints.

[20] *Ponencia,* p. 21.

[21] *Republic v. Pilipinas Shell Petroleum Corporation*, G.R. No. 173918, April 8, 2008, 550 SCRA 680, 693.

[22] G.R. No. 163935, February 2, 2006, 481 SCRA 480, 521.

effect of laws, rules and regulations cannot be made to depend on the *actual knowledge* of their terms by the affected individuals and entities. The fact of publication assumes, by legal fiction, that all affected parties have been notified and are aware of applicable laws, rules and regulations; thereafter, the published enactments govern affected parties and their actions.

According to the *ponencia*, publication is not required since "promulgation" is not the same as "publication"; she alludes to certain legal provisions on the Judiciary's issuance of judgments where the "promulgation" of orders or decisions does not require publication. The *ponencia* further cites *National Association of Electricity Consumers for Reforms*[23] as justification.

The comparison of impeachment rules with court rulings is far from apt. Court rulings are pronouncements by the judicial branch of government on *specific* cases affecting *specific* parties on *defined* issues. As a rule, these rulings affect only the immediate parties to the case and their successors-in-interest;[24] hence, the public has no immediate interest that may be directly affected, and need not be informed about the court rulings.

In contrast, laws, rules and regulations, as a rule, affect the public in general and for this reason, they must be brought to the attention of the public. This reason underlies the rule on publication under Article 2 of the Civil Code and the rule under the complementary Article 3 that ignorance of the law excuses no one from compliance with its terms. These provisions fully apply to impeachment rules as these rules affect everyone – the impeachable officials; the House of Representatives itself as the constitutional body charged with the initiation of the impeachment process; the members of the House of Representatives; the citizenry who can bring impeachment

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[23] *Id.*

[24] *Padilla and Phoenix-Omega Development and Management Corp. v. Court of Appeals and Susana Realty, Inc.*, G.R. No. 123893, November 22, 2001, 370 SCRA 218; and *National Housing Authority v. Jose Evangelista*, G.R. No. 140945, May 16, 2005, 458 SCRA 478-479.

complaints; and the public at large who have a stake in the due performance of duties by their public officers.

From these perspectives, the term "promulgation," as used by the courts with respect to its decisions and rulings, cannot be directly compared and equated with "promulgation," as used with respect to laws and other enactments passed by the legislature; the latter require publication before they become fully effective. Notably, the Judiciary itself is not exempt from the obligation to publish rules that bind the public in general before these rules acquire binding effect. The Supreme Court publishes its procedural rules because they affect the litigating public; the Rules of Court requires the element of publication in "*in rem*" cases where court rulings are intended to bind the public in general.

Incidentally, the *ponencia's* cited *National Association of Electricity Consumers for Reforms* case[25] cannot be used to support the proposition that promulgation excludes the act of publication. In this case, the Court did not come up with a categorical statement that promulgation should be construed to exclude publication. Even if the term "promulgation"[26] had been loosely used, the focus of the case was on the need to publish rules before they become effective.

The *ponencia* also points out that even if Section 3 of Article VII of the Constitution requires the promulgation of rules for the canvassing of election certificates, the House of Representatives did not publish these rules.[27] This justification likewise carries very little supportive weight as the failure of the House of Representatives to publish rules – that, by law, must be published – does not do away with the publication requirement.

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[25] *Supra* note 22.

[26] *Id.* at 518 and 522. The term "promulgation" was used alternately in reference to orders and rules.

[27] *Ponencia*, p. 17. It is Section 4(6), not Section 3, Article VII of the Constitution that refers to the promulgation of canvassing rules.

I particularly reject the *ponente*'s statement that there is no other single formal term in the English language to appropriately refer to an issuance without the need of it being published.[28] Several terms contradicting this statement immediately come to mind; instead of using the word "promulgate," the words *issue*, *adopt*, *set forth*, *establish*, and *determine* may be used, depending on the context. Thus, I cannot give any merit to the *ponencia's* claim.

I, likewise, cannot accept the implication from the *ponencia* that the Constitutional Commission may have used the word "promulgate" in Section 3(8), Article XI in a sense different from its established legal meaning. The members of the Constitutional Commission are legal experts whose deliberative records this Court did not hesitate to cite as authorities in the earlier *Francisco* case[29] that first ruled on impeachment under the 1987 Constitution. At the time the 1987 Constitution was discussed and passed, Article 2 of the Civil Code and the *Tañada* ruling were already both in place. In both rulings, the general legal usage of the term "promulgation" with respect to laws, rules and regulations denotes "publication." Had a meaning other than this usage been intended, the members of the Constitutional Commission could have plainly so stated, *i.e.*, that publication of the rules on impeachment is not necessary. The reality is that the Constitutional Commission members did not see the need to so state because publication is a given. Significantly, even the members of the 15th Congress – who themselves are experts in crafting legislations – impliedly recognized the need for publication as they, in fact, did publish their rules on impeachment,[30] *although their publication was too late for the proceedings of the Justice Committee.* Under these circumstances, it requires a considerable stretch of the imagination to claim that the term "promulgate" should be understood to be divorced from the requirement of publication.

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[28] *Id.* at 18.

[29] *Supra* note 1.

[30] *Urbano v. Government Service Insurance System*, 419 Phil. 948, 969 (2001); and *Corona v. Court of Appeals*, G.R. No. 97356, September 10, 1992, 214 SCRA 378, 392, citing Ruben Agpalo, *Statutory Construction*.

Even if I were to accept the *ponencia*'s position that "to promulgate" simply means "to make known" and not necessarily "to publish," the *ponencia* does not state how the 15*th* Congress made its impeachment rules known to the public other than through the publication it undertook[31] (which rendered the rules of impeachment effective only on September 17, 2010 or after the Justice Committee had acted on the impeachment complaints). With this omission, the 15th Congress cannot be said to have complied with Section 3(8), Article XI of the Constitution in relation to Article 2 of the Civil Code and with existing jurisprudence on this point prior to September 17, 2010.

In *Romulo L. Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.*[32] we ruled that the Senate must publish the rules for its legislative inquiries *in each Congress* or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed, to sufficiently put the public on notice on the applicable rules.[33] As the Court explained then, the Senate is not bound by the rules adopted by the previous Senate. In the same manner, a succeeding House of Representatives cannot simply adopt the rules of the preceding House of Representatives without publication of the rules or the fact of their adoption. Simple adoption of the rules, without the required publication, leaves the House of Representatives with no effective rules binding on the public.

Contrary to the *ponencia*, the fact that the applicable provision in *Neri*[34] – Section 21, Article VI of the Constitution – uses the word "publish" instead of "promulgate" does not justify a different interpretation of Section 3(8), Article XI of the Constitution. A justification for the need to publish the rules in aid of legislative inquiries is to protect the witnesses who may be cited for contempt. Impeachable officials and witnesses in

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[31] *Ponencia,* p. 18.

[32] G.R. No. 180643, September 4, 2008, 564 SCRA 152, 230.

[33] *Tañada v. Tuvera, supra* note 14.

[34] *Supra* note 32.

impeachment proceedings are no less entitled to the same protection as they are likewise subject to the contempt powers of the House of Representatives in these proceedings. Additionally, impeachable officials stand to be removed from office, prevented from taking any other government post, and made to experience the humiliation that an impeachment necessarily brings. These risks define the standards of fairness an impeachable officer is entitled to in an impeachment proceeding, whether at the House of Representatives or in the Senate. At the very least, duly published and effective rules of impeachment must be in place to afford the official sought to be impeached the fairness that Section 1, Article III of the Constitution demands.[35]

To be sure, the belated publication of the Rules cannot have the retroactive effect of curing the infirmity that existed before the publication took place; the guarantee of due process is not served by a belated notice as a violation has by then already occurred. Precisely, publication is a **condition precedent** to the effectivity of the law.[36]

The *ponencia* also posits that the lack of publication would not nullify the proceedings taken prior to the effectivity of the impeachment rules, because the 15-day period after publication would run counter to the mandated periods under Section 3, Article XI of the Constitution.

I find this argument unpersuasive for two very practical reasons.

First, the due process guarantee does not strictly require that the time gap between the publication and the effectivity of an enactment be fifteen (15) days. The clear terms of Article 2 of the Civil Code show that the House of Representatives has the discretion to specify a period lesser than 15 days before a statute, law or rule becomes effective. Thus, it could have provided for a shorter period if its intent had been to ensure

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[35] *Republic v. Pilipinas Shell Petroleum, supra* note 21.

[36] *Philippine International Trading Corporation v. Commission on Audit, supra* note 12.

compliance with the impeachment periods imposed by the Constitution. Unfortunately, *it did not so provide* and this failure cannot now be used as an argument against the application of the publication requirement.

Second, three (3) periods regulate the actions of the House of Representatives on the impeachment proceedings. The *first* is the inclusion in the Order of Business which shall be made within 10 session days from the filing of the impeachment complaint. The *second* is the three-session-day period within which to refer the complaint to the proper committee. The *third* is the sixty-session-day period for the committee to report out its actions and recommendations to the plenary. All these are mandatory periods. But of these periods, the first two involve *specific actions* of the House of Representatives that are required by the Constitution itself and cannot, thus, be affected by the Rules. The committee actions, on the other hand, have been left by the Constitution[37] for the House of Representatives to determine and undertake at its discretion, subject only to the requirement of a hearing; to the vote required to decide at the committee; and to the general provisions of the Constitution on the protection of the constitutional rights of the impeachable official. The temporal constitutional limitation is on the period given to the committee to act – it must complete its proceedings and report back to the House of Representatives in plenary within 60 session days from the referral.

Under the attendant facts of the case where the publication of the adopted Rules of Impeachment came *after* the impeachment complaints had been referred to the Justice Committee for action, the required 15-day period before it took effect necessarily fell within the mandatory 60-session-day period given to the Committee. Thus, the opportunity to act within the mandatory 60-session-day period was lessened by the 15-day waiting time for the impeachment rules to take effect.

The intrusion of the publication period on the mandatory period for action by the Justice Committee, however, does not necessarily mean that the publication requirement must give

[37] Section 3(2), Article XI of the Constitution.

way to the constitutional mandatory period because the mandatory 60-session-day period has not repealed or modified, impliedly or expressly, the publication requirement. No facial repeal is evident from Section 3(8) of Article XI of the Constitution, nor is there any plain intent to do away with the publication requirement discernible from the terms of the constitutional provision. Neither is there any irreconcilable inconsistency or repugnancy between the two legal provisions.[38] Thus, no reason exists in law preventing the two legal requirements from standing side by side and from being applied to the attendant facts of the case.

An important consideration in the above conclusion relates to the length of the respective mandatory periods. The Justice Committee is given 60 *session* days (*i.e.*, not only 60 *calendar* days) within which to act, while the period involved under Article 2 of the Civil Code is 15 calendar days. Under these terms, the simultaneous application of the two requirements is not an impossibility, considering especially that the Justice Committee has control over the impeachment proceedings and can make adjustments as it sees fit to ensure compliance with the required 60-session-day period.

Under the given facts of the present case, the House of Representatives had ample time to pass and publish its rules on impeachment soon after it convened, given particularly that its action was merely to adopt the Rules of Impeachment of the 14th Congress. *However, it chose not to undertake any immediate publication.* The House of Representatives, too, could have provided in its adopted Rules of Impeachment for an effectivity period of less than the 15 days that Article 2 of the Civil Code generally provides, as provided by this Article itself. *This was not also done*; thus, a tight time situation resulted for the Justice Committee.

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[38] See *Mecano v. Commission on Audit*, G.R. No. 103982, December 11, 1992, 216 SCRA 506; *Republic v. Asuncion*, G.R. No. 108208, March 11, 1994, 231 SCRA 230-232; *Secretary of Finance v. Ilarde*, G.R. No. 121782, May 9, 2005, 450 SCRA 233; and *Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995, 251 SCRA 251-252.

This tight timeline, however, is not an argument or justification to defeat the publication requirement as this requirement cannot be defeated by the negligence or inaction of a party burdened with the duty to publish. A saving grace in this case is that the full 60-session-day period has not lapsed counting from the time the impeachment complaints were referred to the Justice Committee.

d. Consequence of Failure to Publish

In light of the House of Representatives' initial failure to publish its impeachment rules, all the proceedings prior to the effectivity of the subsequently-published rules must necessarily be ***void for violation of due process***. This is a conclusion the Court cannot shy away from; it must, as a duty, declare the nullity of laws, rules and regulations affecting individual rights that are not published. This is not the first time, in fact, that this Court will so act; jurisprudential history is replete with instances of laws, rules and regulations that the Court has voided for lack of the required publication.[39] As the present case stands, no discernable reason exists not to apply the fundamental rule on publication.

For clarity, ***nullity applies to all the proceedings so far taken before the Justice Committee.*** These are the hearing on the sufficiency of form and the vote thereon taken on September 1, 2010, and the hearing on the sufficiency of the substance and the vote thereon taken on September 7, 2010. All other committee actions necessarily drew their strength from these early actions and are, therefore, affected also by the lack of publication. ***The invalidity does not attach to actions taken by the House of Representatives itself*** – *i.e.*,

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[39] *Securities and Exchange Commission*, G.R. No. 164026, December 23, 2008, 575 SCRA 113, 121-123; *Republic v. Pilipinas Shell Petroleum Corporation*, *supra* note 21, at 689-694; *Senate v. Ermita*, G.R. Nos. 168777, 169659, 169660, 169667, 169834, and 171246, *supra* note 13, at 71-72; *Pilipinas Kao, Inc. v. Court of Appeals*, *supra* note 11, at 860-861; *Philsa International Placement and Services Corp. v. Secretary of Labor and Employment*, 408 Phil. 270, 290 (2001); and *Philippine International Trading Corporation v. Commission on Audit*, *supra* note 12.

the inclusion in the Order of Business and the referral to committees – as these are specific actions taken pursuant to the terms of the Constitution. Given that published rules of impeachment now exist and have been effective starting September 17, 2010, ***nothing should now prevent the House of Representatives from resuming its proceedings from its last valid action – the Speaker's referral of the impeachment complaints to the Justice Committee which can now undertake its constitutional role on impeachment.***

II. The One-Year Bar Rule

My second point of disagreement with the *ponencia* is on the interpretation of Section 3(5), Article XI of the Constitution (*the one-year bar rule*) which states that:

> No impeachment proceedings shall be ***initiated*** against the same official more than once within a period of one year.

As explained by Mr. Justice Adolfo S. Azcuna in his Concurring Opinion in *Francisco*,[40] "the purpose of this provision is two-fold: to prevent undue or too frequent harassment; and to allow the legislature to do its principal task of legislation." I highlight these purposes as I believe that they should drive our interpretation of the above-quoted Section 3(5), Article XI of the Constitution.

a. The Contending Positions

The petitioner argues that the filing *alone* of an impeachment complaint initiates an impeachment proceeding and the referral of the complaint is already the "initial action" taken by the House of Representatives. Hence, no other impeachment complaint can be filed within a year counted after the filing of the first impeachment complaint.

The private respondents – the proponents of the second impeachment complaint (*Reyes group*) – argue that the petitioner may invoke the one-year bar only after a referral to the committee (in accordance with *Francisco*), or *at some point between*

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[40] *Supra* note 1.

the conclusion of the committee report and the transmittal of the Articles of Impeachment to the Senate.

The Office of the Solicitor General (*OSG*), for its part, specifically posits that an impeachment proceeding is initiated only when the House of Representatives disposes the impeachment complaint "by the vote of at least one-third of all the members of the House,"[41] *i.e.*, through a disposition *against* the impeachable officer.[42] The OSG and the Reyes group commonly ask, however, for a reexamination of *Francisco*[43] on the ground that its interpretation of Section 3(5), Article XI of the Constitution has rendered the impeachment mechanism "virtually, if not completely, ineffectual"[44] since it allows public officials to escape constitutional accountability by simply obtaining the filing of a frivolous impeachment complaint to preempt the filing of a meritorious one.[45]

The *ponencia* declined to adopt either position and applied the *Francisco*[46] ruling that the filing ***and*** the referral of the impeachment complaint to the proper committee "initiated" the impeachment proceedings and triggered the operation of the one-year bar rule.

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[41] Memorandum of the House of Representatives Committee on Justice, pp. 78 and 80.

[42] This is a step further than the interpretation of the House of Representatives of the 12th Congress of Article XI, Section 3(5) in *Francisco*. The Rules on Impeachment of the 12th Congress provides that an impeachment proceeding is *deemed initiated*, among others, on the date the House of Representatives votes to overturn or affirm the findings of the Justice Committee that the verified impeachment complaint is not sufficient in substance. Simply, the House of Representatives' disposition of the impeachment complaint need not be against the impeachable officer to "initiate" an impeachment proceeding.

[43] *Supra* note 1.

[44] Memorandum of respondents Reyes, *et al.*, pp. 30-31.

[45] Memorandum of The House of Representatives Committee on Justice, pp. 80-83.

[46] *Supra* note 1.

I disagree with these positions. Nevertheless, as the OSG did and as the Reyes group reflected in their positions, I believe that our ruling in *Francisco*[47] must be re-examined, particularly its interpretation of what the constitutional proscription against the initiation of more than one impeachment complaint within a year covers.

b. The Facts of Francisco

Francisco[48] is inevitably the starting point of discussion of the one-year bar rule, if only because this case definitively ruled on the interpretation of the word "initiate" which this Court determined with finality to be the acts of filing and referral of the impeachment complaint to the proper House committee. In *Francisco*,[49] the following facts transpired:

1. **On June 2, 2003**, President Estrada filed an impeachment complaint *(the first complaint)* against Chief Justice Davide and seven other associate justices.
2. **On August 5, 2003**, the first complaint was referred to the Justice Committee.
3. **On October 13, 2003**, the Justice Committee ruled that the first complaint was "sufficient in form," but voted to *dismiss* it on October 22, 2003 for being insufficient in substance. The Committee Report, however, was *never submitted to the House of Representatives* in accordance with Section 3(2), Article XI of the Constitution.
4. **On October 23, 2003**, Reps. Gilbert C. Teodoro and Felix William B. Fuentebella filed with the Secretary General a second impeachment complaint, which was accompanied by a "Resolution of Endorsement/ Impeachment" signed by at least 1/3 of all the Members of the House of Representatives. This was followed

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47 *Supra* note 1.

48 *Ibid.*

49 *Ibid.*

> by a deluge of petitions filed before the Court seeking to restrain the House of Representatives from further acting on the second complaint or for the Court to dismiss those petitions mainly on the ground that the Court has no jurisdiction.

Notably, under these facts, at the time the second impeachment complaint was filed, several *acts in the impeachment process* had already been completed – *i.e.*, the first complaint had been filed and referred to the proper committee; the complaint had been determined to be sufficient in form but was also found to be insufficient in substance. At that point, the Justice Committee only had to submit its report to the House of Representatives, but this was never undertaken. Before any report could be submitted, a second impeachment complaint was filed. Thus, the issue of whether the second impeachment case was barred under Section 3(5), Article XI, arose.

The first complaint's insufficiency in substance notwithstanding, the Court held (as echoed by the present *ponencia*) that an impeachment proceeding had already been initiated "by the act of filing of the complaint and its referral to the Committee on Justice,"[50] adopting the view of *amici curiae* Constitutional Commissioners Florenz Regalado and Father Joaquin G. Bernas that the word "initiate" as used in Section 3(5), Article XI of the Constitution, means to file, both adding, however, that "*the filing must be accompanied by*

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[50] *Id.* at 169-170.

In *Francisco*, the Court stated that for Commissioner Regalado, the sponsor of Section 3(5), Article XI, "initiate" means "to file" adding that the act of initiating "included the act of taking initial action on the complaint."

Father Bernas' argument goes:

> Briefly then, an impeachment proceeding is not a single act. It is a complexus of acts consisting of a beginning, a middle and an end. The end is the transmittal of the articles of impeachment to the Senate. The middle consists of those deliberative moments leading to the formulation of the articles of impeachment. The beginning or the initiation is the filing of the complaint and its referral to the Committee on Justice.

an action to set the complaint moving." This ruling was primarily directed against the position that *the vote of one-third of the House of Representatives in a resolution of impeachment will initiate the impeachment proceedings*.[51]

c. Refutation of the Petitioner's Position

The petitioner's position – that the mere filing of an impeachment complaint should serve as a complete trigger for the one-year bar rule – is a repetition of the view that the Court rejected in *Francisco*.[52] The petitioner obviously equated a "verified complaint for impeachment" that may be filed under Section 3(2) of Article XI, to the "impeachment proceedings" that may not be "initiated" against the same official more than once within a year under Section 3(5) of the same article. As in *Francisco*,[53] the *ponencia* favorably considers the reasoning of Father Bernas that a "proceeding" before the House of Representatives (as distinguished from a "case" which is the "legal controversy that must be decided by the Senate) is progressive in character, having a beginning, a middle and an end. An impeachment "proceeding" begins when a verified complaint is filed ***and*** referred to the proper Committee;[54] the filing of an impeachment complaint sets off the initial phase of the impeachment proceeding, this phase is not completed and the impeachment proceeding is not fully "initiated" until the House of Representatives itself *initially* acts on the impeachment complaint.

I completely agree with the *ponencia* that the petitioner's position should be rejected. Aside from the reasoning based on the deliberations of the Constitutional Commission, the petitioner's restrictive view unduly limits the people's right to file impeachment complaints, at the same time that it ties the hands of the House of Representatives – the body constitutionally answerable to the electorate – by effectively placing the power of impeachment

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[51] *Id.* at 164.

[52] *Id.*

[53] *Ibid*.

[54] *Id.* at 169.

in the hands of random complainants whose acts can preclude or suspend the filing of other impeachment complaints for at least a year.

Thus, it is only proper that the act of initiating the impeachment process should go beyond the act of mere filing and should extend to initial action by the receiving entity on the complaint to fully signify that an impeachment proceeding has been "initiated." To what acts the initiation phase shall extend is a point of disagreement with the *ponencia* and is fully discussed at the appropriate topic below.

d. The OSG Position

At the other end (in fact, the back-end) of how an impeachment proceeding is "initiated" for purposes of the one-year bar rule is the OSG's position that the back-end is signaled by the favorable vote of a third of the House of Representatives on the intrinsic merits of the impeachment complaint. This view *disagrees* with the *ponencia* that the referral by the House of Representatives of the complaint to the proper committee completes the initiation phase of the impeachment process.

Independently of the reasons propounded in *Francisco*,[55] I reject this submission for two reasons.

First, to "impeach" simply means "to formally charge with a violation of the public trust"[56] or "to bring an accusation against."[57] **The power of impeachment is lodged with the House and not with the Senate**; **the power of the Senate is to "try and decide an impeachment case."** Once one-third of the House of Representatives membership votes in favor of impeachment, the public official is effectively *impeached* – *i.e.*, indicted of an impeachable offense. At this point, the impeachment proceedings before the House of Representatives (again contrasted with the totality of the impeachment "case")

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[55] *Id.*

[56] *Black's Law Dictionary*, 8th ed.

[57] *Webster's Third New International Dictionary*.

already terminates; and an entirely different proceeding begins – *i.e.*, the trial of the impeachment case at the Senate.

Second, **the OSG's interpretation disregards the purposes of the one-year bar** to the point of defeating these purposes. If we pursue the argument to its logical conclusion, as long as the one-third vote required to "impeach" has not been obtained, then the House of Representatives and the Justice Committee can continuously receive and entertain impeachment complaints; only a favorable House of Representatives vote (effectively, the endorsement of the Articles of Impeachment to the Senate) can serve as a bar to another impeachment complaint within one year. This position, to be sure, is a prescription for the successive filing of impeachment complaints *and* "hearings" held one after another, terminated only by the successful consideration by the House of Representatives of one of the filed complaints. The possibility of multiple impeachment complaints is exemplified, not only in the present case, but in the records of previous impeachment complaints before the House of Representatives under the present Constitution.

I do not believe that this impeachment scenario is what the Constitution intended when it provided for the one-year bar rule; the operation of this scenario cannot but have the effect of causing undue delay and prejudice to legislative work. To state the obvious, *undue* harassment of the impeachable official shall also result, again to the prejudice of public service. All these run counter to the purposes of Section 3(5), Article XI of the Constitution.

e. Revisiting Francisco

All the above having been said, the *ponencia's* conclusion of strictly adhering to the *Francisco*[58] ruling leaves much to be desired as the ruling still leaves open the more specific question of *what completes the initiation process* in light of the established purposes of the one-year bar rule.

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[58] *Supra* note 1.

An examination of *Francisco* shows that it extensively discussed the constitutional meaning of "initiation" in Article XI by relying heavily on the records of the Constitutional Commission.[59] Yet, it was *eerily silent* on the purposes behind Section 3(5) which was the provision directly in issue.

Basic in construing a constitution is the ascertainment of the intent or purpose of the framers in framing the provision under consideration. This should include, aside from the reason which induced the framers to enact the particular provision, the particular purpose/s intended to be accomplished and the evils, if any, sought to be prevented or remedied. Constitutional interpretation must consider the whole instrument and its various parts in a manner that would align the understanding of the words of the Constitution with the identified underlying intents and purposes.[60]

Aside from discussing the proceedings of the Constitutional Commission in considering the initiation aspects of an impeachment proceeding, the Court in *Francisco*[61] gave the word "initiate" its ordinary meaning, *i.e.*, "to begin, commence, or set going" in accordance with the principle of *verba legis*. Thus, the word "initiate" in Section 3(1), Article XI of the

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[59] I entertain doubts on the completeness of *Francisco's* arguments in construing the word "initiate"(which the *ponencia* effectively adopted) in so far as they rely on Commissioner Maambong's observations. The Commissioner's remark on the need to be "very technical" on the word "initiation" obviously referred to Section 3(3) of Article XI where the word "initiate" no longer appears, but was read in relation to Section 3(1). The word "initiate" in Section 3(1), however, is used in a different sense, that is, to bring an impeachable officer to impeachment trial in the Senate. The word "initiate" in Section 3(1) is expressly used in the Constitution as a "power" – and not with reference to procedure. The same word as used in Section 3(5) was understood in *Francisco* to mean the "filing and referral to the Justice Committee" for action, which essentially refers to procedure. In this consideration of Section 3(5), its purposes were not taken into account.

[60] See *Civil Liberties v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[61] *Supra* note 1.

Constitution was read to mean to *commence a "case"* that the Senate shall consider after the transmittal of the Articles of Impeachment on the one-third vote of all the members of the House of Representatives affirming the favorable resolution of the Justice Committee or overriding it.

The majority in *Francisco*,[62] however, never discussed the meaning of "initiate" *for purposes of the one-year bar* based on the proceedings of the Constitutional Commission. Only the Concurring Opinion of Mr. Justice Adolfo Azcuna referred to the purposes of Section 3(5), Article XI of the Constitution, as reflected in the Constitutional Commission deliberations. He quoted the proceedings as follows:[63]

MR. VILLACORTA. Madam President, I would just like to ask the Committee three questions.

On Section 3, page 2, lines 12 to 14, the last paragraph reads as follows: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year." Does this mean that even if an evidence is discovered to support another charge or ground for impeachment, a second or subsequent proceeding cannot be initiated against the same official within a period of one year? In other words, one year has to elapse before a second or subsequent charge or proceeding can be initiated. The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?

MR. ROMULO. Yes, the intention here really is to limit. This is **not only to protect public officials** who, in this case, are of the highest category from harassment but also to **allow the legislative body to do its work** which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.[64] (Emphases supplied).

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[62] *Ibid.*

[63] *Id.* at 1053

[64] 2 Record of the Constitutional Commission, p. 282; see also Separate Opinion of Justice Azcuna in *Francisco v. House of Representatives, id.* at 313.

Without doubt, the silence of *Francisco*[65] (and of the present *ponencia*) on the purposes of Section 3(5), Article XI of the Constitution contributes in no small measure to the clamor for a revisit to *Francisco*[66] since it did not address the intent of the one-year bar rule, yet laid down a doctrine on the provision that this intent produced.

e.1. An Alternative View of Francisco

e.1.i. The Back-End of the Initiation Process

I agree with the conclusion of *Francisco*[67] on when an impeachment proceeding starts. Indeed, the initiation phase of the proceeding cannot start at any point other than the filing of the impeachment complaint. I cannot but agree, too, that the initiation phase is not confined solely to the fact of filing; the House of Representatives as the receiving entity has to intervene for a complete and meaningful initiation process. But beyond these, the question arises – up to what point does the initiation phase of the impeachment proceedings end considering the totality of Section 3, Article XI of the Constitution?

This question must inevitably arise since the presented reasons – either from the *amici curiae* or the deliberations of the Constitutional Commission on Section 3(1) and Section 3(3), Article XI of the Constitution – do not present ready answers. For one, the term "initiate" under Section 3(1) does not carry the same sense as the term "initiated" in Section 3(5); the first refers to the power of the House of Representatives to impeach as against the power of the Senate to try an impeachment case brought forward by the House of Representatives, while Section 3(5) specifically refers to the internal proceedings of the House of Representatives.

I submit on this point – *i.e.*, *on the outer limit or back end of the initiation phase of the impeachment proceedings* – that the intent and purpose behind Section 3(5), Article XI of

[65] *Supra* note 1.

[66] *Ibid.*

[67] *Ibid.*

the Constitution must necessarily come into play. ***The complete interpretation of the Section must consider the point beyond which another impeachment complaint shall constitute undue harassment against the impeachable official, as well as the point that should serve as a cut-off to ensure that the House of Representatives is not unduly taken away from its mandated lawmaking activities.***

For a bird's eye view of the impeachment process at the House of Representatives, the proceedings run as follows:

a. A Member of the House files or endorses a verified impeachment complaint;

b. The verified complaint is included in the Order of Business of the House of Representatives;

c. The House of Representatives refers the verified complaint to the proper committee;

d. The committee determines the sufficiency in form and substance of the verified complaint and submits its recommendations to the House of Representatives.[68]

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[68] **A. COMMITTEE PROCEEDINGS**

Section 4. *Determination of Sufficiency in Form and Substance.* - **Upon due referral, the Committee on Justice shall determine whether the complaint is sufficient in form and substance.** If the committee finds that the complaint is insufficient in form, it shall return the same to the Secretary General within three (3) session days with a written explanation of the insufficiency. The Secretary General shall return the same to the complainant(s) together with the committee's written explanation within three (3) session days from receipt of the committee resolution finding the complaint insufficient in form.

Should the committee find the complaint sufficient in form, it shall then determine if the complaint is sufficient in substance. **The requirement of substance is met if there is a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee**. If the committee finds that the complaint is not sufficient in substance, it shall dismiss the complaint and shall submit its report as provided hereunder.

Section 5. *Notice to Respondents and Time to Plead.* - **If the committee finds the complaint sufficient in form and substance, it shall immediately furnish the respondent(s) with a copy of the resolution**

i. If the Committee determines that the complaint is insufficient in form, it shall return the complaint to the Secretary General with a written explanation of the insufficiency.

ii. If the Committee finds the complaint insufficient in substance, it shall dismiss the complaint and make the proper report to the House of Representatives in plenary. (If the House of Representatives disapproves the finding of insufficiency, thus effectively deciding that the impeachment complaint is sufficient, then it returns the complaint to the Committee for the proceedings described below.)

e. After a finding of sufficiency, the committee proceeds to require the respondent to answer and to hear the merits of the complaint.

i. If the committee finds that the complaint lacks merit, it shall submit to the House of Representatives

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and/or verified complaint, as the case may be, with written notice thereof and serve a copy of the answer to the complaint(s). No motion to dismiss shall be allowed within the period to answer the complaint.

The answer, which shall be under oath, may include affirmative defenses. If the respondent fails or refuses to file an answer within the reglementary period, he/she is deemed to have interposed a general denial to the complaint. Within three (3) days from receipt of the answer, the complainant may file a reply, serving a copy thereof to the respondent who may file a rejoinder within three (3) days from receipt of the reply, serving a copy thereof to the complainant. If the complainant fails to file a reply, all the material allegations in the answer are deemed controverted. Together with their pleadings, the parties shall file their affidavits or counter-affidavits, as the case may be, with their documentary evidence. Such affidavits or counter-affidavits shall be subscribed before the Chairperson of the Committee on Justice or the Secretary General. Notwithstanding all the foregoing, failure presenting evidence in support of his/her defenses.

When there are more than one respondent, each shall be furnished with copy of the verified complaint from a Member of the House or a copy of the verified complaint from a private citizen together with the resolution of endorsement by a Member of the House of Representatives and a written notice to answer and in that case, reference to respondent in these Rules shall be understood as respondents.

a resolution of dismissal. A vote of 1/3 of the House of Representatives overrides the resolution, in which case the committee shall prepare the Articles of Impeachment.

f. The House of Representatives in plenary considers the committee's favorable recommendation expressed through a resolution setting forth the Articles of Impeachment. By a vote of at least 1/3 of the House of Representatives, the Articles of Impeachment shall be endorsed to the Senate for trial.

   i. If the 1/3 vote on the resolution on the Articles of Impeachment is not attained, then the complaint is dismissed and the impeachment proceedings end.

e.1.ii. The Ponencia's Deficiencies

The *ponencia* demarcates the referral by the House of Representatives of the impeachment complaint to the proper committee as the outer or back end limit of the initiation phase apparently because referral is the initial action of the House of Representatives action on the matter. The appropriate point, however, cannot be based solely on the first overt action the House of Representatives takes, if the purposes of the "initiation" of the impeachment complaint are to be respected. Specifically, the purpose and intent of Section 3(5), Article XI of the Constitution, as gleaned from the word "initiated" and the one-year bar rule, must be considered. I believe that on this point, the *ponencia* made an incomplete consideration that should be corrected.

e.1.iii. The One-Year Bar Rule and Its Purposes

The one-year bar rule and its purposes and effects, once considered, unavoidably introduce into the word "initiate" the idea of knowing and meaningful action sufficient to have the effect of preventing the filing of another impeachment complaint within one year. The import of what the bar signifies can be gleaned from the importance the Constitution gives public accountability and the impeachment process; public accountability is a primary constitutional interest that merits no less than one

complete and separate Article in the Constitution, while impeachment is one of the defined means of holding the highest government officials accountable. They are prominent, not only in the Constitution, but in the public mind as well.

In this light, the bar against impeachment that Section 3(5), Article XI of the Constitution speaks of cannot simply be confined to the mechanical act of filing an impeachment complaint. As every citizen enjoys the right to file a complaint, a bar triggered by the mere physical act of filing one complaint is practically a negation of the granted right without a meaningful basis. Thus, the initiation of an impeachment complaint, understood in the sense used in Section 3(5), Article XI of the Constitution, must involve a process that goes beyond this physical act of filing; initiation must be a participatory act that involves the receiving entity, in this case, the House of Representatives.

To be consistent with the nature and effects of the bar, the participation of the House of Representatives in the initiation phase must itself be meaningful; it must be an act characterized by the exercise of discretion in determining that the filed impeachment complaint is valid and can be the basis for the impeachment proceedings to follow, subject to supporting and duly admitted evidence. To state the obvious, only a valid impeachment complaint should serve as a bar; otherwise, no meaningful balance would exist between the impeachment and the bar that can frustrate it.

The receipt by the House of Representatives of the filed impeachment complaint, like the filing of the complaint, involves a mechanical act that leaves the House be the basis for the impeachment proceedings to follow with no discretion to exercise; a filed complaint must be received as the filing of the complaint is in the exercise of a right granted by the Constitution. In like manner, the initial overt action by the House of Representatives – the referral of the impeachment complaint to the appropriate committee – is no different from the prior act of receiving the complaint. It is essentially a mandatory act that the Constitution commands. In fact, the act of receiving an impeachment complaint cannot really be divorced from the

act of referral since both acts are products of constitutional directives couched in the mandatory language of Section 3(2), Article XI of the Constitution.

The next action following the referral of the impeachment complaint to the Justice Committee is the latter's consideration of the complaint for sufficiency in form and substance. The determination of sufficiency is essentially a test for validity and is the first opportunity for a meaningful action, involving the exercise of discretion, that would justify the imposition of a bar. It is at this level, with the complaint declared as valid, that impeachment proceedings can be fully recognized to be *validly* initiated.

From this perspective, the *Francisco*[69] ruling – while essentially referring to aspects of the initiation phase of the impeachment proceedings – does not fully cover its complete initiation phase. The act of referral that passed *Francisco's*[70] approval is a purely mechanical act that does not consider the validity of the complaint and the exercise of discretion in the determination of its validity as essential elements. At the core, *Francisco*[71] is incomplete because it did not consider the purposes of Section 3(5), Article XI of the Constitution.

e.1.iv. The Undue Harassment Purpose

From the perspective of the purposes of the one-year bar rule, it should be noted that up to the point of the referral by the House of Representatives, nothing is expected to be done by the public official against whom the complaint is filed. In fact, both the Constitution and the impeachment rules do not require that the complainant furnish the official sought to be impeached a copy of the verified impeachment complaint. Only after the Justice Committee finds the complaint sufficient in form and substance that the respondent official is formally furnished a copy of the verified complaint.

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[69] *Supra* note 1.

[70] *Ibid*.

[71] *Ibid.*

It should be considered, too, that the mere filing of an impeachment complaint is not *per se* an act of harassment. The filing of an impeachment complaint is a remedy that the Constitution itself provides and defines. The concept of harassment only enters the picture in any subsequent complaint filed; the Constitution itself bars a second complaint within a year from the initiation of the first complaint on the presumption that the second complaint only serves to harass an impeachable officer.

Since "undue harassment" is practically a legal reason or justification for the one-year bar rule, it can only be understood in terms of the legal effects that the filing of an impeachment complaint carries with it. As against the impeachable official against whom a complaint is filed, legal effects start only from the time a valid complaint is recognized. The mere referral of a complaint by the House of Representatives to the proper committee does not in any way legally affect the public official against whom a complaint is filed; at this point, he/she is only a passive participant in the proceedings – a person named in a complaint that may not even prosper. Legal effect takes place only when the complaint is found valid for sufficiency in form and substance, and the public official is formally furnished a copy and is required to answer. At this point – *i.e.,* when the House of Representatives, through its appropriate committee, has exercised its discretion in taking concrete action against an impeachable public official – a valid complaint can be said to have been formally recognized by and fully "initiated" in the House of Representatives.

It is at this point, too, that the constitutional intent of preventing undue harassment of an impeachable officer is triggered. Beyond this point, a second impeachment complaint, whether valid or invalid, becomes too many for an impeachable official to face within a year.

e.1.v. Interference in Lawmaking

From the perspective of interference in the House of Representatives proceedings, note that the determination of sufficiency of the verified complaint in form and substance

requires committee action but not any hearing where the respondent official must be present as a matter of due process. Sufficiency in form only requires a facial consideration of the complaint based on the mandated formal requirements.

The Constitution requires the bare minimum of verification of the complaint, and the allegation that it is filed by a Member of the House of Representatives or the endorsement by a Member if the complaint is filed by a citizen. Additionally, following the Rules of Criminal Procedure of the Rules of Court[72] that applies as suppletory rules, ***the form*** should be appropriate if a proper respondent, occupying an office subject to impeachment, is named in the complaint, and if specific acts or omissions are charged under one of the grounds for impeachment defined by the Constitution.

The complaint should be considered sufficient ***in substance*** if the acts or omissions charged are appropriate under the cited grounds and can serve as basis to hear and to bring the Articles of Impeachment forward to the Senate. It is at this point that the Justice Committee can determine, as a matter of substance, if the impeachment complaint is one that – because of its validity – can serve as a bar to a second complaint within a one-year period.

Notably, all these would only require the examination of the verified complaint and whatever component annexes it may contain, *without need for any formal hearing or any explanation from the respondent* whose opportunity to explain and dispute the case against him/her only comes after an Answer. It is at this hearing before the Justice Committee that the determination of "probable cause" transpires.

Incidentally, the Constitution expressly requires that there be a hearing before the Justice Committee submits its resolution on the Articles of Impeachment. Notably, too, the Constitution requires a hearing only at this point, not at any other stage, particularly at the determination of the sufficiency in form and

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[72] Section 7, Rule 17.

substance stage, although no law prohibits the Justice Committee from calling the parties to a "sufficiency" hearing.

Up until the determination of the validity of the complaint in form and substance, *all of which are internal to the Justice Committee,* interference on the lawmaking part of the House of Representatives can be seen to be negligible. The records of the present Justice Committee themselves show that it devoted only two meetings to determine the sufficiency of the complaint in form and substance.

Thus, from the point of view of both possible undue harassment effects and interference in the lawmaking activities of the House of Representatives, no justification on these grounds exists to restrict the back-end or outside limit of the initiation phase of the impeachment proceedings to the referral of the verified complaint to the Justice Committee. In fact, the nature of a referral as a mandatory and non-discretionary action of the House of Representatives dictates that the initiation phase be extended beyond this point. The appropriate point that serves both the "undue harassment" and "interference in lawmaking" purposes of Section 3(5), Article XI of the Constitution is when the impeachment complaint is determined to be valid. Beyond that point, the possibilities of undue harassment and interference in lawmaking become real.

e.1.vi. From Prism of Experience and Practical Application

Admittedly, the alternative view dictates a result different from the result the Court arrived at under the facts of *Francisco*;[73] with the dismissal of the first impeachment complaint for insufficiency in substance, no complaint stood to trigger the one-year bar rule so that the second complaint should have been recognized. But this consequence should not deter the Court from reconsidering its position; experience in impeachment cases from the time of *Francisco*[74] has shown that this ruling has not served the overall purposes of impeachment at all.

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[73] *Supra* note 1.

[74] *Ibid.*

As the OSG argued, the *Francisco* ruling can indeed encourage naughty effects; a meritorious impeachment case can effectively be barred by the filing of a *prior* unmeritorious impeachment complaint whose mere referral to the Justice Committee already bars the recognition of the meritorious complaint. Its disregard of the purposes of Section 3(5), Article XI of the Constitution leaves the impeachment process highly susceptible to manipulation. In contrast, this naughty effect can be minimized with the adoption of the alternative view that fully takes the purposes of Section 3(5), Article XI of the Constitution into account, as the alternative:

a. recognizes that the referral is a mandatory non-discretionary act on the part of the Speaker or the leadership of the House of Representatives; all complaints must be referred to the Justice Committee for its action and recommendation; and

b. recognizes that the Constitution grants the Justice Committee the initial discretionary authority to act on all matters of form and substance of impeachment complaints, including the finding and recommendation that a second complaint is barred by the one-year bar rule.

To be sure, an unmeritorious complaint can still be filed ahead of time under the alternative view and be recognized as sufficient in form and substance by the Justice Committee in order to bar an expected meritorious complaint. This is a political dimension of the impeachment process that neither this Court nor the public can directly remedy under the terms of the present Constitution. The alternative view, however, would prevent the *unilateral refusal* at the level of the Speaker or leadership of the House of Representatives to refer the complaint to the Justice Committee on the ground of the one-year bar rule. Once a second complaint is referred, the Justice Committee – as the body granted by the Constitution with the initial authority and duty to rule – would then have to rule on the applicability of a bar and, subsequently, report this out to the plenary for its consideration. At both levels, debates can take place that can

effectively bring the matter of public opinion to the bar where the political act of the House of Representatives can properly be adjudged.

The *ponencia*, incidentally, posits that:

> Referral of the complaint to the proper committee is not done by the House Speaker alone xxx. It is the House of Representatives, in public plenary session, which has the power to set its own chamber into special operation by referring the complaint or to otherwise guard against the initiation of a second impeachment proceeding xxx.
>
> x x x. With respect to complaints for impeachment, the House has the discretion not to refer a subsequent impeachment complaint to the Committee on Justice where official records and further debate show that an impeachment complaint filed against the same impeachable officer has already been referred to the said committee and the one year period has not yet expired xxx. Far from being mechanical, before the referral stage, a period of deliberation is afforded the House[.]

The *ponencia* added:

> Allowing an expansive construction of the term "initiate" beyond the act of referral allows the unmitigated influx of successive complaints… Worse, the Committee shall conduct overlapping hearings until and unless the disposition of one of the complaints ends with the affirmance of a resolution for impeachment…. or the Committee on Justice concludes its first report to the House plenary regardless of the recommendation… Each of these scenarios runs roughshod the very purpose behind the constitutionally imposed one-year bar. (Underlining supplied).

With all due respect and as discussed above, these statements disregard the clear wording of the Constitution and the purposes of the one-year bar rule.

First, the constitutional directive to refer an impeachment complaint to the Committee is clear and unequivocal; it does not set terms or procedures and provides only for a period. Also, the House of Representatives itself does not appear – from the terms of Section 3, Article XI of the Constitution – to have the authority *at the first instance* to undertake any

direct action on subsequently-filed impeachment complaints other than to refer them to the proper committee. The House of Representatives, therefore, must refer a filed impeachment complaint to the Justice Committee within the mandated period. Any attempt to read into the Constitution any procedure other than what it clearly provides is to introduce further complications into the impeachment process, and is an intervention inconsistent with the terms of the Constitution.

Second, the question that the *ponencia* has not even ventured to answer is when an impeachment proceeding is initiated *in light of the purposes of the one-year bar*. As pointed out above, until the Justice Committee finds the impeachment complaint or complaints sufficient in form *and* substance, no "hearing" is required under the terms of the Constitution and it is pointless to claim that overlapping hearings will take place. The Justice Committee acts as the constitutional sentry through its power to determine the validity of the complaints' form and substance; the judicious exercise of this power is enough to avoid the feared "overlapping hearings." Any subsequent complaint filed while an impeachment proceeding, based on a valid impeachment complaint, is in progress, or within a year from the declaration of the validity of an impeachment complaint's form and substance, can only be **dismissed for insufficiency of substance as the consideration of its substance is barred by the one-year bar rule.**

It is in the same light that I find it difficult to fully appreciate the *ponencia's* analogy – *i.e.*, the referral of the impeachment complaint is like the burning of the candle wick that ignites, that is, initiates impeachment proceedings. Using the same analogy, lighting a candle unless done deliberately, *i.e.*, with the purpose of lighting the candle in mind, would be no better than a candle lit in the winds' way. The purposes of Section 3(5), Article XI of the Constitution must be considered in determining when the initiation phase of impeachment proceedings ends; otherwise, a manipulation of the process can intervene, putting the impeachment process to naught.

III. SUMMARY

To summarize:

a. The House of Representatives properly referred the impeachment complaints filed against the petitioner pursuant to the express terms of Section 3(2), Article XI of the Constitution. Accordingly, the referral is valid.

b. The proceedings were undertaken without the benefit of fully effective rules on impeachment as required by Section 3(8), Article XI of the Constitution, in relation to Article 2 of the Civil Code. These proceedings violated the petitioner's right to due process and, hence, are invalid.

c. In light of the Rules of Procedure in Impeachment Proceedings of the Fifteenth Congress, promulgated on September 2, 2010 and which became effective on September 17, 2010, no legal stumbling block now exists to prevent the from taking cognizance of the referred complaints and from undertaking its constitutional role under Section 3, Article XI of the Constitution.

d. The initiation phase of impeachment proceedings starts with the filing of the verified impeachment complaint by any Member of the House of Representatives or by any citizen upon resolution of an endorsement by any member of the House of Representatives. The initiation phase ends when the Justice Committee determines and the House of Representatives approves the sufficiency of the impeachment complaint in form and substance.

e. The finding of the validity of the impeachment complaint in form and substance completes the initiation phase of the impeachment proceedings and bars the filing of another impeachment complaint for a period of one year therefrom.

f. Any question posed by the filing of separate complaints by two separate parties in the present case is a matter for the Justice Committee and, ultimately, for the House of Representatives, to resolve under the terms of the Constitution and its Rules on Impeachment. In light of the invalidity of the

proceedings of the Justice Committee, there is no concrete action that this Court can act upon; the matter, at this point, is not yet ripe for adjudication.

On the basis of the foregoing, I vote to **GRANT** the petition.

SECOND DIVISION

[A.M. No. 09-7-284-RTC. February 16, 2011]

RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT - BRANCH 56, MANDAUE CITY, CEBU.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; SHOULD REQUEST FOR AN EXTENSION OF THE REGLEMENTARY PERIOD WITHIN WHICH TO DECIDE THEIR CASES IF THEY THINK THEY CANNOT COMPLY WITH THEIR JUDICIAL DUTY.— The Court knew the heavy caseloads heaped on the shoulders of every trial judge. But such cannot excuse him from doing his mandated duty to resolve cases with diligence and dispatch. Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they cannot comply with their judicial duty. This, Judge Vestil failed to do. Corollarily, a heavy caseload may excuse a judge's failure to decide cases within the reglementary period but not their failure to request an extension of time within which to decide the case on time. Hence, all that respondent judge needs to do is request for an extension of time over which the Court has, almost customarily, been considerate. Moreover, as correctly pointed out by the OCA, it is not enough that he pens his decision; it is imperative

to promulgate the same within the mandated period. The lack of staff that will prepare and type the decision is equally inexcusable to justify the delay in the promulgation of the cases.

2. ID.; ID.; FAILURE TO RESOLVE CASES SUBMITTED FOR DECISION WITHIN THE PERIOD FIXED BY LAW CONSTITUTES A SERIOUS VIOLATION OF THE CONSTITUTION.— We cannot overemphasize the Court's policy on prompt resolution of disputes. Justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Section 16, Article III of the Constitution.

3. ID.; ID.; MUST PERFORM THEIR OFFICIAL DUTIES WITH UTMOST DILIGENCE IF PUBLIC CONFIDENCE IN THE JUDICIARY IS TO BE PRESERVED.— The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.

4. ID.; ID.; RESPONSIBLE FOR THE PROPER AND EFFICIENT COURT MANAGEMENT.— [T]he proper and efficient court management is the responsibility of the judge, and he is the one directly responsible for the proper discharge of his official functions. What we emphasized before bears repeating: "It is the *duty of a judge to take note of the cases submitted for his decision or resolution and to see to it that the same are decided within the 90-day period fixed by law*, and failure to resolve a case within the required period constitutes gross inefficiency." "A judge *ought to know* the cases submitted to him for decision or resolution and *is expected to keep his own record of cases so that he may act on them promptly*." "The public trust character of his office imposes upon him the highest degree of responsibility and efficiency." Accordingly, it is incumbent upon him to devise an efficient recording and filing system in his court, so that no disorderliness can affect the flow of cases and their speedy disposition.

5. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER; CLASSIFIED AS A LESS SERIOUS CHARGE.— Failure to render decisions and orders within the mandated period constitutes a violation of Rule 3.05, Canon 3, of the Code of Judicial Conduct, which then makes Judge Vestil liable administratively. Section 9, Rule 140 of the Revised Rules of Court classifies undue delay in rendering a decision or order as a less serious charge punishable under Section 11 (B) of the same Rule.

D E C I S I O N

PERALTA, *J.*:

This administrative matter stemmed from the Report dated July 6, 2009 on the judicial audit and physical inventory of cases conducted by the Audit Team of the Office of the Court Administrator (OCA) in March 2007 in the Regional Trial Court of Mandaue City, Branch 56, Cebu, in anticipation of the compulsory retirement of Judge Augustine A. Vestil (Judge Vestil), then presiding judge of the same court.

The report disclosed that during the audit, the trial court has: (1) a total caseload of 1,431 cases consisting of 555 civil cases and 876 criminal cases; (2) 15 cases submitted for decision, but were already beyond the reglementary period;[1] (3) two cases with pending incidents awaiting resolution, which were beyond the reglementary period;[2] and (4) 247 cases, which had remained dormant for a considerable length of time.

It was further reported that Branch 56 did not observe an organized record management. No system was being followed to facilitate the monitoring of the status of cases. The court records were found to be in disarray as: (1) court records of

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[1] Civil Cases Nos. MAN-2910, MAN-3084, MAN-4009, Land Registration Cases Nos. LRC-638, LRC (Fe Cortes Dabon, Petitioner), and Criminal Cases Nos. DU-3316, DU-5308, DU-7047, DU-7518, DU-7649, DU-9207, DU-9650, DU-11862, DU-12508 and DU-13453.

[2] Civil Case No. 3762 (Motion to Dismiss) and Criminal Case No. 10480 (Demurrer to Evidence)

terminated and archived cases were mixed with active cases; (2) copies of orders, pleadings and other documents were not chronologically attached to the case folders; (3) copies of the minutes of the hearings/proceedings were left unattached to the case folders and were merely kept in a separate file; and (4) loose copies of orders, pleadings and other documents were found merely inserted in the case folders.

Thus, on April 23, 2007, then Deputy Court Administrator Zenaida N. Elepaño issued a Memorandum, directing Judge Vestil to: (1) submit an explanation of his failure to: [a] decide 15 cases submitted for decision within the reglementary period, [b] resolve the incidents for resolution in two cases within the reglementary period, and [c] take further action on the 247 cases despite the lapse of a considerable length of time; (2) decide the 15 cases submitted for decision and resolve the incidents in two cases; and (3) take appropriate action on the 247 dormant cases within 45 days from notice.

Likewise, in the same Memorandum, Atty. Emeline Bullever-Cabahug (Atty. Cabahug), Clerk of Court of the same court, was directed to devise and adopt a records management system that will ensure the immediate and orderly filing of court records, and effectively facilitate the monitoring of the status of cases and supervise her staff members to ensure prompt delivery of their respective assignments.

On June 20, 2007, in compliance with the Court's directives, Judge Vestil, without explaining the reason for the delay, reported the subsequent actions taken in the cases referred to in the Memorandum dated April 23, 2007, to wit:

As to directive no. 2:

1. Civil Case No. MAN-2910 – *submitted for decision in May 2007 as the defendant's Formal Offer of Exhibits was filed on February 12, 2007 and the exhibits were admitted on March 19, 2007;*
2. Civil Case No. MAN-3084 – *still pending trial and hearing was reset to June 28, 2007;*

3. Civil Case No. MAN-4009 – *decided on February 20, 2007, or 17 days before the lapse of the reglementary period. But due to the absence of the typist-in-charge, the typing of the decision was left unfinished;*

4. LRC No. 638 – *decided on March 8, 2007;*

5. LRC (Fe Cortes Dabon, petitioner) – *decided on December 7, 2006;*

6. Criminal Case No. DU-3316 – *decided on September 4, 2006 and was promulgated on June 6, 2007;*

7. Criminal Case No. DU-5308 – *decided on September 21, 2004. Promulgated set on December 5, 2006. Reset to May 28, 2007. Reset to April 26, 2007 and reset to May 21, 2007. Pre-trial of other accused was still set on May 21, 2007;*

8. Criminal Case No. DU-7047 – *decided on April 13, 2007; promulgated on March 26, 2007;*

9. Criminal Case No. DU-7518 – *decided on April 7, 2006; promulgated on April 3, 2007;*

10. Criminal Case No. DU-7649 – *decided on February 9, 2007; promulgated on May 28, 2007;*

11. Criminal Case No. DU-9207 – *decided on August 1, 2006 and promulgated on April 18, 2007;*

12. Criminal Case No. DU-9650 – *submitted for decision on March 1, 2007;*

13. Criminal Case No. DU-11862 – *decided per judgment dated October 16, 2006; set for promulgation on March 1, 2007;*

14. Criminal Case No. DU-12508 – *originally set to be promulgated on December 6, 2006 but due to lack of judges, it was eventually promulgated only on May 11, 2007;*

15. Criminal Case No. DU-13453 – *promulgated on April 2007;*

16. Civil Case No. MAN-3762 (Motion to Dismiss) – *counsels were required to submit their respective memoranda with regard to the motion to dismiss only up to June 11, 2007, thus, not yet submitted for decision;*

17. Criminal Case No. DU-10480 (Demurrer to Evidence) – *per order dated May 25, 2007, demurrer to evidence was denied. Reception of Accused evidence was set to August 28, 2007.*

With regard to the alleged dormant cases, Judge Vestil acted, although belatedly, on the two hundred forty-seven (247) cases before he retired on August 8, 2007. Some of the cases were ordered dismissed or archived; others were set for pre-marking of exhibits, deposition-taking, arraignment, pre-trial or hearing; and, some were ordered submitted for decision. Judge Vestil, however, offered no explanation why there was delay in the court's action in these cases.

For her part, Atty. Cabahug reported that:

(1) they have already conducted an inventory of court records in the storage room to properly give space for cases which are archived, disposed or decided cases;

(2) they made a list in separate logbooks - of the cases: (a) forwarded to the Supreme Court, and the Court of Appeals; (b) those placed in the *bodega*; (c) transmitted to the Office of the Clerk of Court; (d) newly filed and transferred from other courts; and (e) already disposed of, decided or archived;

(3) they already gave instructions to the court clerks to note in the Semi Annual Inventory Report the last action of the court in all the cases assigned to them;

(4) issued a memorandum to her staff members to seek permission and enter in the logbook the time whenever they go out of the office during office hours;

(5) and suggested to have a staff meeting every Monday of the month to monitor the concerns of their staff.

In a Resolution dated March 26, 2008, the Court granted the request of Judge Vestil for the release of his retirement benefits, provided the amount of One Hundred Thousand Pesos (₱100,000.00) shall be retained/withheld therefrom to answer for whatever adverse decision the Court may impose on him in relation to the instant case.

The audit team maintained, however, that except for Civil Case No. MAN-3084 and Criminal Cases Nos. DU-9650 and DU-11862 which were inadvertently included as submitted for decision but were in fact already decided or still pending trial, all other cases reported in the audit report suffered undue delay in its disposition. While, Judge Vestil claimed that certain cases were decided within the reglementary period, he, however, also admitted that while he was able to prepare the decisions, the same remained unpromulgated within the reglementary period. With regard to the 247 dormant cases, while he immediately acted upon its resolution, he however, offered no explanation for the delay in the resolution thereof.

On August 8, 2007, Judge Vestil compulsorily retired from service.

Later, on July 6, 2009, the OCA, in its Report, found Judge Vestil guilty of undue delay in deciding cases and recommended that a fine of twenty thousand pesos (₱20,000.00) be deducted from the one hundred thousand pesos (₱100,000.00) previously withheld from his retirement benefits. However, in so far as Atty. Cabahug is concerned, the instant matter was recommended to be considered as closed and terminated.

On August 19, 2009, the Court resolved to consider the instant complaint CLOSED and TERMINATED in so far as Atty. Cabahug is concerned.

On October 12, 2009, Judge Vestil manifested that since his retirement in 2007, he had already undergone several medical examinations and presently his continuous medication costs at least ₱500.00 daily. Judge Vestil, thus, prays for the resolution of the instant complaint against him and the subsequent release of the ₱100,000.00 which was previously withheld from his retirement benefits upon his retirement.

We sustain the findings and recommendation of the OCA.

A review of the records would show the undisputed delay in the disposition of numerous cases assigned to Branch 56 which was then presided by Judge Vestil. There were at least

80 civil cases, some were filed as early as 1997, which are still pending as of March 2007. Furthermore, at least 100 criminal cases are still pending beyond the 90-day reglementary period.

In his defense, Judge Vestil sought refuge from the fact that Branch 56 was saddled with a heavy caseload. We are, however, unconvinced. The Court knew the heavy caseloads heaped on the shoulders of every trial judge. But such cannot excuse him from doing his mandated duty to resolve cases with diligence and dispatch. Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they cannot comply with their judicial duty. This, Judge Vestil failed to do. Corollarily, a heavy caseload may excuse a judge's failure to decide cases within the reglementary period but not their failure to request an extension of time within which to decide the case on time.[3] Hence, all that respondent judge needs to do is request for an extension of time over which the Court has, almost customarily, been considerate.

Moreover, as correctly pointed out by the OCA, it is not enough that he pens his decision; it is imperative to promulgate the same within the mandated period. The lack of staff that will prepare and type the decision is equally inexcusable to justify the delay in the promulgation of the cases.

We cannot overemphasize the Court's policy on prompt resolution of disputes. Justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Section 16,[4] Article III of the Constitution.

The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered,

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[3] *Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31, Tagum City*, A.M. No. 04-1-56-RTC, February 17, 2005, 451 SCRA 605, 610.

[4] Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.[5]

Furthermore, the proper and efficient court management is the responsibility of the judge, and he is the one directly responsible for the proper discharge of his official functions.[6] What we emphasized before bears repeating: "It is the *duty of a judge to take note of the cases submitted for his decision or resolution and to see to it that the same are decided within the 90-day period fixed by law*, and failure to resolve a case within the required period constitutes gross inefficiency." "A judge *ought to know* the cases submitted to him for decision or resolution and *is expected to keep his own record of cases so that he may act on them promptly*." "The public trust character of his office imposes upon him the highest degree of responsibility and efficiency."[7] Accordingly, it is incumbent upon him to devise an efficient recording and filing system in his court, so that no disorderliness can affect the flow of cases and their speedy disposition.

Failure to render decisions and orders within the mandated period constitutes a violation of Rule 3.05,[8] Canon 3, of the

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[5] *Petallar v. Pullos*, A.M. No. MTJ-03-1484, January 15, 2004, 419 SCRA 434, 438.

[6] *Office of the Court Administrator v. Judge Reinato G. Quilala and Branch Clerk of Court Zenaida D. Reyes-Macabeo, MeTC, Branch 26, Manila*, A.M. No. MTJ-01-1341, February 15, 2001, 351 SCRA 597, 604.

[7] *Id*.

[8] CANON 3-A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE

x x x x x x x x x

Rule 3.05 - A judge shall dispose of the court's business promptly and decide cases within the required periods.

Code of Judicial Conduct, which then makes Judge Vestil liable administratively. Section 9, Rule 140 of the Revised Rules of Court classifies undue delay in rendering a decision or order as a less serious charge punishable under Section 11 (B) of the same Rule.

Here, considering that Judge Vestil had been previously administratively sanctioned for dereliction of duty,[9] the imposition of fine amounting to ₱40,000.00 is, thus, proper.

WHEREFORE, in view of all the foregoing, Judge Augustine A. Vestil is adjudged administratively liable for failure to decide cases within the reglementary period and is hereby *FINED* in the amount of ₱40,000.00, to be deducted from the ₱100,000.00 previously retained from his retirement benefits. The Fiscal Management Office is *DIRECTED* to immediately release the balance of Judge Vestil's retirement benefits after such fine has been deducted therefrom.

SO ORDERED.

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

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[9] Suspended for one (1) year and fined in the amount of ₱50,000.00 for dereliction of duty.

FIRST DIVISION

[A.M. No. RTJ-11-2272. February 16, 2011]
(Formerly A.M. OCA IPI No. 07-2559-RTJ)

MARCIANO ALCARAZ, *complainant, vs.* **JUDGE FATIMA GONZALES-ASDALA**, **REGIONAL TRIAL COURT, BRANCH 87, QUEZON CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; EVERY WRITTEN MOTION SHOULD GENERALLY BE SET FOR HEARING BY ITS PROPONENT.— The Rules of Court require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent. When a motion ought to be heard, the same rules prescribe that it must be served to the adverse party with a **notice of hearing**.

2. ID.; ID.; ID.; ID.; SHALL BE ADDRESSED TO ALL THE PARTIES CONCERNED AND SHALL SPECIFY THE TIME AND DATE OF THE HEARING.— The substance of a notice of hearing is, in turn, laid out in Section 5 of Rule 15 of the Rules of Court. The provision states: "Section 5. *Notice of hearing*. — The notice of hearing shall be **addressed to all the parties concerned**, and shall **specify the time and date of the hearing** which must not be later than ten (10) days after the filing of the motion." In the case at bench, it is clear that the notice of hearing in Emelita's motion for execution pending appeal did not comply with the foregoing standards. *First*. Rather than being addressed to the adverse party, the notice of hearing in Emelita's motion was directed to the Branch Clerk of Court. Such gaffe actually contradicts a basic purpose of the notice requirement—*i.e.*, to inform an adverse party of the date and time of the proposed hearing. *Second*. The notice of hearing did not specify a date and time of hearing. In fact, there was nothing in the notice that even suggests that the proponent intended to set a hearing with the trial court in the first place. As may be observed, the notice is merely an instruction for the clerk of court to submit

the motion "*for the consideration and approval*" of the trial court "*immediately upon receipt*" or "*at any time convenient*" with the said court. The notice of hearing in Emelita's motion does not, in reality, give any kind of notice.

3. ID.; ID.; ID.; A LITIGIOUS MOTION WITHOUT A VALID NOTICE OF HEARING IS A MERE SCRAP OF PAPER NOT DESERVING OF ANY JUDICIAL ACKNOWLEDGMENT.— Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. x x x An important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. After all, the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a "mere scrap of paper" not deserving of any judicial acknowledgment.

4. JUDICIAL ETHICS; JUDGES; MAY NOT BE HELD ADMINISTRATIVELY ACCOUNTABLE FOR NOT ACTING UPON MOTIONS WITH DEFECTIVE NOTICES OF HEARING.— [A] judge may not be held administratively accountable for not acting upon a "mere scrap of paper." To impose upon judges a positive duty to recognize and resolve motions with defective notices of hearing would encourage litigants to an unbridled disregard of a simple but necessary rule of a fair judicial proceeding. x x x Verily, We find the respondent free from any administrative liability in not taking action on Emelita's motion for execution pending appeal. The motion itself is not entitled to judicial cognizance—the reason for which is imputable to the fault of the movant herself and not to an apparent breach of the respondent of her duties as a member of the bench. Notably, the respondent did act on the matter of the execution of the MeTC judgment pending appeal when the issue was properly scheduled for hearing in the 8 February 2006 Urgent Motion.

D E C I S I O N

PEREZ, *J.*:

The present administrative matter is based on the following facts:

Prelude

Civil Case No. 32771, entitled "*Emelita L. Mariano represented by Marciano Alcaraz, plaintiff, v. Alfredo M. Dualan, defendant,*" is an ejectment case originally filed with the Metropolitan Trial Court (MeTC), Branch 35 of Quezon City.[1]

On 28 September 2004, the MeTC rendered judgment in the said case in favor of the plaintiff Emelita Mariano (Emelita).[2] The *fallo* reads:[3]

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter and all persons claiming rights under him to vacate the premises located at 340 Roosevelt Ave., Quezon City and to peacefully turn-over possession thereof to the plaintiff.
>
> Defendant is likewise ordered to pay the following to the plaintiff, to wit:
>
> 1. the amount of Seventy Six Thousand (Php 76,000.00) Pesos per month, reckoned from September 2000 until defendant and all persons claiming rights under him shall finally vacate the premises representing compensation for the reasonable use and occupation thereof;
> 2. the amount of Eight Thousand (Php 8,000.00) Pesos as and by way of attorney's fee; and
> 3. cost of suit.

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[1] *Rollo*, p. 7.

[2] *Id.*

[3] *Id* at 7-8.

On 23 November 2004, Emelita filed a Motion for Execution before the MeTC.[4]

On 3 January 2005, the losing defendant, Alfredo M. Dualan (Alfredo), filed his Notice of Appeal.[5]

In an Order dated 19 January 2005, the MeTC granted Emelita's Motion for Execution and, at the same time, gave due course to Alfredo's appeal.[6] On 17 February 2005, a writ of execution was issued in favor of Emelita.[7]

In the meantime or on 14 February 2005, however, Alfredo filed a Motion for Partial Reconsideration of the 19 January 2005 Order of the MeTC.[8] In it, Alfredo asked for the suspension of the execution of judgment in favor of Emelita, in view of the *supersedeas* bond the former posted on 25 January 2005.[9] Emelita, for her part, manifested through her counsel that she has no objection to the posting of the said *supersedeas* bond and is withdrawing her Motion for Execution.[10]

On 29 July 2005, the MeTC issued an Order granting Alfredo's Motion for Partial Reconsideration.[11] The Order provides:[12]

> x x x [t]aking into consideration the explanation put forth by defendant and with the manifestation of plaintiff's counsel that they are withdrawing their motion for execution and that they have no objection to the approval of the *supersedeas* bond, in the interest of substantial justice, the Motion for Partial Consideration is hereby GRANTED. Defendant's Notice of Appeal having been granted by this Court in

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[4] *Id.* at 8.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 15.

[10] *Id.*

[11] *Id.* at 8.

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

the Order dated January 19, 2005, let the entire records of this case be forwarded to the Regional Trial Court for further proceedings.

Consistent with the manifestation of plaintiff's counsel, the motion for execution dated 28 October 2004 is hereby considered withdrawn and the writ of execution dated 17 February 2005 issued by this court is hereby set aside. (Emphasis supplied)

On 2 August 2005, the records of the case were received, on appeal, by the Regional Trial Court (RTC) of Quezon City.[13] Accordingly, the case was re-docketed as Civil Case No. Q-05-56029.[14] On 9 August 2005, the case was raffled to Branch 87—then presided by the respondent, Judge Fatima Gonzales-Asdala.[15]

In the Sala of the Respondent Judge

On 12 November 2005, Emelita filed with the RTC a **Motion for Execution Pending Appeal**,[16] asking for the immediate execution of the MeTC judgment. She pointed out that Alfredo, during the pendency of the appeal, has not made any rental deposits with the RTC as required by Section 19 of Rule 70 of the Rules of Court.[17] This omission, Emelita argued, entitles her to an immediate execution of the MeTC ruling in her favor.[18]

About three months after, complainant Marciano Alcaraz—as representative of Emelita in the pending case—inquired with the RTC about the status of the motion for execution pending appeal.[19] There, the complainant was informed that the appeal was already deemed submitted for decision but the respondent

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[13] *Id.* at 9.

[14] *Id.*

[15] In *Edaño v. Gonzales-Asdala* (A.M. No. RTJ-06-1974, 26 July 2007, 528 SCRA 212), the respondent was dismissed from service due to gross insubordination and gross misconduct.

[16] *Rollo*, pp. 38-40.

[17] *Id.*

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

[19] *Id.* at 36.

had not taken any action, much less issued any order or resolution, regarding the motion for execution pending appeal.[20]

Distraught about the respondent's apparent inaction, Emelita filed with the RTC an **Urgent Motion to Order Defendant-Appellant to Deposit the Amount of Rent Due to Plaintiff-Appellee Under the Contract, and to Resolve Plaintiff's November 12, 2005 Motion for Execution Pending Appeal**[21] (Urgent Motion) on 8 February 2006. Unlike the previous motion, Emelita's Urgent Motion was actually scheduled for hearing on 17 February 2006.[22]

During the day the Urgent Motion was set for hearing, however, Alfredo failed to appear.[23] The respondent, thus, issued an order of even date requiring Alfredo to file his Comment on the Urgent Motion within ten (10) days from its receipt.[24] But still, no Comment was filed.[25]

On 25 April 2006, the respondent finally resolved the Urgent Motion and ordered the issuance of a writ of execution in favor of Emelita.[26]

The Charge and the Recommendation

On 8 May 2006, the complainant filed with the Office of the Ombudsman a Complaint-Affidavit[27] charging the respondent of neglect or refusal to act on matters pending before her *sala*, in violation of Section 3(f) of Republic Act No. 3019.[28] As chief basis of the charge, the complainant cited the respondent's

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[20] *Id.*

[21] *Id.* at 41-45.

[22] *Id.* at 10.

[23] *Id.* at 19.

[24] *Id.*

[25] *Id.* at 21.

[26] *Id.* at 20-21.

[27] *Id.* at 36-37.

[28] *Id.*

inexcusable failure to act on Emelita's motions immediately or, at the very least, within a reasonable time.

On 13 June 2006, the Ombudsman issued an Order[29] deferring action on the charge against the respondent, pursuant to the pronouncements of this Court in *Maceda v. Vasquez*[30] and *Judge Caoibes, Jr. v. Hon. Ombudsman*.[31] The complaint-affidavit was thus referred to the Office of the Court Administrator (OCA) for the conduct of an appropriate investigation as to the possible administrative liability of the respondent.

After receiving the respondent's comment[32] to the complaint-affidavit and evaluating the established facts, the OCA submitted its Report[33] to this Court on 23 March 2007. In essence, the OCA found the respondent administratively liable for unjust delay in the dispatch of her official duties and recommended the sanction of reprimand.[34]

Our Ruling

We disagree with the finding and recommendation of the OCA.

At first glance, it would seem that the respondent was guilty of undue delay, if not, absolute neglect in resolving Emelita's motion for execution pending appeal. The respondent had not taken any action on the said motion and, in fact, came to consider Emelita's plea for an execution pending appeal only after the latter had filed an Urgent Motion. From the filing of the motion for execution pending appeal, a period of more than five (5) months had to pass before the respondent finally directed a writ of execution to be issued. Under these circumstances, it

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[29] *Id.* at 28-31.

[30] G.R. No. 102781, 22 April 1993, 221 SCRA 464.

[31] 413 Phil. 717 (2001).

[32] *Rollo*, pp. 7-11.

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

[34] *Id.*

was understandable why the complainant cried out against the inaction.

A deeper look at the records of the case, however, reveals that no administrative fault may be attributed on the part of the respondent.

An inspection of Emelita's motion for execution pending appeal discloses a defective notice of hearing. Thus:[35]

NOTICE OF HEARING

The BRANCH CLERK OF COURT
RTC QUEZON CITY
BRANCH 87

Greetings:

Kindly submit the foregoing MOTION for the consideration and approval of the Honorable Court immediately upon receipt hereof, or at any time convenient to the Honorable Court.

Paranaque City for Quezon City
November 12, 2005

Atty. Nelson B. Bayot (Sgd.)
(Emphasis supplied).

The Rules of Court require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent.[36] When a motion ought to be heard, the same rules prescribe that it must be served to the adverse party with a **notice of hearing**.[37]

The substance of a notice of hearing is, in turn, laid out in Section 5 of Rule 15 of the Rules of Court. The provision states:[38]

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

[36] Section 4, Rule 15 of the Rules of Court.

[37] *Id.*

[38] Section 5, Rule 15 of the Rules of Court.

Section 5. *Notice of hearing*. — The notice of hearing shall be **addressed to all the parties concerned**, and shall **specify the time and date of the hearing** which must not be later than ten (10) days after the filing of the motion. (Emphasis supplied)

In the case at bench, it is clear that the notice of hearing in Emelita's motion for execution pending appeal did not comply with the foregoing standards.

First. Rather than being addressed to the adverse party, the notice of hearing in Emelita's motion was directed to the Branch Clerk of Court. Such gaffe actually contradicts a basic purpose of the notice requirement—*i.e.*, to inform an adverse party of the date and time of the proposed hearing.

Second. The notice of hearing did not specify a date and time of hearing. In fact, there was nothing in the notice that even suggests that the proponent intended to set a hearing with the trial court in the first place. As may be observed, the notice is merely an instruction for the clerk of court to submit the motion "*for the consideration and approval*" of the trial court "*immediately upon receipt*" or "*at any time convenient*" with the said court. The notice of hearing in Emelita's motion does not, in reality, give any kind of notice.

Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper.[39] In the classic formulation of *Manakil v. Revilla*,[40] such a motion was condemned as:

x x x [n]othing but a piece of paper filed with the court. It presented no question which the court could decide. **The court had no right to consider it, nor had the clerk any right to receive it without a compliance with Rule 10** [now Sections 4 and 5 of Rule 15]. **It was not, in fact, a motion.** It did not comply with the

[39] *Sebastian v. Cabal*, 143 Phil. 364, 366 (1970); *Manila Surety and Fidelity Co., Inc. v. Batu Construction Company*, 121 Phil. 1221, 1224 (1965); *Philippine National Bank v. Donasco*, 117 Phil. 429, 433 (1963); *Director of Lands v. Sanz*, 45 Phil. 117, 121 (1923); *The Roman Catholic Bishop of Lipa v. The Municipality of Unisan*, 44 Phil. 866, 871 (1920).

[40] 42 Phil. 81, 82 (1921).

rules of the court. It did not become a motion until x x x the petitioners herein fixed a time for hearing of said alleged motion. (Emphasis supplied).

An important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. After all, the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion[41] and to give a proper notice thereof on the other party.[42] It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a "mere scrap of paper" not deserving of any judicial acknowledgment.

Accordingly, a judge may not be held administratively accountable for not acting upon a "mere scrap of paper." To impose upon judges a positive duty to recognize and resolve motions with defective notices of hearing would encourage litigants to an unbridled disregard of a simple but necessary rule of a fair judicial proceeding. In *Hon. Cledera v. Hon. Sarmiento*,[43] this Court aptly observed:

The rules commanding the movant to serve of the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing "shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion" (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. **To deviate from the peremptory principle x x x would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon — all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be**

[41] Section 4 of Rule 15 of the Rules of Court.

[42] *Id. See* also *Magno v. Ortiz*, G.R. No. L-22670, 31 January 1969, 26 SCRA 692, 695; *Fulton Insurance Company v. Manila Railroad Co.*, 129 Phil. 195, 203-204 (1967).

[43] 148-A Phil. 468 (1971).

ignored. We had to draw a line somewhere and WE did when we promulgated on January 1, 1964 the Revised Rules of Court, wherein WE delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding.[44] (Emphasis supplied)

Verily, We find the respondent free from any administrative liability in not taking action on Emelita's motion for execution pending appeal. The motion itself is not entitled to judicial cognizance—the reason for which is imputable to the fault of the movant herself and not to an apparent breach of the respondent of her duties as a member of the bench. Notably, the respondent did act on the matter of the execution of the MeTC judgment pending appeal when the issue was properly scheduled for hearing in the 8 February 2006 Urgent Motion.

WHEREFORE, the complaint dated 8 May 2006 against the respondent, as then presiding judge of Regional Trial Court, Branch 87 of Quezon City, is hereby *DISMISSED*.

SO ORDERED.

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

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[44] *Id.* at 491.

SECOND DIVISION

[G.R. No. 166495. February 16, 2011]

ROQUE C. FACURA and EDUARDO F. TUASON, *petitioners, vs.* **COURT OF APPEALS, RODOLFO S. DE JESUS and EDELWINA DG. PARUNGAO,** *respondents.*

[G.R. No. 184129. February 16, 2011]

RODOLFO S. DE JESUS, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, EDUARDO F. TUASON, LOCAL WATER UTILITIES ADMINISTRATION (LWUA), represented by its new Administrator Orlando C. Hondrade,** *respondents.*

[G.R. No. 184263. February 16, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **EDELWINA DG. PARUNGAO, and the HONORABLE COURT OF APPEALS (Former 7th Division),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN; AN APPEAL SHALL NOT STOP AN OMBUDSMAN DECISION FROM BEING EXECUTORY.— Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order *(A.O.)* No. 17, is categorical in providing that an appeal shall not stop an Ombudsman decision from being executory. This rule applies to the appealable decisions of the Ombudsman, namely, those where the penalty imposed is other than public censure or reprimand, or a penalty of suspension of more than one month, or a fine equivalent to more than one month's salary. Hence, the dismissal of De Jesus and Parungao from the government service is immediately executory pending appeal.

2. ID.; ID.; ID.; ID.; ID.; WHERE THE PENALTY IS REMOVAL AND THE RESPONDENT WINS HIS APPEAL, HE SHALL BE CONSIDERED AS HAVING BEEN UNDER PREVENTIVE SUSPENSION; EFFECT.— Section 7 is also clear in providing that in case the penalty is removal and the respondent wins his 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 removal. x x x [T]here is no such thing as a vested interest in an office, or an absolute right to hold office, except constitutional offices with special provisions on salary and tenure. The Rules of Procedure of the Ombudsman being procedural, no vested right of De Jesus and Parungao would be violated as they would be considered under preventive suspension, and entitled to the salary and emoluments they did not receive in the event that they would win their appeal.

3. ID.; ID.; ID.; ID.; ID.; THE ISSUANCE OF A PRELIMINARY MANDATORY INJUNCTION STAYING THE PENALTY OF DISMISSAL IMPOSED BY THE OMBUDSMAN IN CASE AT BAR IS AN ENCROACHMENT ON THE RULE-MAKING POWERS OF THE OMBUDSMAN.— The CA, even on terms it may deem just, has no discretion to stay a decision of the Ombudsman, as such procedural matter is governed specifically by the Rules of Procedure of the Office of the Ombudsman. The CA's issuance of a preliminary mandatory injunction, staying the penalty of dismissal imposed by the Ombudsman in this administrative case, is thus an encroachment on the rule-making powers of the Ombudsman under Section 13 (8), Article XI of the Constitution, and Sections 18 and 27 of R.A. No. 6770, which grants the Office of the Ombudsman the authority to promulgate its own rules of procedure. The issuance of an injunctive writ renders nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; TWO MAIN RULES.— The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court x x x. The principle of *res judicata* lays down two main rules: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the

litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. The first rule which corresponds to paragraph (b) of Section 47 x x x, is referred to as "bar by former judgment"; while the second rule, which is embodied in paragraph (c), is known as "conclusiveness of judgment."

5. ID.; ID.; ID.; ID.; PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT; BARS THE RELITIGATION OF PARTICULAR FACTS OR ISSUES IN ANOTHER LITIGATION BETWEEN THE SAME PARTIES ON A DIFFERENT CLAIM OR CAUSE OF ACTION.— Under the principle of conclusiveness of judgment, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

6. ID.; ID.; ID.; ID.; APPLIES TO ADMINISTRATIVE CASES; CASE AT BAR.— Although involving different causes of action, this administrative case and the proceeding for probable cause are grounded on the same set of facts, involve the same issue of falsification of official documents, and require the same quantum of evidence – substantial evidence, as was similarly found in *Borlongan*, and correctly relied upon by De Jesus. It was ruled in *De Jesus* that there was no reasonable ground to believe that the requisite criminal intent or *mens rea* was present. Although the presence of *mens rea* is indeed unnecessary for a finding of guilt in an administrative case for falsification of official documents, it was expressly found by this Court in *De Jesus* that there was no absolutely false narration of facts in the two sets of appointment papers. x x x Hence,

the finding that nothing in the two sets of appointment papers constitutes an absolutely false narration of facts is binding on this case, but only insofar as the issue of falsification of public documents is concerned, and not on the other issues involved herein, namely, the other acts of De Jesus and Parungao which may amount to dishonesty, gross neglect of duty, grave misconduct, being notoriously undesirable, and conduct prejudicial to the best interest of the service, as charged in the complaint. Contrary to Tuason and LWUA's contentions, the factual finding of this Court in *De Jesus* as to the absence of falsification is based on the same evidence as in this administrative case. There are, however, other evidence and admissions present in this case as cited by Tuason and LWUA which pertain to other issues and not to the issue of falsification. Meanwhile the doctrine in *Montemayor v. Bundalian* that *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers, has been abandoned in subsequent cases which have since applied the principle of *res judicata* to administrative cases. Hence, *res judicata* can likewise be made applicable to the case at bench. Thus, given all the foregoing, the factual finding in *De Jesus* that there was no false statement of facts in both sets of appointment papers, is binding in this case.

7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE EXISTENCE OF MALICE OR CRIMINAL INTENT IS NOT A MANDATORY REQUIREMENT FOR A FINDING OF FALSIFICATION OF OFFICIAL DOCUMENTS AS AN ADMINISTRATIVE OFFENSE.— The existence of malice or criminal intent is not a mandatory requirement for a finding of falsification of official documents as an administrative offense.

8. ID.; ID.; ID.; FALSIFICATION OF OFFICIAL DOCUMENTS; NOT ESTABLISHED IN CASE AT BAR.— The Court x x x believes that in this case, at the time each set of appointment papers were made, De Jesus and Parungao believed they were making true statements. They prepared and signed the first set on the basis of the inter-office memoranda issued by the Board members appointing their respective confidential staff conformably with DBM approval. The second set was prepared to correct the retroactive appointments to conform to the CSC reportorial requirements, and the same was also approved by

Administrator Jamora. There was no reason for De Jesus and Parungao to believe such to be false. Irregular it is perhaps, not being in conformity with the CSC rules on accreditation, but not false. Therefore, this Court finds that no falsification of official documents occured.

9. ID.; ID.; ID.; MISREPRESENTATION OF AUTHORITY; NOT DULY PROVEN IN CASE AT BAR.— [P]rior to the CSC resolution recalling his reinstatement and declaring it illegal and void, De Jesus cannot be faulted for relying on the LWUA board resolution reinstating him as Deputy Administrator. Furthermore, the CSC resolution recalling his reinstatement and declaring it illegal and void was issued only after the appointment papers were prepared and signed. Thus, there was no misrepresentation of authority on the part of De Jesus when he signed the appointment papers because he did so after he was reinstated by the LWUA Board and before such reinstatement was declared illegal and void by the CSC. More important, the dismissal case against him was ultimately dismissed, thereby conclusively establishing his right to his title and position as Deputy Administrator of LWUA.

10. ID.; ID.; CIVIL SERVICE COMMISSION (CSC); THE DUTIES UNDER THE CSC ACCREDITATION PROGRAM IN CASE AT BAR LIES WITH THE HUMAN RESOURCES MANAGEMENT OFFICER.— As culled from the CSC letter x x x "the **Human Resources Management Officer** shall: x x x **Prepare and submit within the first fifteen calendar days of each ensuing month to the CSFO concerned two copies of the monthly ROPA together with certified true copies of appointments issued and finally acted upon**"; x x x Under LWUA Office Order No. 205.01, Administrator Jamora authorized De Jesus to sign appointment papers of appointees to vacant plantilla positions in LWUA which were previously approved by the Administrator or the Board of Trustees. Thus: "**In the exigency of the service and to facilitate/expedite administrative works, the Deputy Administrator, Administrative Services, is hereby authorized under delegated authority to act on and sign for and in behalf of the Administrator**, documents such as Office Orders, **Appointment Papers** x x x **which have been previously cleared/approved in writing by the Administrator, or by the Board of Trustees x x x.**" It is clear from the above that the responsibility to submit within the first fifteen (15) calendar

days of each ensuing month to the CSFO two copies of the monthly ROPA together with certified true copies of appointments acted upon lies with the Human Resources Management Officer *(HRMO)*, namely, Parungao. Even granting that De Jesus, as Deputy Administrator, has direct supervision over the Human Resources and Management Department, it is the HRMO who is expressly tasked with the duty to submit to the CSC the ROPA with true copies of appointments finally acted upon. Therefore, De Jesus, as Deputy Administrator, cannot be held liable for such failure to submit the first set of appointment papers with the ROPA as prescribed under the CSC accreditation rules.

11. ID.; ID.; ID.; APPOINTMENTS; THE DISCRETIONARY POWER TO TAKE FINAL ACTION ON APPOINTMENTS IN CASE AT BAR IS LODGED IN THE LOCAL WATER UTILITIES ADMINISTRATION ADMINISTRATOR.— The authority to exercise the delegated authority to take final action on appointment papers is lodged in the LWUA Administrator. The only duty of De Jesus is to sign appointment papers previously approved by the Administrator or Board. Thus, De Jesus' duty to sign appointment papers is only ministerial in nature, while the discretionary power to take final action on appointments remains lodged in the LWUA Administrator. De Jesus is, thus, bound only to sign appointment papers previously approved by the LWUA Administrator or Board, in accordance with LWUA Office Order No. 205.01, having no power to exercise any discretion on the matter. In exercising his ministerial duty of signing the appointment papers, De Jesus obeyed the patently lawful order of his superior. CSC Resolution No. 967701 does not charge De Jesus with the duty to know and comply with the rules of the Accreditation Program, that being the province of the LWUA Administrator and HRMO, as expressly provided for in the CSC letter. Therefore, so long as the appointment papers were approved by the Administrator or Board, the order to sign them is patently lawful. Hence, De Jesus cannot be faulted for obeying the patently lawful orders of his superior. Furthermore, there is no evidence on record to indicate that he acted in bad faith, as what he did was in conformity with the authority granted to him by LWUA Office Order No. 205.01.

12. ID.; ID.; ID.; HAS THE SOLE OFFICE TO APPROVE OR DISAPPROVE APPOINTMENTS TO THE GOVERNMENT.— The CA correctly stated that the approval or disapproval of appointment to the government is the sole office of the CSC, and not the DBM, as the very authority given to LWUA to take final action on its appointments is by virtue of CSC's accreditation program. Thus, the DBM approval to retroact its previously granted authority to hire the LWUA confidential staff is subject to an appointment validly issued in accordance with CSC rules. In other words, the DBM approval for retroactivity presupposed valid appointments. DBM's approval was mistakenly understood to pertain to both the back salaries and the validity of the staff's appointments when, in fact, DBM's approval related only to LWUA's authority to hire and not to the validity of the appointments of the hired personnel. Therefore, back salaries should only have been due upon the effectivity of valid appointments, which is within the authority of the CSC to approve, and not of the DBM.

13. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; NOT PRESENT IN CASE AT BAR.— Dishonesty refers to a person's "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." The absence of dishonesty on the part of De Jesus and Parungao is supported by their good faith in complying with the orders of Administrator Jamora. Their good faith is manifested in several circumstances. First, their brief to Administrator Jamora, stating that the issues on the retroactive appointments and overpayments were deemed settled with the reply letter of the DBM, demonstrates that they actually and honestly believed that the letter had in fact resolved the issue. Second, their memorandum to Administrator Jamora explained that the appointment papers with retroactive effectivity dates would be violative of the provisions of CSC Res. No. 967701 and CSC Omnibus Rules on Appointments Rule 7, Section 11. Third, an informal consultation was held with the CSC Field Director to seek advice regarding the retroactive appointments, wherein it was suggested that the appointments be re-issued effective December 12, 2001, hence, the issuance of the second set of appointment papers. Finally, such

retroactive appointments were published in the LWUA *Quarterly Reports on Accession.* The foregoing circumstances are apparently contrary to any intention to defraud or deceive.

14. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, DEFINED; PENALTY.— Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In this regard, the Court finds Parungao, as HRMO, guilty of simple neglect of duty. Given her duties under the CSC Accreditation Program, she should have been aware of the reportorial requirements, and of the fact that it is the CSC which has authority over appointments, and not the DBM. Had she given the proper attention to her responsibility as HRMO, the first set of appointment papers would never have been issued, thereby avoiding the present predicament altogether. When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs. Parungao failed to exercise such prudence, caution and attention. Simple neglect of duty is classified under the Uniform Rules on Administrative Cases in the Civil Service as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no circumstance to warrant the imposition of the maximum penalty of six months, and considering her demonstrated good faith, the Court finds the imposition of suspension without pay for one month and one day as justified.

APPEARANCES OF COUNSEL

Hilario Paul Ragunjan, Jr. for Eduardo F. Tuason and Roque C. Facura.

Soriano Velez and Partners Law Offices for Edelwina DG Parungao.

Ma. Elena Te for LWUA.

D E C I S I O N

MENDOZA, *J.*:

For resolution before this Court are the following:

G.R. No. 166495 is a petition for *certiorari* filed by Roque Facura *(Facura)* and Eduardo Tuason *(Tuason)* assailing the Resolutions[1] dated September 22, 2004 and January 4, 2005 of the Court of Appeals *(CA)* in CA-G.R. SP No. 84902, which granted the applications for preliminary mandatory injunction filed by Atty. Rodolfo De Jesus *(De Jesus)* and Atty. Edelwina Parungao *(Parungao)* by ordering their reinstatement to their former positions despite the standing order of dismissal issued by the Office of the Ombudsman *(Ombudsman)* against them.

G.R. No. 184129 is an appeal, by way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, filed by De Jesus, from the Decision[2] dated May 26, 2005 and Resolution[3] dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, which affirmed the Review and Recommendation[4] dated January 26, 2004 and Order[5] dated April 20, 2004 issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed De Jesus from the government service with prejudice to re-entry thereto.

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[1] *Rollo* (G.R. 166495), pp. 235-237, 307-314. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[2] *Rollo* (G.R. 184129), pp. 73-99. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[3] *Id.* at 101-105. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[4] *Id.* at 252-267. Penned by Special Prosecution Officer Roberto T. Agagon, approval recommended by Assistant Ombudsman Pelagio G. Apostol, and approved by Hon. Victor C. Fernandez.

[5] *Id.* at 296-311. Penned by Special Prosecution Officer Roberto T. Agagon, approval recommended by Assistant Ombudsman Pelagio G. Apostol, and approved by Deputy Ombudsman Victor C. Fernandez.

G.R. 184263 is another appeal, by way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, filed by the Ombudsman, from the Decision dated May 26, 2005 and Resolution dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, for ordering the reinstatement of Parungao as Manager of the Human Resources Management Department *(HRMD)* of the Local Water Utilities Administration *(LWUA)*, thereby modifying the Review and Recommendation[6] dated January 26, 2004 and Order[7] dated April 20, 2004, issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed Parungao from the government service with prejudice to re-entry thereto.

These consolidated cases arose from a Joint Complaint-Affidavit filed with the Ombudsman by Facura and Tuason against De Jesus and Parungao for violation of Republic Act *(R.A.)* No. 3019 *(the Anti-Graft and Corrupt Practices Act)*, dishonesty, gross neglect of duty, grave misconduct, falsification of official documents, being notoriously undesirable, and conduct prejudicial to the best interest of the service.

The Facts

The LWUA is a government-owned and controlled corporation chartered under Presidential Decree *(P.D)* No. 198, as amended. De Jesus was the Deputy Administrator for Administrative Services of LWUA, while Parungao was its HRMD Manager for Administrative Services.

De Jesus was dismissed from the service per LWUA Board Resolution No. 061[8] dated March 28, 2001. Through Board Resolution No. 069 dated April 17, 2001, the Board denied his motion for reconsideration and prohibited De Jesus from acting on any matter as head of Administrative Services. On April 18, 2001, De Jesus appealed to the Civil Service Commission *(CSC)* to nullify Board Resolution Nos. 061 and 069.

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[6] *Id.* at 252-267.

[7] *Id.* at 296-311.

[8] *Id.* at 449-452.

On August 20, 2001, pending resolution of his petition with the CSC, De Jesus filed a petition for reinstatement with a newly-reconstituted LWUA Board, which granted it on September 4, 2001 through Board Resolution No. 172.[9] De Jesus then withdrew his petition with the CSC on September 5, 2001.

Under the CSC Accreditation Program, particularly under CSC Resolution No. 967701[10] dated December 3, 1996, LWUA has been granted the authority to take final action on appointment papers effective January 1, 1997. Under LWUA Officer Order No. 205.01[11] dated September 25, 2001, LWUA Administrator Lorenzo Jamora *(Administrator Jamora)* granted De Jesus the authority to sign/approve and issue appointment papers of appointees to vacant plantilla positions in LWUA which have been previously cleared or approved in writing by the Administrator or the Board of Trustees.

Prior to the grant of authority to De Jesus to sign appointment papers, in a letter[12] dated August 27, 2001 signed by Administrator Jamora, LWUA requested the Department of Budget and Management *(DBM)* for authority to hire confidential staff for the LWUA Board of Trustees. The request was to seek exemption for LWUA from Administrative Order No. 5 which prohibited the hiring of new personnel in order to generate savings.

While awaiting the reply of DBM on his request, Jamora, in an inter-office memorandum[13] dated October 23, 2001, directed the Office of Administrative Services *(OAS),* headed by De Jesus, and the Investment and Financial Services, to process the payment of the salaries and allowances of his two (2) newly appointed confidential staff who reported to him effective October 10, 2001. Upon receipt of the said inter-office memorandum,

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[9] *Id.* at 407-411.

[10] *Id.* at 204-206.

[11] *Id.* at 177.

[12] *Id.* at 168-169.

[13] *Id.* at 170.

the OAS forwarded it to the HRMD headed by Parungao for appropriate action.

On December 11, 2001, LWUA received a reply letter[14] from DBM granting the request to fill positions for the LWUA Board's confidential staff. On the same day, on the strength of said letter of approval, LWUA board members issued their respective inter-office memoranda[15] and letter[16] containing the retroactive appointments of their confidential staff, as follows: Board Chairman Francisco Dumpit appointed Michael M. Raval and Ma. Geraldine Rose D. Buenaflor effective August 20, 2001; Trustee Bayani Dato, Sr. appointed Albino G. Valenciano, Jr. effective August 20, 2001; and Trustee Solomon Badoy appointed Kristina Joy T. Badoy and Noelle Stephanie R. Badoy effective June 19, 2001. On December 18, 2001, Trustee Normando Toledo also issued an inter-office memorandum[17] appointing, effective August 20, 2001, Marc Anthony S. Verzosa and Ma. Lourdes M. Manaloto. These inter-office memoranda and letter directed De Jesus to prepare their appointment papers. They bore the written concurrence of Administrator Jamora as agency head and mandated appointing authority of LWUA employees under the LWUA charter. Upon his receipt of the aforesaid inter-office memoranda and letter, De Jesus forwarded them to the HRMD for the preparation and processing of the corresponding appointment papers.

As HRMD head, Parungao forwarded the said documents to the Personnel Division to have them transformed into formal appointment papers, otherwise known as CSC Standard Form No. 33. The encoded standard forms indicated the names and positions of the confidential staff and the dates of signing and issuance of the appointments, which were the retroactive effectivity dates appearing in the inter-office memoranda and letter issued by the Board member. The concerned HRMD

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[14] *Id.* at 171-172.

[15] *Id.* at 173-174.

[16] *Id.* at 176.

[17] *Id.* at 175.

staff and Parungao affixed their initials below the printed name of De Jesus who, in turn, signed the formal appointment papers as respresentative of the appointing authority. The nine (9) appointment papers[18] bore Serial Nos. 168207, 168210, 168213, 168214, 168215, 168216, 168217, 168287, and 168288.

In Office Order No. 286.01 dated December 13, 2001 and Office Order No. 001.02 dated December 20, 2001 issued by De Jesus and Parungao, it was stated therein that the following nine (9) personnel were appointed retroactively to the dates indicated below:

Ma. Geraldine Rose D. Buenaflor	-	August 20, 2001
Michael M. Raval	-	August 20, 2001
Albino G. Valenciano, Jr.	-	August 20, 2001
Noelle Stephanie R. Badoy	-	June 19, 2001
Kristina Joy T. Badoy	-	June 19, 2001
Jesusito R. Toren	-	October 15, 2001
Ma. Susan G. Facto	-	October 10, 2001
Ma. Lourdes M. Manaloto	-	August 20, 2001
Marc Anthony S. Versoza	-	August 20, 2001

On December 20, 2001, Administrator Jamora issued an inter-office memorandum[19] to the accounting department on the matter of payment of back salaries of the said confidential staff, stating therein that as approved by the DBM in its letter, the hiring of such personnel was authorized retroactive to their employment date, thus, ordering the immediate payment of their back salaries and other remunerations. On the same day, a LWUA disbursement voucher[20] was prepared and processed by the Accounting Department, and Administrator Jamora thereafter approved the release of a Land Bank check amounting to ₱624,570.00 as

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[18] *Id.* at 178-186.

[19] *Id.* at 187

[20] *Id.* at 193.

part of the cash advance amounting to ₱692,657.31, for the payment of the back salaries.

The appointments of the subject confidential staff were reflected in the Supplemental Quarterly Report on Accession for June and August 2001 and *Quarterly Report on Accession and Separation* for October to December 2001 which were submitted to the CSC on January 8, 2002.

On January 25, 2002, HRMD and OAS issued a Memorandum[21] for Administrator Jamora on the subject of the appointment papers of the nine (9) confidential staff of the Board. De Jesus and Parungao called his attention to the requirements under CSC Resolution No. 967701[22] of the submission to the CSC of two (2) copies of the Report on Personnel Actions *(ROPA)* within the first fifteen (15) days of the ensuing month together with the certified true copies of the appointments acted on, and appointments not submitted within the prescribed period would be made effective thirty (30) days prior to the date of submission to the CSC. It was explained that the appointment papers with retroactive effectivity dates violated the provisions of CSC Res. No. 967701 and Rule 7, Section 11 of the CSC Omnibus Rules on Appointments. For said reason, LWUA accreditation could be cancelled and the Administrator be held personally liable for the invalidated appointments. It was suggested instead that the appointments be re-issued effective December 12, 2001, the ROPA be dated January 15, 2002, and the earlier retroactive appointments be cancelled, as advised by a CSC Field Director in a previous informal consultation. It was also proposed that the salaries and benefits already paid be made on *quantum meruit* basis, based on actual services rendered as certified by the Board members.

Therefore, for the purpose of meeting the monitoring and reportorial requirements of the CSC in relation to the accreditation given to LWUA to take final action on its appointments, De

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[21] *Id.* at 485-487.

[22] *Id.* at 204-206.

Jesus and Parungao, with the prior approval of Administrator Jamora, re-issued the appointments of the Board's nine (9) confidential staff. The appointment papers[23] were now all dated December 12, 2001, with Serial Nos. 168292, 168293, 168294, 168295, 168297, 168298, 168299, 168301, and 168304 and were transmitted to the CSC.

On February 28, 2002, Administrator Jamora again wrote a letter[24] to the DBM clarifying whether its December 11, 2001 letter, approving the hiring of the confidential staff of the LWUA Board, had retroactive effect. It was explained that the said confidential staff had started rendering services as early as August 20, 2001, when the Board assumed office because their services were urgently needed by the trustees.

Meanwhile, the LWUA Accounting Department, in a Brief to the Legal Department dated March 2, 2002, sought its legal opinion on the subject of the first payment of salary of the confidential staff. The Legal Department replied that a letter had been sent to the DBM seeking clarification on whether the previous DBM approval retroacted to the actual service of the confidential staff.

Thereafter, the Internal Control Office *(ICO)* of LWUA issued a memorandum dated May 10, 2002, questioning the issuance of the retroactive appointment papers. It pointed out that since the appointment papers submitted to the CSC indicated December 12, 2001 as effective date, the appointment of the involved personnel to the government service should be considered effective only on said date, with their salaries and other compensation computed only from December 12, 2001. Thus, there was an overpayment made as follows:

Ma. Geraldine Rose D. Buenaflor	-	₱107,730.09
Michael M. Raval	-	₱111,303.16
Albino G. Valenciano, Jr.	-	₱107,730.09

[23] *Id.* at 195-203.

[24] *Id.* at 207.

Noelle Stephanie R. Badoy	-	₱157,210.34
Kristina Joy T. Badoy	-	₱163,130.69

It was further recommended that the Legal Department conduct an investigation to identify the person liable to refund to LWUA the overpayments made to the subject personnel and that the Accounting Department take appropriate actions to recover the overpayment.

On June 5, 2002, LWUA received DBM's reply letter[25] on June 5, 2002, informing Administrator Jamora that the previously granted authority on the hiring of the confidential staff to the LWUA Board may be implemented retroactive to the date of actual service rendered by the employees involved.

In a Brief to Administrator Jamora dated July 26, 2002, signed by De Jesus and initialed by Parungao, the issues raised by ICO in its Memorandum on the retroactive appointments of the concerned confidential staff and overpayments were deemed clarified with the reply letter of the DBM on the retroactive implementation of the authority granted to LWUA in the previous letter of approval.

Meanwhile, on November 20, 2001, in relation to the earlier appeal of De Jesus (which he withdrew upon his reinstatement by the newly reconstituted LWUA Board), the CSC issued Resolution No. 011811,[26] which remanded the case to LWUA for the conduct of an investigation regarding De Jesus' dismissal, to be finished within three (3) calendar months, failure of which would result in the dismissal of the case against De Jesus.

On August 15, 2002, the CSC issued Resolution No. 021090[27] ruling that CSC Resolution No. 011811 had not been rendered moot and academic by the reinstatement of De Jesus by the LWUA Board. It further declared the reinstatement as illegal, null and void. The Board was directed to recall the reinstatement

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[25] *Id.* at 208.

[26] *Id.* at 412-419.

[27] *Id.* at 420-423.

of De Jesus, and LWUA was ordered to continue the conduct of the investigation on De Jesus as earlier directed, within three (3) calendar months from receipt of the resolution. For failure of LWUA to conduct an investigation within the required period, CSC Resolution No. 030504[28] was issued dated May 5, 2003 considering the dismissal case closed and terminated.

Complaint of Facura and Tuason

On October 18, 2002, Facura and Tuason filed a Joint Affidavit-Complaint[29] before the Evaluation and Preliminary Investigation Bureau of the Ombudsman against De Jesus and Parungao charging them with: 1) violation of Section 3(e) of R.A. No. 3019; and 2) dishonesty, gross neglect of duty, grave misconduct, falsification of official documents, being notoriously undesirable, and conduct prejudicial to the best interest of the service, for the fabrication of fraudulent appointments of nine (9) coterminous employees of LWUA.

Facura and Tuason alleged that the retroactive appointment papers were fabricated and fraudulent as they were made to appear to have been signed/approved on the dates stated, and not on the date of their actual issuance. They further alleged that with malice and bad faith, De Jesus and Parungao willfully and feloniously conspired not to submit the fraudulent appointment papers to the CSC, and to submit instead the valid set of appointment papers bearing the December 12, 2001 issuance date.

They questioned the issuance of the fraudulent appointments in favor of the nine (9) confidential staff, to the prejudice of the government in the amount of ₱692,657.31, as these were used as basis for the payment of their back salaries. They also alleged that De Jesus' reinstatement was illegal and that he had lost authority to sign any LWUA documents effective upon the issuance of LWUA Board Resolution Nos. 061 and 069. Thus, the actions undertaken by him in signing the fraudulent

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[28] *Id.* at 244-251.

[29] *Id.* at 212-223.

appointments were all misrepresented and, therefore, unlawful. They further alleged that contrary to law, De Jesus continued to receive his salary and benefits as Deputy Administrator of LWUA despite having already been dismissed. They cited the string of criminal and administrative cases against De Jesus before the trial courts and the Ombudsman.

In their Joint Counter-Affidavit,[30] De Jesus and Parungao alleged that they were mere rank-and-file employees who had no knowledge of or participation in personnel matters; that their actions in issuing the two sets of appointments were all documented and above-board; that as subordinate employees, they had no discretion on the matter of the retroactive appointments of the nine confidential staff specifically requested by the Board members; and that the re-issuance of the second set of appointments effective December 12, 2001 was duly approved by Administrator Jamora. They denied any financial damage on the part of LWUA since the retroactive payment of salaries was justified under the DBM letter approving the hiring of personnel retroactive to the date of actual services rendered by them.

The Ruling of the Ombudsman

The complaint was originally referred to the Ombudsman's Preliminary Investigation and Administrative Adjudication Bureau – B, and assigned to Graft Investigation and Prosecution Officer I Vivian Magsino-Gonzales *(Pros. Magsino-Gonzales)*. After evaluating the documents on file, Pros. Magsino-Gonzales dispensed with the preliminary conference and preliminary investigation of the case. In her Decision dated September 30, 2003, she recommended the outright dismissal of the case, ratiocinating that the Ombudsman did not have the jurisdiction to resolve the issues of fraudulent appointments of the nine confidential staff and their alleged overpayment to the damage of LWUA and the government and to decide on the status of De Jesus as a dismissed employee which, in her view, belonged to the primary jurisdiction and technical expertise of the CSC.

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[30] *Id.* at 224-236.

Said recommendation was disapproved by the Ombudsman and the case was referred for review to Special Prosecution Officer Roberto Agagon *(Special Pros. Agagon)* of the Preliminary Investigation and Administrative Adjudication Bureau – A. Without conducting a preliminary conference or investigation, Special Pros. Agagon came up with the assailed Review and Recommendation finding De Jesus and Parungao guilty of grave misconduct, dishonesty, gross neglect of duty, and falsification, the dispositive portion of which reads:

> WHEREFORE, respondents Rodolfo S. De Jesus and Edelwina DG. Parungao are meted out the penalty of Dismissal from the service with prejudice to re-entry into the government service.

On March 24, 2004, Facura and Tuason filed their Motion for Reconsideration but the same was denied in the assailed Order dated April 20, 2004.

The Ombudsman found that during De Jesus' dismissal from the service at the LWUA, and despite the advice of the CSC to await the final resolution of his appeal, De Jesus illegally issued appointments to several coterminous employees in June and August 2001. The appointments were found to have been prepared and issued by De Jesus and Parungao after the former had been terminated from LWUA, therefore, without authority to sign/act on any official LWUA document/official matter, which fact he was fully aware of, thereby making the solemnity of the documents questionable. All said appointments were, thus, found to be fraudulent, illegal, and of no legal force and effect. Since these were also prepared and initialed by Parungao, a conspiracy to commit falsification through dishonesty was found to have been present.

It was also found that the DBM approved the LWUA request on retroactivity of payment of back salaries because not all facts attendant to the illegal appointments had been disclosed to said office. The deliberate concealment of the illegal appointment papers was dishonest. The attachment of the illegal appointments to the LWUA Disbursement Voucher for payment of back salaries, to the prejudice and damage of the government, was

also cited as another deliberate concealment and distortion with false narration of facts.

The Ombudsman also viewed the second set of appointment papers as to have been issued for no apparent reason and designed to legalize the illegal appointments issued in June and August 2001. Thus, dishonesty on the part of De Jesus was found to be present for acting against a series of orders issued by the CSC and for the falsification of the illegal appointment papers.

The Ruling of the Court of Appeals

Aggrieved, De Jesus and Parungao filed a petition for review with the CA on July 5, 2004 which was docketed as CA-G.R. SP No. 84902, praying, among others, for the issuance of a Temporary Restraining Order (TRO) and/or preliminary prohibitory injunction to enjoin the implementation of the order of dismissal against them. The CA, in its Resolution dated July 20, 2004, deferred action on the application for TRO and gave Facura and Tuason time to comment.

After the petition to the CA was filed, LWUA implemented the order of dismissal against De Jesus and Parungao. Administrator Jamora issued Office Order No. 151204 notifying De Jesus and Parungao of their dismissal from the LWUA effective at the close of office hours on July 23, 2004.

On August 12, 2004, the CA granted the application for TRO so as not to render the issues raised in the petition moot and academic. On August 24, 2004, Facura and Tuason filed their Manifestation with Extremely Urgent Motion for Dissolution of the issued TRO because the act to be enjoined, the implementation of the dismissal order, was *fait accompli*.

On September 22, 2004, the CA issued the assailed Resolution denying Facura and Tuason's motion to dissolve the TRO, and granting the issuance of a writ of preliminary mandatory injunction in favor of De Jesus and Parungao, which reads as follows:

WHEREFORE, the foregoing considered, the Motion to Dissolve TRO filed by respondents is hereby DENIED. Accordingly, let writ of preliminary mandatory injunction issue enjoining LWUA and the

Office of the Ombudsman from enforcing the assailed Order and are thereby directed to maintain and/or restore the status quo existing at the time of the filing of the present petition by reinstating petitioners to their former positions pending the resolution of this case upon the filing of petitioner's bond in the amount of ₱40,000.00 each, which will answer for whatever damages respondents may sustain in the event that the petition is not granted.

The CA found that the right to appeal from decisions of the Ombudsman imposing a penalty other than public censure or reprimand, or a penalty of suspension of more than one month or a fine equivalent to more than one month's salary, granted to parties by Section 27 of R.A. No. 6770 (the Ombudsman Act) should generally carry with it the stay of these decisions pending appeal citing *Lopez v. Court of Appeals*.[31] The right to a writ of preliminary mandatory injunction was deemed to be in order because De Jesus' and Parungao's right to be protected under R.A. No. 6770 was found to exist *prima facie*, and the acts sought to be enjoined are violative of such right.

On October 4, 2004, Facura, Tuason and LWUA moved for the reconsideration of the September 22, 2004 Resolution, which motion was opposed by De Jesus and Parungao. Their Motions for Reconsideration were denied by the CA on January 4, 2005, as follows:

WHEREFORE, the foregoing considered, the respondents' respective Motions for Reconsideration of the Resolution dated 22 September 2004 are hereby DENIED. Petitioner De Jesus' Most Urgent Motion to Deputize the Philippine National Police to Implement the Injunctive Writ dated 29 September 2004 is GRANTED and accordingly the said entity is hereby deputized to implement the injunctive relief issued by this Court.

Facura and Tuason then filed the present Petition for *Certiorari* with this Court questioning the above-mentioned Resolutions of the CA, docketed as G.R. No. 166495. Pending resolution of the said Petition, the CA rendered its decision in CA-G.R. SP No. 84902, dated May 26, 2005, the dispositive portion of which reads:

[31] 438 Phil. 351 (2002).

WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Review and Recommendation and Order are MODIFIED hereby ordering the reinstatement of petitioner Parungao as Manager of the Human Resource Management Department of LWUA with back pay and without loss of seniority. The dismissal of petitioner De Jesus from the government service with prejudice to re-entry thereto is AFFIRMED.

Facura, Tuazon and the Ombudsman filed their respective Motions for Partial Reconsideration, while De Jesus filed his Motion for Reconsideration. These were denied by the CA in its Resolution dated August 6, 2008.

The CA believed that at the time De Jesus signed the two sets of appointment papers, the CSC had not divested itself of jurisdiction and authority over his dismissal case. Thus, he misrepresented his authority to do so as his dismissal was still in effect and for resolution by the CSC. The CA agreed with De Jesus that it was his ministerial duty to comply with the request of the Board members. However, he failed to perform his ministerial duty, for if he had in fact done so, the second set of appointments would not have been issued as the first set of appointments with retroactive effectivity dates would have already been submitted to the CSC.

The CA further found the request for approval to the DBM to apply the earlier granted authority to hire retroactively as a disingenuous attempt to provide a semblance of legality to the intended retroactive appointments. It held that the approval or disapproval of appointment to the government was the sole office of the CSC, and not the DBM, as the LWUA authority to take final action on its appointments was by virtue of CSC's accreditation program. De Jesus' failure to submit the retroactive appointment papers as prescribed under the CSC accreditation was viewed by the CA as a concealment of such retroactivity and, thus, dishonesty. To its mind, the CSC was deliberately made unaware of what the DBM was doing, and vice versa.

Parungao was exonerated by the CA after having been found that she took steps to clarify the matter with the CSC, informed

her superiors about her misgivings and the legal effects of the retroactive appointments, and published such retroactive appointments in the LWUA *Quarterly Reports on Accession*, thus, demonstrating her good faith.

In its Resolution denying the motions for reconsideration filed by Facura, Tuazon and De Jesus, the CA ruled, among others, that the case of *De Jesus v. Sandiganbayan*[32] could not be used as basis to absolve administrative liability, as the present case was not limited solely to falsification and preparation of the two sets of appointment papers. The CA found that De Jesus failed to comply with CSC rules due to his failure to submit the first set of appointment papers to the CSC. Dishonesty was found present when De Jesus submitted the first set of appointment papers to the DBM and the second set to CSC to comply with reportorial requirements, ensuring that the DBM was unaware of what the CSC was doing and vice versa. The CSC resolutions dismissing the complaint against De Jesus were found to have no bearing as the dismissal case was already before the CSC for resolution when De Jesus affixed his signature. Thus, De Jesus had no authority to sign the appointment papers and by doing so, he defied the CSC directive recalling his reinstatement. Violation of CSC rules on appointment was found to be distinct from misrepresentation of authority to sign appointment papers.

Hence, the present Petitions for Review on *Certiorari* separately filed by De Jesus and the Ombudsman, docketed as G.R. Nos. 185129 and 184263, respectively.

THE ISSUES

The issues presented for resolution by Facura (now deceased) and Tuason in **G.R. No. 166495** are as follows:

a. Whether or not an appeal of the Ombudsman's decision in administrative cases carries with it the suspension of the imposed penalty;

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[32] G.R. Nos. 164166 & 164173-80, October 17, 2007, 536 SCRA 394.

b. Whether or not petitioners were heard before the issuance of the writ of preliminary mandatory injunction; and

c. Whether or not private respondents are entitled to the writ of preliminary mandatory injunction.

The assignment of errors presented by De Jesus in **G.R. No. 184129**, are as follows:

I

THE COURT OF APPEALS GROSSLY ERRED IN NOT APPLYING THE DOCTRINE OF CONCLUSIVENESS OF JUDGMENT AND/OR *RES JUDICATA* ARISING FROM SC DECISION DATED OCTOBER 17, 2007 IN G.R. NOS. 164166 & 164173-80 AND CSC RES. NOS. 03-0504, 07-0146 & 07-0633.

II

THE COURT OF APPEALS GROSSLY ERRED IN NOT FINDING PETITIONER TO HAVE ACTED IN GOOD FAITH WHEN HE OBEYED THE PATENTLY LAWFUL ORDERS OF HIS SUPERIORS.

III

THE COURT OF APPEALS GROSSLY ERRED IN STILL RELYING ON CSC RES. NO. 01-1811 AND RES. NO. 02-1090 AFTER HAVING BEEN RENDERED MOOT AND ACADEMIC BY CSC RES. NO. 03-0405.

IV

THE COURT OF APPEALS GROSSLY ERRED IN FINDING PETITIONER TO HAVE COMMITTED AN ACT OF DISHONESTY IN RELATION TO THE CSC ACCREDITATION PROGRAM.

V

PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN AND THE COURT OF APPEALS DO NOT HAVE JURISDICTION TO COLLATERALLY RULE AGAINST PETITIONER'S TITLE AS DEPUTY ADMINISTRATOR OF LWUA.

VI

THE COURT OF APPEALS GROSSLY ERRED IN FAILING TO APPRECIATE AS MITIGATING CIRCUMSTANCES THE EDUCATION AND LENGTH OF SERVICE OF PETITIONER IN THE IMPOSITION OF SUPREME PENALTY OF DISMISSAL.

VII

THE COURT OF APPEALS GROSSLY ERRED IN STILL FINDING PETITIONER GUILTY OF MISREPRESENTATION OF AUTHORITY AFTER EXONERATING ATTY. EDELWINA DG. PARUNGAO.

The issue presented for resolution by the Ombudsman in **G.R. No. 184263** is as follows:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT NO SUBSTANTIAL EVIDENCE EXISTS AGAINST RESPONDENT PARUNGAO FOR THE ADMINISTRATIVE OFFENSE OF DISHONESTY WHICH WARRANTS HER DISMISSAL FROM THE SERVICE.

THE RULING OF THE COURT

G.R. No. 166495

The issue of whether or not an appeal of the Ombudsman decision in an administrative case carries with it the immediate suspension of the imposed penalty has been laid to rest in the recent resolution of the case of *Ombudsman v. Samaniego,*[33] where this Court held that the decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ, to wit:

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman,[34] as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 7. *Finality and execution of decision.* – Where the respondent is absolved of the charge, and in case of conviction

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[33] G.R. No. 175573, October 5, 2010.

[34] Administrative Order No. 7, dated April 10, 1990.

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.

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 such officer. [Emphases supplied]

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*.[35] It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*,[36] we held:

The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not

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[35] *Buencamino v. CA*, G.R. No. 175895, April 12, 2007, 520 SCRA 797.

[36] G.R. No. 150274, August 4, 2006, 497 SCRA 626, 636-637.

> receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals*,[37] upheld the resolution of the CA denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the CA did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

> SEC. 12. Effect of appeal – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman.[38] Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989[39] also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or

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[37] G.R. No. 175895, April 12, 2007, 520 SCRA 797.

[38] See Section 3, Rule V, Rules of Procedure of the Office of the Ombudsman.

[39] Republic Act No. 6770.

modify its rules as the interest of justice may require. **For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.**

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12,[40] Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.[41] [Emphases supplied]

Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order *(A.O.)* No. 17, is categorical in providing that an appeal shall not stop an Ombudsman decision from being executory. This rule applies to the appealable decisions of the Ombudsman, namely, those where the penalty imposed is other than public censure or reprimand, or a penalty of suspension of more than one month, or a fine equivalent to more than one month's salary. Hence, the dismissal of De Jesus and Parungao from the government service is immediately executory pending appeal.

The aforementioned Section 7 is also clear in providing that in case the penalty is removal and the respondent wins his 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 removal. As explained above, there is no such thing as a vested interest in an office, or an

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[40] SEC. 12. *Effect of appeal*. – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed **unless the Court of Appeals shall direct otherwise upon such terms as it may deem just**. [Emphasis supplied]

[41] *Supra* note 36.

absolute right to hold office, except constitutional offices with special provisions on salary and tenure. The Rules of Procedure of the Ombudsman being procedural, no vested right of De Jesus and Parungao would be violated as they would be considered under preventive suspension, and entitled to the salary and emoluments they did not receive in the event that they would win their appeal.

The ratiocination above also clarifies the application of Rule 43 of the Rules of Court in relation to Section 7 of the Rules of Procedure of the Office of the Ombudsman. The CA, even on terms it may deem just, has no discretion to stay a decision of the Ombudsman, as such procedural matter is governed specifically by the Rules of Procedure of the Office of the Ombudsman.

The CA's issuance of a preliminary mandatory injunction, staying the penalty of dismissal imposed by the Ombudsman in this administrative case, is thus an encroachment on the rule-making powers of the Ombudsman under Section 13 (8), Article XI of the Constitution, and Sections 18 and 27 of R.A. No. 6770, which grants the Office of the Ombudsman the authority to promulgate its own rules of procedure. The issuance of an injunctive writ renders nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

The CA, however, cannot be blamed for so ruling because at that time the Court's rulings were not definite and, thus, nebulous. There were no clear-cut guidelines yet. Even the initial ruling in *Samaniego* on September 11, 2008, stated in effect that the mere filing by a respondent of an appeal sufficed to stay the execution of the joint decision against him. The *Samaniego* initial ruling merely followed that in the case of *Office of the Ombudsman v. Laja*,[42] where it was stated:

> [O]nly orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not

[42] G.R. No. 169241, May 2, 2006, 488 SCRA 574.

equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision**. It is only then that execution shall perforce issue as a matter of right. **The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal**. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory. [Emphasis in the original].

Having ruled that the decisions of the Ombudsman are immediately executory pending appeal, The Court finds it unncessary to determine whether or not Facura and Tuason were heard before the issuance of the writ of preliminary mandatory injunction.

G.R. Nos. 184129 & 184263

The Court now looks into the issue of whether De Jesus was rightfully dismissed from the government service, and whether Parungao was righfully exonerated by the CA.

Conclusiveness of Judgment

De Jesus contends that under the doctrine of conclusiveness of judgment and/or *res judicata*, the present case is bound by the decision of this Court in *De Jesus v. Sandiganbayan*.[43]

The original complaint filed with the Ombudsman by Facura and Tuason spawned two cases, an administrative proceeding docketed as OMB-C-A-0496-J, which is the subject of this present case, and a proceeding for the determination of probable cause for the filing of criminal charges docketed as OMB-C-C-02-0712-J.

As to the criminal charges, probable cause was found to be present by the Ombudsman, and nine (9) informations for

[43] *Supra* note 32.

falsification of public documents were separately filed against De Jesus and Parungao with the Sandiganbayan docketed as Criminal Case Nos. 27894-27902. After his Motion to Quash was denied, De Jesus filed a petition for *certiorari* with this Court docketed as G.R. Nos. 164166 & 164173-80, entitled *De Jesus v. Sandiganbayan*.[44] This petition was resolved on October 17, 2007 in favor of De Jesus with the finding that the evidence could not sustain a *prima facie* case. His Motion to Quash was granted for lack of probable cause to form a sufficient belief as to the guilt of the accused. The Court stated that there was no reasonable ground to believe that the requisite criminal intent or *mens rea* was present, finding that nothing in the two sets of appointment papers constituted an absolutely false narration of facts.

As a result, the criminal cases filed with the Sandiganbayan were consequently dismissed on March 14, 2008.[45] Copies of the decisions of this Court and the Sandiganbayan were submitted to the CA through a Manifestation with Most Urgent *Ex-Parte* Motion on April 24, 2008.

De Jesus cited the case of *Borlongan v. Buenaventura*[46] to support his argument that this administrative case should be bound by the decision in *De Jesus v. Sandiganbayan*.[47] In *Borlongan*, similar to the situation prevailing in this case, the complaint-affidavit filed with the Ombudsman also spawned two cases – a proceeding for the determination of probable cause for the filing of criminal charges, and an administrative case subject of the petition. In said case, this Court found that its factual findings regarding the proceeding for the determination of probable cause bound the disposition of the factual issues in the administrative case under the principle of conclusiveness of judgment, as both the probable cause proceeding and the administrative case require the same quantum of evidence, that

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[44] *Id.*

[45] *Rollo* (G.R. 184129), p. 406.

[46] G.R. No. 167234, February 27, 2006, 483 SCRA 405.

[47] *Supra* note 32.

is, substantial evidence. Furthermore, the factual backdrop in the proceeding for the determination of probable cause, which this Court declared as insufficient to hold respondents for trial, was the same set of facts which confronted this Court in the administrative case.

On the other hand, the Ombudsman, Tuason and LWUA raised the jurisprudential principle that the dismissal of a criminal case involving the same set of facts does not automatically result in the dismissal of the administrative charges due to the distinct and independent nature of one proceeding from the other. They further countered that the only issue resolved in *De Jesus* was the absence of *mens rea*, which was not a mandatory requirement for a finding of falsification of official documents as an administrative offense;[48] and although it was found that there was no absolutely false narration of facts in the two sets of appointment papers, the issue in this administrative case was not limited solely to falsification of official documents. It was further contended that the evidence and admissions in the administrative case were different from the evidence in the criminal case, thus, the findings in the criminal case could not bind the administrative case. Finally, they argued that the doctrine of *res judicata* would only apply to judicial or quasi-judicial proceedings and not to administrative matters.[49]

The Court agrees with De Jesus insofar as the finding regarding the falsification of official documents is concerned.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, as follows:

> Sec. 47. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x

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[48] *Ombudsman v. Torres*, G.R. No. 168309, January 29, 2008, 543 SCRA 46, 60.

[49] *Montemayor v. Bundalian*, 453 Phil. 158 (2003).

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which actually and necessarily included therein or necessary thereto.

The principle of *res judicata* lays down two main rules: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same.[50] The first rule which corresponds to paragraph (b) of Section 47 above, is referred to as "bar by former judgment"; while the second rule, which is embodied in paragraph (c), is known as "conclusiveness of judgment."[51]

As what is involved in this case is a proceeding for the determination of probable cause and an administrative case, necessarily involving different causes of action, the applicable principle is conclusiveness of judgment. The Court in *Calalang v. Register of Deeds of Quezon City*[52] explained such, to wit:

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[50] *Noceda v. Arbizo-Directo*, G.R. No. 178495, July 26, 2010.

[51] *Alamayri v. Pabale*, G.R. No. 151243, April 30, 2008, 553 SCRA 146.

[52] G.R. Nos. 76265 and 83280, March 11, 1994, 231 SCRA 88, 99-100.

The second concept - conclusiveness of judgment- states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.

Under the principle of conclusiveness of judgment, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[53]

Although involving different causes of action, this administrative case and the proceeding for probable cause are grounded on the same set of facts, involve the same issue of falsification of official documents, and require the same quantum of evidence[54] – substantial evidence, as was similarly found in *Borlongan*, and correctly relied upon by De Jesus.

It was ruled in *De Jesus* that there was no reasonable ground to believe that the requisite criminal intent or *mens rea* was present. Although the presence of *mens rea* is indeed unnecessary for a finding of guilt in an administrative case for falsification of official documents,[55] it was expressly found by this Court in *De Jesus* that there was no absolutely false narration of facts in the two sets of appointment papers. The pertinent portion is quoted hereunder as follows:

> Criminal intent must be shown in felonies committed by means of *dolo*, such as falsification. In this case, there is no reasonable ground to believe that the requisite criminal intent or *mens rea* was present. The Ombudsman assails the first set of documents with dates of appointment earlier than December 12, 2001. Clearly, the first set of CSC Form No. 33 was prepared earlier as shown by the serial numbers. The first set has serial numbers 168207, 168210, 168213, 168214, 168215, 168216, 168217, 168287 and 168288; while the second set has serial numbers 168292, 168293, 168294, 168295, 168297, 168298, 168299, 168301 and 168304. The Ombudsman also admits this fact. Indeed, petitioner

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[53] *Noceda v. Arbizo-Directo*, G.R. No. 178495, July 26, 2010.

[54] *Borlongan v. Buenaventura*, G.R. No. 167234, February 27, 2006, 483 SCRA 405, 415-416.

[55] *Supra* note 48.

admits having signed two sets of appointment papers but **nothing in said documents constitutes an absolutely false narration of facts**. The first set was prepared and signed on the basis of the inter-office memoranda issued by the members of the Board appointing their respective confidential staff conformably with the DBM approval. There was no untruthful statement made on said appointment papers as the concerned personnel were in fact appointed earlier than December 12, 2001. In fact, the DBM also clarified that the authority to hire confidential personnel may be implemented retroactive to the date of actual service of the employee concerned. In any case, Jamora authorized the issuance of the second set of appointment papers. Following the CSC Rules, the second set of appointment papers should mean that the first set was ineffective and that the appointing authority, in this case, the members of the Board, shall be liable for the salaries of the appointee whose appointment became ineffective. There was nothing willful or felonious in petitioner's act warranting his prosecution for falsification. The evidence is insufficient to sustain a *prima facie* case and it is evident that no probable cause exists to form a sufficient belief as to the petitioner's guilt.[56] [Emphasis supplied]

Hence, the finding that nothing in the two sets of appointment papers constitutes an absolutely false narration of facts is binding on this case, but only insofar as the issue of falsification of public documents is concerned, and not on the other issues involved herein, namely, the other acts of De Jesus and Parungao which may amount to dishonesty, gross neglect of duty, grave misconduct, being notoriously undesirable, and conduct prejudicial to the best interest of the service, as charged in the complaint.

Contrary to Tuason and LWUA's contentions, the factual finding of this Court in *De Jesus* as to the absence of falsification is based on the same evidence as in this administrative case. There are, however, other evidence and admissions present in this case as cited by Tuason and LWUA which pertain to other issues and not to the issue of falsification.

Meanwhile the doctrine in *Montemayor v. Bundalian*[57] that *res judicata* applies only to judicial or quasi-judicial proceedings,

[56] *Supra* note 32 at 405-406.

[57] 453 Phil. 158, 169 (2003).

and not to the exercise of administrative powers, has been abandoned in subsequent cases[58] which have since applied the principle of *res judicata* to administrative cases. Hence, *res judicata* can likewise be made applicable to the case at bench. Thus, given all the foregoing, the factual finding in *De Jesus* that there was no false statement of facts in both sets of appointment papers, is binding in this case.

Even granting that the principle of conclusiveness of judgment is inapplicable to the case at bench, this Court finds no cogent reason to deviate from the factual findings in *De Jesus* based on a careful review of the evidence on record. The existence of malice or criminal intent is not a mandatory requirement for a finding of falsification of official documents as an administrative offense. What is simply required is a showing that De Jesus and Parungao prepared and signed the appointment papers knowing fully well that they were false.[59]

The Court, however, believes that in this case, at the time each set of appointment papers were made, De Jesus and Parungao believed they were making true statements. They prepared and signed the first set on the basis of the inter-office memoranda issued by the Board members appointing their respective confidential staff conformably with DBM approval. The second set was prepared to correct the retroactive appointments to conform to the CSC reportorial requirements, and the same was also approved by Administrator Jamora. There was no reason for De Jesus and Parungao to believe such to be false. Irregular it is perhaps, not being in conformity with the CSC rules on accreditation, but not false. Therefore, this Court finds that no falsification of official documents occured.

Legality of Reinstatement and Authority to Sign

The CA held that, as evinced from CSC Resolution No. 011811, which ordered LWUA to conduct an investigation, the CSC

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[58] *Borlongan v. Buenaventura*, *supra* note 54; *Executive Judge Basilia v. Judge Becamon*, 487 Phil. 490 (2004); *Atty. De Vera v. Judge Layague*, 395 Phil. 253 (2000).

[59] *Supra* note 48.

had not divested itself of jurisdiction and authority over De Jesus' dismissal case at the time he issued and signed both sets of appointment papers. The CA ruled that in doing so, he defied the CSC directive recalling his reinstatement.

De Jesus argues that, his title is not open to indirect challenge and can only be assailed in a proceeding for *quo warranto*; and that absent any judicial declaration, he remained to be a *de jure* officer, and even if he were only a *de facto* officer, his acts were done under color of authority and, thus, valid and binding. De Jesus further argues that the pendency of his appeal to the CSC did not render his reinstatement illegal, as he had no choice but to rely on the regularity of the LWUA board resolution which reinstated him, and this reinstatement should have rendered superfluous the CSC resolution ordering investigation. He further contends that it was wrong for the CA to rely on the CSC resolutions which were interlocutory. Since CSC Resolution No. 030504 ultimately dismissed the case against him and in effect nullified his prior dismissal from LWUA, he should be considered as never having left his office. Said CSC resolution should have also rendered the previous CSC resolutions moot and academic.

De Jesus also cites CSC Resolution Nos. 07-0633 and 07-0146, which relate to other complaints filed against him, and which recognize the legality of his reinstatement and affirm CSC Resolution No. 030504 as *res judicata*. He argues that this case should be bound by the three aforementioned CSC resolutions under the principle of *res judicata*.

A brief review of the relevant facts is necessary to resolve the issue at hand. LWUA dismissed De Jesus on March 28, 2001. He appealed to the CSC on April 18, 2001. He was reinstated on September 4, 2001 and so withdrew his appeal with the CSC the next day. Notwithstanding, in connection with his appeal, the CSC issued Resolution No. 011811 on November 20, 2001 ordering LWUA to investigate. The two sets of appointment papers were signed by De Jesus in December 2001. It was only on August 15, 2002 that the CSC issued Resolution No. 021090, which recalled De Jesus' reinstatement

and declared it illegal and void. However, De Jesus title was conclusively established on May 5, 2003 by CSC Resolution No. 030504, which finally dismissed the case against him.

Thus, prior to the CSC resolution recalling his reinstatement and declaring it illegal and void, De Jesus cannot be faulted for relying on the LWUA board resolution reinstating him as Deputy Administrator. Furthermore, the CSC resolution recalling his reinstatement and declaring it illegal and void was issued only after the appointment papers were prepared and signed. Thus, there was no misrepresentation of authority on the part of De Jesus when he signed the appointment papers because he did so after he was reinstated by the LWUA Board and before such reinstatement was declared illegal and void by the CSC.

More important, the dismissal case against him was ultimately dismissed, thereby conclusively establishing his right to his title and position as Deputy Administrator of LWUA.

Duties under the CSC Accreditation Program

The CA also found that De Jesus failed to comply with the CSC rules under the Accreditation Program due to his failure to submit the first set of retroactive appointment papers to the CSC. Such failure was said to constitute a concealment of the retroactivity from the CSC and, thus, dishonesty on his part. Parungao, on the other hand, was reinstated by the CA after having been found that she took steps to clarify the matter with the CSC; that she informed her superiors about her misgivings and the legal effects of the retroactive appointments; and that she published such retroactive appointments in the LWUA *Quarterly Reports on Accession*, thus, demonstrating her good faith.

De Jesus argues that, as Deputy Administrator, it was not his responsibility to comply with the CSC rules under the Accreditation Program. He contends that the CA itself recognized this fact when it stated that it was the responsibility of the LWUA Administrator to know and implement the terms and conditions of accreditation. The CA even further stated that it was the Human Resources Management Officer who had

the responsibility of preparing and submitting the appointment papers with the ROPA.

On the other hand, Tuason and LWUA argue that under Executive Order *(E.O.)* No. 286, the Office of the Deputy Administrator has direct supervision over the HRMD, and so De Jesus should be held liable for failure to submit the first set of appointment papers in accordance with the CSC rules.

Under CSC Resolution No. 967701[60] granting LWUA authority to take final action on its appointments under the CSC Accreditation Program, the following was said to have been violated:

> 6. That for purposes of immediate monitoring and records keeping, the LWUA shall submit within the first fifteen calendar days of each ensuing month to the CSFO two copies of the monthly Report on Personnel Actions (ROPA) together with certified true copies of appointments acted upon;
>
> 7. That failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective;
>
> 8. That appointments issued within the month but not listed in the ROPA for the said month shall become ineffective 30 days from issuance;
>
> x x x x x x x x x

As culled from the CSC letter[61] dated November 11, 1996, addressed to then LWUA Admistrator De Vera, which accompanied CSC Resolution No. 967701, the following responsibilities under the CSC Accreditation Program were reiterated thus:

> The LWUA Administrator/appointing authority shall:
>
> - Take final action on all appointments that he issues/signs;
> - Exercise delegated authority to take final action on appointments following the terms and conditions stipulated

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[60] *Rollo* (G.R. No. 184129), pp. 469-471.

[61] *Id.* at 467-468.

in the Resolution and within the limits and restrictions of Civil Service Law, rules, policies and standards;

- Assume personal liability for the payment of salaries for actual services rendered by employees whose appointments have been invalidated by the CSNCRO.

On the other hand, the **Human Resources Management Officer** shall:

- Ensure that all procedures, requirements, and supporting papers to appointments specified in MC No. 38, s. 1997 and MC Nos. 11 and 12, s. 1996 have been complied with and found to be in order before the appointment is signed by the appointing authority;

x x x x x x x x x

- **Prepare and submit within the first fifteen calendar days of each ensuing month to the CSFO concerned two copies of the monthly ROPA together with certified true copies of appointments issued and finally acted upon; and**

x x x x x x x x x

[Emphases supplied]

Under LWUA Office Order No. 205.01,[62] Administrator Jamora authorized De Jesus to sign appointment papers of appointees to vacant plantilla positions in LWUA which were previously approved by the Administrator or the Board of Trustees. Thus:

In the exigency of the service and to facilitate/expedite administrative works, the Deputy Administrator, Administrative Services, is hereby authorized under delegated authority to act on and sign for and in behalf of the Administrator, documents such as Office Orders, **Appointment Papers**, Inter-Office Memoranda and other administrative documents including communications to CSC and/or DBM relating to filling up of vacant positions, either by promotion or recruitment, as well as transfer of personnel, **which have been previously cleared/approved in writing by the Administrator,**

[62] *Id.* at 177.

or by the Board of Trustees, as the case may be. Also delegated is the authority to act and sign for and in behalf of the Administrator, the Notice(s) of Salary Adjustment (NOSA) and Notice(s) of Salary Increment (NOSI). [Emphases supplied]

It is clear from the above that the responsibility to submit within the first fifteen (15) calendar days of each ensuing month to the CSFO two copies of the monthly ROPA together with certified true copies of appointments acted upon lies with the Human Resources Management Officer *(HRMO)*, namely, Parungao. Even granting that De Jesus, as Deputy Administrator, has direct supervision over the Human Resources and Management Department, it is the HRMO who is expressly tasked with the duty to submit to the CSC the ROPA with true copies of appointments finally acted upon. Therefore, De Jesus, as Deputy Administrator, cannot be held liable for such failure to submit the first set of appointment papers with the ROPA as prescribed under the CSC accreditation rules.

The authority to exercise the delegated authority to take final action on appointment papers is lodged in the LWUA Administrator. The only duty of De Jesus is to sign appointment papers previously approved by the Administrator or Board. Thus, De Jesus' duty to sign appointment papers is only ministerial in nature, while the discretionary power to take final action on appointments remains lodged in the LWUA Administrator. De Jesus is, thus, bound only to sign appointment papers previously approved by the LWUA Administrator or Board, in accordance with LWUA Office Order No. 205.01, having no power to exercise any discretion on the matter.

In exercising his ministerial duty of signing the appointment papers, De Jesus obeyed the patently lawful order of his superior. CSC Resolution No. 967701 does not charge De Jesus with the duty to know and comply with the rules of the Accreditation Program, that being the province of the LWUA Administrator and HRMO, as expressly provided for in the CSC letter. Therefore, so long as the appointment papers were approved by the Administrator or Board, the order to sign them is patently lawful. Hence, De Jesus cannot be faulted for obeying the

patently lawful orders of his superior. Furthermore, there is no evidence on record to indicate that he acted in bad faith, as what he did was in conformity with the authority granted to him by LWUA Office Order No. 205.01.

The same, however, cannot be said of Parungao. As HRMO, she was expressly charged with the duty to prepare and submit within the first fifteen calendar days of each ensuing month to the CSFO concerned two copies of the monthly ROPA together with certified true copies of appointments issued and finally acted upon. Thus, she must necessarily be aware that failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective, and that appointments issued within the month but not listed in the ROPA for the said month shall become ineffective 30 days from issuance. Knowing this, she should never have given her approval by initialing the first set of retroactive appointments as she should have known that they would be ineffective under the CSC accreditation rules.

No Dishonesty, Mere Confusion

With the finding that the request for approval of the DBM to apply the earlier granted authority retroactively was a disingenuous attempt to provide a semblance of legality to the intended retroactive appointments, the CA held that the approval or disapproval of appointment to the government was the sole office of the CSC, and not the DBM. Furthermore, dishonesty was found present when De Jesus submitted the first set of appointment papers to the DBM and the second set to the CSC, apparently to ensure that the DBM was unaware of what the CSC was doing and vice versa.

A careful perusal of the records will show that the request for approval to the DBM, characterized by the CA as an attempt to provide a semblance of legality, was the act of Administrator Jamora and not of De Jesus or Parungao. The request letter[63] to the DBM was signed by Jamora. Therefore, neither De Jesus nor Parungao can be held liable for the act. The Court also

[63] *Id.* at 207.

failed to find any evidence on record that De Jesus deliberately ensured that DBM was unaware of what the CSC was doing and vice versa. It has already been discussed that De Jesus' only duty was to sign the appointment papers in accordance with the LWUA office order granting him authority to do so. All responsibilities relating to the reportorial requirements pertain to Parungao as the HRMO.

Furthermore, the appointment papers provided to the DBM were referenced by Administrator Jamora in his request letter, and not by De Jesus or Parungao. The first set of appointment papers was never submitted to the CSC not because the retroactivity of the appointments was being concealed, but precisely because it was realized that such did not comply with the reportorial requirements. Given the foregoing, there could have been no dishonesty on the part of De Jesus and Parungao.

Instead, it appears that the root of the dilemma in the case at bench lies in confusion rather than dishonesty. This confusion pertains to the misunderstanding of the roles of the CSC and the DBM *vis-a-vis* the issuance of appointment papers. Such confusion can be gleaned from the brief to Administrator Jamora signed by De Jesus and initialed by Parungao, stating that the issues on the retroactive appointments and overpayments were deemed settled with the reply letter of the DBM on the retroactive implementation of the authority previously granted.

The CA correctly stated that the approval or disapproval of appointment to the government is the sole office of the CSC, and not the DBM, as the very authority given to LWUA to take final action on its appointments is by virtue of CSC's accreditation program.[64] Thus, the DBM approval to retroact its previously granted authority to hire the LWUA confidential staff is subject to an appointment validly issued in accordance with CSC rules. In other words, the DBM approval for retroactivity presupposed valid appointments. DBM's approval was mistakenly understood to pertain to both the back salaries and the validity of the staff's appointments when, in fact, DBM's

[64] *Id.* at 91.

approval related only to LWUA's authority to hire and not to the validity of the appointments of the hired personnel. Therefore, back salaries should only have been due upon the effectivity of valid appointments, which is within the authority of the CSC to approve, and not of the DBM.

Dishonesty refers to a person's "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[65] The absence of dishonesty on the part of De Jesus and Parungao is supported by their good faith in complying with the orders of Administrator Jamora. Their good faith is manifested in several circumstances. First, their brief to Administrator Jamora, stating that the issues on the retroactive appointments and overpayments were deemed settled with the reply letter of the DBM, demonstrates that they actually and honestly believed that the letter had in fact resolved the issue. Second, their memorandum[66] to Administrator Jamora explained that the appointment papers with retroactive effectivity dates would be violative of the provisions of CSC Res. No. 967701 and CSC Omnibus Rules on Appointments Rule 7, Section 11. Third, an informal consultation[67] was held with the CSC Field Director to seek advice regarding the retroactive appointments, wherein it was suggested that the appointments be re-issued effective December 12, 2001, hence, the issuance of the second set of appointment papers. Finally, such retroactive appointments were published in the LWUA *Quarterly Reports on Accession*. The foregoing circumstances are apparently contrary to any intention to defraud or deceive.

Parungao - Guilty
Of Simple Neglect of Duty

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[65] *Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine*, A.M. No. 2005-21-SC, September 28, 2010.

[66] *Rollo* (G.R. 184129), pp. 485-487.

[67] *Id.* at 486.

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[68] In this regard, the Court finds Parungao, as HRMO, guilty of simple neglect of duty. Given her duties under the CSC Accreditation Program, she should have been aware of the reportorial requirements, and of the fact that it is the CSC which has authority over appointments, and not the DBM. Had she given the proper attention to her responsibility as HRMO, the first set of appointment papers would never have been issued, thereby avoiding the present predicament altogether.

When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs.[69] Parungao failed to exercise such prudence, caution and attention.

Simple neglect of duty is classified under the Uniform Rules on Administrative Cases in the Civil Service as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no circumstance to warrant the imposition of the maximum penalty of six months, and considering her demonstrated good faith, the Court finds the imposition of suspension without pay for one month and one day as justified.

WHEREFORE,

(1) in **G.R. No. 166495**, the petition is *GRANTED*. The assailed September 22, 2004 and January 4, 2005 Resolutions of the Court of Appeals are hereby *REVERSED* and *SET ASIDE*. The writ of preliminary mandatory injunction issued in CA-G.R. SP No. 84902 is ordered *DISSOLVED*.

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[68] *Salumbides v. Ombudsman*, G.R. No. 180917, April 23, 2010.

[69] *Id.*

(2) in **G.R. No. 184129**, the petition is *GRANTED*, and in **G.R. No. 184263**, the petition is *PARTIALLY GRANTED*. The assailed May 26, 2005 Decision and August 6, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 84902, are hereby *REVERSED* and *SET ASIDE*, and a new one entered

a. ordering the reinstatement of Rodolfo S. De Jesus as Deputy Administrator of the LWUA with full back salaries and such other emoluments that he did not receive by reason of his removal; and

b. finding Human Resources Management Officer Edelwina DG. Parungao *GUILTY* of Simple Neglect of Duty and hereby imposing the penalty of suspension from office for one (1) month and one (1) day without pay.

SO ORDERED.

Carpio (Chairperson), Nachura, Leonardo de Castro, and *Abad, JJ.*, concur.

FIRST DIVISION

[G.R. No. 171328. February 16, 2011]

LYZAH SY FRANCO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 171335. February 16, 2011]

STEVE BESARIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO THE REVIEW AND REVISION OF ERRORS OF LAW.— "[A]s a rule, our jurisdiction in cases brought to us from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below." While this rule is not without exception, there are no exceptional circumstances in these cases that warrant a departure from the findings of facts of the trial court, as affirmed by the CA. Even after considering the merits, the petitions deserve outright denial.

2. CRIMINAL LAW; CONSPIRACY; MUST BE PROVEN ON THE SAME QUANTUM OF EVIDENCE AS THE FELONY SUBJECT OF THE AGREEMENT OF THE PARTIES.— There is conspiracy when two or more persons agree to commit a felony and decide to commit it. "Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. [It] may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators [prior to], during and after the commission of the felony to achieve a common design or purpose." x x x [P]etitioners' actions were in relation to the attainment of a common objective. They had vital roles in the nefarious scheme to sell a vehicle that they knew would never be delivered, but for which they obtained a substantial sum of money from Lourdes.

3. ID.; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— "The elements of the crime of estafa under x x x [Article 315, par. 2 (a) of the Revised Penal Code] are: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage."

4. ID.; ID.; ID.; DULY ESTABLISHED IN CASE AT BAR.— Petitioners presented themselves to Lourdes as persons possessing the authority and capacity to engage in the financing of used vehicles

in behalf of Final Access Marketing. This was a clear misrepresentation considering their previous knowledge not only of Erlinda's complaint but also of several others as regards the failure of Final Access Marketing to deliver the motor vehicles bought. Lourdes relied on their misrepresentations and parted with her money. Almost a week passed by, but petitioners and Rule did not deliver the said motor vehicle. They also did not fulfill their subsequent promise to provide a replacement or to refund her payment. When Lourdes visited the office of Final Access Marketing to demand the return of her money, it was already closed. She could not locate any of them except for Franco who denied any wrongdoing. Consequently, she suffered damage.

5. ID.; ID.; PENALTY.— Having committed the crime of estafa, the petitioners must suffer the proper penalties provided by law. The law imposes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount swindled exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed 20 years. To determine the minimum of the indeterminate penalty, *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be reduced by one degree, that is, to *prision correccional* in its minimum and medium periods. The minimum period of the indeterminate penalty shall be taken from the full range of the penalty of *prision correccional* in its minimum and medium periods, which is six (6) months and one (1) day to four (4) years and two (2) months. With the amount of the fraud at ₱80,000.00, there is ₱58,000.00 in excess of ₱22,000.00. Five years must therefore be added to the maximum period of the prescribed penalty ranging from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years. Thus, the maximum term of the penalty would range from eleven (11) years, eight (8) months and twenty-one (21) days to thirteen (13) years. This is in accord with our ruling in *People v. Temparada* x x x.

APPEARANCES OF COUNSEL

Egmedio J. Castillon, Jr. for Lyzah Sy Franco.
Puno & Associates Law Office for Steve Besario.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In the prosecution for the crime of estafa committed under Article 315, paragraph 2(a) of the Revised Penal Code, there must be evidence of false representation or false pretense on the part of the accused to prove reasonable doubt. In this case, the employee's act of soliciting a client despite previous knowledge of several complaints against his or her employer for failure to deliver the motor vehicle that was the subject of the agreement, is tantamount to misrepresentation.

Factual Antecedents

These petitions for review on *certiorari* impugn the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 27414 which affirmed with modifications the Decision[2] of the Regional Trial Court of Manila, Branch 52, in Criminal Case No. 99-173688, convicting petitioners Lyzah Sy Franco (Franco) and Steve Besario (Besario) of the crime of Estafa. The Information filed against petitioners and their co-accused, Antonio Rule, Jr. (Rule) and George Torres (Torres), contained the following accusatory allegations:

That on or about the first week of June 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud MA. LOURDES G. ANTONIO, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which they made to said Ma. Lourdes G. Antonio, to the effect that they are employees of FINAL ACCESS MARKETING, a business entity engaged in the sale and financing of used or repossessed cars, and as such could process and facilitate the sale of a Mazda car 323 bearing plate number PVB-999 worth ₱130,000.00 provided they be given the amount of ₱80,000.00 as

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[1] CA *rollo*, pp. 185-199; penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rodrigo V. Cosico and Danilo B. Pine.

[2] Records, pp. 360-373; penned by Judge Edgardo F. Sundiam.

down payment and by means of other deceits of similar import, induced and succeeded in inducing the said Ma. Lourdes G. Antonio to give and deliver as in fact she gave and delivered to herein accused the said amount of ₱80,000.00, and accused knowing fully well that their manifestations and representations were false and untrue and were made only to obtain the said amount of ₱80,000.00 which amount once in their possession, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert the said amount of ₱80,000.00 to their own personal use and benefit, to the damage and prejudice of said MA. LOURDES G. ANTONIO in the aforesaid amount of ₱80,000.00 in its equivalent amount to the Philippine Currency.

Contrary to law.[3]

During arraignment, petitioners entered separate pleas of "not guilty." Rule and Torres failed to appear and, to date, remain at large. After the termination of the pre-trial conference, trial ensued.

The Version of the Prosecution

Ma. Lourdes G. Antonio (Lourdes) testified that petitioners swindled her. She claimed that Franco was a friend of her niece and that she has known her for almost a year. In the first week of June 1998, Franco came to her house and offered to assist her in purchasing a used car. Franco introduced herself as Assistant Administrative Coordinator of Final Access Marketing which was engaged in the sale and financing of second-hand and repossessed vehicles. Franco gave her calling card after their conversation.

Lourdes was interested in the offer of Franco since she and her husband were actually looking for a used car for their taxicab operation. She therefore contacted Franco to take up her offer.

On June 26, 1998, Franco and Lourdes went to a showroom on Houston Street, San Juan, Metro Manila, where Lourdes immediately chose a blue Mazda 323 car with Plate No. PVB No. 999 from those that were on display.

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[3] *Id.* at 1-2.

At around 7 o'clock in the evening of July 2, 1998, Franco went to the house of Lourdes and presented a sales proposal. She was with Besario and Rule, whom she introduced as her superiors. Rule then made a presentation on the Mazda 323 car informing Lourdes that she can buy it for ₱130,000.00 with a downpayment of ₱80,000.00 and the balance to be paid in 12 equal monthly installments. Rule also told Lourdes that the car would be delivered within three days from receipt of her money.

Lourdes agreed to pay the downpayment the following day. Before the petitioners departed, Rule ordered Franco to sign the sales proposal as sales executive. Lourdes also signed the document. Rule then issued a receipt dated July 3, 1998 and instructed Franco and Besario to give it to Lourdes after receiving her downpayment upon their return on the next day.

The following day, July 3, 1998, Franco and Besario returned to the house of Lourdes to collect the downpayment of ₱80,000.00. Besario received and counted the money and handed it to Franco. After counting the money, Franco returned the same to Besario, who put it inside the bag he was carrying. They gave to Lourdes the receipt dated July 3, 1998 that was signed by Rule. At the same time, they assured her that the car would be delivered in three days.

The car, however, was not delivered as promised. Lourdes called up Final Access Marketing's office and was able to talk to the owner/manager, Torres, who assured her that her downpayment would be refunded or that they would look for a replacement.

Meanwhile, Lourdes and her husband returned to the showroom on Houston Street, San Juan, where they saw the Mazda car already clean. The security guard told them it was ready for release in the afternoon.

When the car was still undelivered, Lourdes sought the aid of "*Hoy Gising*," a television show that broadcasts grievances of people against fraudulent schemes. During a visit to the show's office, Lourdes learned that 12 other persons were victimized by the group of petitioners.

Lourdes also met with Atty. Renz Jaime, legal counsel of Final Access Marketing, who assured her that Final Access Marketing would return her money by August. When he reneged on his promise, formal demand was made on him to settle the obligation of said business enterprise.

Erlinda Acosta (Erlinda) was one of the alleged victims of petitioners whom Lourdes met while airing her complaint in the television program "*Hoy Gising*." Erlinda testified that she was referred to Besario when she was looking for a second-hand vehicle. She went to the office of Final Access Marketing in Timog Avenue, Quezon City, and was shown by Besario several pictures of vehicles from which she chose a Mitsubishi Pajero.

On April 7, 1998, Erlinda and her son met Besario, Rule and their other companions in a restaurant. They brought the vehicle Erlinda wanted to purchase and her son drove it for a road test. Thereafter, she agreed to buy the vehicle for ₱600,000.00. She signed a Vehicle Sales Proposal and handed to Rule a downpayment of US$3,000.00.

On April 20, 1998, Erlinda delivered to Besario and Rule a manager's check in the amount of ₱245,000.00 as payment for the entire balance. She was then assured that the vehicle will be delivered a week later. However, Besario and Rule reneged on their promise. Erlinda went to the office of Final Access Marketing and complained to Franco but to no avail. Her motor vehicle was never delivered. Thus, she went to "*Hoy Gising*."

Juanito Antonio corroborated the testimony of his wife, Lourdes. He was present when petitioners Franco and Besario, together with Rule, went to their house in the evening of July 2, 1998 with a written proposal for the sale of a vehicle. After his wife signed the document, she gave a downpayment of ₱80,000.00. When the car was not delivered on the date agreed upon, he and his wife went to the office of Final Access Marketing. Upon their inquiries, the security guard on duty said that the car they purchased already had a gate pass and would be delivered in the afternoon. However, the said vehicle was never delivered to them.

The Version of the Petitioners

Franco denied involvement in the alleged conspiracy to commit estafa against Lourdes. She alleged that it was Torres, the owner of Final Access Marketing, who was the swindler. And like Lourdes, she was a victim in this case.

Franco claimed that petitioner Besario hired her as a clerk-typist. She was promoted to the position of Assistant Administrative Coordinator and was authorized to solicit clients for Final Access Marketing.

Franco learned from her sister that Lourdes wanted to purchase a second-hand car. She went to see Lourdes and presented to the latter a list of repossessed vehicles. She gave her calling card to Lourdes before they parted. Later on, Lourdes called and visited the office of Final Access Marketing, where Franco introduced Lourdes to Besario and Rule.

Franco accompanied Lourdes to showrooms where the latter chose a blue Mazda car with Plate No. PVB 999. Rule agreed to sell the car to Lourdes for ₱130,000.00. Thus, on the evening of July 2, 1998, she, Besario and Rule went to the house of Lourdes with a Vehicle Sales Proposal. Franco signed the document without reading and understanding the same upon the insistence of Rule. Rule then signed an official receipt and instructed Franco and Besario to return the next day to give the same to Lourdes after collecting her downpayment. Lourdes was also assured that the car would be delivered within three days from receipt of the downpayment.

On July 3, 1998, at around 10 a.m., Franco and Besario came back to collect the downpayment. Lourdes gave her cash payment to Besario, who counted it. He gave said cash to Franco, who counted it again. When the money was handed back to Besario, he put it inside a black bag. Thereafter, Franco and Besario went to a restaurant to pick-up Rule. They rode a taxi and proceeded to the house of Torres, but it was only Besario and Rule who went inside. Franco went home without receiving a single centavo for her transportation fare.

When the car was not delivered, Lourdes called Franco who in turn reminded her boss to expedite its release. However, the continued failure to receive the vehicle compelled Lourdes to report the incident to "*Hoy Gising*." It was only during this period that Franco learned of similar complaints from other customers. Thereafter, Lourdes called her intermittently asking for a reimbursement. However, the latter could not do anything since her employers no longer reported to the office. Rule and Torres left Manila and went to Cebu. She was not aware of their whereabouts at the time of her testimony.

On the other hand, Besario failed to attend several hearings. The notice to appear and to present evidence sent to him was returned unserved since he moved to another address without informing the trial court. Thus, upon motion of the prosecution, he was declared to have waived his right to present evidence. The case was consequently submitted for decision.

The Ruling of the Regional Trial Court

On October 23, 2001, the trial court rendered its Decision finding petitioners guilty beyond reasonable doubt of the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code. The dispositive portion reads as follows:

> ACCORDINGLY, above premises all considered, the Court finding accused Lyzah Sy Franco and Steve Besario GUILTY, beyond reasonable doubt, of the crime charged in the Information, the Court hereby sentences said two accused to each suffer the indeterminate penalty of imprisonment ranging from seventeen (17) years of *reclusion temporal* as MAXIMUM to eight (8) years and one (1) day of *prison mayor* as MINIMUM and to suffer all the accessory penalties as provided by law.
>
> Accused Franco and Besario, jointly and severally are likewise ordered to pay private complainant Ma. Lourdes Antonio the sum of ₱80,000.00 as actual damages.
>
> SO ORDERED.[4]

[4] *Id*. at 373.

The Ruling of the Court of Appeals

On July 26, 2005, the CA promulgated its Decision that affirmed with modification the decision of the trial court. It convicted the petitioners for the crime of estafa under Article 315, par. 2(a) of the Revised Penal Code and modified the penalty. The dispositive portion of its Decision reads as follows:

> WHEREFORE, in view of the foregoing premises, the Decision dated October 23, 2001 rendered by the trial court is hereby AFFIRMED, with modification to the effect that the penalty imposed upon each of the appellants is hereby MODIFIED to an indeterminate sentence of Four (4) years, Two (2) months, and One (1) day of *prision correccional* as minimum to Thirteen (13) years of *reclusion temporal* as maximum.
>
> Accused Franco and Besario are likewise ordered to pay, jointly and severally, private complainant, Ma. Lourdes Antonio, the sum of ₱80,000.00 as actual damages.
>
> SO ORDERED.[5]

Hence, petitioners filed separate petitions for review on *certiorari* assailing the Decision of the CA. Franco contends that "the Court of Appeals decided the case on a mistaken inference and [misappreciation] of facts bordering on speculations, surmises or conjectures."[6]

On the other hand, Besario ascribes the following error to the CA:

> PUBLIC RESPONDENT COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY DISREGARDING THE LAW, JURISPRUDENCE AND EVIDENCE WHEN IT RULED THAT PETITIONER BESARIO IS GUILTY OF THE CRIME OF ESTAFA AS CHARGED IN THE INFORMATION.[7]

In its Consolidated Comment, the Solicitor General opposes the petitions by arguing that "petitioners raise[d] questions of

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[5] CA *rollo*, p. 199.

[6] *Rollo* of G.R. No. 171328, p. 10.

[7] *Rollo* of G.R. No. 171335, p. 17.

fact which are inappropriate in a petition for review on *certiorari*. x x x."[8] The Solicitor General also believes the prosecution's evidence was sufficient to convict petitioners of estafa under Article 315, par. 2(a) of the Revised Penal Code and that petitioners' defenses failed to overturn the evidence showing their guilt beyond reasonable doubt.

Our Ruling

The petitions are not meritorious.

Exception to the Finality and Conclusiveness of Factual Findings of the Court of Appeals

"[A]s a rule, our jurisdiction in cases brought to us from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below."[9] While this rule is not without exception, there are no exceptional circumstances in these cases that warrant a departure from the findings of facts of the trial court, as affirmed by the CA. Even after considering the merits, the petitions deserve outright denial.

The conviction of Franco and Besario for conspiring to commit estafa against Lourdes must therefore stand. The prosecution satisfactorily established their participation in the scheme to defraud Lourdes, their acts were not isolated from but related to a plot to deceive her. The prosecution likewise proved beyond reasonable doubt that the well-planned swindling scheme of Franco and Besario resulted to estafa.

Conspiracy must be Shown as Clearly as the Commission of the Offense[10]

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[8] *Id*. at 197.

[9] *People v. Petralba*, 482 Phil. 362, 374 (2004).

[10] *Erquiaga v. Court of Appeals*, 419 Phil. 641, 647 (2001).

There is conspiracy when two or more persons agree to commit a felony and decide to commit it.[11] "Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. [It] may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators [prior to], during and after the commission of the felony to achieve a common design or purpose."[12]

Several circumstances in this case conclusively show Franco's role in defrauding Lourdes. She was the one who personally approached Lourdes and actively made representations on behalf of Final Access Marketing despite previous knowledge of the company's failure to deliver the vehicle sold to Erlinda. She offered to help Lourdes purchase a second-hand car by presenting herself as an Assistant Administrative Coordinator of said company. She also assisted Lourdes in selecting a car she wanted to buy. Six days later, Franco arrived with Besario and Rule in the house of Lourdes after regular business hours. Franco made the necessary introductions and they commenced with a presentation that persuaded Lourdes to part with her money. They showed Lourdes a prepared Sales Proposal Agreement that Franco signed as a sales executive.

Franco, together with Besario, returned the next day to collect the downpayment of Lourdes. After counting the money and putting it inside a bag, they assured Lourdes that the car would be delivered within three days. When they failed to fulfill their promise and their unlawful scheme was unraveled, she did not do anything to placate Lourdes.

We cannot lend credence to Franco's assertion that she only knew of her employer's fraudulent scheme after Lourdes reported the same to "*Hoy Gising.*" For sure, before their former clients reported their anomalous transactions to "*Hoy Gising*," they first lodged their complaints with the company itself. Hence,

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[11] REVISED PENAL CODE, Article 8.

[12] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 414-415.

we are at a loss why Franco, as the company's Assistant Administrative Coordinator would feign ignorance of the same. We also could not understand why after "discovering" her employer's fraudulent transactions, and after said employers absconded, Franco continued to report to their office. She did not even bother to inform Lourdes that her employers had already absconded. Finally, since she made representations to Lourdes that the car would be delivered in three days time, the least that Franco could have done was to investigate the matter and explain to Lourdes the company's failure to deliver the car. After all, Franco was a friend of Lourdes' niece.

Besario, for his part, actively conspired with Franco by inducing Lourdes to part with her money. He also went to the house of Lourdes and induced the latter to make a downpayment on the car she wanted to purchase and sign the Sales Proposal Agreement. He and Franco collected the money from Lourdes and promised her that the car would be delivered three days later even if he had knowledge from the previous transaction with Erlinda that the delivery would never happen. Thereafter, he could not be reached or found when the car was still undelivered and their devious plot was exposed.

Evidently, petitioners' actions were in relation to the attainment of a common objective. They had vital roles in the nefarious scheme to sell a vehicle that they knew would never be delivered, but for which they obtained a substantial sum of money from Lourdes.

Having established the existence of a conspiracy between Franco and Besario, the prosecution proceeded to present evidence to prove that the acts of the petitioners constituted estafa.

Estafa by Means of Deceit

Article 315, par. 2(a) of the Revised Penal Code penalizes fraud or deceit when committed as follows:

x x x x x x x x x

2. by means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud:

> (a) by using fictitious name, or actions, falsely pretending to possess power, influence, qualification, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

"The elements of the crime of estafa under the foregoing provision are: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage."[13]

Petitioners presented themselves to Lourdes as persons possessing the authority and capacity to engage in the financing of used vehicles in behalf of Final Access Marketing. This was a clear misrepresentation considering their previous knowledge not only of Erlinda's complaint but also of several others as regards the failure of Final Access Marketing to deliver the motor vehicles bought. Lourdes relied on their misrepresentations and parted with her money. Almost a week passed by, but petitioners and Rule did not deliver the said motor vehicle. They also did not fulfill their subsequent promise to provide a replacement or to refund her payment. When Lourdes visited the office of Final Access Marketing to demand the return of her money, it was already closed. She could not locate any of them except for Franco who denied any wrongdoing. Consequently, she suffered damage.

If indeed they were innocent as they claimed to be, Erlinda's complaint to petitioners and the 12 other similar complaints with "*Hoy Gising*" regarding undelivered vehicles should have dissuaded petitioners from further soliciting customers. The fact that they continued to offer for sale a second-hand car to Lourdes is indicative of deceit and their complicity in the conspiracy to commit estafa. The manner in which petitioners transacted

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[13] *RCL Feeders PTE., Ltd. v. Hon. Perez*, 487 Phil. 211, 220-221 (2004).

business with Erlinda and Lourdes as well as their awareness of 12 other similar complaints with "*Hoy Gising*" were sufficient to establish the existence of a *modus operandi*.

Franco's attempt to escape culpability by feigning ignorance of the previously failed transactions on the delivery of vehicles by Final Access Marketing cannot be countenanced. As gleaned from the testimony of Erlinda, Franco was already with Final Access Marketing at the time these transactions occurred. She was therefore familiar with the company's procedure and policy on the sales of second-hand vehicles. She even accompanied Lourdes to showrooms and introduced her to Besario and Rule.

As an employee of Final Access Marketing, Franco was expected to be familiar with its daily activities. It would be unworthy of belief that she did not know of the complaints for the unexplained failure of Final Access Marketing to deliver vehicles to its customers. Human nature and experience would compel her to make queries on her own to discover the reasons for the non-delivery of the vehicles. Her continued insistence in soliciting Lourdes as a client by introducing herself as an Assistant Administrative Coordinator of Final Access Marketing with the ability to provide financing for a vehicle of her choice is therefore indicative of fraudulent misrepresentation.

The petitioners also contend that they are not criminally liable since the transaction with Lourdes was a contract of sale. This contention does not deserve serious consideration. While the fact that they entered into a contract with Lourdes cannot be denied, the transaction transpired due to their deceit. It was their misrepresentation that induced Lourdes to sign the Sales Proposal agreement and part with her money.

In denying any criminal wrongdoing, petitioners blame their co-accused, Torres, whom they claim to be the owner of Final Access Marketing. The shifting of blame is common among conspirators in their attempt to escape liability. It is a desperate strategy to compensate for their weak defense. We are not

readily influenced by such a proposition since its "obvious motive is to distort the truth and frustrate the ends of justice."[14]

The Penalty

Having committed the crime of estafa, the petitioners must suffer the proper penalties provided by law. The law imposes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount swindled exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed 20 years.[15] To determine the minimum of the indeterminate penalty, *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be reduced by one degree, that is, to *prision correccional* in its minimum and medium periods. The minimum period of the indeterminate penalty shall be taken from the full range of the penalty of *prision correccional* in its minimum and medium periods, which is six (6) months and one (1) day to four (4) years and two (2) months. With the amount of the fraud at ₱80,000.00, there is ₱58,000.00 in excess of ₱22,000.00. Five years must therefore be added to the maximum period of the prescribed penalty ranging from six (6) years, eight (8) months and twenty-one (21) days to eight (8) years. Thus, the maximum term of the penalty would range from eleven (11) years, eight (8) months and twenty-one (21) days to thirteen (13) years. This is in accord with our ruling in *People v. Temparada*,[16] *viz:*

> The prescribed penalty for *estafa* under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum. The minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e*. from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the

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[14] *People v. Macaliag*, 392 Phil. 284, 299 (2000).

[15] REVISED PENAL CODE, Article 315.

[16] G.R. No. 173473, December 17, 2008, 574 SCRA 258, 283-284.

minimum term for the five *estafa* cases at 4 years and 2 months *of prision correccional* since this is within the range of *prision correccional* minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum is not *prision mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prision correccional* maximum to *prision mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. x x x.

WHEREFORE, the petitions for review on *certiorari* are *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 27414 which affirmed with modification the Decision of the Regional Trial Court, Branch 52, in Criminal Case No. 99-173688 convicting petitioners Lyzah Sy Franco and Steve Besario of the crime of estafa is *AFFIRMED with further modification* that the indeterminate prison term imposed on each of the petitioners is four (4) years and two (2) months of *prision correccional* as minimum to thirteen (13) years of *reclusion temporal* as maximum.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182070. February 16, 2011]

E.G. & I. CONSTRUCTION CORPORATION and EDSEL GALEOS, *petitioners, vs.* **ANANIAS P. SATO, NILO BERDIN, ROMEO M. LACIDA, JR., and HEIRS OF ANECITO S. PARANTAR, SR., namely: YVONNE, KIMBERLY MAE, MARYKRIS, ANECITO, JR., and JOHN BRYAN, all surnamed PARANTAR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; EMPLOYER ALLEGING VALID CAUSE MUST PROVE THE SAME. — 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.

2. ID.; ID.; ABANDONMENT; ELEMENTS; NOT MERE ABSENCE BUT UNEQUIVOCAL INTENT TO DISCONTINUE EMPLOYMENT CONSTITUTES ABANDONMENT. — For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.

3. ID.; ID.; ID.; NOT APPRECIATED BY THE MERE FAILURE TO REPORT FOR WORK AFTER NOTICE OF RETURN TO WORK, AND THE SAME NEGATED BY THE FILING OF ILLEGAL DISMISSAL CASE BARELY FOUR DAYS FROM ALLEGED ABANDONMENT. — The reason why respondents failed to report for work was because petitioner corporation barred them from entering its construction sites. It is a settled

rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified. Petitioner corporation failed to show overt acts committed by respondents from which it may be deduced that they had no more intention to work. Respondents' filing of the case for illegal dismissal barely four (4) days from their alleged abandonment is totally inconsistent with our known concept of what constitutes abandonment.

4. ID.; ID.; MONEY CLAIMS; PROOF OF PAYMENT RESTS ON THE EMPLOYER. — As a rule, one who pleads payment has the burden of proving it. Even as the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.

5. ID.; ID.; ID.; DOUBTS IN EVIDENCE BETWEEN THAT OF THE EMPLOYER AND THAT OF THE EMPLOYEE, RESOLVED IN FAVOR OF THE LATTER. — [T]he submission of petitioner corporation of the time records and payrolls of respondents only on their appeal before the NLRC is contrary to elementary precepts of justice and fair play. Respondents were not given the opportunity to check the authenticity and correctness of the same. Thus, we sustain the ruling of the CA in the grant of the monetary claims of respondents. We are guided by the time-honored principle that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is the rule in controversies between a laborer and his master that doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor.

APPEARANCES OF COUNSEL

Celso K. Inocente for petitioners.
Casul Law Office for respondents.

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 October 24, 2007 and the Resolution[2] dated March 3, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 02316.

The factual and procedural antecedents of the case are as follows:

Respondent Ananias P. Sato (Sato) was hired in October 1990 by petitioner E.G. & I. Construction Corporation as a grader operator, which is considered as technical labor. He held the position for more than thirteen (13) years. In April 2004, Sato discovered that petitioner corporation had not been remitting his premium contributions to the Social Security System (SSS). When Sato kept on telling petitioners to update his premium contributions, he was removed as a grader operator and made to perform manual labor, such as tilling the land in a private cemetery and/or digging earthworks in petitioner corporation's construction projects.[3] In July 2004, an inspection team from the SSS went to petitioner corporation's office to check its compliance with the SSS law. On July 22, 2004, petitioners told Sato that they could no longer afford to pay his wages, and he was advised to look for employment in other construction companies.[4] Sato, however, found difficulty in finding a job because he had been blacklisted in other construction companies and was prevented from entering the project sites of petitioners.[5]

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 40-54.

[2] *Id.* at 56-58.

[3] CA Decision, *id.* at 41; NLRC decision, *id.* at 61-62; LA decision, *id.* at 142.

[4] CA Decision, *id.* at 41-42; NLRC decision, *id.* at 62; LA decision, *id.* at 142-143.

[5] CA Decision; *id.* at 42.

Respondent Nilo Berdin (Berdin) was hired by petitioners in March 1991 as a steelman/laborer; respondent Anecito S. Parantar, Sr.[6] (Parantar) was hired in February 1997 as a steelman; and respondent Romeo M. Lacida, Jr.[7] (Lacida) was hired in March 2001 as a laborer.[8] At the start of their employment, they were required by petitioners to sign several documents purporting to be employment contracts.[9] They immediately signed the documents without verifying their contents for fear of forfeiting their employment.[10]

Respondents were required to work from 7:00 a.m. until 5:00 p.m. While in the employ of petitioners, they devoted their time exclusively in the service of petitioners and were assigned to various construction projects of petitioners. They were tasked to set up steel bars used in the building foundation, to mix cement, and to perform other tasks required of them by petitioners.[11]

On July 24, 2004, the project engineer of respondents Berdin, Parantar, and Lacida instructed them to affix their signatures on various documents. They refused to sign the documents because they were written in English, a language that they did not understand. Irked by their disobedience, the project engineer terminated their employment. On the same date, they were given their weekly wages. However, the wages that were paid to them were short of three (3) days worth of wages, as penalty for their refusal to sign the documents. The following day, they were not allowed to enter the work premises.[12]

On July 26, 2004, respondents filed their respective complaints with the Regional Arbitration Branch of Cebu City for illegal

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[6] Also known as Aniceto S. Parantar, Sr. in other documents.

[7] Also known as Romeo Laceda in other documents.

[8] CA Decision; *rollo*, p. 41.

[9] CA Decision, *id.* at 42; NLRC decision, *id.* at 62; LA decision, *id.* at 143.

[10] CA Decision, *id.* at 42.

[11] *Id.*; NLRC decision, *id.* at 62; LA decision, *id.* at 143.

[12] *Id.*

dismissal, underpayment of wages (wage differentials), holiday pay, thirteenth (13th) month pay, and service incentive leave pay.[13]

Petitioners, on the other hand, admitted that respondents were employed by them and were assigned in their various construction projects. However, they denied that they illegally terminated respondents' employment. According to petitioners, respondents abandoned their work when they failed to report for work starting on July 22, 2004. Petitioner corporation sent letters advising respondents to report for work, but they refused. Petitioner corporation maintained that respondents are still welcome, if they desire to work.[14]

As to respondent Sato, petitioner corporation alleged that it admonished respondent for having an illicit affair with another woman; that, in retaliation, Sato complained to the SSS for alleged non-remittance of his premium contributions; that Sato's work was substandard; and that he also incurred unexplained absences and was constantly reprimanded for habitual tardiness.

On July 27, 2005, the Labor Arbiter rendered a decision[15] finding that respondents were illegally dismissed from employment. In lieu of reinstatement, due to the strained relations of the parties and as prayed for by respondents, each of them was granted separation pay equivalent to one (1) month pay for every year of service. The Labor Arbiter likewise awarded respondents' claim for wage differentials, 13th month pay, holiday pay, and service incentive leave pay. The Labor Arbiter ruled in favor of granting the monetary claims of respondents because of petitioner corporation's failure to effectively controvert the said claims by not presenting proof of payment, such as payrolls or vouchers.[16] The dispositive portion of the decision reads:

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[13] *Id.*

[14] CA Decision, *id.* at 43; NLRC decision, *id.* at 62-63; LA decision, *id.* at 143-144.

[15] Penned by Labor Arbiter Ernesto F. Carreon; *id.* at 142-148.

[16] *Id.* at 145.

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent [petitioner] E.G. & I. Construction Corporation to pay [respondents] the following:

1. Ananias P. Sato	-	₱ 107,250.00
2. Anecito Parantar	-	120,944.00
3. Nilo Berdin	-	152,144.00
4. Romeo M. Lacida, Jr.	-	138,594.00
Total Award		₱ 518,932.00

The other claims and the case against respondent Edsel Galeos are dismissed for lack of merit.

SO ORDERED.[17]

On appeal, the National Labor Relations Commission (NLRC) reversed the ruling of the Labor Arbiter in a decision[18] dated July 31, 2006. The *fallo* of the NLRC decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby **SET ASIDE** and **VACATED** and a new one entered Dismissing the case. Respondents are however ordered to pay complainants' proportionate 13th month [pay] for the year 2004 computed as follows:

1. Ananias Sato	-	₱ 3,180.00
2. Anecito Parantar	-	2,520.00
3. Nilo Berdin	-	2,700.00
4. Romeo Laceda	-	2,520.00
Total		₱10,920.00

SO ORDERED.[19]

In reversing the decision of the Labor Arbiter, the NLRC ratiocinated that, other than respondents' bare allegation that they were dismissed, they failed to present a written notice of

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[17] *Id.* at 147-148.

[18] Penned by Commissioner Oscar S. Uy, with Presiding Commissioner Gerardo C. Nograles and Commissioner Aurelio D. Menzon, concurring; *id.* at 61-67.

[19] *Id.* at 66.

dismissal,[20] and that respondents' individual complaints opted for the payment of separation pay instead of reinstatement.[21] The NLRC opined that illegal dismissal was inconsistent with the prayer for separation pay instead of reinstatement. As for the monetary reliefs prayed for by respondents, the NLRC withdrew the grant of the same because of petitioner corporation's submission of the copies of payrolls, annexed to its memorandum on appeal.[22]

Respondents filed a motion for reconsideration. However, the same was denied in a resolution[23] dated October 9, 2006.

Aggrieved, respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On October 24, 2007, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, this petition is **GRANTED**. The *Decision and Resolution* of the NLRC, dated July 31, 2006 and October 9, 2006, respectively, are hereby **REVERSED and SET ASIDE**. The *Decision* of the labor arbiter, dated July 27, 2005, is **REINSTATED**.
>
> Costs against private respondents.
>
> SO ORDERED.[24]

The CA ruled that respondents were illegally dismissed. A written notice of dismissal is not a pre-requisite for a finding of illegal dismissal.[25] Respondents did not abandon their work. They were refused entry into the company's project sites.[26] As to the award of monetary claims, the CA decided in favor of the grant of the same. Petitioner corporation belatedly submitted

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[20] *Id.* at 63.

[21] *Id.* at 64.

[22] *Id.* at 65.

[23] *Id.* at 73-76.

[24] *Id.* at 53.

[25] *Id.* at 47.

[26] *Id.*

copies of the weekly time record, payroll, and acknowledgement receipts of the 13th month pay. There was no explanation given why the said documents were not submitted before the Labor Arbiter in order to establish their authenticity and correctness, and to give respondents the opportunity to refute the entries therein.[27]

Hence, this petition.

The issue to be resolved in this case is whether the CA erred in reinstating the decision of the Labor Arbiter, declaring that respondents were illegally terminated from employment by petitioner corporation, and that respondents are entitled to their monetary claims.

We sustain the ruling of the CA. Petitioner corporation failed to prove that respondents were dismissed for just or authorized cause. 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.[28]

For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[29] The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.[30]

In this case, petitioner corporation claims that respondent Sato committed unexplained absences on May 20, 24, and 25,

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[27] *Id.* at 50.

[28] THE LABOR CODE, Art. 277(b); *Pepsi Cola Products Philippines, Inc. v. Santos*, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252.

[29] *Padilla Machine Shop v. Javilgas*, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 357.

[30] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 239.

2004 and on June 7, 18, and 23, 2004. However, based on the findings of fact of the CA, respondent Sato worked on May 20, June 18 and 23, 2004. This was based on the weekly time record and payroll of respondent Sato that were presented by petitioner corporation in its appeal before the NLRC. On respondent Sato's alleged absences on May 24 and 25 and on June 7, 2004, no time record and payroll documents were presented by petitioner corporation. With regard to respondents Berdin, Lacida, and Parantar, petitioner corporation alleges that they failed to report for work starting on July 22, 2004, and that petitioner even sent them letters advising them to report for work, but to no avail.

Notwithstanding these assertions of petitioner corporation, we sustain the ruling of the CA. The reason why respondents failed to report for work was because petitioner corporation barred them from entering its construction sites. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[31] The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[32] Petitioner corporation failed to show overt acts committed by respondents from which it may be deduced that they had no more intention to work. Respondents' filing of the case for illegal dismissal barely four (4) days from their alleged abandonment is totally inconsistent with our known concept of what constitutes abandonment.

We sustain the ruling of the CA on respondents' money claims. As a rule, one who pleads payment has the burden of proving it. Even as the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other

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[31] *Id.*

[32] *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 606.

claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[33]

In this case, the submission of petitioner corporation of the time records and payrolls of respondents only on their appeal before the NLRC is contrary to elementary precepts of justice and fair play. Respondents were not given the opportunity to check the authenticity and correctness of the same. Thus, we sustain the ruling of the CA in the grant of the monetary claims of respondents. We are guided by the time-honored principle that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is the rule in controversies between a laborer and his master that doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor.[34]

WHEREFORE, in view of the foregoing, the Decision dated October 24, 2007 and the Resolution dated March 3, 2008 of the Court of Appeals in CA-G.R. SP No. 02316 are hereby *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

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

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[33] *Id.* at 618.

[34] *De Castro v. Liberty Broadcasting Network, Inc.*, G.R. No. 165153, September 23, 2008, 566 SCRA 238, 251.

SECOND DIVISION

[G.R. No. 183390. February 16, 2011]

PLASTIMER INDUSTRIAL CORPORATION and TEO KEE BIN, *petitioners, vs.* **NATALIA C. GOPO, KLEENIA R. VELEZ, FILEDELFA T. AMPARADO, MIGNON H. JOSEPH, AMELIA L. CANDA, MARISSA D. LABUNOS, MELANIE T. CAYABYAB, MA. CORAZON DELA CRUZ, and LUZVIMINDA CABASA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES MAY BE REVIEWED BY COURT WHERE THERE ARE CONFLICTING FINDINGS BETWEEN THE LABOR TRIBUNALS AND THE COURT OF APPEALS. — In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for *certiorari* when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals. In this case, we find that the findings of the Labor Arbiter and the NLRC are more in accord with the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; ONE-MONTH NOTICE TO THE DOLE OF TERMINATION OF EMPLOYMENT; VIOLATION THEREOF DOES NOT RENDER THE RETRENCHMENT ILLEGAL BUT ENTITLES AFFECTED EMPLOYEES TO NOMINAL DAMAGES. — In this case, Plastimer submitted the notice of termination of employment to the DOLE on 26 May 2004. However, notice to the affected employees were given to them on 14 May 2004 or 30 days before

the effectivity of their termination from employment on 13 June 2004. While notice to the DOLE was short of the one-month notice requirement, the affected employees were sufficiently informed of their retrenchment 30 days before its effectivity. Petitioners' failure to comply with the one-month notice to the DOLE is only a procedural infirmity and does not render the retrenchment illegal. In *Agabon v. NLRC*, we ruled that when the dismissal is for a just cause, the absence of proper notice should not nullify the dismissal or render it illegal or ineffectual. Instead, the employer should indemnify the employee for the violation of his statutory rights. Here, the failure to fully comply with the one-month notice of termination of employment did not render the retrenchment illegal but it entitles respondents to nominal damages.

3. ID.; ID.; ID.; DOES NOT REQUIRE SUBSTANTIAL LOSSES TO MATERIALIZE BEFORE EXERCISING THE ULTIMATE AND DRASTIC OPTION TO PREVENT LOSSES. — Article 283 of the Labor Code recognizes retrenchment to prevent losses as a right of the management to meet clear and continuing economic threats or during periods of economic recession to prevent losses. There is no need for the employer to wait for substantial losses to materialize before exercising ultimate and drastic option to prevent such losses.

4. ID.; ID.; WAIVERS AND QUITCLAIMS; VALID IF REASONABLE, WITH FULL UNDERSTANDING OF ITS IMPORT AND VOLUNTARY. — The Court has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.

APPEARANCES OF COUNSEL

Verzosa Gutierrez Nolasco Montenegro & Associates for petitioners.

R.P. Acorda & Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 13 August 2007 Decision[2] and 5 June 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 97271.

The Antecedent Facts

On 7 May 2004, the Personnel and Administration Manager of Plastimer Industrial Corporation (Plastimer) issued a Memorandum informing all its employees of the decision of the Board of Directors to downsize and reorganize its business operations due to withdrawal of investments and shares of stocks which resulted in the change of its corporate structure. On 14 May 2004, the employees of Plastimer, including Natalia C. Gopo, Kleenia R. Velez, Filedelfa T. Amparado, Mignon H. Joseph, Amelia L. Canda, Marissa D. Labunos, Melanie T. Cayabyab, Ma. Corazon dela Cruz and Luzviminda Cabasa (respondents) were served written notices of their termination effective 13 June 2004. On 24 May 2004, Plastimer and Plastimer Industrial Corporation Christian Brotherhood (PICCB), the incumbent sole and exclusive collective bargaining representative of all rank and file employees, entered into a Memorandum of Agreement (MOA) relative to the terms and conditions that would govern the retrenchment of the affected employees. On 26 May 2004, Plastimer submitted to the Department of Labor and Employment (DOLE) an Establishment Termination Report containing the list of the employees affected by the reorganization and downsizing. On 28 May 2004, the affected employees,

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 249-255. Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin, concurring.

[3] *Id.* at 272.

including respondents, signed individual "Release Waiver and Quitclaim."

Thereafter, respondents filed a complaint against Plastimer and its President Teo Kee Bin (petitioners) before the Labor Arbiter for illegal dismissal with prayer for reinstatement and full backwages, underpayment of separation pay, moral and exemplary damages and attorney's fees. Respondents alleged that they did not voluntarily relinquish their jobs and that they were required to sign the waivers and quitclaims without giving them an opportunity to read them and without explaining their contents. Respondents further alleged that Plastimer failed to establish the causes/valid reasons for the retrenchment and to comply with the one-month notice to the DOLE as well as the standard prescribed under the Collective Bargaining Agreement between Plastimer and the employees. Petitioners countered that the retrenchment was a management prerogative and that respondents got their retrenchment or separation pay even before the effective date of their separation from service.

The Decisions of the Labor Arbiter and the NLRC

In its 22 August 2005 Decision,[4] the Labor Arbiter ruled that petitioners were able to prove that there was a substantial withdrawal of stocks that led to the downsizing of the workforce. The Labor Arbiter ruled that notice to the affected employees were given on 14 May 2004, 30 days before its effective date on 14 June 2004. It was only the notice to the DOLE that was filed short of the 30-day period. The Labor Arbiter further ruled that respondents claimed their separation pay in accordance with the MOA. The Labor Arbiter further ruled that respondents could not claim ignorance of the contents of the waivers and quitclaims because they were assisted by the union President and their counsel in signing them.

Respondents appealed the Labor Arbiter's decision before the National Labor Relations Commission (NLRC).

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[4] *Id.* at 176-183. Penned by Labor Arbiter Salimathar V. Nambi.

In its 29 December 2005 Resolution,[5] the NLRC affirmed the Labor Arbiter's decision. The NLRC noted that respondents did not signify any protest to the MOA entered into between Plastimer and PICCB. The NLRC held that there was no proof that respondents were intimidated or coerced into signing the waivers and quitclaims because they were assisted by the union President and their counsel. The NLRC ruled that the filing of the complaint was just an afterthought on the part of respondents.

Respondents filed a motion for reconsideration.

In its 25 October 2006 Resolution,[6] the NLRC denied the motion.

Respondents filed a petition for *certiorari* before the Court of Appeals.

The Decision of the Court of Appeals

In its 13 August 2007 Decision, the Court of Appeals reversed the NLRC decision. The Court of Appeals ruled that there was no valid cause for retrenchment. The Court of Appeals noted that the change of management and majority stock ownership was brought about by execution of deeds of assignment by several stockholders in favor of other stockholders. Further, the Court of Appeals noted that while Plastimer claimed financial losses from 2001 to 2004, records showed an improvement of its finances in 2003.

The Court of Appeals further ruled that Plastimer failed to use a reasonable and fair standard or criteria in ascertaining who would be dismissed and who would be retained among its employees. The Court of Appeals ruled that the MOA between Plastimer and PICCB only recognized the need for partial retrenchment and the computation of retrenchment pay without disclosing the criteria in the selection of the employees to be retrenched.

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[5] *Id.* at 219-227. Penned by Commissioner Romeo C. Lagman with Commissioner Tito F. Genilo, concurring.

[6] *Id.* at 246-247. Penned by Commissioner Gregorio O. Bilog III with Commissioners Lourdes C. Javier and Tito F. Genilo, concurring.

Finally, the Court of Appeals ruled that the union President and the PICCB's counsel were not present when the retrenched employees were made to sign the waivers and quitclaims.

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, the instant petition is GRANTED. The assailed Resolutions of the NLRC in NLRC-NCR CA No. 046013-05 are hereby REVERSED AND SET ASIDE and a new judgment is entered finding petitioners to have been illegally dismissed. Plastimer Industrial Corporation is hereby ordered to reinstate petitioners to their former positions, without loss of seniority rights and other privileges, and to pay them their backwages from June 14, 2004 up to the time of actual reinstatement less the amounts they respectively received as separation pay.
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> SO ORDERED.[7]

Petitioners filed a motion for reconsideration.

In its 5 June 2008 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The only issue in this case is whether respondents were illegally retrenched by petitioners.

The Ruling of this Court

The petition has merit.

Petitioners assail the Court of Appeals in substituting its own findings of facts to the findings of the Labor Arbiter and the NLRC. Petitioners argue that the findings of fact of the Labor Arbiter and the NLRC are accorded with respect if not finality. Petitioners allege that the Court of Appeals did not find any arbitrariness or grave abuse of discretion on the part of the NLRC and thus, it had no basis in reversing the NLRC resolutions which affirmed the Labor Arbiter's decision.

[7] *Id.* at 255.

In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination.[8] Thus, the Court of Appeals can grant a petition for *certiorari* when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy.[9] To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.[10] In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals.[11] In this case, we find that the findings of the Labor Arbiter and the NLRC are more in accord with the evidence on record.

One-Month Notice of Termination of Employment

Article 283 of the Labor Code provides:

ART. 283. *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A

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[8] *Maralit v. Philippine National Bank*, G.R. No. 163788, 24 August 2009, 596 SCRA 662.

[9] *Id.*

[10] *Id.*, citing *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, 26 June 2007, 525 SCRA 708.

[11] *Philamlife v. Gramaje*, 484 Phil. 880 (2004).

fraction of at least six (6) months shall be considered one (1) whole year.

In this case, Plastimer submitted the notice of termination of employment to the DOLE on 26 May 2004. However, notice to the affected employees were given to them on 14 May 2004 or 30 days before the effectivity of their termination from employment on 13 June 2004. While notice to the DOLE was short of the one-month notice requirement, the affected employees were sufficiently informed of their retrenchment 30 days before its effectivity. Petitioners' failure to comply with the one-month notice to the DOLE is only a procedural infirmity and does not render the retrenchment illegal. In *Agabon v. NLRC*,[12] we ruled that when the dismissal is for a just cause, the absence of proper notice should not nullify the dismissal or render it illegal or ineffectual. Instead, the employer should indemnify the employee for the violation of his statutory rights.[13] Here, the failure to fully comply with the one-month notice of termination of employment did not render the retrenchment illegal but it entitles respondents to nominal damages.

Validity of Retrenchment

The Court of Appeals ruled that there was no valid cause for retrenchment. The Court of Appeals noted that while Plastimer claimed financial losses from 2001 to 2004, records showed an improvement of its finances in 2003.

We do not agree.

The Court of Appeals acknowledged that an independent auditor confirmed petitioners' losses for the years 2001 and 2002.[14] The fact that there was a net income in 2003 does not justify the Court of Appeals' ruling that there was no valid reason for the retrenchment. Records showed that the net income of ₱6,185,707.05 for 2003 was not even enough

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[12] 485 Phil. 248 (2004).

[13] *Id.*

[14] *Rollo*, p. 252.

for petitioners to recover from the ₱52,904,297.88 loss in 2002.[15] Article 283 of the Labor Code recognizes retrenchment to prevent losses as a right of the management to meet clear and continuing economic threats or during periods of economic recession to prevent losses.[16] There is no need for the employer to wait for substantial losses to materialize before exercising ultimate and drastic option to prevent such losses.[17]

Validity of Waivers and Quitclaims

The Court has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.[18]

We agree with the Labor Arbiter and the NLRC that respondents were sufficiently apprised of their rights under the waivers and quitclaims that they signed. Each document contained the signatures of Edward Marcaida (Marcaida), PICCB President, and Atty. Bayani Diwa, the counsel for the union, which proved that respondents were duly assisted when they signed the waivers and quitclaims. Further, Marcaida's letter to Teo Kee Bin, dated 28 May 2004, proved that proper assistance was extended upon respondents, thus:

Nais po naming iparating sa inyo na ginagampanan ng pamamahala ng unyon ang kanilang tungkulin lalo na sa pag "assist" ng mga miyembrong kasali sa retrenchment program at tumanggap ng kanilang separation pay sa ilalim ng napagkasunduang "Memorandum of Agreement."

Naipaliwanag po sa bawat miyembro ang epekto ng kanilang pagtanggap ng kanilang mga separation pay. Wala kaming

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[15] *Id.* at 244.

[16] *Mendros, Jr. v. Mitsubishi Motors Phils. Corporation (MMPC)*, G.R. No. 169780, 16 February 2009, 579 SCRA 529.

[17] *Id.*

[18] *Alabang Country Club, Inc. v. NLRC*, 503 Phil. 937 (2005).

natanggap na masamang reaksiyon nang sila ay aming makausap at kanilang naiintindihan ang sitwasyon ng kumpanya.[19]

Hence, we rule that the waivers and quitclaims that respondents signed were valid.

WHEREFORE, we *SET ASIDE* the 13 August 2007 Decision and 5 June 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 97271. We *REINSTATE* the 22 August 2005 Decision of the Labor Arbiter and the 29 December 2005 Resolution of the NLRC upholding the validity of respondents' retrenchment with *MODIFICATION* that petitioners pay each of the respondents the amount of ₱30,000 as nominal damages for non-compliance with statutory due process.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184007. February 16, 2011]

PAQUITO V. ANDO, *petitioner, vs.* **ANDRESITO Y. CAMPO, *ET AL.*,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NLRC MANUAL ON THE EXECUTION OF JUDGMENT; REGULAR COURTS HAVE NO JURISDICTION ON QUESTIONS FROM OR INCIDENTAL TO THE ENFORCEMENT OF LABOR CASE DECISIONS; INJUNCTION RELATIVE THERETO MAY NOT BE ISSUED BY THE COURTS. — The Court has long recognized that regular

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[19] CA *rollo,* p. 183.

courts have no jurisdiction to hear and decide questions which arise from and are incidental to the enforcement of decisions, orders, or awards rendered in labor cases by appropriate officers and tribunals of the Department of Labor and Employment. To hold otherwise is to sanction splitting of jurisdiction which is obnoxious to the orderly administration of justice. Thus, it is, first and foremost, the *NLRC Manual on the Execution of Judgment* that governs any question on the execution of a judgment of that body. The Rules of Court apply only by analogy or in a suppletory character. x x x Further underscoring the RTC's lack of jurisdiction over petitioner's complaint is Article 254 of the Labor Code, to wit: ART. 254. *INJUNCTION PROHIBITED.* – No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.

2. ID.; ID.; ON THIRD-PARTY CLAIMS; MANUAL DEALS "SPECIFICALLY" WITH THIRD PARTY CLAIMS BROUGHT BEFORE THE NLRC; THIRD-PARTY DEFINED AS ONE NOT A PARTY TO THE CASE, ASSERTS RIGHT TO THE POSSESSION OF PROPERTY LEVIED UPON. — Consider the provision in Section 16, Rule 39 of the Rules of Court on third-party claims: x x x On the other hand, the *NLRC Manual on the Execution of Judgment* deals **specifically** with third-party claims in cases brought before that body. It defines a third-party claim as one where a person, not a party to the case, asserts title to or right to the possession of the property levied upon. It also sets out the procedure for the filing of a third-party claim. x x x There is no doubt in our mind that petitioner's complaint is a third-party claim within the cognizance of the NLRC. Petitioner may indeed be considered a "third party" *in relation to the property subject of the execution vis-à-vis the Labor Arbiter's decision.* There is no question that the property belongs to petitioner and his wife, and not to the corporation. It can be said that the property belongs to the conjugal partnership, not to petitioner alone. Thus, the property belongs to a third party, *i.e.*, the conjugal partnership. At the very least, the Court can consider that petitioner's wife is a third party within contemplation of the law.

3. ID.; ID.; JURISDICTION OF THE NLRC CONTINUES UNTIL THE CASE IS FINALLY TERMINATED BY PROPER

IMPLEMENTATION OF ITS DIRECTIVES. — There is no denying that the present controversy arose from the complaint for illegal dismissal. The subject matter of petitioner's complaint is the execution of the NLRC decision. Execution is an essential part of the proceedings before the NLRC. Jurisdiction, once acquired, continues until the case is finally terminated, and there can be no end to the controversy without the full and proper implementation of the commission's directives.

4. ID.; ID.; POWER OF THE NLRC TO EXECUTE ITS JUDGMENT EXTENDS ONLY TO PROPERTIES UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR ALONE. — [T]he power of the NLRC, or the courts, to execute its judgment extends only to properties unquestionably belonging to the judgment debtor alone. A sheriff, therefore, has no authority to attach the property to any person except that of the judgment debtor.

APPEARANCES OF COUNSEL

Renecio R. Espiritu for petitioner.
Marvin J. Tañada for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court. Petitioner Paquito V. Ando (petitioner) is assailing the Decision[2] dated February 21, 2008 and the Resolution[3] dated July 25, 2008 of the Court of Appeals (CA) in CA-G.R. CEB-SP. No. 02370.

Petitioner was the president of Premier Allied and Contracting Services, Inc. (PACSI), an independent labor contractor.

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[1] *Rollo*, pp. 26-48.

[2] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Franchito N. Diamante, concurring; *rollo*, pp. 50-59.

[3] *Id.* at 75-77.

Respondents were hired by PACSI as pilers or haulers tasked to manually carry bags of sugar from the warehouse of Victorias Milling Company and load them on trucks.[4] In June 1998, respondents were dismissed from employment. They filed a case for illegal dismissal and some money claims with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VI, Bacolod City.[5]

On June 14, 2001, Labor Arbiter Phibun D. Pura (Labor Arbiter) promulgated a decision, ruling in respondents' favor.[6] PACSI and petitioner were directed to pay a total of ₱422,702.28, representing respondents' separation pay and the award of attorney's fees.[7]

Petitioner and PACSI appealed to the NLRC. In a decision[8] dated October 20, 2004, the NLRC ruled that petitioner failed to perfect his appeal because he did not pay the supersedeas bond. It also affirmed the Labor Arbiter's decision with modification of the award for separation pay to four other employees who were similarly situated. Upon finality of the decision, respondents moved for its execution.[9]

To answer for the monetary award, NLRC Acting Sheriff Romeo Pasustento issued a Notice of Sale on Execution of Personal Property[10] over the property covered by Transfer Certificate of Title (TCT) No. T-140167 in the name of "Paquito V. Ando x x x married to Erlinda S. Ando."

This prompted petitioner to file an action for prohibition and damages with prayer for the issuance of a temporary restraining order (TRO) before the Regional Trial Court (RTC), Branch

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[4] CA *rollo*, p. 191.

[5] *Rollo*, pp. 50-51.

[6] CA *rollo*, pp. 191-199.

[7] *Id.* at 198.

[8] *Id.* at 200-204.

[9] *Rollo*, p. 51.

[10] CA *rollo*, pp. 72-73.

50, Bacolod City. Petitioner claimed that the property belonged to him and his wife, not to the corporation, and, hence, could not be subject of the execution sale. Since it is the corporation that was the judgment debtor, execution should be made on the latter's properties.[11]

On December 27, 2006, the RTC issued an Order[12] denying the prayer for a TRO, holding that the trial court had no jurisdiction to try and decide the case. The RTC ruled that, pursuant to the *NLRC Manual on the Execution of Judgment*, petitioner's remedy was to file a third-party claim with the NLRC Sheriff. Despite lack of jurisdiction, however, the RTC went on to decide the merits of the case.

Petitioner did not file a motion for reconsideration of the RTC Order. Instead, he filed a petition for *certiorari* under Rule 65[13] before the CA. He contended that the RTC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order. Petitioner argued that the writ of execution was issued improvidently or without authority since the property to be levied belonged to him – in his personal capacity – and his wife. The RTC, respondent contended, could stay the execution of a judgment if the same was unjust.[14] He also contended that, pursuant to a ruling of this Court, a third party who is not a judgment creditor may choose between filing a third-party claim with the NLRC sheriff or filing a separate action with the courts.[15]

In the Decision now assailed before this Court, the CA affirmed the RTC Order in so far as it dismissed the complaint on the ground that it had no jurisdiction over the case, and nullified all other pronouncements in the same Order. Petitioner moved for reconsideration, but the motion was denied.

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[11] *Rollo*, p. 51.

[12] CA *rollo*, pp. 41-44.

[13] *Id.* at 2-40.

[14] *Id.* at 16.

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

Petitioner then filed the present petition seeking the nullification of the CA Decision. He argues that he was never sued in his personal capacity, but in his representative capacity as president of PACSI. Neither was there any indication in the body of the Decision that he was solidarily liable with the corporation.[16] He also concedes that the Labor Arbiter's decision has become final. Hence, he is not seeking to stop the execution of the judgment against the properties of PACSI. He also avers, however, that there is no evidence that the sheriff ever implemented the writ of execution against the properties of PACSI.[17]

Petitioner also raises anew his argument that he can choose between filing a third-party claim with the sheriff of the NLRC or filing a separate action.[18] He maintains that this special civil action is purely civil in nature since it "involves the manner in which the writ of execution in a labor case will be implemented against the property of petitioner which is not a corporate property of PACSI."[19] What he is seeking to be restrained, petitioner maintains, is not the Decision itself but the manner of its execution.[20] Further, he claims that the property levied has been constituted as a family home within the contemplation of the Family Code.[21]

The petition is meritorious.

Initially, we must state that the CA did not, in fact, err in upholding the RTC's lack of jurisdiction to restrain the implementation of the writ of execution issued by the Labor Arbiter.

The Court has long recognized that regular courts have no jurisdiction to hear and decide questions which arise from and

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[16] *Rollo*, p. 33.

[17] *Id.* at 34.

[18] *Id.* at 35.

[19] *Id.* at 36.

[20] *Id.* at 37.

[21] *Id.* at 39.

are incidental to the enforcement of decisions, orders, or awards rendered in labor cases by appropriate officers and tribunals of the Department of Labor and Employment. To hold otherwise is to sanction splitting of jurisdiction which is obnoxious to the orderly administration of justice.[22]

Thus, it is, first and foremost, the *NLRC Manual on the Execution of Judgment* that governs any question on the execution of a judgment of that body. Petitioner need not look further than that. The Rules of Court apply only by analogy or in a suppletory character.[23]

Consider the provision in Section 16, Rule 39 of the Rules of Court on third-party claims:

SEC. 16. *Proceedings where property claimed by third person.*— If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed.

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[22] *Air Services Cooperative v. CA*, 354 Phil. 905, 916 (1998), citing *Balais v. Hon. Velasco*, 322 Phil. 790, 807 (1996).

[23] 2005 REVISED RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION, Section 3. Suppletory Application of the Rules of Court. - In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

On the other hand, the *NLRC Manual on the Execution of Judgment* deals **specifically** with third-party claims in cases brought before that body. It defines a third-party claim as one where a person, not a party to the case, asserts title to or right to the possession of the property levied upon.[24] It also sets out the procedure for the filing of a third-party claim, to wit:

SECTION 2. *Proceedings.* — If property levied upon be claimed by any person other than the losing party or his agent, such person shall make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title and shall file the same with the sheriff and copies thereof served upon the Labor Arbiter or proper officer issuing the writ and upon the prevailing party. Upon receipt of the third party claim, all proceedings with respect to the execution of the property subject of the third party claim shall automatically be suspended and the Labor Arbiter or proper officer issuing the writ shall conduct a hearing with due notice to all parties concerned and resolve the validity of the claim within ten (10) working days from receipt thereof and his decision is appealable to the Commission within ten (10) working days from notice, and the Commission shall resolve the appeal within same period.

There is no doubt in our mind that petitioner's complaint is a third- party claim within the cognizance of the NLRC. Petitioner may indeed be considered a "third party" *in relation to the*

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[24] NLRC MANUAL ON THE EXECUTION OF JUDGMENT, Rule VI, Sec. 1.

property subject of the execution vis-à-vis the Labor Arbiter's decision. There is no question that the property belongs to petitioner and his wife, and not to the corporation. It can be said that the property belongs to the conjugal partnership, not to petitioner alone. Thus, the property belongs to a third party, *i.e.*, the conjugal partnership. At the very least, the Court can consider that petitioner's wife is a third party within contemplation of the law.

The Court's pronouncements in *Deltaventures Resources, Inc. v. Hon. Cabato*[25] are instructive:

> Ostensibly the complaint before the trial court was for the recovery of possession and injunction, but in essence it was an action challenging the legality or propriety of the levy *vis-a-vis* the *alias* writ of execution, including the acts performed by the Labor Arbiter and the Deputy Sheriff implementing the writ. The complaint was in effect a motion to quash the writ of execution of a decision rendered on a case properly within the jurisdiction of the Labor Arbiter, to wit: Illegal Dismissal and Unfair Labor Practice. Considering the factual setting, it is then logical to conclude that the subject matter of the third party claim is but an incident of the labor case, a matter beyond the jurisdiction of regional trial courts.
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> x x x x x x x x x
>
> x x x. Whatever irregularities attended the issuance an execution of the *alias* writ of execution should be referred to the same administrative tribunal which rendered the decision. This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.
>
> The broad powers granted to the Labor Arbiter and to the National Labor Relations Commission by Articles 217, 218 and 224 of the Labor Code can only be interpreted as vesting in them jurisdiction over incidents arising from, in connection with or relating to labor disputes, as the controversy under consideration, to the exclusion of the regular courts.[26]

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[25] 384 Phil. 252, 260 (2000).

[26] *Id.* at 260-261. (Citations omitted.)

There is no denying that the present controversy arose from the complaint for illegal dismissal. The subject matter of petitioner's complaint is the execution of the NLRC decision. Execution is an essential part of the proceedings before the NLRC. Jurisdiction, once acquired, continues until the case is finally terminated,[27] and there can be no end to the controversy without the full and proper implementation of the commission's directives.

Further underscoring the RTC's lack of jurisdiction over petitioner's complaint is Article 254 of the Labor Code, to wit:

> ART. 254. *INJUNCTION PROHIBITED*. – No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.

That said, however, we resolve to put an end to the controversy right now, considering the length of time that has passed since the levy on the property was made.

Petitioner claims that the property sought to be levied does not belong to PACSI, the judgment debtor, but to him and his wife. Since he was sued in a representative capacity, and not in his personal capacity, the property could not be made to answer for the judgment obligation of the corporation.

The TCT[28] of the property bears out that, indeed, it belongs to petitioner and his wife. Thus, even if we consider petitioner as an agent of the corporation – and, therefore, not a stranger to the case – such that the provision on third-party claims will not apply to him, the property was registered not only in the name of petitioner but also of his wife. She stands to lose the property subject of execution without ever being a party to the case. This will be tantamount to deprivation of property without due process.

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[27] *Mariño, Jr. v. Gamilla*, 490 Phil. 607, 620 (2005), citing *A' Prime Security Services, Inc. v. Hon. Drilon*, 316 Phil. 532, 537 (1995).

[28] CA *rollo*, p. 109.

Moreover, the power of the NLRC, or the courts, to execute its judgment extends only to properties unquestionably belonging to the judgment debtor alone.[29] A sheriff, therefore, has no authority to attach the property of any person except that of the judgment debtor.[30] Likewise, there is no showing that the sheriff ever tried to execute on the properties of the corporation.

In sum, while petitioner availed himself of the wrong remedy to vindicate his rights, nonetheless, justice demands that this Court look beyond his procedural missteps and grant the petition.

WHEREFORE, the foregoing premises considered, the petition is *GRANTED*. The Decision dated February 21, 2008 and the Resolution dated July 25, 2008 of the Court of Appeals in CA-G.R. CEB-SP. No. 02370 are hereby *REVERSED* and *SET ASIDE*, and a new one is entered declaring *NULL* and *VOID* (1) the Order of the Regional Trial Court of Negros Occidental dated December 27, 2006 in Civil Case No. 06-12927; and (2) the Notice of Sale on Execution of Personal Property dated December 4, 2006 over the property covered by Transfer Certificate of Title No. T-140167, issued by the Acting Sheriff of the National Labor Relations Commission.

SO ORDERED.

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

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[29] *Go v. Yamane*, G.R. No. 160762, May 3, 2006, 489 SCRA 107, 124; *Yao v. Hon. Perello*, 460 Phil. 658, 662 (2003); *Co Tuan v. NLRC*, 352 Phil. 240, 250 (1998).

[30] *Johnson and Johnson (Phils.), Inc. v. CA*, 330 Phil. 856, 873 (1996).

SECOND DIVISION

[G.R. No. 188902. February 16, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROBERTO LOPEZ *y* CABAL**, *appellant*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — When the trial court's factual findings are affirmed by the Court of Appeals, such findings are generally conclusive and binding upon the Court. Moreover, where the credibility of the witness is in question, the findings of the trial court are generally accorded great respect, if not finality, and generally will not be disturbed on appeal, unless there is a clear showing that the trial court overlooked, misappreciated, or misapplied some facts or circumstances of weight and substance that would have affected the outcome of the case. The rationale for this rule is that the trial court has the advantage of observing first-hand the demeanor, behavior, and manner of the witness on the stand and, thus, is in a better position to determine the witness' credibility.

2. CIVIL LAW; DAMAGES; LOSS OF EARNING CAPACITY; REQUIRES DOCUMENTARY EVIDENCE AS BASIS OF COMPUTATION. — [W]e modify the award for loss of earning capacity. The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity. In this case, Liberty presented a certification from Tanod Publishing which showed that Melendres was a photo correspondent for Tanod Newspaper and that "his monthly salary ranges from ₱1,780 to ₱3,570 on per story basis." Liberty presented another certification from Tanod Publishing which showed that Melendres received the total amount of ₱24,990 representing payment of honoraria and transportation allowance from 1 January to 31 July 2006. The Court notes that the defense did not object when the prosecution presented these documents before the trial court. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court

in arriving at its judgment. It was also established that at the time of his death, Melendres was 41 years old. Thus, Melendres' net earning capacity can be derived from two sources: (1) his monthly salary and (2) his honorarium and transportation allowance. Loss of earning capacity is computed as follows: Net Earning Capacity = Life expectancy x Gross Annual Income – Living Expenses.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO, *J.*:

This is an appeal from the 12 May 2009 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 03199. The 12 May 2009 Decision affirmed with modification the 15 February 2008 Decision[2] of the Regional Trial Court, National Capital Judicial Region, Branch 73, Malabon City (trial court), finding accused-appellant Roberto Lopez *y* Cabal (Lopez) guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*. The Court of Appeals also ordered Lopez to pay the heirs of the victim Prudencio Melendres (Melendres) as follows: ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱33,000 as actual damages and ₱200,000 for loss of earning capacity.

On 10 August 2006, Lopez was charged with the murder of Melendres.

Lopez pleaded not guilty upon arraignment.

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Jose C. Reyes, concurring.

[2] CA *rollo*, pp. 16-21. Penned by Pairing Judge Benjamin M. Aquino, Jr.

During the trial, prosecution witness Leo Acibar (Acibar) testified that on 31 July 2006 at about 8:30 a.m., he saw Melendres buying cigarettes from a store when Lopez suddenly appeared and shot Melendres from behind with a caliber .38 revolver, hitting him on the right side of the head. Acibar added that Lopez again shot Melendres on the chest and on the lower abdomen. Lopez then fled from the scene. Acibar immediately reported the incident to the *barangay* authorities.

Ma. Liberty Francisco Melendres (Liberty), Melendres' wife, testified as to the civil liability of Lopez. Liberty presented receipts to show that she spent ₱33,000 for the burial and the interment and ₱7,500 for the wake.[3] She also presented a certification from Tanod Publishing, Inc. (Tanod Publishing), Melendres' employer, as to his monthly salary range,[4] honoraria and transportation allowance.[5] She also sought to recover moral damages.

For the defense, Lopez maintained his innocence and claimed that he was working on Jaime Domingo's (Domingo) house on 31 July 2006.

Domingo testified that Lopez worked for him from 26 to 31 July 2006 to repair the pipelines in his house. However, on cross-examination, Domingo said that Lopez worked for him only until 30 July 2006.[6]

Maritess Padilla (Padilla) also testified that she saw two hooded men with guns tucked in their waist draw their guns and shoot Melendres. Padilla said the first assailant was dark-skinned and stood about five feet five inches, while the second assailant was only about four feet eleven inches. Padilla stated that Lopez was not one of the assailants and that she would be able to identify the assailants if she saw them again.

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[3] Exhibits "N", "N-1" and "N-2", records, folder 1, pp. 52-54.

[4] Exhibit "N-3", *id*. at 55.

[5] Exhibit "N-4", *id*. at 56.

[6] TSN, 4 December 2007, p. 3.

On 15 February 2008, the trial court rendered its decision finding Lopez guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. The trial court also ordered Lopez to pay the heirs of Melendres as follows: ₱50,000 as death indemnity, ₱50,000 as moral damages, ₱40,000 as actual damages and ₱7,570 per month for six months as lost income.

Lopez appealed to the Court of Appeals. Lopez insisted that the prosecution failed to prove his guilt beyond reasonable doubt. Lopez also questioned the monetary awards made by the trial court.

In its 12 May 2009 Decision, the Court of Appeals denied Lopez's appeal and affirmed with modification the trial court's decision. The Court of Appeals said that Acibar's failure to accurately describe Lopez as the perpetrator did not affect his credibility. Moreover, no ill motive can be attributed to Acibar to conclude that he would falsely testify against Lopez. The Court of Appeals also agreed with the trial court that the testimonies of the defense witnesses were vague. The Court of Appeals added that Lopez's alibi is a weak defense and can easily be fabricated.

On the award of damages, the Court of Appeals reduced the award of actual damages from ₱40,000 to ₱33,000, the latter amount having been substantiated by receipts. As to the loss of income, the Court of Appeals noted that there was no accurate way to determine Melendres' earnings since the certification issued by Tanod Publishing did not reflect a fixed amount but only a salary range. However, the Court of Appeals held that the heirs of Melendres are still entitled to a reasonable amount as a result of Melendres' loss of earning capacity and deemed it proper to increase the award from ₱45,420 to ₱200,000.

Hence, this petition.

We find the petition without merit. When the trial court's factual findings are affirmed by the Court of Appeals, such findings are generally conclusive and binding upon the Court.[7]

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[7] *Danofrata v. People*, 458 Phil. 1018 (2003).

Moreover, where the credibility of the witness is in question, the findings of the trial court are generally accorded great respect, if not finality, and generally will not be disturbed on appeal, unless there is a clear showing that the trial court overlooked, misappreciated, or misapplied some facts or circumstances of weight and substance that would have affected the outcome of the case.[8] The rationale for this rule is that the trial court has the advantage of observing first-hand the demeanor, behavior, and manner of the witness on the stand and, thus, is in a better position to determine the witness' credibility.[9]

However, we modify the award for loss of earning capacity. The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity.[10] In this case, Liberty presented a certification from Tanod Publishing which showed that Melendres was a photo correspondent for Tanod Newspaper and that "his monthly salary ranges from ₱1,780 to ₱3,570 on per story basis."[11] Liberty presented another certification from Tanod Publishing which showed that Melendres received the total amount of ₱24,990 representing payment of honoraria and transportation allowance from 1 January to 31 July 2006.[12] The Court notes that the defense did not object when the prosecution presented these documents before the trial court. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[13] It was also established that at the time of his death, Melendres was 41 years old.[14]

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[8] *People v. Ballesta*, G.R. No. 181632, 25 September 2008, 566 SCRA 400.

[9] *People v. Orio*, 386 Phil. 786 (2000).

[10] *España v. People*, 499 Phil. 547 (2005), citing *People v. Mallari*, 452 Phil. 210 (2003).

[11] Exhibit "N-3", records, folder 1, p. 55.

[12] Exhibit "N-4", *id*. at 56.

[13] *People v. Tigle*, 465 Phil. 368 (2004).

[14] Exhibit "C", records, folder 1, p. 51.

Thus, Melendres' net earning capacity can be derived from two sources: (1) his monthly salary[15] and (2) his honorarium and transportation allowance.[16] Loss of earning capacity is computed as follows:

Net Earning
Capacity = Life expectancy x Gross Annual Income – Living Expenses

= [2/3 (80 – age at death)] x GAI – [50% of GAI]

= [2/3 (80 – 41)] x ₱74,940[17] – ₱37,470

= [2/3 (39)] x ₱37,470

= 26 x ₱37,470

Net Earning
Capacity = ₱974,220

WHEREFORE, we *AFFIRM* the 12 May 2009 Decision of the Court of Appeals finding accused-appellant Roberto Lopez *y* Cabal guilty beyond reasonable doubt of murder with the *MODIFICATION* that accused-appellant Roberto Lopez *y* Cabal is ordered to pay the heirs of Prudencio Melendres the amount of ₱974,220 for loss of earning capacity.

SO ORDERED.

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

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[15] Exhibit "N-3", *id*. at 55. Since only the range of Melendres' salary was given, we derived the average between the two amounts which is ₱2,675 and we multiplied this amount by 12 to get the annual salary which is ₱32,100.

[16] Exhibit "N-4", *id*. at 56. For the computation of the gross annual income, we divided ₱24,990 into 7 to get the average honoraria and transportation allowance per month which is ₱3,570 and then we multiplied this by 12 to get the yearly honoraria and transportation allowance which is ₱42,840.

[17] ₱32,100 + ₱42,840 = ₱74,940.

FIRST DIVISION

[G.R. No. 192251. February 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BARANGAY CAPTAIN TONY TOMAS, SR., BENEDICTO DOCTOR, and NESTOR GATCHALIAN,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTIONS; WHERE THE TRIAL COURT OVERLOOKED A MATTER OF SIGNIFICANCE. — We reiterate the consistent principle the Court applies when the issue of credibility of witnesses is raised in the backdrop of the findings of the trial court which are wholly affirmed by the appellate court. An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. Indeed, it is settled that when credibility is in issue, the Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves, and observed their deportment during trial. x x x Findings of facts are matters best left to the trial court. However, where the "trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result," then this Court will not shirk from its duty of ascertaining the proper outcome of such reversible error committed by the trial court.

2. ID.; ID.; ID.; ALLEGATION OF PARTIALITY AND ILL-MOTIVE CANNOT AFFECT A CREDIBLE WITNESS. — Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. x x x The grounds of partiality and ill motive raised by accused-appellants cannot discredit the testimonies of the prosecution witnesses. For one, as the appellate court aptly noted, close relationship to the victim does not make a witness biased per se.

3. ID.; ID.; NEGATIVE PARAFFIN TEST, NOT CONCLUSIVE. — Time and again this Court had reiterated that "even negative findings of the paraffin test do not conclusively show that a person did not fire a gun," and that "a paraffin test has been held to be highly unreliable."

4. ID.; ID.; POSITIVE IDENTIFICATION OF ACCUSED ENTITLED TO GREATER WEIGHT THAN ALIBI AND DENIAL. — It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrators of the crime is entitled to greater weight than their alibis and denials. x x x Once a person gains familiarity with another, identification becomes an easy task even from a considerable distance. Most often, the face and body movements of the assailants create a lasting impression on the victim and eyewitness' minds which cannot be easily erased from their memory. Their positive identification of accused-appellants as the perpetrators of the crime charged was categorical and consistent; hence, We cannot cast any doubt on their credibility as prosecution witnesses. x x x Besides, denial and alibi are inherently weak defenses and constitute self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of credible witnesses.

5. CRIMINAL LAW; MURDER; ELEMENTS. — Generally, the elements of murder are: 1. That a person was killed. 2. That the accused killed him. 3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248. 4. The killing is not parricide or infanticide.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATION THEREOF. — A qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense. Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides: x x x Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the **offender killed the victim**, (2) **through treachery**, or by any of the other five qualifying circumstances, duly alleged in the Information. x x x There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. Mere suddenness of the attack does not amount to

treachery. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. Thus, frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. For *alevosia* to qualify the crime to murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.

7. ID.; CONSPIRACY; MUST SUFFICIENTLY ESTABLISH THE AGREEMENT AND COMMISSION OF THE CRIME BY TWO OR MORE PERSONS. — Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose. Conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt; as mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. x x x [I]n a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all.

8. CRIMINAL LAW; CRIMINAL LIABILITY; ACCOMPLICE; LIABILITY OF ACCUSED POSITIVELY INVOLVED IN A CRIME BUT WHOSE PARTICIPATION IS NOT CERTAIN. — Gatchalian appeared in the company of Tomas, Sr. and Doctor. He also fled together with them. However, Gatchalian was unarmed and did not say anything or commit any overt act to externally manifest his cooperation with the shooting of Estrella. On the other hand, Gatchalian never attempted to stop the shooting, which tends to show that he was aware of the plan and intent to kill Estrella or, at the very least, that he acquiesced to the shooting of Estrella. x x x [W]ith his lack of overt acts manifestly contributing to the accomplishment of the common design to shoot Estrella, there is some doubt if

he indeed conspired with Tomas, Sr. and Doctor. This, however, does not exculpate him from criminal liability absent proof that he merely tagged along or just happened to meet his employer (Tomas, Sr.) shortly before the incident or was merely taken along without being told about the other accused-appellants' plan. The fact that Gatchalian appeared together with the other accused-appellants and fled with them, while not constitutive of proof beyond reasonable doubt of conspiracy, still proves a certain degree of participation and cooperation in the execution of the crime. Consequently, in line with the principle that whatever is favorable to an accused must be accorded him, Gatchalian is guilty as an accomplice only.

9. ID.; MURDER; PENALTY FOR THE PRINCIPAL AND THE ACCOMPLICE TO THE CRIME. — We agree with the courts *a quo* that Tomas, Sr. and Doctor merit to suffer the penalty of *reclusion perpetua* for the murder of Estrella. As an accomplice to the murder, Gatchalian is liable to a penalty of *reclusion temporal* or one degree lower than the imposable penalty for murder. Considering that there are no other aggravating or mitigating circumstances applicable, the penalty of *reclusion temporal* in its medium period is proper. Considering further the applicability of the Indeterminate Sentence Law since Gatchalian is not disqualified under Section 2 of said law, the proper penalty imposable is *prision mayor* in its medium period, as minimum, to *reclusion temporal* in its medium period, as maximum.

10. ID.; ID.; DAMAGES; LOSS OF EARNING CAPACITY SHOULD BE SUBSTANTIATED BY DOCUMENTARY EVIDENCE. — Anent the grant of damages for loss of income or earning capacity in the amount of USD 368,000, We find it proper and duly proven. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity.

11. ID.; ID.; ID.; CIVIL INDEMNITY *EX DELICTO* IS MANDATORY IN MURDER AND DOES NOT REQUIRE EVIDENCE. — [C]ivil indemnity *ex delicto* is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime. Based on current jurisprudence, the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Estrella is in order.

12. ID.; ID.; ID.; MORAL DAMAGES AND EXEMPLARY DAMAGES PROPER IN MURDER. — [T]he CA correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to her family. With the presence of the qualifying circumstance of treachery, the award of PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code. Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Benitez Legaspi Barcelo Rafael & Salamera Law Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is an appeal from the Decision[1] dated August 12, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03405, which affirmed with modification the Decision[2] dated May 27, 2008 in Criminal Case No. 06-92 of the Regional Trial Court (RTC), Branch 68 in Camiling, Tarlac. The RTC found accused Tony Tomas, Sr. (Tomas, Sr.), Benedicto Doctor (Doctor), and Nestor Gatchalian (Gatchalian) guilty beyond reasonable doubt of Murder.

The Facts

In an Information[3] filed on July 21, 2006, the three accused were indicted for the crime of murder under Article 248

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[1] *Rollo*, pp. 2-13. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Mario L. Guariña III and Normandie B. Pizarro.

[2] CA *rollo*, pp. 15-40. Penned by Presiding Judge Jose S. Vallo.

[3] Records, p. 1.

of the Revised Penal Code (RPC), allegedly committed as follows:

> That on or about July 19, 2006, at around 10:00 o'clock in the evening, Municipality of Mayantoc, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shot several times one Estrella Doctor Casco which [caused] her instantaneous death.

Upon arraignment on September 14, 2006, the three accused pleaded not guilty to the above charge.[4] Trial[5] on the merits ensued after the pre-trial conference.

Version of the Prosecution

Estrella Doctor Casco (Estrella) was based in the United States, working there as a procurement specialist with Safeway, Inc. and as a planner. She arrived in the Philippines on July 9, 2006 or about 10 days before her untimely demise.

At around 9:45 in the evening on July 19, 2006, the victim (Estrella), with her mother Damiana Doctor (Damiana) and caretakers Liezl Toledo (Liezl) and Angelita Duque (Angelita), were traversing the road towards her house in *Barangay* Baybayaos, Mayantoc, Tarlac after she had parked her rented car at the house of Liezl's mother-in-law, Erlinda Toledo. They had just come from the clinic of Dr. Salvador for a medical check-up of Damiana.

Estrella was walking slightly ahead of her mother and Angelita when appellants Tomas, Sr., Doctor and Gatchalian suddenly

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[4] *Id.* at 35-36.

[5] During the trial, the prosecution presented as its witnesses Liezl Toledo, Angelita Duque, Avelino Casco, Dr. Saturnino Ferrer and P/Insp. Eleno Mangrobang. On the other hand, the defense presented as its witnesses accused-appellants, Milagros Reguine, Rosalinda Areniego, Yolanda Pablo, P/Supt. Daisy P. Babor, Rosendo Toledo, PO3 Luciano Captan and PO1 Celso Isidro.

came out from the side of the road. Tomas, Sr. and Doctor are cousins of Estrella. Thereupon, without saying anything, Tomas, Sr. drew a gun and shot Estrella twice at a distance of about 1.5 meters away. Gatchalian, without a gun, allegedly supported Tomas, Sr. by standing in a blocking position along the road, while Doctor positioned himself at the back of Damiana and Angelita and poked a handgun at them, telling them to lie face down on the ground, though they did not totally drop on the road but were in a kneeling position.

When Tomas, Sr. fired the first two shots at Estrella, the latter fell down but the former still followed it with three more shots when she was already prone on the ground. After the five shots, the three accused fled towards the house of Tomas, Sr. Liezl, who was standing about four meters away from Estrella, shouted, "*Saklulu, tulungan ninyo kami* (*Help, help us*)," then ran to her house. Meanwhile, Angelita came to the aid of 80-year-old Damiana, who suffered a hypertensive attack after seeing what happened to her daughter. Angelita waved her hand to seek assistance from *Barangay Kagawad* Yolanda Pablo (*Kagawad* Pablo) who came out on the road.

Both Liezl and Angelita recognized the three accused from the light coming from the lamppost. The road was well lit. Doctor's house was barely seven (7) meters from the scene of the crime, that of Tomas, Sr. about 15 meters away, while Gatchalian was staying in a hut in the fields.

The people in the neighborhood heard the gunshots, and most of them came out of their houses to see what happened. *Kagawad* Pablo was watching TV in her house when she heard the gunshots and immediately went out to investigate. She saw three persons on the road: Damiana who was seated, Angelita who was squatting and holding a fan, and a person lying on the ground who was Estrella, already shot. She responded to Angelita's call for help to take Estrella to the district hospital. Rosalinda Areniego (Rosalinda), first cousin of Estrella, was with her child, Ryan, in her house watching the TV program "*Sa Piling Mo*" with actress Judy Ann Santos between 9:30 to 10:00 p.m.

when she heard the gunshots. Her house was 10 to 15 meters away from the road.

Liezl contacted Estrella's cousin, Captain Joel Candelario (Capt. Candelario), the Chief of Police of the Philippine National Police (PNP) detachment at Sta. Ignacia, Tarlac, who, in turn, contacted the police in Mayantoc, Tarlac. A half-hour later, Capt. Candelario arrived at the scene and, using a rented car, brought Estrella to the Malacampa District Hospital in Camiling, Tarlac accompanied by Liezl, Domingo Toledo (Liezl's husband), Neri Corpuz (Liezl's first cousin) and *Kagawad* Pablo. Estrella was declared dead on arrival by the attending doctors. Estrella was 56 years old when she died.

Thereafter, Police Inspector Eleno Mangrobang (P/Insp. Mangrobang), the Chief of Police of Mayantoc, Tarlac arrived in the district hospital and asked questions from Liezl and Angelita. They were then brought to the police station for investigation where Liezl executed her *Sinumpaang Salaysay* (Sworn Statement).[6] Angelita likewise accomplished her *Sinumpaang Salaysay*.[7] Both Liezl and Angelita categorically identified the three accused as the ones who perpetrated the crime.

The autopsy conducted by Dr. Saturnino Ferrer (Dr. Ferrer) a day after the shooting, or on July 20, 2006, showed four (4) gunshot wounds, one of them perforating the heart of Estrella. Dr. Ferrer issued the death certificate, citing the cause of death as "MULTIPLE GUNSHOT WOUNDS, LACERATIONS OF THE UPPER PORTION OF THE HEART, MULTIPLE RIB FRACTURES, HEMOPERICARDIUM, LEFT HEMOTHORAX; SEVERE EXTERNAL AND INTERNAL HEMORRHAGE."[8]

On the same day, July 20, 2006, Tomas, Sr. and Doctor were arrested in their respective homes, while Gatchalian was arrested in the woodland (*kahuyan*). The three were subjected to paraffin

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[6] Records, pp. 5-6, dated July 20, 2006.

[7] *Id.* at 2-3, dated July 20, 2006.

[8] *Rollo*, p. 4.

tests shortly after the policemen took them in custody and were found negative for gunpowder burns.

Liezl opined that what probably prompted the three accused to murder Estrella were the facts that: (1) Tomas, Sr. was removed as administrator of Estrella's properties in *Barangay* Baybayaos, Mayantoc, Tarlac; (2) Tomas, Sr. lost several cases against Estrella's father, Cecilio Doctor (Cecilio); (3) Tomas, Sr. accused Estrella of instigating and financing several cases filed against him; and (4) Cecilio filed a case against Alejandro Doctor, the father of accused Doctor, involving an easement of a property. These apparent motives were corroborated by Angelita.

Version of the Defense

The accused denied involvement in the incident.

Tomas, Sr. averred that he was at home sleeping when the incident happened. Since he suffered a cardiac arrest in December 1988, he had regular attacks and, on that day, feeling bad, he slept early at around 7:00 p.m. in a bed in the living room in front of the television and woke up at 4:00 a.m. the next day. He was not awakened by the gunshots the previous night and it was his wife who told him about Estrella's death from the shooting. In the morning of July 20, 2006, as *barangay* captain, he confirmed Estrella's death in front of Doctor's house from his neighbors. His investigation did not identify the persons responsible for the crime.

On the other hand, Doctor, the brother-in-law of Tomas, Sr. and a cousin of Estrella, likewise denied any involvement in the incident. He asserted that after working in the field the whole day of July 19, 2006, he went home at 4:00 p.m. At around 9:00 p.m. he went to sleep. At 10:00 p.m. he awoke to urinate and was told by his wife that his cousin Estrella met an accident. He was prevailed upon by his wife not to go out of the house. He then went back to sleep and woke up at 5:00 a.m. the next day.

Gatchalian admitted that he was a farm helper of Tomas,

Sr. and worked in the latter's rice field. On the night of the incident, he claimed he was at home asleep with his 10-year-old son Jayson. He woke up the next day at 5:00 a.m. and proceeded to work in the farm of Tomas, Sr.

On July 20, 2006, P/Insp. Mangrobang invited the accused to the Mayantoc police station for investigation but instead immediately brought them inside the municipal jail. An hour later, policemen brought them to Camp Macabulos for paraffin tests. Thereafter, they were returned to jail.

The Ruling of the RTC

On May 27, 2008, the RTC rendered its Decision finding the accused guilty beyond reasonable doubt of murder and sentencing them to *reclusion perpetua*. The dispositive portion reads:

> WHEREFORE, premises considered, this Court finds accused Tony Tomas, Sr., Benedicto Doctor and Nestor Gatchalian guilty beyond reasonable doubt of the offense of Murder and hereby sentences each of them to suffer the penalty of *Reclusion Perpetua*.
>
> Likewise, all of the said accused are hereby ordered to pay jointly the heirs of the victim, the following:
>
> 1]. The amount of Php50,000.00 as civil indemnity;
>
> 2]. The amount of Php50,000.00 as moral damages;
>
> 3]. The amount of Php30,000.00 as exemplary damages;
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> 4]. The amount of Php285,416.33 and another amount of $2,182.78 US dollars or its equivalent in Philippine pesos at the time of its payment as actual damages; and
>
> 5]. The amount of $368,000.00 US dollars or its equivalent in Philippine pesos at the time of its payment for loss of income of the victim.
>
> SO ORDERED.

The RTC appreciated the testimonies of prosecution witnesses Liezl and Angelita (caretakers of Estrella), Avelino Casco (husband of Estrella), Dr. Ferrer (the doctor who conducted the autopsy), and P/Insp. Mangrobang. It gave credence to the positive identification by Liezl and Angelita of the accused

as the perpetrators. The RTC held as sufficient the positive identification, coupled with sufficient motive, on the part of Tomas, Sr. and Doctor and other circumstantial evidence proving the accused as the perpetrators of the murder of Estrella. The RTC appreciated treachery in the swiftness and unexpectedness of the attack upon the unarmed Estrella without the slightest provocation, and the attendance of conspiracy through the accused's contributory acts to successfully carry out the crime. Thus, the trial court's finding beyond reasonable doubt of the accused's guilt to the offense of murder and the corresponding sentence of *reclusion perpetua* without eligibility of parole in lieu of the death penalty.

The RTC found the accused's similar defenses of denial and alibi bereft of merit. It ratiocinated that these defenses were but mere denial and self-serving statements of the accused without any shred of supporting evidence. The additional defense testimonies of Milagros Reguine (Milagros), Rosalinda, *Kagawad* Pablo, Police Superintendent Daisy P. Babor (P/Supt. Babor), Rosendo Toledo (Rosendo), Police Officer 3 (PO3) Luciano Captan, and PO1 Celso Isidro did not disprove the evidence of the prosecution, much less proved the accused's innocence. The trial court found incredulous the defense testimonies of Rosalinda, Milagros and Rosendo to the effect that the assailants were two young men, with the gunman sporting a flat-top haircut while his companion had long hair. The RTC ratiocinated that it would not have been easy for defense witnesses to identify the assailants due to the speed of the incident, their distance from the crime scene, and the fact that, at the start of the shooting, Rosalinda and Milagros were watching television in their respective homes while Rosendo was busy drinking with his buddies. Thus, between the testimonies of Liezl and Angelita who were with the victim and those of Rosalinda, Milagros and Rosendo, the RTC found the testimonies of the former more credible.

Anent the negative paraffin tests on appellants, the RTC relied on *Marturillas v. People*,[9] where the Court reiterated

[9] G.R. No. 163217, April 18, 2006, 487 SCRA 273.

its consistent ruling that a negative paraffin test conducted on an accused does not *ipso facto* prove said accused is innocent, for a negative paraffin test result is not conclusive proof that a person has not fired a gun.

Aggrieved, the accused appealed[10] their conviction to the CA.

The Ruling of the CA

On August 12, 2009, the appellate court rendered its Decision, affirming the findings of the RTC and the conviction of the accused but modifying the award of actual damages to PhP 385,416.33 from PhP 285,416.33 to correctly reflect what was proved during trial. The *fallo* reads:

> WHEREFORE, premises considered, the Decision of the RTC of Camiling, Tarlac, Branch 68, dated May 27, 2008 in Criminal Case No. 06-92 is hereby AFFIRMED with MODIFICATION, awarding the total of ₱385,416.33 as and by way of actual damages in addition to the US$2,182.78 or its equivalent in Philippine pesos previously awarded. The rest of the Decision stands.
>
> SO ORDERED.

The CA found that the testimony of the prosecution witnesses and their positive identification of the accused as perpetrators of the killing of Estrella were more credible than the denial and self-serving averments by the defense witnesses, which were unsubstantiated. Reiterating the RTC's ruling that a negative paraffin test result is not conclusive of the accused's innocence, the appellate court also found the presence of treachery and conspiracy in the manner the accused carried out the nefarious deed.

The Issues

Thus, the instant appeal, where both accused-appellants and the Office of the Solicitor General, representing the People of the Philippines, opted not to file any supplemental brief, since no new issues are raised nor any supervening events transpired,

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[10] CA *rollo*, pp. 42-43, Notice of Appeal dated June 2, 2008.

and correspondingly filed their respective Manifestations[11] to the effect that the Brief for the Accused-Appellants,[12] accused-appellants' Motion for Reconsideration,[13] and the Brief for the Appellee[14] filed in CA-G.R. CR-H.C. No. 03405 be used in resolving the instant appeal.

Thus, accused-appellants raise the same assignments of errors earlier passed over and resolved by the CA, to wit: *first*, that the testimonies of prosecution witnesses Liezl and Angelita were incredible and repugnant to human experience and behavior; *second*, the RTC erred in disregarding their negative paraffin test results and their defense of denial and alibi; *third*, there was no conspiracy; and *fourth*, there was no treachery. Elsewise put, accused-appellants question the credibility of the prosecution witnesses and raise the issue of insufficiency of evidence to convict them, much less the presence of treachery and conspiracy.

The Court's Ruling

The appeal is partly meritorious.

First Issue: Credibility of Prosecution Witnesses

Accused-appellants assert that prosecution witnesses Liezl and Angelita are not credible witnesses on the grounds of their partiality since they rely on the family of Estrella for their livelihood. They argue that the testimonies of Liezl and Angelita are too perfect since appellants could not have committed the crime in such a well-lit place where they could easily be identified, coupled with the fact that Liezl, Angelita and Damiana were spared from harm. They infer that the testimonies of Liezl and Angelita were fabricated. They also point to the reason that the adverse testimony of Liezl is on account of her ill feelings

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[11] *Rollo*, pp. 34-37, Manifestation and Motion of the Office of the Solicitor General dated August 20, 2010; *id.* at 41-43, Manifestation of Accused-Appellants dated September 17, 2010.

[12] CA *rollo*, pp. 55-111, dated October 31, 2008.

[13] *Id.* at 199-215, dated September 1, 2009.

[14] *Id.* at 155-173, dated February 2, 2009.

towards Doctor who previously subjected her to shame when he slapped her in public, and also to ingratiate herself to her employer, Cecilio, Estrella's father, who was charged by Tomas, Sr. in a case.

To cast more doubt on their testimonies, accused-appellants point to the incongruity of both Liezl and Angelita not identifying them as the perpetrators of Estrella's killing immediately after the incident when they had ample opportunity to do so. In the case of Angelita, she only mentioned Tomas, Sr. to Cecilio and did not include Doctor and Gatchalian. And much worse in the case of Liezl, who rushed home looking for her cellular phone, and did not even bother to reveal accused-appellants' identities to the responding policemen.

We disagree.

At the outset, We reiterate the consistent principle the Court applies when the issue of credibility of witnesses is raised in the backdrop of the findings of the trial court which are wholly affirmed by the appellate court. An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect.[15] Indeed, it is settled that when credibility is in issue, the Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves, and observed their deportment during trial.[16]

Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.[17]

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[15] *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 351.

[16] *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 511; citing *People v. Navida*, G.R. Nos. 312239-40, December 4, 2000, 346 SCRA 821, 830.

[17] *People v. Mamantak*, G.R. No. 174659, July 28, 2008, 560 SCRA 298, 309; citing *People v. Alba*, G.R. No. 107715, April 25, 1996, 256 SCRA 505.

The trial court found more credible the testimony of prosecution witnesses Liezl and Angelita, who narrated in a straightforward and candid manner what transpired that fateful night of July 19, 2006. One with the appellate court, We find no reason to set aside their testimonies.

The grounds of partiality and ill motive raised by accused-appellants cannot discredit the testimonies of the prosecution witnesses. For one, as the appellate court aptly noted, close relationship to the victim does not make a witness biased per se.[18] It has to be amply shown that the witness is truly biased and has fabricated the testimony on account of such bias. Accused-appellants have not sufficiently shown such a bias. The fact that Liezl and Angelita depend on the victim's family for their job as caretakers does not make them biased witnesses. Besides, their testimonies have not been shown to be fabricated. The trial court that had scrutinized their deportment, facial expression, and body language during the trial has found them more credible. For another, the ill motive raised by accused-appellants has not been shown to affect the testimony of Liezl to suit her alleged personal ill feelings against Doctor. If it were so and the content of her testimony was fabricated, why did Liezl not make Doctor as the gunman who shot Estrella? And why include Gatchalian and Tomas, Sr.?

But more telling of the veracity of the testimony of these prosecution witnesses are the following facts: (1) Angelita has not been shown to have any ill motive against accused-appellants; (2) during the time immediately after the shooting incident when Liezl ran to her house and Angelita brought Damiana home, Angelita was queried by Cecilio about who shot Estrella, and Angelita replied without hesitation that it was Tomas, Sr. who shot Estrella;[19] (3) when Angelita mentioned Tomas, Sr. to Cecilio as the gunman, she had not conferred with Liezl; thus, they could not have made it up that Tomas,

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[18] *People v. Mendoza*, G.R. Nos. 109279-80, January 18, 1999, 301 SCRA 66, 79.

[19] TSN, May 31, 2007, pp. 25-29.

Sr. was the gunman; (4) while it is true that Angelita did not mention the names of Doctor and Gatchalian, such does not denigrate from the fact that it was indeed Tomas, Sr. whom Angelita saw shooting Estrella with a handgun; (5) Angelita sufficiently showed by her testimony that she was busy attending to Damiana who had a hypertensive attack and the house was in chaos because of the incident and, thus, was not able to enlighten Cecilio more about the incident; and (6) the fact that both Liezl and Angelita made their official statements (*sinumpaang salaysay*) a few hours after the incident during the investigation conducted by P/Insp. Mangrobang initially at the district hospital and later at the police station shows that their account of what happened was not fabricated and they positively identified accused-appellants as the perpetrators.

Consequently, the testimonies of Angelita and Liezl were neither fabricated nor prompted by any ill motive but were truly eyewitness accounts of what transpired that fateful night of July 19, 2006.

Second Issue: Negative Paraffin Test and Defenses of Denial and Alibi

Accused-appellants also allege error by the trial court in disregarding their negative paraffin test results coupled with their defenses of denial and alibi which, they strongly asserted, were corroborated by credible witnesses Rosalinda and Rosendo who do not appear to harbor any ill motive against the victim and her family. The testimonies of Rosalinda and Rosendo, according to accused-appellants, attest to the fact that the assailants were two young men. Moreover, they contend that their act of not fleeing is a circumstance that should favorably be considered.

We are likewise not persuaded.

Negative paraffin test not conclusive

Accused-appellants were subjected to paraffin tests on July 20, 2006 at 11:05 a.m. or the very next day and a little over 14 hours after the shooting incident. Since gunpowder nitrates

stay for 72 hours in the hands of a person who fired a handgun, a timely paraffin test, if positive, will definitely prove that a person had fired a handgun within that time frame. A negative result, however, does not merit conclusive proof that a person had not fired a handgun. Thus, the negative paraffin test results of accused-appellants cannot exculpate them, particularly Tomas, Sr., from the crime.

Time and again this Court had reiterated that "even negative findings of the paraffin test do not conclusively show that a person did not fire a gun,"[20] and that "a paraffin test has been held to be highly unreliable."[21] This is so since there are many ways, either deliberately or accidentally, that the residue of gunpowder nitrates in the hands of a person who fired a handgun can be removed. This point was aptly explained and clarified by defense witness P/Supt. Babor, a Forensic Chemist and the Regional Chief of the PNP Crime Laboratory at Camp Olivas in San Fernando, Pampanga. She explained in open court the various factors affecting the non-adhesion, disappearance or removal of the residue of gunpowder nitrates on the hands of a person who fires a gun, like the wind direction and velocity when the handgun was fired, the type of firearm used, the humidity or moisture present in the ammunition, and when the person wears gloves to preclude adhesion of the gunpowder nitrates.[22] Also, she explained that opening the pores of the skin will make the nitrates slough off or disappear and this could be done by subjecting the hands to heat, like steam from boiling water, or sufficiently washing the hands with warm water. Finally, gunpowder nitrates are also dissolved by diphenylamine.[23]

Positive Identification

As adverted to above, the credibility of prosecution witnesses Liezl and Angelita has not been successfully assailed by accused-

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[20] *Revita v. People*, G.R. No. 177564, October 31, 2008, 570 SCRA 356, 370.

[21] *Id.*

[22] TSN, December 18, 2007, p. 10.

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

appellants. Besides, in Our assiduous review of the records of the instant case, We cannot weigh and view the evidence in the same light as accused-appellants. It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrators of the crime is entitled to greater weight than their alibis and denials.[24]

Thus, Angelita testified as to what happened and positively identified accused-appellants and their specific actions:

ATTY. DE GUZMAN: While walking towards the house of Mrs. Casco at about past 9 o'clock of July 19, 2006, do you recall of any unusual incident that transpired?

ANGELITA DUQUE: Yes, sir.

Q: What was that?
A: Brgy. Captain Tony Tomas, Benedicto Doctor, and Nestor Gatchalian suddenly emerged and accosted us while we were going to the house of Mrs. Casco, sir.

Q: In particular, what did Brgy. Captain Tomas do?
A: He suddenly hold a gun and shot Mrs. Casco, sir.

Q: How many times did Brgy. Captain Tony Tomas shoot Mrs. Casco?
A: First, he fired two (2) gunshots to Mrs. Casco and Mrs. Casco fell on the ground and it was followed by another three (3) shots, sir.

Q: While Brgy. Captain Tony Tomas was shooting at Mrs. Casco, what was Benedicto Doctor doing?
A: Before Brgy. Captain Tony Tomas fired shots, Benedicto Doctor was already positioned at our back poking the gun to us, sir.

Q: How about Nestor Gatchalian, what was he doing at the time Brgy. Captain Tony Tomas was shooting Mrs. Casco?

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[24] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 566; citing *People v. Manegdeg*, G.R. No. 115470, October 13, 1999, 316 SCRA 689, 704.

A: Nestor Gatchalian was standing at the middle of the road supporting Brgy. Captain Tomas, sir.[25]

On the other hand, Liezl likewise testified as to how the shooting transpired:

ATTY. DE GUZMAN: While you were walking, do you recall of any unusual or extra ordinary occurrence that took place at that time?

LIEZL TODLEDO: Yes, sir.

Q: What was that?
A: Tony [Tomas, Sr.], Benedicto Doctor and Nestor Gatchalian suddenly came out, sir.

Q: What did Tony [Tomas, Sr.] do if any?
A: He suddenly drew a handgun and shot Mrs. Casco, sir.

Q: How many times did Tony [Tomas, Sr.] shoot Estrella Casco?
A: At first, he fired two (2) shots sir, and followed it with three (3) more shots.

Q: What happened to Mrs. Casco after the first two (2) shots?
A: She fell down, sir.

Q: What did you do, if any?
A: I was standing, sir. And I heard another three (3) shots.

Q: At the time you heard the three (3) shots, what did you do if any?
A: When I saw the body of Mrs. Casco jerked, I shouted and ran away, sir.

Q: You said, you shouted. What were the words you shouted?
A: "*Saklulu, tulungan ninyo kami*", while running, sir.

Q: Where did you run?
A: Going to our house, sir.[26]

It must be pointed out that prosecution witnesses Liezl and Angelita knew accused-appellants well since they were

[25] TSN, April 24, 2007, pp. 12-13.

[26] TSN, January 9, 2007, pp. 12-13.

neighbors. Thus, they have attained a high level of familiarity with each other.

Once a person gains familiarity with another, identification becomes an easy task even from a considerable distance. Most often, the face and body movements of the assailants create a lasting impression on the victim and eyewitness' minds which cannot be easily erased from their memory.[27] Their positive identification of accused-appellants as the perpetrators of the crime charged was categorical and consistent; hence, We cannot cast any doubt on their credibility as prosecution witnesses.[28] As aptly pointed out by the CA:

> With regard to the purported identification made by defense witnesses ROSALINDA ARENIEGO and ROSENDO TEODORO of the alleged culprits different from the accused-appellants, the Court notes with approval the RTC's observation that between the testimonies of eyewitnesses LIEZL and ANGELITA, and that of defense witnesses ROSALINDA and ROSENDO, the former's declarations were more credible, as they were in fact walking together with the victim when she was shot, while ROSALINDA and ROSENDO were supposedly about fifteen (15) meters away from the crime scene.[29]

Besides, denial and alibi are inherently weak defenses and constitute self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of credible witnesses.[30]

Third and Fourth Issues: Appreciation of Treachery and Presence of Conspiracy

We tackle the last two issues together for being related and intertwined, dealing as they were on how the crime of murder was perpetrated.

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[27] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 471-472.

[28] *Id.* at 470.

[29] *Rollo*, p. 11.

[30] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 297.

Accused-appellants strongly maintain the absence of the qualifying circumstance of treachery—qualifying the killing of Estrella to murder; and the lack of conspiracy—penalizing them equally for the crime of murder. They strongly assert the lack of treachery since their simultaneous and sudden appearance could not amount to it, for Tomas, Sr. still had to draw his gun before shooting Estrella, and Doctor still had to position himself behind Damiana and Angelita before ordering them to drop or lie face down on the ground. Evidently, the victim Estrella had ample opportunity to dodge or defend herself.

And finally, accused-appellants point to the dearth of evidence showing their concerted acts in pursuing a common design to kill Estrella. Prosecution witnesses Liezl and Angelita point to Tomas, Sr. as the one who fired a handgun; Doctor was purportedly carrying one but did not use it, while Gatchalian did not carry one. They aver that the prosecution failed to show evidence of their intentional participation in the crime with a common design and purpose since Doctor's act of holding a gun was never shown to be in furtherance of the killing of Estrella. And much less can Gatchalian's act of merely standing on the road in the path of the four ladies ever constitute furtherance of the common purpose of killing Estrella.

Accused-appellants' arguments are partly meritorious.

After a judicious study of the records at hand, We are compelled to affirm the presence of the qualifying circumstance of treachery and of conspiracy. However, the evidence adduced and the records do not support a finding of conspiracy against appellant Gatchalian.

Treachery duly proven

A qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense.[31] Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

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[31] *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 737; citing *People v. Guillermo*, G.R. No. 147786, January 20, 2004, 420 SCRA 326, 343.

ART. 248. *Murder*.— Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the **offender killed the victim**, (2) **through treachery**, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are:

1. That a person was killed.

2. That the accused killed him.

3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.[32]

In the instant case, there is no dispute that Estrella was shot to death—she succumbed to four gunshot wounds, one of which

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[32] 2 L.B. Reyes, *THE REVISED PENAL CODE, CRIMINAL LAW* 469 (16th ed., 2006).

perforated her heart—and it is neither parricide nor infanticide. That Tomas, Sr. killed the victim in a treacherous manner was established by the prosecution during the trial.

There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make.[33] Mere suddenness of the attack does not amount to treachery.[34] The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[35] Thus, frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[36]

For *alevosia* to qualify the crime to murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted.[37] Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[38]

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[33] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 635-636; citing *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288; *People v. Ballesteros*, G.R. No. 172693, August 11, 2008, 561 SCRA 657, 670.

[34] *People v. Tabuelog*, G.R. No. 178059, January 22, 2008, 542 SCRA 301, 316.

[35] *People v. Rosas*, G.R. No. 177805, October 24, 2008, 570 SCRA 117, 133; citing *People v. Lab-eo*, G.R. No. 133438, January 16, 2002, 373 SCRA 461, 475.

[36] *Olalia, Jr. v. People*, G.R. No. 177276, August 20, 2008, 562 SCRA 723, 737; citing *People v. Belaro*, G.R. No. 99869, May 26, 1999, 307 SCRA 591, 607.

[37] *People v. Balais*, *supra* note 24, at 568.

[38] *People v. Barriga*, G.R. No. 178545, September 29, 2008, 567 SCRA 65, 80-81; citing *People v. Leal*, G.R. No. 139313, June 19, 2001, 358 SCRA 794, 807.

Consequently, the issue of the presence of treachery hinges on the account of eyewitnesses Liezl and Angelita, who witnessed everything from the inception of the attack until accused-appellants fled from the crime scene. Both were not only certain and unwavering in their positive identification of accused-appellants, but their testimony, as aptly noted by the courts *a quo*, were also factual, straightforward and convincing on how the murder transpired.

To reiterate, as quoted above, while the party of Estrella was walking, accused-appellants suddenly appeared from the side of the road. Without uttering any word, Tomas, Sr. drew his gun and shot Estrella twice, while Doctor simultaneously poked a gun at Angelita and Damiana. And when Estrella already fell down, Tomas, Sr. shot her thrice more—perhaps to ensure her death. Then accused-appellants fled. It is, thus, clear that the shooting of Estrella by Tomas, Sr. was done with treachery. The nefarious act was done in a few moments, it was unexpected as it was sudden. The act of Doctor in immobilizing Angelita and Damiana in those brief moments afforded and ensured accused-appellants' impunity from the unarmed Estrella and her three similarly unarmed companions.

Conspiracy duly proven

While We likewise affirm the presence of conspiracy, as adverted above, We cannot agree to the finding of the trial court as affirmed by the appellate court that Gatchalian is equally guilty on account of conspiracy to merit the same criminal liability as accused-appellants Tomas, Sr. and Doctor.

Findings of facts are matters best left to the trial court. However, where the "trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result,"[39] then this Court will not shirk from its duty of ascertaining the proper outcome of such reversible error committed by the trial court.

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[39] *People v. Eling*, *supra* note 31, at 735-736; citing *People v. Ferrer*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 50.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[40] Conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt;[41] as mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[42]

In the instant case, the ascertained facts of the shooting to death of Estrella with treachery established beyond reasonable doubt the commission of the crime of murder. Tomas, Sr.'s guilt has been proved beyond reasonable doubt. To be equally guilty for murder, it must be shown that Doctor and Gatchalian conspired with Tomas, Sr., for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all.[43] From the clear testimony of Angelita and Liezl, it has been duly established that Doctor's contemporaneous act was made in furtherance of the common purpose of killing Estrella and ensuring impunity from the act. Indeed, Doctor's cooperation in the shooting of Estrella ensured its accomplishment and their successful escape

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[40] *People v. Tan*, G.R. No. 177566, March 26, 2008, 549 SCRA 489, 502; citing *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003, 396 SCRA 31; *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008, 554 SCRA 572, 586.

[41] *People v. Malolot*, G.R. No. 174063, March 14, 2008, 548 SCRA 676, 689; citing *People v. Lacao, Sr.*, G.R. No. 95320, September 14, 1991, 201 SCRA 317, 329.

[42] *Id.*; citing *People v. Gonzales*, G.R. No. 128282, April 30, 2001, 357 SCRA 460, 474.

[43] *People v. Liquiran*, G.R. No. 105693, November 19, 1993, 228 SCRA 62, 74; *People v. Rostata*, G.R. No. 91482, February 9, 1993, 218 SCRA 657, 678; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385, 401.

from the crime scene. Doctor is, thus, equally guilty and liable for the murder of Estrella on account of conspiracy.

Gatchalian guilty as an accomplice

Gatchalian, however, is differently situated as Doctor. We note that the evidence adduced and the records would show that Gatchalian did not do overt acts for the furtherance of the shooting of Estrella. As mentioned above, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[44]

It appears that Gatchalian is a party to the conspiracy as found by the courts *a quo*. Gatchalian appeared in the company of Tomas, Sr. and Doctor. He also fled together with them. However, Gatchalian was unarmed and did not say anything or commit any overt act to externally manifest his cooperation with the shooting of Estrella. On the other hand, Gatchalian never attempted to stop the shooting, which tends to show that he was aware of the plan and intent to kill Estrella or, at the very least, that he acquiesced to the shooting of Estrella.

The trial court viewed Gatchalian as supporting Tomas, Sr. by taking a "blocking position" in the road. We, however, cannot subscribe to such a view considering that his presence is merely extraneous to the accomplishment of the crime. Besides, Angelita and Damiana were covered by Doctor who poked a gun at them, while Liezl was so far back that it would be incongruous, to say the least, that Gatchalian was blocking the road. Who would he be blocking then when the road is wide and Liezl was far back?

Thus, with his lack of overt acts manifestly contributing to the accomplishment of the common design to shoot Estrella, there is some doubt if he indeed conspired with Tomas, Sr. and Doctor. This, however, does not exculpate him from criminal liability absent proof that he merely tagged along or just happened to meet his employer (Tomas, Sr.) shortly before the incident

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[44] *People v. Malolot, supra* note 41.

or was merely taken along without being told about the other accused-appellants' plan. The fact that Gatchalian appeared together with the other accused-appellants and fled with them, while not constitutive of proof beyond reasonable doubt of conspiracy, still proves a certain degree of participation and cooperation in the execution of the crime. Consequently, in line with the principle that whatever is favorable to an accused must be accorded him, Gatchalian is guilty as an accomplice only. As We aptly explained in *People v. Ballesta*:

> Mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person as a conspirator. x x x Lacking sufficient evidence of conspiracy and there being doubt as to whether appellant acted as a principal or just a mere accomplice, the doubt should be resolved in his favor and is thus held liable only as an accomplice.
>
> x x x Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as accomplice will always be resolved in favor of the milder form of criminal liability—that of a mere accomplice.[45]

Proper Penalties

We agree with the courts *a quo* that Tomas, Sr. and Doctor merit to suffer the penalty of *reclusion perpetua* for the murder of Estrella.

As an accomplice to the murder, Gatchalian is liable to a penalty of *reclusion temporal* or one degree lower than the imposable penalty for murder. Considering that there are no other aggravating or mitigating circumstances applicable, the penalty of *reclusion temporal* in its medium period is proper. Considering further the applicability of the Indeterminate Sentence Law since Gatchalian is not disqualified under Section 2 of said law, the proper penalty imposable is *prision mayor* in its medium period, as minimum, to *reclusion temporal* in its medium period, as maximum.

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[45] G.R. No. 181632, September 25, 2008, 566 SCRA 400, 420-421 (citations omitted).

Award of Damages

Finally, on the damages awarded, the CA correctly modified the actual damages to PhP 385,416.33[46] and USD 2,182.78,[47] the amounts duly proven during trial with supporting official receipts and corresponding documents related to actual expenses for the casket, funeral services and the airfreight of Estrella's remains back to the United States.

Anent the grant of damages for loss of income or earning capacity in the amount of USD 368,000, We find it proper and duly proven. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity.[48] The prosecution duly proved Estrella's loss of earning capacity by presenting the statement from her employer, Safeway Inc., which showed her earning an hourly rate of USD 25.233.[49] Likewise, Estrella's 2006 Wage and Tax Statement from her Employee's Records in the Department of the Treasury – Internal Revenue Service[50] shows her earnings for 2006 at USD 29,828.72. Evidently, as shown by her husband Avelino Casco's testimony, Estrella was averaging gross earnings of USD 48,000 annually. In applying the formula[51] used in the American Expectancy Table of Mortality, the RTC arrived at the figure

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[46] Records, pp. 35-38; Rizal Funeral Homes, Inc. OR No. 478 dated July 26, 2006, PhP 50,000, for sealing and crating of casket; Funeraria Francisco OR No. 1446 dated July 22, 2006, PhP 150,000, for bronze casket; Funeraria Francisco OR No. 0414, dated July 26, 2006, PhP 29,000, for funeral services; and Shulman Air Freight Internation Phils., Inc. OR No. 32270 dated July 27, 2006, PhP 156,416.33, for airfreight charges for the remains of Estrella.

[47] Additional freight charges thru Philippine Airlines Air Waybill 079-3046 5960, records, p. 201.

[48] *People v. Casta, supra* note 15, at 361.

[49] Records, p. 194.

[50] *Id.* at 195.

[51] Compensation of heirs for loss of income = [2 (80 – age of the victim) x (net annual income, *i.e.*, annual income less reasonable expenses which is 50% of gross annual income)] / 3. Thus, [2 (80 – 57) x (USD 24,000 or USD 48,000 – USD 24,000)] / 3. The resulting product is USD 368,000.

of USD 368,000 as compensation for Estrella's heir for loss of income or earning capacity. We find no reason to disturb this finding of the trial court as affirmed by the appellate court.

Moreover, civil indemnity *ex delicto* is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime.[52] Based on current jurisprudence, the award of civil indemnity *ex delicto* of PhP 50,000 in favor of the heirs of Estrella is in order.[53] Likewise, the CA correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to her family.[54] With the presence of the qualifying circumstance of treachery, the award of PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code.[55] Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.[56]

WHEREFORE, the instant appeal is hereby *PARTLY GRANTED* as to appellant *NESTOR GATCHALIAN*. Accordingly, the CA Decision dated August 12, 2009 in CA-G.R. CR-H.C. No. 03405 is hereby *MODIFIED* in that *NESTOR GATCHALIAN* is declared guilty beyond reasonable doubt as an *accomplice* in the offense of Murder under Art. 248 of the RPC. Applying the Indeterminate Sentence Law, Gatchalian is hereby sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to 17 years

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[52] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 751; citing *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 617.

[53] *Id.* at 751-752; citing *Española v. People*, G.R. No. 163354, June 21, 2005, 460 SCRA 547, 555-556.

[54] *Id.*; citing *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 743.

[55] *Id.* (citations omitted)

[56] *Id.*; citing *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2007, 520 SCRA 244, 258.

and four (4) months of *reclusion temporal,* as maximum. The rest of the appealed decision stands.

The May 27, 2008 RTC Decision should be modified to read, as follows:

WHEREFORE, premises considered, this Court finds accused Tony Tomas, Sr. and Benedicto Doctor guilty beyond reasonable doubt of the offense of Murder and hereby sentences each of them to suffer the penalty of *Reclusion Perpetua*. This Court also finds accused Nestor Gatchalian guilty beyond reasonable doubt as an accomplice to the offense of Murder and with the application of the Indeterminate Sentence Law hereby sentences him to suffer the penalty of eight (8) years and one (1) day of *Prision Mayor*, as minimum, to 17 years and four (4) months of *Reclusion Temporal*, as maximum.

Likewise, all of the said accused are hereby ordered to pay jointly the heirs of the victim, the following:

1.) The amount of PhP 50,000.00 as civil indemnity;

2.) The amount of PhP 50,000.00 as moral damages;

3.) The amount of PhP 30,000.00 as exemplary damages;

4.) The amount of PhP 385,416.33 and another amount of USD 2,182.78 or its equivalent in Philippine pesos at the time of its payment as actual damages; and,

5.) The amount of USD 368,000 or its equivalent in Philippine pesos at the time of its payment for loss of income of the victim.

No pronouncement as to costs.

SO ORDERED.

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

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PLEADINGS

Allegation in pleadings — Every pleading must contain, in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (Phil. Bank of Communications *vs.* Sps. Go, G.R. No. 175514, Feb. 14, 2011) p. 43

Specific denial — Modes of specific denial are: (a) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (b) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (c) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial. (Phil. Bank of Communications *vs*. Sps. Go, G.R. No. 175514, Feb. 14, 2011) p. 43

— The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. (Phil. Bank of Communications *vs*. Sps. Go, G.R. No. 175514, Feb. 14, 2011) p. 43

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— Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. *(Id.)*

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