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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 10-10-4-SC. March 8, 2011]

RE: LETTER OF THE UP LAW FACULTY ENTITLED "RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT"

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREEDOM OF EXPRESSION; THE SHOW CAUSE RESOLUTION DOES NOT DENY RESPONDENTS THEIR FREEDOM OF EXPRESSION.— It is respondents' collective claim that the Court, with the issuance of the Show Cause Resolution, has interfered with respondents' constitutionally mandated right to free speech and expression. It appears that the underlying assumption behind respondents' assertion is the misconception that this Court is denying them the right to criticize the Court's decisions and actions, and that this Court seeks to "silence" respondent law professors' dissenting view on what they characterize as a "legitimate public issue." This is far from the truth. A reading of the Show Cause Resolution will plainly show that it was neither the fact that respondents had criticized a decision of the Court nor that they had charged one of its members of

plagiarism that motivated the said Resolution. It was the manner of the criticism and the contumacious language by which respondents, who are not parties nor counsels in the *Vinuya* case, have expressed their opinion in favor of the petitioners in the said pending case for the "proper disposition" and consideration of the Court that gave rise to said Resolution. The Show Cause Resolution painstakingly enumerated the statements that the Court considered excessive and uncalled for under the circumstances surrounding the issuance, publication, and later submission to this Court of the UP Law faculty's Restoring Integrity Statement. To reiterate, it was not the circumstance that respondents expressed a belief that Justice Del Castillo was guilty of plagiarism but rather their expression of that belief as "not only as an established fact, but a truth" when it was "[o]f public knowledge [that there was] an ongoing investigation precisely to determine the truth of such allegations." It was also pointed out in the Show Cause Resolution that there was a pending motion for reconsideration of the *Vinuya* decision. The Show Cause Resolution made no objections to the portions of the Restoring Integrity Statement that respondents claimed to be "constructive" but only asked respondents to explain those portions of the said Statement that by no stretch of the imagination could be considered as fair or constructive.

2. ID.; ID.; ID.; EDUCATION; ACADEMIC FREEDOM; IT IS NOT INCONSISTENT WITH THE PRINCIPLE OF ACADEMIC FREEDOM FOR THE COURT TO SUBJECT LAWYERS WHO TEACH LAW TO DISCIPLINARY ACTION FOR CONTUMACIOUS CONDUCT AND SPEECH, COUPLED WITH UNDUE INTERVENTION IN FAVOR OF A PARTY IN A PENDING CASE WITHOUT OBSERVING PROPER PROCEDURE, EVEN IF PURPORTEDLY DONE IN THEIR CAPACITY AS TEACHERS.— It is not contested that respondents herein are, by law and jurisprudence, guaranteed academic freedom and undisputably, they are free to determine what they will teach their students and how they will teach. We must point out that there is nothing in the Show Cause Resolution that dictates upon respondents the subject matter they can teach and the manner of their instruction. Moreover, it is not inconsistent with the principle of academic freedom for this Court to subject lawyers who teach law to disciplinary

action for **contumacious conduct and speech, coupled with undue intervention in favor of a party in a pending case, without observing proper procedure,** even if purportedly done in their capacity as teachers.

3. ID.; ID.; ID.; ID.; ID.; ACADEMIC FREEDOM CANNOT BE SUCCESSFULLY INVOKED AS A DEFENSE IN CASE AT BAR; THE REASON THAT FREEDOM OF EXPRESSION MAY BE SO DELIMITED IN THE CASE OF LAWYERS APPLIES WITH GREATER FORCE TO THE ACADEMIC FREEDOM OF LAW PROFESSORS.— A novel issue involved in the present controversy, for it has not been passed upon in any previous case before this Court, is the question of whether lawyers who are also law professors can invoke academic freedom as a defense in an administrative proceeding **for intemperate statements tending to pressure the Court or influence the outcome of a case or degrade the courts**. Applying by analogy the Court's past treatment of the "free speech" defense in other bar discipline cases, academic freedom cannot be successfully invoked by respondents in this case. The implicit ruling in the jurisprudence discussed above is that the constitutional right to freedom of expression of members of the Bar may be circumscribed by their ethical duties as lawyers to give due respect to the courts and to uphold the public's faith in the legal profession and the justice system. To our mind, the reason that freedom of expression may be so delimited in the case of lawyers applies with greater force to the academic freedom of law professors.

4. ID.; ID.; ID.; ID.; ID.; RESPONDENTS' ACTIONS AS LAW PROFESSORS MUST BE MEASURED UP AGAINST THE SAME CANONS OF PROFESSIONAL RESPONSIBILITY APPLICABLE TO ACTS OF MEMBERS OF THE BAR AS THE FACT OF THEIR BEING LAW PROFESSORS IS INEXTRICABLY ENTWINED WITH THE FACT THAT THEY ARE LAWYERS.— It would do well for the Court to remind respondents that, in view of the broad definition in *Cayetano v. Monsod*, lawyers when they teach law are considered engaged in the practice of law. Unlike professors in other disciplines and more than lawyers who do not teach law, respondents are bound by their oath to uphold the ethical standards of the legal profession. Thus, their actions as law professors must be measured against the same canons of professional responsibility

applicable to acts of members of the Bar as the fact of their being law professors is inextricably entwined with the fact that they are lawyers. Even if the Court was willing to accept respondents' proposition in the Common Compliance that their issuance of the Statement was in keeping with their duty to "participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice" under Canon 4 of the Code of Professional Responsibility, we cannot agree that they have fulfilled that same duty in keeping with the demands of Canons 1, 11 and 13 to give due respect to legal processes and the courts, and to avoid conduct that tends to influence the courts. Members of the Bar cannot be selective regarding which canons to abide by given particular situations. With more reason that law professors are not allowed this indulgence, since they are expected to provide their students exemplars of the Code of Professional Responsibility as a whole and not just their preferred portions thereof.

5. LEGAL ETHICS; ATTORNEYS; IN CASES WHERE THE CRITICS ARE NOT ONLY CITIZENS BUT MEMBERS OF THE BAR, JURISPRUDENCE HAS REPEATEDLY AFFIRMED THE AUTHORITY OF THE COURT TO DISCIPLINE LAWYERS WHOSE STATEMENTS REGARDING THE COURTS AND FELLOW LAWYERS, WHETHER JUDICIAL OR EXTRAJUDICIAL, HAVE EXCEEDED THE LIMITS OF FAIR AND COMMON DECENCY.— In a long line of cases, including those cited in respondents' submissions, this Court has held that the right to criticize the courts and judicial officers must be balanced against the equally primordial concern that the independence of the Judiciary be protected from due influence or interference. In cases where the critics are not only citizens but members of the Bar, jurisprudence has repeatedly affirmed the authority of this Court to discipline lawyers whose statements regarding the courts and fellow lawyers, whether judicial or extrajudicial, have exceeded the limits of fair comment and common decency.

6. ID.; ID.; THE SOCIETAL VALUE THAT PRESSES FOR RECOGNITION IN CASE AT BAR IS THE TREAT TO JUDICIAL INDEPENDENCE AND THE ORDERLY ADMINISTRATION OF JUSTICE THAT IMMODERATE, RECKLESS AND UNFAIR ATTACKS ON JUDICIAL

DECISIONS AND INSTITUTIONS POSE.— One such societal value that presses for recognition in the case at bar is the threat to judicial independence and the orderly administration of justice that immoderate, reckless and unfair attacks on judicial decisions and institutions pose. This Court held as much in *Zaldivar v. Sandiganbayan and Gonzales*, where we **indefinitely suspended** a lawyer from the practice of law for issuing to the media statements grossly disrespectful towards the Court in relation to a pending case, to wit: Respondent Gonzales is entitled to the constitutional guarantee of free speech. No one seeks to deny him that right, least of all this Court. What respondent seems unaware of is **that freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest**. **One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice.** There is no antinomy between free expression and the integrity of the system of administering justice. **For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice**, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community. x x x. For this reason, the Court cannot uphold the view of some respondents that the Statement presents no grave or imminent danger to a legitimate public interest.

7. ID.; ID.; NO MATTER HOW FIRM A LAWYER'S CONVICTION IN THE RIGHTEOUSNESS OF HIS CAUSE THERE IS SIMPLY NO EXCUSE FOR DENIGRATING THE COURTS AND ENGAGING IN PUBLIC BEHAVIOR THAT TENDS TO PUT THE COURTS AND THE LEGAL PROFESSION INTO DISREPUTE.— The Court has already clarified that it is not the expression of respondents' staunch belief that Justice Del Castillo has committed a misconduct that the majority of this Court has found so unbecoming in the Show Cause Resolution. No matter how firm a lawyer's conviction in the righteousness of his cause there is simply no excuse for denigrating the courts and engaging in public behavior that tends to put the courts and the legal profession into disrepute. This doctrine, which we have repeatedly upheld in such cases as *Salcedo, In re*

Almacen and *Saberong*, should be applied in this case with more reason, as the respondents, not parties to the *Vinuya* case, denounced the Court and urged it to change its decision therein, in a public statement using contumacious language, which with temerity they subsequently submitted to the Court for "proper disposition."

8. ID.; ID.; RESPONDENTS' VIEWS REGARDING THE PLAGIARISM ISSUE IS WHOLLY IMMATERIAL TO THEIR LIABILITY FOR CONTUMACIOUS SPEECH AND CONDUCT.— That humiliating the Court into reconsidering the *Vinuya* Decision in favor of the *Malaya Lolas* was one of the objectives of the Statement could be seen in the following paragraphs from the same: And in light of the significance of this decision to the quest for justice not only of Filipino women, but of women elsewhere in the world who have suffered the horrors of sexual abuse and exploitation in times of war, **the Court cannot coldly deny relief and justice to the petitioners on the basis of pilfered and misinterpreted texts.** x x x (3) **The same breach and consequent disposition of the *Vinuya* case does violence to the primordial function of the Supreme Court as the ultimate dispenser of justice** to all those who have been left without legal or equitable recourse, such as the petitioners therein. Whether or not respondents' views regarding the plagiarism issue in the *Vinuya* case had valid basis was wholly immaterial to their liability for contumacious speech and conduct. These are two separate matters to be properly threshed out in separate proceedings. The Court considers it highly inappropriate, if not tantamount to dissembling, the discussion devoted in one of the compliances arguing the guilt of Justice Del Castillo. In the Common Compliance, respondents even go so far as to attach documentary evidence to support the plagiarism charges against Justice Del Castillo in the present controversy. The ethics case of Justice Del Castillo (A.M. No. 10-7-17-SC), with the filing of a motion for reconsideration, was still pending at the time of the filing of respondents' submissions in this administrative case. As respondents themselves admit, they are neither parties nor counsels in the ethics case against Justice Del Castillo. Notwithstanding their professed overriding interest in said ethics case, it is not proper procedure for respondents to bring up their plagiarism arguments here especially when it has no bearing on their own administrative case.

9. ID.; ID.; THE COURT FAILS TO SEE HOW CAN IT ENNOBLE THE PROFESSION IF WE ALLOW RESPONDENTS TO SEND SIGNAL TO THEIR STUDENTS THAT THE ONLY WAY TO EFFECTIVELY PLEAD THEIR CASES AND PERSUADE OTHERS TO THEIR POINT OF VIEW IS TO BE OFFENSIVE.— Still on motive, it is also proposed that the choice of language in the Statement was intended for effective speech; that speech must be "forceful enough to make the intended recipients listen." One wonders what sort of effect respondents were hoping for in branding this Court as, among others, callous, dishonest and lacking in concern for the basic values of decency and respect. The Court fails to see how it can ennoble the profession if we allow respondents to send a signal to their students that the only way to effectively plead their cases and persuade others to their point of view is to be offensive. This brings to our mind the letters of Dr. Ellis and Prof. Tams which were deliberately quoted in full in the narration of background facts to illustrate the sharp contrast between the civil tenor of these letters and the antagonistic irreverence of the Statement. In truth, these foreign authors are the ones who would expectedly be affected by any perception of misuse of their works. Notwithstanding that they are beyond the disciplinary reach of this Court, they still obviously took pains to convey their objections in a deferential and scholarly manner. It is unfathomable to the Court why respondents could not do the same. These foreign authors' letters underscore the universality of the tenet that legal professionals must deal with each other in good faith and due respect. The mark of the true intellectual is one who can express his opinions logically and soberly without resort to exaggerated rhetoric and unproductive recriminations.

10. ID.; ID.; RESPONDENTS' LACK OF OBSERVANCE OF FIDELITY AND DUE RESPECT TO THE COURT IS SHOWN BY THE FACT THAT THEY KNEW FULLY WELL THAT THE MATTER OF PLAGIARISM IN THE *VINUYA* DECISION ITSELF, AT THE TIME OF THE STATEMENT'S ISSUANCE, WERE STILL BOTH *SUB JUDICE* OR PENDING FINAL DISPOSITION OF THE COURT.— The Court finds that there was indeed a lack of observance of fidelity and due respect to the Court, particularly when respondents knew fully well that the matter of plagiarism in the *Vinuya* decision and the merits of the *Vinuya* decision itself, at the time of the Statement's

issuance, were still both ***sub judice*** or pending final disposition of the Court. These facts have been widely publicized. On this point, respondents allege that at the time the Statement was first drafted on July 27, 2010, they did not know of the constitution of the Ethics Committee and they had issued the Statement under the belief that this Court intended to take no action on the ethics charge against Justice Del Castillo. Still, there was a significant lapse of time from the drafting and printing of the Statement on July 27, 2010 and its publication and submission to this Court in early August when the Ethics Committee had already been convened. If it is true that the respondents' outrage was fueled by their perception of indifference on the part of the Court then, when it became known that the Court did intend to take action, there was nothing to prevent respondents from recalibrating the Statement to take this supervening event into account in the interest of fairness.

11. ID.; ID.; THE 35 OTHER RESPONDENTS NAMED IN THE COMMON COMPLIANCE ARE REMINDED OF THEIR LAWYERLY DUTY UNDER CANONS 1, 11 AND 13, TO GIVE DUE RESPECT TO THE COURTS AND TO REFRAIN FROM INTEMPERATE AND OFFENSIVE LANGUAGE TENDING TO INFLUENCE THE COURT ON PENDING MATTERS OR TO DENIGRATE THE COURTS AND THE ADMINISTRATION OF JUSTICE.— With respect to the 35 respondents named in the Common Compliance, considering that this appears to be the first time these respondents have been involved in disciplinary proceedings of this sort, the Court is willing to give them the benefit of the doubt that they were for the most part well-intentioned in the issuance of the Statement. However, it is established in jurisprudence that where the excessive and contumacious language used is plain and undeniable, then good intent can only be mitigating. As this Court expounded in *Salcedo*: In his defense, Attorney Vicente J. Francisco states that it was **not his intention to offend the court or to be recreant to the respect thereto** but, **unfortunately, there are his phrases which need no further comment.** Furthermore, it is a well settled rule in all places where the same conditions and practice as those in this jurisdiction obtain, that **want of intention is no excuse from liability** (13 C. J., 45). **Neither is the fact that the phrases employed are justified by the facts a valid defense**: **"Where the matter is abusive or insulting, evidence that the**

language used was justified by the facts is not admissible as a defense. Respect for the judicial office should always be observed and enforced." (*In re Stewart*, 118 La., 827; 43 S., 455.) Said lack or want of intention **constitutes at most an extenuation of liability** in this case**, taking into consideration Attorney Vicente J. Francisco's state of mind,** according to him when he prepared said motion. **This court is disposed to make such concession**. However, in order to **avoid a recurrence thereof and to prevent others, by following the bad example,** from taking the same course, this court considers it imperative **to treat the case of said attorney with the justice it deserves**. Thus, the 35 respondents named in the Common Compliance should, notwithstanding their claim of good faith, be reminded of their lawyerly duty, under Canons 1, 11 and 13, to give due respect to the courts and to refrain from intemperate and offensive language tending to influence the Court on pending matters or to denigrate the courts and the administration of justice.

12. ID.; ID.; DEAN LEONEN IS ADMONISHED FOR FAILING TO OBSERVE FULL CANDOR AND HONESTY IN HIS DEALINGS WITH THE COURT AS REQUIRED UNDER CANON 10.— We are surprised that someone like Dean Leonen, with his reputation for perfection and stringent standards of intellectual honesty, could proffer the explanation that there was no misrepresentation when he allowed at least one person to be indicated as having actually signed the Statement when all he had was a verbal communication of an **intent** to sign. In the case of Justice Mendoza, what he had was only hearsay information that the former intended to sign the Statement. If Dean Leonen was truly determined to observe candor and truthfulness in his dealings with the Court, we see no reason why he could not have waited until all the professors who indicated their desire to sign the Statement had in fact signed before transmitting the Statement to the Court as a duly signed document. If it was truly impossible to secure some signatures, such as that of Justice Mendoza who had to leave for abroad, then Dean Leonen should have just resigned himself to the signatures that he was able to secure. We cannot imagine what urgent concern there was that he could not wait for actual signatures before submission of the Statement to this Court. As respondents all asserted, they were neither parties to nor counsels in the *Vinuya* case and the ethics case against Justice

Del Castillo. The Statement was neither a pleading with a deadline nor a required submission to the Court; rather, it was a voluntary submission that Dean Leonen could do at any time. In sum, the Court likewise finds Dean Leonen's Compliance **unsatisfactory**. However, the Court is willing to ascribe these isolated lapses in judgment of Dean Leonen to his misplaced zeal in pursuit of his objectives. In due consideration of Dean Leonen's professed good intentions, the Court deems it sufficient to admonish Dean Leonen for failing to observe full candor and honesty in his dealings with the Court as required under Canon 10.

13. ID.; ID.; ALL LAWYERS, WHETHER THEY ARE JUDGES, COURT EMPLOYEES, PROFESSORS OR PRIVATE PRACTITIONERS, ARE OFFICERS OF THE COURT AND HAVE VOLUNTARILY TAKEN AN OATH, AS AN INDISPENSABLE QUALIFICATION FOR ADMISSION TO THE BAR, TO CONDUCT THEMSELVES WITH GOOD FIDELITY TOWARDS THE COURTS; THERE IS NO EXEMPTION FROM THIS SWORN DUTY FOR LAW PROFESSORS, REGARDLESS OF THEIR STATUS IN THE ACADEMIC COMMUNITY OR THE LAW SCHOOL WHICH THEY BELONG.— In a democracy, members of the legal community are hardly expected to have monolithic views on any subject, be it a legal, political or social issue. Even as lawyers passionately and vigorously propound their points of view they are bound by certain rules of conduct for the legal profession. This Court is certainly not claiming that it should be shielded from criticism. All the Court demands is the same respect and courtesy that one lawyer owes to another under established ethical standards. All lawyers, whether they are judges, court employees, professors or private practitioners, are officers of the Court and have voluntarily taken an oath, as an indispensable qualification for admission to the Bar, to conduct themselves with good fidelity towards the courts. There is no exemption from this sworn duty for law professors, regardless of their status in the academic community or the law school to which they belong.

14. REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF ATTORNEYS; ADMINISTRATIVE CASES INITIATED BY SUPREME COURT; PRESENT CASE IS NOT AN INDIRECT CONTEMPT PROCEEDING UNDER RULE 71 OF THE RULES

OF COURT WHICH REQUIRES HEARING.— In the Common Compliance, respondents named therein asked for alternative reliefs should the Court find their Compliance unsatisfactory, that is, that the Show Cause Resolution be set for hearing and for that purpose, they be allowed to require the production or presentation of witnesses and evidence bearing on the plagiarism and misrepresentation issues in the *Vinuya* case (G.R. No. 162230) and the plagiarism case against Justice Del Castillo (A.M. No. 10-7-17-SC) and to have access to the records of, and evidence that were presented or may be presented in the ethics case against Justice Del Castillo. The prayer for a hearing and for access to the records of A.M. No. 10-7-17-SC was substantially echoed in Dean Leonen's separate Compliance. In Prof. Juan-Bautista's Compliance, she similarly expressed the sentiment that "[i]f the Restoring Integrity Statement can be considered indirect contempt, under Section 3 of Rule 71 of the Rules of Court, such may be punished only after charge and hearing." It is this group of respondents' premise that these reliefs are necessary for them to be accorded full due process. The Court finds this contention unmeritorious. Firstly, it would appear that the confusion as to the necessity of a hearing in this case springs largely from its characterization as a special civil action for indirect contempt in the Dissenting Opinion of Justice Sereno (to the October 19, 2010 Show Cause Resolution) and her reliance therein on the majority's purported failure to follow the procedure in Rule 71 of the Rules of Court as her main ground for opposition to the Show Cause Resolution. However, once and for all, it should be clarified that this is not an indirect contempt proceeding and Rule 71 (which requires a hearing) has no application to this case. As explicitly ordered in the Show Cause Resolution this case was docketed as an administrative matter. The rule that is relevant to this controversy is Rule 139-B, Section 13, on disciplinary proceedings initiated *motu proprio* by the Supreme Court, to wit: SEC. 13. *Supreme Court Investigators.*—In proceedings initiated *motu proprio* by the Supreme Court or in other proceedings when the interest of justice so requires, the Supreme Court **may** refer the case for investigation to the Solicitor General or to any officer of the Supreme Court or judge of a lower court, in which case the investigation shall proceed in the same manner provided in Sections 6 to 11 hereof, save that the review of the report of investigation shall be conducted directly by the

Supreme Court. From the foregoing provision, it cannot be denied that a formal investigation, through a referral to the specified officers, is merely discretionary, **not mandatory** on the Court. Furthermore, it is only if the Court deems such an investigation necessary that the procedure in Sections 6 to 11 of Rule 139-A will be followed. x x x Under the rules and jurisprudence, respondents clearly had no right to a hearing and their reservation of a right they do not have has no effect on these proceedings. Neither have they shown in their pleadings any justification for this Court to call for a hearing in this instance. They have not specifically stated what relevant evidence, documentary or testimonial, they intend to present in their defense that will necessitate a formal hearing. Instead, it would appear that they intend to present records, evidence, and witnesses bearing on the plagiarism and misrepresentation issues in the *Vinuya* case and in A.M. No. 10-7-17-SC on the assumption that the findings of this Court which were the bases of the Show Cause Resolution were made in A.M. No. 10-7-17-SC, or were related to the conclusions of the Court in the Decision in that case. This is the primary reason for their request for access to the records and evidence presented in A.M. No. 10-7-17-SC. This assumption on the part of respondents is erroneous. To illustrate, the only incident in A.M. No. 10-7-17-SC that is relevant to the case at bar is the fact that the submission of the actual signed copy of the Statement (or *Restoring Integrity I*, as Dean Leonen referred to it) happened there. Apart from that fact, it bears repeating that the proceedings in A.M. No. 10-7-17-SC, the ethics case against Justice Del Castillo, is a separate and independent matter from this case.

15. ID.; ID.; ID.; RESPONDENTS' REQUESTS FOR A HEARING, FOR PRODUCTION/PRESENTATION OF EVIDENCE BEARING ON THE PLAGIARISM AND MISREPRESENTATION ISSUES IN G.R. NO. 162230 AND A.M. NO. 10-7-17-SC ARE DENIED FOR LACK OF MERIT.— To find the bases of the statements of the Court in the Show Cause Resolution that the respondents issued a Statement with language that the Court deems objectionable during the pendency of the *Vinuya* case and the ethics case against Justice Del Castillo, respondents need to go no further than the four corners of the Statement itself, its various versions, news

reports/columns (many of which respondents themselves supplied to this Court in their Common Compliance) and internet sources that are already of public knowledge. Considering that what respondents are chiefly required to explain are the language of the Statement and the circumstances surrounding the drafting, printing, signing, dissemination, *etc.*, of its various versions, the Court does not see how any witness or evidence in the ethics case of Justice Del Castillo could possibly shed light on these facts. To be sure, these facts are within the knowledge of respondents and if there is any evidence on these matters the same would be in their possession. We find it significant that in Dean Leonen's Compliance he narrated how as early as September 2010, *i.e.*, before the Decision of this Court in the ethics case of Justice Del Castillo on October 12, 2010 and before the October 19, 2010 Show Cause Resolution, retired Supreme Court Justice Vicente V. Mendoza, after being shown a copy of the Statement upon his return from abroad, predicted that the Court would take some form of action on the Statement. By simply reading a hard copy of the Statement, a reasonable person, even one who "fundamentally agreed" with the Statement's principles, could foresee the possibility of court action on the same on an implicit recognition that the Statement, as worded, is not a matter this Court should simply let pass. This belies respondents' claim that it is necessary for them to refer to any record or evidence in A.M. No. 10-7-17-SC in order to divine the bases for the Show Cause Resolution. If respondents have chosen not to include certain pieces of evidence in their respective compliances or chosen not to make a full defense at this time, because they were counting on being granted a hearing, that is respondents' own look-out. Indeed, law professors of their stature are supposed to be aware of the above jurisprudential doctrines regarding the non-necessity of a hearing in disciplinary cases. They should bear the consequence of the risk they have taken. Thus, respondents' requests for a hearing and for access to the records of, and evidence presented in, A.M. No. 10-7-17-SC should be denied for lack of merit.

VILLARAMA, JR., *J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREEDOM OF EXPRESSION; THE SUBJECT STATEMENTS PRESENT NO

CLEAR AND PRESENT DANGER OF A SUBSTANTIVE EVIL THAT THE STATE HAS A RIGHT TO PREVENT AS TO TAKE IT OUT OF THE PROTECTIVE MANTLE OF THE FREEDOM OF SPEECH AND EXPRESSION UNDER THE BILL OF RIGHTS.— After a careful study of the respondents' submissions, I respectfully submit that the above submissions are SATISFACTORY in view of respondents' claim of good faith and the fact that a re-examination of the Statement indeed admits of such claim. Consistent with respondents' claims, the tenor of the Statement was to call the Court's attention to the grave allegations and its effects on the integrity and credibility of the Court and the Judiciary. Indeed, the general wording of the Statement and its ending paragraphs lend support to respondents' averments that the Statement was prompted by the sincere and honest desire to protect the integrity and credibility of the Judiciary, especially the Supreme Court. Given such submissions, I am willing to afford respondents the benefit of the doubt as to their intentions concerning the forceful language employed in certain portions of the Restoring Integrity Statement. This is especially so considering that the subject statements present no clear and present danger of a substantive evil that the State has a right to prevent as to take it out of the protective mantle of the freedom of speech and expression under the Bill of Rights. A reading of the Statement, with particular focus on its final paragraphs, will not leave the reader with feelings of contempt for the Court but only a feeling that the Court must champion the cause of integrity. Furthermore, it should be noted that our society has developed to the point where critical analysis of information is not in short supply. The public is nowadays not only more well informed, but it has access to information with which citizens could make their own independent assessment of pending issues of public concern, including the fitness and integrity of the members of this Court to render fair and impartial judgment on the cases before them. However, given the fact that some isolated portions of the statement were arguably disrespectful, respondents should be reminded to be more circumspect in their future statements.

2. LEGAL ETHICS; ATTORNEYS; DEAN LEONEN'S LAPSES APPEAR MORE THE RESULT OF OVERZEALOUSNESS RATHER THAN BAD FAITH OR A DELIBERATE INTENT TO DO FALSEHOOD OR TO MISLEAD THE COURT; THERE

BEING NO INTENT OR INEXCUSABLE NEGLIGENCE, THERE IS NO GROUND TO HOLD DEAN LEONEN LIABLE UNDER CANON 10 AND RULES 10.01 AND 10.02 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— As regards Dean Leonen, I likewise submit that his explanation is sufficient to exonerate him from the charge of violation of Canon 10 and Rules 10.01, 10.02 and 10.03, all of the Code of Professional Responsibility. While it appears that Dean Leonen mistakenly relied on hearsay information that Justice Mendoza had authorized him to indicate Justice Mendoza as a signatory to the Statement, still, Dean Leonen's lapses appear more the result of overzealousness rather than bad faith or a deliberate intent to do falsehood or to mislead the Court. Indeed, under the circumstances as they appeared to him, and considering that there were other professors who had authorized him to indicate them as signatories, it was not all too remiss on his part to indicate Justice Mendoza as a signatory to the Statement upon the information given to him by his administrative staff. That he acted upon the wrong information given to him, though telling of some degree of carelessness on his part, is not gross negligence that is tantamount to bad faith. Hence, there being no intent or inexcusable negligence, there is no ground to find him liable under Canon 10 and Rules 10.01 and 10.02 of the Code of Professional Responsibility. Similarly, there is no cogent reason to hold him liable for violation of Rule 10.03 as it likewise does not appear that Dean Leonen violated any rule of procedure or misused any procedural rule to defeat the ends of justice. The submission of the Statement to the Court, it should be noted, was *ad hoc*.

CARPIO MORALES, *J.*, *dissenting opinion:*

REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF ATTORNEYS; ADMINISTRATIVE CASES INITIATED BY SUPREME COURT; NO REASONABLE GROUND FOR THE COURT TO *MOTU PROPRIO* INITIATE AN ADMINISTRATIVE CASE.— Consistent with my dissent from the Court's October 19, 2010 Resolution, I maintain my position that, in the first place, there was no reasonable ground to *motu proprio* initiate the administrative case, in view of (1) the therein discussed injudiciousness attending the Resolution, anchored on an irregularly concluded finding of indirect contempt with adverse declarations prematurely describing the subject

Statement of the UP Law Faculty that could taint the disciplinary action, and (2) the Court's conventionally permissive attitude toward the "expression of belief" or "manner of criticism" coming from legal academics, lawyer-columnists, and civic circles, in a number of high-profile cases, most notably at the height of the "CJ Appointment Issue" during which time the motion for reconsideration of the Court's decision was similarly pending.

CARPIO, *J.*, *dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREEDOM OF EXPRESSION; THE MAJORITY'S ACTION IMPERMISSIBLY EXPANDS THE COURT'S ADMINISTRATIVE POWER AND, MORE IMPORTANTLY, ABRIDGES CONSTITUTIONALLY PROTECTED SPEECH ON PUBLIC CONDUCT GUARANTEED TO ALL, INCLUDING MEMBERS OF THE BAR.— I find the Compliance of the 37 legal scholars satisfactory and therefore see no need to admonish or warn them for supposed use of disrespectful language in their statement commenting on a public issue involving the official conduct of a member of this Court. The majority's action impermissibly expands the Court's administrative powers and, more importantly, abridges constitutionally protected speech on public conduct guaranteed to all, including members of the bar. *First*. The matter of Justice Mariano del Castillo's reported misuse and non-attribution of sources in his *ponencia* in *Vinuya v. Executive Secretary* is an issue of public concern. A day before the *Vinuya* petitioners' counsels filed their supplemental motion for reconsideration on 19 July 2010 raising these allegations, a national TV network carried a parallel story online. On the day the pleading was filed, another national TV network and an online news magazine, carried the same story. Soon, one of the authors allegedly plagiarized commented that the work he and a co-author wrote was misrepresented in *Vinuya*. Justice del Castillo himself widened the scope of publicity by submitting his official response to the allegations to a national daily which published his comment in full. Justice del Castillo's defenses of good faith and non-liability echoed an earlier statement made by the Chief of the Court's Public Information Office. These unfolding events generated an all-important public issue affecting no less than the integrity of this Court's decision-making – its core constitutional function – thus inexorably inviting public

comment. Along with other sectors, the law faculty of the University of the Philippines (UP), which counts among its ranks some of this country's legal experts, responded by issuing a statement, bewailing what the professors see as the Court's indifference to the perceived dishonesty in the crafting of the *Vinuya ponencia* and its aggravating effect on the *Vinuya* petitioners' cause, refuting Justice del Castillo's defenses, underscoring the seriousness of the issue, and calling for the adoption of individual and institutional remedial measures. This is prime political speech critical of conduct of public officials and institution, delivered in public forum. Under the scheme of our constitutional values, this species of speech enjoys the highest protection, rooted on the deeply-held notion that "the interest of society and the maintenance of good government demand a full discussion of public affairs." Indeed, preceding western jurisprudence by nearly five decades, this Court, in the first score of the last century, identified the specific right to criticize official conduct as protected speech, branding attempts by courts to muzzle criticism as "tyranny of the basest sort."

2. ID.; ID.; ID.; ID.; ID.; THE STATEMENT TAKEN AS A WHOLE, SEEKS TO UPHOLD THE BEDROCK OF DEMOCRATIC VALUE OF KEEPING JUDICIAL PROCESSES FREE FROM ANY TAINT OF DISHONESTY OR MISREPRESENTATION.— In testing whether speech critical of judges and judicial processes falls outside the ambit of constitutionally protected expression, spilling into the territory of sanctionable utterances, this Court adheres to the "clear and present danger" test. Under this analytical framework, an utterance is constitutionally protected unless "the evil consequence of the comment or utterance [is] 'extremely serious and the degree of imminence extremely high.'" It appears that the evil consequences the UP law faculty statement will supposedly spawn are (1) the slurring of this Court's dignity and (2) the impairment of its judicial independence *vis-à-vis* the resolution of the plagiarism complaint in *Vinuya*. Both are absent here. On the matter of institutional degradation, the 12-paragraph, 1,553-word statement of the UP law faculty, taken as a whole, does not exhibit that "irrational obsession to demean, ridicule, degrade and even destroy the courts and their members" typical of unprotected judicial criticism. On the contrary, the statement, taken as a whole, seeks to uphold the bedrock democratic value of keeping judicial

processes free of any taint of dishonesty or misrepresentation. Thus, the UP law faculty statement is far removed from speech the Court has rightly sanctioned for proffering no useful social value, ***solely*** crafted to vilify its members and threaten its very existence.

3. ID.; ID.; ID.; ID.; ID.; NOT A SINGLE WORD IN THE 8 FEBRUARY 2011 RESOLUTION HINTS THAT THE UP LAW FACULTY STATEMENT PRESSURED, MUCH LESS THREATENED, THE COURT TO DECIDE THE MOTION FOR RECONSIDERATION FOR THE *VINUYA* PETITIONERS.— On the alleged danger of impairment of this Court's judicial independence in resolving the plagiarism charge in *Vinuya*, this too, did not come to pass. In the Resolution of 8 February 2011 in A.M. No. 10-17-17-SC, the Court denied reconsideration to its earlier ruling finding no merit in the *Vinuya* petitioners' claim of plagiarism. Not a single word in the 8 February 2011 Resolution hints that the UP law faculty statement pressured, much less threatened, this Court to decide the motion for reconsideration for the *Vinuya* petitioners. Thus, the 8 February 2011 Resolution gives the lie to the conclusion that the UP law faculty statement posed any danger, much less one that is "extremely serious," to the Court's independence.

4. ID.; ID.; ID.; ID.; ID.; THE CONCLUSION THAT THE UP LAW FACULTY STATEMENT DISRESPECTS THE COURT AND ITS MEMBERS IS VALID ONLY IF THE STATEMENT IS TAKEN APART, ITS DISMEMBERED PARTS SEPARATELY SCRUTINIZED TO ISOLATE AND HIGHLIGHT PERCEIVED OFFENSIVE PHRASES AND WORDS; THE APPROACH DEFIES COMMON SENSE AND DEPART FROM THE COURT'S ESTABLISHED PRACTICE IN SCRUTINIZING SPEECH CRITICAL OF THE JUDICIARY.— The conclusion that the UP law faculty statement disrespects the Court and its members is valid only if the statement is taken apart, its dismembered parts separately scrutinized to isolate and highlight perceived offensive phrases and words. This approach defies common sense and departs from this Court's established practice in scrutinizing speech critical of the judiciary. *People v. Godoy* instructs that speech critical of judges must be "read with contextual care," making sure that disparaging statements are not "taken out of context." Using this approach, and applying the clear and present danger test, the Court in *Godoy* cleared

a columnist and a publisher of liability despite the presence in the assailed news article of derogatory yet isolated statements about a judge. We can do no less to the statement of the members of the UP law faculty, who, after all, were impelled by nothing but their sense of professional obligation to "speak out on a matter of public concern and one that is of vital interest to them." On the supposed unpleasant tone of the statement, critical speech, by its nature, is caustic and biting. It is for this same reason, however, that it enjoys special constitutional protection. "The constitution does not apply only to sober, carefully reasoned discussion. There may be at least some value in permitting cranky, obstreperous, defiant conduct by lawyers on the ground that it encourages a public culture of skepticism, anti-authoritarianism, pluralism, and openness. It is important to remember that the social function of lawyers is not only to preserve order, but also to permit challenges to the status quo."

5. ID.; ID.; ID.; ID.; ID.; SUPREME COURT JUSTICES, AS PUBLIC OFFICIALS, AND THE SUPREME COURT, AS AN INSTITUTION, ARE ENTITLED TO NO GREATER IMMUNITY FROM CRITICISM THAN OTHER PUBLIC OFFICIALS AND INSTITUTIONS.— Supreme Court Justices, as public officials, and the Supreme Court, as an institution, are entitled to no greater immunity from criticism than other public officials and institutions. The members of this Court are sustained by the people's resources and our actions are always subject to their accounting. Thus, instead of shielding ourselves with a virtual *lese-majeste* rule, wholly incompatible with the Constitution's vision of public office as a "public trust," we should heed our own near century-old counsel: a clear conscience, not muzzled critics, is the balm for wounds caused by a "hostile and unjust accusation" on official conduct.

6. ID.; ID.; ID.; ID.; ID.; THE CONSTITUTION, LOGIC, COMMON SENSE AND HUMBLE AWARENESS OF THE COURT'S ROLE IN THE LARGER PROJECT OF DISPENSING JUSTICE IN A DEMOCRACY REVOLT AGAINST THE MAJORITY'S DISMISSAL OF THE UP LAW FACULTY'S SUGGESTION AS USELESS CALUMNY AND BRANDED THEIR CONSTITUTIONALLY PROTECTED SPEECH AS "UNBECOMING OF LAWYERS AND LAW PROFESSORS."— The academic bar, which the UP law faculty represents, is the judiciary's partner in a perpetual intellectual

conversation to promote the rule of law and build democratic institutions. It serves the interest of sustaining this vital relationship for the Court to constructively respond to the academics' criticism. Instead of heeding the UP law faculty's call for the Court to "ensur[e] that not only the content, but also the processes of preparing and writing its own decisions, are credible and beyond question," the majority dismisses their suggestion as useless calumny and brands their constitutionally protected speech as "unbecoming of lawyers and law professors." The Constitution, logic, common sense and a humble awareness of this Court's role in the larger project of dispensing justice in a democracy revolt against such response.

SERENO, *J.*, *dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; FREEDOM OF EXPRESSION; BY ISSUING THE SHOW CAUSE ORDER, AND AFFIRMING IN IT THE CURRENT DECISION, THE COURT PUTS IN ITSELF IN THE PRECARIOUS POSITION OF SHACKLING FREE SPEECH AND EXPRESSION.— The history of the Supreme Court shows that the times when it emerged with strength from tempests of public criticism were those times when it valued constitutional democracy and its own institutional integrity. Indeed, dangers from pressure and threat presented by what is usually constitutionally deemed as free speech can arise only when the Court allows itself to be so threatened. It is unfortunate when a tribunal admits that its core of independence can be shaken by a twelve-paragraph, two-page commentary from academia. By issuing the Show Cause Order, and affirming it in the current Decision, the Court puts itself in the precarious position of shackling free speech and expression. The Court, which has the greater duty of restraint and sobriety, but which appears to the public to have failed to transcend its instinct for self-preservation and to rise above its own hurt, gains nothing by punishing those who, to its mind, also lacked such restraint.

2. ID.; ID.; ID.; EDUCATION; ACADEMIC FREEDOM; THE VALUE OF ACADEMIC FREEDOM AS A NECESSARY CONSTITUTIONAL COMPONENT OF THE RIGHT TO FREEDOM OF EXPRESSION, LIES IN THE ABILITY OF THE COMMON MAN, AIDED BY THE EXPERTISE AVAILABLE

IN THE ACADEME, TO HOLD A MAGISTRATE ACCOUNTABLE IN THE EXERCISE OF HIS OFFICIAL FUNCTIONS, FOREMOST OF WHICH IS THE ISSUANCE OF A WRITTEN DECISION.— This is where academic freedom, when exercised in appropriate measure, is most helpful. Milton encapsulates free speech as simply the right to "argue freely according to conscience." The value of academic freedom, as a necessary constitutional component of the right to freedom of expression, lies in the ability of the common man, aided by the expertise available in the academe, to hold a magistrate accountable in the exercise of his official functions, foremost of which is the issuance of written decisions. Paragraph 23 of the United Nations *Basic Principles on the Role of Lawyers* states: Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization… The *Basic Principles on the Role of Lawyers* "have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers," and these "should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and legislature, and the public in general." Thus, faced with the duty of balancing lawyers' fundamental right to free speech which has now been expressly recognized in the international arena, against this Court's desire to preserve its exalted role in society by disciplining for offensive language, this Court must examine whether it has already encroached into constitutionally-prohibited interference with the basic rights of individuals.

3. ID.; ID.; ID.; ID.; THE ACADEME IS NOT TO BE AN APPLAUSE MACHINE FOR THE JUDICIARY; IT IS TO HELP GUIDE THE JUDICIARY BY ILLUMINATING NEW PATHS FOR THE JUDICIARY TO TAKE, BY ALERTING THE JUDICIARY TO ITS INCONSISTENT DECISIONS, AND BY IDENTIFYING

GAPS IN LAW AND JURISPRUDENCE.— The realm of public opinion is where the academe, especially our schools and universities, plays a most crucial role in ensuring judicial legitimacy. Not by blindly legitimizing its acts, but by constantly reminding the judiciary of its presence as a helpful but critical ally. The academe is not to be an applause machine for the judiciary; it is to help guide the judiciary by illuminating new paths for the judiciary to take, by alerting the judiciary to its inconsistent decisions, and by identifying gaps in law and jurisprudence.

4. ID.; ID.; ID.; ID.; THE SPECIAL ROLE OF THE LAW SCHOOL FACULTY IN UPHOLDING JUDICIAL INDEPENDENCE MUST BE RECOGNIZED.— In this regard, the law school has a special place. Phoebe Haddon writes: "[t]he value and preservation of academic freedom depend on an academic environment that nurtures, not silences, diverse views. The law school faculty has a special responsibility to maintain a nurturing environment for diverse views because of the importance of the marketplace of ideas in our teaching and the value we theoretically place on the role of persuasive discourse in the quest for knowledge. Faculty autonomy takes on significance because it can protect freedom of inquiry." In a certain sense, therefore, because the law faculty can discharge a most meaningful role in keeping the judiciary honest, there must be recognition given to the special role of the law faculty in upholding judicial independence.

5. ID.; ID.; ID.; ID.; THE LEGAL ACADEME IS THE PRESERVE OF THE NOBLE STANDARDS OF LEGAL REASONING AND LEGAL SCHOLARSHIP; IT MUST ITSELF DEMONSTRATE STRENGTH AND INDEPENDENCE AND NOT TO BE PUNISHED WHEN DOING SO.— The testing ground for integrity in judicial decision-making is provided in large measure by the legal academe, when it probes, tests and measures whether judicial decisions rise up to the definition of just and well-reasoned decisions as they have been defined by centuries-old norms of legal reasoning and legal scholarship. If we have a legal academe that is slothful, that is not self-disciplined, that covets the closeness to the powers-that-be which an unprofessional relationship with the judicial leadership can bring, then this refining role of the legal academe is lost. The legal academe is the preserver of the noble standards of legal reasoning and legal scholarship. It must itself demonstrate

strength and independence and not be punished when doing so. Those who occupy the most powerful positions in this country must always be ready to hold themselves accountable to the people. I believe that the tradition of deference to the judiciary has limits to its usefulness and these times do not call for the unbroken observance of such deference as much as they call for a public demonstration of honesty in all its forms.

6. REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF ATTORNEYS; ADMINISTRATIVE CASES INITIATED BY SUPREME COURT; DESPITE THE ASSERTION THAT THE PRESENT CASE IS MERELY AN EXERCISE OF THE COURT'S DISCIPLINARY AUTHORITY OVER THE MEMBERS OF THE BAR, A CLOSER LOOK REVEALS THE TRUE NATURE OF THE PROCEEDING IS ONE FOR INDIRECT CONTEMPT, THE DUE PROCESS REQUIREMENTS OF WHICH ARE STRICTLY PROVIDED FOR UNDER RULE 71 OF THE RULES OF COURT.— Despite the assertion that the present case is merely an exercise of the Court's disciplinary authority over members of the bar, a closer look reveals the true nature of the proceeding as one for indirect contempt, the due process requirements of which are strictly provided for under Rule 71 of the Rules of Court. The majority attempts to skirt the issue regarding the non-observance of due process by insisting that the present case is not an exercise of the Court's contempt powers, but rather is anchored on the Court's disciplinary powers. Whatever designation the majority may find convenient to formally characterize this proceeding, however, the pretext is negated by the disposition in the Resolution of 19 October 2010 itself and its supporting rationale. The majority directed respondents to **SHOW CAUSE,** within ten (10) days from receipt of a copy of the Resolution, why they should not be disciplined as members of the Bar. Yet the substance therein demonstrates that the present proceeding is one for indirect contempt, particularly in the following portions: We made it clear in the case of *In re Kelly* that any publication, pending a suit, reflecting upon the court, the jury, the parties, the officers of the court, the counsel with reference to the suit, or tending to influence the decision of the controversy, **is contempt of court** and is punishable. x x x Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These

potentially devastating attacks and unjust criticism can threaten the independence of the judiciary. x x x The Court could hardly perceive any reasonable purpose for the faculty's less than objective comments except to discredit the April 28, 2010 Decision in the *Vinuya* case and undermine the Court's honesty, integrity and competence in addressing the motion for reconsideration.

7. ID.; ID.; ID.; FACT THAT THE JURISPRUDENCE ADVERTED TO BY THE MAJORITY DWELL ON CONTEMPT NEGATE THE CLAIM THAT THE PRESENT CASE IS NOT A CONTEMPT PROCEEDING BUT PURELY AN ADMINISTRATIVE ONE.— The jurisprudence adverted to by the majority dwell on contempt, foremost of which is *In re Kelly*, one of the first and leading cases discussing contempt. Citing *Ex Parte Terry*, the Supreme Court in that case held that acts punishable as contempt are those "…tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority." Significantly, before he was cited for contempt, Respondent Amzi B. Kelly was first given the opportunity to appear before the Court, submit a written Answer, and present his oral argument. The footnote citation in Footnote 4 of the 19 October 2010 Resolution, A.M. No. 07-09-13-SC, refers to *"In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007,"* a case for indirect contempt lodged against the publisher of a national daily. In this case, the Court not only gave respondent a chance to explain himself, but also created an Investigating Committee regarding the subject matter of the alleged contemptible act: From October 30, 2007 to March 10, 2008, the Investigating Committee held hearings and gathered affidavits and testimonies from the parties concerned. The Committee invited respondent Macasaet, Dañguilan-Vitug, Delis, and ACA Marquez to a preliminary meeting, in which they were requested to submit their respective affidavits which served as their testimonies on direct examination. They were then later cross-examined on various dates: respondent Macasaet on January 10, 2008, Dañguilan-Vitug on January 17, 2008, Delis on January 24, 2008, and ACA Marquez on January 28, 2008. The Chief of the Security Services and the Cashier of the High Court likewise testified on January

22 and 24, 2008, respectively. This approach of using jurisprudence on contempt to justify adverse findings against herein respondents is continued in the current Decision. The majority cites the 1935 case *Salcedo v. Hernandez* which identified the proceedings specifically as contempt, even though the respondent was a member of the bar. The 1949 case of *In Re Vicente Sotto*, from which the majority quotes heavily – and which the majority states is "still good law" – is explicitly identified as a proceeding for contempt of court. In *Zaldivar v. Sandiganbayan and Gonzales*, the Court issued a Resolution "to require respondent Gonzales to explain in writing within ten (10) days from notice hereof, why he should not be punished for contempt of court and/or subjected to administrative sanctions…" only after a Motion to Cite in Contempt was filed by the petitioner. Even as the Court discussed its exercise of both its contempt powers and disciplinary powers over the respondent attorney in the said case, it still gave him ample time and opportunity to defend himself by allowing him to file an Omnibus Motion for Extension and Inhibition, a Manifestation with Supplemental Motion to Inhibit, a Motion to Transfer Administrative Proceedings to the Integrated Bar of the Philippines, and an Urgent Motion for Additional Extension of Time to File Explanation *Ex Abundante Cautelam.* The case of *In Re Almacen,* also cited in the current Decision, was in the nature of a contempt proceeding even as it adverted to duties of members of the bar, as can be gleaned from the following: So that, in line with the doctrinal rule that the protective mantle of contempt may ordinarily be invoked only against scurrilous remarks or malicious innuendoes while a court mulls over a pending case and not after the conclusion thereof, Atty. Almacen would now seek to sidestep the thrust of a contempt charge by his studied emphasis that the remarks for which he is now called upon to account were made only after this Court had written finis to his appeal. Atty. Almacen filed with the Court a "Petition to Surrender Lawyer's Certificate of Title," after his clients had lost the right to file an appeal before the Court due to his own inadvertence. And yet, the Court still gave him the "ampliest [sic] latitude" for his defense, giving him an opportunity to file a written explanation and to be heard in oral argument. All of the above negate the claim that this is not a contempt proceeding but purely an administrative one.

8. ID.; ID.; ID.; THE ALLEGATION AND CONCLUSION THAT THE FACULTY MEMBERS PURPORTEDLY "UNDERMINE THE COURT'S HONESTY, INTEGRITY AND COMPETENCE," MAKE IT CLEAR THAT THE TRUE NATURE OF THE ACTION IS ONE FOR INDIRECT CONTEMPT.— The central argumentation in the Show Cause Order is evidence of the original intent of the proceeding. The allegation and conclusion that the faculty members purportedly "undermine the Court's honesty, integrity, and competence," make it clear that the true nature of the action is one for indirect contempt. The discussion in the Resolution of 19 October 2010 hinged on the tribunal's need for self-preservation and independence, in view of the "institutional attacks" and "outside interference" with its functions – charges which more appropriately fall under its contempt authority, rather than the authority to determine fitness of entering and maintaining membership in the bar.

9. ID.; ID.; ID.; THE SHOW CAUSE ORDER VIOLATED RESPONDENTS' RIGHT TO DUE PROCESS BECAUSE IT NEVER AFFORDED THEM THE CATEGORICAL REQUIREMENTS OF NOTICE AND HEARING.— The Show Cause Order failed to specify which particular mode of contempt was committed by the respondents (as required in the Rules of Court). Its language and tenor also explicitly demonstrated that the guilt of respondents had already been prejudged. Page three (3) of the Order states: "The opening sentence alone is a grim preamble to the institutional attack that lay ahead." Page four (4) makes the conclusion that: "The publication of a statement…was totally unnecessary, uncalled for, and a rash act of misplaced vigilance." The Order also violated respondents' right to due process because it never afforded them the categorical requirements of notice and hearing. The requirements for Indirect Contempt as laid out in Rule 71 of the Rules of Court demand strict compliance: 1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct, and 2) an opportunity for the person charged to appear and explain his conduct.

10. ID.; ID.; ID.; THE COURT'S CONTEMPT POWERS IS NOT AN ALL-ENCOMPASSING TOOL TO SILENCE CRITICISM.— The essence of a court's contempt powers stems from a much-needed remedy for the violation of lawful court orders and for

maintaining decorum during proceedings, as an essential auxiliary to the due administration of justice. It is not an all-encompassing tool to silence criticism. Courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they fulfill. It must be wielded on the preservative, rather than on the vindictive, principle. So careful is the approach ordinarily taken by the Court in cases of contempt that it places a premium on the conduct of a hearing, to such a point that it administratively sanctioned a lower court judge for issuing a Show Cause Order *sua sponte* and finding the respondent guilty of criminal contempt without the benefit of a hearing.

11. ID.; ID.; ID.; THE POWER TO CITE FOR CONTEMPT, AS WELL AS THE POWER TO DISCIPLINE, ARE MECHANISMS TO BE EXERCISED SOLELY TOWARDS THE ORDERLY ADMINISTRATION OF JUSTICE; SUCH POWERS MUST BE WEIGHED CAREFULLY AGAINST THE SUBSTANTIVE RIGHTS OF PUBLIC TO FREE EXPRESSION AND ACADEMIC FREEDOM.— The *power to cite for contempt*, as well as the *power to discipline*, are mechanisms to be exercised solely towards the orderly administration of justice. Such powers must be weighed carefully against the substantive rights of the public to free expression and academic freedom. In this critical balancing act, the tribunal must therefore utilize, to the fullest extent, soundness and clarity of reasoning, and must not appear to have been swayed by momentary fits of temper. Instead of regarding criticism as perpetually adversarial, the judiciary would do well to respect it, both as an important tool for public accountability, and as the only soothing balm for vindication of felt injustice. Judicial legitimacy established through demonstrated intellectual integrity in decision-making rightly generates public acceptance of such decisions, which makes them truly binding. William Howard Taft, who served as a federal appellate judge before becoming the President of the United States, understood the weight of public evaluation in this wise: "If the law is but the essence of common sense, the protest of many average men may evidence a defect in a judicial conclusion though based on the nicest reasoning and profoundest learning." We who occupy this august chamber are right not because our word is accorded legal finality on

matters that are before us. We are right only when we have been proven right. There must always reside, in the recesses of our minds, the clear distinction between what is merely legal and what is legitimate. Legitimacy is a "tenuous commodity, particularly for unelected judges," and it can only be maintained by a sustained perception of fairness, as well as by the retention of the moral authority of individual judges. This required characteristic of the Court is diminished when its members do not act through the rational strength of their decisions, but are instead perceived to have done so in the misunderstanding of the Court's disciplinary powers."To maintain not only its stature, but also, more importantly, its independence, the judiciary must adhere to the discipline of judicial decision-making, firmly rooting rulings in the language of the documents in issue, precedent and logic. That is, the strength of the judiciary's independence depends not only on the constitutional framework, but also on the extent to which the judiciary acknowledges its responsibility to decide 'according to law'…" Furthermore, as one American Federal Supreme Court decision said: "Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability."

12. ID.; ID.; ID.; NOTHING CAN BE GAINED FROM THE COURT'S EXERCISE OF A HEAVY HAND IN A MATTER WHICH HAS ORIGINATED FROM THE COURT ITSELF; ON THE CONTRARY, THERE IS MUCH TO LOSE IN IMPOSING PENALTIES ON THE OUTSPOKEN MERELY BECAUSE THE OUTSPOKEN HAVE EARNED THE IRE OF THE COURT'S MEMBERS.— The Code of Judicial Conduct prescribes the standards for a judicial response to free speech which, highly-charged though it may be, is necessarily protected. Rule 3.04 in particular states that: "A judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the

courts for the litigants." The Supreme Court has itself, on occasion, demanded of lower court judges that they be "dignified in demeanor and refined in speech, [and] exhibit that temperament of utmost sobriety and self-restraint…" Nothing can be gained from the Court's exercise of a heavy hand in a matter which has originated from the Court itself. On the contrary, there is much to lose in imposing penalties on the outspoken merely because the outspoken have earned the ire of the Court's members. They who seek to judge must first themselves be judged. By occupying an exalted seat in the judiciary, judges in effect undertake to embrace a profession and lead lives that demand stringent ethical norms. In his dealings with the public, a judge must exhibit great self-restraint; he should be the last person to be perceived as a tyrant holding imperious sway over his domain, and must demonstrate to the public that in the discharge of his judicial role, he "possess[es] the virtue of *gravitas*. He should be…dignified in demeanor, refined in speech and virtuous in character…[H]e must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint… a judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason."

13. ID.; ID.; ID.; TO MAINTAIN A LIFE OF INTELLECTUAL INTEGRITY, THOSE IN THE JUDICIARY MUST BE BUFFETED BY THE WINDS OF HEALTHFUL CRITICISM; DIRECT AND INFORMED CRITICISM OF JUDICIAL DECISIONS STRENGTHENS ACCOUNTABILITY.— In my view of a constitutional democracy, the judiciary is required to demonstrate moral authority and legitimacy, not only legality, at all times. It has often been said that the rule of law requires an independent judiciary that fairly, impartially and promptly applies the law to cases before it. The rule of law requires a judiciary that is not beholden to any political power or private interests, whose only loyalty is to the people and to the Constitution that the people have ordained as their fundamental governing precept. It requires integrity, independence and probity of each individual judge. To be independent, the judiciary must always remember that it will lose public support and in a certain sense, its legitimacy, if it does not demonstrate its integrity in its judicial decisions. It must show a keen nose for the fundamental importance of upholding right over wrong. To maintain a life of intellectual integrity, those of us in the

> judiciary must be buffeted by the winds of healthful criticism. Direct and informed criticism of judicial decisions strengthens accountability. As Taft is noted for writing: "[n]othing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice than the consciousness that every act of theirs is to be subject to the intelligent scrutiny of their fellow men, and to their candid criticism .... In the case of judges having a life tenure, indeed, their very independence makes the right freely to comment on their decisions of greater importance, because it is the only practical and available instrument in the hands of a free people to keep such judges alive to the reasonable demands of those they serve."

APPEARANCES OF COUNSEL

Molo Sia Velasco Tuazon & Ty for Felix L. Ty.

Cruz & Reyes Law Offices for Mark R. Bocobo.

Zamora Poblador Vasquez & Bretaña for Atty. Raul T. Vasquez.

Carag Zaballero & San Pablo for Dan P. Calica.

Puyat, Jacinto & Santos for Gwen Grecia-De Vera.

Sanidad Abaya Te Viterbo Enriquez & Tan Law Offices for Atty. Theodore O. Te.

Santos Paruñgao Aquino Abejo & Santos Law Offices for Marvic M.V.F. Leonen and Theodore O. Te.

Ongkiko Manhit Custodio & Acorda for Dean Marvic M.V.F. Leonen.

Quisumbing Torres for Jose Gerardo A. Alampay, Antonio GM. La Viña, Rodolfo Noel S. Quimbo & Gmeleen Faye B. Tomboc.

Sycip Salazar Hernandez and Gatmaitan for Dean Marvic M.V.F. Leonen, Tristan A. Catindig, Carina C . Laforteza and Theodore Te.

Castillo Laman Tan Pantaleon & San Jose for Rommel J. Casis and Dina D. Lucenario.

Maria Karla L. Espinosa, Myra Janina R. Bañaga, Felix Marie M. Guerrero and Angelo D. Manlangit for Evalyn G. Ursua.

Caguioa & Gatmaytan for Dante Gatmaytan.

Yorac Arroyo Chua Caedo & Coronel Law Firm for Arthur P. Autea, Jay L. Batongbacal, Concepcion L. Jardeleza, Sandra Marie O. Coronel and Susan D. Villanueva.

Arthur Autea and Associates for Arthur P. Autea.

Free Legal Assistance Group for Froilan Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Theodore O. Te, Florin T. Hilbay, Evelyn (Leo) D. Battad, Solomon F. Lumba, Miguel Armovit, Rosa Maria J. Bautista, Rosario O. Gallo, Jose C. Laureta, Antonio M. Santos, and Owen J. Lynch.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For disposition of the Court are the various submissions of the 37 respondent law professors[1] in response to the Resolution dated October 19, 2010 (the Show Cause Resolution), directing them to show cause why they should not be disciplined as members of the Bar for violation of specific provisions of the Code of Professional Responsibility enumerated therein.

At the outset, it must be stressed that the Show Cause Resolution clearly dockets this as an administrative matter, not a special civil action for indirect contempt under Rule 71 of the Rules of Court, contrary to the dissenting opinion of Associate Justice Maria Lourdes P. A. Sereno (Justice Sereno) to the said October 19, 2010 Show Cause Resolution. Neither is this

[1] Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay, Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Owen J. Lynch, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty, Evalyn G. Ursua, Raul T. Vasquez, Susan D. Villanueva and Dina D. Lucenario; *rollo*, pp. 24-25.

a disciplinary proceeding grounded on an allegedly irregularly concluded finding of indirect contempt as intimated by Associate Justice Conchita Carpio Morales (Justice Morales) in her dissenting opinions to both the October 19, 2010 Show Cause Resolution and the present decision.

With the nature of this case as purely a bar disciplinary proceeding firmly in mind, the Court finds that **with the exception of one respondent whose compliance was adequate and another who manifested he was not a member of the Philippine Bar**, the submitted explanations, being mere denials and/or tangential to the issues at hand, are decidedly **unsatisfactory**. The proffered defenses even more urgently behoove this Court to call the attention of respondent law professors, who are members of the Bar, to the relationship of their duties as such under the Code of Professional Responsibility to their civil rights as citizens and academics in our free and democratic republic.

The provisions of the Code of Professional Responsibility involved in this case are as follows:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

> RULE 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 10 - A lawyer owes candor, fairness and good faith to the court.

> Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

> Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative

by repeal or amendment, or assert as a fact that which has not been proved.

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

CANON 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

RULE 11.05- A lawyer shall submit grievances against a Judge to the proper authorities only.

CANON 13 — A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

Established jurisprudence will undeniably support our view that when lawyers speak their minds, they must ever be mindful of their sworn oath to observe ethical standards of their profession, and in particular, avoid foul and abusive language to condemn the Supreme Court, or any court for that matter, for a decision it has rendered, **especially during the pendency of a motion for such decision's reconsideration**. The accusation of plagiarism against a member of this Court is not the real issue here but rather this plagiarism issue has been used to deflect everyone's attention from the actual concern of this Court to determine by respondents' explanations whether or not respondent members of the Bar have crossed the line of decency and acceptable professional conduct and speech and violated the Rules of Court through improper intervention or interference as third parties to a pending case. Preliminarily, it should be stressed that it was respondents themselves who called upon the Supreme Court to act on their Statement,[2] which they formally submitted, through Dean Marvic M.V.F. Leonen (Dean Leonen), for the Court's proper disposition. Considering the defenses of

[2] Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court; *rollo*, pp. 4-9.

freedom of speech and academic freedom invoked by the respondents, it is worth discussing here that the legal reasoning used in the past by this Court to rule that freedom of expression is not a defense in administrative cases against lawyers for using intemperate speech in open court or in court submissions can similarly be applied to respondents' invocation of academic freedom. Indeed, it is precisely because respondents are not merely lawyers but lawyers who teach law and mould the minds of young aspiring attorneys that respondents' own non-observance of the Code of Professional Responsibility, even if purportedly motivated by the purest of intentions, cannot be ignored nor glossed over by this Court.

To fully appreciate the grave repercussions of respondents' actuations, it is *apropos* to revisit the factual antecedents of this case.

BACKGROUND OF THE CASE

Antecedent Facts and Proceedings

On **April 28, 2010**, the *ponencia* of Associate Justice Mariano del Castillo (Justice Del Castillo) in *Vinuya, et al. v. Executive Secretary* (G.R. No. 162230) was promulgated. On **May 31, 2010**, the counsel[3] for Vinuya, *et al.* (the "*Malaya Lolas*"), filed a Motion for Reconsideration of the *Vinuya* decision, raising solely the following grounds:

I. OUR OWN CONSTITUTIONAL AND JURISPRUDENTIAL HISTORIES REJECT THIS HONORABLE COURTS' (SIC) ASSERTION THAT THE EXECUTIVE'S FOREIGN POLICY PREROGATIVES ARE VIRTUALLY UNLIMITED; PRECISELY, UNDER THE RELEVANT JURISPRUDENCE AND CONSTITUTIONAL PROVISIONS, SUCH PREROGATIVES ARE PROSCRIBED BY INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN STANDARDS, INCLUDING THOSE PROVIDED FOR IN THE RELEVANT INTERNATIONAL CONVENTIONS OF WHICH THE PHILIPPINES IS A PARTY.[4]

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[3] Counsel of record for the *Malaya Lolas* (petitioners in G.R. No. 162230) is the Roque & Butuyan Law Offices.

[4] *Malaya Lolas*' Motion for Reconsideration dated May 31, 2010, p. 1.

II. THIS HONORABLE COURT HAS CONFUSED DIPLOMATIC PROTECTION WITH THE BROADER, IF FUNDAMENTAL, RESPONSIBILITY OF STATES TO PROTECT THE HUMAN RIGHTS OF ITS CITIZENS – ESPECIALLY WHERE THE RIGHTS ASSERTED ARE SUBJECT OF *ERGA OMNES OBLIGATIONS* AND PERTAIN TO *JUS COGENS* NORMS.[5]

On **July 19, 2010**,[6] counsel for the *Malaya Lolas*, Attys. H. Harry L. Roque, Jr. (Atty. Roque) and Romel Regalado Bagares (Atty. Bagares), filed a **Supplemental** Motion for Reconsideration in G.R. No. 162230, where they posited for the first time their charge of plagiarism as one of the grounds for reconsideration of the *Vinuya* decision. Among other arguments, Attys. Roque and Bagares asserted that:

I.

IN THE FIRST PLACE, IT IS HIGHLY IMPROPER FOR THIS HONORABLE COURT'S JUDGMENT OF APRIL 28, 2010 TO PLAGIARIZE AT LEAST THREE SOURCES – AN ARTICLE PUBLISHED IN 2009 IN THE YALE LAW JOURNAL OF INTERNATIONAL LAW, A BOOK PUBLISHED BY THE CAMBRIDGE UNIVERSITY PRESS IN 2005 AND AN ARTICLE PUBLISHED IN 2006 IN THE CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW – AND MAKE IT APPEAR THAT THESE SOURCES SUPPORT THE JUDGMENT'S ARGUMENTS FOR DISMISSING THE INSTANT PETITION WHEN IN TRUTH, THE PLAGIARIZED SOURCES EVEN MAKE A STRONG CASE FOR THE PETITION'S CLAIMS.[7]

They also claimed that "[i]n this controversy, the evidence bears out the fact not only of extensive plagiarism but of (sic) also

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[5] *Id.* at 8.

[6] The contents of the Supplemental Motion for Reconsideration were posted on Atty. Roque's blog on July 18, 2010, the day before its filing. *See* http://harryroque.com/2010/07/18/supplemental-motion-alleging-plagiarism-in-the-supreme-court/ (last accessed on January 20, 2011).

[7] *Malaya Lolas*' Supplemental Motion for Reconsideration dated July 19, 2010, p. 8.

of **twisting** the true intents of the plagiarized sources by the *ponencia* to suit the arguments of the assailed Judgment for denying the Petition."[8]

According to Attys. Roque and Bagares, the works allegedly plagiarized in the *Vinuya* decision were namely: (1) Evan J. Criddle and Evan Fox-Decent's article "A Fiduciary Theory of Jus Cogens;"[9] (2) Christian J. Tams' book *Enforcing Erga Omnes Obligations in International Law*;[10] and (3) Mark Ellis' article "Breaking the Silence: On Rape as an International Crime."[11]

On the same day as the filing of the Supplemental Motion for Reconsideration on July 19, 2010, journalists Aries C. Rufo and Purple S. Romero posted an article, entitled "SC justice plagiarized parts of ruling on comfort women," on the Newsbreak website.[12] The same article appeared on the GMA News TV website also on July 19, 2010.[13]

On **July 22, 2010**, Atty. Roque's column, entitled "Plagiarized and Twisted," appeared in the Manila Standard Today.[14] In the said column, Atty. Roque claimed that Prof. Evan Criddle, one of the authors purportedly not properly acknowledged in the *Vinuya* decision, confirmed that his work, co-authored with Prof. Evan Fox-Decent, had been plagiarized. Atty. Roque quoted

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[8] *Id.* at 36. (Emphasis supplied.)

[9] Which appeared in the Yale Law Journal in 2009.

[10] Cambridge University Press, 2005.

[11] Published in the Case Western Reserve Journal of International Law in 2006.

[12] *See* Annex 4 of the 35 respondents' Common Compliance filed on November 19, 2010. The article's time of posting was indicated as 7:00 a.m.; *rollo*, p. 304.

[13] The article was posted on July 19, 2010 at 12:02 a.m. *See* http://www.gmanews.tv/story/196407/sc-justice-plagiarized-parts-of-ruling-on-comfort-women (Last accessed on January 20, 2011).

[14] *See* http://www.manilastandardtoday.com/insideOpinion.htm?f=2010/july/22/harryroque.isx&d=2010/july/22 (Last accessed January 24, 2011).

Prof. Criddle's response to the post by Julian Ku regarding the news report[15] on the alleged plagiarism in the international law blog, *Opinio Juris*. Prof. Criddle responded to Ku's blog entry in this wise:

> The newspaper's[16] [plagiarism] claims are based on a motion for reconsideration filed yesterday with the Philippine Supreme Court yesterday. The motion is available here:
>
> http://harryroque.com/2010/07/18/supplemental-motion-alleging-plagiarism-in-the-supreme-court/
>
> The motion suggests that the Court's decision contains thirty-four sentences and citations that are identical to sentences and citations in my 2009 YJIL article (co-authored with Evan Fox-Decent). Professor Fox-Decent and I were unaware of the petitioners' [plagiarism] allegations until after the motion was filed today.
>
> Speaking for myself, the most troubling aspect of the court's jus cogens discussion is that it implies that the prohibitions against crimes against humanity, sexual slavery, and torture are not jus cogens norms. Our article emphatically asserts the opposite. The Supreme Court's decision is available here: http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm[17]

On even date, July 22, 2010, Justice Del Castillo wrote to his colleagues on the Court in reply to the charge of plagiarism contained in the Supplemental Motion for Reconsideration.[18]

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[15] The link indicated in Julian Ku's blog entry was not a newspaper report but the Newsbreak article posted in GMA News TV's website.

[16] *Id*.

[17] Prof. Criddle's response was posted on July 19, 2010 at 2:44 EST. *See* link below:

http://opiniojuris.org/2010/07/19/international-law-plagiarism-charge-bedevils-philippines-supreme-court-justice/ (Last accessed on January 20, 2011).

[18] This letter was subsequently published in the Philippine Star as shown by Annex 7 of the 35 respondents' Common Compliance filed on November 19, 2010; *rollo*, pp. 309-310.

In a letter dated **July 23, 2010**, another purportedly plagiarized author in the *Vinuya* decision, Dr. Mark Ellis, wrote the Court, to wit:

Your Honours:

I write concerning a most delicate issue that has come to my attention in the last few days.

Much as I regret to raise this matter before your esteemed Court, I am compelled, as a question of the integrity of my work as an academic and as an advocate of human rights and humanitarian law, to take exception to the possible unauthorized use of my law review article on rape as an international crime in your esteemed Court's Judgment in the case of *Vinuya et al. v. Executive Secretary et al.* (G.R. No. 162230, Judgment of 28 April 2010).

My attention was called to the Judgment and the issue of possible plagiarism by the Philippine chapter of the Southeast Asia Media Legal Defence Initiative (SEAMLDI),[19] an affiliate of the London-based Media Legal Defence Initiative (MLDI), where I sit as trustee.

In particular, I am concerned about a large part of the extensive discussion in footnote 65, pp. 27-28, of the said Judgment of your esteemed Court. I am also concerned that your esteemed Court may have misread the arguments I made in the article and employed them for cross purposes. This would be ironic since the article was written precisely to argue for the appropriate legal remedy for victims of war crimes, genocide, and crimes against humanity.

I believe a full copy of my article as published in the *Case Western Reserve Journal of International Law* in 2006 has been made available to your esteemed Court. I trust that your esteemed Court will take the time to carefully study the arguments I made in the article.

I would appreciate receiving a response from your esteemed Court as to the issues raised by this letter.

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[19] Atty. Roque and Atty. Bagares, through the Center for International Law, have collaborated in the past with the SEAMLDI. The Center for International Law, which has Atty. Roque as Chairman and Atty. Bagares as Executive Director, hosted the 2nd South East Asia Media Legal Defense Conference held in October 2009 in Cebu City. *See* http://www.roquebutuyan.com/centerlaw/index.html and http://jmsc.asia/seasiamediadefense2009/program/ (Both last accessed on January 20, 2011).

With respect,

(Sgd.)

Dr. Mark Ellis[20]

In Memorandum Order No. 35-2010 issued on **July 27, 2010**, the Court formed the Committee on Ethics and Ethical Standards (the Ethics Committee) pursuant to Section 13, Rule 2 of the Internal Rules of the Supreme Court. In an *En Banc* Resolution also dated July 27, 2010, the Court referred the July 22, 2010 letter of Justice Del Castillo to the Ethics Committee. The matter was subsequently docketed as A.M. No. 10-7-17-SC.

On **August 2, 2010**, the Ethics Committee required Attys. Roque and Bagares to comment on the letter of Justice Del Castillo.[21]

On **August 9, 2010**, a statement dated July 27, 2010, entitled "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court" (the Statement), was posted in Newsbreak's website[22] and on Atty. Roque's blog.[23] A report regarding the statement also appeared on various on-line news sites, such as the GMA News TV[24] and the Sun Star[25] sites, on the same date. The statement was likewise posted at the University of the Philippines College

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[20] http://www.scribd.com/doc/39856111/Letter-to-Republic-of-the-Philippines-Supreme-Court-Ellis (Last accessed on January 20, 2011).

[21] *Per Curiam* Decision, *In the Matter of Charges of Plagiarism, etc., against Associate Justice Mariano C. del Castillo*, A.M. No. 10-7-17-SC, October 12, 2010.

[22] http://www.newsbreak.ph/2010/08/09/restoring-integrity/ (Last accessed on January 24, 2011).

[23] http://harryroque.com/2010/08/09/restoring-integritya-statement-by-the-faculty-of/ (Last accessed on January 20, 2011).

[24] http://www.gmanews.tv/story/198182/resignation-of-sc-justice-in-plagiarism-issue-sought (Last accessed on January 20, 2011).

[25] http://www.sunstar.com.ph/manila/faculties-hit-plagiarized-ruling (Last accessed on January 20, 2011).

of Law's bulletin board allegedly on **August 10, 2010**[26] and at said college's website.[27]

On **August 11, 2010**, Dean Leonen submitted a copy of the Statement of the University of the Philippines College of Law Faculty (UP Law faculty) to the Court, through Chief Justice Renato C. Corona (Chief Justice Corona). The cover letter dated August 10, 2010 of Dean Leonen read:

The Honorable
Supreme Court of the Republic of the Philippines

Through:	Hon. C. Corona Chief Justice
Subject:	Statement of faculty from the UP College of Law on the Plagiarism in the case of *Vinuya v. Executive Secretary*

Your Honors:

We attach for your information and **proper disposition** a statement signed by thirty[-]eight (38)[28] members of the faculty of the UP College of Law. We hope that its points **could be considered** by the Supreme Court *en banc*.

Respectfully,

(Sgd.)
Marvic M.V.F. Leonen
Dean and Professor of Law
(Emphases supplied.)

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[26] *See* paragraph 2.9, Dean Leonen Compliance dated November 19, 2010; *rollo*, p. 327.

[27] The date of posting of the Statement is not indicated on the UP Law website. *See* http://law.upd.edu.ph/index.php?option=com_content&view=article&id=166:restoring-integrity-a-statement-by-the-faculty-of-the-up-college-of-law&catid=52:faculty-news&Itemid=369 (Last accessed on January 20, 2011).

[28] Although the Dean's letter indicated that 38 faculty members signed the statement, an examination of the attachment showed that the number of purported signatories was only 37.

The copy of the Statement attached to the above-quoted letter did not contain the actual signatures of the alleged signatories but only stated the names of 37 UP Law professors with the notation (SGD.) appearing beside each name. For convenient reference, the text of the UP Law faculty Statement is reproduced here:

RESTORING INTEGRITY
A STATEMENT BY THE FACULTY OF
THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW
ON THE ALLEGATIONS OF PLAGIARISM AND
MISREPRESENTATION
IN THE SUPREME COURT

An extraordinary act of injustice has again been committed against the brave Filipinas who had suffered abuse during a time of war. After they courageously came out with their very personal stories of abuse and suffering as "comfort women", waited for almost two decades for any meaningful relief from their own government as well as from the government of Japan, got their hopes up for a semblance of judicial recourse in the case of *Vinuya v. Executive Secretary*, G.R. No. 162230 (28 April 2010), they only had these hopes crushed by a singularly reprehensible act of dishonesty and misrepresentation by the Highest Court of the land.

It is within this frame that the Faculty of the University of the Philippines College of Law views the charge that an Associate Justice of the Supreme Court committed plagiarism and misrepresentation in *Vinuya v. Executive Secretary*. The plagiarism and misrepresentation are not only affronts to the individual scholars whose work have been appropriated without correct attribution, but also a serious threat to the integrity and credibility of the Philippine Judicial System.

In common parlance, 'plagiarism' is the appropriation and misrepresentation of another person's work as one's own. In the field of writing, it is cheating at best, and stealing at worst. It constitutes a taking of someone else's ideas and expressions, including all the effort and creativity that went into committing such ideas and expressions into writing, and then making it appear that such ideas and expressions were originally created by the taker. It is dishonesty, pure and simple. A judicial system that allows plagiarism in any form is one that allows dishonesty. Since all judicial decisions form part of the law of the land, to allow plagiarism in the Supreme

Court is to allow the production of laws by dishonest means. Evidently, this is a complete perversion and falsification of the ends of justice.

A comparison of the *Vinuya* decision and the original source material shows that the *ponente* merely copied select portions of other legal writers' works and interspersed them into the decision as if they were his own, original work. Under the circumstances, however, because the Decision has been promulgated by the Court, the Decision now becomes the Court's and no longer just the *ponente's*. Thus the Court also bears the responsibility for the Decision. In the absence of any mention of the original writers' names and the publications from which they came, the thing speaks for itself.

So far there have been unsatisfactory responses from the *ponente* of this case and the spokesman of the Court.

It is argued, for example, that the inclusion of the footnotes from the original articles is a reference to the 'primary' sources relied upon. This cursory explanation is not acceptable, because the original authors' writings and the effort they put into finding and summarizing those primary sources are precisely the subject of plagiarism. The inclusion of the footnotes together with portions of their writings in fact aggravates, instead of mitigates, the plagiarism since it provides additional evidence of a deliberate intention to appropriate the original authors' work of organizing and analyzing those primary sources.

It is also argued that the Members of the Court cannot be expected to be familiar with all legal and scholarly journals. This is also not acceptable, because personal unfamiliarity with sources all the more demands correct and careful attribution and citation of the material relied upon. It is a matter of diligence and competence expected of all Magistrates of the Highest Court of the Land.

But a far more serious matter is the objection of the original writers, Professors Evan Criddle and Evan Fox-Descent, that the High Court actually misrepresents the conclusions of their work entitled "A Fiduciary Theory of *Jus Cogens*," the main source of the plagiarized text. In this article they argue that the classification of the crimes of rape, torture, and sexual slavery as crimes against humanity have attained the status of *jus cogens*, making it obligatory upon the State to seek remedies on behalf of its aggrieved citizens. Yet, the *Vinuya* decision uses parts of the same article to arrive at the contrary conclusion. This exacerbates the intellectual dishonesty of copying

works without attribution by transforming it into an act of intellectual fraud by copying works in order to mislead and deceive.

The case is a potential landmark decision in International Law, because it deals with State liability and responsibility for personal injury and damage suffered in a time of war, and the role of the injured parties' home States in the pursuit of remedies against such injury or damage. National courts rarely have such opportunities to make an international impact. That the petitioners were Filipino "comfort women" who suffered from horrific abuse during the Second World War made it incumbent on the Court of last resort to afford them every solicitude. But instead of acting with urgency on this case, the Court delayed its resolution for almost seven years, oblivious to the deaths of many of the petitioners seeking justice from the Court. When it dismissed the *Vinuya* petition based on misrepresented and plagiarized materials, the Court decided this case based on polluted sources. By so doing, the Supreme Court added insult to injury by failing to actually exercise its "power to urge and exhort the Executive Department to take up the claims of the *Vinuya* petitioners. Its callous disposition, coupled with false sympathy and nonchalance, belies a more alarming lack of concern for even the most basic values of decency and respect. The reputation of the Philippine Supreme Court and the standing of the Philippine legal profession before other Judiciaries and legal systems are truly at stake.

The High Court cannot accommodate less than absolute honesty in its decisions and cannot accept excuses for failure to attain the highest standards of conduct imposed upon all members of the Bench and Bar because these undermine the very foundation of its authority and power in a democratic society. Given the Court's recent history and the controversy that surrounded it, it cannot allow the charges of such clear and obvious plagiarism to pass without sanction as this would only further erode faith and confidence in the judicial system. And in light of the significance of this decision to the quest for justice not only of Filipino women, but of women elsewhere in the world who have suffered the horrors of sexual abuse and exploitation in times of war, the Court cannot coldly deny relief and justice to the petitioners on the basis of pilfered and misinterpreted texts.

The Court cannot regain its credibility and maintain its moral authority without ensuring that its own conduct, whether collectively or through its Members, is beyond reproach. This necessarily includes ensuring

that not only the content, but also the processes of preparing and writing its own decisions, are credible and beyond question. The *Vinuya* Decision must be conscientiously reviewed and not casually cast aside, if not for the purpose of sanction, then at least for the purpose of reflection and guidance. It is an absolutely essential step toward the establishment of a higher standard of professional care and practical scholarship in the Bench and Bar, which are critical to improving the system of administration of justice in the Philippines. It is also a very crucial step in ensuring the position of the Supreme Court as the Final Arbiter of all controversies: a position that requires competence and integrity completely above any and all reproach, in accordance with the exacting demands of judicial and professional ethics.

With these considerations, and bearing in mind the solemn duties and trust reposed upon them as teachers in the profession of Law, it is the opinion of the Faculty of the University of the Philippines College of Law that:

(1) The plagiarism committed in the case of *Vinuya v. Executive Secretary* is unacceptable, unethical and in breach of the high standards of moral conduct and judicial and professional competence expected of the Supreme Court;

(2) Such a fundamental breach endangers the integrity and credibility of the entire Supreme Court and undermines the foundations of the Philippine judicial system by allowing implicitly the decision of cases and the establishment of legal precedents through dubious means;

(3) The same breach and consequent disposition of the *Vinuya* case does violence to the primordial function of the Supreme Court as the ultimate dispenser of justice to all those who have been left without legal or equitable recourse, such as the petitioners therein;

(4) In light of the extremely serious and far-reaching nature of the dishonesty and to save the honor and dignity of the Supreme Court as an institution, it is necessary for the *ponente* of *Vinuya v. Executive Secretary* to resign his position, without prejudice to any other sanctions that the Court may consider appropriate;

(5) The Supreme Court must take this opportunity to review the manner by which it conducts research, prepares drafts, reaches and finalizes decisions in order to prevent a recurrence of similar acts, and to provide clear and concise guidance to the Bench

and Bar to ensure only the highest quality of legal research and writing in pleadings, practice, and adjudication.

Malcolm Hall, University of the Philippines College of Law, Quezon City, 27 July 2010.

(SGD.) MARVIC M.V.F. LEONEN
Dean and Professor of Law

(SGD.) FROILAN M. BACUNGAN
Dean (1978-1983)

(SGD.) PACIFICO A. AGABIN
Dean (1989-1995)

(SGD.) MERLIN M. MAGALLONA
Dean (1995-1999)

(SGD.) SALVADOR T. CARLOTA
Dean (2005-2008)
and Professor of Law

REGULAR FACULTY

(SGD.) CARMELO V. SISON
Professor

(SGD.) JAY L. BATONGBACAL
Assistant Professor

(SGD.) PATRICIA R.P. SALVADOR DAWAY
Associate Dean and Associate Professor

(SGD.) EVELYN (LEO) D. BATTAD
Assistant Professor

(SGD.) DANTE B. GATMAYTAN
Associate Professor

(SGD.) GWEN G. DE VERA
Assistant Professor

(SGD.) THEODORE O. TE
Assistant Professor

(SGD.) SOLOMON F. LUMBA
Assistant Professor

(SGD.) FLORIN T. HILBAYA
Assistant Professor

(SGD.) ROMMEL J. CASIS
Assistant Professor

LECTURERS

(SGD.) JOSE GERARDO A. ALAMPAY

(SGD.) JOSE C. LAURETA

(SGD.) ARTHUR P. AUTEA

(SGD.) DINA D. LUCENARIO

(SGD.) ROSA MARIA J. BAUTISTA

(SGD.) OWEN J. LYNCH

(SGD.) MARK R. BOCOBO

(SGD.) ANTONIO M. SANTOS

(SGD.) DAN P. CALICA

(SGD.) VICENTE V. MENDOZA

(SGD.) TRISTAN A. CATINDIG

(SGD.) RODOLFO NOEL S. QUIMBO

(SGD.) SANDRA MARIE O. CORONEL

(SGD.) GMELEEN FAYE B. TOMBOC

(SGD.) ROSARIO O. GALLO

(SGD.) NICHOLAS FELIX L. TY

(SGD.) CONCEPCION L. JARDELEZA

(SGD.) EVALYN G. URSUA

(SGD.) ANTONIO G.M. LA VIÑA

(SGD.) RAUL T. VASQUEZ

(SGD.) CARINA C. LAFORTEZA

(SGD.) SUSAN D. VILLANUEVA[29]

(Underscoring supplied.)

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[29] *Rollo,* pp. 4-9.

Meanwhile, in a letter dated August 18, 2010, Prof. Christian J. Tams made known his sentiments on the alleged plagiarism issue to the Court.[30] We quote Prof. Tams' letter here:

Glasgow, 18 August 2010

Vinuya, et al. v. Executive Secretary et al. (G.R. No. 162230)

Hon. Renato C. Corona, Chief Justice

Your Excellency,

My name is Christian J. Tams, and I am a professor of international law at the University of Glasgow. I am writing to you in relation to the use of one of my publications in the above-mentioned judgment of your Honourable Court.

The relevant passage of the judgment is to be found on p. 30 of your Court's Judgment, in the section addressing the concept of obligations *erga omnes*. As the table annexed to this letter shows, the relevant sentences were taken almost word by word from the introductory chapter of my book *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005). I note that there is a generic reference to my work in footnote 69 of the Judgment, but as this is in relation to a citation from another author (Bruno Simma) rather than with respect to the substantive passages reproduced in the Judgment, I do not think it can be considered an appropriate form of referencing.

I am particularly concerned that my work should have been used to support the Judgment's cautious approach to the *erga omnes* concept. In fact, a most cursory reading shows that my book's central thesis is precisely the opposite: namely that the *erga omnes* concept has been widely accepted and has a firm place in contemporary international law. Hence the introductory chapter notes that "[t]he present study attempts to demystify aspects of the 'very mysterious' concept and thereby to facilitate its implementation" (p. 5). In the same vein, the concluding section notes that "the preceding chapters show that the concept is now a part of the *reality* of international law, established in the jurisprudence of courts and the practice of States" (p. 309).

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[30] This was received by the Court on August 20, 2010. It was also reported on Newsbreak that same day. *See* (http://www.newsbreak.ph/2010/08/20/third-author-plagiarized-by-sc-justice-complains/).

With due respect to your Honourable Court, I am at a loss to see how my work should have been cited to support – as it seemingly has – the opposite approach. More generally, I am concerned at the way in which your Honourable Court's Judgment has drawn on scholarly work without properly acknowledging it.

On both aspects, I would appreciate a prompt response from your Honourable Court.

I remain

Sincerely yours

(Sgd.)

Christian J. Tams[31]

In the course of the submission of Atty. Roque and Atty. Bagares' exhibits during the August 26, 2010 hearing in the ethics case against Justice Del Castillo, the Ethics Committee noted that Exhibit "J" (a copy of the Restoring Integrity Statement) was not signed but merely reflected the names of certain faculty members with the letters (SGD.) beside the names. Thus, the Ethics Committee directed Atty. Roque to present the signed copy of the said Statement within three days from the August 26 hearing.[32]

It was upon compliance with this directive that the Ethics Committee was given a copy of the signed UP Law Faculty Statement that showed on the signature pages the names of the full roster of the UP Law Faculty, 81 faculty members in all. Indubitable from the actual signed copy of the Statement was that only 37 of the 81 faculty members appeared to have signed the same. However, the 37 actual signatories to the

[31] *See* Annex 2 of the 35 respondents' Compliance dated November 19, 2010. A full-color PDF replica of Prof. Tams' letter was also linked on Atty. Roque's blog entry dated August 22, 2010. *See* blog entry here - http://harryroque.com/2010/08/22/third-author-plagiarized-by-sc-justice-complains-from-newsbreak/ (last accessed on January 20, 2011) and the letter here - http://harryroque.files.wordpress.com/2010/08/tams-letter-to-supreme-court.pdf (last accessed on January 21, 2011).

[32] *Per Curiam* Decision in A.M. No. 10-7-17-SC, October 12, 2010.

Statement did not include former Supreme Court Associate Justice Vicente V. Mendoza (Justice Mendoza) as represented in the previous copies of the Statement submitted by Dean Leonen and Atty. Roque. It also appeared that Atty. Miguel R. Armovit (Atty. Armovit) signed the Statement although his name was not included among the signatories in the previous copies submitted to the Court. Thus, the total number of ostensible signatories to the Statement remained at 37.

The Ethics Committee referred this matter to the Court *en banc* since the same Statement, having been formally submitted by Dean Leonen on August 11, 2010, was already under consideration by the Court.[33]

In a Resolution dated October 19, 2010, the Court *en banc* made the following observations regarding the UP Law Faculty Statement:

> Notably, while the statement was meant to reflect the educators' opinion on the **allegations** of plagiarism against Justice Del Castillo, they treated such allegation not only as an established fact, but a truth. In particular, they expressed dissatisfaction over Justice Del Castillo's explanation on how he cited the primary sources of the quoted portions and yet arrived at a contrary conclusion to those of the authors of the articles supposedly plagiarized.
>
> Beyond this, however, the statement bore certain remarks which raise concern for the Court. The opening sentence alone is a grim preamble to the institutional attack that lay ahead. It reads:
>
> > An extraordinary act of injustice has again been committed against the brave Filipinas who had suffered abuse during a time of war.
>
> The first paragraph concludes with a reference to the decision in *Vinuya v. Executive Secretary* as a reprehensible act of dishonesty and misrepresentation by the Highest Court of the land. x x x.
>
> The insult to the members of the Court was aggravated by imputations of deliberately delaying the resolution of the said case, its dismissal on the basis of "polluted sources," the Court's alleged indifference

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[33] *Id*.

to the cause of petitioners [in the *Vinuya* case], as well as the supposed alarming lack of concern of the members of the Court for even the most basic values of decency and respect.[34] x x x. (Underscoring ours.)

In the same Resolution, the Court went on to state that:

> While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far. Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary. The court must "insist on being permitted to proceed to the disposition of its business in an orderly manner, **free from outside interference obstructive of its functions and tending to embarrass the administration of justice.**"

The Court could hardly perceive any reasonable purpose for the faculty's less than objective comments except to discredit the April 28, 2010 Decision in the *Vinuya* case and undermine the Court's honesty, integrity and competence in addressing the motion for its reconsideration. As if the case on the comfort women's claims is not controversial enough, the UP Law faculty would fan the flames and invite resentment against a resolution that would not reverse the said decision. This runs **contrary to their obligation as law professors and officers of the Court to be the first to uphold the dignity and authority of this Court, to which they owe fidelity according to the oath they have taken as attorneys, and not to promote distrust in the administration of justice.**[35] x x x. (Citations omitted; emphases and underscoring supplied.)

Thus, the Court directed Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay,

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[34] Resolution dated October 19, 2010; *rollo*, pp. 23-29.

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

Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Owen J. Lynch, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty, Evalyn G. Ursua, Raul T. Vasquez, Susan D. Villanueva and Dina D. Lucenario to show cause, within ten (10) days from receipt of the copy of the Resolution, why they should not be disciplined as members of the Bar for violation of Canons 1,[36] 11 and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility.[37]

Dean Leonen was likewise directed to show cause within the same period why he should not be disciplinarily dealt with for violation of Canon 10, Rules 10.01, 10.02 and 10.03 for submitting through his letter dated August 10, 2010, during the pendency of G.R. No. 162230 and of the investigation before the Ethics Committee, for the consideration of the Court *en banc*, a dummy which is not a true and faithful reproduction of the UP Law Faculty Statement.[38]

In the same Resolution, the present controversy was docketed as a regular administrative matter.

Summaries of the Pleadings Filed by Respondents in Response to the October 19, 2010 Show Cause Resolution

On November 19, 2010, within the extension for filing granted by the Court, respondents filed the following pleadings:

(1) Compliance dated November 18, 2010 by counsels for 35 of the 37 respondents, excluding Prof. Owen Lynch and Prof. Raul T. Vasquez, in relation to the charge of violation of Canons 1, 11 and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility;

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[36] The Show Cause Resolution inadvertently referred to Canon 10 but should refer to Canon 1.

[37] Show Cause Resolution; *rollo*, pp. 27-28.

[38] *Id.* at 28.

(2) Compliance and Reservation dated November 18, 2010 by Prof. Rosa Maria T. Juan-Bautista in relation to the same charge in par. (1);

(3) Compliance dated November 19, 2010 by counsel for Prof. Raul T. Vasquez in relation to the same charge in par. (1);

(4) Compliance dated November 19, 2010 by counsels for Dean Leonen, in relation to the charge of violation of Canon 10, Rules 10.01, 10.02 and 10.03; and

(5) Manifestation dated November 19, 2010 by counsel for Prof. Owen Lynch.

Common Compliance of 35 Respondents (Excluding Prof. Owen Lynch and Prof. Raul Vasquez)

Thirty-five (35) of the respondent UP Law professors filed on November 19, 2010 a common compliance which was signed by their respective counsels (the Common Compliance). In the "Preface" of said Common Compliance, respondents stressed that "[they] issued the *Restoring Integrity Statement* in the discharge of the 'solemn duties and trust reposed upon them as teachers in the profession of law,' and as members of the Bar to speak out on a matter of public concern and one that is of vital interest to them."[39] They likewise alleged that "they acted with the purest of intentions" and pointed out that "none of them was involved either as party or counsel"[40] in the *Vinuya* case. Further, respondents "note with concern" that the Show Cause Resolution's findings and conclusions were "a **prejudgment** – that respondents indeed are **in contempt**, have breached their obligations as law professors and officers of the Court, and have violated 'Canons [1], 11 and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility."[41]

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[39] Common Compliance; *rollo*, p. 201.

[40] *Id*.

[41] *Id.* at 201-202. (Emphases supplied.)

By way of explanation, the respondents emphasized the following points:

(a) *Respondents' alleged noble intentions*

In response to the charges of failure to observe due respect to legal processes[42] and the courts[43] and of tending to influence, or giving the appearance of influencing the Court[44] in the issuance of their Statement, respondents assert that their intention was not to malign the Court but rather to defend its integrity and credibility and to ensure continued confidence in the legal system. Their noble motive was purportedly evidenced by the portion of their Statement "focusing on constructive action."[45] Respondents' call in the Statement for the Court "to provide clear and concise guidance to the Bench and Bar to ensure only the highest quality of legal research and writing in adjudication," was reputedly "in keeping with strictures enjoining lawyers to 'participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice'" (under Canon 4 of the Code of Professional Responsibility) and to "promote respect for the law and legal processes" (under Canon 1, *id.*).[46] Furthermore, as academics, they allegedly have a "special interest and duty to vigilantly guard against plagiarism and misrepresentation because these unwelcome occurrences have a profound impact in the academe, especially in our law schools."[47]

Respondents further "[called] on this Court not to misconstrue the *Restoring Integrity Statement* as an 'institutional attack' x x x on the basis of its first and ninth paragraphs."[48] They

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[42] Code of Professional Responsibility, Canon 1.
[43] *Id.*, Canon 11.
[44] *Id.*, Canon 13.
[45] Common Compliance; *rollo*, p. 203.
[46] *Id.* at 204.
[47] *Id.* at 205.
[48] *Id.* at 208.

further clarified that at the time the Statement was allegedly drafted and agreed upon, it appeared to them the Court "was not going to take any action on the grave and startling allegations of plagiarism and misrepresentation."[49] According to respondents, the bases for their belief were (i) the news article published on July 21, 2010 in the Philippine Daily Inquirer wherein Court Administrator Jose Midas P. Marquez was reported to have said that Chief Justice Corona would not order an inquiry into the matter;[50] and (ii) the July 22, 2010 letter of Justice Del Castillo which they claimed "did nothing but to downplay the gravity of the plagiarism and misrepresentation charges."[51] Respondents claimed that it was their perception of the Court's indifference to the dangers posed by the plagiarism allegations against Justice Del Castillo that impelled them to urgently take a public stand on the issue.

(b) *The "correctness" of respondents' position that Justice Del Castillo committed plagiarism and should be held accountable in accordance with the standards of academic writing*

A significant portion of the Common Compliance is devoted to a discussion of the merits of respondents' charge of plagiarism against Justice Del Castillo. Relying on *University of the Philippines Board of Regents v. Court of Appeals*[52] and foreign materials and jurisprudence, respondents essentially argue that their position regarding the plagiarism charge against Justice Del Castillo is the correct view and that they are therefore justified in issuing their *Restoring Integrity Statement*. Attachments to the Common Compliance included, among others:

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[49] *Id.* at 208-209.

[50] Respondents were referring to the article by Donna Pazzibugan entitled "High Court Not Probing 'Plagiarism,'" which according to footnote 28 of the Common Compliance may be accessed at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/2010072182283/High-court-not-probing-plagiarism> as of November 12, 2010.

[51] Common Compliance; *rollo*, p. 209.

[52] 372 Phil. 287 (1999).

(i) the letter dated October 28, 2010 of Peter B. Payoyo, LL.M, Ph.D.,[53] sent to Chief Justice Corona through Justice Sereno, alleging that the *Vinuya* decision likewise lifted without proper attribution the text from a legal article by Mariana Salazar Albornoz that appeared in the *Anuario Mexicano De Derecho Internacional* and from an International Court of Justice decision; and (ii) a 2008 Human Rights Law Review Article entitled "Sexual Orientation, Gender Identity and International Human Rights Law" by Michael O'Flaherty and John Fisher, in support of their charge that Justice Del Castillo also lifted passages from said article without proper attribution, but this time, in his *ponencia* in *Ang Ladlad LGBT Party v. Commission on Elections*.[54]

(c) *Respondents' belief that they are being "singled out" by the Court when others have likewise spoken on the "plagiarism issue"*

In the Common Compliance, respondents likewise asserted that "the plagiarism and misrepresentation allegations are legitimate public issues."[55] They identified various published reports and opinions, in agreement with and in opposition to the stance of respondents, on the issue of plagiarism, specifically:

(i) Newsbreak report on July 19, 2010 by Aries Rufo and Purple Romero;[56]

(ii) Column of Ramon Tulfo which appeared in the Philippine Daily Inquirer on July 24, 2010;[57]

(iii) Editorial of the Philippine Daily Inquirer published on July 25, 2010;[58]

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[53] According to his letter, Atty. Payoyo is a former UP Law Professor, former chief editor of the Philippine Law Journal and a recipient of the Court's centennial award in international law.

[54] G.R. No. 190582, April 8, 2010.

[55] Common Compliance; *rollo*, p. 211.

[56] Annex 4; *id.* at 304-306.

[57] Annex 5; *id.* at 307.

[58] Annex 6; *id.* at 308.

(iv) Letter dated July 22, 2010 of Justice Del Castillo published in the Philippine Star on July 30, 2010;[59]

(v) Column of Former Intellectual Property Office Director General Adrian Cristobal, Jr. published in the Business Mirror on August 5, 2010;[60]

(vi) Column of Former Chief Justice Artemio Panganiban published in the Philippine Daily Inquirer on August 8, 2010;[61]

(vii) News report regarding Senator Francis Pangilinan's call for the resignation of Justice Del Castillo published in the Daily Tribune and the Manila Standard Today on July 31, 2010;[62]

(viii) News reports regarding the statement of Dean Cesar Villanueva of the Ateneo de Manila University School of Law on the calls for the resignation of Justice Del Castillo published in The Manila Bulletin, the Philippine Star and the Business Mirror on August 11, 2010;[63]

(ix) News report on expressions of support for Justice Del Castillo from a former dean of the Pamantasan ng Lungsod ng Maynila, the Philippine Constitutional Association, the Judges Association of Bulacan and the Integrated Bar of the Philippines – Bulacan Chapter published in the Philippine Star on August 16, 2010;[64] and

(x) Letter of the Dean of the Liceo de Cagayan University College of Law published in the Philippine Daily Inquirer on August 10, 2010.[65]

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[59] Annex 7; *id.* at 309-310.

[60] Annex 8; *id.* at 311.

[61] Annex 9; *id.* at 312.

[62] Annexes 10 and 11; *id.* at 313-314.

[63] Annexes 12, 13 and 14; *id.* at 315-317.

[64] Annex 15; *id.* at 318-319.

[65] Annex 16; *id.* at 320.

In view of the foregoing, respondents alleged that this Court has singled them out for sanctions and the charge in the Show Cause Resolution dated October 19, 2010 that they may have violated specific canons of the Code of Professional Responsibility is unfair and without basis.

(d) *Freedom of expression*

In paragraphs 28 to 30 of the Common Compliance, respondents briefly discussed their position that in issuing their Statement, "they should be seen as not only to be performing their duties as members of the Bar, officers of the court, and teachers of law, but also as citizens of a democracy who are constitutionally protected in the exercise of free speech."[66] In support of this contention, they cited *United States v. Bustos*,[67] *In re: Atty. Vicente Raul Almacen*,[68] and *In the Matter of Petition for Declaratory Relief Re: Constitutionality of Republic Act 4880, Gonzales v. Commission on Elections*.[69]

(e) *Academic freedom*

In paragraphs 31 to 34 of the Common Compliance, respondents asserted that their Statement was also issued in the exercise of their academic freedom as teachers in an institution of higher learning. They relied on Section 5 of the University of the Philippines Charter of 2008 which provided that "[t]he national university has the right and responsibility to exercise academic freedom." They likewise adverted to *Garcia v. The Faculty Admission Committee, Loyola School of Theology*[70] which they claimed recognized the extent and breadth of such freedom as to encourage a free and healthy discussion and communication of a faculty member's field of study without fear of reprisal. It is respondents' view that had

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[66] *Id.* at 215.

[67] 37 Phil. 731 (1918).

[68] G.R. No. L-27654, February 18, 1970, 31 SCRA 562.

[69] 137 Phil. 471 (1969).

[70] 160-A Phil. 929 (1975).

they remained silent on the plagiarism issue in the *Vinuya* decision they would have "compromised [their] integrity and credibility as teachers; [their silence] would have created a culture and generation of students, professionals, even lawyers, who would lack the competence and discipline for research and pleading; or, worse, [that] their silence would have communicated to the public that plagiarism and misrepresentation are inconsequential matters and that intellectual integrity has no bearing or relevance to one's conduct."[71]

In closing, respondents' Common Compliance exhorted this Court to consider the following portion of the dissenting opinion of Justice George A. Malcolm in *Salcedo v. Hernandez*,[72] to wit:

> Respect for the courts can better be obtained by following a calm and impartial course from the bench than by an attempt to compel respect for the judiciary by chastising a lawyer for a too vigorous or injudicious exposition of his side of a case. The Philippines needs lawyers of independent thought and courageous bearing, jealous of the interests of their clients and unafraid of any court, high or low, and the courts will do well tolerantly to overlook occasional intemperate language soon to be regretted by the lawyer which affects in no way the outcome of a case.[73]

On the matter of the reliefs to which respondents believe they are entitled, the Common Compliance stated, thus:

> WHEREFORE:
>
> **A. Respondents, as citizens of a democracy, professors of law, members of the Bar and officers of the Court, respectfully pray that:**
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> 1. the foregoing be noted; and
> 2. the Court reconsider and reverse its adverse findings in the Show Cause Resolution, including its conclusions that respondents have: [a] breached their "obligation as law

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[71] Common Compliance; *rollo*, p. 217.

[72] 61 Phil. 724 (1935).

[73] *Id.* at 733-734, cited in the Common Compliance; *rollo*, p. 219.

professors and officers of the Court to be the first to uphold the dignity and authority of this Court, … and not to promote distrust in the administration of justice"; and [b] committed "violations of Canons 10, 11, and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility."

B. In the event the Honorable Court declines to grant the foregoing prayer, respondents respectfully pray, in the alternative, and in assertion of their due process rights, that before final judgment be rendered:

1. the Show Cause Resolution be set for hearing;

2. respondents be given a fair and full opportunity to refute and/or address the findings and conclusions of fact in the Show Cause Resolution (including especially the finding and conclusion of a lack of malicious intent), and in that connection, that appropriate procedures and schedules for hearing be adopted and defined that will allow them the full and fair opportunity to require the production of and to present testimonial, documentary, and object evidence bearing on the plagiarism and misrepresentation issues in *Vinuya v. Executive Secretary (G.R. No. 162230, April 28, 2010)* and *In the Matter of the Charges of Plagiarism, etc. Against Associate Justice Mariano C. Del Castillo (A.M. No. 10-7-17-SC); and*

3. respondents be given fair and full access to the transcripts, records, drafts, reports and submissions in or relating to, and accorded the opportunity to cross-examine the witnesses who were or could have been called in *In The Matter of the Charges of Plagiarism, etc. Against Associate Justice Mariano C. Del Castillo (A.M. No. 10-7-17-SC).*[74]

Compliance and Reservation of Prof. Rosa Maria T. Juan-Bautista

Although already included in the Common Compliance, Prof. Rosa Maria T. Juan-Bautista (Prof. Juan-Bautista) filed a separate Compliance and Reservation (the Bautista Compliance), wherein she adopted the allegations in the Common Compliance with some additional averments.

[74] Common Compliance; *rollo*, pp. 219-220.

Prof. Juan-Bautista reiterated that her due process rights allegedly entitled her to challenge the findings and conclusions in the Show Cause Resolution. Furthermore, "[i]f the Restoring Integrity Statement can be considered **indirect contempt**, under Section 3 of Rule 71 of the Rules of Court, such may be punished only after charge and hearing."[75]

Prof. Juan-Bautista stressed that respondents signed the Statement "in good faith and with the best intentions to protect the Supreme Court by asking one member to resign."[76] For her part, Prof. Juan-Bautista intimated that her deep disappointment and sadness for the plight of the *Malaya Lolas* were what motivated her to sign the Statement.

On the point of academic freedom, Prof. Juan-Bautista cited jurisprudence[77] which in her view highlighted that academic freedom is constitutionally guaranteed to institutions of higher learning such that schools have the freedom to determine for themselves who may teach, what may be taught, how lessons shall be taught and who may be admitted to study and that courts have no authority to interfere in the schools' exercise of discretion in these matters in the absence of grave abuse of discretion. She claims the Court has encroached on the academic freedom of the University of the Philippines and other universities on their right to determine how lessons shall be taught.

Lastly, Prof. Juan-Bautista asserted that the Statement was an exercise of respondents' constitutional right to freedom of expression that can only be curtailed when there is grave and

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[75] Bautista Compliance; *id.* at 179. (Emphasis supplied.)

[76] *Id.* at 180. (Emphasis supplied.)

[77] *Mercado v. AMA Computer College–Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010; *Morales v. Board of Regents of the University of the Philippines*, G.R. No. 161172, December 13, 2004, 446 SCRA 227; *University of the Philippines Board of Regents v. Court of Appeals*, *supra* note 49; *Arokiaswamy William Margaret Celine v. University of the Philippines Board of Regents*, G.R. No. 152309, Resolution, September 18, 2002.

imminent danger to public safety, public morale, public health or other legitimate public interest.[78]

Compliance of Prof. Raul T. Vasquez

On November 19, 2010, Prof. Raul T. Vasquez (Prof. Vasquez) filed a separate Compliance by registered mail (the Vasquez Compliance). In said Compliance, Prof. Vasquez narrated the circumstances surrounding his signing of the Statement. He alleged that the *Vinuya* decision was a topic of conversation among the UP Law faculty early in the first semester (of academic year 2010-11) because it reportedly contained citations not properly attributed to the sources; that he was shown a copy of the Statement by a clerk of the Office of the Dean on his way to his class; and that, agreeing in principle with the main theme advanced by the Statement, he signed the same in utmost good faith.[79]

In response to the directive from this Court to explain why he should not be disciplined as a member of the Bar under the Show Cause Resolution, Prof. Vasquez also took the position that a lawyer has the right, like all citizens in a democratic society, to comment on acts of public officers. He invited the attention of the Court to the following authorities: (a) *In re: Vicente Sotto*;[80] (b) *In re: Atty. Vicente Raul Almacen*;[81] and (c) a discussion appearing in American Jurisprudence (AmJur) 2d.[82] He claims that he "never had any intention to unduly influence, nor entertained any illusion that he could or should influence, [the Court] in its disposition of the *Vinuya* case"[83] and that "attacking the integrity of [the Court] was the farthest thing on respondent's

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[78] Bautista Compliance; *rollo*, p. 185; citing *Integrated Bar of the Philippines v. Atienza*, G.R. No. 175241, February 24, 2010.

[79] *See* Vasquez Compliance; *rollo*, p. 428.

[80] 82 Phil. 595 (1949).

[81] *Supra* note 68.

[82] AmJur 2d §52.

[83] Vasquez Compliance; *rollo*, p. 430.

mind when he signed the Statement."[84] Unlike his colleagues, who wish to impress upon this Court the purported homogeneity of the views on what constitutes plagiarism, Prof. Vasquez stated in his Compliance that:

> 13. Before this Honorable Court rendered its *Decision* dated 12 October 2010, **some espoused the view that willful and deliberate intent to commit plagiarism is an essential element** of the same. **Others, like respondent, were of the opinion that plagiarism is committed regardless of the intent** of the perpetrator, the way it has always been viewed in the academe. **This uncertainty made the issue a fair topic for academic discussion in the College.** Now, this Honorable Court has ruled that plagiarism presupposes deliberate intent to steal another's work and to pass it off as one's own.[85] (Emphases supplied.)

Also in contrast to his colleagues, Prof. Vasquez was willing to concede that he "might have been remiss in correctly assessing the effects of such language [in the Statement] and could have been more careful."[86] He ends his discussion with a respectful submission that with his explanation, he has faithfully complied with the Show Cause Resolution and that the Court will rule that he had not in any manner violated his oath as a lawyer and officer of the Court.

Separate Compliance of Dean Leonen regarding the charge of violation of Canon 10 in relation to his submission of a "dummy" of the UP Law Faculty Statement to this Court

In his Compliance, Dean Leonen claimed that there were three drafts/versions of the UP Law Faculty Statement, which he described as follows:

- ***"Restoring Integrity I"*** which bears the entire roster of the faculty of the UP College of Law in its signing pages, and

[84] *Id.* at 431.

[85] *Id.* at 430.

[86] *Id*.

the actual signatures of the thirty-seven (37) faculty members subject of the Show Cause Resolution. A copy was filed with the Honorable Court by Roque and Butuyan on 31 August 2010 in A.M. No. 10-7-17-SC.

- ***"Restoring Integrity II"*** which does not bear any actual physical signature, but which reflects as signatories the names of thirty-seven (37) members of the faculty with the notation "(SGD.)". A copy of *Restoring Integrity II* was publicly and physically posted in the UP College of Law on 10 August 2010. Another copy of *Restoring Integrity II* was also officially received by the Honorable Court from the Dean of the UP College of Law on 11 August 2010, almost three weeks before the filing of *Restoring Integrity I*.

- ***"Restoring Integrity III"*** which is a reprinting of *Restoring Integrity II*, and which presently serves as the official file copy of the Dean's Office in the UP College of Law that may be signed by other faculty members who still wish to. It bears the actual signatures of the thirty-seven original signatories to *Restoring Integrity I* above their printed names and the notation "(SGD.)" and, in addition, the actual signatures of eight (8) other members of the faculty above their handwritten or typewritten names.[87]

For purposes of this discussion, only ***Restoring Integrity I*** and ***Restoring Integrity II*** are relevant since what Dean Leonen has been directed to explain are the discrepancies in the signature pages of these two documents. ***Restoring Integrity III*** was never submitted to this Court.

On how ***Restoring Integrity I*** and ***Restoring Integrity II*** were prepared and came about, Dean Leonen alleged, thus:

2.2 On 27 July 2010, sensing the emergence of a relatively broad agreement in the faculty on a draft statement, Dean Leonen instructed his staff to print the draft and circulate it among the faculty members so that those who wished to may sign. For this purpose, the staff encoded the law faculty roster to serve as the printed draft's signing pages. Thus did the first printed draft of the Restoring Integrity Statement, ***Restoring Integrity I***, come into being.

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[87] Dean Leonen Compliance; *rollo*, pp. 324-325.

2.3. As of 27 July 2010, the date of the Restoring Integrity Statement, Dean Leonen was unaware that a Motion for Reconsideration of the Honorable Court's Decision in *Vinuya vs. Executive Secretary* (G.R. No. 162230, 28 April 2010) had already been filed, or that the Honorable Court was in the process of convening its Committee on Ethics and Ethical Standards in A.M. No. 10-7-17-SC.

2.4. Dean Leonen's staff then circulated ***Restoring Integrity I*** among the members of the faculty. Some faculty members visited the Dean's Office to sign the document or had it brought to their classrooms in the College of Law, or to their offices or residences. Still other faculty members who, for one reason or another, were unable to sign ***Restoring Integrity I*** at that time, nevertheless conveyed to Dean Leonen their assurances that they would sign as soon as they could manage.

2.5. Sometime in the second week of August, judging that ***Restoring Integrity I*** had been circulated long enough, Dean Leonen instructed his staff to reproduce the statement in a style and manner appropriate for posting in the College of Law. Following his own established practice in relation to significant public issuances, he directed them to reformat the signing pages so that only the names of those who signed the first printed draft would appear, together with the corresponding "(SGD.)" note following each name. ***Restoring Integrity II*** thus came into being.[88]

According to Dean Leonen, the "practice of eliminating blanks opposite or above the names of non-signatories in the final draft of significant public issuances, is meant not so much for aesthetic considerations as to secure the integrity of such documents."[89] He likewise claimed that "[p]osting statements with blanks would be an open invitation to vandals and pranksters."[90]

With respect to the inclusion of Justice Mendoza's name as among the signatories in ***Restoring Integrity II*** when in fact he did not sign ***Restoring Integrity I***, Dean Leonen attributed

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[88] *Id.* at 325-326.

[89] *Id.* at 326.

[90] *Id.*, in Footnote 2.

the mistake to a miscommunication involving his administrative officer. In his Compliance, he narrated that:

> 2.7. Upon being presented with a draft of ***Restoring Integrity II*** with the reformatted signing pages, Dean Leonen noticed the inclusion of the name of Justice Mendoza among the "(SGD.)" signatories. As Justice Mendoza was not among those who had physically signed ***Restoring Integrity I*** when it was previously circulated, Dean Leonen called the attention of his staff to the inclusion of the Justice's name among the "(SGD.)" signatories in ***Restoring Integrity II***.
>
> 2.8. Dean Leonen was told by his administrative officer that she had spoken to Justice Mendoza over the phone on Friday, 06 August 2010. According to her, Justice Mendoza had authorized the dean to sign the Restoring Integrity Statement for him as he agreed fundamentally with its contents. Also according to her, Justice Mendoza was unable at that time to sign the Restoring Integrity Statement himself as he was leaving for the United States the following week. *It would later turn out that this account was not entirely accurate*.[91] (Underscoring and italics supplied.)

Dean Leonen claimed that he "had no reason to doubt his administrative officer, however, and so placed full reliance on her account"[92] as "[t]here were indeed other faculty members who had also authorized the Dean to indicate that they were signatories, even though they were at that time unable to affix their signatures physically to the document."[93]

However, after receiving the Show Cause Resolution, Dean Leonen and his staff reviewed the circumstances surrounding their effort to secure Justice Mendoza's signature. It would turn out that this was what actually transpired:

> 2.22.1. On Friday, 06 August 2010, when the dean's staff talked to Justice Mendoza on the phone, he [Justice Mendoza] indeed initially agreed to sign the Restoring Integrity Statement as he fundamentally

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[91] *Id.* at 326-327.

[92] *Id.* at 327.

[93] *Id.*, in Footnote 3.

agreed with its contents. However, Justice Mendoza did not exactly say that he authorized the dean to sign the Restoring Integrity Statement. Rather, he inquired if he could authorize the dean to sign it for him as he was about to leave for the United States. The dean's staff informed him that they would, at any rate, still try to bring the Restoring Integrity Statement to him.

2.22.2. Due to some administrative difficulties, Justice Mendoza was unable to sign the Restoring Integrity Statement before he left for the U.S. the following week.

2.22.3. The staff was able to bring Restoring Integrity III to Justice Mendoza when he went to the College to teach on 24 September 2010, a day after his arrival from the U.S. This time, Justice Mendoza declined to sign.[94]

According to the Dean:

2.23. It was only at this time that Dean Leonen realized the true import of the **call he received from Justice Mendoza in late September.** Indeed, Justice Mendoza confirmed that by the time the hard copy of the Restoring Integrity Statement was brought to him shortly after his arrival from the U.S., he declined to sign it because it had already become controversial. **At that time, he predicted that the Court would take some form of action against the faculty.** By then, and under those circumstances, he wanted to show due deference to the Honorable Court, being a former Associate Justice and not wishing to unduly aggravate the situation by signing the Statement.[95] (Emphases supplied.)

With respect to the omission of Atty. Armovit's name in the signature page of ***Restoring Integrity II*** when he was one of the signatories of ***Restoring Integrity I*** and the erroneous description in Dean Leonen's August 10, 2010 letter that the version of the Statement submitted to the Court was signed by **38** members of the UP Law Faculty, it was explained in the Compliance that:

Respondent Atty. Miguel Armovit physically signed ***Restoring Integrity I*** when it was circulated to him. However, his name was

[94] *Id.* at 331-332.

[95] *Id.* at 332.

inadvertently left out by Dean Leonen's staff in the reformatting of the signing pages in ***Restoring Integrity II.*** The dean assumed that his name was still included in the reformatted signing pages, and so mentioned in his cover note to Chief Justice Corona that 38 members of the law faculty signed (the original 37 plus Justice Mendoza.)[96]

Dean Leonen argues that he should not be deemed to have submitted a dummy of the Statement that was not a true and faithful reproduction of the same. He emphasized that the main body of the Statement was unchanged in all its three versions and only the signature pages were not the same. This purportedly is merely "reflective of [the Statement's] essential nature as a 'live' public manifesto meant to continuously draw adherents to its message, its signatory portion is necessarily evolving and dynamic x x x many other printings of [the Statement] may be made in the future, each one reflecting the same text but with more and more signatories."[97] Adverting to criminal law by analogy, Dean Leonen claims that "this is not an instance where it has been made to appear in a document that a person has participated in an act when the latter did not in fact so participate"[98] for he "did not misrepresent which members of the faculty of the UP College of Law had agreed with the *Restoring Integrity Statement* proper and/or had expressed their desire to be signatories thereto."[99]

In this regard, Dean Leonen believes that he had not committed any violation of Canon 10 or Rules 10.01 and 10.02 for he did not mislead nor misrepresent to the Court the contents of the Statement or the identities of the UP Law faculty members who agreed with, or expressed their desire to be signatories to, the Statement. He also asserts that he did not commit any violation of Rule 10.03 as he "coursed [the Statement] through the appropriate channels by transmitting the same to Honorable Chief Justice Corona for the latter's information and proper

[96] *Id.* at 328, in footnote 4.

[97] *Id.* at 334, in footnote 7.

[98] *Id.* at 335.

[99] *Id.* at 335-336.

disposition with the hope that its points would be duly considered by the Honorable Court *en banc.*"[100] Citing *Rudecon Management Corporation v. Camacho*,[101] Dean Leonen posits that the required quantum of proof has not been met in this case and that no dubious character or motivation for the act complained of existed to warrant an administrative sanction for violation of the standard of honesty provided for by the Code of Professional Responsibility.[102]

Dean Leonen ends his Compliance with an enumeration of nearly identical reliefs as the Common Compliance, including the prayers for a hearing and for access to the records, evidence and witnesses allegedly relevant not only in this case but also in A.M. No. 10-7-17-SC, the ethical investigation involving Justice Del Castillo.

Manifestation of Prof. Owen Lynch (Lynch Manifestation)

For his part, Prof. Owen Lynch (Prof. Lynch) manifests to this Court that he is not a member of the Philippine bar; but he is a member of the bar of the State of Minnesota. He alleges that he first taught as a visiting professor at the UP College of Law in 1981 to 1988 and returned in the same capacity in 2010. He further alleges that "[h]e subscribes to the principle, espoused by this Court and the Supreme Court of the United States, that '…[d]ebate on public issues should be uninhibited, robust and wide open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[103] In signing the Statement, he believes that "the right to speak means the right to speak effectively."[104]

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[100] *Id.* at 338.

[101] 480 Phil. 652 (2004).

[102] Dean Leonen Compliance; *rollo*, p. 338.

[103] Lynch Manifestation; *rollo*, p. 188; citing *New York Times, Co. v. Sullivan*, 376 US 254 (1964) quoted with approval by the Court in *Lopez v. Court of Appeals*, 145 Phil. 219 (1970).

[104] *Id*.

Citing the dissenting opinions in *Manila Public School Teachers Association v. Laguio, Jr.*,[105] Prof. Lynch argued that "[f]or speech to be effective, it must be forceful enough to make the intended recipients listen"[106] and "[t]he quality of education would deteriorate in an atmosphere of repression, when the very teachers who are supposed to provide an example of courage and self-assertiveness to their pupils can speak only in timorous whispers."[107] Relying on the doctrine in *In the Matter of Petition for Declaratory Relief Re: Constitutionality of Republic Act 4880, Gonzales v. Commission on Elections*,[108] Prof. Lynch believed that the Statement did not pose any danger, clear or present, of any substantive evil so as to remove it from the protective mantle of the Bill of Rights (*i.e.*, referring to the constitutional guarantee on free speech).[109] He also stated that he "has read the Compliance of the other respondents to the Show Cause Resolution" and that "he signed the Restoring Integrity Statement for the same reasons they did."[110]

ISSUES

Based on the Show Cause Resolution and a perusal of the submissions of respondents, the material issues to be resolved in this case are as follows:

1.) Does the Show Cause Resolution deny respondents their freedom of expression?

2.) Does the Show Cause Resolution violate respondents' academic freedom as law professors?

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[105] G.R. No. 95445, August 6, 1991, 200 SCRA 323.

[106] Quoted by Prof. Lynch from the Dissenting Opinion of Justice Gutierrez, Jr. in the *Manila Public School Teachers Association* case (*id.* at 338).

[107] Quoted by Prof. Lynch from the Dissenting Opinion of Justice Cruz in the *Manila Public School Teachers Association* case (*id.* at 343).

[108] *Supra* note 69.

[109] Lynch Manifestation; *rollo*, p. 189.

[110] *Id*.

3.) Do the submissions of respondents satisfactorily explain why they should not be disciplined as Members of the Bar under Canons 1, 11, and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility?

4.) Does the separate Compliance of Dean Leonen satisfactorily explain why he should not be disciplined as a Member of the Bar under Canon 10, Rules 10.01, 10.02 and 10.03?

5.) Are respondents entitled to have the Show Cause Resolution set for hearing and in relation to such hearing, are respondents entitled to require the production or presentation of evidence bearing on the plagiarism and misrepresentation issues in the *Vinuya* case (G.R. No. 162230) and the ethics case against Justice Del Castillo (A.M. No. 10-7-17-SC) and to have access to the records and transcripts of, and the witnesses and evidence presented, or could have been presented, in the ethics case against Justice Del Castillo (A.M. No. 10-7-17-SC)?

DISCUSSION

The Show Cause Resolution does not deny respondents their freedom of expression.

It is respondents' collective claim that the Court, with the issuance of the Show Cause Resolution, has interfered with respondents' constitutionally mandated right to free speech and expression. It appears that the underlying assumption behind respondents' assertion is the misconception that this Court is denying them the right to criticize the Court's decisions and actions, and that this Court seeks to "silence" respondent law professors' dissenting view on what they characterize as a "legitimate public issue."

This is far from the truth. A reading of the Show Cause Resolution will plainly show that it was neither the fact that respondents had criticized a decision of the Court nor that they had charged one of its members of plagiarism that motivated the said Resolution. It was the manner of the criticism and the contumacious language by which respondents, who are not parties nor counsels in the *Vinuya* case, have expressed their opinion

in favor of the petitioners in the said pending case for the "proper disposition" and consideration of the Court that gave rise to said Resolution. The Show Cause Resolution painstakingly enumerated the statements that the Court considered excessive and uncalled for under the circumstances surrounding the issuance, publication, and later submission to this Court of the UP Law faculty's Restoring Integrity Statement.

To reiterate, it was not the circumstance that respondents expressed a belief that Justice Del Castillo was guilty of plagiarism but rather their expression of that belief as "not only as an established fact, but a truth"[111] when it was "[o]f public knowledge [that there was] an ongoing investigation precisely to determine the truth of such allegations."[112] It was also pointed out in the Show Cause Resolution that there was a pending motion for reconsideration of the *Vinuya* decision.[113] The Show Cause Resolution made no objections to the portions of the Restoring Integrity Statement that respondents claimed to be "constructive" but only asked respondents to explain those portions of the said Statement that by no stretch of the imagination could be considered as fair or constructive, to wit:

> Beyond this, however, the statement bore certain remarks which raise concern for the Court. The opening sentence alone is a grim preamble to the institutional attack that lay ahead. It reads:
>
> > An extraordinary act of injustice has again been committed against the brave Filipinas who had suffered abuse during a time of war.
>
> The first paragraph concludes with a reference to the decision in *Vinuya v. Executive Secretary* as a reprehensible act of dishonesty and misrepresentation by the Highest Court of the land. x x x.
>
> The insult to the members of the Court was aggravated by imputations of deliberately delaying the resolution of the said case,

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[111] Show Cause Resolution; *rollo*, p. 25.

[112] *Id.* at 26.

[113] To date, said motion for reconsideration of the *Vinuya* decision is still pending resolution by the Court.

its dismissal on the basis of "polluted sources," the Court's alleged indifference to the cause of petitioners [in the *Vinuya* case], as well as the supposed alarming lack of concern of the members of the Court for even the most basic values of decency and respect.[114] x x x. (Underscoring ours.)

To be sure, the Show Cause Resolution itself recognized respondents' freedom of expression when it stated that:

> While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far. Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary. The court must "insist on being permitted to proceed to the disposition of its business in an orderly manner, **free from outside interference obstructive of its functions and tending to embarrass the administration of justice.**"

The Court could hardly perceive any reasonable purpose for the faculty's less than objective comments except to discredit the April 28, 2010 Decision in the *Vinuya* case and undermine the Court's honesty, integrity and competence in addressing the motion for its reconsideration. As if the case on the comfort women's claims is not controversial enough, the UP Law faculty would fan the flames and invite resentment against a resolution that would not reverse the said decision. This runs **contrary to their obligation as law professors and officers of the Court to be the first to uphold the dignity and authority of this Court, to which they owe fidelity according to the oath they have taken as attorneys, and not to promote distrust in the administration of justice.**[115] x x x. (Citations omitted; emphases and underscoring supplied.)

Indeed, in a long line of cases, including those cited in respondents' submissions, this Court has held that the right to criticize the courts and judicial officers must be balanced against the equally primordial concern that the independence of the Judiciary be protected from due influence or interference. In

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[114] Show Cause Resolution; *rollo*, pp. 25-26.

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

cases where the critics are not only citizens but members of the Bar, jurisprudence has repeatedly affirmed the authority of this Court to discipline lawyers whose statements regarding the courts and fellow lawyers, whether judicial or extrajudicial, have exceeded the limits of fair comment and common decency.

As early as the 1935 case of *Salcedo v. Hernandez*,[116] the Court found Atty. Vicente J. Francisco both guilty of contempt and liable administratively for the following paragraph in his second motion for reconsideration:

> We should like frankly and respectfully to make it of record that the resolution of this court, denying our motion for reconsideration, **is absolutely erroneous and constitutes an outrage to the rights of the petitioner Felipe Salcedo and a mockery of the popular will expressed at the polls in the municipality of Tiaong, Tayabas.** We wish to exhaust all the means within our power in order that this error may be corrected by the very court which has committed it, **because we should not want that some citizen, particularly some voter of the municipality of Tiaong, Tayabas, resort to the press publicly to denounce, as he has a right to do, the judicial outrage** of which the herein petitioner has been the victim, and because it is our utmost desire to safeguard the prestige of this honorable court and of each and every member thereof in the eyes of the public. But, at the same time **we wish to state sincerely that erroneous decisions like these, which the affected party and his thousands of voters will necessarily consider unjust, increase the proselytes of 'sakdalism' and make the public lose confidence in the administration of justice**.[117] (Emphases supplied.)

The highlighted phrases were considered by the Court as neither justified nor necessary and further held that:

> [I]n order to call the attention of the court in a special way to the essential points relied upon in his argument and to emphasize the force thereof, the many reasons stated in his said motion were sufficient and the phrases in question were superfluous. **In order to appeal to reason and justice, it is highly improper and amiss to make**

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[116] *Supra* note 72.

[117] *Id.* at 726.

trouble and resort to threats, as Attorney Vicente J. Francisco has done, because both means are annoying and good practice can never sanction them by reason of their natural tendency to disturb and hinder the free exercise of a serene and impartial judgment, particularly in judicial matters, in the consideration of questions submitted for resolution.

There is no question that said paragraph of Attorney Vicente J. Francisco's motion contains a more or less veiled threat to the court because it is insinuated therein, after the author shows the course which the voters of Tiaong should follow in case he fails in his attempt, that they **will resort to the press for the purpose of denouncing, what he claims to be a judicial outrage** of which his client has been the victim; and **because he states in a threatening manner with the intention of predisposing the mind of the reader against the court, thus creating an atmosphere of prejudices against it in order to make it odious in the public eye**, that decisions of the nature of that referred to in his motion promote distrust in the administration of justice and increase the proselytes of *sakdalism*, a movement with seditious and revolutionary tendencies the activities of which, as is of public knowledge, occurred in this country a few days ago. **This cannot mean otherwise than contempt of the dignity of the court and disrespect of the authority thereof on the part of Attorney Vicente J. Francisco, because he presumes that the court is so devoid of the sense of justice that, if he did not resort to intimidation, it would maintain its error notwithstanding the fact that it may be proven, with good reasons, that it has acted erroneously**.[118] (Emphases supplied.)

Significantly, *Salcedo* is the decision from which respondents culled their quote from the **minority** view of Justice Malcolm. Moreover, *Salcedo* concerned statements made in a pleading filed by a counsel in a case, unlike the respondents here, who are neither parties nor counsels in the *Vinuya* case and therefore, do not have any standing at all to interfere in the *Vinuya* case. Instead of supporting respondents' theory, *Salcedo* is authority for the following principle:

As a member of the bar and an officer of this court, Attorney Vicente J. Francisco, as any attorney, is in duty bound to uphold

[118] *Id.* at 727-728.

its dignity and authority and to defend its integrity, not only because it has conferred upon him the high privilege, not a right (Malcolm, Legal Ethics, 158 and 160), **of being what he now is: a priest of justice** (*In re Thatcher*, 80 Ohio St. Rep., 492, 669), but also because in so doing, he **neither creates nor promotes distrust in the administration of justice, and prevents anybody from harboring and encouraging discontent which, in many cases, is the source of disorder**, thus undermining the foundation upon which rests that bulwark called judicial power to which those who are aggrieved turn for protection and relief.[119] (Emphases supplied.)

Thus, the lawyer in *Salcedo* was fined and **reprimanded** for his injudicious statements in his pleading, by accusing the Court of "erroneous ruling." Here, the respondents' Statement goes way beyond merely ascribing error to the Court.

Other cases cited by respondents likewise espouse rulings contrary to their position. *In re: Atty. Vicente Raul Almacen*,[120] cited in the Common Compliance and the Vasquez Compliance, was an instance where the Court **indefinitely suspended** a member of the Bar for filing and releasing to the press a "Petition to Surrender Lawyer's Certificate of Title" in protest of what he claimed was a great injustice to his client committed by the Supreme Court. In the decision, the petition was described, thus:

He indicts this Court, in his own phrase, as a tribunal **"peopled by men who are calloused to our pleas for justice, who ignore without reasons their own applicable decisions and commit culpable violations of the Constitution with impunity."** His client's he continues, who was deeply aggrieved by this Court's **"unjust judgment,"** has become **"one of the sacrificial victims before the altar of hypocrisy."** In the same breath that he alludes to the classic symbol of justice, he ridicules the members of this Court, **saying "that justice as administered by the present members of the Supreme Court is not only blind, but also deaf and dumb."** He then vows to **argue the cause of his client "in the people's forum," so that "the people may know of the silent injustices committed by this Court," and that "whatever**

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[119] *Id.* at 728.

[120] *Supra* note 68.

mistakes, wrongs and injustices that were committed must never be repeated." He ends his petition with a prayer that

> "x x x a resolution issue ordering the Clerk of Court to receive the certificate of the undersigned attorney and counsellor-at-law IN TRUST with reservation that at any time in the future and in the event we regain our faith and confidence, we may retrieve our title to assume the practice of the noblest profession."[121]

It is true that in *Almacen* the Court extensively discussed foreign jurisprudence on the principle that a lawyer, just like any citizen, has the right to criticize and comment upon actuations of public officers, including judicial authority. However, the real doctrine in *Almacen* is that such criticism of the courts, whether done in court or outside of it, must conform to standards of fairness and propriety. This case engaged in an even more extensive discussion of the legal authorities sustaining this view. To quote from that decision:

> **But it is the cardinal condition of all such criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety.** A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. **Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action**.
>
> **For, membership in the Bar imposes upon a person obligations and duties which are not mere flux and ferment**. His investiture into the legal profession places upon his shoulders no burden more basic, more exacting and more imperative than that of respectful behavior toward the courts. He vows solemnly to conduct himself "with all good fidelity x x x to the courts"; and the Rules of Court constantly remind him "to observe and maintain the respect due to courts of justice and judicial officers." **The first canon of legal ethics enjoins him "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."**
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> As Mr. Justice Field puts it:

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[121] *Id.* at 564-565.

> "x x x the obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the Bar, is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. **This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but includes abstaining out of court from all insulting language and offensive conduct toward judges personally for their judicial acts.**" (Bradley, v. Fisher, 20 Law. 4d. 647, 652)

The lawyer's duty to render respectful subordination to the courts is essential to the orderly administration of justice. Hence, in the assertion of their clients' rights, lawyers — even those gifted with superior intellect — are enjoined to rein up their tempers.

> "The counsel in any case may or may not be an abler or more learned lawyer than the judge, **and it may tax his patience and temper to submit to rulings which he regards as incorrect, but discipline and self-respect are as necessary to the orderly administration of justice as they are to the effectiveness of an army**. The decisions of the judge must be obeyed, because he is the tribunal appointed to decide, and the bar should at all times be the foremost in rendering respectful submission." (*In Re Scouten*, 40 Atl. 481)

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In his relations with the courts, a lawyer may not divide his personality so as to be an attorney at one time and a mere citizen at another. Thus, statements made by an attorney in private conversations or communications or in the course of a political campaign, **if couched in insulting language** as to bring into scorn and disrepute the administration of justice, may subject the attorney to disciplinary action.[122] (Emphases and underscoring supplied.)

In a similar vein, *In re: Vicente Sotto*,[123] cited in the Vasquez Compliance, observed that:

> [T]his Court, in *In re Kelly*, held the following:

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[122] *Id.* at 580-582.

[123] *Supra* note 80.

> **The publication of a criticism of a party or of the court to a pending cause, respecting the same, has always been considered as misbehavior, tending to obstruct the administration of justice**, and subjects such persons to contempt proceedings. **Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications or public clamor**. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law, **free from outside coercion or interference.** x x x.

Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; because if well founded it may enlighten the court and contribute to the correction of an error if committed; but if it is not well taken and obviously erroneous, it should, in no way, influence the court in reversing or modifying its decision. x x x.

xxx xxx xxx

To hurl the false charge that this Court has been for the last years committing deliberately "so many blunders and injustices," that is to say, that it has been deciding in favor of one party knowing that the law and justice is on the part of the adverse party and not on the one in whose favor the decision was rendered, in many cases decided during the last years, **would tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of this Court, and consequently to lower or degrade the administration of justice by this Court**. The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, **and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result**. **As a member of the bar and an officer of the courts Atty. Vicente Sotto, like any other, is in duty bound to uphold the dignity and authority of this Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice.** Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.[124] (Emphases and underscoring supplied.)

[124] *Id.* at 599-602.

That the doctrinal pronouncements in these early cases are still good law can be easily gleaned even from more recent jurisprudence.

In *Choa v. Chiongson,*[125] the Court administratively disciplined a lawyer, through the imposition of a fine, for making malicious and unfounded criticisms of a judge in the guise of an administrative complaint and held, thus:

> As an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to its officers. This does not mean, however, that a lawyer cannot criticize a judge. As we stated in *Tiongco vs. Hon. Aguilar*:
>
> It does not, however, follow that just because a lawyer is an officer of the court, he cannot criticize the courts. That is his right as a citizen, and it is even his duty as an officer of the court to avail of such right. Thus, in *In Re: Almacen* (31 SCRA 562, 579-580 [1970]), this Court explicitly declared:
>
> > Hence, as a citizen and as officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he "professionally answerable to a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen." (Case of Austin, 28 Am Dec. 657, 665).
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> Nevertheless, such a right is not without limit. For, as this Court warned in *Almacen*:
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> > But it is a cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. **A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other.** Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct, that subjects a lawyer to disciplinary action.
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> xxx xxx xxx

[125] 329 Phil. 270 (1996).

Elsewise stated, the right to criticize, which is guaranteed by the freedom of speech and of expression in the Bill of Rights of the Constitution, must be exercised responsibly, for every right carries with it a corresponding obligation. Freedom is not freedom from responsibility, but freedom with responsibility. x x x.

x x x x x x x x x

Proscribed then are, *inter alia*, the use of unnecessary language which jeopardizes high esteem in courts, creates or promotes distrust in judicial administration (*Rheem*, *supra*), or tends necessarily to undermine the confidence of people in the integrity of the members of this Court and to degrade the administration of justice by this Court (*In re: Sotto*, 82 Phil. 595 [1949]); or **of offensive and abusive language** (*In re: Rafael Climaco*, 55 SCRA 107 [1974]); **or abrasive and offensive language** (*Yangson vs. Salandanan*, 68 SCRA 42 [1975]; **or of disrespectful, offensive, manifestly baseless, and malicious statements in pleadings or in a letter addressed to the judge** (*Baja vs. Macandog*, 158 SCRA [1988], citing the resolution of 19 January 1988 in *Phil. Public Schools Teachers Association vs. Quisumbing*, G.R. No. 76180, and *Ceniza vs. Sebastian*, 130 SCRA 295 [1984]); **or of disparaging, intemperate, and uncalled-for remarks** (*Sangalang vs. Intermediate Appellate Court*, 177 SCRA 87 [1989]).

Any criticism against a judge made in the guise of an administrative complaint which is clearly unfounded and impelled by ulterior motive will not excuse the lawyer responsible therefor under his duty of fidelity to his client. x x x.[126] (Emphases and underscoring supplied.)

In *Saberon v. Larong*,[127] where this Court found respondent lawyer guilty of simple misconduct for using intemperate language in his pleadings and imposed a fine upon him, we had the occasion to state:

The Code of Professional Responsibility mandates:

> CANON 8 - A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

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[126] *Id.* at 276-279.

[127] A.C. No. 6567, April 16, 2008, 551 SCRA 359.

Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

CANON 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.

However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.

On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings must be dignified.[128]

Verily, the accusatory and vilifying nature of certain portions of the Statement exceeded the limits of fair comment and cannot be deemed as protected free speech. Even *In the Matter of Petition for Declaratory Relief Re: Constitutionality of Republic Act 4880, Gonzales v. Commission on Elections*,[129] relied upon by respondents in the Common Compliance, held that:

From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however a literal interpretation. **Freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances**

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

[129] *Supra* note 69.

it should remain unfettered and unrestrained. There are other societal values that press for recognition. x x x.[130] (Emphasis supplied.)

One such societal value that presses for recognition in the case at bar is the threat to judicial independence and the orderly administration of justice that immoderate, reckless and unfair attacks on judicial decisions and institutions pose. This Court held as much in *Zaldivar v. Sandiganbayan and Gonzales*,[131] where we **indefinitely suspended** a lawyer from the practice of law for issuing to the media statements grossly disrespectful towards the Court in relation to a pending case, to wit:

> Respondent Gonzales is entitled to the constitutional guarantee of free speech. No one seeks to deny him that right, least of all this Court. What respondent seems unaware of is **that freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice.** There is no antinomy between free expression and the integrity of the system of administering justice. **For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice**, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community. x x x.[132] (Emphases supplied.)

For this reason, the Court cannot uphold the view of some respondents[133] that the Statement presents no grave or imminent danger to a legitimate public interest.

The Show Cause Resolution does not interfere with respondents' academic freedom.

It is not contested that respondents herein are, by law and jurisprudence, guaranteed academic freedom and undisputably,

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[130] *Id.* at 494.

[131] 248 Phil. 542 (1988).

[132] *Id.* at 579.

[133] Prof. Juan-Bautista and Prof. Lynch.

they are free to determine what they will teach their students and how they will teach. We must point out that there is nothing in the Show Cause Resolution that dictates upon respondents the subject matter they can teach and the manner of their instruction. Moreover, it is not inconsistent with the principle of academic freedom for this Court to subject lawyers who teach law to disciplinary action for **contumacious conduct and speech, coupled with undue intervention in favor of a party in a pending case, without observing proper procedure,** even if purportedly done in their capacity as teachers.

A novel issue involved in the present controversy, for it has not been passed upon in any previous case before this Court, is the question of whether lawyers who are also law professors can invoke academic freedom as a defense in an administrative proceeding **for intemperate statements tending to pressure the Court or influence the outcome of a case or degrade the courts**.

Applying by analogy the Court's past treatment of the "free speech" defense in other bar discipline cases, academic freedom cannot be successfully invoked by respondents in this case. The implicit ruling in the jurisprudence discussed above is that the constitutional right to freedom of expression of members of the Bar may be circumscribed by their ethical duties as lawyers to give due respect to the courts and to uphold the public's faith in the legal profession and the justice system. To our mind, the reason that freedom of expression may be so delimited in the case of lawyers applies with greater force to the academic freedom of law professors.

It would do well for the Court to remind respondents that, in view of the broad definition in *Cayetano v. Monsod*,[134] lawyers

[134] G.R. No. 100113, September 3, 1991, 201 SCRA 210, 214, where the Court ruled that:

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill." (Citing 111 ALR 23.)

when they teach law are considered engaged in the practice of law. Unlike professors in other disciplines and more than lawyers who do not teach law, respondents are bound by their oath to uphold the ethical standards of the legal profession. Thus, their actions as law professors must be measured against the same canons of professional responsibility applicable to acts of members of the Bar as the fact of their being law professors is inextricably entwined with the fact that they are lawyers.

Even if the Court was willing to accept respondents' proposition in the Common Compliance that their issuance of the Statement was in keeping with their duty to "participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice" under Canon 4 of the Code of Professional Responsibility, we cannot agree that they have fulfilled that same duty in keeping with the demands of Canons 1, 11 and 13 to give due respect to legal processes and the courts, and to avoid conduct that tends to influence the courts. Members of the Bar cannot be selective regarding which canons to abide by given particular situations. With more reason that law professors are not allowed this indulgence, since they are expected to provide their students exemplars of the Code of Professional Responsibility as a whole and not just their preferred portions thereof.

The Court's rulings on the submissions regarding the charge of violation of Canons 1, 11 and 13.

Having disposed of respondents' main arguments of freedom of expression and academic freedom, the Court considers here the other averments in their submissions.

With respect to good faith, respondents' allegations presented two main ideas: (a) the validity of their position regarding the plagiarism charge against Justice Del Castillo, and (b) their pure motive to spur this Court to take the correct action on said issue.

The Court has already clarified that it is not the expression of respondents' staunch belief that Justice Del Castillo has committed a misconduct that the majority of this Court has found so unbecoming in the Show Cause Resolution. No matter how firm a lawyer's conviction in the righteousness of his cause there is simply no excuse for denigrating the courts and engaging in public behavior that tends to put the courts and the legal profession into disrepute. This doctrine, which we have repeatedly upheld in such cases as *Salcedo*, *In re Almacen* and *Saberong*, should be applied in this case with more reason, as the respondents, not parties to the *Vinuya* case, denounced the Court and urged it to change its decision therein, in a public statement using contumacious language, which with temerity they subsequently submitted to the Court for "proper disposition."

That humiliating the Court into reconsidering the *Vinuya* Decision in favor of the *Malaya Lolas* was one of the objectives of the Statement could be seen in the following paragraphs from the same:

> And in light of the significance of this decision to the quest for justice not only of Filipino women, but of women elsewhere in the world who have suffered the horrors of sexual abuse and exploitation in times of war, **the Court cannot coldly deny relief and justice to the petitioners on the basis of pilfered and misinterpreted texts.**
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> xxx xxx xxx
>
> (3) **The same breach and consequent disposition of the *Vinuya* case does violence to the primordial function of the Supreme Court as the ultimate dispenser of justice** to all those who have been left without legal or equitable recourse, such as the petitioners therein.[135]
> (Emphases and underscoring supplied.)

Whether or not respondents' views regarding the plagiarism issue in the *Vinuya* case had valid basis was wholly immaterial to their liability for contumacious speech and conduct. These are two separate matters to be properly threshed out in separate proceedings. The Court considers it highly inappropriate, if not

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[135] *Rollo*, pp. 6-7.

tantamount to dissembling, the discussion devoted in one of the compliances arguing the guilt of Justice Del Castillo. In the Common Compliance, respondents even go so far as to attach documentary evidence to support the plagiarism charges against Justice Del Castillo in the present controversy. The ethics case of Justice Del Castillo (A.M. No. 10-7-17-SC), with the filing of a motion for reconsideration, was still pending at the time of the filing of respondents' submissions in this administrative case. As respondents themselves admit, they are neither parties nor counsels in the ethics case against Justice Del Castillo. Notwithstanding their professed overriding interest in said ethics case, it is not proper procedure for respondents to bring up their plagiarism arguments here especially when it has no bearing on their own administrative case.

Still on motive, it is also proposed that the choice of language in the Statement was intended for effective speech; that speech must be "forceful enough to make the intended recipients listen."[136] One wonders what sort of effect respondents were hoping for in branding this Court as, among others, callous, dishonest and lacking in concern for the basic values of decency and respect. The Court fails to see how it can ennoble the profession if we allow respondents to send a signal to their students that the only way to effectively plead their cases and persuade others to their point of view is to be offensive.

This brings to our mind the letters of Dr. Ellis and Prof. Tams which were deliberately quoted in full in the narration of background facts to illustrate the sharp contrast between the civil tenor of these letters and the antagonistic irreverence of the Statement. In truth, these foreign authors are the ones who would expectedly be affected by any perception of misuse of their works. Notwithstanding that they are beyond the disciplinary reach of this Court, they still obviously took pains to convey their objections in a deferential and scholarly manner. It is unfathomable to the Court why respondents could not do the same. These foreign authors' letters underscore the universality

[136] Lynch Manifestation; *rollo*, p. 188.

of the tenet that legal professionals must deal with each other in good faith and due respect. The mark of the true intellectual is one who can express his opinions logically and soberly without resort to exaggerated rhetoric and unproductive recriminations.

As for the claim that the respondents' noble intention is to spur the Court to take "constructive action" on the plagiarism issue, the Court has some doubts as to its veracity. For if the Statement was primarily meant for this Court's consideration, why was the same published and reported in the media first before it was submitted to this Court? It is more plausible that the Statement was prepared for consumption by the general public and designed to capture media attention as part of the effort to generate interest in the most controversial ground in the Supplemental Motion for Reconsideration filed in the *Vinuya* case by Atty. Roque, who is respondents' colleague on the UP Law faculty.

In this regard, the Court finds that there was indeed a lack of observance of fidelity and due respect to the Court, particularly when respondents knew fully well that the matter of plagiarism in the *Vinuya* decision and the merits of the *Vinuya* decision itself, at the time of the Statement's issuance, were still both ***sub judice*** or pending final disposition of the Court. These facts have been widely publicized. On this point, respondents allege that at the time the Statement was first drafted on July 27, 2010, they did not know of the constitution of the Ethics Committee and they had issued the Statement under the belief that this Court intended to take no action on the ethics charge against Justice Del Castillo. Still, there was a significant lapse of time from the drafting and printing of the Statement on July 27, 2010 and its publication and submission to this Court in early August when the Ethics Committee had already been convened. If it is true that the respondents' outrage was fueled by their perception of indifference on the part of the Court then, when it became known that the Court did intend to take action, there was nothing to prevent respondents from recalibrating the Statement to take this supervening event into account in the interest of fairness.

Speaking of the publicity this case has generated, we likewise find no merit in the respondents' reliance on various news reports and commentaries in the print media and the internet as proof that they are being unfairly "singled out." On the contrary, these same annexes to the Common Compliance show that it is not enough for one to criticize the Court to warrant the institution of disciplinary[137] or contempt[138] action. This Court takes into account the nature of the criticism and weighs the possible repercussions of the same on the Judiciary. When the criticism comes from persons outside the profession who may not have a full grasp of legal issues or from individuals whose personal or other interests in making the criticism are obvious, the Court may perhaps tolerate or ignore them. However, when law professors are the ones who appear to have lost sight of the boundaries of fair commentary and worse, would justify the same as an exercise of civil liberties, this Court cannot remain silent for such silence would have a grave implication on legal education in our country.

With respect to the 35 respondents named in the Common Compliance, considering that this appears to be the first time these respondents have been involved in disciplinary proceedings of this sort, the Court is willing to give them the benefit of the doubt that they were for the most part well-intentioned in the issuance of the Statement. However, it is established in jurisprudence that where the excessive and contumacious language used is plain and undeniable, then good intent can only be mitigating. As this Court expounded in *Salcedo*:

> In his defense, Attorney Vicente J. Francisco states that it was **not his intention to offend the court or to be recreant to the respect thereto** but, **unfortunately, there are his phrases which need no further comment.** Furthermore, it is a well settled rule in all places where the same conditions and practice as those in this jurisdiction obtain, that **want of intention is no excuse from liability** (13 C. J., 45). **Neither is the fact that the phrases employed are justified by the facts a valid defense**:

[137] In the case of members of the Bar.

[138] In the case of members of the Bar and/or non-lawyers.

> **"Where the matter is abusive or insulting, evidence that the language used was justified by the facts is not admissible as a defense. Respect for the judicial office should always be observed and enforced."** (*In re Stewart*, 118 La., 827; 43 S., 455.) Said lack or want of intention **constitutes at most an extenuation of liability** in this case, **taking into consideration Attorney Vicente J. Francisco's state of mind,** according to him when he prepared said motion. **This court is disposed to make such concession**. However, in order to **avoid a recurrence thereof and to prevent others, by following the bad example,** from taking the same course, this court considers it imperative **to treat the case of said attorney with the justice it deserves**.[139] (Emphases supplied.)

Thus, the 35 respondents named in the Common Compliance should, notwithstanding their claim of good faith, be reminded of their lawyerly duty, under Canons 1, 11 and 13, to give due respect to the courts and to refrain from intemperate and offensive language tending to influence the Court on pending matters or to denigrate the courts and the administration of justice.

With respect to Prof. Vasquez, the Court favorably notes the differences in his Compliance compared to his colleagues. In our view, he was the only one among the respondents who showed true candor and sincere deference to the Court. He was able to give a straightforward account of how he came to sign the Statement. He was candid enough to state that his agreement to the Statement was in principle and that the reason plagiarism was a "fair topic of discussion" among the UP Law faculty prior to the promulgation of the October 12, 2010 Decision in A.M. No. 10-7-17-SC was the uncertainty brought about by a division of opinion on whether or not willful or deliberate intent was an element of plagiarism. He was likewise willing to acknowledge that he may have been remiss in failing to assess the effect of the language of the Statement and could have used more care. He did all this without having to retract his position on the plagiarism issue, without demands for undeserved reliefs (as will be discussed below) and without

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[139] *Salcedo v. Hernandez, supra* note 72 at 729-730.

baseless insinuations of deprivation of due process or of prejudgment. This is all that this Court expected from respondents, not for them to sacrifice their principles but only that they recognize that they themselves may have committed some ethical lapse in this affair. We commend Prof. Vasquez for showing that at least one of the respondents can grasp the true import of the Show Cause Resolution involving them. For these reasons, the Court finds Prof. Vasquez' Compliance **satisfactory**.

As for Prof. Lynch, in view of his Manifestation that he is a member of the Bar of the State of Minnesota and, therefore, not under the disciplinary authority of this Court, he should be excused from these proceedings. However, he should be reminded that while he is engaged as a professor in a Philippine law school he should strive to be a model of responsible and professional conduct to his students even without the threat of sanction from this Court. For even if one is not bound by the Code of Professional Responsibility for members of the Philippine Bar, civility and respect among legal professionals of any nationality should be aspired for under universal standards of decency and fairness.

The Court's ruling on Dean Leonen's Compliance regarding the charge of violation of Canon 10.

To recall, the Show Cause Resolution directed Dean Leonen to show cause why he should not be disciplinary dealt with for violation of Canon 10, Rules 10.01, 10.02 and 10.03 and for submitting a "dummy" that was not a true and faithful reproduction of the signed Statement.

In his Compliance, Dean Leonen essentially denies that ***Restoring Integrity II*** was not a true and faithful reproduction of the actual signed copy, ***Restoring Integrity I***, because looking at the text or the body, there were no differences between the two. He attempts to downplay the discrepancies in the signature pages of the two versions of the Statement (*i.e.*, ***Restoring Integrity I*** and ***Restoring Integrity II***) by claiming that it is but expected in "live" public manifestos with dynamic and evolving

pages as more and more signatories add their imprimatur thereto. He likewise stresses that he is not administratively liable because he did not misrepresent the members of the UP Law faculty who "**had agreed with the *Restoring Integrity Statement* proper and/or who had expressed their desire to be signatories thereto**."[140]

To begin with, the Court cannot subscribe to Dean Leonen's implied view that the signatures in the Statement are not as significant as its contents. Live public manifesto or not, the Statement was formally submitted to this Court at a specific point in time and it should reflect accurately its signatories at that point. The value of the Statement as a UP Law Faculty Statement lies precisely in the identities of the persons who have signed it, since the Statement's persuasive authority mainly depends on the reputation and stature of the persons who have endorsed the same. Indeed, it is apparent from respondents' explanations that their own belief in the "importance" of their positions as UP law professors prompted them to publicly speak out on the matter of the plagiarism issue in the *Vinuya* case.

Further, in our assessment, the true cause of Dean Leonen's predicament is the fact that he did not from the beginning submit the signed copy, ***Restoring Integrity I***, to this Court on August 11, 2010 and, instead, submitted ***Restoring Integrity II*** with its retyped or "reformatted" signature pages. It would turn out, according to Dean Leonen's account, that there were errors in the retyping of the signature pages due to lapses of his unnamed staff. First, an unnamed administrative officer in the dean's office gave the dean inaccurate information that led him to allow the inclusion of Justice Mendoza as among the signatories of ***Restoring Integrity II***. Second, an unnamed staff also failed to type the name of Atty. Armovit when encoding the signature pages of ***Restoring Integrity II*** when in fact he had signed ***Restoring Integrity I***.

The Court can understand why for purposes of posting on a bulletin board or a website a signed document may have to

[140] Dean Leonen Compliance; *rollo*, p. 336.

be reformatted and signatures may be indicated by the notation (SGD). This is not unusual. We are willing to accept that the reformatting of documents meant for posting to eliminate blanks is necessitated by vandalism concerns.

However, what is unusual is the submission to a court, especially this Court, of a signed document for the Court's consideration that did not contain the actual signatures of its authors. In most cases, it is the original signed document that is transmitted to the Court or at the very least a photocopy of the actual signed document. Dean Leonen has not offered any explanation why he deviated from this practice with his submission to the Court of ***Restoring Integrity II*** on August 11, 2010. There was nothing to prevent the dean from submitting ***Restoring Integrity I*** to this Court even with its blanks and unsigned portions. Dean Leonen cannot claim fears of vandalism with respect to court submissions for court employees are accountable for the care of documents and records that may come into their custody. Yet, Dean Leonen deliberately chose to submit to this Court the facsimile that did not contain the actual signatures and his silence on the reason therefor is in itself a display of lack of candor.

Still, a careful reading of Dean Leonen's explanations yield the answer. In the course of his explanation of his willingness to accept his administrative officer's claim that Justice Mendoza agreed to be indicated as a signatory, Dean Leonen admits in a footnote that other professors had likewise only authorized him to indicate them as signatories and had not in fact signed the Statement. Thus, at around the time ***Restoring Integrity II*** was printed, posted and submitted to this Court, at least one purported signatory thereto had not actually signed the same. Contrary to Dean Leonen's proposition, that is precisely tantamount to making it appear to this Court that a person or persons participated in an act when such person or persons did not.

We are surprised that someone like Dean Leonen, with his reputation for perfection and stringent standards of intellectual honesty, could proffer the explanation that there was no misrepresentation when he allowed at least one person to be

indicated as having actually signed the Statement when all he had was a verbal communication of an **intent** to sign. In the case of Justice Mendoza, what he had was only hearsay information that the former intended to sign the Statement. If Dean Leonen was truly determined to observe candor and truthfulness in his dealings with the Court, we see no reason why he could not have waited until all the professors who indicated their desire to sign the Statement had in fact signed before transmitting the Statement to the Court as a duly signed document. If it was truly impossible to secure some signatures, such as that of Justice Mendoza who had to leave for abroad, then Dean Leonen should have just resigned himself to the signatures that he was able to secure.

We cannot imagine what urgent concern there was that he could not wait for actual signatures before submission of the Statement to this Court. As respondents all asserted, they were neither parties to nor counsels in the *Vinuya* case and the ethics case against Justice Del Castillo. The Statement was neither a pleading with a deadline nor a required submission to the Court; rather, it was a voluntary submission that Dean Leonen could do at any time.

In sum, the Court likewise finds Dean Leonen's Compliance **unsatisfactory**. However, the Court is willing to ascribe these isolated lapses in judgment of Dean Leonen to his misplaced zeal in pursuit of his objectives. In due consideration of Dean Leonen's professed good intentions, the Court deems it sufficient to admonish Dean Leonen for failing to observe full candor and honesty in his dealings with the Court as required under Canon 10.

Respondents' requests for a hearing, for production/presentation of evidence bearing on the plagiarism and misrepresentation issues in G.R. No. 162230 and A.M. No. 10-7-17-SC, and for access to the records of A.M. No. 10-7-17-SC are unmeritorious.

In the Common Compliance, respondents named therein asked for alternative reliefs should the Court find their Compliance unsatisfactory, that is, that the Show Cause Resolution be set for hearing and for that purpose, they be allowed to require the production or presentation of witnesses and evidence bearing on the plagiarism and misrepresentation issues in the *Vinuya* case (G.R. No. 162230) and the plagiarism case against Justice Del Castillo (A.M. No. 10-7-17-SC) and to have access to the records of, and evidence that were presented or may be presented in the ethics case against Justice Del Castillo. The prayer for a hearing and for access to the records of A.M. No. 10-7-17-SC was substantially echoed in Dean Leonen's separate Compliance. In Prof. Juan-Bautista's Compliance, she similarly expressed the sentiment that "[i]f the Restoring Integrity Statement can be considered indirect contempt, under Section 3 of Rule 71 of the Rules of Court, such may be punished only after charge and hearing."[141] It is this group of respondents' premise that these reliefs are necessary for them to be accorded full due process.

The Court finds this contention unmeritorious.

Firstly, it would appear that the confusion as to the necessity of a hearing in this case springs largely from its characterization as a special civil action for indirect contempt in the Dissenting Opinion of Justice Sereno (to the October 19, 2010 Show Cause Resolution) and her reliance therein on the majority's purported failure to follow the procedure in Rule 71 of the Rules of Court as her main ground for opposition to the Show Cause Resolution.

However, once and for all, it should be clarified that this is not an indirect contempt proceeding and Rule 71 (which requires a hearing) has no application to this case. As explicitly ordered in the Show Cause Resolution this case was docketed as an administrative matter.

The rule that is relevant to this controversy is Rule 139-B, Section 13, on disciplinary proceedings initiated *motu proprio* by the Supreme Court, to wit:

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[141] Bautista Compliance; *rollo*, p. 179.

SEC. 13. *Supreme Court Investigators.*—In proceedings initiated *motu proprio* by the Supreme Court or in other proceedings when the interest of justice so requires, the Supreme Court **may** refer the case for investigation to the Solicitor General or to any officer of the Supreme Court or judge of a lower court, in which case the investigation shall proceed in the same manner provided in Sections 6 to 11 hereof, save that the review of the report of investigation shall be conducted directly by the Supreme Court. (Emphasis supplied.)

From the foregoing provision, it cannot be denied that a formal investigation, through a referral to the specified officers, is merely discretionary, **not mandatory** on the Court. Furthermore, it is only if the Court deems such an investigation necessary that the procedure in Sections 6 to 11 of Rule 139-A will be followed.

As respondents are fully aware, in general, administrative proceedings do not require a trial type hearing. We have held that:

The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is *absolute* absence of the opportunity to be heard, hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side. **A formal or trial type hearing is not at all times and in all instances essential to due process**, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy.[142] (Emphases supplied.)

In relation to bar discipline cases, we have had the occasion to rule in *Pena v. Aparicio*[143] that:

Disciplinary proceedings against lawyers are *sui generis*. **Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the**

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[142] *Placido v. National Labor Relations Commission,* G.R. No. 180888, September 18, 2009, 600 SCRA 697, 704-705.

[143] A.C. No. 7298, June 25, 2007, 525 SCRA 444, citing *In re: Atty. Vicente Raul Almacen, supra* note 68.

conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. **It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice** by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.[144] (Emphases supplied.)

In *Query of Atty. Karen M. Silverio-Buffe, Former Clerk of Court – Br. 81, Romblon – On the Prohibition from Engaging in the Private Practice of Law*,[145] we further observed that:

[I]n several cases, the Court has disciplined lawyers without further inquiry or resort to any formal investigation where the facts on record sufficiently provided the basis for the determination of their administrative liability.

In *Prudential Bank v. Castro*, the Court **disbarred a lawyer without need of any further investigation after considering his actions based on records showing his unethical misconduct;** the misconduct not only cast dishonor on the image of both the Bench and the Bar, but was also inimical to public interest and welfare. In this regard, the Court took judicial notice of several cases handled by the errant lawyer and his cohorts that revealed their *modus operandi* in circumventing the payment of the proper judicial fees for the astronomical sums they claimed in their cases. The Court held that those cases sufficiently provided the basis for the determination of respondents' administrative liability, without need for further inquiry into the matter under the principle of *res ipsa loquitur*.

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[144] *Id.* at 453.

[145] A.M. No. 08-6-352-RTC, August 19, 2009, 596 SCRA 378.

Also on the basis of this principle, we ruled in *Richards v. Asoy*, that **no evidentiary hearing is required before the respondent may be disciplined for professional misconduct already established by the facts on record.**

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These cases clearly show that the absence of any formal charge against and/or formal investigation of an errant lawyer do not preclude the Court from immediately exercising its disciplining authority, as long as the errant lawyer or judge has been given the opportunity to be heard. As we stated earlier, Atty. Buffe has been afforded the opportunity to be heard on the present matter through her letter-query and Manifestation filed before this Court.[146] (Emphases supplied.)

Under the rules and jurisprudence, respondents clearly had no right to a hearing and their reservation of a right they do not have has no effect on these proceedings. Neither have they shown in their pleadings any justification for this Court to call for a hearing in this instance. They have not specifically stated what relevant evidence, documentary or testimonial, they intend to present in their defense that will necessitate a formal hearing.

Instead, it would appear that they intend to present records, evidence, and witnesses bearing on the plagiarism and misrepresentation issues in the *Vinuya* case and in A.M. No. 10-7-17-SC on the assumption that the findings of this Court which were the bases of the Show Cause Resolution were made in A.M. No. 10-7-17-SC, or were related to the conclusions of the Court in the Decision in that case. This is the primary reason for their request for access to the records and evidence presented in A.M. No. 10-7-17-SC.

This assumption on the part of respondents is erroneous. To illustrate, the only incident in A.M. No. 10-7-17-SC that is relevant to the case at bar is the fact that the submission of the actual signed copy of the Statement (or *Restoring Integrity I*, as Dean Leonen referred to it) happened there. Apart from

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[146] *Id.* at 396-398.

that fact, it bears repeating that the proceedings in A.M. No. 10-7-17-SC, the ethics case against Justice Del Castillo, is a separate and independent matter from this case.

To find the bases of the statements of the Court in the Show Cause Resolution that the respondents issued a Statement with language that the Court deems objectionable during the pendency of the *Vinuya* case and the ethics case against Justice Del Castillo, respondents need to go no further than the four corners of the Statement itself, its various versions, news reports/columns (many of which respondents themselves supplied to this Court in their Common Compliance) and internet sources that are already of public knowledge.

Considering that what respondents are chiefly required to explain are the language of the Statement and the circumstances surrounding the drafting, printing, signing, dissemination, *etc.*, of its various versions, the Court does not see how any witness or evidence in the ethics case of Justice Del Castillo could possibly shed light on these facts. To be sure, these facts are within the knowledge of respondents and if there is any evidence on these matters the same would be in their possession.

We find it significant that in Dean Leonen's Compliance he narrated how as early as September 2010, *i.e.*, before the Decision of this Court in the ethics case of Justice Del Castillo on October 12, 2010 and before the October 19, 2010 Show Cause Resolution, retired Supreme Court Justice Vicente V. Mendoza, after being shown a copy of the Statement upon his return from abroad, predicted that the Court would take some form of action on the Statement. By simply reading a hard copy of the Statement, a reasonable person, even one who "fundamentally agreed" with the Statement's principles, could foresee the possibility of court action on the same on an implicit recognition that the Statement, as worded, is not a matter this Court should simply let pass. This belies respondents' claim that it is necessary for them to refer to any record or evidence in A.M. No. 10-7-17-SC in order to divine the bases for the Show Cause Resolution.

If respondents have chosen not to include certain pieces of evidence in their respective compliances or chosen not to make a full defense at this time, because they were counting on being granted a hearing, that is respondents' own look-out. Indeed, law professors of their stature are supposed to be aware of the above jurisprudential doctrines regarding the non-necessity of a hearing in disciplinary cases. They should bear the consequence of the risk they have taken.

Thus, respondents' requests for a hearing and for access to the records of, and evidence presented in, A.M. No. 10-7-17-SC should be denied for lack of merit.

A final word

In a democracy, members of the legal community are hardly expected to have monolithic views on any subject, be it a legal, political or social issue. Even as lawyers passionately and vigorously propound their points of view they are bound by certain rules of conduct for the legal profession. This Court is certainly not claiming that it should be shielded from criticism. All the Court demands is the same respect and courtesy that one lawyer owes to another under established ethical standards. All lawyers, whether they are judges, court employees, professors or private practitioners, are officers of the Court and have voluntarily taken an oath, as an indispensable qualification for admission to the Bar, to conduct themselves with good fidelity towards the courts. There is no exemption from this sworn duty for law professors, regardless of their status in the academic community or the law school to which they belong.

WHEREFORE, this administrative matter is decided as follows:

(1) With respect to **Prof. Vasquez**, after favorably noting his submission, the Court finds his **Compliance** to be **satisfactory.**

(2) The Common Compliance of 35 respondents, namely, **Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T.**

Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay, Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty, Evalyn G. Ursua, Susan D. Villanueva and Dina D. Lucenario, is found **UNSATISFACTORY**. These 35 respondent law professors are **REMINDED** of their lawyerly duty, under Canons 1, 11 and 13 of the Code of Professional Responsibility, to give due respect to the Court and to refrain from intemperate and offensive language tending to influence the Court on pending matters or to denigrate the Court and the administration of justice and warned that the same or similar act in the future shall be dealt with more severely.

(3) The separate Compliance of **Dean Marvic M.V.F. Leonen** regarding the charge of violation of Canon 10 is found **UNSATISFACTORY**. He is further **ADMONISHED** to be more mindful of his duty, as a member of the Bar, an officer of the Court, and a Dean and professor of law, to observe full candor and honesty in his dealings with the Court and warned that the same or similar act in the future shall be dealt with more severely.

(4) **Prof. Lynch**, who is not a member of the Philippine bar, is **EXCUSED** from these proceedings. However, he is reminded that while he is engaged as a professor in a Philippine law school he should strive to be a model of responsible and professional conduct to his students even without the threat of sanction from this Court.

(5) Finally, respondents' requests for a hearing and for access to the records of A.M. No. 10-7-17-SC are **DENIED** for lack of merit.

SO ORDERED.

Corona, C.J., Velasco, Jr., Peralta, Bersamin, Abad, Perez, and *Mendoza, JJ.,* concur.

Brion, J., on leave. The *C.J.* certifies that Mr. Justice Brion left his concurring vote.

Villarama, Jr., J., see separate opinion.

Carpio and *Carpio Morales, JJ.,* see dissenting opinions.

Sereno, J., dissents and reserves the right to issue a Separate Opinion.

Del Castillo, J., no part.

Nachura, J., on leave.

SEPARATE OPINION

VILLARAMA, JR., *J.*:

This treats of respondents' compliance with the Court's Resolution dated October 19, 2010, which required respondents, who are professors of the University of the Philippines College of Law, to show cause why they should not be disciplined as members of the bar for having published a Statement entitled, "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court" which appeared to contain statements that were disrespectful to the Court. The Court's directive reads as follows:

WHEREFORE, in light of the foregoing, Attys. Marvic M.V.F. Leonen, Froilan M. Bacungan, Pacifico A. Agabin, Merlin M. Magallona, Salvador T. Carlota, Carmelo V. Sison, Patricia R.P. Salvador Daway, Dante B. Gatmaytan, Theodore O. Te, Florin T. Hilbay, Jay L. Batongbacal, Evelyn (Leo) D. Battad, Gwen G. De Vera, Solomon F. Lumba, Rommel J. Casis, Jose Gerardo A. Alampay, Miguel R. Armovit, Arthur P. Autea, Rosa Maria J. Bautista, Mark R. Bocobo, Dan P. Calica, Tristan A. Catindig, Sandra Marie O. Coronel, Rosario O. Gallo, Concepcion L. Jardeleza, Antonio G.M. La Viña, Carina C. Laforteza, Jose C. Laureta, Owen J. Lynch, Rodolfo Noel S. Quimbo, Antonio M. Santos, Gmeleen Faye B. Tomboc, Nicholas Felix L. Ty,

Evalyn G. Ursua, Raul V. Vasquez, Susan D. Villanueva, and Dina D. Lucenario, members of the faculty of the University of the Philippines College of Law, are directed to **SHOW CAUSE**, within ten (10) days from receipt of a copy of this Resolution, why they should not be disciplined as members of the Bar for violation of Canons 1[1], 11, and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility.

Further, Dean Marvic M.V.F. Leonen is directed to SHOW CAUSE, within ten (10) days from receipt of this Resolution, why he should not be disciplinarily dealt with for violation of Canon 10, Rules 10.01, 10.02 and 10.03 for submitting, through his letter dated August 10, 2010, during the pendency of G.R. No. 162330, *Vinuya v. Executive Secretary* and of the investigation before the Committee on Ethics and Ethical Standards, for the consideration of the Court *En Banc*, a dummy which is not a true and faithful reproduction of the purported statement, entitled "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court." x x x

In their Compliance, 35 of the respondents, excluding Professors Owen J. Lynch and Raul V. Vasquez, take common defense that the statements contained in *Restoring Integrity* were mere expressions of their opinion, dispensed in accordance with their duties as members of the bar and as professors of law. They aver that they acted with the purest intentions, guided by their duty of candor, fairness and good faith to the Court, and deny that it was their intention to malign the Court as an institution for its decision in *Vinuya v. Executive Secretary*.[2] They claim that any reference to *Vinuya* in their statement was made only to establish and accent the grave consequences of the allegations of plagiarism and misrepresentation allegedly committed by one of the Court's members. Indeed, they claim that the Statement was intended "to defend the integrity and credibility of the entire Supreme Court" and ensure continued confidence in the legal system and the Judiciary by calling on the Court to take constructive action in the face of the damaging

[1] The Show Cause Resolution inadvertently mentioned Canon 10.

[2] G.R. No. 162230, April 8, 2010.

allegations. They also add that the Statement was meant to address what they perceived as indifference on the part of the Court owing to certain statements reportedly made by Supreme Court Administrator and spokesperson, Atty. Jose Midas P. Marquez (that Chief Justice Renato C. Corona would not take any action on the charges) and their reading of Justice Mariano C. Del Castillo's letter replying to the allegations.

Respondents affirm their loyalty and respect for the Court and claim that as professors of law, they have a special interest in guarding against plagiarism and misrepresentation to ensure intellectual honesty among their students. They allegedly released the Statement in support of "efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding law and jurisprudence." Citing similar commentaries on the issue, they likewise invoke freedom of speech and academic freedom to justify the publication of their stand on the matter.

Finally, respondents argue that the Resolution amounted to a prejudgment of their liability for contempt and breach of Canons 1, 11, 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility. Thus, they invoke their right to due process and plead for an opportunity to present evidence relative to the proceedings in A.M. No. 10-7-17-SC entitled *In the Matter of the Charges of Plagiarism, etc. Against Associate Justice Mariano C. Del Castillo.*

Prof. Rosa Maria T. Juan-Bautista, in her separate Compliance and Reservation, reiterates the above reservation of her right to due process and request for hearing. She likewise supplements the above submissions with additional arguments in support of her assertion that she signed the Statement in the exercise of her freedom of expression.

As to Prof. Owen J. Lynch, Prof. Lynch filed a Manifestation invoking freedom of expression and asserting that the statement did not pose a clear and present danger of a substantive evil that the State has a right to prevent. He also manifests that he is not a member of the Philippine Bar as he is an American

citizen who is a member of the bar of the State of Minnesota.

Prof. Raul V. Vasquez, for his part, likewise submits that he never had any intention of maligning the Court and alleges that he signed the Statement as he was fundamentally in agreement with its contents. He further states that he might have been remiss in correctly assessing the effects of the language employed in the Statement and says that he could have been more careful.

As regards the charge of violating Canon 10 and Rules 10.01, 10.02 and 10.03 for submitting to the Court a copy of the *Restoring Integrity Statement* that was not a true and faithful reproduction thereof, Dean Marvic M.V.F. Leonen submitted the following explanations.

Dean Leonen denies misrepresenting the contents of the Statement or which faculty members signed and/or signified their intention to sign the same. He avers that there are actually three versions of the Statement, all with the same contents, but with different signature pages. Two versions were submitted to the Court: one with the signature pages containing the full roster of faculty members and the actual signatures of the signatories (which version he calls *Restoring Integrity I*) and the other with the retyped signature page containing just the names of the members who signed, with the notation "(SGD.)" beside their names. This second version he referred to as *Restoring Integrity II*. According to him, these two copies arose because after the original version containing the full roster of faculty members was circulated for signature, he had the signature pages re-typed to eliminate the blanks prior to posting in the bulletin board. (He alleges that the practice of re-typing the signature pages was meant to ensure the integrity of the public issuance as posting the Statement with blanks would open it to vandalism.)

When the re-typed signature page was presented to him by his staff, he noticed that the name of retired Justice Vicente V. Mendoza was indicated as a signatory even though the latter did not sign the Statement. He asked his administrative staff

about the inclusion and the latter claimed that she spoke to Justice Mendoza on the phone before the latter flew for the United States. According to his staff, Justice Mendoza allegedly authorized him to sign on behalf of Justice Mendoza since the latter agrees with the contents of the Statement but was just unable to personally affix his signature because he was leaving for the United States the following week. Dean Leonen claims that he did not have any reason to disbelieve his staff because there were indeed other faculty members who authorized him to sign the Statement for them. Thus, he placed full faith and confidence in his staff's claim and allowed the inclusion of Justice Mendoza's name as one of the signatories in *Restoring Integrity II* which he later submitted to the Court. Because of this information, also, he believed that the total number of signatories to the Statement was already 38.

Dean Leonen adds that in September 2010, he received a call from Justice Mendoza, who said that he will no longer sign the statement "considering that it had already become controversial and that he did not wish to unduly aggravate the situation." On October 21, 2010, after receiving a copy of this Court's Show Cause Resolution, he met with his staff and reviewed what had transpired in connection with their efforts to secure Justice Mendoza's signature. It was then that he learned that while Justice Mendoza initially agreed to sign the statement, Justice Mendoza did not exactly authorize him to sign for the latter. Rather, Justice Mendoza merely inquired "if he could authorize the dean to sign it for him as he was leaving for the United States." He then realized the full import of the call he received from Justice Mendoza in September.

As regards the omission of the name of Atty. Miguel R. Armovit in the re-typed signature pages of *Restoring Integrity II*, Dean Leonen explains that the omission was due simply to inadvertence.

After a careful study of the respondents' submissions, I respectfully submit that the above submissions are SATISFACTORY in view of respondents' claim of good faith and the fact that a re-examination of the Statement indeed

admits of such claim. Consistent with respondents' claims, the tenor of the Statement was to call the Court's attention to the grave allegations and its effects on the integrity and credibility of the Court and the Judiciary. Indeed, the general wording of the Statement and its ending paragraphs lend support to respondents' averments that the Statement was prompted by the sincere and honest desire to protect the integrity and credibility of the Judiciary, especially the Supreme Court. Given such submissions, I am willing to afford respondents the benefit of the doubt as to their intentions concerning the forceful language employed in certain portions of the Restoring Integrity Statement. This is especially so considering that the subject statements present no clear and present danger of a substantive evil that the State has a right to prevent as to take it out of the protective mantle of the freedom of speech and expression under the Bill of Rights. A reading of the Statement, with particular focus on its final paragraphs, will not leave the reader with feelings of contempt for the Court but only a feeling that the Court must champion the cause of integrity. Furthermore, it should be noted that our society has developed to the point where critical analysis of information is not in short supply. The public is nowadays not only more well informed, but it has access to information with which citizens could make their own independent assessment of pending issues of public concern, including the fitness and integrity of the members of this Court to render fair and impartial judgment on the cases before them. However, given the fact that some isolated portions of the statement were arguably disrespectful, respondents should be reminded to be more circumspect in their future statements.

As regards Dean Leonen, I likewise submit that his explanation is sufficient to exonerate him from the charge of violation of Canon 10 and Rules 10.01, 10.02 and 10.03, all of the Code of Professional Responsibility. While it appears that Dean Leonen mistakenly relied on hearsay information that Justice Mendoza had authorized him to indicate Justice Mendoza as a signatory to the Statement, still, Dean Leonen's lapses appear more the result of overzealousness rather than bad faith or a deliberate intent to do falsehood or to mislead the Court. Indeed, under

the circumstances as they appeared to him, and considering that there were other professors who had authorized him to indicate them as signatories,[3] it was not all too remiss on his part to indicate Justice Mendoza as a signatory to the Statement upon the information given to him by his administrative staff. That he acted upon the wrong information given to him, though telling of some degree of carelessness on his part, is not gross negligence that is tantamount to bad faith. Hence, there being no intent or inexcusable negligence, there is no ground to find him liable under Canon 10 and Rules 10.01 and 10.02 of the Code of Professional Responsibility.

Similarly, there is no cogent reason to hold him liable for violation of Rule 10.03 as it likewise does not appear that Dean Leonen violated any rule of procedure or misused any procedural rule to defeat the ends of justice. The submission of the Statement to the Court, it should be noted, was *ad hoc*.

I therefore vote to **NOTE** and **CONSIDER** the explanations submitted by respondents in their Compliance/s **SATISFACTORY** with a **REMINDER** that they be more circumspect in their future statements considering that the Court also has its own sensibilities.

I also vote to consider this administrative matter **CLOSED and TERMINATED**.

DISSENTING OPINION

CARPIO MORALES, *J.*:

Consistent with my dissent from the Court's October 19, 2010 Resolution, I maintain my position that, in the first place, there was no reasonable ground to *motu proprio* initiate the administrative case, in view of (1) the therein discussed injudiciousness attending the Resolution, anchored on an irregularly concluded finding of indirect contempt with adverse declarations prematurely describing the subject Statement of

[3] Footnote 3 of the Compliance of Dean Leonen, p. 5.

the UP Law Faculty that could taint the disciplinary action, and (2) the Court's conventionally permissive attitude toward the "expression of belief" or "manner of criticism" coming from legal academics, lawyer-columnists, and civic circles, in a number of high-profile cases, most notably at the height of the "CJ Appointment Issue" during which time the motion for reconsideration of the Court's decision was similarly pending.

DISSENTING OPINION

CARPIO, *J.*:

I find the Compliance of the 37 legal scholars[1] satisfactory and therefore see no need to admonish or warn them[2] for supposed use of disrespectful language in their statement[3] commenting on a public issue involving the official conduct of a member of this Court. The majority's action impermissibly expands the Court's administrative powers[4] and, more importantly,

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[1] All belonging to the faculty of the University of the Philippines College of Law including the incumbent dean, four former deans, members of the regular faculty and instructors. Professor Owen Lynch, a visiting professor and a member of the Minnesota bar, filed a manifestation joining causes with the respondents.

[2] The majority excludes from their finding Atty. Raul T. Vasquez whose Compliance they find satisfactory.

[3] "Restoring Integrity: A Statement By The University Of The Philippines College Of Law On The Allegations Of Plagiarism And Misrepresentation In The Supreme Court."

[4] In the Resolution of 19 October 2010, 37 professors were required to show cause why no disciplinary sanction should be imposed on them for violating the following provisions of the Code of Professional Responsibility:

Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Canon 11 – A lawyer shall observe and maintain respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.05 - A lawyer shall submit grievances against a Judge to the proper authorities only.

abridges constitutionally protected speech on public conduct guaranteed to all, including members of the bar.

First. The matter of Justice Mariano del Castillo's reported misuse and non-attribution of sources in his *ponencia* in *Vinuya v. Executive Secretary*[5] is an issue of public concern. A day before the *Vinuya* petitioners' counsels filed their supplemental motion for reconsideration on 19 July 2010 raising these allegations, a national TV network carried a parallel story online.[6] On the day the pleading was filed, another national TV network[7] and an online news magazine,[8] carried the same story. Soon, one of the authors allegedly plagiarized commented that the work he and a co-author wrote was misrepresented in *Vinuya*.[9] Justice

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Canon 13 – A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

Today's Resolution admonishes the incumbent dean, Marvic M.V.F. Leonen, and warns 35 other professors for "speech and conduct unbecoming of lawyers and law professors."

Significantly, the 37 academics did not counsel or abet *activities* of any sort and none of them is counsel to any of the parties in *Vinuya v. Executive Secretary*, thus Rule 1.02 and Canon 13 are irrelevant. Rule 11.05 is similarly inapplicable because none of the professors authored any of the materials used in *Vinuya* hence, their grievance to the purported plagiarism and misrepresentation is not specific and personal to cloak them with legal personality to institute a complaint against Justice Mariano del Castillo. On the other hand, Canon 1 and Canon 11, accommodate and do not trump the constitutional guarantee of free speech.

[5] G.R. No. 162230, 28 April 2010.

[6] The news article "*SC justice plagiarized parts of ruling on comfort women*" by Aries C. Rufo and Purple S. Romero appeared in the website of ABS-CBN on 18 July 2010 (*see* http://www.abs-cbnnews.com/nation/07/18/10/sc-justice-plagiarized-parts-ruling-comfort-women).

[7] GMA-7 (*see* http://www.gmanews.tv/story/196407/sc-justice-plagiarized-parts-of-ruling-on-comfort-women)

[8] Newsbreak (*see* http://newsbreak.com.ph/index.php?option=com_content&task=view&id=7981&Itemid=88889005.)

[9] Commenting on a blog entry on the news stories ABS-CBN, GMA-7 and Newsbreak carried, Professor Evan Criddle, co-author of the article

del Castillo himself widened the scope of publicity by submitting his official response to the allegations to a national daily which published his comment in full.[10] Justice del Castillo's defenses of good faith and non-liability[11] echoed an earlier statement made by the Chief of the Court's Public Information Office.[12]

A Fiduciary Theory of Jus Cogens, 34 Yale J. Int'l L. 331 (2009), stated: "Speaking for myself, the most troubling aspect of the court's *jus cogens* discussion is that it implies that the prohibitions against crimes against humanity, sexual slavery, and torture are not *jus cogens* norms. Our article emphatically asserts the opposite." (*see* http://opiniojuris.org/2010/07/19/international-law-plagiarism-charge-bedevils-philippines-supreme-court-justice/). The two other authors, Christian J. Tams and Mark Ellis, whose works were reportedly misused in the Court's ruling in *Vinuya*, had since filed formal complaints with the Court.

[10] Justice del Castillo's comment appeared in THE PHILIPPINE STAR'S "Letters to the Editor" Section on 30 July 2010 captioned "*The Del Castillo Ponencia in Vinuya* By Mariano C. Del Castillo, Associate Justice" (*see* http://www.philstar.com/Article.aspx?articleId=598044&publicationSubCategoryId=135).

[11] Justice del Castillo wrote:

> It must be emphasized that there was every intention to attribute all sources, whenever due. At no point was there ever any malicious intent to appropriate another's work as our own. x x x
>
> x x x x x x x x x
>
> Incidentally, it was stated in the Newsbreak article posted by Aries C. Rufo and Purple S. Romero on July 19, 2010 that "x x x there is no rule or provision in the judiciary against copying from other's work and passing these off as original material." Dean Pacifico Agabin concurred with this observation when he "pointed out, It is not prohibited under the Code of Judicial Ethics, or any statutes. It is just a matter of delicadeza… It bears on the honesty of the judge to give credit where credit is due."
>
> Finally, Section 184(k) of Republic Act No. 8293 (Intellectual Property Code of the Philippines) provides that "any use made of a work for the purpose of any judicial proceedings x x x" shall not constitute infringement of copyright.

[12] Who informed the public: "You can't expect all justices in the Supreme Court to be familiar with all these journals." (*see* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100721-282283/High-court-not-probing-plagiarism).

These unfolding events generated an all-important public issue affecting no less than the integrity of this Court's decision-making – its core constitutional function – thus inexorably inviting public comment.

Along with other sectors, the law faculty of the University of the Philippines (UP), which counts among its ranks some of this country's legal experts,[13] responded by issuing a statement,[14] bewailing what the professors see as the Court's indifference to the perceived dishonesty in the crafting of the *Vinuya ponencia* and its aggravating effect on the *Vinuya* petitioners' cause, refuting Justice del Castillo's defenses, underscoring the seriousness of the issue, and calling for the adoption of individual and institutional remedial measures.[15]

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[13] Dean Pacifico Agabin, an alumnus of Yale Law School, is an authority in constitutional law, author of numerous scholarly publications and active appellate litigator who frequently appeared before the Court to argue landmark public law cases. Dean Merlin Magallona is a recognized expert in international law, a published scholar and former Undersecretary of Foreign Affairs. Professor Tristan Catindig, a Harvard Law School alumnus, is a commercial law expert and author of numerous publications on the subject.

[14] The respondents claim that they spoke in their capacity as lawyers, law professors and citizens (Common Compliance, pp. 2, 16).

[15] Summed in the penultimate paragraph of their statement:

(1) The plagiarism committed in the case of *Vinuya v. Executive Secretary* is unacceptable, unethical and in breach of the high standards of moral conduct and judicial and professional competence expected of the Supreme Court;

(2) Such a fundamental breach endangers the integrity and credibility of the entire Supreme Court and undermines the foundations of the Philippine judicial system by allowing implicitly the decision of cases and the establishment of legal precedents through dubious means;

(3) The same breach and consequent disposition of the Vinuya case does violence to the primordial function of the Supreme Court as the ultimate dispenser of justice to all those who have been left without legal or equitable recourse, such as the petitioners therein;

(4) In light of the extremely serious and far-reaching nature of the dishonesty and to save the honor and dignity of the Supreme Court as an institution, it is necessary for the *ponente* of *Vinuya v. Executive Secretary* to resign his position, without prejudice to any other sanctions that the Court may consider appropriate;(5) The Supreme Court must take this

This is prime political speech critical of conduct of public officials and institution, delivered in public forum. Under the scheme of our constitutional values, this species of speech enjoys the highest protection,[16] rooted on the deeply-held notion that "the interest of society and the maintenance of good government demand a full discussion of public affairs."[17] Indeed, preceding western jurisprudence by nearly five decades, this Court, in the first score of the last century, identified the specific right to criticize official conduct as protected speech, branding attempts by courts to muzzle criticism as "tyranny of the basest sort."[18]

Second. In testing whether speech critical of judges and judicial processes falls outside the ambit of constitutionally protected expression, spilling into the territory of sanctionable utterances, this Court adheres to the "clear and present danger"

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opportunity to review the manner by which it conducts research, prepares drafts, reaches and finalizes decisions in order to prevent a recurrence of similar acts, and to provide clear and concise guidance to the Bench and Bar to ensure only the highest quality of legal research and writing in pleadings, practice, and adjudication.

[16] *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441, 538, Carpio, *J.*, concurring.

[17] *United States v. Bustos*, 37 Phil. 731, 740 (1918). Jurisprudence privileges this right by requiring the very high quantum of proof of actual malice to establish liability for libelous comment on public conduct (*Vasquez v. Court of Appeals*, 373 Phil. 238 (1999); *Flor v. People*, G.R. No. 139987, 31 March 2005, 454 SCRA 440).

[18] The relevant passage reads:

> The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. x x x (*United States v. Bustos*, 37 Phil. 731, 741 (1918)).

It was only in 1964 that the United States Supreme Court enunciated a comparable doctrine, with refinements (see *New York Times v. Sullivan*, 376 U.S. 254 [1964]).

test.[19] Under this analytical framework, an utterance is constitutionally protected unless "the evil consequence of the comment or utterance [is] 'extremely serious and the degree of imminence extremely high.'"[20]

It appears that the evil consequences the UP law faculty statement will supposedly spawn are (1) the slurring of this Court's dignity and (2) the impairment of its judicial independence *vis-à-vis* the resolution of the plagiarism complaint in *Vinuya*. Both are absent here. On the matter of institutional degradation, the 12-paragraph, 1,553-word statement of the UP law faculty, taken as a whole, does not exhibit that "irrational obsession to demean, ridicule, degrade and even destroy the courts and their members" typical of unprotected judicial criticism.[21] On the contrary, the statement, taken as a whole, seeks to uphold the bedrock democratic value of keeping judicial processes free of any taint of dishonesty or misrepresentation. Thus, the UP law faculty statement is far removed from speech the Court has rightly sanctioned for proffering no useful social value, ***solely*** crafted to vilify its members and threaten its very existence.[22]

On the alleged danger of impairment of this Court's judicial independence in resolving the plagiarism charge in *Vinuya*, this too, did not come to pass. In the Resolution of 8 February 2011 in A.M. No. 10-17-17-SC,[23] the Court denied reconsideration

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[19] *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *People v. Godoy*, 312 Phil. 977 (1995); *In re Almacen*, No. L-27654, 18 February 1970, 31 SCRA 562.

[20] *Cabansag v. Fernandez*, 102 Phil. 152, 161 (1957).

[21] See *e.g. Column of Ramon Tulfo in the Philippine Daily Inquirer Issues of 13 and 16 October 1989*, A.M. No. 90-4-1545-0, 17 April 1990 (Resolution).

[22] *In re Sotto*, 82 Phil. 595 (1949). *See* also *Column of Ramon Tulfo in the Philippine Daily Inquirer Issues of 13 and 16 October 1989*, *id.*

[23] *In the Matter of the Charges of Plagiarism etc., Against Associate Justice Mariano C. Del Castillo*.

to its earlier ruling finding no merit in the *Vinuya* petitioners' claim of plagiarism. Not a single word in the 8 February 2011 Resolution hints that the UP law faculty statement pressured, much less threatened, this Court to decide the motion for reconsideration for the *Vinuya* petitioners. Thus, the 8 February 2011 Resolution gives the lie to the conclusion that the UP law faculty statement posed any danger, much less one that is "extremely serious," to the Court's independence.

Third. The conclusion that the UP law faculty statement disrespects the Court and its members is valid only if the statement is taken apart, its dismembered parts separately scrutinized to isolate and highlight perceived offensive phrases and words. This approach defies common sense and departs from this Court's established practice in scrutinizing speech critical of the judiciary. *People v. Godoy*[24] instructs that speech critical of judges must be "read with contextual care," making sure that disparaging statements are not "taken out of context."[25] Using this approach, and applying the clear and present danger test, the Court in *Godoy* cleared a columnist and a publisher of liability despite the presence in the assailed news article of derogatory yet isolated statements about a judge. We can do no less to the statement of the members of the UP law faculty, who, after all, were impelled by nothing but their sense of professional obligation to "speak out on a matter of public concern and one that is of vital interest to them."[26]

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[24] *People v. Godoy*, 312 Phil. 977 (1995).

[25] We held:

> On the issue of whether the specified statements complained of are contumacious in nature, we are inclined, *based on an overall perusal and objective analysis of the subject article*, to hold in the negative. We have read and reread the article in *its entirety* and we are fully convinced that what is involved here is a situation wherein the alleged disparaging statements *have been taken out of context*. *If the statements claimed to be contum[acious] had been read with contextual care*, there would have been no reason for this contempt proceeding. *Id*. at 994 (emphasis supplied).

[26] Common Compliance, p. 2.

On the supposed unpleasant tone of the statement, critical speech, by its nature, is caustic and biting. It is for this same reason, however, that it enjoys special constitutional protection. "The constitution does not apply only to sober, carefully reasoned discussion. There may be at least some value in permitting cranky, obstreperous, defiant conduct by lawyers on the ground that it encourages a public culture of skepticism, anti-authoritarianism, pluralism, and openness. It is important to remember that the social function of lawyers is not only to preserve order, but also to permit challenges to the status quo."[27]

Supreme Court Justices, as public officials, and the Supreme Court, as an institution, are entitled to no greater immunity from criticism than other public officials and institutions.[28] The members of this Court are sustained by the people's resources and our actions are always subject to their accounting.[29] Thus, instead of shielding ourselves with a virtual *lese-majeste* rule, wholly incompatible with the Constitution's vision of public office as a "public trust,"[30] we should heed our own near century-old counsel: a clear conscience, not muzzled critics, is the balm for wounds caused by a "hostile and unjust accusation" on official conduct.[31]

Fourth. The academic bar, which the UP law faculty represents, is the judiciary's partner in a perpetual intellectual conversation to promote the rule of law and build democratic institutions. It serves the interest of sustaining this vital relationship

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[27] W. Bradley Wendel, *Free Speech For Lawyers*, 28 Hastings Const. L.Q. 305, 440 (2001).

[28] *In the Matter of the Allegations Contained in the Columns of Mr. Amado A.P. Macasaet Published in Malaya Dated September 18, 19, 20, and 21, 2007*, A.M. No. 07-09-13-SC, 8 August 2008, 561 SCRA 395, 489, Carpio, *J*., dissenting.

[29] The Constitution provides that "[P]ublic officers and employees must, at all times, be accountable to the people x x x" (Article XI, Section 1).

[30] Constitution, Article XI, Section 1.

[31] *United States v. Bustos*, 37 Phil. 731, 741 (1918).

for the Court to constructively respond to the academics' criticism. Instead of heeding the UP law faculty's call for the Court to "ensur[e] that not only the content, but also the processes of preparing and writing its own decisions, are credible and beyond question," the majority dismisses their suggestion as useless calumny and brands their constitutionally protected speech as "unbecoming of lawyers and law professors." The Constitution, logic, common sense and a humble awareness of this Court's role in the larger project of dispensing justice in a democracy revolt against such response.

Accordingly, I vote to consider respondents' explanation in their common and individual Compliance as satisfactory and to consider this matter closed and terminated.

DISSENTING OPINION

SERENO, *J.*:

The history of the Supreme Court shows that the times when it emerged with strength from tempests of public criticism were those times when it valued constitutional democracy and its own institutional integrity. Indeed, dangers from pressure and threat presented by what is usually constitutionally deemed as free speech can arise only when the Court allows itself to be so threatened. It is unfortunate when a tribunal admits that its core of independence can be shaken by a twelve-paragraph, two-page commentary from academia. By issuing the Show Cause Order, and affirming it in the current Decision, the Court puts itself in the precarious position of shackling free speech and expression. The Court, which has the greater duty of restraint and sobriety, but which appears to the public to have failed to transcend its instinct for self-preservation and to rise above its own hurt, gains nothing by punishing those who, to its mind, also lacked such restraint.

I join the dissents of Justices Antonio T. Carpio, Conchita Carpio Morales, and Martin S. Villarama. To be taken together with this Opinion is my earlier Dissenting Opinion dated 19 October 2010. The effect and intent of the "Restoring Integrity"

Statement must be examined in the context of what this Court has done to contribute to the controversy as well as the reception by the public of the pronouncements of this Court on the plagiarism charges in connection with the Decision in G.R. No. 162230, *Vinuya, et al. v. Executive Secretary*, promulgated on 28 April 2010.

A few days after the *Malaya Lolas* (petitioners in G.R. No. 162230) filed a Supplemental Motion for Reconsideration of the *Vinuya* Decision, the Acting Chief of the Court's Public Information Office informed the media that the Chief Justice had no plans of inquiring into the plagiarism charges against Justice Mariano C. del Castillo raised in said motion. He stated further that: "You can't expect all justices in the Supreme Court to be familiar with all these journal articles."[1] Justice del Castillo defended himself by submitting his official statement to the Philippine Star, which published it on 30 July 2010. In the meantime, Dr. Mark Ellis, one of several authors whose works was allegedly plagiarized, sent a letter dated 23 July 2010 to the Court, expressing concern about the alleged plagiarism of his work and the misreading of the arguments therein "for cross purposes."

On 31 July 2010, the Daily Tribune, the Manila Standard, and other newspapers of national circulation reported that Senator Francis Pangilinan, a member of the bar, demanded the resignation of Justice Del Castillo in order to "spare the judiciary from embarrassment and harm." On 25 July 2010, the Philippine Daily Inquirer discussed the plagiarism issue in their editorial entitled "*Supreme Theft.*" On 5 August 2010, another member of the bar wrote about plagiarism in his column entitled "*What's in a Name?*" published in the Business Mirror.[2] On 8 August 2010, the Philippine Daily Inquirer published former Chief Justice Artemio Panganiban's opinion, to the effect that the issue "seeps to the very integrity of the Court." That same opinion also

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[1] The news item is also available on the publication's website at http://newsinfo.inquirer.net/inquirer headlines/nation/view/20100721-282283/High-court-not-probing-plagiarism.

[2] Atty. Adrian S. Cristobal, Jr., Plagiarism, in *What's in a Name?*, Business Mirror, 5 August 2010.

raised the question of whether the justices who concurred in the *Vinuya ponencia* were qualified to sit as members of the Ethics Committee.

Dean Marvic M.V. F. Leonen of the University of the Philippines College of Law transmitted to the Court a statement entitled "Restoring Integrity: A Statement By The Faculty Of The University Of The Philippines College Of Law On The Allegations Of Plagiarism And Misrepresentation In The Supreme Court," the cover letter of which was dated 11 August 2010. Shortly thereafter, several schools published their own declarations on the matter.

A week after the UP Law Faculty's statement was transmitted to the Court, Professor Christian Tams expressed his own views. In a letter addressed to the Chief Justice[3], Professor Tams said: "…I am at a loss to see how my work should have been cited to support – as it seemingly has – the opposite approach. More generally, I am concerned at the way in which your Honourable Court's Judgment has drawn on scholarly work without properly acknowledging it." Other authors soon followed suit, articulating their own dismay at the use of their original works, through internet blogs, comments and other public fora.[4]

Thus, the negative public exposure caused by such acts of plagiarism cannot be attributed solely to the UP Law Faculty. That the Court was put in the spotlight and garnered unwanted attention was caused by a myriad of factors, not the least of which was Justice Del Castillo's own published defense entitled "The Del Castillo *ponencia* in *Vinuya*" pending the resolution

[3] Dated 18 August 2010.

[4] Evan Criddle, who co-authored the article, "A Fiduciary Theory of Jus Cogens," with Evan Fox-Decent, wrote a comment in reply to a post written about the issue in a legal blog. The blog entry to which Criddle commented is the Opinio Juris entry entitled "International Law Plagiarism Charge Bedevils Philippines Supreme Court Justice," located at <http://opiniojuris.org/2010/07/19/international-law-plagiarism-charge-bedevils-philippines-supreme-court-justice/>; Criddle's comment was made on 19 July 2010 at 2:44 pm EST.

of the complaint against him by the Ethics Committee, and the categorical statement made by the Acting Chief of the Court's Public Information Office to the media that the Chief Justice had no plans of investigating the plagiarism charges. These twin acts attracted negative reaction, much of which came from the legal profession and the academe. The issue itself – alleged plagiarism in a judicial decision, including the alleged use of plagiarized materials to achieve a result opposite to the theses of the said materials – resonated in the public's consciousness and stirred a natural desire in the citizenry to raise calls to save an important public institution, namely, the judiciary. The responses published by different sectors constituted nothing more than an exercise of free speech – critical commentary calling a public official to task in the exercise of his functions.

The respondents herein, who were not parties to any pending case at the time, forwarded the "Restoring Integrity" Statement as a public expression of the faculty's stand regarding the plagiarism issue. Such an open communication of ideas from the citizenry is an everyday occurrence – as evidenced by dozens of letters of appeals for justice received regularly by this Court from a myriad of people, and the placards displayed along Padre Faura Street every Tuesday. The commentators and participants in the public discussions on the *Vinuya* Decision, both on the Internet and in traditional media, included legal experts and other members of the bar, with even a former Chief Justice of the Supreme Court numbered among them. Yet only members of the UP Law Faculty were deemed to be the cause for the majority's trepidation that the Court's honesty, integrity, and competence was being undermined. The Show Cause Order went so far as to hold the respondent faculty members responsible for threatening the independence of the judiciary.

Despite the assertion that the present case is merely an exercise of the Court's disciplinary authority over members of the bar, a closer look reveals the true nature of the proceeding as one for indirect contempt, the due process requirements of which are strictly provided for under Rule 71 of the Rules of Court. The majority attempts to skirt the issue regarding the

non-observance of due process by insisting that the present case is not an exercise of the Court's contempt powers, but rather is anchored on the Court's disciplinary powers. Whatever designation the majority may find convenient to formally characterize this proceeding, however, the pretext is negated by the disposition in the Resolution of 19 October 2010 itself and its supporting rationale.

The majority directed respondents to **SHOW CAUSE,** within ten (10) days from receipt of a copy of the Resolution, why they should not be disciplined as members of the Bar. Yet the substance therein demonstrates that the present proceeding is one for indirect contempt, particularly in the following portions:

> We made it clear in the case of *In re Kelly* that any publication, pending a suit, reflecting upon the court, the jury, the parties, the officers of the court, the counsel with reference to the suit, or tending to influence the decision of the controversy, **is contempt of court** and is punishable.[5]
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> xxx xxx xxx
>
> Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary.[6]
>
> xxx xxx xxx
>
> The Court could hardly perceive any reasonable purpose for the faculty's less than objective comments except to discredit the April 28, 2010 Decision in the *Vinuya* case and undermine the Court's honesty, integrity and competence in addressing the motion for reconsideration.[7] (Emphasis supplied)

The jurisprudence adverted to by the majority dwell on contempt, foremost of which is *In re Kelly,* one of the first

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[5] From page four of the Resolution dated 19 October 2010.

[6] From page four of the Resolution dated 19 October 2010. The footnote points to a case docketed as A.M. No. 07-09-13-SC.

[7] From page five of the Resolution dated 19 October 2010.

and leading cases discussing contempt. Citing *Ex Parte Terry,* the Supreme Court in that case held that acts punishable as contempt are those "…tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority."[8] Significantly, before he was cited for contempt, Respondent Amzi B. Kelly was first given the opportunity to appear before the Court, submit a written Answer, and present his oral argument.

The footnote citation in Footnote 4 of the 19 October 2010 Resolution, A.M. No. 07-09-13-SC, refers to *"In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007,"* a case for indirect contempt lodged against the publisher of a national daily. In this case, the Court not only gave respondent a chance to explain himself, but also created an Investigating Committee regarding the subject matter of the alleged contemptible act:

> From October 30, 2007 to March 10, 2008, the Investigating Committee held hearings and gathered affidavits and testimonies from the parties concerned.
>
> The Committee invited respondent Macasaet, Dañguilan-Vitug, Delis, and ACA Marquez to a preliminary meeting, in which they were requested to submit their respective affidavits which served as their testimonies on direct examination. They were then later cross-examined on various dates: respondent Macasaet on January 10, 2008, Dañguilan-Vitug on January 17, 2008, Delis on January 24, 2008, and ACA Marquez on January 28, 2008. The Chief of the Security Services and the Cashier of the High Court likewise testified on January 22 and 24, 2008, respectively.[9]

This approach of using jurisprudence on contempt to justify adverse findings against herein respondents is continued in the current Decision. The majority cites the 1935 case *Salcedo v.*

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[8] 35 Phil. 944, 951 (1916).

[9] A.M. No. 07-09-13-SC, 8 August 2008, 561 SCRA 395.

Hernandez[10] which identified the proceedings specifically as contempt, even though the respondent was a member of the bar. The 1949 case of *In Re Vicente Sotto*[11], from which the majority quotes heavily – and which the majority states is "still good law" – is explicitly identified as a proceeding for contempt of court. In *Zaldivar v. Sandiganbayan and Gonzales*, the Court issued a Resolution "to require respondent Gonzales to explain in writing within ten (10) days from notice hereof, why he should not be punished for contempt of court and/or subjected to administrative sanctions…"[12] only after a Motion to Cite in Contempt was filed by the petitioner. Even as the Court discussed its exercise of both its contempt powers and disciplinary powers over the respondent attorney in the said case, it still gave him ample time and opportunity to defend himself by allowing him to file an Omnibus Motion for Extension and Inhibition, a Manifestation with Supplemental Motion to Inhibit, a Motion to Transfer Administrative Proceedings to the Integrated Bar of the Philippines, and an Urgent Motion for Additional Extension of Time to File Explanation *Ex Abundante Cautelam.*

The case of *In Re Almacen*[13], also cited in the current Decision, was in the nature of a contempt proceeding even as it adverted to duties of members of the bar, as can be gleaned from the following:

> So that, in line with the doctrinal rule that the protective mantle of contempt may ordinarily be invoked only against scurrilous remarks or malicious innuendoes while a court mulls over a pending case and not after the conclusion thereof, Atty. Almacen would now seek to sidestep the thrust of a contempt charge by his studied emphasis that the remarks for which he is now called upon to account were made only after this Court had written finis to his appeal.

Atty. Almacen filed with the Court a "Petition to Surrender Lawyer's Certificate of Title," after his clients had lost the

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[10] 61 Phil. 724, G.R. No. 42992, 8 August 1935.

[11] 82 Phil. 595, 21 January 1949.

[12] 248 Phil. 542, 7 October 1988.

[13] G.R. No. L-27654. 18 February 1970, 31 SCRA 562.

right to file an appeal before the Court due to his own inadvertence. And yet, the Court still gave him the "ampliest [sic] latitude" for his defense, giving him an opportunity to file a written explanation and to be heard in oral argument.

All of the above negate the claim that this is not a contempt proceeding but purely an administrative one.

The central argumentation in the Show Cause Order is evidence of the original intent of the proceeding. The allegation and conclusion that the faculty members purportedly "undermine the Court's honesty, integrity, and competence," make it clear that the true nature of the action is one for indirect contempt. The discussion in the Resolution of 19 October 2010 hinged on the tribunal's need for self-preservation and independence, in view of the "institutional attacks" and "outside interference" with its functions – charges which more appropriately fall under its contempt authority, rather than the authority to determine fitness of entering and maintaining membership in the bar.

The Show Cause Order failed to specify which particular mode of contempt was committed by the respondents (as required in the Rules of Court). Its language and tenor also explicitly demonstrated that the guilt of respondents had already been prejudged. Page three (3) of the Order states: "The opening sentence alone is a grim preamble to the institutional attack that lay ahead." Page four (4) makes the conclusion that: "The publication of a statement…was totally unnecessary, uncalled for, and a rash act of misplaced vigilance."

The Order also violated respondents' right to due process because it never afforded them the categorical requirements of notice and hearing. The requirements for Indirect Contempt as laid out in Rule 71 of the Rules of Court demand strict compliance: 1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct, and 2) an opportunity for the person charged to appear and explain his conduct.[14]

[14] *Pacuribot v. Judge Lim, Jr.,* A.M. No. RTJ-97-1382, 17 July 1997.

The essence of a court's contempt powers stems from a much-needed remedy for the violation of lawful court orders and for maintaining decorum during proceedings, as an essential auxiliary to the due administration of justice.[15] It is not an all-encompassing tool to silence criticism. Courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they fulfill.[16] It must be wielded on the preservative, rather than on the vindictive, principle.[17]

So careful is the approach ordinarily taken by the Court in cases of contempt that it places a premium on the conduct of a hearing, to such a point that it administratively sanctioned a lower court judge for issuing a Show Cause Order *sua sponte* and finding the respondent guilty of criminal contempt without the benefit of a hearing. In the case of *Castaños v. Judge Escaño, Jr.*,[18] the Court held:

> It is an oft-repeated rule that the power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the due administration of justice. Judges, however, should exercise their contempt powers judiciously and sparingly, with utmost restraint, and with the end in view of utilizing their contempt powers for correction and preservation, not for retaliation or vindication.
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> It is true that, in the case at bench, respondent judge, after having received a copy of Agapito's affidavit in connection with the petitioner's administrative charges against him, directed Agapito to show cause within three days from notice why he should not be held in contempt of court…but, without the benefit of hearing required in Rule 71, Section 3 of the Rules of Court, respondent judge, in an Order, dated February 22, 1993, sentenced Agapito guilty for contempt of court on account of the allegations he made in his affidavit, dated November

[15] 17 C.J.S. Contempt § 45.

[16] *Heirs of the Late Justice Jose B.L. Reyes v. CA*, G.R. Nos. 135180-81, 16 August 2000, 338 SCRA 282, 299, citing *Yasay, Jr. v. Recto*, 313 SCRA 739 [1999], citing *Dee v. SEC*, 199 SCRA 238 (1991).

[17] *Villavicencio v. Lukban*, 39 Phil. 778; *People v. Alarcon*, 69 Phil. 265.

[18] A.M. No. RTJ-93-955, 12 December 1995.

18, 1992. Such failure to afford Agapito the opportunity to be heard as a matter of due process of law deserves administrative sanction.

In finding Judge Escaño, Jr. guilty of grave abuse of judicial authority, the Court stated:

When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order. After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles. Moreover, witnesses against erring judges cannot come out in the open to help the Judiciary in disrobing its inept members if we allow judges to abuse their judicial discretion, more particularly with respect to the exercise of their contempt powers.

As Justice Carpio Morales finds in her Dissenting Opinion to the Resolution of 19 October 2010, this action of the Court is tainted with injudiciousness precisely because:

"…the Resolution is not what it purports to be. Ostensibly, the Resolution is a show cause order that initiates what would become a newly docketed regular administrative matter. There is more than meets the eye, however. When stripped of its apparent complexion, the Resolution shows its true colors and presents itself as a pronouncement of guilt of indirect contempt without proper recourse left to the parties."[19]

Thus, Justice Carpio Morales reiterates in her Dissenting Opinion to the current Decision her belief that this proceeding is in essence one for indirect contempt:

"Consistent with my dissent from the Court's October 19, 2010 Resolution, I maintain my position that there was no reasonable ground to *motu proprio* initiate the administrative case, in view of (i) the therein discussed injudiciousness attending the Resolution, which

[19] Justice Conchita Carpio Morales, Dissenting Opinion to the Resolution of 19 October 2010, at 2.

was anchored on an irregularly concluded finding of indirect contempt with adverse declarations prematurely describing the subject Statement, that could taint the disciplinary action."

The *power to cite for contempt,* as well as the *power to discipline,* are mechanisms to be exercised solely towards the orderly administration of justice. Such powers must be weighed carefully against the substantive rights of the public to free expression and academic freedom. In this critical balancing act, the tribunal must therefore utilize, to the fullest extent, soundness and clarity of reasoning, and must not appear to have been swayed by momentary fits of temper.

Instead of regarding criticism as perpetually adversarial, the judiciary would do well to respect it, both as an important tool for public accountability, and as the only soothing balm for vindication of felt injustice. Judicial legitimacy established through demonstrated intellectual integrity in decision-making rightly generates public acceptance of such decisions, which makes them truly binding. William Howard Taft, who served as a federal appellate judge before becoming the President of the United States, understood the weight of public evaluation in this wise: "If the law is but the essence of common sense, the protest of many average men may evidence a defect in a judicial conclusion though based on the nicest reasoning and profoundest learning."[20]

We who occupy this august chamber are right not because our word is accorded legal finality on matters that are before us. We are right only when we have been proven right. There must always reside, in the recesses of our minds, the clear distinction between what is merely legal and what is legitimate. Legitimacy is a "tenuous commodity, particularly for unelected judges,"[21] and it can only be maintained by a sustained perception of fairness, as well as by the retention of the moral authority of individual judges. This required characteristic of the Court

[20] William Howard Taft, *Criticisms of the Federal Judiciary*, 29 Am. L. Rev. 641, 642 (1895).

[21] Michael Abramowicz and Thomas Colby, Notice-and-Comment Judicial Decision-Making, 76 U. Chi. L. Rev. 965 (2009) at 983.

is diminished when its members do not act through the rational strength of their decisions, but are instead perceived to have done so in the misunderstanding of the Court's disciplinary powers.

"To maintain not only its stature, but also, more importantly, its independence, the judiciary must adhere to the discipline of judicial decision-making, firmly rooting rulings in the language of the documents in issue, precedent and logic. That is, the strength of the judiciary's independence depends not only on the constitutional framework, but also on the extent to which the judiciary acknowledges its responsibility to decide 'according to law'…"[22]

Furthermore, as one American Federal Supreme Court decision said:

"Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability."[23]

The Code of Judicial Conduct prescribes the standards for a judicial response to free speech which, highly-charged though it may be, is necessarily protected. Rule 3.04 in particular states that: "A judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants." The Supreme Court has itself, on occasion, demanded of lower court judges that they be "dignified in demeanor and refined in speech, [and] exhibit that temperament of utmost sobriety and self-restraint…"[24]

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[22] Thomas Vanaskie, *The Independence and Responsibility of the Federal Judiciary*, 46 Vill. L. Rev. 745.

[23] *Nebraska Press Ass'n. v. Stuart*, 427 U.S. 539, 96 S.Ct. 2791 (1976).

[24] *Dagudag v. Paderanga*, A.M. No. RTJ-06-2017, 19 June 2008, 555 SCRA 217, 235.

Nothing can be gained from the Court's exercise of a heavy hand in a matter which has originated from the Court itself. On the contrary, there is much to lose in imposing penalties on the outspoken merely because the outspoken have earned the ire of the Court's members.

They who seek to judge must first themselves be judged. By occupying an exalted seat in the judiciary, judges in effect undertake to embrace a profession and lead lives that demand stringent ethical norms.[25] In his dealings with the public, a judge must exhibit great self-restraint; he should be the last person to be perceived as a tyrant holding imperious sway over his domain,[26] and must demonstrate to the public that in the discharge of his judicial role, he "possess[es] the virtue of *gravitas*. He should be…dignified in demeanor, refined in speech and virtuous in character…[H]e must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint… a judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason."[27]

In my view of a constitutional democracy, the judiciary is required to demonstrate moral authority and legitimacy, not only legality, at all times. It has often been said that the rule of law requires an independent judiciary that fairly, impartially and promptly applies the law to cases before it. The rule of law requires a judiciary that is not beholden to any political power or private interests, whose only loyalty is to the people and to the Constitution that the people have ordained as their fundamental governing precept. It requires integrity, independence and probity of each individual judge. To be independent, the judiciary must always remember that it will lose public support and in a certain sense, its legitimacy, if it does not demonstrate its integrity in its judicial decisions. It must show a keen nose for the fundamental importance of upholding right over wrong.

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[25] *Ariosa v. Tamin*, A.M. No. RTJ-92-798, 15 November 2000.

[26] *Torcende v. Sardido,* A.M. No. MTJ-99-1238, 24 January 2003.

[27] *Juan de la Cruz v. Carretas,* A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 227-229.

To maintain a life of intellectual integrity, those of us in the judiciary must be buffeted by the winds of healthful criticism. Direct and informed criticism of judicial decisions strengthens accountability. As Taft is noted for writing: "[n]othing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice than the consciousness that every act of theirs is to be subject to the intelligent scrutiny of their fellow men, and to their candid criticism .... In the case of judges having a life tenure, indeed, their very independence makes the right freely to comment on their decisions of greater importance, because it is the only practical and available instrument in the hands of a free people to keep such judges alive to the reasonable demands of those they serve."[28]

This is where academic freedom, when exercised in appropriate measure, is most helpful. Milton encapsulates free speech as simply the right to "argue freely according to conscience."[29] The value of academic freedom, as a necessary constitutional component of the right to freedom of expression, lies in the ability of the common man, aided by the expertise available in the academe, to hold a magistrate accountable in the exercise of his official functions, foremost of which is the issuance of written decisions. Paragraph 23 of the United Nations *Basic Principles on the Role of Lawyers*[30] states:

> Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization…

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[28] *Supra* note 19.

[29] In *Areopagitica*, John Milton's philosophical defense of free speech, cited by Justice Isagani Cruz (Dissenting Opinion), *National Press Club v. COMELEC*, G.R. No. 102653, 5 March 1992, 207 SCRA 1.

[30] Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

The *Basic Principles on the Role of Lawyers* "have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers," and these "should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and legislature, and the public in general." Thus, faced with the duty of balancing lawyers' fundamental right to free speech which has now been expressly recognized in the international arena, against this Court's desire to preserve its exalted role in society by disciplining for offensive language, this Court must examine whether it has already encroached into constitutionally-prohibited interference with the basic rights of individuals.

The realm of public opinion is where the academe, especially our schools and universities, plays a most crucial role in ensuring judicial legitimacy. Not by blindly legitimizing its acts, but by constantly reminding the judiciary of its presence as a helpful but critical ally. The academe is not to be an applause machine for the judiciary; it is to help guide the judiciary by illuminating new paths for the judiciary to take, by alerting the judiciary to its inconsistent decisions, and by identifying gaps in law and jurisprudence.

In this regard, the law school has a special place. Phoebe Haddon writes: "[t]he value and preservation of academic freedom depend on an academic environment that nurtures, not silences, diverse views. The law school faculty has a special responsibility to maintain a nurturing environment for diverse views because of the importance of the marketplace of ideas in our teaching and the value we theoretically place on the role of persuasive discourse in the quest for knowledge. Faculty autonomy takes on significance because it can protect freedom of inquiry."[31] In a certain sense, therefore, because the law faculty can discharge a most meaningful role in keeping the judiciary honest, there must

[31] Phoebe Haddon, Academic Freedom and Governance: A Call for Increased Dialogue and Diversity, 66 Tex. L. Rev. 1561.

be recognition given to the special role of the law faculty in upholding judicial independence.

The testing ground for integrity in judicial decision-making is provided in large measure by the legal academe, when it probes, tests and measures whether judicial decisions rise up to the definition of just and well-reasoned decisions as they have been defined by centuries-old norms of legal reasoning and legal scholarship. If we have a legal academe that is slothful, that is not self-disciplined, that covets the closeness to the powers-that-be which an unprofessional relationship with the judicial leadership can bring, then this refining role of the legal academe is lost. The legal academe is the preserver of the noble standards of legal reasoning and legal scholarship. It must itself demonstrate strength and independence and not be punished when doing so.

Those who occupy the most powerful positions in this country must always be ready to hold themselves accountable to the people. I believe that the tradition of deference to the judiciary has limits to its usefulness and these times do not call for the unbroken observance of such deference as much as they call for a public demonstration of honesty in all its forms.

I dissent from the Majority Decision admonishing Dean Marvic M. V. F. Leonen and issuing a warning to the thirty-five faculty members in connection with the "Restoring Integrity" Statement. I find the Common Compliance of the thirty-five faculty members, dated 18 November 2010, as well as the Compliance submitted by Professor Rosa Maria T. Juan Bautista on 18 November 2010 and by Professor Raul Vasquez on 19 November 2010, to be satisfactory. I also find the separate Compliance of Dean Leonen dated 18 November 2010 and of Professor Owen J. Lynch dated 19 November 2010 similarly satisfactory, and vote to consider this matter closed and terminated.

EN BANC

[G.R. No. 157838. March 8, 2011]

CANDELARIO L. VERZOSA, JR. (in his former capacity as Executive Director of the Cooperative Development Authority), *petitioner, vs.* **GUILLERMO N. CARAGUE (in his official capacity as Chairman of the COMMISSION ON AUDIT), RAUL C. FLORES, CELSO D. GANGAN, SOFRONIO B. URSAL and COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; NOT THE PROPER REMEDY IN CASE AT BAR.— Petitioner availed of the wrong remedy in filing a petition for review under Rule 45. Article IX-A, Section 7 of the Constitution provides that decisions, orders or rulings of the Commission on Audit may be brought to the Supreme Court on *certiorari* by the aggrieved party. Moreover, under Section 2, Rule 64, of the Revised Rules of Civil Procedure, a judgment or final order or resolution of the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65. Moreover, on the merits, the petition lacks merit.

2. POLITICAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); COA CIRCULAR NO. 85-55-A DATED SEPTEMBER 8, 1985; PROMULGATED PURSUANT TO ARTICLE IX-D, SECTION 2(2) OF THE 1987 CONSTITUTION FOR THE PREVENTION AND DISALLOWANCE OF IRREGULAR, UNNECESSARY, EXCESSIVE, EXTRAVAGANT OR UNCONSCIONABLE EXPENDITURES, OR USES OF FUNDS AND PROPERTIES.— Pursuant to its constitutional mandate to "promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties," the COA promulgated

the amended Rules under COA Circular No. 85-55-A dated September 8, 1985. With respect to excessive expenditures, these shall be determined by place and origin of goods, volume or quantity of purchase, service warranties, quality, special features of units purchased and the like.

3. ID.; ID.; ID.; ID.; ID.; WHEN IS PRICE CONSIDERED "EXCESSIVE"; FACTORS TO BE CONSIDERED IN DETERMINING WHETHER OR NOT THE PRICE IS EXCESSIVE.— *Price* is considered "excessive" if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor. In determining whether or not the price is excessive, the following factors may be considered: A - Supply and demand forces in the market. Ex. - Where there is a supply shortage of a particular product, such as cement or GI sheets, prices of these products may vary within a day. B - Government Price Quotations C - Warranty of Products or Special Features. The price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award. D - Brand of Products. Products of recognized brand coming from countries known for producing such quality products are relatively expensive. Ex. - Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

4. ID.; ID.; ID.; ID.; ID.; THE CONDUCT OF PUBLIC BIDDING IN CASE AT BAR WAS NOT MADE OBJECTIVELY WITH THE END IN VIEW OF PURCHASING QUALITY EQUIPMENT AT THE LEAST COST TO THE GOVERNMENT; THE PRICE DIFFERENCE ALSO EXCEEDED THE 10% ALLOWABLE VARIANCE IN THE UNIT BOUGHT AND THE SAME ITEM'S PRICE.— Based on the findings and observations supported by documentary evidence, respondents concluded that contrary to CDA's claims, the difference in brands, microprocessors, BIOSes, as well as casings will not affect the efficiency of the computers' performance. Clearly, the conduct of public bidding in this case was not made objectively with the end in view of purchasing quality equipment at the least cost to the government. The price difference far exceeded the 10% allowable

variance in the unit bought and the same item's price, as shown by the report submitted to the TSO Director.

5. ID.; ID.; ID.; ID.; ID.; "EXCESSIVE EXPENDITURES" UNDER COA CIRCULAR NO. 85-55-A COVERED CASES OF OVERPRICING OF PURCHASES, CHARACTERIZED BY GROSSLY EXAGGERATED OR INFLATED QUOTATIONS IN EXCESS OF THE CURRENT AND PREVAILING MARKET PRICE BY A 10% VARIANCE FROM THE PURCHASED ITEM.— As to petitioner's objection regarding the non-presentation of actual canvass sheets used by the auditor, the same is immaterial, considering the disparity in the prices of the computers paid by CDA to Tetra and offered by the lowest bidder, Microcircuits. The TSO report, prepared by personnel having the knowledge and expertise on computer equipment, supplied the auditor with reliable field data on which the auditor based her final computation."Excessive expenditures" under COA Circular No. 85-55-A covered cases of "[o]verpricing of purchases, characterized by grossly exaggerated or inflated quotations, in excess of the current and prevailing market price by a 10% variance from the purchased item." The telephone canvass initially done by the resident auditor was merely confirmatory of the overpricing based on similar specifications and features as indicated in the TSO report.

6. ID.; ID.; ID.; ID.; ID.; NO ARBITRARINESS OR GRAVE ABUSE ON THE PART OF THE COMMISSION ON AUDIT IN DISALLOWING IN AUDIT THE AMOUNT REPRESENTING THE OVERPRICE IN PAYMENT FOR THE PURCHASED COMPUTER UNITS AND PERIPHERALS.— Findings of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence. It is only upon a clear showing that the COA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction that this Court will set aside its decisions or final orders. We find no such arbitrariness or grave abuse on the part of the COA when it disallowed in audit the amount representing the overprice in the payment by CDA for the purchased computer units and peripherals, its findings are well-supported by the evidence on record.

7. ID.; ID.; ID.; ID.; ID.; PETITIONER IS PERSONALLY AND SOLIDARILY LIABLE FOR THE DISALLOWED AMOUNT; PETITIONER ACTED IN BAD FAITH WHEN HE PREVAILED UPON THE DAP-TEC TO MODIFY THE INITIAL RESULT OF THE TECHNICAL EVALUATION OF THE COMPUTERS BY IMPOSING AN IRRELEVANT GRADING SYSTEM THAT WAS INTENDED TO FAVOR ONE OF THE BIDDERS, AFTER THE BIDS ARE OPEN.— With respect to the liability of petitioner, we likewise affirm the COA's ruling that he is personally and solidarily liable for the disallowed amount. The doctrine of separate personality of a corporation finds no application because CDA is not a private entity but a government agency created by virtue of Republic Act No. 6939 in compliance with the provisions of Section 15, Article XII of the 1987 Constitution. Moreover, respondents satisfactorily established that petitioner acted in bad faith when he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an irrelevant grading system that was intended to favor one of the bidders, after the bids had been opened. Section 103 of Presidential Decree No. 1445 (Government Auditing Code of the Philippines) provides: SECTION 103. *General liability for unlawful expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor**. Further, Section 19 of the Manual on Certificate of Settlement and Balances under COA Circular No. 94-001 dated January 20, 1994 provides: 19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: a) the nature of the disallowance; b) the duties, responsibilities or obligations of the officers/persons concerned; c) the extent of their participation or involvement in the disallowed transaction; and d) the amount of losses or damages suffered by the government thereby.

8. ID.; ID.; ID.; ID.; ID.; THE CONTINUED SERVICEABILITY OF THE PURCHASED COMPUTERS IS NOT A FACTOR IN THE DETERMINATION OF WHETHER THE PRICE PAID BY THE GOVERNMENT WAS UNREASONABLE OR EXCESSIVE; THE DAMAGE OR INJURY TO THE GOVERNMENT REFERS PRIMARILY TO AMOUNT EXCEEDING THE ALLOWABLE VARIANCE IN THE PRICE PAID FOR THE ITEM

PURCHASED UNDER A TRANSACTION WHICH IS NOT THE MOST ADVANTAGEOUS TO THE GOVERNMENT.— The continued serviceability of the purchased computers is not a factor in the determination of whether the price paid by the government was unreasonable or excessive. The damage or injury caused to the government refers primarily to the amount exceeding the allowable variance in the price paid for the item purchased under a transaction which is not the most advantageous to the government. In this case, it was clearly shown that CDA could have purchased the same quality computers with similar technical specifications at much lower cost and the result of technical evaluation was manipulated to favor one bidder, for which the COA found the petitioner to be directly responsible.

SERENO, *J., dissenting opinion:*

1. POLITICAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); FIVE REASONS WHY THE PETITION SHOULD HAVE BEEN GRANTED BY THE COURT.— The Petition should have been granted for five reasons. First, the Commission on Audit (COA) cannot violate the same rules it imposes on all public offices regarding the manner of conducting canvasses. These rules essentially require that written canvasses be made of the same item from at least three suppliers, using the proper canvass forms. The COA itself cannot violate these rules by disallowing purchases merely on the basis of an alleged overpricing. The base price identified by the COA was made only on the basis of an alleged undocumented telephone price canvass by a COA auditor. The COA likewise based its findings on a report of the Technical Services Office (TSO), which compared the equipment with that of only one supplier and only one brand of computer. The latter brand, Genesis, which produces inferior computer clones, is significantly different from Trigem – a well-known Korean brand – which produced the computers purchased by the Cooperative Development Agency (CDA). Neither was the Genesis clone one of the brands subjected to technical evaluation testing. Second, the COA auditor, who admitted that she is not a computer technology expert, cannot substitute her own discretion for that of the CDA by denying the CDA's right to prefer the following as the required specifications for

the computers CDA intended to purchase for its own use: (a) Intel microprocessor chips over any other kind of chips, including those manufactured by AMD; (b) ROM BIOS licensed by IBM, AMI, Phoenix or Awards over that of AcerBios; (c) tower casings over desktop casings; and (d) 2 megabytes over 640 kilobytes of Random Access Memory (RAM). Third, the amount of disallowance has no basis in fact, is grossly disproportionate to the total purchase price, and is in the nature of punitive damages. Not only was a mere telephone canvass conducted, there was absolutely no basis in fact for the belief that a volume discount at an arbitrary amount determined solely by the COA auditor would have been granted by the supplier. This was a mere conjecture by the COA auditor. Fourth, this Court relies on the allegation that there were instances of manipulation during the bidding process. However, the records show that this allegation was belatedly raised by respondents. It was only in respondents' Comment filed on 19 March 2004 before this Court that they raised the allegation. The COA Decision under question was dated 21 October 1998 and this Decision did not make any finding on this score, inasmuch as this issue was not raised before the Commission. Petitioner was not afforded due process to rebut these allegations while the case was still pending with respondent COA. Also, the documents on record do not support this allegation. Fifth, there is no legal basis to make the CDA Executive Director personally liable for the return of the disallowance. He has demonstrated that his act of signing the purchase documents was only ministerial, as the Pre-qualification Bids and Awards Committee (PBAC) and the Board of Administrators (BOA) acted on them. There is a clear, bright line that the Commission on Audit must not cross. The powers that the 1987 Constitution granted it are only to "define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance or irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." This does not include the substitution of preference of government agencies. Nor does this allow COA to trample on the due process rights of government auditees.

2. ID.; ID.; ID.; ID.; BASIC PRINCIPLES IN GOVERNMENT PROCUREMENT ARE THREATENED BY COMMISSION ON AUDIT'S INSISTENT INTERFERENCE AND ENCROACHMENT; IN HOLDING PETITIONER LIABLE FOR THE ALLEGED EXCESSIVE EXPENDITURE, WE ARE INTRODUCING DANGEROUS PRECEDENTS IN ADMINISTRATIVE PROCEDURES WITH REGARD TO BIDDING AND AUDIT.— In the case at bar, we are faced with a situation where basic principles in government procurement are threatened by COA's insistent interference and encroachment. In holding petitioner liable for the alleged excessive expenditure, we are introducing dangerous precedents in administrative procedures with regard to bidding and audit. First, the bidding process is rendered inutile if we hold that government agencies should always award purchase contracts in favor of the lowest bidder; or even worse, that they should simply purchase equipment from the suppliers offering the lowest prices, regardless of brand or quality. Second, the discretionary power of government agencies to determine criteria and the features of equipment or supplies becomes irrelevant; because, third, COA's preference in determining the criteria and the features or characteristics of the equipment or supplies is held as superior to that of any other government agency.

3. ID.; ID.; ID.; ID.; THE STATE AUDITOR DID NOT CONDUCT ANY ACTUAL CANVASS TO DETERMINE THE REASONABLENESS OF THE PRICE BUT A MERE TELEPHONE CANVASS WHICH IS CONTRARY TO THE PREVAILING RULES AND JURISPRUDENCE AT THAT TIME.— State Auditor Luzviminda Rubico admitted in her 1st Indorsement dated 6 June 1994 that **she did not conduct any actual canvass to determine the reasonableness of the price**. Instead, she conducted a mere telephone canvass. Her failure to do so was contrary to the prevailing rules and jurisprudence at that time. It is likewise inaccurate to say that since petitioner did not demand the canvass sheets, *Arriola* is inapplicable to the case at bar. Petitioner, from the very start, refused to acknowledge the validity of the PED-TSO price evaluation report, claiming that the comparison was between "apples and oranges." Petitioner demanded that respondents instead conduct a price comparison between the same items in the open market, or at the very least, "compare the acquired computer equipment and

peripherals with the same modes of other branded computers." By so doing, petitioner would have been fully apprised of the charge against him and the other CDA officials.

4. ID.; ID.; ID.; ID.; COA RESOLUTION NO. 90-43 WHICH MANDATED THE PRICE EVALUATION DIVISION, TECHNICAL SERVICES OFFICE (PED-TSO) TO BE TRANSPARENT WITH REGARD TO THE SOURCES OF THE REFERENCE VALUES WAS NOT COMPLIED WITH.— It bears emphasizing that, in the Summary of Price Data and Feedback Form on which respondents base their allegations, the officer-in-charge (OIC) of the PED-TSO of respondent COA disclosed that **the other items were based only on one or two pieces of valid price information, instead of three as required. However, it did not disclose the source of the reference values or base prices. In fact, the OIC of the PED-TSO clearly stated that some pieces of equipment used for comparison had no data available.** This was clearly contrary to Resolution No. 90-43 on PED-TSO's mandate to be transparent with regard to the sources of the reference values. Respondents cannot sanction a person for an act or omission when they did not even bother to follow the standards they themselves established as well as those that have been established by this Court. Unfortunately, respondent COA merely relied on the report of the auditor. The auditor did not see, hold, or examine the equipment. Even the PED-TSO report that she relied on was incomplete, as will be explained more in detail later.

5. ID.; ID.; ID.; ID.; RESPONDENTS FAILED TO APPLY *ARRIOLA V. COURT OF APPEALS*; IT IS MORE REGRETTABLE THAT, IN CASE AT BAR, THE COURT HAS LOWERED THE STANDARDS FOR DUE PROCESS IT PAINSTAKINGLY ESTABLISHED IN ARRIOLA.— It is also imperative to note that, acting on the Court's ruling in *Arriola*, on 31 March 1997, respondent COA issued Memorandum No. 97-012 which provides the guidelines for securing the evidence to support audit findings of overpricing. The COA memorandum cited this particular portion in *Arriola*: **Price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowances** of agency disbursements for government projects. It also cited *National Center for Mental Health Management v. COA*, to wit: **It would be difficult to concede to**

the quoted summary of overpricing made by the Technical Audit Analyst to be a final basis for an out-and-out rejection of agency disbursements/cost estimates in the absence of actual canvass sheets and/or price quotations from identified suppliers. In order to further clarify the role and status of price reference data in the audit evidence process, respondent COA also issued the following guidelines to determine whether there is overpricing. The guidelines state: 3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa. 2.1. above **have to be supported with canvass sheets and/or price quotations indicating: a) the identities/names of the suppliers or sellers; b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; c) the specifications of the items which should match those involved in the finding of over-pricing; and d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction. In the assignment of the liability for the disallowed overprice, the auditor shall carefully study the procedures followed in processing the questioned transactions and determine those officials/employees who had direct participation in the fixing of the price/prices of the questioned transaction.** Officials/employees, whose signatures or initials may appear on the vouchers and/or transactions documents, who are determined to have had no participation in the fixing of the price shall not be included among those to be held liable for the disallowance. When respondent COA decided this case on 21 October 1998, these guidelines were already in force. **This Court had already established the standards in *Arriola*.** Thus, respondent COA should have, at the very least, ordered the auditor to present the documents enumerated in these guidelines. It should have made sure that the due process standards laid down in *Arriola* were followed. In *Nava v. Palattao*, we held that *Arriola* and Memorandum No. 97-012 were not applicable because *Arriola* was promulgated and these regulations were issued after the audit in *Nava* was conducted. *Nava*, however, is fundamentally different from the present case in two respects. First, at the time the audit in the present case was conducted, *Arriola* was already promulgated and respondent, being a party to the case, was already aware of the standards established in that case. Second, in *Nava*, the COA presented evidence proving beyond reasonable doubt that the accused in that case violated

the Anti-Graft and Corrupt Practices Act in the purchase of laboratory tools and devices. Unfortunately, respondents failed to apply *Arriola*. It is even more regrettable that, in the case at bar, this Court has lowered the standards for due process it painstakingly established in *Arriola.*

6. ID.; ID.; ID.; ID.; RESPONDENTS VIOLATED PETITIONER'S RIGHT TO DUE PROCESS WHEN THEY COMPARED THE EQUIPMENT PURCHASED WITH THAT OF A DIFFERENT BRAND HAVING DIFFERENT FEATURES AND FUNCTIONS.— Respondents violated petitioner's right to due process when they compared the equipment purchased with that of a different brand having different features and functions. In *Arriola*, we held that there should have been a specific comparison between the pump purchased and the pump the TSO based its price findings from. We stated that it was not sufficient to compare the purchased item, a "Goulds Submersible pump model 25 EL 30432, 3 HP, 230 V., coupled to Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz. 3450 RPM" to a mere "Goulds submersible pump." Thus, following *Arriola*, the "same item" referred to in COA Circular No. 85-55-A should therefore mean as the item having specifically the same brand with the same features and specifications with that item purchased. In the case at bar, the price of the Tetra computers was compared with that of Genesis computers; the price of the Magtek uninterrupted power system was compared with that of APC, Admate and PK. These comparisons were in violation of COA Circular No. 85-55-A. As earlier discussed, a comparison should be made between the ***same items*** available in the market. Genesis computer clones are inferior to Tetra Trigem computers, which are branded Korean equipment; expectedly, Genesis would be priced differently. It does not take an expert to say that branded computers are superior to generic clones. As pointed out by petitioner – which was not refuted by respondents – Genesis was a non-branded computer which was incomparable to a branded product such as Trigem. Not only was it a different brand, but it also had different specifications and features. These items were not the same as those that were actually bought, but, instead, were *alternatives*.

7. ID.; ID.; ID.; ID.; NO BASIS FOR RESPONDENT COA'S FINDINGS THAT GENESIS AND TRIGEM WERE OF THE SAME CHARACTERISTICS AND ATTRIBUTES ASIDE FROM

THE FACT THAT NO ACTUAL CANVASS WAS MADE IT ALSO APPEARS THAT NO VALID COMPARISON WAS MADE.— I also wish to emphasize the inaccuracy of Auditor Rubico's reports dated 17 and 23 November 1995, respectively, from which respondents base their Comment. Auditor Rubico stated that the TSO determined that both computers were of the same characteristics and attributes. A cursory reading of the report immediately reveals that, contrary to the auditor's report, the PED-TSO disclosed that it lacked necessary information when it conducted the comparison. The only other comparison conducted by respondent COA was by Director Marieta Acorda of the Information Technology Center of COA, where she compared Trigem computers with the computers of Columbia and Microcircuits. She did not compare Trigem with Genesis. In her report, as will be discussed more in detail later, Director Acorda stated that the functions of the specific features – microprocessors, BIOSes and casings – of the three bidders did not affect the performance of the computer, except for the RAM capacity. This was therefore an irrelevant comparison to conclude that the Trigem computers should have been priced at those of Genesis; when it was not the brands being compared by Director Acorda. Therefore, there is no basis for respondent COA's finding that Genesis and Trigem were of the same characteristics and attributes. It is therefore clear that respondents' basis for holding petitioner liable is unsubstantiated and based on mere speculations and conjecture. First, no actual canvass was made; and second, it appears that **no valid comparison was conducted either**.

8. ID.; ID.; ID.; ID.; RESPONDENT COA SUBSTITUTED ITS OWN JUDGMENT FOR THAT OF THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA) WITHOUT LEGAL AUTHORITY TO DO SO AND WITHOUT ANY LEGAL OR FACTUAL BASIS FOR ITS CONCLUSIONS THAT ITS JUDGMENTS IN MATTERS OF PREFERENCE WAS SUPERIOR TO THAT OF THE CDA.— In applying *Arriola* to the case at bar, we should hold that respondents violated petitioner's due process when they failed (1) to conduct an actual canvass in the market; (2) to present canvass sheets or price quotations; (3) to disclose the source of the reference values or base prices; and (4) to compare the questioned equipment specifically to the same items – a situation even worse

than that in *Arriola*, where at least COA compared items of the same brand but with different specifications; and where while no canvass sheets or price quotations were produced, actual written canvass was apparently conducted. It is likewise unfair to compare Tetra's proposed Trigem computers to a computer clone that was not even qualified to be bidded on or was not subjected to the same hardware benchmark testing. That the brands should not have mattered is wrongly maintained by both Director Acorda and by State Auditor Rubico (in the first Indorsement dated 6 June 1994). This assertion of course violates COA's own basic rules on investigations of allegations of irregularities in government purchases. Respondent COA substituted its own judgment for that of CDA without legal authority to do so and without any legal or factual basis for its conclusions that its judgment in matters of preference was superior to that of CDA. Even if it were to be proven that its judgments or preferences were superior to those of CDA, the fundamental problem remains that it does not have the authority to substitute the judgment of the audited agency with those of its own. It can only audit purchases, not prescribe what are to be purchased.

9. ID.; ID.; ID.; ID.; THE POWERS OF THE COA UNDER THE 1987 CONSTITUTION DO NOT INCLUDE THE POWER TO SUBSTITUTE ITS OWN PREFERENCE OVER THAT OF A GOVERNMENT AGENCY, OR TO DICTATE WHICH EQUIPMENT IS BETTER OR MORE APPROPRIATE WITHOUT FOLLOWING THE REQUIREMENTS OF DUE PROCESS.— There was a denial of due process when respondents imposed their own judgment and discretion on the PBAC. If we were to analyze the case carefully, respondents actually attacked the discretion of the PBAC and the Board of Administrators (BOA) – not that of petitioner – in setting the criteria and approving the purchase of the equipment. The 1987 Constitution provides that the powers of COA include the power to "promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." These powers, however, do not include the power to substitute its own preference over that of a government agency; or to dictate which equipment is better or more appropriate without

following the requirements of due process. To recall, the records are replete with documents from respondents alleging that there was overpricing. CDA allegedly bought the equipment when there were *cheaper alternatives* in the market. Respondents insist that, as long as the equipment had the same basic functions, brand should not matter. These alternatives did not necessarily possess the same functions or features identified by the PBAC; nevertheless, these alternatives were more acceptable to respondents. In short, they wanted to substitute their own judgment for that of the CDA officials, **without even verifying with the CDA officials the purposes or uses of the equipment or of each specification required**.

10. ID.; ID.; ID.; IF RESPONDENTS INSIST THAT PETITIONER AND THE OTHER CDA OFFICIALS SHOULD HAVE PURCHASED THE CHEAPER ALTERNATIVES, THEN THEY SHOULD HAVE CHARGED THE CDA OFFICIALS FOR "UNNECESSARY" OR "EXTRAVAGANT" EXPENDITURES UNDER COA CIRCULAR NO.85-55-A, RATHER THAN "EXCESSIVE" EXPENDITURES.— If respondents insist that petitioner and the other CDA officials should have purchased the cheaper alternatives, then they should have charged the CDA officials for "unnecessary" or "extravagant" expenditures under COA Circular No. 85-55-A, rather than "excessive" expenditures, to wit: "UNNECESSARY" EXPENDITURES Definition: The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. **Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation**. **This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time**. An **expenditure that is not essential or that which can be dispensed with** without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining in whether or not an expenditure is necessary. x x x "EXTRAVAGANT" EXPENDITURES Definition: The term "extravagant expenditure" signifies those **incurred without restraint, judiciousness and economy**. Extravagant expenditures exceed the bounds of

propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious. Respondent then would have proceeded with the case, going into the wisdom and reasonableness of the criteria and the functions of the equipment bought *vis-à-vis* the needs of the CDA. To reiterate, in the case at bar, respondents did not even go into CDA's purpose for the equipment bought. Therefore, absent an undertaking of the proper process and, consequently, a finding that the criteria and standards were established with grave abuse of discretion, respondents cannot question the wisdom of petitioner and the other CDA officials with regard to the standards and criteria set. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.

11. ID.; ID.; ID.; ID.; PETITIONER ENJOYS THE PRESUMPTION OF REGULARITY; AN ALLEGATION OF MANIPULATION MUST BE ACCOMPANIED BY SUBSTANTIAL EVIDENCE BEFORE RESPONDENTS CAN CONCLUDE BAD FAITH ATTENDED THE TRANSACTION.— After judiciously poring over the records, I find that the allegations of auditor Rubico **are unsubstantiated**. Respondents did not attach the so-called "First and Impartial Result." What they attached was the DAP-TEC technician's 23 November 1995 letter, which was issued upon the request of Abraham Rodriguez, allegedly a COA representative to the CDA, but **which does not support the report of auditor Rubico**. The letter states: "After compiling, tabulating and interpreting the test results, our office communicated to CDA our findings as evidenced by letter and attachments labeled as '**1st result**'. "A day or two after submitting our findings, Mr. Evangelista came to our office and directed us to include in our report penalties for any deviation from the hardware specifications, providing us with penalty points to be followed and imposed. Mr. Evangelista, also, directed us to specify in our report the name of the winning supplier, which we did, per our letter & attachment labeled as '**2nd result**'." Notably, the DAP-TEC technician merely stated that Mr. Evangelista provided

them with guidelines for penalty points. The technician did not say that Mr. Evangelista instructed them to indicate Tetra as the winner. He only instructed DAP-TEC to indicate which bidder won the technical evaluation. Thus, there was nothing in the letter that conclusively showed that Mr. Evangelista had gone to DAP-TEC under the instructions of petitioner, specifically to manipulate the results. Again, respondents did not investigate the matter. They did not even ask why CDA imposed 'penalty points' or why CDA required those specifications. They merely took the report of auditor Rubico as the absolute truth, without verifying its content. The documents attached as evidence for our review is bereft of any indication that there was manipulation involved. It is a basic tenet in the observance of administrative due process that the tribunal or any of its judges must act on its own independent consideration of law and facts of the controversy, and not simply accept the views of the subordinate. In the case at bar, respondents erroneously relied solely on the Indorsement of auditor Rubico for the disallowance despite the absence of substantial evidence to support the claim. Petitioner enjoys the presumption of regularity. An allegation of manipulation must be accompanied by substantial evidence before respondents can conclude that bad faith attended the transaction.

12. ID.; ID.; ID.; ID.; RESPONDENT'S ALLEGATION THAT THE BIDDING PROCESS WAS TAINTED WITH IRREGULARITY WAS BELATEDLY RAISED.— More egregiously, **respondents' allegation that the bidding process was tainted with irregularity was belatedly raised**. It was only in respondents' Comment before this Court dated 12 March 2004 that the allegation was made. Even if auditor Rubico's report cited above was dated 23 November 1995, the Decision dated 21 October 1998 did not discuss the issue of whether the bidding process was properly conducted. Neither did it state that the disallowance was upheld on the basis of the alleged manipulation. Respondents are therefore estopped from raising that matter very late in the day. Petitioner was only informed of the manipulation issue for the first time through respondents' Comment filed in 2004. It is again violative of petitioner's due process when respondents now come before us, insisting that the disallowance was based on the alleged manipulation, when it was never found to be so by respondent COA in its Decision in 1998. Thus, the reliance of

this Court on respondents' belated allegation is clearly unwarranted.

13. ID.; ID.; ID.; ID.; ALLEGATION OF OVERPRICING ON THE TOTAL AMOUNT PAID FOR THE PURCHASES IS MISLEADING.— In disposing of the issues of this case, the *ponencia* likewise relied on the doctrine that states that findings of quasi-judicial agencies are to be given great respect. However, this doctrine cannot be applied to the present case. To reiterate, COA Commissioner Dalman dissented from the 13 March 2003 COA Resolution. In addition, when this Court required public respondents to comment on the Petition, the Office of the Solicitor General (OSG) submitted a Manifestation and Motion in lieu of Comment. The OSG informed us that it "**is constrained to adopt a position adverse to the Commission on Audit**." In my opinion, these instances were red flags that should have warned us to look into the findings of respondent COA more carefully. While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but are contradicted by the evidence on record.

14. ID.; ID.; ID.; ID.; NO LEGAL BASES TO MAKE PETITIONER PERSONALLY LIABLE FOR THE DISALLOWANCE; PETITIONER WAS EXERCISING MINISTERIAL FUNCTIONS WITH REGARD TO THE WHOLE PROCESS, THE DISCRETION WITH REGARD TO THE PURCHASE OF THE EQUIPMENT CLEARLY RESTED ON THE PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE (PBAC) AND THE BOARD OF ADMINISTRATORS (BOA).— Lastly, as a public official, petitioner is assumed to have performed his functions regularly. The burden to prove otherwise rests on respondents. In the case at bar, not only did respondents fail to substantiate their allegations; worse, they violated petitioner's right to due process. There is no legal basis to make him personally liable for the disallowance. It was clear that the PBAC was primarily responsible for the formulation of rules and guidelines on the conduct of the public bidding. It was also responsible for the criteria for pre-qualifying

prospective bidders and for determining whether the documents submitted are in accordance with the required checklist of requirements. Finally, it was the body that recommends to the Board of Administrators (BOA) the winner of the bid, according to its own evaluation. The BOA, meanwhile, was the body that gave the final approval for the purchase of the equipment. It is presumed that petitioner, PBAC, BOA and even DAP-TEC were acting independently of each other. Each had their respective powers and functions. Respondents failed to rebut this presumption. Even if it were true that there were instances of manipulation in the bidding process when a certain Rey Evangelista allegedly ordered the DAP-TEC to fix the results of the technical evaluation, it was likewise not conclusively shown that he was acting under the orders of petitioner. Mr. Evangelista was never proved to be directly connected or related to petitioner; instead, the auditor alleged that Mr. Evangelista was the staff of Edwin Canonizado, who is the PBAC chair. Thus, to allege that petitioner had a role in the so-called manipulation of the bidding process, respondents carry the burden of substantially proving this to be true. The mere fact that petitioner was the one who reconstituted the PBAC or that he was the one who contracted the services of DAP-TEC does not conclusively show that he was directly involved in the alleged manipulation. Respondents likewise carry the burden of showing that they followed the proper procedure of assailing bidding procedures. However, respondents miserably failed in both respects. What is more apparent is that petitioner was merely exercising ministerial functions with regard to the whole process. The discretion with regard to the purchase of the equipment clearly rested on the PBAC and the BOA. Thus, absent any evidence showing that petitioner had any direct participation in the alleged fixing of the price, or that he exerted undue influence over the PBAC and BOA, he should not have been made liable under the circumstances. This opinion likewise applies to the other CDA officials who were made solidarily liable with petitioner by public respondents.

15. REMEDIAL LAW; EVIDENCE; RULE ACCORDING GREAT RESPECT TO FINDINGS OF QUASI-JUDICIAL AGENCIES IS NOT APPLICABLE IN CASE AT BAR.— I also note that respondents erroneously based the allegation of overpricing on the total amount paid for the purchases. Thus, in their

Comment, respondents alleged: "...Foregoing premises considered it can be safely asserted that the computers of TETRA and Microcircuits were of the same quality and therefore, the only basis left in determining the winning bid was the price/ cost of the computers, which to repeat, Microcircuits offered at a much lower price of ₱123,315.00, that is half the price of ₱2,285,279.00 of TETRA's computers." In addition, respondents claimed, "...Among the three bidders, TETRA offered the highest bid price quotation of ₱2,269,630 while Microcircuit ₱1,123,315.00 and Columbia – ₱1,177,600.00 despite the reported inferior quality of TETRA's products..." **These allegations are misleading. It is false to say that Microcircuits offered half the price of Tetra. The Tetra bid quoted above represents the initial order plus the purchase of the additional 21 computers. The price difference between Tetra and Microcircuits based on the original bid only amounted to ₱146,305. This false allegation puts into question respondents' appreciation of the facts, especially considering that they merely quoted auditor Rubico's report, without providing this Court with supporting evidence on the record.**

APPEARANCES OF COUNSEL

Carlos Voltaire M. Verzosa for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

The present petition for review on *certiorari* assails the Decision Nos. 98-424[1] and 2003-061[2] dated October 21, 1998 and March 18, 2003, respectively, of the Commission on Audit (COA) affirming the Notice of Disallowance No. 93-0016-101 dated November 17, 1993 and the corresponding CSB No. 94-001-101 dated January 10, 1994.

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[1] *Rollo*, pp. 50-52.

[2] *Id.* at 61-63.

The facts are:

On two separate occasions in December 1992, the Cooperative Development Authority (CDA) purchased from Tetra Corporation (Tetra) a total of forty-six (46) units of computer equipment and peripherals in the total amount of ₱2,285,279.00. Tetra was chosen from among three qualified bidders (Tetra, Microcircuits and Columbia). In the technical evaluation of the units to be supplied by the qualified bidders, CDA engaged the services of the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC). The bidding was conducted in accordance with the Approved Guidelines and Procedures of Public Bidding for Information Technology (IT) Resources and Memorandum Order No. 237 issued by the Office of the President. Petitioner who was then the Executive Director of the CDA approved the purchase.

On May 18, 1993, the Resident Auditor sought the assistance of the Technical Services Office (TSO), COA in the determination of the reasonableness of the prices of the purchased computers.[3] In its reply-letter dated October 18, 1993, the TSO found that the purchased computers were overpriced/excessive by a total of ₱881,819.00. It was noted that (1) no volume discount was given by the supplier, considering the number of units sold; (2) as early as 1992, there were so much supply of computers in the market so that the prices of computers were relatively low already; and (3) when CDA first offered to buy computers, of the three qualified bidders, Microcircuits offered the lowest bid of ₱1,123,315.00 while Tetra offered the highest bid of ₱1,269,630.00.[4] The Resident Auditor issued Notice of Disallowance No. 93-0016-101 dated November 17, 1993, for the amount of ₱881,819.00.[5]

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[3] COA Records.

[4] *Id.,* I[st] Indorsement dated June 6, 1994.

[5] *Rollo,* pp. 165-169.

In a letter[6] dated May 13, 1994, CDA Chairman Edna E. Aberilla appealed for reconsideration of the disallowance to COA Chairman Celso D. Gangan, submitting the following justifications:

> [1.] The basis of comparison (*Genesis vs. Trigem computers and ferro-resonant type UPS vs. ordinary UPS*) is erroneous, as it is like comparing apples to oranges. x x x Genesis, a non-branded computer, is incomparable to Trigem, a branded computer in the same manner as the MAGTEK-UPS, a ferro-resonant type of UPS, should not be compared with APC-1000W, ADMATE 1000W and PK 1000W, which are all ordinary types of UPS.
>
> x x x It would have been more appropriate, therefore, to compare the acquired computer equipment and peripherals with the same models of other branded computers.
>
> [2.] The technical specifications and other added features were given due weight. x x x [T]he criteria for determining the winning bidder is as follows:
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> | | |
> |---|---|
> | Cost/price | 50% |
> | Technical Specifications | 30% |
> | Support Services | 20% |
>
> [3.] The same technical specifications and special features explained the advantages of the acquired computer equipment and peripherals with those that are being compared with. With regards to our branded computer, the advantages include the following:
>
> [a.] Original and Licensed Copy of its Disk Operating System specifically MS-DOS Ver 5.0.
>
> [b.] Original and Licensed Operating System Diskettes and its Manuals.
>
> xxx xxx xxx
>
> [c.] User's Manual and Installation Guide x x x
>
> [d.] Computers offered should run PROGRESS Application Development System as indicated in the Bid

[6] *Id.* at 73, 170.

Document x x x because the developing system for the establishment of the agency's Management Information System (MIS) is based on PROGRESS Application Software.

[e.] Legal Bios/License Agreement for the particular brand of computers offered to CDA. x x x

With these features, the agency is assured that the computers were acquired through a legitimate process (not smuggled/"pirated"), thereby, upholding the agency's respect for Intellectual Property Law or P.D. No. 49.

With regard to the UPS, x x x it is a ferro-resonant type x x x [which has] advantages to ensure greater reliability and will enable users to operate without interruption.

[4.] [As declared in] COA Circular No. 85-55-A, "the price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award. As will be seen from the criteria adopted by the agency, both the warranty and special features were considered and given corresponding weights in the computation for the support services offered by the bidder.

[5.] x x x [T]here is no overpricing because in the process of comparing "*apples vs. apples*", the other buyers in effect procured their units at a higher price than those of the CDA. We x x x are still in the process of gathering additional data of other transactions to further support our stand. x x x

[6.] x x x The rapid changes due to research and development in Information Technology (I.T.) results in the significant reduction of prices of computer equipment. x x x [M]aking a comparison given two different periods (*December 1992 vs. August 1993*) may be invalid x x x.

[7.] The procedures of the public bidding as adopted by the [CDA] x x x demonstrate a very effective mechanism for avoiding any possible overpricing.[7]

In compliance with the request of the Legal Office Director, the TSO submitted its comments on the justifications submitted

[7] *Id.* at 74-77, 171-174.

by the CDA. On the non-comparability of Genesis and Trigem brands, it explained that the reference values were in accordance with the same specifications but exclusive of the "branded" information, since this was not stated in the P.O./Invoice, which was used as basis of the canvass. Since the said brands are both computers of the same general characteristics/attributes, the branded and non-branded labels propounded by the supplier is of scant consideration. As regards the UPS, it was pointed out that the enumerated advantages of the delivered items are the same advantages that can be generated from a UPS of the same specifications and standard features; in this case, the reference value pertains to a UPS with the same capacity, input, output, battery pack and back-up time, except for the brand. As to the period of purchase by the CDA, the TSO noted that based on its monitoring from October 1993 to May 1994, prices of Star and Epson printers and hard disk (120 MB Model St-3144A) either remained the same or even increased by 2% to 5%. It is therefore valid that the price of an item is the same from one period to another, and that an item may be available unless it is out of stock, or phased out, with or without a replacement. In this case, the reference value cannot be considered as the reduced price as a result of rapid changes due to research since the said reference value is the price for the same model already existing in December 1992 when the purchase was made and still available in August 1993, and not an equivalent nor replacement of a phased out model.[8]

On the other hand, the Resident Auditor maintained her stand on the disallowance and submitted to Assistant Commissioner Raul C. Flores her replies to the CDA's justifications, as follows: (1) on the allegedly erroneous comparison between Genesis and Trigem brands, if this will be the basis, then their bidding will not be acceptable because in the Abstract of Bids, the comparison of prices was not based on similar brands, *i.e.*, Tetra offered Trigem-Korean for ₱1,269,620, Microcircuits offered Arche-US brand for ₱1,123,315, and Columbia offered

[8] COA Records, Memorandum dated April 24, 1995.

Acer-Taiwan brand for ₱1,476,600; what is important is that, the specifications and functions are similar; (2) the 2nd, 3rd and 4th justifications are of no moment as all the offers of the three qualified bidders were of similar technical specifications, features and warranty as contained in the Proposal Bid Form; (3) on the 5th justification — the companies referred to procured only one unit each and of much higher grade; (4) on the 6th justification — while the date of the canvass conducted by the TSO does not coincide with the date of purchase, there is no showing that foreign exchange rate changed during the latter part of 1992 which will significantly increase the prices of computers; and (5) on the 7th justification — while the COA witnessed the public bidding, the post-evaluation was left to the Pre-qualifications, Bids and Awards Committee (PBAC). The National Government Audit Office I concurred with the opinion of the Resident Auditor that CDA's request may not be given due course.[9]

On October 21, 1998, respondent COA issued the assailed decision affirming the disallowance. It held that whether or not the product is branded is irrelevant in the determination of the reasonableness of the price since the brand was not stated in the Call for Bids nor in the Purchase Order. The bids of the three qualified bidders were based on similar technical specifications, features and warranty as contained in their proposals. It was also found that the performance of the competing computer equipment would not vary or change even if the attributes or characteristics of said computers cited by petitioner were to be factored in. The difference in brands, microprocessors, BIOSes, as well as casings will not affect the efficiency of the computer's performance.[10]

Further, COA declared that CDA should not have awarded the contract to Tetra but to the other competing bidders, whose bid is more advantageous to the government. It noted that Microcircuits offered the lowest bid of ₱1,123,315.00 for the

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[9] *Id.*, Memorandum dated August 29, 1994.

[10] *Rollo*, p. 51.

US brand said to be more durable than the Korean brand supplied by Tetra. CDA also should have been entitled to volume discount considering the number of units it procured from Tetra. Lastly, COA emphasized that the requirements and specifications of the end-user are of prime consideration and the other added features of the equipment, if not specified or needed by the end-user, should not be taken into account in determining the purchase price. The conduct of public bidding should be made objectively with the end in view of purchasing quality equipment as needed at the least cost to the government. The price for the equipment delivered having been paid, when such equipment could be acquired at a lower cost, the disallowance of the price difference was justified.[11]

Petitioner's motion for reconsideration having been denied, he now comes to this Court for relief on the following grounds:

RESPONDENT COMMISSION ON AUDIT'S FINDING THAT THE AMOUNT OF ₱881,819.00 SHOULD BE DISALLOWED IN THE PURCHASE OF THE COMPUTER EQUIPMENT BY THE CDA IS NOT SUPPORTED BY EVIDENCE AND IS CONTRADICTORY TO LAW AND JURISPRUDENCE.

RESPONDENT COMMISSION ON AUDIT ERRED IN HOLDING THE PETITIONER PERSONALLY AND SOLIDARILY LIABLE FOR THE DISALLOWED SUM OF ₱881,819.00, ABSENT ANY FINDING MUCH LESS EVEN AN ALLEGATION THAT HE HAD ACTED IN BAD FAITH, WITH MALICIOUS INTENT OR WITH NEGLIGENCE IN THE PURCHASE OF THE COMPUTER EQUIPMENT BY THE CDA.[12]

Petitioner reiterates his argument that price was not the sole criteria in determining the winning bid for the purchased computers, price comprising only 50% of the criteria, while technical evaluation and support services were accorded 30% and 20%, respectively. He points out that the computer/hardware of generic class which was provided to the COA-TSO with low-priced quotations for comparison with the winning bid and

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

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

as bases for disallowance in audit, never underwent technical or physical evaluation as did the computer equipment of the three final bidders. Moreover, the CDA-PBAC Bidding Procedure was designed in such a way that generic type (cloned) computers were eliminated even in the pre-qualification stage. It is for this reason that the final bidders all offered *branded computers* which, by their very nature, were all considered to be efficient by no less than the Information Technology Center (ITC) of the COA, as mentioned in the memorandum dated December 9, 1996 of Director Marieta SF. Acorda. The mere fact that the offered computers had different manufacturers can lead to a reasonable conclusion that the life spans of the same and reliability would also vary.[13]

As to the COA's position that even if only the price was considered, the contract should have been awarded to Microcircuits, petitioner points out that in such a case, CDA's disallowance would have been only ₱140,000.00, much lower than the present ₱881,819.00 disallowance. But as it is, on the basis of the three criteria applied during the pre-qualification stage, Tetra garnered the highest points as certified by the PBAC in its memorandum-update dated November 20, 1992. The application of all three criteria meets the standard set by COA Circular No. 85-55-A. Thus, although Microcircuits got the highest percentage on Cost/Price factor, it only ranked second in over-all performance, to Tetra, as evaluated by the PBAC.[14]

Petitioner cites the dissenting opinion[15] of COA Commissioner Emmanuel M. Dalman who found no overpricing in this case and the CDA decision as one done in good faith and with the presumption of regularity in the performance of official functions. Indeed, it behooved on COA to prove that the standards set by the COA circular were met in audit disallowance; it even failed to produce actual canvass sheets and/or price quotations from

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[13] *Id.* at 23-29, 80-81.

[14] *Id.* at 29-33.

[15] *Id.* at 92-93.

identified suppliers. The Summary of Price Data and comparison sheets attached to the Notice of Disallowance by themselves are not sufficient basis for the disallowance herein since they do not satisfy the requirement highlighted in the case of *Arriola v. Commission on Audit.*[16] The COA auditor herself (author of the Notice of Disallowance) admitted that she did not personally prepare actual canvass sheets and only a telephone canvass was conducted. As to the volume discount, again no evidence was adduced to show that the other bidders would have given the same if the contract was awarded to them. What is certain is that, owing to the consideration of the two major criteria of "technical evaluation" and "after-sales support," most of the computer equipments provided by Tetra pursuant to the disallowed transaction are still functioning to date, even after twelve (12) years of continued use.[17]

Finally, petitioner contends that he should not be made personally liable for the disallowed expense. He invokes the prevailing doctrine that unless they have exceeded their authority, corporate officers, as a general rule, are not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. CDA though a government corporation, there is no single allegation or imputation, much less any evidence of any act, constituting bad faith, malice or negligence on the part of petitioner during his service as Executive Director of the CDA, he being a mere signatory to the documents after the winning bidder had been chosen, and was only a recommending officer on these matters.[18]

In its Manifestation and Motion[19] dated September 10, 2003, the Office of the Solicitor General stated that after a thorough review of the records of the case, it is constrained to adopt a position adverse to the COA.

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[16] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[17] *Rollo*, pp. 33-40.

[18] *Id.* at 40-43.

[19] *Id.* at 109-111.

Respondents filed their Comment, arguing that this Court's jurisdiction was not correctly invoked by petitioner who filed a petition for review under Rule 45 and not a petition for *certiorari* under Rule 65. Petitioner failed to allege that respondents acted without or in excess of their jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. On the allegation that their finding of overprice was not supported by evidence, respondents assert that the evaluation report of the DAP-TEC clearly showed that Tetra ranked last in its evaluation while Microcircuits ranked the highest. It was clear that the most advantageous deal for the government should have been concluded with Microcircuits since their computer specifications were at par with those of Tetra and they offered a much lower cost to the government – *lower than half the price offered by Tetra*.[20]

Moreover, respondents point out that petitioner's contention that price was not the only basis for the award is negated by the finding of the Resident Auditor (Luzviminda V. Rubico) that the DAP-TEC technical evaluation report which became the basis for declaring Tetra as the winning bidder, was fraudulently acquired. Director Mesina signed the same unaware that it was already another version of the technical evaluation report which she had signed earlier, when Tetra's computers were found to be the most inferior in quality. It can be safely asserted that the computers of Tetra and Microcircuits were of the same quality, and therefore, the only basis left in determining the winning bid was the price/cost of the computers (₱1,123,315.00 for Microcircuits and ₱2,285,279.00 for Tetra).[21]

Lastly, respondents maintain that petitioner is personally and solidarily liable for the disallowed amount of ₱881,819.00. As Executive Director, petitioner ordered the reconstitution of PBAC without any valid reason, on August 25, 1992 amending Special Order No. 91-117 dated October 24, 1991, which nullified the previous bidding conducted in December 1991. Petitioner then engaged the services of the DAP-TEC which came out with two

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[20] *Id.* at 145-148.

[21] *Id.* at 148.

different technical evaluation reports, when it was no longer his duty to do so but that of the PBAC Chairman. These acts show bad faith on the part of petitioner. Mr. Antonio L. Quintos, Jr. of the DAP-TEC confirmed that Mr. Rey Evangelista, staff of PBAC Chairman Edwin T. Canonizado, talked to him and asked him to change and/or make alterations on the first evaluation report, which he did, as set forth in his letter[22] dated November 23, 1995 to Ms. Minnie Mesina of the Center for Information Technology Development (CITD) of the DAP. As provided in the Manual on Certificate of Settlement and Balances (Revised 1973), "[a] public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is clear showing of bad faith, malice or gross negligence."[23]

We deny the petition.

To begin with, petitioner availed of the wrong remedy in filing a petition for review under Rule 45. Article IX-A, Section 7 of the Constitution provides that decisions, orders or rulings of the Commission on Audit may be brought to the Supreme Court on *certiorari* by the aggrieved party.[24] Moreover, under Section 2, Rule 64, of the Revised Rules of Civil Procedure, a judgment or final order or resolution of the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65. Moreover, on the merits, the petition lacks merit.

Pursuant to its constitutional mandate to "promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties,"[25] the COA promulgated the amended Rules under COA Circular No. 85-55-A[26] dated September 8, 1985.

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[22] *Id.* at 248-249.

[23] *Id.* at 148-152.

[24] *Reyes v. Commission on Audit*, G.R. No. 125129, March 29, 1999, 305 SCRA 512, 516.

[25] Art. IX-D, Sec. 2 [2], 1987 Constitution.

[26] Which amended, revised and/or amplified the existing rules contained in COA Circular No. 77-55 dated March 29, 1977.

With respect to excessive expenditures, these shall be determined by place and origin of goods, volume or quantity of purchase, service warranties, quality, special features of units purchased and the like.[27]

Price is considered "excessive" if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor. In determining whether or not the price is excessive, the following factors may be considered[28]:

A - Supply and demand forces in the market.

Ex. - Where there is a supply shortage of a particular product, such as cement or GI sheets, prices of these products may vary within a day.

B - Government Price Quotations

C - Warranty of Products or Special Features

The price is not necessarily excessive when the service/ item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award.

D - Brand of Products

Products of recognized brand coming from countries known for producing such quality products are relatively expensive.

Ex. - Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

The issue to be resolved is whether the computer units bought by CDA from Tetra were overpriced.

Records showed that while the respondents found nothing wrong per se with the criteria adopted by the CDA in the overall evaluation of the bids, the technical aspect was seriously

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[27] COA Circular No. 85-55-A, 2.6.

[28] *Id.*, 3.3 (Standards for "Excessive" Expenditure).

questioned. The final technical evaluation report was apparently manipulated to favor Tetra, which offered a Korean-made brand as against Microcircuits which offered a US-made brand said to be more durable, at a lower price. The letter[29] dated November 3, 1992 signed by Ms. Mesina in behalf of DAP Vice-President Austere A. Panadero informed petitioner that based on their evaluation in compliance with the "grading system" specified by CDA, the DAP found the units of Tetra as "best suited" to the needs of CDA.

Upon investigation, respondents discovered that there was an earlier report (1st report) which actually stated a contrary finding (Tetra units emerged as the most inferior in quality) but the representative from CDA (Rey Evangelista) came to the DAP-CITD and gave further instructions on "penalty points" for deviation in hardware specifications, resulting in a modified 2nd report (faxed to petitioner's office) in which Tetra was already indicated to have the highest ranking.

These findings were detailed by Auditor Rubico in her letter dated November 23, 1995 to the COA Legal Counsel, to wit:

xxx xxx xxx

6. After CDA and DAP came into an agreement, CDA PBAC Committee informed and instructed all the 3 qualified bidders to submit and brought *[sic]* their respective hardwares to DAP for Technical Evaluation for 3 consecutive days (As stated in the agreement) in which they all complied with.

7. Eventually, on November 4, 1992 10:07 A.M., the [DAP] released/faxed the FIRST and IMPARTIAL RESULT (Exhibit 5) of the conducted technical evaluation by DAP-TEC signed by Director Minerva Mecina for and in behalf of Mr. A. Panadero. **Most, if not all, on the categories of computer testing results showed that among the 3 computer hardwares evaluated, the product of [TETRA] which is Trigem Brand is of the most inferior quality and last in the over-all ranking.** The technical evaluation was conducted by Mr. Antonio Quintos, Jr. This result was never presented to this office

[29] *Rollo*, pp. 88-89.

nor attached to the CDA disbursement voucher as supporting document in payment made to DAP but accidentally handed over to us.

8. On the same date, November 4, 1992 11:20 A.M., the CDA PBAC Committee together with the presence of representatives from each suppliers/bidders and this office (as witness), opened the bid documents (Exhibits 6, 6A & 6B). Among the 3 bidders, [TETRA] offered the highest bid price quotation, (Tetra – ₱1,269,630; Microcircuits – ₱1,123,315; and Columbia – ₱1,177,600) in spite of the inferior quality of their products.

9. It can be noted that CDA PBAC Committee had formulated their grading/point system (Exhibit 1). There were three (3) factors to consider in awarding the bid such as COST (50%), TECHNICAL EVALUATION (30%) and SUPPORT SERVICE (20%). In view of the above, as regards to the results of the technical evaluation and price bidding, there's no way [TETRA] could possibly win and be chosen as the winning bidder.

10. The day after the results of the technical evaluation and opening of the bid prices were known, in which it could be clearly seen who's going to be the winner, MR. REY EVANGELISTA, staff of Mr. Canonizado (Who incidentally is the PBAC Chairman), went to DAP Office. As confirmed by Mr. Quintos, Jr. to us, Mr. Evangelista talked to him and asked him to change and/or make alterations on the 1st evaluation result and to indicate the name of [TETRA] the number one in the over-all ranking in the evaluation result which he did.

11. Thus, on November 5, 1992, Mr. Quintos, Jr. issued and faxed the SECOND (2nd) RESULT (Exhibit 7). It was antedated November 3, 1992 and was signed by Director Mecina also on November 5, 1992 for and in behalf of Mr. A. Panadero. In this 2nd result, [TETRA] became the number one (1) in the over-all ranking and apparently there was the intention to favor [TETRA] and to make sure that it will turn out to be the winning bidder. It may be noted in attachment "A" of the letter sent by Mr. A. Panadero (Exhibit 4), which contained the manner and detailed activities the evaluation

is to be conducted that **there was no evaluation/testing really performed in this 2nd evaluation result.** Notice the irrelevant columns added to the said result (CDA Grading system). We asked Mr. Quintos, Jr. if figures in the column "Below Specifications" will affect the capability and quality of the computer hardware that will make it inferior from the other and he answered in the negative. Therefore, in our view, **the purpose of adding this "penalty" column is of no relevance to the evaluation conducted but just to give the CDA PBAC Committee all the reasons to give a plus or minus grade/percentage to the hardwares offered by the suppliers/bidders and to satisfy their need.** Moreover, we believed that DAP from which CDA paid the amount of ₱15,000 for the technical service rendered should give an independent report.

12. As regard to the factor in the CDA PBAC grading system which is the Support Service (20%) (Exhibit 1), we believe that Columbia Computer Center (UPSON) offering ACER brand is of more established and has advantage in terms of support service because of its business standing, facilities and equipment than [TETRA]. Please take note on the computation the CDA PBAC made as regard to this factor. The CDA PBAC Committee and its Secretariat **never presented nor submitted data/documents to this office to support this computation.**

All the above facts were documented and confirmed. As to authenticity and genuineness of the 1st and 2nd results, Mr. Quintos, Jr. told us that he was able to make Director Minerva Mecina signed the documents in behalf of Mr. A. Panadero without informing her of the discrepancies. On the other hand, Director Mecina admitted that it was her signature indeed but not knowing that she signed two different documents. This irregularity, we believed, is known to all members of the CDA PBAC Committee, more so by its Chairman, since all these documents were retrieved from the file of its Secretariat with some documents stamped received by CDA Planning Division Staff.

x x x x x x x x x[30] (Emphasis supplied.)

[30] *Id.* at 245-246.

Convinced that there was indeed manipulations in the conduct of bidding to favor Tetra, particularly the introduction of additional features in the CDA grading system after the bids have been opened in order to justify the DAP to change, upon request of CDA, the results of its first evaluation, COA General Counsel Raquel R. Habitan referred the matter to COA's ITC to determine whether or not (1) the additional features introduced in CDA's grading system are really irrelevant to the efficiency of the computers' performance; and (2) the products of Tetra were the most inferior in quality as compared to those offered by the losing bidders at lower price on the basis of the specifications and function.[31]

In her Memorandum dated December 9, 1996 to Director Habitan, Ms. Marieta SF. Acorda, Director of COA's ITC, gave the following comments:

xxx xxx xxx

1. On the first issue – we observed that no additional computer features were introduced in CDA's grading system, rather the bidders were penalized for non-compliance with technical specifications fixed by CDA.

On CDA's representation with the Development Academy of the Philippines – Technical Evaluation Committee (DAP Committee) and based on the grading system devised by the former, the DAP Committee agreed to impose penalties for non-compliance of the bids with the technical specifications. Hereunder are their reasons for the penalties and our comments thereto:

1.1 Columbia Computer Center (Columbia) and MicroCircuits Corporation (MCC) were penalized because the microprocessor of the computer hardware they delivered for evaluation were AMD and not Intel as required in the technical specification.

AMD and Intel are both microprocessor brands. It rarely malfunctions. Hence, the difference in brands, as in this case, will not affect the efficiency of the computer's performance. However, Intel microprocessors are more expensive and are manufactured

[31] COA Records.

by Intel Corporation which pioneered the production of microprocessors for personal computers.

1.2 Columbia was penalized because the ROM BIOSes of the computer hardware they delivered were AcerBios. a deviation from the technical specifications which requires ROM BIOSes licensed by IBM, AMI, Phoenix or Awards.

This will not affect the efficiency of the computer's performance. What is important is that these ROM BIOSes are legal or licensed.

1.3 Columbia was again penalized because the casing of the computer they delivered for evaluation in the Tower 386DX category has a desktop casing and not tower casing as provided in the technical specification.

Casings do not affect the efficiency of the computer's performance but may affect office furniture requirements such as the design of computer tables.

1.4 Tetra Corporation (Tetra) was penalized because the RAM of the Notebook it delivered for evaluation was only 640K instead of 2M (expandable).

We agree that RAM capacity will affect the efficiency of the computer's performance.

2. On the second issue - the Benchmark testing conducted by DAP-Committee in which Tetra got the lowest score in terms of Technical Evaluation is not a sufficient basis for us to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

In Benchmark Testing, weights are allocated to the different technical features of a computer. The computers are then evaluated/ appraised using diagnostic software and ranked in accordance with the results of such evaluation/appraisal. The resulting ranking merely suggests which computer best the appraisals.[32] (Emphasis supplied.)

Based on the foregoing findings and observations supported by documentary evidence, respondents concluded that contrary to CDA's claims, the difference in brands, microprocessors,

[32] *Rollo*, pp. 235-236.

BIOSes, as well as casings will not affect the efficiency of the computers' performance. Clearly, the conduct of public bidding in this case was not made objectively with the end in view of purchasing quality equipment at the least cost to the government. The price difference far exceeded the 10% allowable variance in the unit bought and the same item's price, as shown by the following report submitted to the TSO Director[33]:

x x x x x x x x x

Subject: Summary of Price Data & Feedback Form
Agency/Address: Cooperative Development Authority – Q.C.
PED Q#/Item Classification: 93-06-370-372 / Computer
T S O Reference Code: N=060393/190.5

Particulars (purchase doc.(s)/ contract, quantity, item and specifications)	Purchase Price (Per unit) (In Pesos)	Reference Value/s as of August 1993 (Per unit) (In Pesos)	Auditor's Feedback Form Unit Price allowed in audit/ Remarks
P.O.#'s 92-107 dated 12/7/92 P.O.#'s 92-118 dated 12/28/92 Invoice # 18810 dated 12/29/92 23 units PC-AT 80386 SX with 21 units 80 mb Hard Disk - 14" Paper white Monitor - Trigem 386 SX - 4 MB on Board - 1.2 MB Floppy Disk drive - 1.44 MB Floppy Disk drive - Trigem VGA PW Monitor - VGA card - Mouse with mouse pad	44,269.00	386 SX Genesis Brand -100 MB Hard Disk -4 MB RAM on Board -TVS Monitor (low radiation) *23,600.00 (10/93)	

[33] *Rollo,* pp. 166-169.

P.O.#92107 dated 12/7/92 Invoice # 18798 dated 12/11/92 1 unit PC-AT 80386 TOWER with: - 600 MB Hard Disks - 14" TG VGA Colored Monitor Display - TG 986 XE (33 mhz.) - 8 MB RAM on Board with math co-processor - 1.2 MB FDD - 1.44 MB FDD - 600 MB SCSI HDD with controller - VGA card - 150 MB tape back-up with data cartridge - External Modern (2400 BPS) - with mouse	177,443.00	*115,000.00	
P.O.# 92-107 dated 12/7/92 Invoice # 18798 dated 12/11/92 1unit PC-AT 80386 SX Laptop Notebook/Notepad Type w/ - 8 MB Hard Disk - VGA (LCD) Display - TG386 NP (25 Mhz.) - 2 MB RAM on Board - with mouse	74,000.00	**38,000.00	
P.O. #93-120 dated 12/28/92 Invoice # 1261 dated 12/29/92 I unit MAGTEX Uninterrupted Power Supply (UPS) 1.0 (KVA) Input: 220V 60Hz. 1 dia. Output: 220V 60Hz. 1 dia. Capacity: 1 KVA Battery Pack: sealed Maintenance Free Back-up Time: 30 minutes	55,000.00	*22,000.00 APC 1000W (8/93) *14,500.00 ADMATE 1000W (8/93) *29,000.00 PK 1000W (8/93)	

P.O. #92-019 dated 10/5/92			
3 units Upgrade PC-XT to PC-AT 286 - 1 MB RAM expandable /16 Mhz. (Min.) - 40 MB Hard Disk - 1.2 Mb FDD - 1.44 MB FDD - with 101 Enhanced Key-board	15,350.00	*13,500.00	
P.O.#92-112 dated 12/15/92			
Invoice # 18806 dated 12/23/92			
14 units OKI ML 321 Elite Printer, Dot Matrix Printer (9 pin. 122 cols.)	13,000.00	**12,500.00	

SUMMARY

Number of units	Total Cost	Total Cost Allowable	% Mark-up	Total Cost Allowed	Amount Disallowed
44 Personal computer	₱1,947,836.00	₱1,038,400.00	15	₱1,194,160.00	₱753,676.00
1 PC-AT 80386 Tower	₱ 177,443.00	115,000.00	15	132,250.00	45,193.00
1 PC-AT 80386 SX Laptop Notebook/ Notepad type	₱ 74,000.00	38,000.00	15	43,700.00	30,300.00
1 UPS	₱86,000.00	29,000.00	15	33,350	52,650.00
				Total	₱881,819.00

As above-indicated, the price per item of the PC units, laptop and UPS were overpriced by almost 50%. This comparison was based on the initial purchase of 23 PC units with the bid price by Tetra of ₱1,269,630.00 (23 PC units, 1 unit 386 Tower and 1 unit 386 Notebook) under Disbursement Voucher No. 01-92-12-2399. There was an additional (repeat) purchase of

21 PC units for ₱929,649.00 (same price per item of ₱44,269.00) and one unit UPS for ₱86,000.00. The total contract price obtained by Tetra was ₱2,285,279.00, of which COA disallowed the amount of ₱881,819.00 representing the overprice per the auditor's findings.

As to petitioner's objection regarding the non-presentation of actual canvass sheets used by the auditor, the same is immaterial, considering the disparity in the prices of the computers paid by CDA to Tetra and offered by the lowest bidder, Microcircuits. The TSO report, prepared by personnel having the knowledge and expertise on computer equipment, supplied the auditor with reliable field data on which the auditor based her final computation. "Excessive expenditures" under COA Circular No. 85-55-A covered cases of "[o]verpricing of purchases, characterized by grossly exaggerated or inflated quotations, in excess of the current and prevailing market price by a 10% variance from the purchased item." The telephone canvass initially done by the resident auditor was merely confirmatory of the overpricing based on similar specifications and features as indicated in the TSO report.

Another important factor apparently ignored by the CDA was Microcircuits' branded computers reputed to be more durable (US-made) compared with Tetra's branded computers (Korean-made). Had this factor been considered together with the much lower quotation from Microcircuits, CDA would have assured a deal that is most advantageous to the government at the least cost.

Findings of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence.[34] It is only upon a clear showing that the COA acted without or in excess of jurisdiction or with grave abuse of

[34] *Laysa v. Commission on Audit,* G.R. No. 128134, October 18, 2000, 343 SCRA 520, 526.

discretion amounting to lack or excess of jurisdiction that this Court will set aside its decisions or final orders.[35] We find no such arbitrariness or grave abuse on the part of the COA when it disallowed in audit the amount representing the overprice in the payment by CDA for the purchased computer units and peripherals, its findings are well-supported by the evidence on record.

With respect to the liability of petitioner, we likewise affirm the COA's ruling that he is personally and solidarily liable for the disallowed amount. The doctrine of separate personality of a corporation finds no application because CDA is not a private entity but a government agency created by virtue of Republic Act No. 6939 in compliance with the provisions of Section 15, Article XII of the 1987 Constitution. Moreover, respondents satisfactorily established that petitioner acted in bad faith when he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an irrelevant grading system that was intended to favor one of the bidders, after the bids had been opened.

Section 103 of Presidential Decree No. 1445 (Government Auditing Code of the Philippines) provides:

SECTION 103. *General liability for unlawful expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor**. (Emphasis supplied.)

Further, Section 19 of the Manual on Certificate of Settlement and Balances under COA Circular No. 94-001 dated January 20, 1994 provides:

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: a) the nature of the disallowance; b) the duties, responsibilities or obligations of the

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[35] See *Villanueva v. Commission on Audit,* G.R. No. 151987, March 18, 2005, 453 SCRA 782, 801.

officers/persons concerned; c) the extent of their participation or involvement in the disallowed transaction; and d) the amount of losses or damages suffered by the government thereby. x x x

Petitioner believes that there is no basis to hold him personally liable on account of the fact that the purchased computers were not inferior in quality. In support thereof, he submitted a certification dated September 12, 2003 issued by incumbent CDA Executive Director, Atty. Niel A. Santillan, that 68% of the Tetra computers, or 30 out of 44 units, are still operational even after twelve (12) years of continuous use. Only fourteen (14) units have become unserviceable, which means that the Tetra computers have proven their worth and thus vindicated petitioner, the CDA, CDA-PBAC and the DAP-TEC.[36]

We are not persuaded.

The continued serviceability of the purchased computers is not a factor in the determination of whether the price paid by the government was unreasonable or excessive. The damage or injury caused to the government refers primarily to the amount exceeding the allowable variance in the price paid for the item purchased under a transaction which is not the most advantageous to the government. In this case, it was clearly shown that CDA could have purchased the same quality computers with similar technical specifications at much lower cost and the result of technical evaluation was manipulated to favor one bidder, for which the COA found the petitioner to be directly responsible.

WHEREFORE, the petition is *DENIED.* The COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively, are *AFFIRMED and UPHELD.* Petitioner Candelario L. Verzosa, Jr. is hereby ordered to *REIMBURSE* the amount of ₱881,819.00 subject of Notice of Disallowance No. 93-0016-101 dated November 17, 1993 and the corresponding CSB No. 94-001-101 dated January 10, 1994.

With costs against the petitioner.

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[36] *Rollo,* pp. 292-294.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, and *Mendoza, JJ.,* concur.

Carpio, Carpio Morales, Bersamin, and *Abad, JJ.,* join the dissenting opinion of *J.* Sereno.

Sereno, J., see dissenting opinion.

Corona, C.J., no part.

Nachura and *Brion, JJ.,* on official leave.

DISSENTING OPINION

SERENO, *J.*:

The Petition should have been granted for five reasons.

First, the Commission on Audit (COA) cannot violate the same rules it imposes on all public offices regarding the manner of conducting canvasses. These rules essentially require that written canvasses be made of the same item from at least three suppliers, using the proper canvass forms. The COA itself cannot violate these rules by disallowing purchases merely on the basis of an alleged overpricing. The base price identified by the COA was made only on the basis of an alleged undocumented telephone price canvass by a COA auditor. The COA likewise based its findings on a report of the Technical Services Office (TSO), which compared the equipment with that of only one supplier and only one brand of computer. The latter brand, Genesis, which produces inferior computer clones, is significantly different from Trigem – a well-known Korean brand – which produced the computers purchased by the Cooperative Development Agency (CDA). Neither was the Genesis clone one of the brands subjected to technical evaluation testing.

Second, the COA auditor, who admitted that she is not a computer technology expert, cannot substitute her own discretion for that of the CDA by denying the CDA's right to prefer the following as the required specifications for the computers CDA intended to purchase for its own use: (a) Intel microprocessor

chips over any other kind of chips, including those manufactured by AMD; (b) ROM BIOS licensed by IBM, AMI, Phoenix or Awards over that of AcerBios; (c) tower casings over desktop casings; and (d) 2 megabytes over 640 kilobytes of Random Access Memory (RAM).

Third, the amount of disallowance has no basis in fact, is grossly disproportionate to the total purchase price, and is in the nature of punitive damages. Not only was a mere telephone canvass conducted, there was absolutely no basis in fact for the belief that a volume discount at an arbitrary amount determined solely by the COA auditor would have been granted by the supplier. This was a mere conjecture by the COA auditor.

Fourth, this Court relies on the allegation that there were instances of manipulation during the bidding process. However, the records show that this allegation was belatedly raised by respondents. It was only in respondents' Comment filed on 19 March 2004 before this Court that they raised the allegation. The COA Decision under question was dated 21 October 1998 and this Decision did not make any finding on this score, inasmuch as this issue was not raised before the Commission. Petitioner was not afforded due process to rebut these allegations while the case was still pending with respondent COA. Also, the documents on record do not support this allegation.

Fifth, there is no legal basis to make the CDA Executive Director personally liable for the return of the disallowance. He has demonstrated that his act of signing the purchase documents was only ministerial, as the Pre-qualification Bids and Awards Committee (PBAC) and the Board of Administrators (BOA) acted on them.

There is a clear, bright line that the Commission on Audit must not cross. The powers that the 1987 Constitution granted it are only to "define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance or irregular, unnecessary, excessive, extravagant, or unconscionable

expenditures, or uses of government funds and properties."[1] This does not include the substitution of preference of government agencies. Nor does this allow COA to trample on the due process rights of government auditees.

In the case at bar, we are faced with a situation where basic principles in government procurement are threatened by COA's insistent interference and encroachment. In holding petitioner liable for the alleged excessive expenditure, we are introducing dangerous precedents in administrative procedures with regard to bidding and audit. First, the bidding process is rendered inutile if we hold that government agencies should always award purchase contracts in favor of the lowest bidder; or even worse, that they should simply purchase equipment from the suppliers offering the lowest prices, regardless of brand or quality. Second, the discretionary power of government agencies to determine criteria and the features of equipment or supplies becomes irrelevant; because, third, COA's preference in determining the criteria and the features or characteristics of the equipment or supplies is held as superior to that of any other government agency.

The Case

Before delving into the facts of the case, at the outset, I would like to emphasize that COA regulations and Supreme Court jurisprudence that require disclosure of the base prices used for auditing and that require that like products be the basis of price comparisons (apples cannot be compared to oranges) were already in force when the present controversy arose.

On 10 September 1990, respondent COA issued Resolution No. 90-43 which mandated the Price Evaluation Division, Technical Services Office (PED-TSO) to disclose or identify the sources of its reference values in connection with its price gathering and monitoring activities. The PED-TSO provides the auditors with reference values that are required to be obtained

[1] Article IX, Section 2 of the 1987 CONSTITUTION.

through a **valid canvass in the open market**. This resolution was issued partly in recognition that "price findings of the TSO that result from such audit determination of price reasonableness at times adversely affect auditees who would request TSO to disclose or identify the sources of these price quotations set by PED so that they can procure their supply needs from said sources."

The primary principle which the resolution upholds is that of transparency. Thus, the application of the resolution is not merely limited to the determination of possible sources of supplies. The principle of transparency should apply with more reason to instances when the information requested from the PED-TSO may result in a finding of liability against a government official.

More importantly, on 30 September 1991, we established the standards to be followed in issues of audit disallowance in *Arriola v. COA*.[2]

In *Arriola*, petitioners questioned the disallowance of the COA, which was based merely on a cost comparison submitted by the COA-TSO. We said:

> We note that while NCA had provided receipts and invoices to show the acquisition costs of materials found by COA to be overpriced, **COA merely referred to "a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO**," (p. 124, *Rollo*).
>
> In fairness to petitioners, **COA should have**, with respect for instance to the submersible pump, **produced a written price quotation specifically for "1 Unit Goulds Submersible Pump Model 25 EL 30432, 3 HP, 230 V., coupled to "Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz. 3450 RPM." The cost evaluation sheet**, dated September 15, 1986, Item No. 12 (attached to the decision of Mr. Jose F. Mabanta, (Actg. Director, COA-TSO), **merely refers to a "Goulds submersible pump."** While it is true that Mrs. Espiritu's

[2] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

report dated August 28, 1986 on price findings states with respect to said pump, as follows:

Item Description	Quoted Price as of 12-15-85	Price Findings as of 12/86
1 unit 'Goulds' Submersible Deep well Pump Model 25E 130432 coupled to 'Franklin' Submersible electric Motor, 3HP, 230 volts, 3-phase, 60Hz, 3450 RPM	₱72,550.00	₱26,035.20

. . ." (p. 80, *Rollo*).

this is not, in **the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects**. (Emphasis supplied.)

Thus, we stated that the failure of COA to produce the canvass sheets or source documents was violative of due process and that we cannot uphold COA's disallowance that was based on undocumented claims.

We now go to the facts of the case at bar.

Petitioner is the executive director of the CDA, a government-owned and-controlled corporation. On 25 August 1992, he reconstituted the Committee on Public Bidding and Awards set up under Special Order No. 91-117, as the Pre-Qualification Bids and Awards Committee (PBAC) for the procurement of information technology (IT) resources for the use of the CDA.[3]

The bidding process consisted of three stages: (1) the pre-qualification stage; (2) the technical evaluation stage; and (3) the opening and evaluation of bids.

On 19 October 1992, 7 bidders out of the 26 suppliers who secured bid documents submitted Pre-qualification Documents.

[3] *Rollo* at 67.

Of the 7 bidders, only 3 complied with all the PBAC requirements and were pronounced qualified to bid.[4] These were: Tetra Corporation-Trigem Computers (Tetra), Microcircuits Co. (Microcircuits), and Columbia Computers (Columbia).

The equipment of each of the three bidders was then sent to the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC) to ensure an independent and objective technical evaluation thereof.

The DAP-TEC conducted a hardware benchmark testing to determine the quality and performance of the three bidders, based on the criteria and specifications approved by the PBAC. Since Tetra ranked first in the test, its equipment was recommended by DAP-TEC to CDA.[5]

Thereafter, the respective bids of the three companies were opened. Tetra offered ₱1,269,620; Microcircuits, ₱1,123,315; and Columbia, ₱1,476,600, for 23 units of 386SX computers, 1 unit of 386DX Tower, and 1 unit of 386SX Notebook.[6]

Following the criteria[7] approved by the PBAC, Tetra won the bid.

A second purchase order was issued for 21 additional units of computers. Meanwhile, the uninterrupted power supply (UPS) was acquired through negotiated contract, totalling the purchase amount to ₱2,285,279,[8] for **all** the equipment bought from Tetra.

On 17 November 1993, after auditing the purchase of the equipment, COA Auditor Luzviminda Rubico disallowed ₱881,819 of the total amount paid. Comparing the Tetra equipment to

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[4] *Id.* at 64-66.

[5] *Id.* at 90-91.

[6] *Id.* at 78 and 86.

[7]

Cost/Price	=	50%
Technical Evaluation	=	30%
Support	=	20%

[8] Note that respondent COA states in its Resolution dated 18 March 2003 that the total amount was ₱2,199,279.

non-branded computers and peripherals, the COA resident auditor deemed Tetra's equipment to be overpriced. The auditor held petitioner to be jointly and severally liable with the PBAC members and the CDA chair, namely: Edwin Canonizado, Sylvia Posadas, Ma. Erlinda Dailisan, Ma. Luz Aggabae, Leonilo Cedicol, Amelia Torrente and Edna E. Aberilla.[9]

On 13 May 1994, Chair Edna E. Aberilla, representing petitioner and the PBAC members, moved for a reconsideration of the disallowance.[10]

On 21 October 1998, respondent COA affirmed the disallowance. It ruled that the comparison was based on specifications and functions; thus the brand differences had little bearing on the price findings. It likewise stated that Microcircuits – being a US brand – was more durable than Tetra, which was Korean-made. Respondent also pointed out that CDA should have been entitled to a volume discount from Tetra, considering that it was a bulk purchase. Thus, it held that the CDA officials should have purchased the equipment from Microcircuits, the lowest bidder, considering that both companies offered equipment of the same technical specifications and functions.[11]

Petitioner once again moved for a reconsideration of the Decision of respondent COA. In his motion for reconsideration, he stated that since CDA did not have the technical expertise to evaluate computers, it contracted the services of DAP-TEC to conduct the technical evaluation. The results of the evaluation were among the factors considered in determining the best bid. Petitioner reasoned that cost, quality and track record were also taken into consideration. He further stated that the bidding process was properly conducted. Lastly, he asserted that there was no evidence to show that CDA should have been entitled to a purchase discount.[12]

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[9] *Rollo* at 68-72.

[10] *Id.* at 73-77.

[11] *Id.* at 50-52.

[12] *Id.* at 53-60.

Dismissing the motion, respondent COA issued the assailed Resolution[13] on 18 March 2003, the dispositive portion of which states:

> WHEREFORE, premises considered, and there being no new material evidence adduced that would warrant a reversal or modification of the decision herein sought to be reconsidered, the instant request has to be, as it is hereby denied. Accordingly, COA Decision No. 98-424 dated October 21, 1998 is hereby affirmed with finality.

Commissioner Emmanuel M. Dalman, however, dissented from the majority ruling of the COA[14] and said:

> 1. The CDA cannot be faulted for overpricing since its decision to chose (sic) TETRA Corporation was done in good faith. It was based on the recommendation of the Development Academy of the Philippines (DAP) after a technical evaluation was conducted. Following the principle of presumption of regularity in the performance of official duties, the CDA cannot be held liable, unless there is a finding of fraud or irregularity which is not present in the instant case.
>
> 2. This Office is not incline to share the view of ITC that "...the performance of the competing equipments (sic) would not vary/change even if the attributes cited by management were to be factored in and that the difference in brands, **microprocessors**, BIOSES, as well as casings will not affect the efficiency of the computer's performance" (Emphasis supplied)
>
> > The type of microprocessors used is one among the many factors that affect the computer's performance. Even the brands represent different levels of performance, durability and, of course, prices. At the time the purchase was made and considering the type of computers then procured, distinction should have been made on whether the computer is branded or non-branded since the prices would actually vary although the specifications and other features are identical.

[13] *Id.* at 61-63.

[14] *Id.* at 92-93.

The *ponencia*, unfortunately, affirms the findings of respondent COA and holds that there was excessive expenditure for the purchase of the Tetra computer equipment. It states that an actual canvass for the determination of the base price was not needed, because the auditor based her findings on the report of the Technical Services Office (TSO) of respondent COA.

This ruling is unwarranted.

First, respondents failed to show that there was substantial evidence to support a finding of liability.

Circular No. 85-55-A of the Commission of Audit clearly states:

3.3 EXCESSIVE EXPENDITURES

Definition: **The term 'excessive expenditures' signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.**

Standard for 'Excessive' Expenditures

The term 'excessive expenditures' pertains to variables of Price and Quantity.

1. Price – The price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the prices of the same item per canvass of the auditor.

2. Volume Discounts – The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchase/payment documents.

3. **Factors to be considered** – In determining whether or not the price is excessive, the following factors may be considered.

A – Supply and demand forces in the market.

Ex. – Where there is a supply shortage of a particular product, such as cement or GI sheets, prices of these products may vary within a day.

B – Government Price Quotations

C – Warranty of Products or Special Features

The price is not necessarily excessive when the service/ item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award.

D – Brand of Products

Products of recognized brands coming from countries known for producing such quality products are relatively expensive.

Ex. – Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany. (Emphasis supplied.)

State Auditor Luzviminda Rubico admitted in her 1st Indorsement dated 6 June 1994[15] that **she did not conduct any actual canvass to determine the reasonableness of the price**. Instead, she conducted a mere telephone canvass. Her failure to do so was contrary to the prevailing rules and jurisprudence at that time.

It is likewise inaccurate to say that since petitioner did not demand the canvass sheets, *Arriola* is inapplicable to the case at bar. Petitioner, from the very start, refused to acknowledge the validity of the PED-TSO price evaluation report, claiming that the comparison was between "apples and oranges." Petitioner demanded that respondents instead conduct a price comparison between the same items in the open market, or at the very least, "compare the acquired computer equipment and peripherals with the same modes of other branded computers."[16] By so doing, petitioner would have been fully apprised of the charge against him and the other CDA officials.

Thus, in *Buscaino v. COA*,[17] this Court held:

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[15] *Id.* at 78-79.

[16] *Id.* at 74.

[17] G.R. No. 110798, July 20, 1999, 310 SCRA 635.

Going into the merits of the case, the Court finds that the Commission on Audit acted with grave abuse of discretion in handing down its assailed decision. **The various disbursements upon which petitioner's liability is based have not been indubitably established as patently invalid or irregular and the disallowances ordered by COA were not substantiated by sufficient evidence on record.**

To begin with, as regards the items disallowed on the ground of overpricing, petitioner was adjudged liable therefor because he was a member of the Canvass and Award Committee which was tasked to certify that the prices submitted were the lowest and which recommended the award to the supplier. **The disallowances were made on the basis of respondent's allegation or theory that the school and other office supplies may be bought from other suppliers at prices much lower than those of the supplier to whom the bid was awarded.**

In order to find out how the COA reached such a conclusion, petitioner asked the COA **to furnish him with the necessary information and/or documents that would indicate the large disparity in the prices such as the quotation of prices of every item re-canvassed by the resident auditor, reflecting the brand or quality of the items, the names and addresses of the suppliers where the items were re-canvassed and the date subject items were re-canvassed**. Respondent COA, however, did not furnish the same on the two occasions that the said request was made. **Without the necessary information and/or documents, it baffles the Court how COA could have arrived at the conclusion that there were cases of overpricing. And without the needed information and/or documents, the petitioner was not afforded the opportunity to refute the disallowances, item by item, and to justify the legality of the purchases involved**. As argued by the petitioner,

> **"How can the undersigned (petitioner) determine the difference in prices and per cent increases between the then procurement officer's canvassed prices and the then COA Auditor's re-canvassed prices and possibly justify item by item the legality of the purchase when as you said 'no such document as you indicated above were turned-over to the undersigned** (present PUP COA Auditor)''? **The purchase orders contain several items and it is important that those items which were allegedly overpriced should be identified**."

The requirements of due process of law mandate that every accused or respondent be apprised of the nature and cause of the charge

against him, and the evidence in support thereof be shown or made available to him so that he can meet the charge with traversing or exculpatory evidence. COA's failure to furnish or show to the petitioner the inculpatory documents or records of purchases and price levels constituted a denial of due process which is a valid defense against the accusation. Absent any evidence documentary or testimonial to prove the same, the charge of COA against the herein petitioner must fail for want of any leg to stand on.

In the 1991 decision in the case of *Virgilio C. Arriola and Julian Fernandez vs. Commission on Audit and Board of Liquidators,* rendered on September 30, 1991, which was reiterated in the case of *National Center for Mental Health Management vs. Commission on Audit* on December 6, 1996, this Court succinctly held that mere allegations of overpricing are not,

> " 'x x x **in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects**.'
>
> **A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A** par. 2.6, that:
>
> > 'x x x As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like x x x'
>
> **By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.**

x x x x x x x x x

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. x x x

x x x x x x x x x

It was incumbent upon the COA to prove that its standards were met in its audit disallowance. The records do not show that such was done in this case.

x x x **absent due process and evidence to support COA's disallowance, COA's ruling on petitioner's liability has no basis**."

Indeed, without the evidence upon which the charge of overpricing is anchored, apart from being a denial of due process, it would not be possible to attach liability to petitioner. (Emphasis supplied.)

It bears emphasizing that, in the Summary of Price Data and Feedback Form on which respondents base their allegations, the officer-in-charge (OIC) of the PED-TSO of respondent COA disclosed that **the other items were based only on one or two pieces of valid price information, instead of three as required. However, it did not disclose the source of the reference values or base prices. In fact, the OIC of the PED-TSO clearly stated that some pieces of equipment used for comparison had no data available.** This was clearly contrary to Resolution No. 90-43 on PED-TSO's mandate to be transparent with regard to the sources of the reference values.

Respondents cannot sanction a person for an act or omission when they did not even bother to follow the standards they themselves established as well as those that have been established by this Court. Unfortunately, respondent COA merely relied on the report of the auditor. The auditor did not see, hold, or examine the equipment. Even the PED-TSO report that she relied on was incomplete, as will be explained more in detail later.

It is also imperative to note that, acting on the Court's ruling in *Arriola*, on 31 March 1997, respondent COA issued

Memorandum No. 97-012 which provides the guidelines for securing the evidence to support audit findings of overpricing. The COA memorandum cited this particular portion in *Arriola*:

Price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowances of agency disbursements for government projects.(Emphasis supplied.)

It also cited *National Center for Mental Health Management v. COA*, to wit:[18]

It would be difficult to concede to the quoted summary of overpricing made by the Technical Audit Analyst to be a final basis for an out-and-out rejection of agency disbursements/cost estimates in the absence of actual canvass sheets and/or price quotations from identified suppliers. (Emphasis supplied.)

In order to further clarify the role and status of price reference data in the audit evidence process, respondent COA also issued the following guidelines to determine whether there is overpricing. The guidelines state:

3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa.

2.1. above **have to be supported with canvass sheets and/or price quotations indicating**:

a) the identities/names of the suppliers or sellers;

b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;

c) the specifications of the items which should match those involved in the finding of over-pricing; and

d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

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[18] G.R. No. 114864, December 6, 1996, 265 SCRA 390.

In the assignment of the liability for the disallowed overprice, the auditor shall carefully study the procedures followed in processing the questioned transactions and determine those officials/employees who had direct participation in the fixing of the price/prices of the questioned transaction. Officials/employees, whose signatures or initials may appear on the vouchers and/or transactions documents, who are determined to have had no participation in the fixing of the price shall not be included among those to be held liable for the disallowance. (Emphasis supplied.)

When respondent COA decided this case on 21 October 1998, these guidelines were already in force. **This Court had already established the standards in *Arriola*.** Thus, respondent COA should have, at the very least, ordered the auditor to present the documents enumerated in these guidelines. It should have made sure that the due process standards laid down in *Arriola* were followed.

In *Nava v. Palattao*,[19] we held that *Arriola* and Memorandum No. 97-012 were not applicable because *Arriola* was promulgated and these regulations were issued after the audit in *Nava* was conducted. *Nava*, however, is fundamentally different from the present case in two respects. First, at the time the audit in the present case was conducted, *Arriola* was already promulgated and respondent, being a party to the case, was already aware of the standards established in that case. Second, in *Nava*, the COA presented evidence proving beyond reasonable doubt that the accused in that case violated the Anti-Graft and Corrupt Practices Act in the purchase of laboratory tools and devices. Thus, we held:

Anyway, the logical sequence of events was clearly indicated in the COA Report:

> "1.5.1. Obtained samples of each laboratory tools and devices purchased by the Division of Davao del Sur, Memorandum Receipts covering all the samples were issued by the agency to the audit team and are marked as Exhibits 1.2 and 3 of this Report."

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[19] G.R. No. 160211, August 26, 2008, 499 SCRA 745.

"1.5.2. Bought and presented these samples to reputable business establishments in Davao City like Mercury Drug Store, Berovan Marketing Incorporated and [A]llied Medical Equipment and Supply Corporation (AMESCO) where these items are also available, for price verification."

"1.5.3. Available items which were exactly the same as the samples presented were purchased from AMESCO and Berovan Marketing Incorporated, the business establishments which quoted the lowest prices. Official receipts were issued by the AMESCO and Berovan Marketing Incorporated which are hereto marked as Exhibits 4,5,6 and 7 respectively."

The COA team then tabulated the results as follows:

Item	Purchased Unit Cost	Recanvassed Price + 10% Allow.	Difference	% of Over-pricing	Quantity Purchased	Total Amount of Overpricing
Flask Brush made of Nylon	₱112.20	₱ 8.80	₱103.40	1,175%	400	₱41,360.00
Test Tube Glass Pyrex (18x50 mm)	22.36	14.30	8.06	56%	350	2,821.00
Graduated Cylinder Pyrex (100ml)	713.00	159.50	553.50	347%	324	179,334.00
Glass Spirit Burner (alcohol lamp)	163.50	38.50	125.00	325%	144	18,000.00
Spring Balance (12.5kg)Germany	551.00	93.50	457.50	489%	102	46,665.00
Iron Wire Gauge	16.20	9.90	6.30	64%	47	296.10
Bunsen Burner	701.00	90.75	610.25	672.%	150	91,537.50

What is glaring is the discrepancy in prices. The tabulated figures are supported by Exhibits "E-1", "E-2", "E-3", and "E-4", the Official Receipts evidencing the equipment purchased by the audit team for purposes of comparison with those procured by petitioner. The authenticity of these Exhibits is not disputed by petitioner. As the SBN stated in its Decision, the fact of overpricing — as reflected in the aforementioned exhibits — was testified to or identified by Laura S. Soriano, team leader of the audit team.

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***Second* and more important, the circumstances in *Arriola* are different from those in the present case. In the earlier case, the COA merely referred to a cost comparison made by the engineer of COA-Technical Services Office (TSO), based on unit costs furnished by the Price Monitoring Division of the COA-TSO. The COA even refused to show the canvass sheets to the petitioners, explaining that the source document was confidential.**

In the present case, the audit team examined several documents before they arrived at their conclusion that the subject transactions were grossly disadvantageous to the government. These documents were included in the Formal Offer of Evidence submitted to the Sandiganbayan. Petitioner was likewise presented an opportunity to controvert the findings of the audit team during the exit conference held at the end of the audit, but he failed to do so. (Emphasis supplied.)

Unfortunately, respondents failed to apply *Arriola*. It is even more regrettable that, in the case at bar, this Court has lowered the standards for due process it painstakingly established in *Arriola*.

Second, respondents violated petitioner's right to due process when they compared the equipment purchased with that of a different brand having different features and functions.

In *Arriola*, we held that there should have been a specific comparison between the pump purchased and the pump the TSO based its price findings from. We stated that it was not sufficient to compare the purchased item, a "Goulds Submersible pump model 25 EL 30432, 3 HP, 230 V., coupled to Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz. 3450 RPM" to a mere "Goulds submersible pump." Thus, following *Arriola*, the "same item" referred to in COA Circular No. 85-55-A should therefore mean as the item having specifically the same brand with the same features and specifications with that item purchased.

In the case at bar, the price of the Tetra computers was compared with that of Genesis computers; the price of the Magtek uninterrupted power system was compared with that of APC, Admate and PK. These comparisons were in violation of COA Circular No. 85-55-A. As earlier discussed, a comparison should be made between

the ***same items*** available in the market. Genesis computer clones are inferior to Tetra Trigem computers, which are branded Korean equipment; expectedly, Genesis would be priced differently. It does not take an expert to say that branded computers are superior to generic clones. As pointed out by petitioner – which was not refuted by respondents – Genesis was a non-branded computer which was incomparable to a branded product such as Trigem. Not only was it a different brand, but it also had different specifications and features. These items were not the same as those that were actually bought, but, instead, were *alternatives*.

Below is a summary of the comparison made by the OIC PED-TSO. This is based on the PED-TSO Report[20] provided to the OIC of the TSO (OIC-TSO), which was largely the basis of auditor Rubico's findings:

Items	Reference Value/s as of August
1. Tetra PC-AT 80386 SX with - 80mb Hard Disk - 14" Paper white Monitor - Trigem 386 SX - 4 MB on Board - 1.2 MB Floppy Disk drive - 1.44 MB Floppy Disk drive - Trigem VGA PW Monitor - VGA card - Mouse with mouse pad	1. Genesis 386 SX - 100 MB Hard Disk - 4MB RAM on Board - TV8 Monitor (low radiation)
2. Tetra PC-AT 80386 Tower with - 600 MB Hard Disk - 14" TG VGA colored Monitor Display - TG 386 XE (33mhz.) - 8MB RAM on Board with math co-processor - 1.2 MB FDD - 1.44 MB FDD - 600 MB SCSI HDD with controller	2. **No data available for comparison,** OIC PED-TSO merely quoted the only available price information.

[20] *Rollo* at 70-72.

- VGA card - 150 MB tape back-up with data cartridge - External Modern (2400 BPS) - with mouse	
3. Tetra PC-AT 80386 SX Laptop Notebook/Notepad Type with - 80 MB Hard Disk - VGA (LCD) Display - TG386 NP (25 Mhz.) - 2MB RAM on Board - with mouse	3. **No data available for comparison,** OIC PED-TSO merely quoted the only available price information.
4. Tetra Magtek Uninterrupted Power Supply (UPS) 1.0 (KVA) - Input: 220 V 60Hz.1 dia. - Capacity: 1 KVA - Battery Pack: sealed - Maintenance-free - Back-up time: 30 minutes	4. APC 100W Admate 100W PK 100W **No data available for comparison** for these products.
5. Upgrade PC-XT to PC-AT 286 - 1 MB RAM expandable /16 Mhz. (Min.) - 40 MB Hard Disk - 1.2 Mb FDD - 1.44 MB FDD - With 101 enhanced keyboard	5. **No data available for comparison.** OIC PED-TSO merely quoted the available price information.
6. Tetra OLI ML 321 Elite Printer, Dot matrix printer (9 pin.122 cols.)	6. **No data available for comparison.** OIC PED-TSO merely quoted the available price information.

The OIC PED-TSO disclosed that other items were verified or evaluated but **had no valid data for comparison**. In short, the PED-TSO only knew the price of the computer peripherals, but it had no idea what their brands or specifications were.

I also wish to emphasize the inaccuracy of Auditor Rubico's reports[21] dated 17 and 23 November 1995, respectively, from which respondents base their Comment. Auditor Rubico stated that the TSO determined that both computers were of the same characteristics and attributes.[22] A cursory reading of the report immediately reveals that, contrary to the auditor's report, the PED-TSO disclosed that it lacked necessary information when it conducted the comparison.

The only other comparison conducted by respondent COA was by Director Marieta Acorda of the Information Technology Center of COA, where she compared Trigem computers with the computers of Columbia and Microcircuits. She did not compare Trigem with Genesis.[23] In her report, as will be discussed more in detail later, Director Acorda stated that the functions of the specific features – microprocessors, BIOSes and casings – of the three bidders did not affect the performance of the computer, except for the RAM capacity. This was therefore an irrelevant comparison to conclude that the Trigem computers should have been priced at those of Genesis; when it was not the brands being compared by Director Acorda.

Therefore, there is no basis for respondent COA's finding that Genesis and Trigem were of the same characteristics and attributes.

It is therefore clear that respondents' basis for holding petitioner liable is unsubstantiated and based on mere speculations and conjecture. First, no actual canvass was made; and second, it appears that **no valid comparison was conducted either**.

In applying *Arriola* to the case at bar, we should hold that respondents violated petitioner's due process when they failed (1) to conduct an actual canvass in the market; (2) to present canvass sheets or price quotations; (3) to disclose the source

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[21] *Id.* at 231-233 and 243–247.

[22] *Id.* at 231 and 243.

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

of the reference values or base prices; and (4) to compare the questioned equipment specifically to the same items – a situation even worse than that in *Arriola*, where at least COA compared items of the same brand but with different specifications; and where while no canvass sheets or price quotations were produced, actual written canvass was apparently conducted.

It is likewise unfair to compare Tetra's proposed Trigem computers to a computer clone that was not even qualified to be bidded on or was not subjected to the same hardware benchmark testing.

That the brands should not have mattered is wrongly maintained by both Director Acorda and by State Auditor Rubico (in the first Indorsement dated 6 June 1994). This assertion of course violates COA's own basic rules on investigations of allegations of irregularities in government purchases.

Respondent COA substituted its own judgment for that of CDA without legal authority to do so and without any legal or factual basis for its conclusions that its judgment in matters of preference was superior to that of CDA. Even if it were to be proven that its judgments or preferences were superior to those of CDA, the fundamental problem remains that it does not have the authority to substitute the judgment of the audited agency with those of its own. It can only audit purchases, not prescribe what are to be purchased.

Director Acorda observed that the two other bidders, Microcircuits and Columbia, were penalized for failing to comply with the CDA specifications. For example, CDA required Intel microprocessors, but only Tetra used Intel, while Microcircuits and Columbia used AMD. Thus, Microcircuits and Columbia were penalized. CDA required ROM BIOS licensed by IBM, AMI, Phoenix or Awards. Thus, DAP-TEC penalized Columbia which provided AcerBios. Columbia was again penalized because the tower had a desktop casing and not a tower casing as required by CDA. Tetra was also penalized because the RAM of the Notebook was only 640 kilobytes instead of 2 megabytes (expandable). Director Acorda pointed out that, save for the

RAM of the computers, the other specifications indicated by CDA did not affect the performance of the equipment. She, however, said that the benchmark testing conducted by DAP-TEC was not a sufficient basis to determine whether or not the Tetra computers were inferior to the other computers.

None of the above instances of substitution of judgment make sense. Unless questioned in a proper proceeding, it stands that the preference of CDA is justifiable by its requirements of functionality and durability of the computer equipment bought.

Meanwhile, auditor Rubico noted that Tetra did not give a volume discount on the purchase of the computers. She also pointed out that the prices of computers in 1992 were already relatively low given that there were a considerable number of suppliers in the market. She claimed that the brands of the equipment should not matter because the offers of the bidders were of similar technical specifications, features and warranty as contained in the proposal bid form. Finally, she stated that the date of the telephone canvass and the TSO report was immaterial because there was no showing that foreign exchange rate affected the price of the equipment over that period.

Respondents failed to show any basis for this conclusion. To adopt the above argument is to render the whole bidding process inutile, or to say that actual canvass can be done away with on findings of excessive pricing. Following this line of reasoning, price should then be the only factor to consider when the government acquires equipment and supplies. To reason thus is contrary to the admission of respondents that brands do affect the price and the quality of products. Respondent COA's own Circular No. 85-55-A states that, in determining whether there is an excessive expenditure, the brand of the product should also be taken into consideration. It expressly stated, "**products of recognized brands coming from countries known for producing such quality products are relatively expensive.**" Thus, in the example given in Circular No. 85-55-A on scissors, respondent COA stated that Solingen scissors are expected to be more expensive than ordinary scissors, despite the fact that scissors which are not Solingen have the same

function as the Solingen scissors. The circular likewise provided that price is not excessive if the equipment offers warranty or special features that are necessary to the needs of the agency, and these special features or warranty is reflected on the offer or reward. Respondents cannot now renege on this express admission, thereby denying petitioner his due process.

Respondent never denied that Genesis was a non-branded computer. Moreover, Tetra used Intel microprocessors, which were manufactured by Intel Corporation, the company that pioneered the production of microprocessors for personal computers, as Director Acorda herself pointed out. Other microprocessors, including AMD, are clones of the Intel microprocessor. There was no indication that Genesis also used Intel microprocessors. In fact, what was apparent in the report submitted by the PED-TSO was that Genesis had different specifications and less features than Trigem.

Likewise, Tetra was not legally obligated to give such discount to CDA. Neither was it shown that petitioner had the legal obligation to demand for a volume discount. Nothing in the cited COA regulations states that volume discounts should be demanded for all government purchases; or that failure to negotiate for a volume discount would result in the nullification of the bidding process or the contract; or that the parties shall be held administratively liable for failing to secure a volume discount. Neither was it shown that the other two bidders, Microcircuits and Columbia, would have given CDA a volume discount had they been chosen. Volume discount only becomes relevant in determining whether there were excessive expenditures when the discounts **allowed** for bulk purchases were not reflected in the price offered or in the award or in the purchases or payment document.[24] The term "allowed" here should signify that it is dependent on the negotiations of the parties, and not mandatory.

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[24] COA Circular No. 85-55-A, par. 2, *Standards for "Excessive" Expenditure.*

Furthermore, there was a denial of due process when respondents imposed their own judgment and discretion on the PBAC. If we were to analyze the case carefully, respondents actually attacked the discretion of the PBAC and the Board of Administrators (BOA) – not that of petitioner – in setting the criteria and approving the purchase of the equipment.

The 1987 Constitution provides that the powers of COA include the power to "promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." These powers, however, do not include the power to substitute its own preference over that of a government agency; or to dictate which equipment is better or more appropriate without following the requirements of due process.

To recall, the records are replete with documents from respondents alleging that there was overpricing. CDA allegedly bought the equipment when there were *cheaper alternatives* in the market. Respondents insist that, as long as the equipment had the same basic functions, brand should not matter. These alternatives did not necessarily possess the same functions or features identified by the PBAC; nevertheless, these alternatives were more acceptable to respondents. In short, they wanted to substitute their own judgment for that of the CDA officials, **without even verifying with the CDA officials the purposes or uses of the equipment or of each specification required**.

If respondents insist that petitioner and the other CDA officials should have purchased the cheaper alternatives, then they should have charged the CDA officials for "unnecessary" or "extravagant" expenditures under COA Circular No. 85-55-A, rather than "excessive" expenditures, to wit:

"UNNECESSARY" EXPENDITURES

Definition: The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. **Unnecessary expenditures are those not supportive of the implementation**

of the objectives and mission of the agency relative to the nature of its operation. **This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time**. An **expenditure that is not essential or that which can be dispensed with** without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining in whether or not an expenditure is necessary.

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"EXTRAVAGANT" EXPENDITURES

Definition: The term "extravagant expenditure" signifies those **incurred without restraint, judiciousness and economy**. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious. (Emphasis supplied.)

Respondent then would have proceeded with the case, going into the wisdom and reasonableness of the criteria and the functions of the equipment bought *vis-à-vis* the needs of the CDA. To reiterate, in the case at bar, respondents did not even go into CDA's purpose for the equipment bought.

Therefore, absent an undertaking of the proper process and, consequently, a finding that the criteria and standards were established with grave abuse of discretion, respondents cannot question the wisdom of petitioner and the other CDA officials with regard to the standards and criteria set.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.[25]

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[25] *Daan v. Sandiganbayan,* G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233.

Respondents further claim that Microcircuits, having the lowest bid, should have won. However, even if they were to follow respondent COA's own suggestion, petitioner and the other officials of CDA would still have been held liable for overpricing, because even if they had chosen Microcircuits as respondents suggest, the equipment would still cost more than 10% of the allowable price variance when compared to the base price of Genesis, the chosen inferior clone product. None of the qualified bidders would have successfully won the bid. Stated differently, if respondents insist that petitioner should have accepted the bid of Microcircuits, then the amount of disallowance should have been based on the offer price of Microcircuits and not the price of Genesis.

Thus, respondents clearly contradict themselves when, on the one hand, they insist that the amount disallowed should be taken from the comparison with Genesis, but on the other insist that petitioners should have purchased Microcircuits computers.

The *ponencia* points out that there were instances of manipulation in the bidding process, specifically, during the second stage or the technical evaluation. It appears that, on 23 November 1995, auditor Rubico wrote to the legal counsel of respondent COA.[26] She alleged that on 4 November 1992, DAP-TEC faxed a "First and Impartial Result" from its technical evaluation of the equipment. The tests supposedly showed that Tetra was of the "most inferior quality and last in over-all ranking." On the same day, the CDA PBAC opened the bid documents in the presence of COA representatives. A day after the bids were known, a certain Rey Evangelista, allegedly a staff of PBAC Chair Edwin Canonizado, also allegedly went to DAP-TEC and asked the latter's technician to "change and/or make alteration on the 1st evaluation result and to indicate the name of Tetra Corporation the number one in the over-all ranking in the evaluation result which he did."[27]

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[26] *Rollo* at 243-247.

[27] *Id.* at 245.

After judiciously poring over the records, I find that the allegations of auditor Rubico **are unsubstantiated**. Respondents did not attach the so-called "First and Impartial Result." What they attached was the DAP-TEC technician's 23 November 1995 letter, which was issued upon the request of Abraham Rodriguez, allegedly a COA representative to the CDA, but **which does not support the report of auditor Rubico**. The letter states:[28]

"After compiling, tabulating and interpreting the test results, our office communicated to CDA our findings as evidenced by letter and attachments labeled as '**1st result**'.

"A day or two after submitting our findings, Mr. Evangelista came to our office and directed us to include in our report penalties for any deviation from the hardware specifications, providing us with penalty points to be followed and imposed. Mr. Evangelista, also, directed us to specify in our report the name of the winning supplier, which we did, per our letter & attachment labeled as '**2nd result**'."

Notably, the DAP-TEC technician merely stated that Mr. Evangelista provided them with guidelines for penalty points. The technician did not say that Mr. Evangelista instructed them to indicate Tetra as the winner. He only instructed DAP-TEC to indicate which bidder won the technical evaluation. Thus, there was nothing in the letter that conclusively showed that Mr. Evangelista had gone to DAP-TEC under the instructions of petitioner, specifically to manipulate the results.

Again, respondents did not investigate the matter. They did not even ask why CDA imposed 'penalty points' or why CDA required those specifications. They merely took the report of auditor Rubico as the absolute truth, without verifying its content. The documents attached as evidence for our review is bereft of any indication that there was manipulation involved.

It is a basic tenet in the observance of administrative due process that the tribunal or any of its judges must act on its own independent consideration of law and facts of the

[28] *Id.* at 248-249.

controversy, and not simply accept the views of the subordinate. In the case at bar, respondents erroneously relied solely on the Indorsement of auditor Rubico for the disallowance despite the absence of substantial evidence to support the claim.

Petitioner enjoys the presumption of regularity. An allegation of manipulation must be accompanied by substantial evidence before respondents can conclude that bad faith attended the transaction.

More egregiously, **respondents' allegation that the bidding process was tainted with irregularity was belatedly raised**. It was only in respondents' Comment[29] before this Court dated 12 March 2004 that the allegation was made. Even if auditor Rubico's report cited above was dated 23 November 1995, the Decision dated 21 October 1998 did not discuss the issue of whether the bidding process was properly conducted. Neither did it state that the disallowance was upheld on the basis of the alleged manipulation. Respondents are therefore estopped from raising that matter very late in the day. Petitioner was only informed of the manipulation issue for the first time through respondents' Comment filed in 2004. It is again violative of petitioner's due process when respondents now come before us, insisting that the disallowance was based on the alleged manipulation, when it was never found to be so by respondent COA in its Decision in 1998. Thus, the reliance of this Court on respondents' belated allegation is clearly unwarranted.

In disposing of the issues of this case, the *ponencia* likewise relied on the doctrine that states that findings of quasi-judicial agencies are to be given great respect. However, this doctrine cannot be applied to the present case. To reiterate, COA Commissioner Dalman dissented from the 13 March 2003 COA Resolution. In addition, when this Court required public respondents to comment on the Petition, the Office of the Solicitor General (OSG) submitted a Manifestation and Motion in lieu of Comment.[30] The OSG

[29] *Id.* at 140-155.

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

informed us that it "**is constrained to adopt a position adverse to the Commission on Audit**."

In my opinion, these instances were red flags that should have warned us to look into the findings of respondent OA more carefully.

While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but are contradicted by the evidence on record.[31]

I also note that respondents erroneously based the allegation of overpricing on the total amount paid for the purchases. Thus, in their Comment, respondents alleged:

"...Foregoing premises considered it can be safely asserted that the computers of TETRA and Microcircuits were of the same quality and therefore, the only basis left in determining the winning bid was the price/cost of the computers, which to repeat, Microcircuits offered at a much lower price of ₱123,315.00, that is half the price of ₱2,285,279.00 of TETRA's computers."[32]

In addition, respondents claimed,

"...Among the three bidders, TETRA offered the highest bid price quotation of ₱2,269,630[33] while Microcircuit ₱1,123,315.00 and Columbia – ₱1,177,600.00[34] despite the reported inferior quality of TETRA's products..."[35]

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[31] *Great Southern Maritime Services Corp. v. Surigao,* G.R. No. 183646, 600 SCRA 795.

[32] *Id.* at 148.

[33] It is not clear in the records how respondents came up with this figure.

[34] It appears that Columbia made two bids, one for ₱1,476,600 and the other for ₱1,177,600. *Rollo* at 86.

[35] *Rollo* at 150.

These allegations are misleading. It is false to say that Microcircuits offered half the price of Tetra. The Tetra bid quoted above represents the initial order plus the purchase of the additional 21 computers. The price difference between Tetra and Microcircuits based on the original bid only amounted to ₱146,305. This false allegation puts into question respondents' appreciation of the facts, especially considering that they merely quoted auditor Rubico's report, without providing this Court with supporting evidence on the record.

Lastly, as a public official, petitioner is assumed to have performed his functions regularly. The burden to prove otherwise rests on respondents. In the case at bar, not only did respondents fail to substantiate their allegations; worse, they violated petitioner's right to due process. There is no legal basis to make him personally liable for the disallowance.

It was clear that the PBAC was primarily responsible for the formulation of rules and guidelines on the conduct of the public bidding. It was also responsible for the criteria for pre-qualifying prospective bidders and for determining whether the documents submitted are in accordance with the required checklist of requirements. Finally, it was the body that recommends to the Board of Administrators (BOA) the winner of the bid, according to its own evaluation.

The BOA, meanwhile, was the body that gave the final approval for the purchase of the equipment.

It is presumed that petitioner, PBAC, BOA and even DAP-TEC were acting independently of each other. Each had their respective powers and functions. Respondents failed to rebut this presumption.

Even if it were true that there were instances of manipulation in the bidding process when a certain Rey Evangelista allegedly ordered the DAP-TEC to fix the results of the technical evaluation, it was likewise not conclusively shown that he was acting under the orders of petitioner. Mr. Evangelista was never proved to be directly connected or related to petitioner; instead,

the auditor alleged that Mr. Evangelista was the staff of Edwin Canonizado, who is the PBAC chair.

Thus, to allege that petitioner had a role in the so-called manipulation of the bidding process, respondents carry the burden of substantially proving this to be true. The mere fact that petitioner was the one who reconstituted the PBAC or that he was the one who contracted the services of DAP-TEC does not conclusively show that he was directly involved in the alleged manipulation. Respondents likewise carry the burden of showing that they followed the proper procedure of assailing bidding procedures. However, respondents miserably failed in both respects.

What is more apparent is that petitioner was merely exercising ministerial functions with regard to the whole process. The discretion with regard to the purchase of the equipment clearly rested on the PBAC and the BOA.

Thus, absent any evidence showing that petitioner had any direct participation in the alleged fixing of the price, or that he exerted undue influence over the PBAC and BOA, he should not have been made liable under the circumstances.

This opinion likewise applies to the other CDA officials who were made solidarily liable with petitioner by public respondents.

I vote to grant the Petition.

EN BANC

[G.R. No. 187714. March 8, 2011]

AQUILINO Q. PIMENTEL, JR., MANUEL B. VILLAR, JOKER P. ARROYO, FRANCIS N. PANGILINAN, PIA S. CAYETANO, and ALAN PETER S. CAYETANO, *petitioners, vs.* **SENATE COMMITTEE OF THE WHOLE represented by SENATE PRESIDENT JUAN PONCE ENRILE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; COMPULSORY JOINDER OF INDISPENSABLE PARTIES; TEST TO DETERMINE IF A PARTY IS AN INDISPENSABLE PARTY.— The test to determine if a party is an indispensable party is as follows: An indispensable party is a party who has an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. A person who is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit a complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an

indispensable party that his presence will avoid multiple litigation.

2. ID.; ID.; ID.; ID.; ID.; SENATOR MADRIGAL IS NOT AN INDISPENSABLE PARTY TO THE PRESENT PETITION; THE NATURE OF SENATOR MADRIGAL'S INTEREST IN THE CASE IS NOT OF THE NATURE THAT THE CASE COULD NOT BE RESOLVED WITHOUT HER PARTICIPATION.— In this case, Senator Madrigal is not an indispensable party to the petition before the Court. While it may be true that she has an interest in the outcome of this case as the author of P.S. Resolution 706, the issues in this case are matters of jurisdiction and procedure on the part of the Senate Committee of the Whole which can be resolved without affecting Senator Madrigal's interest. The nature of Senator Madrigal's interest in this case is not of the nature that this case could not be resolved without her participation.

3. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; NOT APPLICABLE WHERE THE ISSUES RAISED ARE PURELY LEGAL WHICH ARE WITHIN THE COMPETENCE AND JURISDICTION OF THE COURT AND NOT AN ADMINISTRATIVE AGENCY OR THE SENATE TO RESOLVE.— The doctrine of primary jurisdiction does not apply to this case. The Court has ruled: x x x It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of fact are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of the court. x x x The issues presented here do not require the expertise, specialized skills and knowledge of respondent for their resolution. On the contrary, the issues here are purely legal questions which are within the competence and jurisdiction of the Court, and not an administrative agency or the Senate to resolve.

4. ID.; CONSTITUTIONAL LAW; DOCTRINE OF SEPARATION OF POWERS; THE COURT IS NOT PRECLUDED FROM RESOLVING LEGAL ISSUES RAISED BY THE MERE

INVOCATION OF THE DOCTRINE OF SEPARATION OF POWERS ESPECIALLY WHEN THE RESOLUTION OF THE LEGAL ISSUES FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT.— As regards respondent's invocation of separation of powers, the Court reiterates that "the inviolate doctrine of separation of powers among the legislative, executive or judicial branches of government by no means prescribes for absolute autonomy in the discharge by each of that part of the governmental power assigned to it by the sovereign people." Thus, it has been held that "the power of judicial review is not so much power as it is [a] duty imposed on this Court by the Constitution and that we would be remiss in the performance of that duty if we decline to look behind the barriers set by the principle of separation of powers." The Court, therefore, is not precluded from resolving the legal issues raised by the mere invocation by respondent of the doctrine of separation of powers. On the contrary, the resolution of the legal issues falls within the exclusive jurisdiction of this Court.

5. ID.; ID.; RIGHT OF EQUAL PROTECTION OF THE LAW; THE TRANSFER OF THE COMPLAINT FROM THE ETHICS COMMITTEE TO THE SENATE COMMITTEE OF THE WHOLE DID NOT VIOLATE SENATOR VILLAR'S RIGHT TO EQUAL PROTECTION; THE REFUSAL OF THE MINORITY TO NAME ITS MEMBERS TO THE ETHICS COMMITTEE EFFECTIVELY PREVENTED THE COMMITTEE FROM PURSUING ITS INVESTIGATION, WHICH CIRCUMSTANCE PROMPTED THE COMMITTEE TO UNDERTAKE THE EXTRAORDINARY REMEDY OF REFERRING THE MATTER TO THE SENATE COMMITTEE OF THE WHOLE.— Reviewing the events that led to the constitution of the Senate Committee of the Whole, the Court notes that upon the election of Senator Enrile as Senate President on 17 November 2008, the Ethics Committee was also reorganized. Senator Lacson, who first called the Senate's attention to the alleged irregularities committed by Senator Villar, was elected as Chairperson. On 16 December 2008, when Senator Lacson inquired whether the Minority was ready to name their representatives to the Ethics Committee, Senator Pimentel informed the body that there would be no member from the Minority in the Ethics Committee. On 26 January 2009, Senator Lacson reiterated his appeal to the Minority to nominate their representatives to the Ethics Committee. Senator Pimentel

informed him that it is the stand of the Minority not to nominate any of their members to the Ethics Committee. Senator Pimentel promised to convene a caucus to determine if the Minority's decision on the matter is final but the records did not show that a caucus was convened. On 20 April 2009, Senator Villar delivered a privilege speech where he stated that he would answer the accusations against him **on the floor and not before the Ethics Committee**. It was because of the accusation that the Ethics Committee could not act with fairness on Senator Villar's case that Senator Lacson moved that the responsibility of the Ethics Committee be undertaken by the Senate acting as a Committee of the Whole, which motion was approved with ten members voting in favor, none against, and five abstentions. The Rules of the Ethics Committee provide that "all matters relating to the conduct, rights, privileges, safety, dignity, integrity and reputation of the Senate and its Members shall be under the exclusive jurisdiction of the Senate Committee on Ethics and Privileges." However, in this case, the refusal of the Minority to name its members to the Ethics Committee stalled the investigation. In short, while ordinarily an investigation about one of its members' alleged irregular or unethical conduct is within the jurisdiction of the Ethics Committee, the Minority effectively prevented it from pursuing the investigation when they refused to nominate their members to the Ethics Committee. Even Senator Villar called the Ethics Committee a kangaroo court and declared that he would answer the accusations against him on the floor and not before the Ethics Committee. Given the circumstances, the referral of the investigation to the Committee of the Whole was an extraordinary remedy undertaken by the Ethics Committee and approved by a majority of the members of the Senate.

6. ID.; ID.; RIGHT TO DUE PROCESS; THE ADOPTION BY THE SENATE COMMITTEE OF THE WHOLE OF THE RULES OF THE ETHICS COMMITTEE DOES NOT VIOLATE SENATOR VILLAR'S RIGHT TO DUE PROCESS; THE CONSTITUTIONAL RIGHT OF THE SENATE TO PROMULGATE ITS OWN RULES OF PROCEDURE HAS LONG BEEN RECOGNIZED AND AFFIRMED BY THE COURT.— We reiterate that, considering the circumstances of this case, the referral of the investigation by the Ethics Committee to the Senate Committee of the Whole is an

extraordinary remedy that does not violate Senator Villar's right to due process. In the same manner, the adoption by the Senate Committee of the Whole of the Rules of the Ethics Committee does not violate Senator Villar's right to due process. The Constitutional right of the Senate to promulgate its own rules of proceedings has been recognized and affirmed by this Court. Thus: *First*. Section 16(3), Article VI of the Philippine Constitution states: "*Each House shall determine the rules of its proceedings.*" This provision has been traditionally construed as a grant of full discretionary authority to the House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process. x x x. The issue partakes of the nature of a political question which, under the Constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Further, pursuant to his constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication. The only limitation to the power of Congress to promulgate its own rules is the observance of quorum, voting, and publication when required. As long as these requirements are complied with, the Court will not interfere with the right of Congress to amend its own rules.

7. ID.; ID.; ID.; THE RULES OF THE SENATE COMMITTEE OF THE WHOLE EXPRESSLY REQUIRE PUBLICATION BEFORE THE RULES CAN TAKE EFFECT; TO COMPLY WITH DUE PROCESS REQUIREMENTS, THE SENATE MUST FOLLOW ITS OWN INTERNAL RULES IF THE RIGHTS OF ITS OWN MEMBERS ARE AFFECTED.— The Constitution does not require publication of the internal rules of the House or Senate. Since rules of the House or the Senate that affect only their members are internal to the House or Senate, such rules need not be published, **unless such rules expressly provide for their publication before the rules can take effect**. In this case, the proceedings before the Senate Committee of the Whole affect only members of the Senate since the proceedings involve the

Senate's exercise of its disciplinary power over one of its members. Clearly, the Rules of the Senate Committee of the Whole are internal to the Senate. However, Section 81, Rule 15 of the Rules of the Senate Committee of the Whole provides: Sec. 81. EFFECTIVITY. These Rules shall be effective after publication in the Official Gazette or in a newspaper of general circulation. Hence, in this particular case, the Rules of the Senate Committee of the Whole itself provide that the Rules must be published before the Rules can take effect. Thus, even if publication is not required under the Constitution, publication of the Rules of the Senate Committee of the Whole is required because the Rules expressly mandate their publication. The majority of the members of the Senate approved the Rules of the Senate Committee of the Whole, and the publication requirement which they adopted should be considered as the will of the majority. Respondent cannot dispense with the publication requirement just because the Rules of the Ethics Committee had already been published in the Official Gazette. To reiterate, the Rules of the Senate Committee of the Whole expressly require publication before the Rules can take effect. To comply with due process requirements, the Senate must follow its own internal rules if the rights of its own members are affected.

8. ID.; ID.; ID.; IN CASE OF CONFLICT BETWEEN THE RULES OF THE SENATE COMMITTEE OF THE WHOLE AND THE CONSTITUTION, THE LATTER WILL PREVAIL.— Incidentally, we note that Section 4, Rule 1 of the Rules of the Senate Committee of the Whole is an exact reproduction of Section 4, Rule 1 of the Rules of the Senate Committee on Ethics and Privileges which states that the Ethics Committee shall be composed of seven members, contrary to the fact that the Senate Committee of the Whole consists of all members of the Senate. In addition, Section 5(B), Rule 1 of the Rules of the Senate Committee of the Whole is an exact reproduction of Section 5(B), Rule 1 of the Rules of the Senate Committee on Ethics and Privileges which states that only two members of the Ethics Committee shall constitute a quorum, contrary to respondent's allegation in its Comment that eight members of the Senate Committee of the Whole shall constitute a quorum. However, if the Senate is constituted as a Committee of the Whole, a majority of the Senate is required to constitute a quorum to

do business pursuant to Section 16(2), Article VI of the Constitution. Otherwise, there will be a circumvention of this express provision of the Constitution on quorum requirement. Obviously, the Rules of the Senate Committee of the Whole require modification to comply with requirements of quorum and voting which the Senate must have overlooked in this case. In any event, in case of conflict between the Rules of the Senate Committee of the Whole and the Constitution, the latter will of course prevail.

APPEARANCES OF COUNSEL

Gana & Manlangit Law Office for petitioners.
Joel L. Bodegon for Manuel B. Villar, Jr.
Johnmuel D. Mendoza & Remigio Michael A. Ancheta II for Senate Committee of the Whole.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for prohibition[1] with prayer for issuance of a writ of preliminary injunction and/or temporary restraining order filed by Senators Aquilino Q. Pimentel, Jr. (Senator Pimentel), Manuel B. Villar (Senator Villar), Joker P. Arroyo, Francis N. Pangilinan, Pia S. Cayetano, and Alan Peter S. Cayetano (petitioners). Petitioners seek to enjoin the Senate Committee of the Whole (respondent) from conducting further hearings on the complaint filed by Senator Maria Ana Consuelo A.S. Madrigal (Senator Madrigal) against Senator Villar pursuant to Senate Resolution No. 706 (P.S. Resolution 706) on the alleged double insertion of ₱200 million for the C-5 Road Extension Project in the 2008 General Appropriations Act.

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

The Antecedents

On 15 September 2008, Senator Panfilo Lacson (Senator Lacson) delivered a privilege speech entitled "*Kaban ng Bayan, Bantayan!*"[2] In his privilege speech, Senator Lacson called attention to the congressional insertion in the 2008 General Appropriations Act, particularly the ₱200 million appropriated for the construction of the President Carlos P. Garcia Avenue Extension from Sucat Luzon Expressway to Sucat Road in Parañaque City including Right-of-Way (ROW), and another ₱200 million appropriated for the extension of C-5 road including ROW. Senator Lacson stated that C-5 is what was formerly called President Carlos P. Garcia Avenue and that the second appropriation covers the same stretch – from Sucat Luzon Expressway to Sucat Road in Parañaque City. Senator Lacson inquired from DBM Secretary Rolando Andaya, Jr. about the double entry and was informed that it was on account of a congressional insertion. Senator Lacson further stated that when he followed the narrow trail leading to the double entry, it led to Senator Villar, then the Senate President.

On 8 October 2008, Senator Madrigal introduced P.S. Resolution 706,[3] the full text of which reads:

WHEREAS the Senate President has repeatedly and publicly "advocated" (sic) the construction of the C-5 Road/Pres. C.P. Garcia Avenue Extension linking Sucat Road in Parañaque City to the South Luzon Expressway;

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[2] *Rollo*, pp. 117-123.

[3] *Id.* at 53-54. RESOLUTION DIRECTING THE COMMITTEE ON ETHICS AND PRIVILEGES TO INVESTIGATE THE CONDUCT OF SENATE PRESIDENT MANUEL B. VILLAR, JR. FOR USING HIS POSITION OF POWER TO INFLUENCE PUBLIC OFFICIALS IN RELOCATING THE C-5 ROAD EXTENSION PROJECT TO DELIBERATELY PASS THRU HIS PROPERTIES, AND TO NEGOTIATE THE OVERPRICED PURCHASE OF ROAD RIGHTS OF WAY THRU SEVERAL PROPERTIES ALSO OWNED BY HIS CORPORATIONS REDOUNDING IN HUGE PERSONAL PERSONAL (SIC) FINANCIAL BENEFITS FOR HIM TO THE DETRIMENT OF THE FILIPINO PEOPLE, THEREBY RESULTING IN A BLATANT CONFLICT OF INTEREST.

WHEREAS it was discovered that there was a double insertion of ₱200 million for the C-5 Road Extension project in the 2008 General Appropriations Act;

WHEREAS Committee on Finance Chair Sen. Juan Ponce Enrile confirmed that the double insertion for the C-5 Road Extension Project was made by the Senate President;

WHEREAS this double insertion is only the tip of the iceberg;

WHEREAS there is overwhelming evidence to show that the Senate President, from the time he was member of the House of Representatives, used his influence on the executive to cause the realignment of the C-5 Road Extension project to ensure that his properties in Barangay San Dionisio, Parañaque City and Barangays Pulang Lupa and Mayuno Uno, Las Piñas would be financially benefited by the construction of the new road;

WHEREAS there is overwhelming evidence to show that the Senate President, through his corporations, negotiated the sale of his properties as roads right of way to the government, the same properties affected by the projects he proposed;

WHEREAS there is overwhelming evidence to show that the Senate President caused the sale of his landholdings to government as a grossly overpriced cost prejudicial to other lot owners in the area, the government, and the Filipino people;

WHEREAS there is overwhelming evidence to show that the Senate President, in the overpriced sale of another property, used his power and influence to extort from the original landowner the profit made from the overprice by the Villar owned corporations;

WHEREAS these acts of the Senate President are in direct violation of the Constitution, the Anti-Graft and Corrupt Practices Act, the Code of Conduct and Ethical Standards of Public Officers;

WHEREAS the Senate President has violated the public trust of the people in order to serve his personal interests thereby sacrificing the people's welfare;

WHEREAS the illegal and unethical conduct of the Senate President has betrayed the trust of the people, and by doing so has shamed the Philippine Senate;

WHEREAS it is incumbent upon the members of the Senate now to reclaim the people's trust and confidence and show that the illegal conduct of any of its member, even of its leaders, shall not go unpunished;

WHEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, TO DIRECT THE COMMITTEE ON ETHICS AND PRIVILEGES TO INVESTIGATE THE CONDUCT OF SENATE PRESIDENT MANUEL B. VILLAR, JR. FOR USING HIS POSITION OF POWER TO INFLUENCE PUBLIC OFFICIALS IN RELOCATING THE C-5 ROAD EXTENSION PROJECT TO DELIBERATELY PASS THRU HIS PROPERTIES, AND TO NEGOTIATE THE OVERPRICED PURCHASE OF ROAD RIGHTS OF WAY THRU SEVERAL PROPERTIES ALSO OWNED BY HIS CORPORATIONS REDOUNDING IN HUGE PERSONAL FINANCIAL BENEFITS FOR HIM TO THE DETRIMENT OF THE FILIPINO PEOPLE, THEREBY RESULTING IN A BLATANT CONFLICT OF INTEREST.

Adopted,

(Sgd.)

M.A. MADRIGAL[4]

On even date, P.S. Resolution 706 was referred to the Committee on Ethics and Privileges (Ethics Committee) which at that time was composed of the following members:

Sen. Pia S. Cayetano -	Chairperson
Sen. Loren Legarda -	Member in lieu of Sen. Madrigal
Sen. Joker Arroyo -	Member
Sen. Alan Peter Cayetano-	Member
Sen. Miriam Defensor-Santiago-	Member
Sen. Gregorio Honasan -	Member
Sen. Panfilo Lacson -	Inhibited and replaced by Sen. Rodolfo Biazon

On 17 November 2008, Senator Juan Ponce Enrile (Senator Enrile) was elected Senate President. The Ethics Committee was reorganized with the election of Senator Lacson as Chairperson, and Senators Richard Gordon, Gregorio Honasan, Loren Legarda,

[4] *Id*.

and Mar Roxas as members for the Majority. On 16 December 2008, Senator Lacson inquired whether the Minority was ready to name their representatives to the Ethics Committee.[5] After consultation with the members of the Minority, Senator Pimentel informed the body that there would be no member from the Minority in the Ethics Committee.[6] On 26 January 2009, Senator Lacson reiterated his appeal to the Minority to nominate their representatives to the Ethics Committee.[7] Senator Pimentel stated that it is the stand of the Minority not to nominate any of their members to the Ethics Committee, but he promised to convene a caucus to determine if the Minority's decision on the matter is final.[8] Thereafter, the Senate adopted the Rules of the Senate Committee on Ethics and Privileges (Committee Rules) which was published in the Official Gazette on 23 March 2009.[9]

On 20 April 2009, Senator Villar delivered a privilege speech[10] where he stated that he would answer the accusations against him on the floor and not before the Ethics Committee. On 27 April 2009, Senator Lacson delivered another privilege speech[11] where he stated that the Ethics Committee was not a kangaroo court. However, due to the accusation that the Ethics Committee could not act with fairness on Senator Villar's case, Senator Lacson moved that the responsibility of the Ethics Committee be undertaken by the Senate, acting as a Committee of the Whole. The motion was approved with ten members voting in favor, none against, and five abstentions.[12]

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[5] *Id.* at 131. Journal of the Senate.

[6] *Id*.

[7] *Id.* at 132. Journal of the Senate.

[8] *Id*.

[9] *Id.* at 141-154.

[10] *Id.* at 155-159. Journal of the Senate.

[11] *Id.* at 162-164. Journal of the Senate.

[12] *Id.* at 165.

Respondent Senate Committee of the Whole conducted its hearings on 4 May 2009, with eleven Senators present, and on 7 May 2009, with eight Senators present. On both hearings, petitioners objected to the application of the Rules of the Ethics Committee to the Senate Committee of the Whole. In particular, petitioners questioned the determination of the quorum. On 11 May 2009, petitioners proposed 11 amendments to the Rules of the Ethics Committee that would constitute the Rules of the Senate Committee of the Whole, out of which three amendments were adopted. On 14 May 2009, Senator Pimentel raised as an issue the need to publish the proposed amended Rules of the Senate Committee of the Whole. On even date, respondent proceeded with the Preliminary Inquiry on P.S. Resolution 706. On 18 May 2009, the Chairman submitted a report on the Preliminary Inquiry with a directive to all Senators to come up with a decision on the preliminary report on 21 May 2009. On 21 May 2009, respondent declared that there was substantial evidence to proceed with the adjudicatory hearing. The preliminary conference was set on 26 May 2009.

Petitioners came to this Court for relief, raising the following grounds:

1. The transfer of the complaint against Senator Villar from the Ethics Committee to the Senate Committee of the Whole is violative of Senator Villar's constitutional right to equal protection;

2. The Rules adopted by the Senate Committee of the Whole for the investigation of the complaint filed by Senator Madrigal against Senator Villar is violative of Senator Villar's right to due process and of the majority quorum requirement under Art. VI, Sec. 16(2) of the Constitution; and

3. The Senate Committee of the Whole likewise violated the due process clause of the Constitution when it refused to publish the Rules of the Senate Committee of the Whole in spite of its own provision [which] require[s] its effectivity upon publication.[13]

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

In its Comment, respondent argues that:

1. The instant petition should be dismissed for failure to join or implead an indispensable party. In the alternative, the instant petition should be archived until such time that the said indispensable party has been joined or impleaded and afforded the opportunity to be heard;

2. There was no grave abuse of discretion on the part of respondent Committee;

3. Petitioners are not entitled to a writ of prohibition for failure to prove grave abuse of discretion on the part of respondent Committee of the Whole;

4. The principle of separation of powers must be upheld;

5. The instant petition must be dismissed for being premature. Petitioners failed to observe the doctrine or primary jurisdiction or prior resort;

6. It is within the power of Congress to discipline its members for disorderly behavior;

7. The determination of what constitutes disorderly behavior is a political question which exclusively pertains to Congress;

8. The Internal Rules of the Senate are not subject to judicial review in the absence of grave abuse of discretion; [and]

9. The Rules of the Ethics Committee, which have been duly published and adopted[,] allow the adoption of supplementary rules to govern adjudicatory hearings.[14]

The Issues

The issues for the Court's resolution are the following:

1. Whether Senator Madrigal, who filed the complaint against Senator Villar, is an indispensable party in this petition;

2. Whether the petition is premature for failure to observe the doctrine of primary jurisdiction or prior resort;

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[14] *Id.* at 86-87.

3. Whether the transfer of the complaint against Senator Villar from the Ethics Committee to the Senate Committee of the Whole is violative of Senator Villar's right to equal protection;

4. Whether the adoption of the Rules of the Ethics Committee as Rules of the Senate Committee of the Whole is a violative of Senator Villar's right to due process and of the majority quorum requirement under Art. VI, Section 16(2) of the Constitution; and

5. Whether publication of the Rules of the Senate Committee of the Whole is required for their effectivity.

The Ruling of this Court

Indispensable Party

Section 7, Rule 3 of the 1997 Rules of Civil Procedure provides:

SEC. 7 – *Compulsory joinder of indispensable parties.* - Parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants.

The test to determine if a party is an indispensable party is as follows:

An indispensable party is a party who has an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person who is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between

them. Also, a person is not an indispensable party if his presence would merely permit a complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[15]

In this case, Senator Madrigal is not an indispensable party to the petition before the Court. While it may be true that she has an interest in the outcome of this case as the author of P.S. Resolution 706, the issues in this case are matters of jurisdiction and procedure on the part of the Senate Committee of the Whole which can be resolved without affecting Senator Madrigal's interest. The nature of Senator Madrigal's interest in this case is not of the nature that this case could not be resolved without her participation.

Doctrine of Primary Jurisdiction

Respondent asserts that the doctrine of primary jurisdiction "simply calls for the determination of administrative questions, which are ordinarily questions of fact, by administrative agencies rather than by courts of justice."[16] Citing *Pimentel v. HRET*,[17] respondent avers that primary recourse of petitioners should have been to the Senate and that this Court must uphold the separation of powers between the legislative and judicial branches of the government.

The doctrine of primary jurisdiction does not apply to this case. The Court has ruled:

> x x x It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions

[15] *Lagunilla v. Velasco,* G.R. No. 169276, 16 June 2009, 589 SCRA 224, 232-233 citing *Regner v. Logarta,* G.R. No. 168747, 19 October 2007, 537 SCRA 277 and *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997).

[16] *Rollo,* p. 108, Comment.

[17] 441 Phil. 492 (2002).

of fact are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of the court. x x x[18]

The issues presented here do not require the expertise, specialized skills and knowledge of respondent for their resolution. On the contrary, the issues here are purely legal questions which are within the competence and jurisdiction of the Court, and not an administrative agency or the Senate to resolve.[19]

As regards respondent's invocation of separation of powers, the Court reiterates that "the inviolate doctrine of separation of powers among the legislative, executive or judicial branches of government by no means prescribes for absolute autonomy in the discharge by each of that part of the governmental power assigned to it by the sovereign people."[20] Thus, it has been held that "the power of judicial review is not so much power as it is [a] duty imposed on this Court by the Constitution and that we would be remiss in the performance of that duty if we decline to look behind the barriers set by the principle of separation of powers."[21] The Court, therefore, is not precluded from resolving the legal issues raised by the mere invocation by respondent of the doctrine of separation of powers. On the contrary, the resolution of the legal issues falls within the exclusive jurisdiction of this Court.

Transfer of the Complaint from the Ethics Committee to the Senate Committee on the Whole

Petitioners allege that the transfer of the complaint against Senator Villar to the Senate Committee of the Whole violates

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[18] *Industrial Enterprises, Inc. v. Court of Appeals,* G.R. No. 88550, 18 April 1990, 184 SCRA 426, 431-432.

[19] *Arimao v. Taher,* G.R. No. 152651, 7 August 2006, 498 SCRA 74.

[20] *Francisco, Jr. v. House of Representatives,* 460 Phil. 830 (2003).

[21] *Tolentino v. Secretary of Finance*, G.R. No. 115455, 25 August 1994, 235 SCRA 630.

his constitutional right to equal protection. Petitioners allege that the Senate Committee of the Whole was constituted solely for the purpose of assuming jurisdiction over the complaint against Senator Villar. Petitioners further allege that the act was discriminatory and removed Senator Villar's recourse against any adverse report of the Ethics Committee to the Senate as a body.

We do not agree with petitioners.

Reviewing the events that led to the constitution of the Senate Committee of the Whole, the Court notes that upon the election of Senator Enrile as Senate President on 17 November 2008, the Ethics Committee was also reorganized. Senator Lacson, who first called the Senate's attention to the alleged irregularities committed by Senator Villar, was elected as Chairperson. On 16 December 2008, when Senator Lacson inquired whether the Minority was ready to name their representatives to the Ethics Committee, Senator Pimentel informed the body that there would be no member from the Minority in the Ethics Committee. On 26 January 2009, Senator Lacson reiterated his appeal to the Minority to nominate their representatives to the Ethics Committee. Senator Pimentel informed him that it is the stand of the Minority not to nominate any of their members to the Ethics Committee. Senator Pimentel promised to convene a caucus to determine if the Minority's decision on the matter is final but the records did not show that a caucus was convened.

On 20 April 2009, Senator Villar delivered a privilege speech where he stated that he would answer the accusations against him **on the floor and not before the Ethics Committee**. It was because of the accusation that the Ethics Committee could not act with fairness on Senator Villar's case that Senator Lacson moved that the responsibility of the Ethics Committee be undertaken by the Senate acting as a Committee of the Whole, which motion was approved with ten members voting in favor, none against, and five abstentions.

The Rules of the Ethics Committee provide that "all matters relating to the conduct, rights, privileges, safety, dignity, integrity

and reputation of the Senate and its Members shall be under the exclusive jurisdiction of the Senate Committee on Ethics and Privileges."[22] However, in this case, the refusal of the Minority to name its members to the Ethics Committee stalled the investigation. In short, while ordinarily an investigation about one of its members' alleged irregular or unethical conduct is within the jurisdiction of the Ethics Committee, the Minority effectively prevented it from pursuing the investigation when they refused to nominate their members to the Ethics Committee. Even Senator Villar called the Ethics Committee a kangaroo court and declared that he would answer the accusations against him on the floor and not before the Ethics Committee. Given the circumstances, the referral of the investigation to the Committee of the Whole was an extraordinary remedy undertaken by the Ethics Committee and approved by a majority of the members of the Senate.

Adoption of the Rules of the Ethics Committee by the Senate Committee of the Whole

Petitioners allege that the adoption of the Rules of the Ethics Committee by the Senate Committee of the Whole is violative of Senator Villar's right to due process.

We do not agree.

Again, we reiterate that, considering the circumstances of this case, the referral of the investigation by the Ethics Committee to the Senate Committee of the Whole is an extraordinary remedy that does not violate Senator Villar's right to due process. In the same manner, the adoption by the Senate Committee of the Whole of the Rules of the Ethics Committee does not violate Senator Villar's right to due process.

The Constitutional right of the Senate to promulgate its own rules of proceedings has been recognized and affirmed by this Court. Thus:

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[22] Section 2.

First. Section 16(3), Article VI of the Philippine Constitution states: *"Each House shall determine the rules of its proceedings."*

This provision has been traditionally construed as a grant of full discretionary authority to the House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

x x x. The issue partakes of the nature of a political question which, under the Constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Further, pursuant to his constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.[23]

The only limitation to the power of Congress to promulgate its own rules is the observance of quorum, voting, and publication when required. As long as these requirements are complied with, the Court will not interfere with the right of Congress to amend its own rules.

Prior Publication

Petitioners assail the non-publication of the Rules of the Senate Committee of the Whole. Respondent counters that publication is not necessary because the Senate Committee of the Whole merely adopted the Rules of the Ethics Committee which had been published in the Official Gazette on 23 March 2009. Respondent alleges that there is only one set of Rules that governs both the Ethics Committee and the Senate Committee of the Whole.

In *Neri v. Senate Committee on Accountability of Public Officers and Investigations,*[24] the Court declared void

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[23] *Dela Paz v. Senate Committee on Foreign Relations*, G.R. No. 184849, 13 February 2009, 579 SCRA 521, 525.

[24] G.R. No. 180643, 25 March 2008, 549 SCRA 77.

unpublished rules of procedure in Senate inquiries insofar as such rules affect the rights of witnesses. The Court cited Section 21, Article VI of the Constitution which mandates:

> Sec. 21. The Senate or the House of Representatives or any of its respective Committees may conduct inquiries in aid of legislation in accordance with its **duly published rules of procedure**. The rights of persons appearing in or affected by such inquiries shall be respected. (Emphasis supplied)

The Court explained in the Resolution[25] denying the motion for reconsideration:

> 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. It is incumbent upon the Senate to publish the rules of its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in the subsequent Congresses or until they are amended or repealed to sufficiently put public on notice.
>
> If it was the intention of the Senate for its present rules on legislative inquiries to be effective even in the next Congress, it could have easily adopted the same language it had used in its main rules regarding effectivity.
>
> Lest the Court be misconstrued, it should likewise be stressed that not all orders issued or proceedings conducted pursuant to the subject *Rules* are null and void. **Only 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 the witnesses as expressed in Section 21, Article VI of the Constitution.** *Sans* such violation, orders and proceedings are considered valid and effective.[26] (Emphasis supplied)

In the recent case of *Gutierrez v. The House of Representatives Committee on Justice, et al.*,[27] the Court further clarified:

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[25] G.R. No. 180643, 4 September 2008, 564 SCRA 152.

[26] *Id.* at 230-231.

[27] G.R. No. 193459, 15 February 2011.

> x x x 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*. *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.[28]

The Constitution does not require publication of the internal rules of the House or Senate. Since rules of the House or the Senate that affect only their members are internal to the House or Senate, such rules need not be published, **unless such rules expressly provide for their publication before the rules can take effect**.

In this case, the proceedings before the Senate Committee of the Whole affect only members of the Senate since the proceedings involve the Senate's exercise of its disciplinary power over one of its members. Clearly, the Rules of the Senate Committee of the Whole are internal to the Senate. However, Section 81, Rule 15 of the Rules of the Senate Committee of the Whole provides:

> Sec. 81. EFFECTIVITY. These Rules shall be effective after publication in the Official Gazette or in a newspaper of general circulation.[29]

Hence, in this particular case, the Rules of the Senate Committee of the Whole itself provide that the Rules must be published before the Rules can take effect. Thus, even if publication is not required under the Constitution, publication of the Rules of the Senate Committee of the Whole is required because the Rules expressly mandate their publication. The majority of the members of the Senate approved the Rules of the Senate Committee of the Whole, and the publication requirement which they adopted should be considered as the will of the majority. Respondent cannot dispense with the publication requirement just because the Rules of the

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[28] Emphasis in the original.

[29] *Rollo*, p. 52.

Ethics Committee had already been published in the Official Gazette. To reiterate, the Rules of the Senate Committee of the Whole expressly require publication before the Rules can take effect. To comply with due process requirements, the Senate must follow its own internal rules if the rights of its own members are affected.

Incidentally, we note that Section 4, Rule 1 of the Rules of the Senate Committee of the Whole[30] is an exact reproduction of Section 4, Rule 1 of the Rules of the Senate Committee on Ethics and Privileges[31] which states that the Ethics Committee shall be composed of seven members, contrary to the fact that the Senate Committee of the Whole consists of all members of the Senate. In addition, Section 5(B), Rule 1 of the Rules of the Senate Committee of the Whole[32] is an exact reproduction of Section 5(B), Rule 1 of the Rules of the Senate Committee on Ethics and Privileges[33] which states that only two members of the Ethics Committee shall constitute a quorum, contrary to respondent's allegation in its Comment that eight members of the Senate Committee of the Whole shall constitute a quorum.[34]

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[30] *Id.* at 31.

[31] *Id.* at 141. It states:

Sec. 4. *Composition*. - It shall have seven (7) members who, including the Chairperson, shall be chosen by the Senate. The President *Pro Tempore* and both the Majority and Minority Leaders of the Senate are *Ex-Officio* Members of the Committee.

[32] *Id.* at 32.

[33] *Id.* at 141. It states:

Sec. 5. *Meetings*. x x x.

B. QUORUM: The presence of at least two (2) Members of the Committee shall constitute a quorum.

[34] *Id.* at 96. The Comment states:

x x x For instance, with respect to the quorum, the records of the deliberations of the Respondent Committee of the Whole will show that Senate President Enrile, after tracing the long history of instances when the Senate was constituted as a Senate Committee of the Whole, pointed out that for purposes of its proceedings and consistent with tradition and practice, eight (8) of its members – not two (2) as Petitioners claimed – will constitute the quorum.

However, if the Senate is constituted as a Committee of the Whole, a majority of the Senate is required to constitute a quorum to do business pursuant to Section 16(2), Article VI of the Constitution.[35] Otherwise, there will be a circumvention of this express provision of the Constitution on quorum requirement. Obviously, the Rules of the Senate Committee of the Whole require modification to comply with requirements of quorum and voting which the Senate must have overlooked in this case. In any event, in case of conflict between the Rules of the Senate Committee of the Whole and the Constitution, the latter will of course prevail.

WHEREFORE, we *GRANT* the petition in part. The referral of the complaint by the Committee on Ethics and Privileges to the Senate Committee of the Whole shall take effect only upon publication of the Rules of the Senate Committee of the Whole.

SO ORDERED.

Corona, C.J., Carpio Morales, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on official leave.

[35] Section 16. x x x

(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide.

EN BANC

[G.R. No. 192856. March 8, 2011]

FERNANDO V. GONZALEZ, *petitioner, vs.* **COMMISSION ON ELECTIONS, RENO G. LIM, STEPHEN C. BICHARA and THE SPECIAL BOARD OF CANVASSERS constituted per Res. dated July 23, 2010 of the Commission on Elections *En Banc,*** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (OEC); CANCELLATION OF CERTIFICATE OF CANDIDACY; DISQUALIFICATION OF CANDIDATE; DISTINGUISHED; EXPOUNDED.— The prohibited acts covered by Section 68 refer to election campaign or political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election (Section 261 [cc], sub-par.6). As to the ground of false representation in the COC under Section 78, we held in *Salcedo II v. Commission on Elections* that in order to justify the cancellation of COC, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court concluded that this refers to qualifications for elective office. Citing previous cases in which the Court interpreted this phrase, we held that Section 78 contemplates statements regarding *age*, *residence* and *citizenship* or non-possession of natural-born Filipino status.

Furthermore, aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office.

2. ID.; ID.; ID.; CANCELLATION OF CERTIFICATE OF CANDIDACY; THE ONLY INSTANCE WHERE A PETITION QUESTIONING THE QUALIFICATIONS OF A CANDIDATE FOR ELECTIVE OFFICE CAN BE FILED BEFORE ELECTION IS WHEN THE PETITION IS FILED UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE.— We pointed out in *Salcedo II* the two remedies available for questioning the *qualifications* of a candidate, thus: **There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code** (B.P. Blg. 881), to wit: "(1) ***Before election***, pursuant to **Section 78** thereof which provides that: x x x and "(2) ***After election***, pursuant to **Section 253** thereof, *viz*: Sec. 253. *Petition for quo warranto*. - *Any voter* contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission *within ten days after the proclamation of the results of the election*." The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under Section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office. Clearly, the *only instance* where a petition questioning the *qualifications* of a candidate for elective office can be filed before election is when the petition is filed under Section 78 of the OEC.

3. ID.; ID.; ID.; ID.; THE PETITION FOR DISQUALIFICATION AND CANCELLATION OF CERTIFICATE OF CANDIDACY FILED

BY RESPONDENT WAS FILED OUT OF TIME; PURSUANT TO SECTION 78 OF THE OEC, THE PETITION SHOULD HAVE BEEN FILED WITHIN TWENTY-FIVE DAYS FROM THE FILING OF THE CERTIFICATE OF CANDIDACY.— Since the petition in SPA No. 10-074 (DC) sought to cancel the COC filed by Gonzalez and disqualify him as a candidate on the ground of false representation as to his citizenship, the same should have been filed within twenty-five days from the filing of the COC, pursuant to Section 78 of the OEC. Gonzalez filed his COC on December 1, 2009. Clearly, the petition for disqualification and cancellation of COC filed by Lim on *March 30, 2010* was filed out of time. The COMELEC therefore erred in giving due course to the petition. Even assuming *arguendo* that the petition in SPA No. 10-074 (DC) was timely filed, we find that the COMELEC gravely erred when it held that the proclamation of Gonzalez by the PBOC of Albay on May 12, 2010 was premature and illegal.

4. ID.; ID.; ID.; ID.; MOTION FOR RECONSIDERATION FILED BY PETITIONER NOT CONSIDERED *PRO FORMA*.— We have held that mere reiteration of issues already passed upon by the court does not automatically make a motion for reconsideration *pro forma*. What is essential is compliance with the requisites of the Rules. Indeed, in the cases where a motion for reconsideration was held to be *pro forma*, the motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof. In the case at bar, the motion for reconsideration filed by Gonzalez failed to show that it suffers from the foregoing defects. Although the motion repeatedly stressed that the people of the Third District of Albay had spoken through the winning margin of votes for Gonzalez that they chose the latter to represent them in the House of Representatives, it also reiterated his position that the petition filed by Bichara is time-barred, adding that it was just an act of political harassment. But the main argument asserts that the evidence of petitioner Bichara was insufficient to justify the Second Division's ruling that Gonzalez is not a natural-born

Filipino and hence disqualified to be a candidate for the position of Member of the House of Representatives. Verily, under prevailing jurisprudence, to successfully challenge herein Gonzalez's disqualification, petitioner in SPA No. 10-074 (DC) must clearly demonstrate that Gonzalez's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. The COMELEC thus seriously erred in ruling that Gonzalez's motion for reconsideration was *pro forma*. Petitioner's motion for reconsideration of the May 8, 2010 resolution of the Second Division having been timely filed, the said resolution had not become final and executory. Considering that at the time of the proclamation of Gonzalez who garnered the highest number of votes for the position of Representative in the 3rd district of Albay, the said Division Resolution declaring Gonzalez disqualified as a candidate for the said position was not yet final, he had at that point in time remained qualified. Therefore, his proclamation on May 12, 2010 by the PBOC was valid or legal. Moreover, the May 8, 2010 resolution cannot as yet be implemented for not having attained finality.

5. ID.; ID.; ID.; ID.; THE COMMISSION ON ELECTION'S (COMELEC) RULING THAT PETITIONER'S PROCLAMATION WAS PREMATURE AND ILLEGAL IS CONTRARY TO THE COURT'S PRONOUNCEMENT IN *LIMKAICHONG V. COMMISSION ON ELECTIONS* AND JURISPRUDENCE INTERPRETING SECTION 72 OF THE OMNIBUS ELECTION CODE AND SECTION 6 OF R.A. NO. 6646 OR THE ELECTORAL REFORMS LAW OF 1987 WHICH AMENDED THE SAID PROVISION.— We find the above ruling contrary to our pronouncement in *Limkaichong* and jurisprudence interpreting Section 72 of the OEC and Section 6 of R.A. No. 6646 which amended said provision. First, as already stated, there was no legal bar to the proclamation of Gonzalez as the winning candidate on May 12, 2010 since the May 8, 2010 Resolution at that time had not yet become final; in fact Gonzalez received a copy thereof only on May 11, 2010. We have held that the five-day period for filing a motion for reconsideration under Rule 19, Section 2 of the

COMELEC Rules of Procedure should be counted from the **receipt** of the decision, resolution, order, or ruling of the COMELEC Division. With his filing of a motion for reconsideration within the three-day period provided in Section 7 of COMELEC Resolution No. 8696, the execution of the said resolution was effectively suspended. Moreover, there is nothing in the May 8, 2010 Resolution of the Second Division ordering the suspension of the proclamation of Gonzalez. From the language of Section 6 of R.A. No. 6646 upon which the first paragraph of Section 16 of COMELEC Resolution No. 8678 was based, the Commission can order the suspension of the proclamation of the winning candidate only *upon motion* during the pendency of the disqualification case. The Court has ruled that the suspension of proclamation of a winning candidate is not a matter which the COMELEC Second Division can dispose of *motu proprio*. Section 6 of R.A. No. 6646 requires that the suspension must be "upon motion by the complainant or any intervenor."

6. ID.; ID.; ID.; ID.; THERE BEING NO FINAL JUDGMENT OF DISQUALIFICATION YET AT THE TIME OF PETITIONER'S PROCLAMATION ON MAY 12, 2010, IT WAS GRAVE ERROR FOR THE COMELEC *EN BANC* TO RULE THAT THE PROCLAMATION WAS PREMATURE AND ILLEGAL.— The rule then is that candidates who are disqualified by final judgment before the election shall not be voted for and the votes cast for them shall not be counted. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, *unless, on motion* of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or cancellation of their certificates of candidacy are strong. There being no final judgment of disqualification yet at the time of his proclamation on May 12, 2010, it was grave error for the COMELEC *En Banc* to rule that Gonzalez's proclamation was illegal and premature. Also, the May 8, 2010 Resolution rendered by the Second Division cannot be construed as an implicit exercise by the Commission of its power to suspend the proclamation of Gonzalez as it could not have yet ordered such suspension considering that Bichara (petitioner in SPA No. 10-074 [DC]) filed his "Urgent Motion to Stop/Suspend The Proclamation of Fernando Vallejo Gonzalez" only on May 11, 2010 after the promulgation of the May 8, 2010

Resolution. Moreover, the COMELEC *En Banc* did not act on said motion of Bichara even after Gonzalez had been proclaimed by the PBOC. Subsequently, Lim filed a motion for leave to intervene and suspend the effects of proclamation of Gonzalez, which was followed by ten very urgent motions for the COMELEC *En Banc* to resolve the same.

7. ID.; ID.; ID.; ID.; THE ADVENT OF AUTOMATED ELECTIONS DID NOT MAKE ANY DIFFERENCE IN THE APPLICATION OF SECTION 6 OF R.A. NO. 6646 INSOFAR AS THE EFFECTS OF DISQUALIFICATION ARE CONCERNED.— Neither can the COMELEC anchor its ruling that the May 12, 2010 proclamation of Gonzalez was illegal and premature on the ground that votes for said candidate, who was disqualified under the May 8, 2010 Resolution of the Second Division, should not have been counted. This is apparent from the other reason cited by the COMELEC as one of the circumstances distinguishing the present case from that of *Limkaichong*, thus: Lastly, it must be taken into consideration that, unlike the previous elections, the ballots were now already printed with the names of the candidates as of the date of printing, and **it was already impossible without incurring tremendous expense and delay merely to remove the name of the disqualified candidate and program the PCOS machines not to count the votes cast in favor of the disqualified candidate in a short period of time prior to the actual elections.** For said reason, this Commission has ample power to suspend the effects of, and ultimately annul, the proclamation of the disqualified candidate whose votes should not have been counted in the first place. The above proposition is untenable. The advent of automated elections did not make any difference in the application of Section 6 of R.A. No. 6646 insofar as the effects of disqualification are concerned. Even at the time when ballots were physically read by the board of election inspectors and counted manually, it had not been absolutely necessary to reprint the ballots or remove the names of candidates who were disqualified before election. The votes cast for such candidates considered as "stray votes" even if read by the PCOS machines will have to be disregarded by the board of canvassers upon proper order from the COMELEC.

8. ID.; ID.; ID.; ID.; A FINAL JUDGMENT BEFORE THE ELECTION IS REQUIRED FOR THE VOTES OF A DISQUALIFIED

CANDIDATE TO BE CONSIDERED "STRAY" PURSUANT TO SECTION 6 OF R.A. NO. 6646.— In any case, the point raised by the COMELEC is irrelevant in resolving the present controversy. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a **final judgment** before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray. After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELEC's flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election offenses. As we held in *Limkaichong*, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

9. ID.; ID.; ID.; ID.; THE COMELEC'S RESOLUTION NO. 8678 WHICH CONTEMPLATE DISQUALIFICATION CASES AGAINST CANDIDATES OVER WHICH THE COMELEC RETAINS JURISDICTION EVEN AFTER THOSE CANDIDATES HAVE WON THE ELECTIONS, DULY PROCLAIMED AND ASSUMED OFFICE, CANNOT BE APPLIED TO PETITIONS FILED AGAINST CANDIDATES FOR THE POSITION OF MEMBER OF THE HOUSE OF REPRESENTATIVES QUESTIONING THEIR CONSTITUTIONAL AND STATUTORY QUALIFICATIONS FOR THE OFFICE UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE.— It must be noted that sub-paragraphs (a) and (b), Section 16 of COMELEC Resolution No. 8678 which contemplate disqualification cases against candidates over which the COMELEC retains jurisdiction even after those candidates have won the elections, duly proclaimed and assumed office, cannot be applied to petitions filed against candidates for the position of Member of the House of Representatives questioning their constitutional and statutory *qualifications* for the office under Section 78 of the OEC. The law is explicit

in vesting jurisdiction over such cases in the HRET. In our Resolution dated July 20, 2009 denying the motion for reconsideration with prayer for oral argument filed by Biraogo in the *Limkaichong* case, we affirmed our ruling in our Decision of April 1, 2009 that "the proper remedy of those who may assail Limkaichong's disqualification based on citizenship is to file before the HRET the proper petition at any time during incumbency." That Lim had already withdrawn the petition for *quo warranto* he had earlier filed before the HRET is of no consequence, considering that citizenship is a continuing requirement for the holding of office of Members of the House of Representatives. Under the 1987 Constitution, Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Anyone who assails a Representative's citizenship or lack of it may still question the same at any time, even beyond the ten-day prescriptive period set in the 1998 HRET Rules.

10. ID.; ID.; ID.; ID.; THE INELIGIBILITY OF A CANDIDATE RECEIVING MAJORITY VOTES DOES NOT ENTITLE THE ELIGIBLE CANDIDATE RECEIVING THE NEXT HIGHEST NUMBER OF VOTES TO BE DECLARED ELECTED.— We also hold that there is no basis for the COMELEC's order constituting a Special Provincial Board of Canvassers for the purpose of proclaiming Lim who got the next highest number of votes in the May 10, 2010 elections for the position of Representative of the 3rd District of Albay. It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides. The second placer is just that, a second placer – he lost in the elections and was repudiated by either the majority or plurality of voters.

11. ID.; ID.; ID.; ID.; FACTS WARRANTING EXCEPTION TO THE SECOND PLACER RULE ARE NOT PRESENT IN CASE AT BAR.— The exception to the second placer rule is predicated on the concurrence of the following: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's

disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate. These facts warranting the exception to the rule are not present in the case at bar. As noted by Commissioner Velasco, the date of promulgation of the resolution declaring Gonzalez disqualified to be a candidate in the May 10, 2010 was not a previously fixed date as required by Section 6 of COMELEC Resolution No. 8696 as the records do not show that the parties were given prior notice thereof. In fact, Gonzalez through his counsel received a copy of the May 8, 2010 Resolution only on May 11, 2010, one day after the elections. And as we held in *Bautista v. Commission on Elections*. Thus, when the electorate voted for Bautista as Punong Barangay on 15 July 2002, it was under the belief that he was qualified. There is no presumption that the electorate agreed to the invalidation of their votes as stray votes in case of Bautista's disqualification. The Court cannot adhere to the theory of respondent Alcoreza that the votes cast in favor of Bautista are stray votes. **A subsequent finding by the COMELEC *en banc* that Bautista is ineligible cannot retroact to the date of elections so as to invalidate the votes cast for him**. As held in *Domino v. COMELEC*: Contrary to the claim of INTERVENOR, petitioner was not notoriously known by the public as an ineligible candidate. **Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory**. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless.

12. ID.; ID.; ID.; ID.; THE COURT HAS NO AUTHORITY UNDER ANY LAW TO IMPOSE UPON AND COMPEL THE PEOPLE TO ACCEPT A LOSER, AS THEIR REPRESENTATIVE OR POLITICAL LEADER.— We have declared that not even this Court has authority under any law to impose upon and compel the people to accept a loser, as their representative or political leader. The wreath of victory cannot be transferred from the

disqualified winner to the repudiated loser. The COMELEC clearly acted with grave abuse of discretion in ordering the proclamation of private respondent Lim who lost by a wide margin of 29,292 votes, after declaring Gonzalez, the winning candidate, disqualified to run as Member of the House of Representatives.

13. ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); HAVING BEEN DULY PROCLAIMED, ISSUE OF PETITIONER'S CITIZENSHIP FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE HRET BEING THE SOLE JUDGE OF ALL CONTEST RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THE MEMBERS OF THE HOUSE OF REPRESENTATIVES AS PROVIDED UNDER ARTICLE VI, SECTION 17 OF THE 1987 CONSTITUTION.— Despite recourse to this Court, however, we cannot rule on the issue of citizenship of Gonzalez. Subsequent events showed that Gonzalez had not only been duly proclaimed, he had also taken his oath of office and assumed office as Member of the House of Representatives. We have consistently held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. In *Perez v. Commission on Elections*, we declared that the Court does not have jurisdiction to pass upon the eligibility of the private respondent who was already a Member of the House of Representatives at the time of filing of the petition for *certiorari*. Under Article VI, Section 17 of the 1987 Constitution, the HRET is the **sole judge** of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. As this Court explained in *Lazatin v. House Electoral Tribunal:* The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred x x x. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as *complete and unimpaired* as if it had remained originally in the legislature" x x x. Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as *full, clear and complete*" x x x. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal x x x and it remained as full, clear and complete as that previously granted the legislature and the

Electoral Commission x x x. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

APPEARANCES OF COUNSEL

Faustina Victoria E. Ochoa-Sarmiento for petitioner.
Benedicto D. Buenaventura for private respondents.
Renato M. Cervantes for Stephen C. Bichara.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for *certiorari*, prohibition and *mandamus* under Rule 65 in relation to Rule 64 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution[1] dated May 8, 2010 of the Commission on Elections (COMELEC) Second Division and Resolution[2] dated July 23, 2010 of the Commission *En Banc*, in SPA No. 10-074 (DC).

The facts are uncontroverted.

Petitioner Fernando V. Gonzalez and private respondent Reno G. Lim both filed certificates of candidacy for the position of Representative of the 3rd congressional district of the Province of Albay in the May 10, 2010 elections. Lim was the incumbent congressman of the 3rd district while Gonzalez was former Governor of Albay, having been elected to said position in 2004 but lost his re-election bid in 2007.

On March 30, 2010, a Petition for Disqualification and Cancellation of Certificate of Candidacy (COC)[3] was filed by

[1] *Rollo*, pp. 110-114. Penned by Presiding Commissioner Nicodemo T. Ferrer and concurred in by Commissioners Lucenito N. Tagle and Elias R. Yusoph.

[2] *Id.* at 72-82. Penned by Commissioner Nicodemo T. Ferrer and concurred in by Commissioners Lucenito N. Tagle, Elias R. Yusoph and Gregorio Y. Larrazabal.

[3] *Id.* at 159-172.

Stephen Bichara [SPA No. 10-074 (DC)] on the ground that Gonzalez is a Spanish national, being the legitimate child of a Spanish father and a Filipino mother, and that he failed to elect Philippine citizenship upon reaching the age of majority in accordance with the provisions of Commonwealth Act (C.A.) No. 625. It was further alleged that Gonzalez's late registration of his certificate of birth with the Civil Registry of Ligao City on January 17, 2006, even if accompanied by an affidavit of election of Philippine citizenship, was not done within a reasonable time as it was in fact registered 45 years after Gonzalez reached the age of majority on September 11, 1961.

In his Answer,[4] Gonzalez denied having willfully made false and misleading statement in his COC regarding his citizenship and pointed out that Bichara had filed the wrong petition under Section 68 of the Omnibus Election Code (OEC) to question his eligibility as a candidate. Gonzalez also argued that the petition which should have been correctly filed under Section 78 of the OEC was filed out of time. He asserted that he is a Filipino citizen as his Alien Certificate of Registration was issued during his minority. However, he took an Oath of Allegiance to the Republic of the Philippines before the Justice of the Peace in Ligao, Albay on his 21st birthday on September 11, 1961. Since then he had comported himself as a Filipino considering that he is married to a Filipina; he is a registered voter who voted during elections; he has been elected to various local positions; he holds a Philippine passport; and most importantly, he has established his life in the Philippines as a Filipino. Gonzalez contended that he is deemed a natural-born Filipino citizen under the 1987 Constitution which includes in the definition of natural-born citizens "[t]hose born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority."

On May 8, 2010, the COMELEC's Second Division issued the assailed resolution which decreed:

[4] *Id.* at 184-198.

WHEREFORE, premises considered, we resolve to, as we do hereby, GRANT this Petition. Respondent Fernando Vallejo Gonzalez is hereby declared disqualified to be a candidate for the position of Member of the House of Representatives, 3rd District, Province of Albay, in the forthcoming National and Local Elections on May 10, 2010.

SO ORDERED.[5]

Finding the petition to be both a petition for disqualification and cancellation of COC, the Second Division ruled that the same was filed on time. On the election of Philippine citizenship by Gonzalez, it held that what Gonzalez submitted is a mere photocopy of his oath of allegiance which was not duly certified by the National Statistics Office, and hence there was no compliance with the requirement of filing with the nearest civil registry, the last act required of a valid oath of allegiance under C.A. No. 625. Further, the Second Division found that in the late registration of Gonzalez's birth on January 17, 2006, he declared that he is a citizen of the Philippines; this at best, was his own conclusion, and at worst, conflicts with his purported oath of allegiance for it would have been a superfluity to express his choice of Philippine citizenship by taking the oath of allegiance if he was already a Filipino citizen. And the fact that Gonzalez attended formal schooling in this country, worked in private firms and in the government service, should not take the place of the stringent requirements of constitutional and statutory provisions on acquisition of Philippine citizenship.[6]

Gonzalez thru counsel received a copy of the aforesaid resolution on May 11, 2010 at 5:20 p.m.[7] On even date, Lim petitioned the Provincial Board of Canvassers (PBOC) to consider the votes cast for Gonzalez as stray or not counted and/or suspend his proclamation, citing the Second Division's May 8, 2010 resolution disqualifying Gonzalez as a candidate for the May 10, 2010 elections.[8] The PBOC, however, dismissed the petition

[5] *Id.* at 114.

[6] *Id.* at 111-113.

[7] *Id.* at 115.

[8] *Id.* at 509-513.

stating that the period for filing of a motion for reconsideration of the COMELEC resolution has not yet lapsed, and hence the same is not yet final and executory.[9] Lim appealed the PBOC's dismissal of his petition to the COMELEC (SPC No. 10-006) but his appeal was eventually dismissed after he filed a motion to withdraw the same.[10]

Based on the results of the counting and canvassing of votes, Gonzalez emerged as the winner having garnered a total of 96,000 votes while Lim ranked second with 68,701 votes. On May 12, 2010, the PBOC officially proclaimed Gonzalez as the duly elected Representative of the 3rd district of Albay. Gonzalez took his oath of office on the same day.[11] On May 13, 2010, Bichara filed a Very Urgent Motion to Suspend the Effects of the Proclamation of Fernando V. Gonzalez.[12]

On May 14, 2010, Gonzalez filed a motion for reconsideration of the May 8, 2010 resolution. Gonzalez reiterated that the Second Division's finding that Bichara's petition is both a petition for disqualification and to cancel COC is not borne by the petition itself and contrary to Section 68 of the OEC and COMELEC Resolution No. 8696. Applying Section 78 of the OEC which is the proper petition based on alleged deliberate misrepresentation and false statement in the COC, Gonzalez contended that Bichara's petition was filed out of time. It was further argued that the subsequent election, proclamation and taking of oath of office of Gonzalez are events warranting the dismissal of SPA No. 10-074 (DC). Stressing that the voice of the people must be respected in this case, Gonzalez pointed out that his not being a Filipino was never an issue in the previous elections where he ran and won (Ligao City Mayor for three terms and Governor of Albay from 2004-2007). He claimed that the petition filed by Bichara, who ran against Gonzalez's wife, Linda Passi

[9] *Id.* at 507-508.

[10] *Id.* at 488-506.

[11] *Id.* at 138-142.

[12] *Id.* at 319-323.

Gonzalez (for re-election as Ligao City Mayor) in the recently concluded elections was indicative of harassment considering that a similar petition for disqualification and cancellation of COC was also filed against his wife by Anna Marie C. Bichara, said to be a sister of the petitioner in SPA No. 10-074 (DC).[13]

On May 22, 2010, Lim filed a Motion for Leave to Intervene as Petitioner stating that being a candidate for the same position, he has legal interest in the success of the petition in SPA No. 10-074 (DC).[14]

In its Resolution dated July 23, 2010, the COMELEC *En Banc* denied the motion for reconsideration and affirmed its finding that Gonzalez failed to prove with sufficient evidence that he had fully complied with the requirements for electing Philippine citizenship under C.A. No. 625. It likewise emphasized that the motion for reconsideration filed by Gonzalez was *pro forma* and hence it did not suspend the effects of the May 8, 2010 resolution disqualifying him as a candidate, conformably with Sections 1 and 4, Rule 19 of the COMELEC Rules of Procedure in relation to Section 7 of COMELEC Resolution No. 8696. Invoking its power to suspend and set aside the proclamation of winning candidates pursuant to Section 16 of COMELEC Resolution No. 8678 in relation to Section 6 of Republic Act (R.A.) No. 6646,[15] the Commission held that the proclamation of Gonzalez by the PBOC was premature and illegal. Finally, the motion to intervene filed by Lim was found to be proper and was accordingly granted.

The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Commission (*En Banc*) RESOLVED to, as it does hereby:

1. ANNUL the invalid proclamation of the respondent Fernando V. Gonzalez as the elected Member of the House of Representatives

[13] *Id.* at 115-137.

[14] *Id.* at 407-412.

[15] The Electoral Reforms Law of 1987.

as he is DISQUALIFIED to run and be voted for the position of Member of the House of Representatives in the May 10, 2010 elections;

2. DENY for utter lack of merit the Motion for Reconsideration of respondent FERNANDO V. GONZALEZ; and

3. AFFIRM the Resolution of the Second Division declaring respondent Fernando V. Gonzalez DISQUALIFIED to run and be voted for as such.

4. Immediately CONSTITUTE a Special Provincial Board of Canvassers of Albay who will PROCLAIM *RENO G. LIM* as the duly elected Member of the House of Representatives of the Third District of Albay for being the bona fide candidate who garnered the highest number of votes in the May 10, 2010 elections.

SO ORDERED.[16]

Commissioner Rene V. Sarmiento dissented from the majority ruling denying the motion for reconsideration of Gonzalez, stating that the people of the 3rd District of Albay has already spoken as to who is their choice of Representative in the Lower House of Congress and in case of doubt as to the qualification of the winning candidate, the doubt will be resolved in favor of the will of the people.[17]

A separate opinion was written by Commissioner Armando C. Velasco stating that the COMELEC no longer has jurisdiction to decide on the matter of the qualifications of Gonzalez, the winning candidate who had already been proclaimed, taken his oath and assumed the office as Representative of the 3rd District of Albay, for which reason the COMELEC's jurisdiction ends and that of the House of Representatives Electoral Tribunal (HRET) begins. He likewise disagreed with the majority's conclusion that Gonzalez's proclamation was invalid considering that: (1) records are bereft of indication that the PBOC had been ordered to suspend the proclamation of Gonzalez; (2) the May 8, 2010 Resolution disqualifying Gonzalez had not yet

[16] *Id.* at 81-82.

[17] *Id.* at 83-86.

become final and executory; (3) the date of said resolution was not a previously fixed date as required by Section 6 of COMELEC Resolution No. 8696, as the records do not show that the parties have been informed of said date of promulgation beforehand; and (4) the three-day period for the filing of a motion for reconsideration should be reckoned from the date of receipt by Gonzalez of copy of the resolution which is May 11, 2010, hence the PBOC acted well within its authority in proclaiming Gonzalez. Commissioner Velasco also disagreed with the majority ruling that Gonzalez's motion for reconsideration was *pro forma,* and maintained that said motion was timely filed which effectively suspended the execution of the May 8, 2010 Resolution. Lastly, he found the order to constitute a Special Provincial Board of Canvassers for the purpose of proclaiming intervenor Lim without basis. Since the May 8, 2010 Resolution was not yet final on election day, the votes cast for Gonzalez cannot be considered stray. Besides, a minority or defeated candidate like Lim cannot be deemed elected to the office in cases where the winning candidate is declared ineligible.[18]

Gonzalez filed the instant petition on July 29, 2010 while Lim filed a Very Urgent Motion For the Issuance of Writ of Execution which the COMELEC granted on August 5, 2010.[19] On August 18, 2010, Lim was proclaimed by a Special Board of Canvassers and subsequently took his oath of office before Assistant State Prosecutor Nolibien N. Quiambao.[20]

In a letter dated August 23, 2010, Lim requested Speaker Feliciano R. Belmonte, Jr. for the administration of his oath and registration in the Roll of the House of Representatives representing the 3rd District of Albay. However, Speaker Belmonte refused to grant Lim's request saying that the issue of qualification of Gonzalez for the position of Member of the House of Representatives is

[18] *Id.* at 87-89.

[19] *Id.* at 639-649.

[20] *Id.* at 863-865.

within the exclusive jurisdiction of the HRET, citing this Court's ruling in *Limkaichong v. Commission on Elections*[21]/[22].

Gonzalez contends that the COMELEC gravely abused its discretion in issuing the assailed resolutions insofar as –

1. It would install the Respondent Reno G. Lim as the Third District of Albay's Representative even though Lim never won the election, and who never became a legal party in the case;

2. It would hold that the petitioner Gonzalez is not a Filipino citizen;

3. It would go on to convene a "Special Board of Canvassers of Albay" created for the sole purpose of proclaiming the respondent Lim as the actual winner of the May 10 elections in the Third District of Albay;

x x x the Commission's resolutions, insofar as it was:

4. Issued with such great speed and haste that its mistakes are glaring;

5. Issued without the required (valid) certification;

6. Insofar as it did not hold that the respondent Reno [G.] Lim had committed more than one act of forum-shopping.[23]

In his Comment,[24] the Solicitor General found no grave abuse of discretion committed by the COMELEC in issuing the assailed resolutions stating that the Commission correctly ruled that Gonzalez is not a natural-born citizen of the Philippines by his failure to perfect his election of Philippine citizenship in accordance with C.A. No. 625 and R.A. No. 562. He likewise adopted the position of the COMELEC that *Limkaichong* is not applicable to the present case and that the motion for reconsideration filed by Gonzalez was *pro forma.*

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[21] G.R. Nos. 178831-32, 179120, 179132-33 & 179240-41, April 1, 2009, 583 SCRA 1.

[22] *Rollo,* pp. 866-868.

[23] *Id.* at 29.

[24] *Id.* at 926-955.

The petition presents the following issues for resolution: (1) whether the petition in SPA No. 10-074 (DC) was timely filed; (2) whether Gonzalez was validly proclaimed as the duly elected Representative of the 3rd District of Albay in the May 10, 2010 elections; and (3) whether the COMELEC had lost jurisdiction over the issue of Gonzalez's citizenship.

We find the petition meritorious.

A petition to cancel a candidate's COC may be filed under Section 78 of the OEC which provides:

SEC. 78. ***Petition to deny due course to or cancel a certificate of candidacy.*** — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Underlining supplied.)

A petition for disqualification of a candidate may also be filed pursuant to Section 68 of the same Code which states:

SEC. 68. ***Disqualifications.*** — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The prohibited acts covered by Section 68 refer to election campaign or political activity outside the campaign period (Section 80); removal, destruction or defacement of lawful election propaganda (Section 83); certain forms of election propaganda (Section 85); violation of rules and regulations on election propaganda through mass media; coercion of subordinates (Section 261 [d]); threats, intimidation, terrorism, use of fraudulent device or other forms of coercion (Section 261 [e]); unlawful electioneering (Section 261 [k]); release, disbursement or expenditure of public funds (Section 261 [v]); solicitation of votes or undertaking any propaganda on the day of the election (Section 261 [cc], sub-par.6).

As to the ground of false representation in the COC under Section 78, we held in *Salcedo II v. Commission on Elections*[25] that in order to justify the cancellation of COC, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court concluded that this refers to qualifications for elective office. Citing previous cases in which the Court interpreted this phrase, we held that Section 78 contemplates statements regarding *age*,[26] *residence*[27] and *citizenship* or non-possession of natural-born Filipino status.[28] Furthermore, aside

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[25] G.R. No. 135886, August 16, 1999, 312 SCRA 447, 455.

[26] *Id.* at 458, citing *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760.

[27] *Id.* at 455, citing *Abella v. Larrazabal*, G.R. Nos. 87721-30 & 88004, December 21, 1989, 180 SCRA 509 and *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400.

[28] *Id.* at 455-456, citing *Labo, Jr. v. Commission on Elections*, G.R. Nos. 105111 & 105384, July 3, 1992, 211 SCRA 297 and *Frivaldo v. Commission on Elections*, G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, G.R. No. 87193, June 23, 1989, 174 SCRA 245 and *Republic v. De la Rosa*, G.R. Nos. 104654, 105715 & 105735, June 6, 1994, 232 SCRA 785.

from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office.[29]

Significantly, we pointed out in *Salcedo II* the two remedies available for questioning the *qualifications* of a candidate, thus:

> **There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code** (B.P. Blg. 881), to wit:
>
> "(1) ***Before election***, pursuant to **Section 78** thereof which provides that:
>
> xxx xxx xxx
>
> and
>
> "(2) ***After election***, pursuant to **Section 253** thereof, *viz*:
>
> 'Sec. 253. *Petition for quo warranto*. - *Any voter* contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission *within ten days after the proclamation of the results of the election*."
>
> (emphasis supplied)

The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under Section 253, a candidate is ineligible if he is disqualified to be elected

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[29] *Id.* at 459, citing *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.

to office, and he is disqualified if he lacks any of the qualifications for elective office.[30] (Emphasis supplied.)

Clearly, the *only instance* where a petition questioning the *qualifications* of a candidate for elective office can be filed before election is when the petition is filed under Section 78 of the OEC.

The petition in SPA No. 10-074 (DC) based on the allegation that Gonzalez was not a natural-born Filipino which was filed before the elections, is in the nature of a petition filed under Section 78. The recitals in the petition in said case, however, state that it was filed pursuant to Section 4 (b) of COMELEC Resolution No. 8696 and Section 68 of the OEC to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification. The COMELEC treated the petition as one filed both for disqualification *and* cancellation of COC, with the effect that Section 68, in relation to Section 3, Rule 25 of the COMELEC Rules of Procedure, is applicable insofar as determining the period for filing the petition.

Rule 25 of the COMELEC Rules of Procedure on Disqualification of Candidates provides:

> Section 1. *Grounds for Disqualification.* – Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.
>
> xxx xxx xxx
>
> Sec. 3. *Period to File Petition.* — The petition shall be filed any day after the last day for filing of certificates of candidacy but **not later than the date of proclamation.** (Emphasis supplied.)

On the other hand, the procedure for filing a petition for cancellation of COC is covered by Rule 23 of the COMELEC Rules of Procedure, which provides:

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[30] *Id.* at 456-457.

Section 1. *Grounds for Denial of Certificate of Candidacy.* — A petition to deny due course to or cancel a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition or political parties *on the exclusive ground* that any material representation contained therein as required by law is false.

Sec. 2. *Period to File Petition.* – The petition must be filed **within five (5) days following the last day for the filing of certificate of candidacy.**

x x x x x x x x x (Emphasis supplied.)

In *Loong v. Commission on Elections*,[31] we categorically declared that the period for filing a petition for cancellation of COC based on false representation is covered by Rule 23 and not Rule 25 of the COMELEC Rules of Procedure. Further, we held that Section 3 of Rule 25 allowing the filing of a petition at any time after the last day for filing of COC's but not later than the date of proclamation, is merely a procedural rule that cannot supersede Section 78 of the OEC. We quote the following pertinent discussion in said case:

x x x Section 78 of the same Code states that in case a person filing a certificate of candidacy has committed false representation, a petition to cancel the certificate of the aforesaid person may be filed within twenty-five (25) days from the time the certificate was filed.

Clearly, SPA No. 90-006 was filed beyond the 25-day period prescribed by Section 78 of the Omnibus Election Code.

We do not agree with private respondent Ututalum's contention that the petition for disqualification, as in the case at bar, may be filed at any time after the last day for filing a certificate of candidacy but not later than the date of proclamation, applying Section 3, Rule 25 of the Comelec Rules of Procedure.

x x x x x x x x x

[31] *Supra* note 26.

The petition filed by private respondent Ututalum with the respondent Comelec to disqualify petitioner Loong on the ground that the latter made a false representation in his certificate of candidacy as to his age, clearly does not fall under the grounds of disqualification as provided for in Rule 25 but is expressly covered by Rule 23 of the Comelec Rules of Procedure governing petitions to cancel certificate of candidacy. Moreover, Section 3, Rule 25 which allows the filing of the petition at any time after the last day for the filing of certificates of candidacy but not later than the date of proclamation, is merely a procedural rule issued by respondent Commission which, although a constitutional body, has no legislative powers. Thus, it can not supersede Section 78 of the Omnibus Election Code which is a legislative enactment.

We also do not find merit in the contention of respondent Commission that in the light of the provisions of Sections 6 and 7 of Rep. Act No. 6646, a petition to deny due course to or cancel a certificate of candidacy may be filed even beyond the 25-day period prescribed by Section 78 of the Code, as long as it is filed within a reasonable time from the discovery of the ineligibility.

Sections 6 and 7 of Rep. Act No. 6646 are here re-quoted:

> "SEC. 6. *Effect of Disqualification Case*. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong."

> "SEC. 7. *Petition to Deny Due Course To or Cancel a Certificate of Candidacy*. — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881."

It will be noted that **nothing in Sections 6 or 7 modifies or alters the 25-day period prescribed by Section 78 of the Code for filing the appropriate action to cancel a certificate of candidacy on account**

of any false representation made therein. On the contrary, said Section 7 affirms and reiterates Section 78 of the Code.

We note that Section 6 refers only to the effects of a disqualification case which may be based on grounds other than that provided under Section 78 of the Code. But Section 7 of Rep. Act No. 6646 also makes the effects referred to in Section 6 applicable to disqualification cases filed under Section 78 of the Code. **Nowhere in Sections 6 and 7 of Rep. Act No. 6646 is mention made of the period within which these disqualification cases may be filed. This is because there are provisions in the Code which supply the periods within which a petition relating to disqualification of candidates must be filed, such as Section 78, already discussed, and Section 253 on petitions for *quo warranto*.**

Thus, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the 25-day period prescribed by Section 78 of the Code for whatever reasons, the election laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for *quo warranto* within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code. x x x[32] (Additional emphasis supplied.)

COMELEC Resolution No. 8696 entitled "*Rules on Disqualification Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections*" was promulgated on November 11, 2009. Section 4 thereof provides:

SEC. 4. *Procedure in filing petitions.* — For purposes of the preceding sections, the following procedure shall be observed:

A. PETITION TO DENY DUE COURSE TO OR CANCEL CERTIFICATE OF CANDIDACY

1. A verified petition to deny due course or to cancel certificate of candidacy may be filed by any person within five (5) days from the last day for the filing of certificate of candidacy but not later than twenty-five (25) days from the filing of certificate of candidacy under Section 78 of the Omnibus Election Code (OEC);

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[32] *Id.* at 765-768.

x x x x x x x x x

B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation;

x x x x x x x x x

As can be gleaned, Section 4(B) of Resolution No. 8696 allowing a petition to disqualify a candidate based on his lack of *qualifications* for elective office such as age, residence and citizenship to be filed "on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation" (the period provided in Section 68 of the OEC), instead of the period for filing under Section 78 (not later than twenty-five days from the filing of the certificate of candidacy) is similar to Rule 25 of the COMELEC Rules of Procedure. Following our ruling in *Loong v. Commission on Elections*,[33] we find that Section 4(B) of Resolution No. 8696 represents another attempt to modify by a mere procedural rule the statutory period for filing a petition to cancel COC on the ground of false representation therein regarding a candidate's *qualifications*. Like Rule 25 of the COMELEC Rules of Procedure, Section 4(B) of Resolution No. 8696 would supplant the prescribed period of filing of petition under Section 78 with that provided in Section 68 even if the latter provision does not at all cover the false representation regarding age, residence and citizenship which may be raised in a petition under Section 78. Indeed, if the purpose behind this rule promulgated by the COMELEC – allowing a petition to cancel COC based on the candidate's non-compliance with constitutional and statutory

[33] *Supra* note 26.

requirements for elective office, such as citizenship, to be filed even beyond the period provided in Section 78 – was simply to remedy a perceived "procedural gap" though not expressly stated in Resolution No. 8696, the Court had already rejected such justification. Thus, we declared in *Loong*:

> It is true that the discovery of false representation as to material facts required to be stated in a certificate of candidacy, under Section 74 of the Code, may be made only after the lapse of the 25-day period prescribed by Section 78 of the Code, through no fault of the person who discovers such misrepresentations and who would want the disqualification of the candidate committing the misrepresentation. It would seem, therefore, that there could indeed be a gap between the time of the discovery of the misrepresentation, (when the discovery is made after the 25-day period under Sec. 78 of the Code has lapsed) and the time when the proclamation of the results of the election is made. During this so-called "gap" the would-be petitioner (who would seek the disqualification of the candidate) is left with nothing to do except to wait for the proclamation of the results, so that he could avail of a remedy against the misrepresenting candidate, that is, by filing a petition for *quo warranto* against him. Respondent Commission sees this "gap" in what it calls a procedural gap which, according to it, is unnecessary and should be remedied.
>
> At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions or protests related to eligibility of candidates for elective offices must be filed, as seen in Sections 78 and 253 of the Code. **Respondent Commission may have seen the need to remedy this so-called "procedural gap," but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.**[34] (Emphasis supplied.)

In the more recent case of *Fermin v. Commission on Elections*,[35] we stressed that a petition filed under Section 78 must not be interchanged or confused with one filed under Section

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[34] *Id.* at 768-769.

[35] G.R. Nos. 179695 & 182369, December 18, 2008, 574 SCRA 782.

68. A petition which is properly a "Section 78 petition" must therefore be filed within the period prescribed therein, and a procedural rule subsequently issued by COMELEC cannot supplant this statutory period under Section 78. We further distinguished the two petitions as to their nature, grounds and effects, to wit:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office**. **If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.
>
> At this point, we must stress that **a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court. x x x
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> **Considering that the Dilangalen petition does not state any of these grounds for disqualification, it cannot be categorized as a "Section 68" petition.**
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> xxx xxx xxx

In support of his claim that he actually filed a "petition for disqualification" and not a "petition to deny due course to or cancel a CoC," Dilangalen takes refuge in Rule 25 of the COMELEC Rules

of Procedure, specifically Section 1 thereof, to the extent that it states, "[a]ny candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law x x x may be disqualified from continuing as a candidate," and COMELEC Resolution No. 7800 (Rules Delegating to COMELEC Field Officials the Authority to Hear and Receive Evidence in Disqualification Cases Filed in Connection with the May 14, 2007 National and Local Elections x x x

xxx xxx xxx

We disagree. **A COMELEC rule or resolution cannot supplant or vary the legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds. In other words, Rule 25 and COMELEC Resolution No. 7800 cannot supersede the dissimilar requirements of the law for the filing of a petition for disqualification under Section 68, and a petition for the denial of due course to or cancellation of CoC under Section 78 of the OEC**. As aptly observed by the eminent constitutionalist, Supreme Court Justice Vicente V. Mendoza, in his separate opinion in *Romualdez-Marcos v. Commission on Elections*:

xxx xxx xxx

Having thus determined that the Dilangalen petition is one under Section 78 of the OEC, the Court now declares that the same has to comply with the 25-day statutory period for its filing. *Aznar v. Commission on Elections* and *Loong v. Commission on Elections* give ascendancy to the express mandate of the law that "the petition may be filed at any time **not later than twenty-five days from the time of the filing of the certificate of candidacy**." Construed in relation to reglementary periods and the principles of prescription, the dismissal of "Section 78" petitions filed beyond the 25-day period must come as a matter of course.

We find it necessary to point out that Sections 5 and 7 of Republic Act (R.A.) No. 6646, contrary to the erroneous arguments of both parties, did not in any way amend the period for filing "Section 78" petitions. While Section 7 of the said law makes reference to Section 5 on the procedure in the conduct of cases for the denial of due course to the CoCs of nuisance candidates (retired Chief Justice Hilario G. Davide, Jr., in his dissenting opinion in *Aquino v. Commission on Elections* explains that "the 'procedure hereinabove

provided' mentioned in Section 7 cannot be construed to refer to Section 6 which does not provide for a procedure but for the effects of disqualification cases, [but] can only refer to the procedure provided in Section 5 of the said Act on nuisance candidates x x x."), the same cannot be taken to mean that the 25-day period for filing "Section 78" petitions under the OEC is changed to 5 days counted from the last day for the filing of CoCs. **The clear language of Section 78 certainly cannot be amended or modified by the mere reference in a subsequent statute to the use of a procedure specifically intended for another type of action.** Cardinal is the rule in statutory construction that repeals by implication are disfavored and will not be so declared by the Court unless the intent of the legislators is manifest. In addition, it is noteworthy that *Loong*, which upheld the 25-day period for filing "Section 78" petitions, was decided long after the enactment of R.A. 6646. In this regard, we therefore find as contrary to the unequivocal mandate of the law, Rule 23, Section 2 of the COMELEC Rules of Procedure x x x.

x x x x x x x x x

As the law stands, the petition to deny due course to or cancel a CoC "may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy."

Accordingly, it is necessary to determine when Fermin filed his CoC in order to ascertain whether the Dilangalen petition filed on April 20, 2007 was well within the restrictive 25-day period. If it was not, then the COMELEC should have, as discussed above, dismissed the petition outright.

x x x x x x x x x[36] (Additional emphasis supplied.)

Since the petition in SPA No. 10-074 (DC) sought to cancel the COC filed by Gonzalez and disqualify him as a candidate on the ground of false representation as to his citizenship, the same should have been filed within twenty-five days from the filing of the COC, pursuant to Section 78 of the OEC. Gonzalez filed his COC on December 1, 2009. Clearly, the petition for disqualification and cancellation of COC filed by Lim on *March 30, 2010* was filed out of time. The COMELEC therefore erred in giving due course to the petition.

[36] *Id.* at 792-794, 796-798 and 800-803.

Even assuming *arguendo* that the petition in SPA No. 10-074 (DC) was timely filed, we find that the COMELEC gravely erred when it held that the proclamation of Gonzalez by the PBOC of Albay on May 12, 2010 was premature and illegal.

Section 72 of the OEC, was amended by Section 6 of R.A. No. 6646 which reads:

> Section 6. ***Effect of Disqualification Case.*** — Any candidate who has been declared by **final judgment** to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, **upon motion of the complainant or any intervenor may[,] during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.** (Emphasis supplied.)

In its July 23, 2010 Resolution, the COMELEC ruled that the motion for reconsideration of the Second Division's May 8, 2010 Resolution filed by Gonzalez on May 14, 2010 was *pro forma* and hence did not suspend the execution of the May 8, 2010 resolution disqualifying him as a candidate.

Section 7 of COMELEC Resolution No. 8696 provides:

> SEC. 7. ***Motion for reconsideration.*** A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. **Such motion, if not pro-forma, suspends the execution or implementation of the Decision, Resolution, Order or Ruling.**
>
> Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall within two (2) days thereafter, certify the case to the Commission *en banc.*
>
> The Clerk of the Commission shall calendar the Motion for Reconsideration for the resolution of the Commission *en banc* within three (3) days from the certification thereof.

Section 13, Rule 18 of the COMELEC Rules of Procedure on the Finality of Decisions or Resolutions provides that –

> (c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

Section 2, Rule 19 of the COMELEC Rules of Procedure also states:

> SEC. 2. ***Period for Filing Motions for Reconsideration.*** — A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.

The Commission *En Banc* in its July 23, 2010 Resolution said:

> As found by this Commission, the motion for reconsideration merely mentioned that respondent was already proclaimed as the winning candidate for Representative of the 3rd District of Albay. Nothing was, however, averred nor any document was submitted to attest to the fact that that (sic) respondent has complied with all the legal requirements and procedure for the election of Philippine citizenship as laid down in Commonwealth Act No. 625 which specifically requires that the oath of allegiance should be filed with the nearest civil registry.[37]

We have held that mere reiteration of issues already passed upon by the court does not automatically make a motion for reconsideration *pro forma*. What is essential is compliance with the requisites of the Rules.[38] Indeed, in the cases where a motion for reconsideration was held to be *pro forma*, the

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[37] *Rollo*, p. 74.

[38] *Republic v. Asuncion*, G.R. No. 159695, September 15, 2006, 502 SCRA 140, 147-148, citing *Marina Properties Corporation v. Court of Appeals*, 355 Phil. 705, 716 (1998).

motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof.[39]

In the case at bar, the motion for reconsideration[40] filed by Gonzalez failed to show that it suffers from the foregoing defects. Although the motion repeatedly stressed that the people of the Third District of Albay had spoken through the winning margin of votes for Gonzalez that they chose the latter to represent them in the House of Representatives, it also reiterated his position that the petition filed by Bichara is time-barred, adding that it was just an act of political harassment. But the main argument asserts that the evidence of petitioner Bichara was insufficient to justify the Second Division's ruling that Gonzalez is not a natural-born Filipino and hence disqualified to be a candidate for the position of Member of the House of Representatives. Verily, under prevailing jurisprudence, to successfully challenge herein Gonzalez's disqualification, petitioner in SPA No. 10-074 (DC) must clearly demonstrate that Gonzalez's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.[41] The COMELEC thus seriously erred in ruling that Gonzalez's motion for reconsideration was *pro forma.*

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[39] *Coquilla v. Commission on Elections,* G.R. No. 151914, July 31, 2002, 385 SCRA 607, 614.

[40] *Rollo,* pp. 115-137.

[41] See *Japzon v. Commission on Elections,* G.R. No. 180088, January 19, 2009, 576 SCRA 331, 353.

Petitioner's motion for reconsideration of the May 8, 2010 resolution of the Second Division having been timely filed, the said resolution had not become final and executory. Considering that at the time of the proclamation of Gonzalez who garnered the highest number of votes for the position of Representative in the 3rd district of Albay, the said Division Resolution declaring Gonzalez disqualified as a candidate for the said position was not yet final, he had at that point in time remained qualified. Therefore, his proclamation on May 12, 2010 by the PBOC was valid or legal.[42] Moreover, the May 8, 2010 resolution cannot as yet be implemented for not having attained finality.

Despite recourse to this Court, however, we cannot rule on the issue of citizenship of Gonzalez. Subsequent events showed that Gonzalez had not only been duly proclaimed, he had also taken his oath of office and assumed office as Member of the House of Representatives. We have consistently held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.[43] In *Perez v. Commission on Elections*,[44] we declared that the Court does not have jurisdiction to pass upon the eligibility of the private respondent who was already a Member of the House of Representatives at the time of filing of the petition for *certiorari*.[45]

Under Article VI, Section 17 of the 1987 Constitution, the HRET is the **sole judge** of all contests relating to the election,

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[42] See *Planas v. Commission on Elections*, G.R. No. 167594, March 10, 2006, 484 SCRA 529, 537.

[43] *Guerrero v. Commission on Elections*, G.R. No. 137004, July 26, 2000, 336 SCRA 458, 466-467, citing *Aquino v. Commission on Elections*, *supra* note 27 at 417-418 and *Romualdez-Marcos v. Commission on Elections*, *supra* note 29 at 340-341. *See* also *Dimaporo v. Commission on Elections*, G.R. No. 179285, February 11, 2008, 544 SCRA 381, 392.

[44] 375 Phil. 1106 (1999).

[45] *Id.* at 1115.

returns, and qualifications of the members of the House of Representatives. As this Court explained in *Lazatin v. House Electoral Tribunal*[46]:

> The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred x x x. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as *complete and unimpaired* as if it had remained originally in the legislature" x x x. Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as *full, clear and complete*" x x x. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal x x x and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission x x x. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

Limkaichong v. Commission on Elections[47] recently reiterated this settled rule on the COMELEC's loss of jurisdiction over a petition questioning the qualifications of a candidate upon his election, proclamation and assumption of office. In said case, petitioner Limkaichong faced two disqualification cases alleging that she is not a natural-born Filipino because her parents were Chinese citizens at the time of her birth. The cases remained pending by the time the May 14, 2007 elections were held in which Limkaichong emerged as the winner with 65,708 votes or by a margin of 7,746 votes. Subsequently, another congressional candidate (Olivia Paras) who obtained the second highest number of votes filed a motion for leave to intervene and to suspend the proclamation of Limkaichong, which the COMELEC's Second Division granted. The day after the PBOC suspended her proclamation, the COMELEC issued Resolution No. 8062 adopting the policy-guidelines of not suspending the proclamation of winning candidates with pending disqualification cases which shall be without prejudice to the continuation of the hearing and resolution of the cases.

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[46] No. 84297, December 8, 1988, 168 SCRA 391, 401.

[47] *Supra* note 21.

Accordingly, Limkaichong moved to reconsider the resolution disqualifying her as a candidate and to lift the order suspending her proclamation. In compliance with Resolution No. 8062, the PBOC reconvened and proclaimed Limkaichong as the duly elected Member of the House of Representatives for the 1st district of Negros Oriental. Thereafter, Paras filed a petition to annul Limkaichong's proclamation, which was dismissed by the COMELEC's First Division, upon the ground that the disqualification cases were not yet final when Limkaichong was proclaimed. Her proclamation being valid or legal, the COMELEC ruled that it effectively divested the Commission of jurisdiction over the cases.

Limkaichong then moved to declare the disqualification cases as dismissed, contending that with her proclamation, her having taken her oath of office and her assumption of the position, the COMELEC was divested of jurisdiction to hear the disqualification cases. Since the COMELEC did not resolve her motion despite her repeated pleas, Limkaichong filed a petition for *certiorari* before this Court. Said petition was consolidated with the petition for prohibition and injunction filed by Louis C. Biraogo, petition for *certiorari* and injunction filed by Renald F. Villando and the petition for *quo warranto*, prohibition and *mandamus* with prayer for temporary restraining order and preliminary injunction instituted by Paras.

By Decision dated April 1, 2009, this Court upheld the validity of Limkaichong's proclamation and the HRET's jurisdiction over the issue of disqualification of Limkaichong, as follows:

> The Court has held in the case of *Planas v. COMELEC*, that at the time of the proclamation of Defensor, the respondent therein who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final. As such, his proclamation was valid or legal, as he had at that point in time remained qualified. Limkaichong's situation is no different from that of Defensor, the former having been disqualified by a Division Resolution on the basis of her not being a natural-born Filipino citizen. **When she was proclaimed by the PBOC, she was the winner during the elections for obtaining the highest number of votes, and at that**

time, the Division Resolution disqualifying her has not yet became final as a result of the motion for reconsideration.

x x x x x x x x x

In her petition x x x, Limkaichong argued that her proclamation on May 25, 2007 by the PBOC divested the COMELEC of its jurisdiction over all issues relating to her qualifications, and that jurisdiction now lies with the HRET.

Biraogo, on the other hand, believed otherwise. He argued x x x that the issue concerning Limkaichong's disqualification is still within the exclusive jurisdiction of the COMELEC *En Banc* to resolve because when Limkaichong was proclaimed on May 25, 2007, the matter was still pending resolution before the COMELEC *En Banc*.

We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. It follows then that **the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET**, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

x x x x x x x x x[48] (Additional emphasis supplied.)

Maintaining that it retains jurisdiction over SPA No. 10-074 (DC), the COMELEC *En Banc* declared in its July 23, 2010 Resolution that the ruling in *Limkaichong v. Commission on Elections* does not apply to the case of Gonzalez since this Court found Limkaichong's proclamation to be valid pursuant to COMELEC Resolution No. 8062 which adopted the policy guideline, in connection with the May 14, 2007 elections, of *not suspending*

[48] *Id.* at 32-34.

the proclamation of winning candidates with pending disqualification cases which shall be without prejudice to the continuation of the hearing and decision of the involved cases.

In the case of Gonzalez, the COMELEC said that the applicable rule is Section 16 of COMELEC Resolution No. 8678 promulgated on October 6, 2009 which specifically governs the proceedings for the May 10, 2010 Automated Elections. Said provision reads:

> SEC. 16. ***Effects of Disqualification.*** — Any candidate who has been declared disqualified by final judgment shall not be voted for and the votes cast in his favor shall not be counted. If, for any reason, he is not declared disqualified by final judgment before the election and he is voted for and receives the winning number of votes, the case shall continue and **upon motion** of the petitioner, complainant, or intervenor, the proclamation of such candidate **may be ordered suspended during the pendency of the said case whenever the evidence is strong.**
>
> a) where a similar complaint/petition is filed before the election and before the proclamation of the respondent and the case is not resolved before the election, the trial and hearing of the case shall continue and referred to the Law Department for preliminary investigation.
>
> b) where the complaint/petition is filed after the election and before the proclamation of the respondent, the trial and hearing of the case shall be suspended and referred to the Law Department for preliminary investigation.
>
> **In either case, if the evidence of guilt is strong, the Commission may order the suspension of the proclamation of respondent, and if proclaimed, to suspend the effects of proclamation**. (Emphasis supplied.)

Invoking the last paragraph of the foregoing provision which the COMELEC said is in harmony with Section 6 of R.A. No. 6646 (Electoral Reforms Law of 1987), the COMELEC ruled that Gonzalez's proclamation was premature and illegal, thus:

Third, as found by the Supreme Court in *Limkaichong,* the COMELEC *en banc* on August 16, 2007 ruled on Limkaichong's manifestation and motion for clarification, thus:

> "In view of the proclamation of Limkaichong and her subsequent assumption of office on June 30, 2007, this Commission rules that all pending incidents relating to the qualifications of Limkaichong should now be determined by the House of Representatives Electoral Tribunal in accordance with the above-quoted provision of the Constitution.
>
> "x x x x x x x x x"

On the contrary, in the present case, the Second Division of the Commission, in the exercise of its power to suspend such proclamation under the aforequoted provisions of law, refused to set aside the proclamation and the effects thereof.

Clearly, therefore, there is no taint of doubt that **with the Resolution of the Second Division disqualifying the respondent, his proclamation by the Provincial Board of Canvassers was pre-mature and illegal and should therefore be annulled. There is no question that this Commission has the power to suspend such proclamation. Notably, in several jurisprudence where the Supreme Court refused the annulment of proclamation and held that the jurisdiction pertained already to HRET, it was the Comelec itself that eventually allowed the proclamation and the effects thereof, as shown in [the] Decision of the Supreme Court above-referred to. In stark contrast with the case at bar, this Commission itself is exercising its prerogative and power to nullify an illegal and premature proclamation of the respondent on the basis of the continued proceedings pursuant to both Section 16 of Resolution 8678 and Section 6 of Republic Act 6646.**

Lastly, it must be taken into consideration that, unlike in the previous elections, the ballots were now already printed with the names of the candidates as of the date of printing, and it was already impossible without incurring tremendous expense and delay merely to remove the name of the disqualified candidate and program the PCOS machines not to count the votes cast in favor of the disqualified candidate in a short period of time prior to the actual elections. For said reason, this Commission has ample power to suspend the effects of, and ultimately annul, the proclamation of the disqualified candidate whose votes should not have been counted in the first place.

x x x x x x x x x[49] (Emphasis supplied.)

We find the above ruling contrary to our pronouncement in *Limkaichong* and jurisprudence interpreting Section 72 of the OEC and Section 6 of R.A. No. 6646 which amended said provision.

First, as already stated, there was no legal bar to the proclamation of Gonzalez as the winning candidate on May 12, 2010 since the May 8, 2010 Resolution at that time had not yet become final; in fact Gonzalez received a copy thereof only on May 11, 2010. We have held that the five-day period for filing a motion for reconsideration under Rule 19, Section 2 of the COMELEC Rules of Procedure should be counted from the **receipt** of the decision, resolution, order, or ruling of the COMELEC Division.[50] With his filing of a motion for reconsideration within the three-day period provided in Section 7 of COMELEC Resolution No. 8696, the execution of the said resolution was effectively suspended.

Moreover, there is nothing in the May 8, 2010 Resolution of the Second Division ordering the suspension of the proclamation of Gonzalez. From the language of Section 6 of R.A. No. 6646 upon which the first paragraph of Section 16 of COMELEC Resolution No. 8678 was based, the Commission can order the suspension of the proclamation of the winning candidate only *upon motion* during the pendency of the disqualification case. The Court has ruled that the suspension of proclamation of a winning candidate is not a matter which the COMELEC Second Division can dispose of *motu proprio*. Section 6 of R.A. No. 6646 requires that the suspension must be "upon motion by the complainant or any intervenor."[51]

The rule then is that candidates who are disqualified by final judgment before the election shall not be voted for and the votes

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[49] *Rollo,* pp. 79-80.

[50] *Coquilla v. Commission on Elections, supra* note 39 at 612, citing *Bulaong v. COMELEC, First Division,* G.R. No. 107987, March 31, 1993, 220 SCRA 745.

[51] *Codilla, Sr. v. De Venecia,* G.R. No. 150605, December 10, 2002, 393 SCRA 639, 663.

cast for them shall not be counted. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, *unless, on motion* of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or cancellation of their certificates of candidacy are strong.[52] There being no final judgment of disqualification yet at the time of his proclamation on May 12, 2010, it was grave error for the COMELEC *En Banc* to rule that Gonzalez's proclamation was illegal and premature. Also, the May 8, 2010 Resolution rendered by the Second Division cannot be construed as an implicit exercise by the Commission of its power to suspend the proclamation of Gonzalez as it could not have yet ordered such suspension considering that Bichara (petitioner in SPA No. 10-074 [DC]) filed his "Urgent Motion to Stop/Suspend The Proclamation of Fernando Vallejo Gonzalez" only on May 11, 2010 after the promulgation of the May 8, 2010 Resolution.[53] Moreover, the COMELEC *En Banc* did not act on said motion of Bichara even after Gonzalez had been proclaimed by the PBOC. Subsequently, Lim filed a motion for leave to intervene and suspend the effects of proclamation of Gonzalez, which was followed by ten very urgent motions for the COMELEC *En Banc* to resolve the same.[54]

Neither can the COMELEC anchor its ruling that the May 12, 2010 proclamation of Gonzalez was illegal and premature on the ground that votes for said candidate, who was disqualified under the May 8, 2010 Resolution of the Second Division, should not have been counted. This is apparent from the other reason cited by the COMELEC as one of the circumstances distinguishing the present case from that of *Limkaichong*, thus:

> Lastly, it must be taken into consideration that, unlike the previous elections, the ballots were now already printed with the names of the candidates as of the date of printing, and **it was already impossible**

[52] *Coquilla v. Commission on Elections, supra* note 39 at 615.

[53] *Rollo,* pp. 278-280.

[54] *Id.* at 373-487.

without incurring tremendous expense and delay merely to remove the name of the disqualified candidate and program the PCOS machines not to count the votes cast in favor of the disqualified candidate in a short period of time prior to the actual elections. For said reason, this Commission has ample power to suspend the effects of, and ultimately annul, the proclamation of the disqualified candidate whose votes should not have been counted in the first place.[55] (Emphasis supplied.)

The above proposition is untenable. The advent of automated elections did not make any difference in the application of Section 6 of R.A. No. 6646 insofar as the effects of disqualification are concerned. Even at the time when ballots were physically read by the board of election inspectors and counted manually, it had not been absolutely necessary to reprint the ballots or remove the names of candidates who were disqualified before election. The votes cast for such candidates considered as "stray votes" even if read by the PCOS machines will have to be disregarded by the board of canvassers upon proper order from the COMELEC.

In any case, the point raised by the COMELEC is irrelevant in resolving the present controversy. It has long been settled that pursuant to Section 6 of R.A. No. 6646, a **final judgment** before the election is required for the votes of a disqualified candidate to be considered "stray." In the absence of any final judgment of disqualification against Gonzalez, the votes cast in his favor cannot be considered stray.[56] After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. The Court thus does not concur with the COMELEC's flawed assertion of jurisdiction premised on its power to suspend the effects of proclamation in cases involving disqualification of candidates based on commission of prohibited acts and election

[55] *Id.* at 80.

[56] *Quizon v. Commission on Elections*, G.R. No. 177927, February 15, 2008, 545 SCRA 635, 642, citing *Codilla, Sr. v. De Venecia*, *supra* note 51 at 672.

offenses. As we held in *Limkaichong*, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.[57]

It must be noted that sub-paragraphs (a) and (b), Section 16 of COMELEC Resolution No. 8678 which contemplate disqualification cases against candidates over which the COMELEC retains jurisdiction even after those candidates have won the elections, duly proclaimed and assumed office, cannot be applied to petitions filed against candidates for the position of Member of the House of Representatives questioning their constitutional and statutory *qualifications* for the office under Section 78 of the OEC. The law is explicit in vesting jurisdiction over such cases in the HRET. In our Resolution dated July 20, 2009 denying the motion for reconsideration with prayer for oral argument filed by Biraogo in the *Limkaichong* case, we affirmed our ruling in our Decision of April 1, 2009 that "the proper remedy of those who may assail Limkaichong's disqualification based on citizenship is to file before the HRET the proper petition at any time during incumbency." That Lim had already withdrawn the petition for *quo warranto* he had earlier filed before the HRET is of no consequence, considering that citizenship is a continuing requirement for the holding of office of Members of the House of Representatives.

Under the 1987 Constitution, Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Anyone who assails a Representative's citizenship or lack of it may still question the same at any time, even beyond the ten-day prescriptive period set in the 1998 HRET Rules.[58]

We also hold that there is no basis for the COMELEC's order constituting a Special Provincial Board of Canvassers for the purpose of proclaiming Lim who got the next highest number of votes in

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[57] *Limkaichong v. Commission on Elections, supra* note 21 at 36.

[58] *Id.* at 38.

the May 10, 2010 elections for the position of Representative of the 3rd District of Albay. It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides.[59] The second placer is just that, a second placer – he lost in the elections and was repudiated by either the majority or plurality of voters.[60]

Private respondent Lim argues that the second placer rule will not apply in this case because Gonzalez was disqualified to be a candidate before election under the assailed COMELEC resolutions which became final and executory after five (5) days without a restraining order issued by this Court. The effect of the ruling on Gonzalez's disqualification retroacts to the day of election (May 10, 2010). As reflected in the recent Statement of Votes prepared by the Special Board of Canvassers, the name of Fernando V. Gonzalez has been delisted from the lists of official candidates for the Members of the House of Representatives in the 3rd District of Albay.[61]

The exception to the second placer rule is predicated on the concurrence of the following: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate

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[59] *Albaña v. Commission on Elections,* G.R. No. 163302, July 23, 2004, 435 SCRA 98, 109, citing *Labo, Jr. v. Commission on Elections, supra* note 28 at 311; *Sunga v. Commission on Elections,* G.R. No. 125629, March 25, 1998, 288 SCRA 76. *See* also *Labo, Jr. v. Commission on Elections,* G.R. No. 86564, August 1, 1989, 176 SCRA 1; *Abella v. COMELEC,* G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 253; *Benito v. COMELEC,* G.R. No. 106053, August 17, 1994, 235 SCRA 436; and *Domino v. Commission on Elections,* G.R. No. 134015, July 19, 1999, 310 SCRA 546.

[60] *Quizon v. Commission on Elections, supra* note 56 at 643, citing *Ocampo v. House of Representatives Electoral Tribunal,* G.R. No. 158466, June 15, 2004, 432 SCRA 144, 150.

[61] *Rollo,* p. 858.

is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate.[62] These facts warranting the exception to the rule are not present in the case at bar. As noted by Commissioner Velasco, the date of promulgation of the resolution declaring Gonzalez disqualified to be a candidate in the May 10, 2010 was not a previously fixed date as required by Section 6[63] of COMELEC Resolution No. 8696 as the records do not show that the parties were given prior notice thereof. In fact, Gonzalez through his counsel received a copy of the May 8, 2010 Resolution only on May 11, 2010, one day after the elections.

And as we held in *Bautista v. Commission on Elections*[64]

> Thus, when the electorate voted for Bautista as Punong Barangay on 15 July 2002, it was under the belief that he was qualified. There is no presumption that the electorate agreed to the invalidation of their votes as stray votes in case of Bautista's disqualification. The Court cannot adhere to the theory of respondent Alcoreza that the votes cast in favor of Bautista are stray votes. **A subsequent finding by the COMELEC *en banc* that Bautista is ineligible cannot retroact to the date of elections so as to invalidate the votes cast for him**. As held in *Domino v. COMELEC*:
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> > Contrary to the claim of INTERVENOR, petitioner was not notoriously known by the public as an ineligible candidate. **Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory**. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed

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[62] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501, citing *Labo, Jr. v. Commission on Elections, supra* note 28.

[63] SEC. 6. *Promulgation.* — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

[64] G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299.

> DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless.[65] (Emphasis supplied.)

We have declared that not even this Court has authority under any law to impose upon and compel the people to accept a loser, as their representative or political leader.[66] The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser.[67] The COMELEC clearly acted with grave abuse of discretion in ordering the proclamation of private respondent Lim who lost by a wide margin of 29,292 votes, after declaring Gonzalez, the winning candidate, disqualified to run as Member of the House of Representatives.

WHEREFORE, the petition is *GRANTED*. The assailed Resolution of the Second Division dated May 8, 2010 and COMELEC *En Banc* Resolution dated July 23, 2010 in SPA No. 10-074 (DC) are hereby *ANNULLED and SET ASIDE*. The Petition for Disqualification and Cancellation of Certificate of Candidacy of Fernando V. Gonzalez is *DISMISSED,* without prejudice to the filing of a proper petition before the House of Representatives Electoral Tribunal raising the same question on the citizenship qualification of Fernando V. Gonzalez.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on official leave.

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[65] *Id.* at 324-325.

[66] *Miranda v. Abaya,* G.R. No. 136351, July 28, 1999, 311 SCRA 617, 635.

[67] *Domino v. Commission on Elections, supra* note 59 at 574.

EN BANC

[G.R. No. 193459. March 8, 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; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; TO IMMEDIATELY RECKON THE INITIATION TO WHAT PETITIONER HERSELF CONCEDES AS THE START OF THE INITIATION PROCESS IS TO COUNTENANCE A RAW OR HALF-BAKED INITIATION.— The Court adhered to the *Francisco*-ordained balance in the tug-of-war between those who want to stretch and those who want to shrink the term "initiate," either of which could disrupt the provision's congruency to the rationale of the constitutional provision. Petitioner's imputation that the Court's Decision

presents a sharp deviation from *Francisco* as it defers the operability of the one-year bar rule rings hollow. Petitioner urges that the word "initiate" must be read in its plain, ordinary and technical meaning, for it is contrary to reason, logic and common sense to reckon the beginning or start of the initiation process from its end or conclusion. Petitioner would have been correct had the subject constitutional provision been worded as "no initiation process of the impeachment proceeding shall be commenced against the same official more than once within a period of one year," in which case the reckoning would literally point to the "start of the beginning." To immediately reckon the initiation to what petitioner herself concedes as the start of the initiation process is to countenance a raw or half-baked initiation. In re-affirming what the phrase "no impeachment proceedings shall be initiated" means, the Court closely applied *Francisco* on what comprises or completes the initiation phase. Nothing can be more unequivocal or well-defined than the elucidation of filing-and-referral in *Francisco*. Petitioner must come to terms with her denial of the exact terms of *Francisco*.

2. ID.; ID.; ID.; THE PHRASEOLOGY OF THE ONE-YEAR BAR RULE DOES NOT CONCERN ITSELF WITH A NUMERICAL LIMITATION OF IMPEACHMENT COMPLAINTS; IF IT WERE THE INTENTION OF THE FRAMERS OF THE CONSTITUTION TO LIMIT THE NUMBER OF COMPLAINTS, THEY WOULD HAVE EASILY SO STATED IN CLEAR AND UNEQUIVOCAL LANGUAGE.— Petitioner posits that referral is not an integral or indispensable part of the initiation of impeachment proceedings, in case of a direct filing of a verified complaint or resolution of impeachment by at least one-third of all the Members of the House. The facts of the case do not call for the resolution of this issue however. Suffice it to restate a footnote in the Court's Decision that in such case of "an abbreviated mode of initiation[, x x x] the filing of the complaint and the taking of initial action [House directive to automatically transmit] are merged into a single act." Moreover, it is highly impossible in such situation to coincidentally initiate a second impeachment proceeding in the interregnum, if any, given the period between filing and referral. Petitioner's discussion on the singular tense of the word "complaint" is too tenuous to require consideration. The phraseology of the one-year bar rule does not concern itself with a numerical limitation of

impeachment complaints. If it were the intention of the framers of the Constitution to limit the number of complaints, they would have easily so stated in clear and unequivocal language.

3. ID.; ID.; ID.; SINCE THE ISSUE IN CASE AT BAR INVOLVES UPHOLDING AN EXPRESS LIMITATION OF A POWER; IT BEHOOVES THE COURT TO LOOK INTO THE RATIONALE BEHIND THE CONSTITUTIONAL PROSCRIPTION WHICH GUARDS AGAINST AN IMPLICIT INSTANCE OF ABUSE OF POWER.— Petitioner further avers that the demonstrated concerns against reckoning the period from the filing of the complaint are mere possibilities based on a general mistrust of the Filipino people and their Representatives. To her, mere possibility of abuse is not a conclusive argument against the existence of power nor a reason to invalidate a law. The present case does not involve an invalidation of a legal provision on a *grant* of power. Since the issue precisely involves upholding an express *limitation* of a power, it behooves the Court to look into the rationale behind the constitutional proscription which guards against an explicit instance of abuse of power. The Court's duty entails an examination of the same possible scenarios considered by the framers of the Constitution (*i.e.*, incidents that may prove to disrupt the law-making function of Congress and unduly or too frequently harass the impeachable officer), which are basically the same grounds being invoked by petitioner to arrive at her desired conclusion. Ironically, petitioner also offers the Court with various possibilities and vivid scenarios to grimly illustrate her perceived oppression. And her own mistrust leads her to find inadequate the existence of the pertinent constitutional provisions, and to entertain doubt on "the respect for and adherence of the House and the respondent committee to the same." While petitioner concedes that there is a framework of safeguards for impeachable officers laid down in Article XI of the Constitution, she downplays these layers of protection as illusory or inutile without implementation and enforcement, as if these can be disregarded at will. Contrary to petitioner's position that the Court left in the hands of the House the question as to when an impeachment proceeding is initiated, the Court merely underscored the House's conscious role in the initiation of an impeachment proceeding. The Court added nothing new in pinpointing the obvious reckoning point of initiation in light of the *Francisco* doctrine. Moreover, referral

of an impeachment complaint to the appropriate committee is already a power or function granted by the Constitution to the House.

4. ID.; ID.; ID.; TACKLING ON THE FLOOR IN ITS ORDER OF BUSINESS A CLEARLY CONSTITUTIONALLY-PROHIBITED SECOND IMPEACHMENT COMPLAINT ON THE MATTER OF WHETHER TO MAKE THE APPROPRIATE REFERRAL GOES PRECISELY INTO THE PROPRIETY OF THE REFERRAL AND NOT ON THE MERITS OF THE COMPLAINT.— Petitioner goes on to argue that the House has no discretion on the matter of referral of an impeachment complaint and that once filed, an impeachment complaint should, as a matter of course, be referred to the Committee. The House cannot indeed refuse to refer an impeachment complaint that is filed *without* a subsisting bar. To refer an impeachment complaint *within* an existing one-year bar, however, is to commit the apparently unconstitutional act of initiating a second impeachment proceeding, which may be struck down under Rule 65 for grave abuse of discretion. It bears recalling that the one-year bar rule itself is a constitutional limitation on the House's power or function to refer a complaint. Tackling on the House floor in its order of business a clearly constitutionally-prohibited second impeachment complaint on the matter of whether to make the appropriate referral goes precisely into the propriety of the referral and not on the merits of the complaint. The House needs only to ascertain the existence or expiry of the constitutional ban of one year, without any regard to the claims set forth in the complaint. To petitioner, the intervening days from the filing of the complaint to whatever completes the initiation of an impeachment proceeding is immaterial in mitigating the influx of successive complaints since allowing multiple impeachment charges would result to the same harassment and oppression. She particularly cites Constitutional Commissioner Ricardo Romulo's concerns on the amount of time spent if "multiple impeachment charges" are allowed. She fails, however, to establish whether Commissioner Romulo limited or quantified his reference to not more than one complaint or charge. IN SUM, the Court did not deviate from, as it did apply the twin rule of **filing** and **referral** in the present case, with *Francisco* as the guiding light. Petitioner refuses to see the other half of that light, however.

5. ID.; ID.; ID.; THE CONSTITUTION CLEARLY GIVES THE HOUSE A WIDE DISCRETION ON HOW TO EFFECTIVELY PROMULGATE ITS IMPEACHMENT RULES; IT IS NOT FOR THE COURT TO TELL A CO-EQUAL BRANCH OF GOVERNMENT ON HOW TO DO SO WHEN SUCH PREROGATIVE IS LODGED EXCLUSIVELY WITH IT.— When the Constitution uses the word "promulgate," it does not necessarily mean to publish in the Official Gazette or in a newspaper of general circulation. Promulgation, as used in Section 3(8), Article XI of the Constitution, suitably takes the meaning of "to make known" as it should be generally understood. Petitioner continues to misapply *Neri v. Senate Committee on Accountability of Public Officers and Investigations* where the Court noted that the Constitution unmistakably requires the publication of rules of procedure pertaining to inquiries in aid of legislation. If the Constitution warranted the publication of Impeachment Rules, then it could have expediently indicated such requirement as it did in the case of legislative inquiries. The Constitution clearly gives the House a wide discretion on how to effectively promulgate its Impeachment Rules. It is not for this Court to tell a co-equal branch of government on how to do so when such prerogative is lodged *exclusively* with it.

6. ID.; ID.; ID.; SECTION 3, ARTICLE XI OF THE CONSTITUTION CONTAINS RELEVANT SELF-EXECUTING PROVISIONS WHICH MUST BE OBSERVED AT THE START OF THE IMPEACHMENT PROCESS, THE PROMULGATION OF THE IMPEACHMENT RULES NOTWITHSTANDING.— Still, petitioner argues that the Court erred when it ruled that "to require publication of the House Impeachment Rules would only delay the impeachment proceedings and cause the House of Representatives to violate constitutionally mandated periods…" She insists that the Committee, after publishing the Impeachment Rules, would still have a remainder of 45 days out of the 60-day period within which to finish its business. Petitioner is mistaken in her assertion. Note that the Court discussed the above-mentioned scenario only "in cases where impeachment complaints are filed at the start of each Congress." Section 3, Article XI of the Constitution contains relevant self-executing provisions which must be observed at the start of the impeachment process, the promulgation of the Impeachment Rules notwithstanding.

7. ID.; ID.; ID.; THE IMPEACHMENT RULES DO NOT PROVIDE FOR ANY PROVISION REGARDING THE INHIBITION OF THE COMMITTEE CHAIRPERSON OR ANY MEMBER FROM PARTICIPATING IN AN IMPEACHMENT PROCEEDING; ANY DECISION ON THE MATTER OF INHIBITION MUST BE RESPECTED, AND IT IS NOT FOR THIS COURT TO INTERFERE WITH THAT DECISION.— Petitioner rehashes her allegations of bias and vindictiveness on the part of the Committee Chairperson, Rep. Niel Tupas, Jr. Yet again, the supposed actuations of Rep. Tupas partake of a keen performance of his avowed duties and responsibilities as the designated manager of that phase in the impeachment proceeding. Besides, the actions taken by the Committee were never its Chairperson's sole act but rather the collective undertaking of its whole 55-person membership. The Committee members even took to voting among themselves to validate what actions to take on the motions presented to the Committee. Indubitably, an impeachment is not a judicial proceeding, but rather a *political exercise*. Petitioner thus cannot demand that the Court apply the stringent standards it asks of justices and judges when it comes to inhibition from hearing cases. Incidentally, the Impeachment Rules do not provide for any provision regarding the inhibition of the Committee chairperson or any member from participating in an impeachment proceeding. The Committee may thus direct any question of partiality towards the concerned member only. And any decision on the matter of inhibition must be respected, and it is not for this Court to interfere with that decision. Except for the constitutionally mandated periods, the pacing or alleged precipitate haste with which the impeachment proceeding against petitioner is conducted is beyond the Court's control. Again, impeachment is a highly politicized intramural that gives the House ample leg room to operate, subject only to the constitutionally imposed limits. And beyond these, the Court is duty-bound to respect the discretion of a co-equal branch of government on matters which would effectively carry out its constitutional mandate.

8. ID.; ID.; ID.; THE LIFTING OF THE *STATUS QUO ANTE* ORDER IS EFFECTIVE IMMEDIATELY; THERE IS THUS NO FAULTING THE COMMITTEE IF IT DECIDES TO, AS IT DID PROCEED WITH THE IMPEACHMENT PROCEEDING AFTER THE COURT RELEASED ITS FEBRUARY 15, 2011

DECISION.— The Court has, in its February 15, 2011 Decision, already lifted its September 14, 2010 *Status Quo Ante* Order which, as said Order clearly stated, was "effective immediately and continuing **until further orders from this Court**." Such "further order" points to that part of the disposition in the February 15, 2011 Decision that directs the lifting of the *Status Quo Ante* Order. The lifting of the *Status Quo Ante* Order is effective immediately, the filing of petitioner's motion for reconsideration notwithstanding, in the same way that the *Status Quo Ante* Order was made effective immediately, respondents' moves to reconsider or recall it notwithstanding. There is thus no faulting the Committee if it decides to, as it did proceed with the impeachment proceeding *after* the Court released its February 15, 2011 Decision.

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 intervenor.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For resolution is petitioner's "Motion for Reconsideration (of the Decision dated 15 February 2011)" dated February 25, 2011 (Motion).

Upon examination of the averments in the Motion, the Court finds neither substantial nor cogent reason to reconsider its Decision. A plain reading of the Decision could very well dispose of petitioner's previous contentions, raised anew in the Motion, but the Court finds it proper, in writing *finis* to the issue, to draw petitioner's attention to certain markers in the Decision.

I

Contrary to petitioner's assertion that the Court sharply deviated from the ruling in *Francisco, Jr. v. The House of Representatives*,[1] the Decision of February 15, 2011 reaffirmed and illuminated the *Francisco* doctrine in light of the particular facts of the present case.

To argue, as petitioner does, that there never was a simultaneous referral of two impeachment complaints as they were actually referred to the committee "separately, one after the other"[2] is to dismantle her own interpretation of *Francisco* that the one-year bar is to be reckoned from the filing of the impeachment complaint. Petitioner's Motion concedes[3] that the *Francisco* doctrine on the initiation of an impeachment proceeding includes the House's initial action on the complaint. By recognizing the legal import of a referral, petitioner abandons her earlier claim that per *Francisco* an impeachment proceeding is initiated by the mere filing of an impeachment complaint.

Having uprooted her reliance on the *Francisco* case in propping her position that the initiation of an impeachment proceeding must be reckoned from the filing of the complaint, petitioner insists on actual initiation and not "constructive initiation by legal fiction" as averred by Justice Adolfo Azcuna in his separate opinion in *Francisco*.

In Justice Azcuna's opinion which concurred with the majority, what he similarly found untenable was the stretching of the reckoning point of initiation to the time that the Committee on Justice (the Committee) report reaches the floor of the House.[4]

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[1] 460 Phil. 830 (2003).

[2] Motion for Reconsideration, p. 8.

[3] Motion for Reconsideration, p. 9: "From these entries, it is clear that each impeachment complaint was the subject of separate and distinct referrals. Following *Francisco*, upon the referral of the First Impeachment Complaint to the respondent Committee, an impeachment proceeding against petitioner Ombudsman has already been initiated." (underscoring supplied)

[4] *Vide Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 1054-1055.

Notably, the provisions of the Impeachment Rules of the 12th Congress that were successfully challenged in *Francisco* provided that an impeachment proceeding was to be "deemed initiated" upon the Committee's finding of sufficiency of substance or upon the House's affirmance or overturning of the Committee's finding,[5] which was clearly referred to as the instances "presumably for internal purposes of the House, as to the timing of some of its internal action on certain relevant matters."[6] Definitely, "constructive initiation by legal fiction" did *not* refer to the aspects of filing and referral in the regular course of impeachment, for this was precisely the gist of *Francisco* in pronouncing what initiation means.

The Court adhered to the *Francisco*-ordained balance in the tug-of-war between those who want to stretch and those who want to shrink the term "initiate," either of which could disrupt the provision's congruency to the rationale of the constitutional provision. Petitioner's imputation that the Court's Decision presents a sharp deviation from *Francisco* as it defers the operability of the one-year bar rule rings hollow.

Petitioner urges that the word "initiate" must be read in its plain, ordinary and technical meaning, for it is contrary to reason, logic and common sense to reckon the beginning or start of the initiation process from its end or conclusion.

Petitioner would have been correct had the subject constitutional provision been worded as "no initiation process of the impeachment proceeding shall be commenced against the same official more than once within a period of one year," in which case the reckoning would literally point to the "start of the beginning." To immediately reckon the initiation to what petitioner herself concedes as the start of the initiation process is to countenance a raw or half-baked initiation.

In re-affirming what the phrase "no impeachment proceedings shall be initiated" means, the Court closely applied *Francisco*

[5] *Id.* at 865.

[6] *Id.* at 1055.

on what comprises or completes the initiation phase. Nothing can be more unequivocal or well-defined than the elucidation of filing-and-referral in *Francisco*. Petitioner must come to terms with her denial of the exact terms of *Francisco*.

Petitioner posits that referral is not an integral or indispensable part of the initiation of impeachment proceedings, in case of a direct filing of a verified complaint or resolution of impeachment by at least one-third of all the Members of the House.[7]

The facts of the case do not call for the resolution of this issue however. Suffice it to restate a footnote in the Court's Decision that in such case of "an abbreviated mode of initiation[, x x x] the filing of the complaint and the taking of initial action [House directive to automatically transmit] are merged into a single act."[8] Moreover, it is highly impossible in such situation to coincidentally initiate a second impeachment proceeding in the interregnum, if any, given the period between filing and referral.

Petitioner's discussion on the singular tense of the word "complaint" is too tenuous to require consideration. The phraseology of the one-year bar rule does not concern itself with a numerical limitation of impeachment complaints. If it were the intention of the framers of the Constitution to limit the number of complaints, they would have easily so stated in clear and unequivocal language.

Petitioner further avers that the demonstrated concerns against reckoning the period from the filing of the complaint are mere possibilities based on a general mistrust of the Filipino people and their Representatives. To her, mere possibility of abuse is not a conclusive argument against the existence of power nor a reason to invalidate a law.

The present case does not involve an invalidation of a legal provision on a *grant* of power. Since the issue precisely involves

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[7] CONSTITUTION, Art. XI, Sec. 3, par. (4).

[8] Decision of February 15, 2011, footnote 61.

upholding an express *limitation* of a power, it behooves the Court to look into the rationale behind the constitutional proscription which guards against an explicit instance of abuse of power. The Court's duty entails an examination of the same possible scenarios considered by the framers of the Constitution (*i.e.*, incidents that may prove to disrupt the law-making function of Congress and unduly or too frequently harass the impeachable officer), which are basically the same grounds being invoked by petitioner to arrive at her desired conclusion.

Ironically, petitioner also offers the Court with various possibilities and vivid scenarios to grimly illustrate her perceived oppression. And her own mistrust leads her to find inadequate the existence of the pertinent constitutional provisions, and to entertain doubt on "the respect for and adherence of the House and the respondent committee to the same."[9]

While petitioner concedes that there is a framework of safeguards for impeachable officers laid down in Article XI of the Constitution, she downplays these layers of protection as illusory or inutile without implementation and enforcement, as if these can be disregarded at will.

Contrary to petitioner's position that the Court left in the hands of the House the question as to when an impeachment proceeding is initiated, the Court merely underscored the House's conscious role in the initiation of an impeachment proceeding. The Court added nothing new in pinpointing the obvious reckoning point of initiation in light of the *Francisco* doctrine. Moreover, referral of an impeachment complaint to the appropriate committee is already a power or function granted by the Constitution to the House.

Petitioner goes on to argue that the House has no discretion on the matter of referral of an impeachment complaint and that once filed, an impeachment complaint should, as a matter of course, be referred to the Committee.

The House cannot indeed refuse to refer an impeachment complaint that is filed *without* a subsisting bar. To refer an

[9] Motion for Reconsideration, p. 36.

impeachment complaint *within* an existing one-year bar, however, is to commit the apparently unconstitutional act of initiating a second impeachment proceeding, which may be struck down under Rule 65 for grave abuse of discretion. It bears recalling that the one-year bar rule itself is a constitutional limitation on the House's power or function to refer a complaint.

Tackling on the House floor in its order of business a clearly constitutionally-prohibited second impeachment complaint on the matter of whether to make the appropriate referral goes precisely into the propriety of the referral and not on the merits of the complaint. The House needs only to ascertain the existence or expiry of the constitutional ban of one year, without any regard to the claims set forth in the complaint.

To petitioner, the intervening days from the filing of the complaint to whatever completes the initiation of an impeachment proceeding is immaterial in mitigating the influx of successive complaints since allowing multiple impeachment charges would result to the same harassment and oppression. She particularly cites Constitutional Commissioner Ricardo Romulo's concerns on the amount of time spent if "multiple impeachment charges"[10] are allowed. She fails, however, to establish whether Commissioner Romulo limited or quantified his reference to not more than one complaint or charge.

IN SUM, the Court did not deviate from, as it did apply the twin rule of **filing** and **referral** in the present case, with *Francisco* as the guiding light. Petitioner refuses to see the other half of that light, however.

II

Petitioner, meanwhile, reiterates her argument that promulgation means publication. She again cites her thesis that Commonwealth Act No. 638, Article 2 of the Civil Code, and the two *Tañada v. Tuvera*[11] cases mandate that the Impeachment Rules be published

[10] *Vide* II RECORD OF THE CONSTITUTIONAL COMMISSION, p. 282 (July 26, 1986).

[11] 220 Phil. 422 (1985); 230 Phil. 528 (1986).

for effectivity. Petitioner raises nothing new to change the Court's stance on the matter.

To reiterate, when the Constitution uses the word "promulgate," it does not necessarily mean to publish in the Official Gazette or in a newspaper of general circulation. Promulgation, as used in Section 3(8), Article XI of the Constitution, suitably takes the meaning of "to make known" as it should be generally understood.

Petitioner continues to misapply *Neri v. Senate Committee on Accountability of Public Officers and Investigations*[12] where the Court noted that the Constitution unmistakably requires the publication of rules of procedure pertaining to inquiries in aid of legislation. If the Constitution warranted the publication of Impeachment Rules, then it could have expediently indicated such requirement as it did in the case of legislative inquiries.

The Constitution clearly gives the House a wide discretion on how to effectively promulgate its Impeachment Rules. It is not for this Court to tell a co-equal branch of government on how to do so when such prerogative is lodged *exclusively* with it.

Still, petitioner argues that the Court erred when it ruled that "to require publication of the House Impeachment Rules would only delay the impeachment proceedings and cause the House of Representatives to violate constitutionally mandated periods…" She insists that the Committee, after publishing the Impeachment Rules, would still have a remainder of 45 days out of the 60-day period within which to finish its business.

Petitioner is mistaken in her assertion. Note that the Court discussed the above-mentioned scenario only "in cases where impeachment complaints are filed at the start of each Congress." Section 3, Article XI of the Constitution contains relevant self-executing provisions which must be observed at the start of the impeachment process, the promulgation of the Impeachment Rules notwithstanding.

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[12] G.R. No. 180643, March 25, 2008, 549 SCRA 77; and September 4, 2008, 564 SCRA 152.

Petitioner rehashes her allegations of bias and vindictiveness on the part of the Committee Chairperson, Rep. Niel Tupas, Jr. Yet again, the supposed actuations of Rep. Tupas partake of a keen performance of his avowed duties and responsibilities as the designated manager of that phase in the impeachment proceeding. Besides, the actions taken by the Committee were never its Chairperson's sole act but rather the collective undertaking of its whole 55-person membership. The Committee members even took to voting among themselves to validate what actions to take on the motions presented to the Committee.

Indubitably, an impeachment is not a judicial proceeding, but rather a *political exercise*. Petitioner thus cannot demand that the Court apply the stringent standards it asks of justices and judges when it comes to inhibition from hearing cases. Incidentally, the Impeachment Rules do not provide for any provision regarding the inhibition of the Committee chairperson or any member from participating in an impeachment proceeding. The Committee may thus direct any question of partiality towards the concerned member only. And any decision on the matter of inhibition must be respected, and it is not for this Court to interfere with that decision.

Except for the constitutionally mandated periods, the pacing or alleged precipitate haste with which the impeachment proceeding against petitioner is conducted is beyond the Court's control. Again, impeachment is a highly politicized intramural that gives the House ample leg room to operate, subject only to the constitutionally imposed limits.[13] And beyond these, the Court is duty-bound to respect the discretion of a co-equal branch of government on matters which would effectively carry out its constitutional mandate.

FINALLY, the Court has, in its February 15, 2011 Decision, already lifted its September 14, 2010 *Status Quo Ante* Order[14] which, as said Order clearly stated, was "effective immediately and continuing **until further orders from this Court**."[15] Such

[13] *Francisco, Jr. v. The House of Representatives, supra.*

[14] *Rollo,* pp. 264-267.

[15] *Id.* at 266, emphasis and underscoring supplied.

"further order" points to that part of the disposition in the February 15, 2011 Decision that directs the lifting of the *Status Quo Ante* Order.

The lifting of the *Status Quo Ante* Order is effective immediately, the filing of petitioner's motion for reconsideration notwithstanding, in the same way that the *Status Quo Ante* Order was made effective immediately, respondents' moves to reconsider or recall it notwithstanding. There is thus no faulting the Committee if it decides to, as it did proceed with the impeachment proceeding *after* the Court released its February 15, 2011 Decision.

WHEREFORE, the Motion for Reconsideration is *DENIED* for lack of merit.

SO ORDERED.

Carpio, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Perez, J., maintain his position in his separate opinion in the main case.

Del Castillo, Jr., maintains his vote in his concurring and dissenting opinion.

Corona, C.J., maintains his dissent vote with *J.* Brion.

Leonardo-de Castro, Peralta, and *Bersamin, JJ.,* maintain their votes with the dissent of *J.* Brion.

Brion, J., C.J. Corona certifies that *J.* Brion maintain his dissent.

Velasco, J.,[*] no part.

Nachura, J., on sabbatical leave (no vote).

FIRST DIVISION

[A.M. No. RTJ-08-2149. March 9, 2011]
(Formerly OCA IPI No. 08-2787-RTJ)

LYDIA A. BENANCILLO, *complainant, vs.* **JUDGE VENANCIO J. AMILA, REGIONAL TRIAL COURT, BRANCH 3, TAGBILARAN CITY,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; ENJOINED NOT ONLY FROM COMMITTING ACTS OF IMPROPRIETY BUT EVEN ACTS WHICH HAVE THE APPEARANCE OF IMPROPRIETY.— We adopt the findings and the recommendations of the OCA. Indeed, the New Code of Judicial Conduct for the Philippine Judiciary exhorts members of the judiciary, in the discharge of their duties, to be models of propriety at all times. Judge Amila should be reminded of Sections 1 and 6, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. x x x The [said] provisions clearly enjoin judges not only from committing acts of impropriety but even acts which have the appearance of impropriety. The Code recognizes that even acts that are not per se improper can nevertheless be perceived by the larger community as such. "Be it stressed that judges are held to higher standards of integrity and ethical conduct than attorneys and other persons not [vested] with public trust."

2. ID.; ID.; CONDUCT UNBECOMING OF A JUDGE; RESPONDENT JUDGE ACTED INAPPROPRIATELY IN CALLING THE COMPLAINANT AND THE INTERVENORS TO A MEETING IN HIS CHAMBERS; CASE AT BAR.— In this case, the respondent judge acted inappropriately in calling the complainant and the intervenors to a meeting inside his chambers. His explanation that he called the said meeting to advise the parties that he will rescind his October 2, 2007 Order is not acceptable. Why would a judge give the parties advance notice that he is going to issue an Order, more so rescind his previous Order? Worse, why would he call on the intervenors whom he had earlier ruled as not having any legal personality in this case? This act of respondent judge would logically create an

impression to complainant that the meeting of the judge with the intervenors had turned his views around towards issuing a revocation of the October 2, 2007 Order.

3. ID.; ID.; ID.; ID.; JUDGE MUST AT ALL TIMES BE TEMPERATE IN HIS LANGUAGE; CASE AT BAR.— In his Comment, respondent judge used derogatory and irreverent language in relation to complainant. The former in effect maliciously besmirched the character of complainant by calling her as "*only a live-in partner of Belot*" and presenting her as an *opportunist* and a *mistress* in an *illegitimate relationship*. The judge also called her a *prostitute*. The judge's accusations that complainant was motivated by *insatiable greed* and would abscond with the contested property are unfair and unwarranted. His depiction of complainant is also inconsistent with the Temporary Protection Order (TPO) he issued in her favor as a victim of domestic violence. Verily, we hold that Judge Amila should be more circumspect in his language. It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.

4. ID.; ID.; ID.; ID.; ID.; PENALTY IN CASE AT BAR.— Accordingly, respondent Judge Venancio J. Amila is hereby found guilty of conduct unbecoming of a judge. In particular, he violated Sections 1 and 6, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. Conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Rules of Court. It is penalized under Section 11C thereof by any of the following: (1) A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning. Inasmuch as Judge Amila was previously found guilty of gross ignorance of the law in connection with his Decision in Criminal Case Nos. 14988 and 14989 which was docketed as A.M. No. RTJ-07-2071 where he was ordered to pay a fine of ₱20,000.00 and warned that a repetition of the same or similar act would be dealt with more severely, the penalty of fine of ₱21,000.00 is deemed appropriate in the instant case.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Before us is a Verified-Complaint[1] dated November 29, 2007 filed by complainant Lydia A. Benancillo (Lydia) charging respondent Judge Venancio J. Amila (Judge Amila) of the Regional Trial Court (RTC), Branch 3, Tagbilaran City with Grave Abuse of Discretion, Gross Ignorance of the Law and Procedure, Knowingly Rendering an Unjust Judgment or Order, Partiality and Impropriety relative to Civil Case No. 7268 entitled "*Lydia A. Benancillo v. Paul John Belot*," a Petition for Temporary Protection Order and Permanent Protection Order under Republic Act No. 9262.

The facts as culled from the Report[2] of the Office of the Court Administrator (OCA) are as follow:

1. **VERIFIED COMPLAINT**

x x x x x x x x x

The complainant, the petitioner in Sp. Civil Case No. 7268, avers that Branch 1 of RTC Tagbilaran City, acting as then Family Court in Tagbilaran City, issued a Temporary Protection Order (TPO) against her live-in partner, Paul John Belot (Belot). The TPO included a directive to Belot to turn over to her personal effects, including properties in their diving business called the Underworld Diver's Panglao, Inc. (Underworld). Belot sought the reconsideration of the issuance of the TPO. Meanwhile, their business partners, Paz Mandin Trotin and Christopher Mandin, filed a motion for intervention with respect to the properties of Underworld. The complainant filed an opposition to the motion for intervention with prayer for preliminary injunction.

The complainant alleges that when Branch 2 of RTC Tagbilaran City, presided by the respondent judge, was designated as the new Family Court in Tagbilaran City, Sp. Civil Case No. 7268 was transferred to the said court. Acting on the pending incidents, the respondent

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[1] *Rollo*, pp. 1-16.

[2] *Id.* at 436-442.

judge denied both Belot's motion for reconsideration and the intervenors' motion for intervention in an Order dated July 16, 2007. The respondent judge incorporated in the resolution a cease-and-desist order prohibiting the intervenors from taking possession of the properties of Underworld.

The complainant further alleges that the respondent judge reiterated his Order of July 16, 2007 in an Order dated August 14, 2007. Subsequently, the respondent judge denied the intervenors' motion for reconsideration in an Order dated October 2, 2007.

The complainant states that the respondent judge constantly ruled in her favor as he consistently held that the intervenors had no legal personality in the case. However, the respondent judge refused to enforce the TPO.

The complainant claims that on October 8, 2007, the respondent judge called her and her counsel to a meeting in his chambers on October 9, 2007. They agreed to the meeting but they did not proceed when they learned that the intervenors were joining them. Subsequent to the respondent judge's meeting with the intervenors, he issued an Order dated October 18, 2007 which rescinded his Order of October 2, 2007. Then, in an Order dated October 25, 2007, he denied the complainant's motion for reconsideration.

According to the complainant, the respondent judge's conduct smacks of impropriety and partiality. She further charges the respondent judge with grave abuse of discretion, gross ignorance of the law and procedure and knowingly rendering an unjust judgment/order for issuing the questioned Orders of October 18, 2007 and October 25, 2007.

The complainant further observed that the respondent judge revoked his Order of October 2, 2007, without any motion being filed by any of the parties. Moreover, the Order of October 18, 2007 was based on an inexistent ground as the respondent judge mentioned in this Order a petition for *certiorari* supposedly filed by Belot which had not yet been x x x filed with the Court of Appeals.

The complainant alleged that the respondent judge's Order of October 25, 2007 ruling on the complainant's motion for reconsideration of the Order of October 18, 2007 introduced a new issue on the jurisdiction of the court over the person of Belot. The respondent judge also ruled on maintaining the status quo, a position inconsistent with the preliminary injunction he had previously issued.

2. **COMMENT** of Judge Venancio J. Amila dated February 8, 2008 wherein he denies the charges against him.

The respondent judge claimed that the complainant was motivated by her "*insatiable greed to have exclusive control and possession pending trial of the case [of] all the properties of the Underworld Divers Panglao, Inc. of respondent Paul John Belot*." x x x [H]e added that the "*complainant . . . is only a live-in partner of respondent with no specific address who was branded repeatedly by Belot as a 'prostitute' and one 'only after his money'*."

According to the respondent judge, he rescinded his Order of October 2, 2007 because the complainant had no right to her alleged shares in the corporation being merely a dummy owner of Belot's shares. He was "*fearful of the consequence in the event that complainant would stealthily dispose of or abscond [with] the properties. . . because of the illegitimate status of their relationship, more so, with their present feud caused by the arrival of Belot's son and the alleged coming of the legitimate wife*."

The respondent judge averred that the complainant "*masterminded all [the] legal manipulations [and] moved heaven and earth x x x to get possession of all the properties of Belot to the extent of filing the instant administrative charge and a petition for certiorari lately with the Court of Appeals, dated December 21, 2007 using the same offensive and disrespectful language in her arguments*.

The respondent asserted he had the authority to *motu proprio* rectify an error to restore things to their *status quo* during the pendency of the case in order to avoid damage or loss. x x x [T]he complainant refused to attend the meeting he called with the intervenor in chambers to explain the Order.

Respondent Judge Amila incorporated in his submission his comment to a similar administrative complaint filed earlier by the complainant. x x x [H]e alleged that he set aside his Order of October 2, 2007 because the Petition for *Certiorari* filed by Belot before the Court of Appeals had placed the jurisdiction of the court under question.

3. **REPLY-AFFIDAVIT** dated February 29, 2008 of the complainant.

The complainant claimed that she suffered psychological and emotional violence as the respondent judge echoed Belot's verbal and psychological abuse against her that she was "*only a live-in*

partner" "*in an illegitimate relation*" and a "*prostitute*." The respondent judge's remarks revealed his prejudice and lack of gender sensitivity and this was unbecoming of a family court judge. His remarks also manifested his lack of knowledge and/or utter disregard of the law on the equal protection to women-victims in intimate relationships under the anti- VAWC law which he was mandated to uphold as a family court judge.

The complainant averred that the respondent judge refused to enforce the TPO under the Anti-VAWC law because of his prejudiced view that she would abscond with the contested properties due to the "illegitimate status" of their "relationship." His personal bias against the complainant reflects his utter lack of the cold neutrality of an impartial judge.

The complainant denied the respondent judge's accusation that she and her counsel "masterminded all these legal manipulations." She added that the accusation implies that the respondent judge was not in control of the proceedings and that he could be manipulated by the parties.

The complainant alleged that as the respondent judge still refused to implement the TPO despite the dismissal of Belot's petition for *certiorari* with the Court of Appeals, she filed a Petition for *Certiorari* before the Supreme Court for the annulment of the Orders dated October 18, 2007 and October 25, 2007.

The complainant asserted that while the respondent judge can change his mind, he could no longer do so when the Order already became final and executory and was not questioned anymore by the parties. Moreover, there was no reason for the respondent judge to call for a meeting with the intervenors because he already ruled that intervention was not allowed in the case.

4. **AFFIDAVIT-MANIFESTATION** dated May 27, 2008 of the complainant.

The complainant manifested that the Court of Appeals of Cebu City already dismissed the Petition for *Certiorari* filed by Belot which petition the respondent Judge cited as reason for rescinding his Order dated [October] 2, 2007, the petition being a prohibited pleading under Section 22 of RA 9262 (Anti-VAWC).[3]

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[3] *Id.* at 436-439.

In its Report[4] dated September 11, 2008, the OCA found that Judge Amila acted inappropriately in calling the intervenors to a meeting in his chambers. It was also noted that he used derogatory and irreverent language in presenting complainant in his Comment as an opportunist, a mistress in an illegitimate relationship and that she was motivated by insatiable greed. As regards the charge for gross ignorance of the law, the OCA noted that the same is premature considering that complainant filed before this Court a petition assailing the October 18 and 25, 2007 Orders of respondent Judge.[5]

The OCA thus recommended:

xxx xxx xxx

1. That the case be REDOCKETED as a regular administrative matter;

2. That the charges of Grave Abuse of Discretion, Gross Ignorance of the Law and Procedure and Knowingly Rendering an Unjust Judgment or Order relative to the issuance of the Order[s] dated October 18, 2007 and October 25, 2007 be **DISMISSED** for being premature;

3. [That r]espondent Judge Venancio J. Amila, Regional Trial Court (Branch 3), Tagbilaran City, be **found guilty of impropriety** for the use of intemperate language **and unbecoming conduct** and be **FINED** in the amount of ₱10,000.00 with the warning that a repetition of the same or similar offense x x x shall be dealt with more severely.[6]

We adopt the findings and the recommendations of the OCA.

Indeed, the New Code of Judicial Conduct for the Philippine Judiciary exhorts members of the judiciary, in the discharge of their duties, to be models of propriety at all times.

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[4] *Id.* at 436-442.

[5] In a Resolution dated January 13, 2010, the Court in A.M. OCA IPI No. 09-3233-RTJ dismissed the complaint against respondent judge for refusing to enforce the Writ of Injunction for being premature. *Id.* at 490.

[6] *Id.* at 441-442.

Judge Amila should be reminded of Sections 1 and 6, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary.[7]

CANON 4
PROPRIETY

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

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

x x x x x x x x x

SECTION 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.

The above provisions clearly enjoin judges not only from committing acts of impropriety but even acts which have the appearance of impropriety. The Code recognizes that even acts that are not per se improper can nevertheless be perceived by the larger community as such. "Be it stressed that judges are held to higher standards of integrity and ethical conduct than attorneys and other persons not [vested] with public trust."[8]

In this case, the respondent judge acted inappropriately in calling the complainant and the intervenors to a meeting inside his chambers. His explanation that he called the said meeting to advise the parties that he will rescind his October 2, 2007 Order is not acceptable. Why would a judge give the parties advance notice that he is going to issue an Order, more so rescind his previous Order? Worse, why would he call on the intervenors whom he had earlier ruled

[7] The New Code of Judicial Conduct for the Philippine Judiciary took effect on June 1, 2004. It superseded the Canons of Judicial Ethics and the Code of Judicial Conduct.

[8] *Office of the Court Administrator v. Estacion, Jr.*, 317 Phil. 600, 603 (1995).

as not having any legal personality in this case? This act of respondent judge would logically create an impression to complainant that the meeting of the judge with the intervenors had turned his views around towards issuing a revocation of the October 2, 2007 Order.

In his Comment, respondent judge used derogatory and irreverent language in relation to complainant. The former in effect maliciously besmirched the character of complainant by calling her as "*only a live-in partner of Belot"* and presenting her as an *opportunist* and a *mistress* in an *illegitimate relationship*. The judge also called her a *prostitute*. The judge's accusations that complainant was motivated by *insatiable greed* and would abscond with the contested property are unfair and unwarranted. His depiction of complainant is also inconsistent with the Temporary Protection Order (TPO) he issued in her favor as a victim of domestic violence. Verily, we hold that Judge Amila should be more circumspect in his language.

> It is reprehensible for a judge to humiliate a lawyer, litigant or witness. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.[9]

Accordingly, respondent Judge Venancio J. Amila is hereby found guilty of conduct unbecoming of a judge. In particular, he violated Sections 1 and 6, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary.

Conduct unbecoming of a judge is classified as a light offense under Section 10,[10] Rule 140 of the Rules of Court. It is penalized

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[9] *Dela Cruz v. Carretas*, A.M. No. RTJ-07-2043, September 5, 2007, 532 SCRA 218, 229.

[10] Rule 140, Section 10. *Light Charges*. – Light charges include:

1. Vulgar and unbecoming conduct;
2. Gambling in public;
3. Fraternizing with lawyers and litigants with pending case/cases in his court; and
4. Undue delay in the submission of monthly reports.

under Section 11C[11] thereof by any of the following: (1) A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning.

Inasmuch as Judge Amila was previously found guilty of gross ignorance of the law in connection with his Decision in Criminal Case Nos. 14988 and 14989 which was docketed as A.M. No. RTJ-07-2071 where he was ordered to pay a fine of ₱20,000.00 and warned that a repetition of the same or similar act would be dealt with more severely, the penalty of fine of ₱21,000.00 is deemed appropriate in the instant case.

WHEREFORE, we find Judge Venancio J. Amila *GUILTY* of Conduct Unbecoming of a Judge, and *FINE* him ₱21,000.00.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Sereno,*[**] *JJ.,* concur.

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[11] Rule 140, Section 11. *Sanctions.*

x x x x x x x x x

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

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

[*] In lieu of Associate Justice Jose Portugal Perez per raffle of September 20, 2010.

[**] In lieu of Associate Justice Presbitero J. Velasco, Jr., per raffle dated March 2, 2011.

SECOND DIVISION

[A.M. No. P-09-2677. March 9, 2011]
(Formerly OCA I.P.I. No. 07-2582-P)

ANGELINA C. LIM and VIVIAN M. GADUANG, *complainants, vs.* **MARIBETH G. AROMIN, Records Officer I, Office of the Clerk of Court, Municipal Trial Court, Meycauayan, Bulacan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MUST DEVOTE EVERY MOMENT OF OFFICIAL TIME TO PUBLIC SERVICE AND MUST STRICTLY OBSERVE OFFICIAL TIME TO INSPIRE PUBLIC RESPECT FOR THE JUSTICE SYSTEM.— Time and again, we have emphasized that court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court. Specifically, court personnel must strictly observe official time to inspire public respect for the justice system. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. Indeed, we cannot ignore the fact that Aromin herself admitted that she was at Lim's warehouse on November 8, 2006 to stop the execution of the certificate of sheriff's sale upon the request of her close friend, Billy Lim, the owner of the warehouse. As pointed out by the Investigating Judge, considering that November 8, 2006 was a regular working day, Aromin was supposed to be in her station in the court attending to her duties. No leave of absence was presented to justify her absence. The transaction which Aromin participated in is clearly not part of her duties as a court employee. Thus, Aromin failed to devote her time exclusively to her official duties, because she had dealt with Lim's issues during office hours on the transaction complained of.

2. ID.; ID.; ID.; RESPONDENT INTERFERED WITH THE EXECUTION OF A VALID CERTIFICATE OF SHERIFF'S SALE IN BEHALF OF A FRIEND WITHOUT REGARD TO THE IMPROPRIETY OF HER ACTS CONSIDERING THAT SHE IS A COURT EMPLOYEE.— But what is more disturbing is the fact that Aromin actually interfered with the execution of a valid certificate of sheriff's sale in behalf of a friend without regard to the impropriety of her acts considering that she is a court employee. Her actuations, thus, led complainants to believe that she was using her position to advance the interest of Billy Lim over the complainants' despite the existence of the NLRC decisions and orders in favor of the latter. Clearly, Aromin's acts fell short of the standards expected of a court employee. As a public servant, she should have known that she is enjoined to uphold public interest over and above personal interest at all times.

3. ID.; ID.; ID.; JUDICIARY EMPLOYEES ARE REMINDED THAT THEY SHOULD BE LIVING EXAMPLES OF UPRIGHTNESS NOT ONLY IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES BUT ALSO IN THEIR PRIVATE DEALINGS WITH OTHER PEOPLE SO AS TO PRESERVE AT ALL TIMES THE GOOD NAME AND STANDING OF THE COURTS IN THE COMMUNITY.— Let this be again a reminder to all court employees that — employees of the judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a JOINT AFFIDAVIT COMPLAINT[1] dated January 18, 2007 of Angelina C. Lim (Lim) and Vivian

[1] *Rollo,* pp. 3-4.

M. Gaduang (Gaduang) charging Maribeth G. Aromin (Aromin), Records Officer 1, Office of the Clerk of Court (OCC), Municipal Trial Court (MTC), Meycauayan, Bulacan with violation of paragraphs a, b, and c of Section 4, Republic Act (R.A.) 6713, or the Code of Ethical Standards for Public Officials and Employees, in relation to NLRC Case No. RAB-III-03-7148-04 entitled *"Angelina Lim v. Holland Industries and Mr. Billy Lim."*

In their complaint, complainants narrated that on November 8, 2006, by virtue of a Decision dated June 30, 2005, an *Alias* Writ of Execution dated September 7, 2006, an Order dated October 16, 2006, and a Certificate of Sheriff's Sale, all issued in their favor, they went to the warehouse of Holland Industries at Sterling Compound/Meridian Compound, Iba, Meycauayan, Bulacan to acquire the subject properties transferred to complainant Lim. However, while they were loading the subject properties to the truck, Aromin arrived and ordered them to stop loading the items since somebody will bring an order from the court stopping the implementation of the certificate of sale.

Complainants claimed that they waited for an hour for the person who was supposed to bring the order, but nobody came; hence, they proceeded with the loading of the items to the truck. It was then that Aromin started shouting to them, *" Magnanakaw kayo. Makapal ang mukha mo." "Abuloy na namin sayo yan. Puta ka, wala kang utang na loob."*

Complainants averred that since Aromin introduced herself to be a court employee in the OCC, MTC, Meycauayan, Bulacan during the posting of the notice of sale on October 3, 2006, she should have known that what they did was legal.

They further questioned Aromin's presence at the warehouse and her misrepresentation as the wife of Reynaldo Lim when in fact she was not. Complainants added that Aromin should be in the court performing her duties and not meddling in their case.

On January 23, 2007, the Office of the Court Administrator (OCA) directed Aromin to comment on the instant complaint against her.[2]

In her Comment[3] dated February 15, 2007, Aromin denied the accusations against her. She alleged that on November 8, 2006, Billy Lim, the owner of the warehouse, summoned her to get police assistance, because complainants were trying to forcibly open his warehouse. On her way to the warehouse, Aromin averred that she was also told that Billy Lim would be bringing some documents and that he asked her to tell complainants to stop the loading of the machineries and other products to their container vans. Thus, she approached complainant Gaduang, who was at that time trying to open the front gate, and advised her to stop because the owner is coming, and told her to wait until 12 o'clock in the afternoon.

Aromin added that Gaduang then arrogantly acted as if she was the owner of the place and falsely represented herself as a lawyer and threatened to file a complaint against her. Likewise, Aromin claimed that she did not know Angelina Lim personally and never encountered her then, thus, the allegations that she shouted invectives at them could not have happened.

Finally, Aromin maintained that she had nothing to do with the controversy between complainants and Lim. She claimed that the instant complaint against her was pure harassment, because she was one of the witnesses in the criminal complaint for robbery and trespassing filed by Billy Lim against the complainants.

Due to the conflicting versions of the parties, on November 19, 2007, the OCA referred the instant complaint to the Executive Judge of the Regional Trial Court, Malolos, Bulacan, for investigation, report and recommendation.[4]

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[2] *Id.* at 35.

[3] *Id.* at 36.

[4] *Id.* at 102.

In her report,[5] Executive Judge Herminia V. Pasamba found respondent to be guilty of improper conduct which tends to diminish the faith of the people in the judiciary, and recommended that she be admonished.

During the investigation, it appeared that on November 8, 2006, Billy Lim tried to stop the loading of the subject items due to the absence of a sheriff or any personnel of the NLRC. It was then that he requested Aromin to seek police assistance and stop complainants from acquiring the machineries and other items inside the warehouse.

The Investigating Judge noted that the allegation that respondent shouted invectives against complainants was never established since the latter failed to attend the hearings. Thus, in so far as this allegation is concerned, the same is baseless.

The Investigating Judge, however, concluded that the administrative complaint against Aromin cannot be dismissed, considering her inappropriate conduct of extending a favor to a friend by using her position as a court employee in order to stop the implementation of a court's judgment. Disciplinary sanction was, therefore, recommended.

On July 6, 2009, the OCA found Aromin guilty of violation of Section 1, Canon IV of the Code of Conduct for Court Personnel and Conduct Unbecoming of a Court Personnel, and recommended that the administrative complaint against respondent be redocketed as a regular administrative matter. The OCA further recommended the imposition of a fine in the amount of ₱5,000.00.

We adopt the findings and recommendation of the OCA.

Time and again, we have emphasized that court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be characterized by a high degree of professionalism and

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[5] *Id*. at 168-174.

responsibility, as they mirror the image of the court. Specifically, court personnel must strictly observe official time to inspire public respect for the justice system. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours.[6]

Indeed, we cannot ignore the fact that Aromin herself admitted that she was at Lim's warehouse on November 8, 2006 to stop the execution of the certificate of sheriff's sale upon the request of her close friend, Billy Lim, the owner of the warehouse. As pointed out by the Investigating Judge, considering that November 8, 2006 was a regular working day, Aromin was supposed to be in her station in the court attending to her duties. No leave of absence was presented to justify her absence. The transaction which Aromin participated in is clearly not part of her duties as a court employee. Thus, Aromin failed to devote her time exclusively to her official duties, because she had dealt with Lim's issues during office hours on the transaction complained of.

But what is more disturbing is the fact that Aromin actually interfered with the execution of a valid certificate of sheriff's sale in behalf of a friend without regard to the impropriety of her acts considering that she is a court employee. Her actuations, thus, led complainants to believe that she was using her position to advance the interest of Billy Lim over the complainants' despite the existence of the NLRC decisions and orders in favor of the latter. Clearly, Aromin's acts fell short of the standards expected of a court employee. As a public servant,

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[6] *Executive Judge Aurora Maqueda Roman, RTC, Gumaca, Quezon v. Virgilio M. Fortaleza, Clerk of Court, MTC, Catanauan, Quezon*, A.M. No. P-10-2865 (formerly OCA I.P.I. No. 09-3044-P), November 22, 2010; *Francisco v. Galvez*, A.M. No. P-09-2636, December 4, 2009, 607 SCRA 21, 28.

she should have known that she is enjoined to uphold public interest over and above personal interest at all times.

Let this be again a reminder to all court employees that – employees of the judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community. The image of the court, as being a true temple of justice, is aptly mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowliest of its personnel.[7]

WHEREFORE, in view of the foregoing, *MARIBETH G. AROMIN*, Records Officer I, Office of the Clerk of Court, Municipal Trial Court, Meycauayan, Bulacan is hereby found *GUILTY* of violation of Section 1, Canon IV of the Code of Conduct for Court Personnel. She is hereby *FINED* in the amount of ₱5,000.00, with the stern warning that a repetition of the same or similar acts will warrant a more severe penalty.

SO ORDERED.

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

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[7] See *Gutierrez v. Quitalig*, 448 Phil. 469, 480 (2003).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

SECOND DIVISION

[A.M. No. RTJ-10-2241. March 9, 2011]
(Formerly OCA I.P.I. No. 09-3224-RTJ)

FERDINAND C. BACOLOT, *complainant, vs.* **HON. FRANCISCO D. PAÑO, Presiding Judge, Regional Trial Court, Branch 93, San Pedro, Laguna,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; JUDGES SHOULD ADMINISTER JUSTICE WITHOUT DELAY AND DIRECTS EVERY JUDGE TO DISPOSE OF THE COURT'S BUSINESS PROMPTLY WITHIN THE PERIOD PRESCRIBED BY LAW; THE TWO-YEAR DELAY OF A MERE MOTION TO RECALL WITNESS IS NOT EXCUSABLE.— The Code of Judicial Conduct under Rule 3.05 of Canon 3 enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. In the instant case, we cannot excuse Judge Paño for the two-year delay in the resolution of a mere motion to recall witness. His staff's or plaintiffs' failure to inform him sooner that the plaintiffs have yet to receive the copy of the order will not shield him from liability. 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. He cannot take refuge behind the inefficiency or mismanagement of his court personnel since the latter are not the guardians of a judge's responsibilities. A judge should be the master of his own domain and take responsibility for the mistakes of his subordinates. The delay may be unintentional as Judge Paño would like us to believe, however, the fact remains that he was remiss in the performance of his duties insofar as resolving pending motions expeditiously.

2. ID.; ID.; ID.; ALLEGATION OF GRAVE MISCONDUCT HAS NO LEG TO STAND ON; ONLY JUDICIAL ERRORS TAINTED WITH FRAUD, DISHONESTY, GROSS IGNORANCE, BAD

FAITH, OR DELIBERATE INTENT TO DO AN INJUSTICE WILL BE ADMINISTRATIVELY SANCTIONED.— As to the allegation of grave misconduct in holding a hearing notwithstanding the fact that defendant's counsel already rested his case, the same has no leg to stand on. It should be emphasized that the questioned ruling of respondent judge was done in the discharge of his judicial functions. Time and again, we have ruled that the acts of a judge, pertaining to his judicial functions, are not subject to disciplinary action, unless they are tainted with fraud, dishonesty, corruption or bad faith. This, complainant failed to establish. If the complainant felt aggrieved, his recourse is through judicial remedies, *i.e.*, to elevate the assailed decision or order to the higher court for review and correction. Indeed, disciplinary proceedings and criminal actions against magistrates do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. **An inquiry into their civil, criminal and/or administrative liability may be made only after the available remedies have been exhausted and decided with finality. In fine, only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.** To hold, otherwise, would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Complaint[1] dated July 7, 2009, wherein complainant Ferdinand C. Bacolot (complainant) charged Hon. Francisco D. Paño, Presiding Judge of Branch 93, Regional Trial Court, San Pedro, Laguna with Grave Misconduct, Gross Neglect of Duty and Dereliction of Duty relative to Civil Case No. SPL-0819 entitled *Teresita Gallardo, et al. v. Prudential Bank, et al.* for Annulment of Mortgage and Foreclosure Sale with Prayer for Cancellation of Title and Reconveyance of Property.

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

The antecedent facts are as follows:

Bacolot is the cousin of Edmund B. Gallardo, plaintiff in the above-mentioned civil case, whom the latter has authorized, by a Special Power of Attorney, to file the instant administrative complaint against Judge Paño.

Bacolot narrated that on June 17, 2005, during trial of the civil case, plaintiffs, through counsel, filed a formal offer of evidence. Thereafter, defendant, after presentation of evidence, manifested that they have no more witness to present. Thus, Judge Paño issued an Order dated September 30, 2005 which reads:

> Atty. Arnel Rivera manifested that he has no more witness to present, therefore, he rested his case and move that he be allowed to file a formal offer of evidence to which Atty. Ferdinand Baylon interposed no objection thereto and the latter is given ten (10) days from receipt of the same to file his Comment thereto.
>
> SO ORDERED.

Defendant failed to file his formal offer of evidence. However, Bacolot complained that Judge Paño, instead of ordering the case as submitted for decision, issued an Order resetting the hearing of the case to another date.

On February 28, 2006, plaintiffs filed a Manifestation with Motion, praying that the case be submitted for decision since defendants have already waived their right to file a formal offer of evidence.

On May 29, 2006, Judge Paño, instead of resolving Bacolot's Manifestation with Motion, reset the hearing to August 11, 2006 allegedly upon motion of defendant's counsel.

On September 4, 2006, counsel for the defendant filed a Motion to Recall Witness, alleging that their former counsel inadvertently failed to have some documents identified by their first witness and prayed for the recall of said witness.

On September 23, 2008, plaintiffs requested the early resolution of the case since the case has already been pending for six (6)

years. On October 30, 2008, plaintiffs also filed their Comment on the Motion to Recall Witness.

On November 10, 2008, or more than two (2) years since the filing of defendant's motion to recall witness, Judge Paño granted the motion and allowed defendant to recall its first witness and set the hearing to December 11, 2008.

Feeling aggrieved, Bacolot, in behalf of plaintiff Gallardo, filed the instant administrative complaint.

Bacolot asserted that on September 30, 2005, defendant already rested his case and moved for allowance to file a formal offer of evidence. Defendant failed to file his formal offer of evidence. Consequently, Bacolot insisted that Judge Paño should have submitted the case for decision upon defendant's failure to make the formal offer. Bacolot complained that Judge Paño, instead of ordering the case to be submitted for resolution, *motu proprio* set another hearing for the presentation of defendant's next witness even if he knew that there were no more witnesses to be presented. Such actuation of Judge Paño, Bacolot asserted, constitutes grave misconduct.

Moreover, Bacolot added that Judge Paño is likewise guilty of gross neglect of duty for the very long delay of two (2) years in resolving defendant's motion to recall witness.

Finally, for failing to install measures for the efficient delivery and/or mailing of court processes, resulting in the repeated postponement of hearings, Bacolot claimed that Judge Paño is likewise guilty of dereliction of duty.

On July 22, 2009, the Office of the Court Administrator (OCA) directed Judge Paño to comment on the charges against him.

In his compliance dated November 3, 2009, Judge Paño posited that the grant or denial of a motion to recall witness is discretionary on the part of the court. Judge Paño maintained that the matter is judicial in nature, and the proper recourse of complainant if they feel aggrieved was through legal means and not the filing of an administrative complaint.

With regard to the allegation of delay in the resolution of the motion to recall witness, Judge Paño explained that the delay was due to the fact that there was no proof that plaintiffs received a copy of the Order dated September 22, 2006 which directed plaintiffs to comment on the motion to recall witness. Judge Paño insisted that plaintiffs' comment was required as part of due process. Judge Paño further clarified that on October 3, 2008, upon discovering that plaintiffs have not received a copy of the Order, he immediately directed that a copy of the same Order be furnished anew to plaintiffs' counsel. On November 11, 2008, Judge Paño also claimed that he immediately resolved the Motion to Recall Witness.

As to the charge of grave misconduct, Judge Paño clarified that it was only by inadvertence when he held a hearing on October 28, 2005 notwithstanding the fact that defendant's counsel had already rested his case. He maintained that there was no element of corruption or clear intent to violate the law or flagrant disregard of established rule.

Likewise, Judge Paño refuted that he failed to supervise the delivery/mailing of court processes which resulted in the delay of administration of justice. He claimed that his staff are well aware of their responsibilities with regard to efficient delivery of court processes. Judge Paño, thus, prayed for the dismissal of the instant complaint for lack of merit.

On June 2, 2010, the OCA found Judge Paño guilty of undue delay in rendering order and simple misconduct. It further recommended that he be fined in the amount of ₱20,000.00 and be warned that a repetition of similar acts shall be dealt with more severely.

In a Resolution dated July 28, 2010, the Court resolved to redocket the instant administrative complaint as a regular administrative matter.

RULING

The Code of Judicial Conduct under Rule 3.05[2] of Canon 3 enunciates that judges should administer justice without delay and

[2] Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases.[3]

In the instant case, we cannot excuse Judge Paño for the two-year delay in the resolution of a mere motion to recall witness. His staff's or plaintiffs' failure to inform him sooner that the plaintiffs have yet to receive the copy of the order will not shield him from liability. 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.[4] He cannot take refuge behind the inefficiency or mismanagement of his court personnel since the latter are not the guardians of a judge's responsibilities. A judge should be the master of his own domain and take responsibility for the mistakes of his subordinates.[5] The delay may be unintentional as Judge Paño would like us to believe, however, the fact remains that he was remiss in the performance of his duties insofar as resolving pending motions expeditiously.

However, as to the allegation of grave misconduct in holding a hearing notwithstanding the fact that defendant's counsel already rested his case, the same has no leg to stand on. It should be emphasized that the questioned ruling of respondent judge was done in the discharge of his judicial functions. Time and again, we have ruled that the acts of a judge, pertaining to his judicial functions, are not subject to disciplinary action,

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[3] See *Re*: *Cases Submitted For Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal*, A.M. No. 09-9-163-MTC, May 6, 2010.

[4] *Office of the Court Administrator v. Quilala*, 404 Phil. 432, 440 (2001).

[5] See *Re*: *Report on the Judicial Audit Conducted in the Municipal Trial Court in Cities, Branch 2, Cagayan de Oro City*, A.M. No. 02-8-207-MTCC, July 27, 2009, 594 SCRA 20, 34.

unless they are tainted with fraud, dishonesty, corruption or bad faith.[6] This, complainant failed to establish.

If the complainant felt aggrieved, his recourse is through judicial remedies, *i.e.*, to elevate the assailed decision or order to the higher court for review and correction. Indeed, disciplinary proceedings and criminal actions against magistrates do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. **An inquiry into their civil, criminal and/or administrative liability may be made only after the available remedies have been exhausted and decided with finality. In fine, only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.** To hold, otherwise, would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[7]

WHEREFORE, Judge Francisco D. Paño, Presiding Judge, Regional Trial Court, Branch 93, San Pedro, Laguna, is hereby *ADMONISHED* for being remiss in the performance of his duties, and strongly *WARNED* that a repetition of the same or similar offense will warrant the imposition of a severe penalty.

SO ORDERED.

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

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[6] *Mariano v. Garfin,* A.M. No. RTJ-06-2024, October 17, 2006, 504 SCRA 605, 614.

[7] *Carmen Edaño v. Judge Fatima G. Asdala, Regional Trial Court, Branch 87, Quezon City,* A.M. No. RTJ-06-2007 (formerly OCA I.P.I. No. 05-2368-RTJ), December 6, 2010.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933, dated January 24, 2011.

FIRST DIVISION

[G.R. No. 158576. March 9, 2011]

CORNELIA M. HERNANDEZ, *petitioner, vs.* **CECILIO F. HERNANDEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; A CONTRACT WHERE CONSENT IS GIVEN THROUGH MISTAKE, VIOLENCE, INTIMIDATION, UNDUE INFLUENCE, OR FRAUD IS VOIDABLE.— A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. In determining whether consent is vitiated by any of the circumstances mentioned, courts are given a wide latitude in weighing the facts or circumstances in a given case and in deciding in their favor what they believe to have actually occurred, **considering the age, physical infirmity, intelligence, relationship, and the conduct of the parties at the time of the making of the contract and subsequent thereto**, irrespective of whether the contract is in public or private writing. And, in order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or those conditions which have principally moved one or both parties to enter the contract.

2. ID.; ID.; AGENCY; THE RELATION OF AN AGENT TO HIS PRINCIPAL IS FIDUCIARY AND IT IS ELEMENTARY THAT IN REGARD TO PROPERTY SUBJECT MATTER OF THE AGENCY, AN AGENT IS ESTOPPED FROM ACQUIRING OR ASSERTING A TITLE ADVERSE TO THAT OF THE PRINCIPAL.— Cecilio's position would give him 83.07% of the just compensation due Cornelia as a co-owner of the land. No evidence on record would show that Cornelia agreed, by way of the 11 November 1993 letter, to give Cecilio 83.07% of the proceeds of the sale of her land. What is on record is that Cornelia asked for an accounting of the just compensation from Cecilio several times, but the request remained unheeded. Right at that point, it can be already said that Cecilio violated the

fiduciary relationship of an agent and a principal. The relation of an agent to his principal is fiduciary and it is elementary that in regard to property subject matter of the agency, an agent is *estopped* from acquiring or asserting a title adverse to that of the principal. His position is analogous to that of a trustee and he cannot, consistently with the principles of good faith, be allowed to create in himself an interest in opposition to that of his principal or *cestui que trust*. Instead of an accounting, what Cornelia received was a receipt and quitclaim document that was ready for signing. As testified to by Cornelia, due to her frail condition and urgent need of money in order to buy medicines, she nevertheless signed the quitclaim in Cornelio's favor. Quitclaims are also contracts and can be voided if there was fraud or intimidation that leads to lack of consent. The facts show that a simple accounting of the proceeds of the just compensation will be enough to satisfy the curiosity of Cornelia. However, Cecilio did not disclose the truth and instead of coming up with the request of his aunt, he made a contract intended to bar Cornelia from recovering any further sum of money from the sale of her property. The preparation by Cecilio of the receipt and quitclaim document which he asked Cornelia to sign, indicate that even Cecilio doubted that he could validly claim 83.07% of the price of Cornelia's land on the basis of the 11 November 1993 agreement. Based on the attending circumstances, the receipt and quitclaim document is an act of fraud perpetuated by Cecilio. Very clearly, both the service contract of 11 November 1993 letter- agreement, and the later receipt and quitclaim document, the first vitiated by mistake and the second being fraudulent, are void.

3. ID.; OBLIGATIONS AND CONTRACTS; PROPER INTEREST RATE TO BE APPLIED ON AN OBLIGATION THAT IS NEITHER A LOAN NOR FORBEARANCE OF MONEY.— Cecilio breached an obligation that is neither a loan nor forbearance of money. The decision of the lower court ordering Cecilio to pay the amount of ₱6,189,417.60 to Cornelia at 12% per annum until fully paid should be modified to **6% per annum from the time of the filing of the complaint up to the date of the decision, and at 12% per annum from finality until fully paid**, in order to conform to the doctrine enunciated by *Eastern Shipping Lines, Inc. v. Court of Appeals*, to wit: 2. When an obligation, not constituting a loan or forbearance of money, is

breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DUE TO THE NATURE OF HIS DUTIES AND FUNCTIONS, AN APPRAISAL COMMISSIONER BECOMES AN OFFICER OF THE COURT AND AS SUCH HE SHOULD BE DISINTERESTED AND CANNOT ACT FOR AND IN BEHALF OF THE DEFENDANT IN THE SAME CASE; CASE AT BAR.— The SPA, however, must be appreciated in the light of the fact that Cecilio was appointed and acted as appraisal commissioner in the expropriation case under the provisions of Section 5, Rule 67 of the Rules of Court x x x. **Due to the nature of his duties and functions as commissioner, Cecilio became an officer of the court.** As stated in Section 5, Rule 67 of the Rules of Court, the commissioner's duty is to **"ascertain and report to the court the just compensation for the property to be taken."** The undertaking of a commissioner is further stated under Section 6, Rule 67 of the rules. x x x Cecilio acted for the expropriation court. He cannot be allowed to consider such action as an act for or in behalf of the defendant in the same case. **Cecilio could not have been a hearing officer and a defendant at the same time.** Indeed, Cecilio foisted fraud on

both the Court and the Hernandezes when, after his appointment as commissioner, he accepted the appointment by the Hernandezes to "represent" and "sue for" them.

APPEARANCES OF COUNSEL

Gilbert U. Medrano for petitioner.
Dimayacyac & Dimayacyac Law Firm for respondent.

D E C I S I O N

PEREZ, *J.*:

Before Us is a Petition for Review[1] of the Decision of the Court of Appeals in CA-G.R. CV No. 70184[2] dated 29 May 2003. The appellate court reversed the Decision of the Regional Trial Court of Makati, Branch 150 (RTC Branch 150), in Civil Case No. 00-1148[3] dated 12 February 2001, declaring that the quitclaim signed by the petitioner is valid and incontrovertible.

The controversy between the parties began when the Republic of the Philippines, through the Department of Public Works and Highways (DPWH), offered to purchase a portion of a parcel of land with an area of 80,133 square meters, covered by TCT No. T-36751[4] of the Registry of Deeds for Tanauan, Batangas, located at San Rafael, Sto. Tomas, Batangas, for use in the expansion of the South Luzon Expressway. The land is *pro-indiviso* owned by Cornelia M. Hernandez (Cornelia), petitioner herein, Atty. Jose M. Hernandez, deceased father of respondent Cecilio F. Hernandez (Cecilio),[5] represented by

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

[2] *Rollo*, pp. 37-51.

[3] Decision of the RTC Branch 150, *id.* at 52-56.

[4] Transfer Certificate of Title, Annex "C", *id.* at 57.

[5] TSN, 8 December 2000, pp. 4-6.

Paciencia Hernandez (Paciencia) and Mena Hernandez (Mena), also deceased and represented by her heirs.[6]

The initial purchase price that was offered by the government was allegedly at Thirty-Five pesos (₱35.00) per square meter for 14,643 square meters of the aforementioned land.[7] The Hernandez family rejected the offer. After a series of negotiations with the DPWH, the last offer stood at Seventy Pesos (₱70.00) per square meter.[8] They still did not accept the offer and the government was forced to file an expropriation case.

On 9 August 1993, an expropriation case was filed by the Republic of the Philippines, through the DPWH, before the Regional Trial Court, Branch 83 (RTC Branch 83), Tanauan, Batangas.[9] The case was first docketed as Civil Case No. T-859, then Civil Case No. C-023. Branch Clerk of Court Francisco Q. Balderama, Jr., issued a Certification dated 10 January 2001 certifying that the docket numbers stated refers to one and the same case.[10]

In Civil Case No. C-023, different parcels of land in *Barangay* Tripache, Tanauan Batangas, which belongs to thirty-four (34) families including the Hernandezes are affected by the expansion project of the DPWH. A similar case, Civil Case No. C-022, was consolidated with the former as it affects the same DPWH endeavor. Land in San Rafael, Sto. Tomas, Batangas, which belong to twenty-three (23) families, was also the subject of expropriation.

On 11 November 1993, the owners of the Hernandez property executed a letter indicating: (1) Cecilio as the representative of the owners of the land; and (2) the compensation he gets in doing such job. The letter reads:

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[6] Petition. *Rollo*, p. 10.

[7] Brief for the Appellant. CA *rollo*, p. 72.

[8] *Id*.

[9] *Id*.

[10] *Id*.

November 11, 1993

Mr. Cecilio F. Hernandez
Tanauan, Batangas

Dear Cecilio:

This would confirm to give you twenty (20%) percent of any amount in excess of Seventy (₱70.00) Pesos per square meter of our respective shares as success fee for your effort in representing us in Civil Case No. T-859 entitled, "Republic of the Philippines, represented by the Public Works and Highways v. Sto. Tomas Agri-Farms, Inc. and the Appellate Courts."

Whatever excess beyond Three Hundred (₱300.00) Pesos per square meter of the area shall likewise be given to you as additional incentive.

We will give you One Thousand Five Hundred (₱8,500.00) (*sic*) Pesos each for the preparation of the pleading before the Regional Trial Court and such other reasonable expenses of litigation pro-indiviso.

Very Truly Yours,

(Sgd.) PACENCIA F. HERNANDEZ

(Sgd.) CORNELIA M. HERNANDEZ

Conforme:

(Sgd.) PACITA M. HERNANDEZ

(Sgd.) CECILIO F. HERNANDEZ

HEIRS OF MENA M. HERNANDEZ

By: (Sgd.) MA. ANTONIA H. LLAMZON

AND

(Sgd.) PERSEVERANDO M. HERNANDEZ[11]

During the course of the expropriation proceedings, an Order dated 13 September 1996 was issued by the RTC Branch 83, informing the parties of the appointment of commissioners to help determine the just compensation. Cecilio was appointed

[11] *Rollo*, p. 58.

as one of the commissioners to represent the defendants in Civil Case No. C-022. The Order reads:

> In order to determine the fair market value of the lands subject of expropriation, the following are appointed as commissioners: Engr. Melchor Dimaano, as representative of the Department of Public Works and Highways (DPWH), **Messrs. Magno Aguilar and Cecilio Hernandez, as representatives of the landowners**, and Mr. Eric Faustino Esperanza as representative of the Court.[12] (Emphasis ours)

On 18 October 1996, Cornelia, and her other co-owners who were also signatories of the 11 November 1993 letter, executed an irrevocable Special Power of Attorney (SPA) appointing Cecilio Hernandez as their "true and lawful attorney" with respect to the expropriation of the subject property.[13] The SPA stated that the authority shall be irrevocable and continue to be binding all throughout the negotiation. It further stated that the authority shall bind all successors and assigns in regard to any negotiation with the government until its consummation and binding transfer of a portion to be sold to that entity with Cecilio as the sole signatory in regard to the rights and interests of the signatories therein. There was no mention of the compensation scheme for Cecilio, the attorney-in-fact.

The just compensation for the condemned properties was fixed in the Decision[14] dated 7 January 1998, penned by Judge Voltaire Y. Rosales (Judge Rosales) of RTC Branch 83, Tanauan, Batangas. The value of the land located at *Barangay* Tripache, Tanauan, Batangas, was pegged at One Thousand Five Hundred Pesos (₱1,500.00) per square meter. The total area that was condemned for the Hernandez family was Fourteen Thousand Six Hundred Forty-Three (14,643) square meters. Thus, multiplying the values given, the Hernandez family will get a total of Twenty One Million, Nine Hundred Sixty-Four Thousand Five Hundred Pesos (₱21,964,500.00) as just compensation.[15]

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[12] *Id.* at 59.

[13] *Id.* at 60-62.

[14] *Id.* at 63-68.

[15] Just Compensation = (Area of land) * (Value per m^2)

Included in the decision is the directive of the court to pay the amount of ₱4,000.00 to Cecilio, as Commissioner's fees.[16]

On 6 October 1999, petitioner executed a Revocation of the SPA[17] withdrawing the authority earlier granted to Cecilio in the SPA dated 18 October 1996. After the revocation, on 28 December 1999, without the termination of counsel on record, Cornelia, with a new lawyer, moved for the withdrawal of her one-third (1/3) share of the just compensation, which is equivalent to Seven Million Three Hundred Twenty-One Thousand Five Hundred Pesos (₱7,321,500.00) – the amount a *pro-indiviso* owner is to receive.

In the Order[18] dated 24 January 2000, Judge Rosales, even with the irregularity that the motion to withdraw was not filed by the counsel of record, granted the motion of petitioner, with the condition that the money shall be released only to the attorney-in-fact, Mr. Cecilio F. Hernandez. The trial court took cognizance of the irrevocable nature of the SPA dated 18 October 1996.[19] Cecilio, therefore, was able to get not just one-third (1/3) of, but the entire sum of Twenty One Million, Nine Hundred Sixty-Four Thousand Five Hundred Pesos (₱21,964,500.00).

On 7 February 2000, Cornelia received from Cecilio a Bank of the Philippine Islands Check amounting to One Million One Hundred Twenty-Three Thousand Pesos (₱1,123,000.00).[20] The check was however accompanied by a Receipt and Quitclaim[21] document in favor of Cecilio. In essence it states that: (1) the amount received will be the share of Cornelia in the just compensation paid by the government in the expropriated property; (2) in consideration of the payment, it will release and forever

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[16] *Rollo,* p. 67.

[17] Revocation of Special Power of Attorney, Annex "I". *Id.* at 69-70.

[18] Order of Judge Voltaire Rosales, Branch 83. *Id.* at 74.

[19] Petition. *Id.* at 14.

[20] *Id.*

[21] *Id.* at 81-82.

discharge Cecilio from any action, damages, claims or demands; and (3) Cornelia will not institute any action and will not pursue her complaint or opposition to the release to Cecilio or his heirs or assigns, of the entire amount deposited in the Land Bank of the Philippines, Tanauan, Batangas, or in any other account with any bank, deposited or will be deposited therein, in connection with Civil Case No. C-023, representing the total just compensation of expropriated properties under the aforementioned case.

The check was received by Cornelia with a heavy heart. She averred in her *ex-parte* testimony that she was forced to receive such amount because she needs the money immediately for medical expenses due to her frail condition.[22]

Moreover, Cornelia averred that after a few days from her receipt of the check, she sought the help of her niece, Daisy Castillo, to get the decision in Civil Case No. C-022.[23] It was only then, when her niece got hold of the decision and explained its contents, that she learned that she was entitled to receive Seven Million Three Hundred Twenty-One Thousand Five Hundred Pesos (₱7,321,500.00).[24] In a Letter[25] dated 22 June 2000, Cornelia demanded the accounting of the proceeds. The letter was left unanswered. She then decided to have the courts settle the issue. A Complaint for the Annulment of Quitclaim and Recovery of Sum of Money and Damages[26] was filed before the RTC Branch 150 of Makati on 18 September 2000. The case was docketed as Civil Case No. 00-1184.

Cecilio, despite the service of summons and copy of the complaint failed to file an answer. The trial court explained further that Cecilio was present in the address supplied by the petitioner but refused to receive the copy. The trial court even gave Cecilio ten (10) more days, from his refusal to accept the

[22] TSN, 8 December 2000, p. 10.
[23] *Id.* at 12-13.
[24] *Id.* at 13.
[25] *Rollo*, pp. 83-84.
[26] Complaint, Annex "O", *id.* at 85-90.

summons, to file his answer. **Upon the motion of the petitioner, respondent Cecilio was declared in default.** The court allowed petitioner to adduce evidence *ex parte*.[27]

Cecilio tried to file a Motion for Reconsideration to lift the order of default. However, the trial court found that the leeway they have given Cecilio to file an answer was more than enough.

In the Decision dated 12 February 2001, the RTC Branch 150 of Makati, through Judge Zeus C. Abrogar denied the motion and nullified the quitclaim in favor of Cecilio. The *fallo* of the case reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, declaring the receipt and quitclaim signed by the plaintiff dated February 7, 2000 as null and void and ordering the defendant to pay the plaintiff the amount of;
>
> 1. ₱6,198,417.60, including the accrued interest thereon with 12% per annum, computed from the date of the filing hereof until the said amount is fully paid;
> 2. payment of ₱200,000.00 to the plaintiff by the defendant by way of moral damages;
> 3. attorney's fees in the sum of ₱100,000.00 and;
> 4. cost of suit.[28]

Aggrieved, Cecilio appealed the Decision of the trial court. The Court of Appeals did not discuss whether the default order was proper. However, the appellate court, in its Decision dated 29 May 2003 reversed and set aside the ruling of the trial court. The dispositive portion reads:

> WHEREFORE, premises considered, the Decision dated February 12, 2001, of the Regional Trial Court of Makati, National Capital Judicial Region, Branch 150, in Civil Case No. 00-1148, is hereby **REVERSED** and **SET ASIDE** and a new one is entered ordering the dismissal of

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[27] *Id.* at 15.

[28] *Id.* at 56.

the complaint filed on September 13, 2000 by the appellee against the appellant. No pronouncement as to costs.[29]

Petitioner Cornelia now submits that the Court of Appeals erred in holding the validity of the receipt and quitclaim document contrary to law and jurisprudence.[30] She holds that the distribution of award that transpired is unjust and prays that the decision of the RTC Branch 150 of Makati be reinstated.

We agree.

The trial court awarded the Hernandez family, among others, a total amount of ₱21,964,500.00 for the expropriation of 14,643 square meters of land to be used as extension of the South Luzon Expressway. The three co-owners of the said land, Cornelia, Mena and Pacencia were listed as item number twenty (20) in the decision dated 7 January 1998, as one of the recipients of the just compensation to be given by the government.[31] As *pro-indiviso* landowners of the property taken, each one of them ought to receive an equal share or one third (1/3) of the total amount which is equivalent to ₱7,321,500.00.

The equal division of proceeds, however, was contested by Cecilio. He avers that he is the agent of the owners of the property.[32] He bound himself to render service on behalf of her cousins, aunt and mother, by virtue of the request of the latter.[33] As an agent, Cecilio insists that he be given the compensation he deserves based on the agreement made in the letter dated 11 November 1993, also called as the service contract,[34] which was signed by all the parties. This is the contract to which Cecilio anchors his claim of validity of the receipt and quitclaim that was signed in his favor.

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[29] Decision of the Court of Appeals in CA G.R. CV. No. 70184, *id.* at 50.

[30] *Id.* at 18.

[31] Petition – Arguments and Discussion. *Id*. at 66.

[32] Decision, RTC Branch 83. *Id.* at 121.

[33] Art. 1868, Civil Code.

[34] Brief for the Appellant (Cecilio), CA *rollo*, p. 73.

I.

A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.[35] In determining whether consent is vitiated by any of the circumstances mentioned, courts are given a wide latitude in weighing the facts or circumstances in a given case and in deciding in their favor what they believe to have actually occurred, **considering the age, physical infirmity, intelligence, relationship, and the conduct of the parties at the time of the making of the contract and subsequent thereto**, irrespective of whether the contract is in public or private writing.[36] And, in order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or those conditions which have principally moved one or both parties to enter the contract.[37]

The compensation scheme of 20% of any amount over ₱70.00 per square meter and everything above ₱300.00 per square meter was granted in favor of Cecilio by the Hernandezes on 11 November 1993. At that time, the Hernandezes had just **rejected** the government's offer of ₱35.00 per square meter, which offer last stood at ₱70.00 per square meter. It was the rejection likewise of the last offer that led to the filing of the expropriation case on 9 August 1993. It was in this case, and for Cecilio's representation in it of the Hernandezes, that he was granted the compensation scheme. Clear as day, the conditions that moved the parties to the contract were the base price at ₱70.00 per square meter, the increase of which would be compensated by 20% of whatever may be added to the base price; and the ceiling price of ₱300.00 per square meter, which was considerably high reckoned from the base at ₱70.00, which would therefore, allow Cecilio to get all that which would

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[35] Art. 1330, Civil Code.

[36] TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines,* Vol. IV, 1991, Art. 1330, p. 475 citing *Transporte v. Beltran,* 51 Off. Gaz. 1434, March, 1955.

[37] Art. 1331, Civil Code.

be in excess of the elevated ceiling. The ceiling was, from the base, extraordinarily high, justifying the extraordinary grant to Cornelio of all that would exceed the ceiling.

It was on these base and ceiling prices, conditions which principally moved both parties to enter into the agreement on the scheme of compensation, that an obvious mistake was made. The trial court, deviating from the principle that just compensation is determined by the value of the land at the time either of the taking or filing,[38] which was in 1993, determined the compensation as the 1998 value of ₱1,500.00 per square meter. The trial court ratiocinated that the 1998 value was considered for the reason, among others that:

> 3. It is common knowledge that prices of real estate in Batangas, including and/or particularly in Sto.Tomas and Tanauan have **skyrocketed** in the past two years;[39] (Emphasis ours).

This 1998 "skyrocketed" price of ₱1,500.00 per square meter was pounced upon by Cecilio as the amount against which the 1993 ceiling of ₱300.00 per square meter should be compared, thereby giving him the amount computed[40] as follows:

CECILIO'S FEES = (20% of anything over ₱70.00) + (everything in excess of ₱300)

**If the land value is at ₱1,500.00 per square meter, then,*

= (20% of ₱230.00) + (₱1,500.00 – ₱300.00)
= ₱46.00 + ₱1,200.00
= **₱1,246.00 per square meter**

CORNELIA'S SHARE = (land value at 1,500 less Cecilio's fees)
= **₱254.00 per square meter**

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[38] Sec. 4, Rule 67 of the Rules of Court.

[39] Decision, RTC Branch 83, Tanauan Batangas in Civil Case No. C-023. *Rollo,* p. 65.

[40] The computation herein is the correct application of the formula in the service contract. There was an error in the computation made by Cecilio in its Appellant's Brief (CA *rollo,* p. 172).

The total expropriated property is at **14,643 m², thus, Cecilio will get a total of*

= **₱1,246.00 * 14,643**
= **₱18,245,178.00 total compensation**

**One Third of the above value shows that Cecilio will get, from Cornelia*

= **₱6,081,726.00**

It must be noted that:

The Hernandez' family gets **₱21,964,500 for **14,643 m2,** at **₱1,500.00 per m2***

One-third (1/3) of that is **₱7,321,500 representing the share of a co-owner like Cornelia*

**What will be left of Cornelia's share if she pays Cecilio will be:*

₱1,239,774 *less: 124,953.60 (Nominal Cost of Litigation as averred by Cecilio)*

1,500.00 (Nominal payment for preparation of pleadings)

OVERALL TOTAL AMOUNT CORNELIA WILL RECEIVE:
₱ 1,113,320.4

As opposed to:

OVERALL TOTAL AMOUNT CECILIO WILL RECEIVE:
₱6,081,726.00

Cecilio's position would give him 83.07% of the just compensation due Cornelia as a co-owner of the land. No evidence on record would show that Cornelia agreed, by way of the 11 November 1993 letter, to give Cecilio 83.07% of the proceeds of the sale of her land.

What is on record is that Cornelia asked for an accounting of the just compensation from Cecilio several times, but the request remained unheeded. Right at that point, it can be already

said that Cecilio violated the fiduciary relationship of an agent and a principal. The relation of an agent to his principal is fiduciary and it is elementary that in regard to property subject matter of the agency, an agent is *estopped* from acquiring or asserting a title adverse to that of the principal. His position is analogous to that of a trustee and he cannot, consistently with the principles of good faith, be allowed to create in himself an interest in opposition to that of his principal or *cestui que trust*.[41]

Instead of an accounting, what Cornelia received was a receipt and quitclaim document that was ready for signing. As testified to by Cornelia, due to her frail condition and urgent need of money in order to buy medicines, she nevertheless signed the quitclaim in Cornelio's favor. Quitclaims are also contracts and can be voided if there was fraud or intimidation that leads to lack of consent. The facts show that a simple accounting of the proceeds of the just compensation will be enough to satisfy the curiosity of Cornelia. However, Cecilio did not disclose the truth and instead of coming up with the request of his aunt, he made a contract intended to bar Cornelia from recovering any further sum of money from the sale of her property.

The preparation by Cecilio of the receipt and quitclaim document which he asked Cornelia to sign, indicate that even Cecilio doubted that he could validly claim 83.07% of the price of Cornelia's land on the basis of the 11 November 1993 agreement. Based on the attending circumstances, the receipt and quitclaim document is an act of fraud perpetuated by Cecilio. Very clearly, both the service contract of 11 November 1993 letter- agreement, and the later receipt and quitclaim document, the first vitiated by mistake and the second being fraudulent, are void.

II.

Cecilio's last source of authority to collect payment from the proceeds of the expropriation is the SPA executed on 18

[41] *Thomas v. Pineda,* G.R. No. L-2411, 28 June 1951, citing *Severino v. Severino,* 44 Phil. 343.

October 1996 by the Hernandezes in favor of Cecilio as their "true and lawful" attorney with respect to the expropriation of the Hernandez property. At the outset, it must be underscored that the SPA did not specify the compensation of Cecilio as attorney-in-fact of the Hernandezes.

The SPA, however, must be appreciated in the light of the fact that Cecilio was appointed and acted as appraisal commissioner in the expropriation case under the provisions of Section 5, Rule 67 of the Rules of Court, which provides:

> SEC. 5. *Ascertainment of compensation.* — Upon the rendition of the order of expropriation, **the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken**. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court. (Emphasis ours).

The commissioner to be appointed is specifically required to be disinterested. As defined, such person must be free from *bias*, prejudice or partiality.[42] The record of performance by Cecilio of his duties as commissioner shows: (1) Order dated 13 September 1996 appointing Cecilio and three others as court commissioners; (2) Agreement on the course of action of the commissioners appointed 13 September 1996 whereby respondent Cecilio signed as a court commissioner; (3) Appraisal Commission Report dated 10 January 1997 signed by respondent and his fellow court commissioners; (4) Dissenting Opinion on the Lone Minority Report dated 14 February 1997 signed by respondent and two other court commissioners; and (5) Decision dated 7 February 1997 which sets the fees of the court commissioners.[43]

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[42] *Roget's Thesaurus*, Fourth ed., 2001, *adj.:* impartial, unbiased, neutral, free from bias, unprejudiced, fair, impersonal, outside, uninvolved, dispassionate, free from self-interest.

[43] Petition. *Rollo*, p. 22.

When Cecilio accepted the position as commissioner and proceeded to perform the duties of such commissioner until the completion of his mandate as such, he created a barrier that prevented his performance of his duties under the SPA. **Due to the nature of his duties and functions as commissioner, Cecilio became an officer of the court.** As stated in Section 5, Rule 67 of the Rules of Court, the commissioner's duty is to **"ascertain and report to the court the just compensation for the property to be taken."** The undertaking of a commissioner is further stated under the rules, to wit:

> SEC. 6. *Proceedings by commissioners*.—Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. **Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case.** The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

Cecilio acted for the expropriation court. He cannot be allowed to consider such action as an act for or in behalf of the defendant in the same case. **Cecilio could not have been a hearing officer and a defendant at the same time.** Indeed, Cecilio foisted fraud on both the Court and the Hernandezes when, after his appointment as commissioner, he accepted the appointment by the Hernandezes to "represent" and "sue for" them.

It should be noted, finally, that, as completion of his appointment as commissioner, compensation for the work he has done for the court was awarded, as stated in the decision rendered in the case, thus:

Finally, plaintiff is directed to pay the corresponding Commissioner's fees of the following, to wit:

1.	Eric Faustino J. Esperanza – Chairman	₱5,000.00
2.	**Cecilio F. Hernandez – Member**	**4,000.00**
3.	Magno Aguilar – Member	4,000.00
4.	Melchor Dimaano – Member	4,000.00[44]

III.

Cecilio breached an obligation that is neither a loan nor forbearance of money. The decision of the lower court ordering Cecilio to pay the amount of ₱6,189,417.60 to Cornelia at 12% per annum until fully paid should be modified to **6% per annum from the time of the filing of the complaint up to the date of the decision, and at 12% per annum from finality until fully paid**, in order to conform to the doctrine enunciated by *Eastern Shipping Lines, Inc. v. Court of Appeals*,[45] to wit:

> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169,

[44] Decision, RTC Branch 83 in Civil Case No. C-023. *Rollo,* p. 67.

[45] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97.

Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

WHEREFORE, premises considered, the Decision of the Court of Appeals is hereby *REVERSED* and *SET ASIDE*. The Decision of the RTC of Makati, Branch 150 is *REINSTATED* with the following *MODIFICATIONS* that the interest on the monetary awards should be at 6% per annum from the time of the filing of the complaint up to the date of the decision, and at 12% per annum from finality until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 159017-18. March 9, 2011]

PAULINO S. ASILO, JR., *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES and Spouses VISITACION AND CESAR C. BOMBASI,** *respondents.*

[G.R. No. 159059. March 9, 2011]

VICTORIA BUETA *VDA. DE* COMENDADOR, IN REPRESENTATION OF DEMETRIO T. COMENDADOR, *petitioner, vs.* **VISITACION C. BOMBASI AND CESAR C. BOMBASI,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); SECTION 3 (e) THEREOF; CAUSING UNDUE INJURY TO ANY PARTY; ELEMENTS.— The elements of the offense are as follows: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) OR that such injury is caused by giving unwarranted benefits, advantage or preference to the other party; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

2. ID.; ID.; ID.; ID.; ELEMENT OF "UNDUE INJURY," ESTABLISHED.— We sustain the Sandiganbayan in its finding of criminal and civil liabilities against petitioner Asilo and petitioner Mayor Comendador as here represented by his widow Victoria Bueta. We agree with the Sandiganbayan that it is undisputable that the first two requisites of the criminal offense were present at the time of the commission of the complained acts and that, as to the remaining elements, there is sufficient amount of evidence to establish that there was an undue injury

suffered on the part of the Spouses Bombasi and that the public officials concerned acted with evident bad faith when they performed the demolition of the market stall. Causing undue injury to any party, including the government, could only mean **actual injury or damage which must be established by evidence.** In jurisprudence, "undue injury" is consistently interpreted as "actual." Undue has been defined as "more than necessary, not proper, [or] illegal"; and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law. It is evident from the records, as correctly observed by the Sandiganbayan, that Asilo and Mayor Comendador as accused below did not deny that there was indeed damage caused the Spouses Bombasi on account of the demolition. We affirm the finding that: xxx. Clearly, the demolition of plaintiff's store was carried out without a court order, and notwithstanding a restraining order which the plaintiff was able to obtain. The demolition was done in the exercise of official duties which apparently was attended by evident bad faith, manifest partiality or gross inexcusable negligence as there is nothing in the two (2) resolutions which gave the herein accused the authority to demolish plaintiff's store.

3. ID.; ID.; ID.; ID.; IT IS EVIDENT FROM THE FACTS OF THE CASE THAT THE ACCUSED PUBLIC OFFICIALS COMMITTED BAD FAITH IN PERFORMING THE DEMOLITION.— "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. [It] contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. It is quite evident in the case at bar that the accused public officials committed bad faith in performing the demolition. *First,* there can be no merit in the contention that respondents' structure is a public nuisance. The abatement of a nuisance without judicial proceedings is possible if it is nuisance *per se*. Nuisance *per se* is that which is nuisance at all times and under any circumstance, regardless of location and surroundings. In this case, the market stall cannot be considered as a nuisance *per se* because as found out by the Court, the buildings had

not been affected by the 1986 fire. This finding was certified to by Supervising Civil Engineer Wilfredo A. Sambrano of the Laguna District Engineer Office. *Second,* the *Sangguniang Bayan* resolutions are not enough to justify demolition. Unlike its predecessor law, the present Local Government Code does not expressly provide for the abatement of nuisance. And even assuming that the power to abate nuisance is provided for by the present code, the accused public officials were under the facts of this case, still devoid of any power to demolish the store. A closer look at the contested resolutions reveals that Mayor Comendador was only authorized to file an unlawful detainer case in case of resistance to obey the order or to demolish the building using legal means. Clearly, the act of demolition without legal order in this case was not among those provided by the resolutions, as indeed, it is a legally impossible provision. Furthermore, the Municipality of Nagcarlan, Laguna, as represented by the then Mayor Comendador, was placed in *estoppel* after it granted yearly business permits in favor of the Spouses Bombasi. Art. 1431 of the New Civil Code provides that, through *estoppel*, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The representation made by the municipality that the Spouses Bombasi had the right to continuously operate its store binds the municipality. It is utterly unjust for the Municipality to receive the benefits of the store operation and later on claim the illegality of the business. The bad faith of the petitioners completes the elements of the criminal offense of violation of Sec. 3(e) of Republic Act No. 3019. The same bad faith serves as the source of the civil liability of Asilo, Angeles, and Mayor Comendador.

4. ID.; CIVIL LIABILITY; DEATH OF ACCUSED DURING THE PENDENCY OF THE CASE COULD HAVE EXTINGUISHED THE CIVIL LIABILITY IF THE SAME AROSE DIRECTLY FROM THE CRIME COMMITTED; THE CIVIL LIABILITY IN CASE AT BAR IS BASED ON ANOTHER SOURCE OF OBLIGATION, THE LAW ON HUMAN RELATIONS.— Death of Mayor Comendador during the pendency of the case could have extinguished the civil liability if the same arose directly from the crime committed. However, in this case, the civil liability is based on another source of obligation, the law on human

relations. The pertinent articles follow: Art. 31 of the Civil Code states: When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. And, Art. 32(6) states: Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages: (6) The right against deprivation of property without due process of law; x x x In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence. As held in *Aberca v. Ver*: It is obvious that the purpose of the above codal provision [Art. 32 of the New Civil Code] is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. x x x. Indeed, the basic facts of this case point squarely to the applicability of the law on human relations. First, the complaint for civil liability was filed way AHEAD of the information on the Anti-Graft Law. And, the complaint for damages specifically invoked defendant Mayor Comendador's violation of plaintiff's right to due process.

5. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; THE ACCUSED VIOLATED THE RIGHT TO PROPERTY OF RESPONDENT-SPOUSES; THE REQUIREMENT OF A SPECIAL ORDER OF DEMOLITION FROM A COURT IS BASED ON THE RUDIMENTS OF JUSTICE AND FAIR PLAY.— The Court is in one with the prosecution that there was a violation of the right to private property of the Spouses Bombasi. The accused public officials should have accorded the spouses the due process of law guaranteed by the Constitution and New Civil Code. The *Sangguniang Bayan* Resolutions as asserted by the defense will not, as already shown, justify demolition of the store without court order. This Court in a number of decisions held that even if there is already a writ of execution, there must still be a need for a special order for the purpose of demolition

issued by the court before the officer in charge can destroy, demolish or remove improvements over the contested property. The pertinent provisions are the following: Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides: (d) Removal of improvements on property subject of execution. – When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition. This special need for a court order even if an ejectment case has successfully been litigated, underscores the independent basis for civil liability, in this case, where no case was even filed by the municipality. The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

6. ID.; ID.; DAMAGES; ACTUAL DAMAGES; TO SEEK RECOVERY OF ACTUAL DAMAGES, IT IS NECESSARY TO PROVE THE ACTUAL AMOUNT OF LOSS WITH REASONABLE CERTAINTY, PREMISED UPON COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE.— We must, however, correct the amount of damages awarded to the Spouses Bombasi. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable. In this case, the Court finds that the only evidence presented to prove the actual damages incurred was the itemized list of damaged and lost items prepared by Engineer Cabrega, **an engineer commissioned by the Spouses Bombasi to estimate the costs.** As held by this Court in *Marikina Auto*

Line Transport Corporation v. People of the Philippines, x x x [W]e agree with the contention of petitioners that respondents failed to prove that the damages to the terrace caused by the incident amounted to ₱100,000.00. **The only evidence adduced by respondents to prove actual damages claimed by private respondent were the summary computation of damage made by Engr. Jesus R. Regal, Jr. amounting to ₱171,088.46 and the receipt issued by the BB Construction and Steel Fabricator to private respondent for ₱35,000.00 representing cost for carpentry works, masonry, welding, and electrical works.** Respondents failed to present Regal to testify on his estimation. In its five-page decision, the trial court awarded ₱150,000.00 as actual damages to private respondent but failed to state the factual basis for such award. Indeed, the trial court merely declared in the decretal portion of its decision that the "sum of ₱150,000.00 as reasonable compensation sustained by plaintiff for her damaged apartment." The appellate court, for its part, failed to explain how it arrived at the amount of ₱100,000.00 in its three-page decision. Thus, the appellate court merely declared: With respect to the civil liability of the appellants, they contend that there was no urgent necessity to completely demolish the apartment in question considering the nature of the damages sustained as a result of the accident. Consequently, appellants continue, the award of ₱150,000.00 as compensation sustained by the plaintiff-appellee for her damaged apartment is an unconscionable amount. Further, in one case, this Court held **that the amount claimed by the respondent-claimant's witness as to the actual amount of damages "should be admitted with extreme caution considering that, because it was a bare assertion, it should be supported by independent evidence." The Court further said that whatever claim the respondent witness would allege must be appreciated in consideration of his particular self-interest.** There must still be a need for the examination of the documentary evidence presented by the claimants to support its claim with regard to the actual amount of damages.

7. ID.; ID.; ID.; ID.; THE PRICE QUOTATION MADE BY THE ENGINEER COMMISSIONED BY RESPONDENT-SPOUSES TO ESTIMATE THE COSTS OF DAMAGES AND PRESENTED AS AN EXHIBIT PARTAKES OF THE NATURE OF HEARSAY EVIDENCE CONSIDERING THAT THE PERSON WHO

ISSUED THEM WAS NOT PRESENTED AS A WITNESS.— The price quotation made by Engineer Cabrega presented as an exhibit partakes of the nature of hearsay evidence considering that the person who issued them was not presented as a witness. Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule. Further, exhibits do not fall under any of the exceptions provided under Sections 37 to 47 of Rule 130 of the Rules of Court.

8. ID.; ID.; TEMPERATE DAMAGES; MAY BE AWARDED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT FROM THE NATURE OF THE CASE, BE PROVEN WITH CERTAINTY; CASE AT BAR.— Though there is no sufficient evidence to award the actual damages claimed, this Court grants temperate damages for ₱200,000.00 in view of the loss suffered by the Spouses Bombasi. Temperate damages are awarded in accordance with Art. 2224 of the New Civil Code when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty. The amount of temperate or moderated damages is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that the temperate damages should be more than nominal but less than compensatory. Without a doubt, the Spouses Bombasi suffered some form of pecuniary loss in the impairment of their store. Based on the record of the case, the demolished store was housed on a two-story building located at the market's commercial area and its concrete walls remained strong and not affected by the fire. However, due to the failure of the Spouses Bombasi to prove the exact amount of damage in accordance with the Rules of Evidence, this court finds that ₱200,000.00 is the amount just and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Pete Quirino Quadra for Paulino S. Asilo, Jr.

Ongkiko Kalaw Manhit & Acorda Law Offices for Victoria Bueta Vda. de Comendador.

Epifanio E. Gamo, Jr. and *Noe Cangco Zarate* for private respondents.

D E C I S I O N

PEREZ, *J.*:

At bench are appeals by *certiorari*[1] from the Decision[2] of the Fourth Division of the Sandiganbayan; (1) finding Demetrio T. Comendador[3] (Mayor Comendador) and Paulino S. Asilo, Jr.[4] guilty beyond reasonable doubt of violation of Sec. 3(e) of Republic Act No. 3019; (2) dismissing the cases against accused Alberto S. Angeles;[5] (3) ordering the defendants Municipality of Nagcarlan, Laguna, Demetrio T. Comendador and Paulino S. Asilo, Jr. to pay the plaintiffs now respondents Visitacion C. Bombasi (Visitacion) and Cesar C. Bombasi damages; and (4) dismissing the cases against the spouses Alida and Teddy Coroza[6] and Benita and Isagani Coronado.[7]

The factual antecedents of the case are:

On 15 March 1978, Private Respondent Visitacion's late mother Marciana *Vda. De* Coronado (*Vda. De* Coronado) and

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] The Decision dated 28 April 2003 was penned by Associate Justice Rodolfo G. Palattao with Associate Justices Gregory S. Ong and Ma. Cristina G. Cortez-Estrada, concurring. *Rollo* (G.R. Nos. 159017-18), pp. 40-71.

[3] Municipal Mayor of Nagcarlan, Laguna.

[4] Municipal Administrator of Nagcarlan, Laguna.

[5] Municipal Planning and Development Coordinator of Nagcarlan, Laguna.

[6] Present occupants of the premises being claimed by Spouses Cesar and Visitacion Bombasi.

[7] *Id*.

the Municipality of Nagcarlan, Laguna (represented by the then Municipal Mayor Crisostomo P. Manalang) entered into a lease contract whereby the Municipality allowed the use and enjoyment of property comprising of a lot and a store located at the corner of Coronado and E. Fernandez Sts. at Poblacion, Nagcarlan, Laguna, in favor of the respondent's mother for a period of twenty (20) years beginning on 15 March 1978 until 15 March 1998, extendible for another 20 years.[8]

The lease contract provided that the late *Vda. De* Coronado could build a firewall on her rented property which must be at least as high as the store; and in case of modification of the public market, she or her heir/s would be given preferential rights.

Visitacion took over the store when her mother died sometime in 1984.[9] From then on up to January 1993, Visitacion secured the yearly Mayor's permits.[10]

Sometime in 1986, a fire razed the public market of Nagcarlan. Upon Visitacion's request for inspection on 15 May 1986, District Engineer Marcelino B. Gorospe (Engineer Gorospe) of the then Ministry of Public Works and Highways,[11] Regional Office No. IV-A, found that the store of Visitacion remained intact and stood strong. This finding of Engineer Gorospe was contested by the Municipality of Nagcarlan.

The store of Visitacion continued to operate after the fire until 15 October 1993.

On 1 September 1993, Visitacion received a letter[12] from Mayor Comendador directing her to demolish her store within five (5) days from notice. Attached to the letter were copies

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[8] *Kasulatan ng Kasunduan.*

[9] TSN, 11 August 1997, p. 24.

[10] TSN, 31 July 1997, pp. 30-32.

[11] Now Department of Public Works and Highways.

[12] Formal Offer of Evidence as admitted by the Sandiganbayan, Exhibit "H-5".

of *Sangguniang Bayan* Resolution No. 156[13] dated 30 August 1993 and a Memorandum issued by Asst. Provincial Prosecutor Marianito Sasondoncillo of Laguna.

The relevant provisos of the Resolution No. 156 states that:

> NOW THEREFORE, be it RESOLVED, as it hereby resolved to authorize Hon. Demetrio T. Comendador to enforce and order the Coronado's to demolish the building constructed on the space previously rented to them in order to give way for the construction of a new municipal market building.
>
> RESOLVED FURTHER, to authorize Demetrio T. Comendador, Honorable Mayor of Nagcarlan to file an Unlawful Detainer Case with damages for the expenses incurred due to the delay in the completion of the project if the Coronado's continuously resists the order.

On 3 September 1993, Visitacion wrote a reply letter to Mayor Comendador saying that: (1) the lease contract was still existing and legally binding; (2) she was willing to vacate the store as long as same place and area would be given to her in the new public market; and (3) in case her proposals are not acceptable to Mayor Comendador, for the latter to just file an unlawful detainer case against her pursuant to *Sangguniang Bayan* Resolution No. 156. Pertinent portions of the letter read:

> x x x With all due respect to the resolution of the Municipal Council and the opinion rendered by the Laguna Asst. Provincial Prosecutor, it is my considered view, however, arrived at after consultation with my legal counsel, that our existing lease contract is still legally binding and in full force and effect. Lest I appear to be defiant, let me reiterate to you and the council that we are willing to vacate the said building provided that a new contract is executed granting to us the same space or lot and the same area. I believe that our proposal is most reasonable and fair under the circumstance. If you are not amenable to the said proposal, I concur with the position taken by the Council for you to file the appropriate action in court for unlawful detainer to enable our court to finally thresh out our differences.[14]

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[13] *Rollo* (G.R. No. 159059), pp. 112-113.

[14] *Rollo* (G.R. Nos. 159017-18), pp. 17-18.

On 15 September 1993, Asst. Provincial Prosecutor Florencio Buyser sent a letter to Visitacion ordering her to vacate the portion of the public market she was occupying within 15 days from her receipt of the letter; else, a court action will be filed against her.

On 11 October 1993, the *Sangguniang Bayan* of Nagcarlan, Laguna issued Resolution No. 183 authorizing Mayor Comendador to demolish the store being occupied by Visitacion using legal means. The significant portion of the Resolution reads:

Kung kaya ang Sangguniang Bayan ay buong pagkakaisang IPINASIYA: Ang pagbibigay kapangyarihan kay Kgg. Demetrio T. Comendador na ipagiba ang anumang istrakturang nagiging sagabal sa mabilis at maayos na pagbabangon ng pamilihang bayan.[15]

On 14 October 1993, Municipal Administrator Paulino S. Asilo, Jr. (Asilo) also sent a letter[16] to Visitacion informing her of the impending demolition of her store the next day. Within the same day, Visitacion wrote a reply letter[17] to Asilo, alleging that there is no legal right to demolish the store in the absence of a court order and that the Resolutions did not sanction the demolition of her store but only the filing of an appropriate unlawful detainer case against her. She further replied that if the demolition will take place, appropriate administrative, criminal and civil actions will be filed against Mayor Comendador, Asilo and all persons who will take part in the demolition.

On 15 October 1993, Mayor Comendador relying on the strength of *Sangguniang Bayan* Resolution Nos. 183 and 156 authorized the demolition of the store with Asilo and Angeles supervising the work.

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[15] *Rollo* (G.R. No. 159059), p. 115.

[16] *Id.* at 116.

[17] *Rollo* (G.R. Nos. 159017-18), p. 147.

Engineer Winston Cabrega (Engineer Cabrega), a licensed civil engineer, estimated the cost of the demolished property as amounting to ₱437,900.00.[18]

On 19 August 1994, Visitacion, together with her husband Cesar Bombasi (Spouses Bombasi) filed with the Regional Trial Court of San Pablo City, Laguna a Civil Case[19] for damages with preliminary injunction against the Municipality of Nagcarlan, Laguna, Mayor Demetrio T. Comendador, Paulino S. Asilo, Jr., and Alberto S. Angeles. The complaint was soon after amended to include the Spouses Benita and Isagani Coronado and Spouses Alida and Teddy Coroza as formal defendants because they were then the occupants of the contested area.

The spouses prayed for the following disposition:

1. RESTRAINING or ENJOINING defendant Municipality and defendant Municipal Mayor from leasing the premises subject of lease Annex "A" hereof, part of which is now occupied by PNP Outpost and by the Municipal Collectors' Office, and the equivalent adjacent area thereof, and to cause the removal of said stalls;

2. UPHOLDING the right of plaintiffs to occupy the equivalent corner area of the leased areas being now assigned to other persons by defendants Municipality and/or by defendant Municipal Mayor, and to allow plaintiffs to construct their stalls thereon;

3. MAKING the injunction permanent, after trial;

4. ORDERING defendants to pay plaintiffs, jointly and severally, the following –

    (a) ₱437,900.00 for loss of building/store and other items therein;

    (b) ₱200,000.00 for exemplary damages;

    (c) ₱200,000.00 for moral damages;

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[18] ₱400,000.00 representing the cost of the concrete building; ₱37,900.00 representing the cost of damage and loss inside the building.

[19] Civil Case No. SP-4064 (94).

(d) ₱30,.00 (sic) for attorney's fees and ₱700.00 for every attendance of counsel in court.

5. GRANTING further reliefs upon plaintiffs as justice and equity may warrant in the premises.[20]

Spouses Bombasi, thereafter, filed a criminal complaint[21] against Mayor Comendador, Asilo and Angeles for violation of Sec. 3(e) of Republic Act No. 3019 otherwise known as the "Anti-Graft and Corrupt Practices Act" before the Office of the Ombudsman. On 22 February 1996, an Information[22] against Mayor Comendador, Asilo and Angeles was filed, which reads:

That on or about October 15, 1993, at Nagcarlan, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, accused Demetrio T. Comendador, being then the Municipal Mayor, accused Paulino S. Asilo, Jr. being then the Municipal Administrator and accused Alberto S. Angeles being then the Municipal Planning and Development Coordinator, all of the Municipality of Nagcarlan, Laguna, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, conspiring and confederating with each other, and with evident bad faith, manifest partiality or through gross inexcusable negligence, did then and there willfully, unlawfully, criminally cause the demolition of a public market stall leased by the municipal government in favor of one Visitacion Coronado-Bombasi without legal or justifiable ground therefor, thus, causing undue injury to the latter in the amount of PESOS: FOUR HUNDRED THIRTY SEVEN THOUSAND AND NINE HUNDRED ONLY (₱437,900.00).

Upon their arraignments, all the accused entered their separate pleas of "Not Guilty."

On 4 March 1997, the Sandiganbayan promulgated a Resolution ordering the consolidation of Civil Case No. SP-4064 (94)[23]

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[20] *Rollo* (G.R. Nos. 159017-18), p. 91.

[21] Docketed as Criminal Case No. 23267.

[22] Records, pp. 1-2.

[23] Then pending with the Regional Trial Court of San Pablo City, Laguna.

with Criminal Case No. 23267 pending before the Third Division pursuant to Section 4, Presidential Decree No. 1606, which pertinently reads:

> Any provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized; Provided, however, that where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.[24]

During the pendency of the case, Alberto S. Angeles died on 16 November 1997. Accordingly, the counsel of Angeles filed a motion to drop accused Angeles. On 22 September 1999, the Third Division of Sandiganbayan issued an Order[25] **DISMISSING** the case against Angeles. The germane portion of the Order reads:

> In view of the submission of the death certificate of accused/ defendant Alberto S. Angeles, and there being no objection on the part of the Public Prosecutor, cases against deceased accused/ defendant Angeles only, are hereby DISMISSED.

The death of Mayor Comendador followed on 17 September 2002. As a result, the counsel of the late Mayor filed on 3 March 2003 a Manifestation before the Sandiganbayan informing the court of the fact of Mayor Comendador's death.

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[24] *Rollo* (G.R. No. 159059), p. 77.

[25] *Id.* at 22.

On 28 April 2003, the Sandiganbayan rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 23267, the court finds accused Demetrio T. Comendador and Paulino S. Asilo, Jr. guilty beyond reasonable doubt of violation of Sec. 3(e) of Republic Act. No. 3019 as amended, and in the absence of aggravating and mitigating circumstances, applying the Indeterminate Sentence Law, said accused are sentenced to suffer the indeterminate penalty of 6 years and 2 months imprisonment as minimum to 10 years and 1 day as maximum.

The order of the court dated September 22, 1999 dismissing the cases against the accused Alberto S. Angeles, who died on November 16, 1997 is hereby reiterated.

In Civil Case No. 4064, defendants Municipality of Nagcarlan, Laguna, Demetrio T. Comendador and Paulino S. Asilo, Jr. are hereby ordered jointly and severally to pay plaintiff ₱437,900.00 as actual damages for the destruction of the store; ₱100,000.00 as moral damages; ₱30,000.00 as attorney's fees, and to pay the cost of the suit. The prayer for exemplary damages is denied as the court found no aggravating circumstances in the commission of the crime.

In view of this court's finding that the defendant spouses Alida and Teddy Coroza are lawful occupants of the subject market stalls from which they cannot be validly ejected without just cause, the complaint against them is dismissed. The complaint against defendant spouses Benita and Isagani Coronado is likewise dismissed, it appearing that they are similarly situated as the spouses Coroza. Meanwhile, plaintiff Visitacion Bombasi is given the option to accept market space being given to her by the municipality, subject to her payment of the appropriate rental and permit fees.

The prayer for injunctive relief is denied, the same having become moot and academic.

The compulsory counterclaim of defendant Comendador is likewise denied for lack of merit.[26]

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

Within the same day, Asilo, through his counsel, filed a Motion for Reconsideration[27] of the Decision alleging that there was only an error of judgment when he complied with and implemented the order of his superior, Mayor Comendador. He likewise alleged that there is no liability when a public officer commits in good faith an error of judgment. The Sandiganbayan, on its Resolution[28] dated 21 July 2003 denied the Motion for Reconsideration on the ground that good faith cannot be argued to support his cause in the face of the court's finding that bad faith attended the commission of the offense charged. The Court further explained that the invocation of compliance with an order of a superior is of no moment for the "demolition [order] cannot be described as having the semblance of legality inasmuch as it was issued without the authority and therefore the same was patently illegal."[29]

The counsel for the late Mayor also filed its Motion for Reconsideration[30] on 12 May 2003 alleging that the death of the late Mayor had totally extinguished both his criminal and civil liability. The Sandiganbayan on its Resolution[31] granted the Motion insofar as the extinction of the criminal liability is concerned and denied the extinction of the civil liability holding that the civil action is an independent civil action.

Hence, these Petitions for Review on *Certiorari*.[32]

Petitioner Asilo argues that in order to sustain conviction under Sec. 3(e) of Republic Act No. 3019 or "The Anti-Graft and Corrupt Practices Act," the public officer must have acted

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[27] *Rollo* (G.R. Nos. 159017-18), p. 72.

[28] *Id.* at 81.

[29] Resolution (Re: Motion for Reconsideration) of the Sandiganbayan, Fourth Division, dated 21 July 2003.

[30] *Rollo* (G.R. No. 159059), pp. 81-87.

[31] *Id.* at 75-80, dated 21 July 2003.

[32] *Rollo* (G.R. Nos. 159017-18), pp. 3-39, dated 25 July 2003 filed by Paulino S. Asilo; *Rollo* (G.R. No. 159059), pp. 12-43, dated 5 September 2003 filed by Victoria Bueta *Vda. De* Comendador, widow of the late Mayor Comendador.

with manifest partiality, evident bad faith or gross negligence. He also contended that he and his co-accused acted in good faith in the demolition of the market and, thereby, no liability was incurred.

On the other hand, Petitioner Victoria argues that the death of Mayor Comendador prior to the promulgation of the decision extinguished **NOT ONLY** Mayor Comendador's criminal liability but also his civil liability. She also asserted good faith on the part of the accused public officials when they performed the demolition of the market stall. Lastly, she contended that assuming *arguendo* that there was indeed liability on the part of the accused public officials, the actual amount of damages being claimed by the Spouses Bombasi has no basis and was not duly substantiated.

Liability of the accused public officials under Republic Act No. 3019

Section 3(e) of Republic Act No. 3019 provides:

> 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:
>
> xxx xxx xxx
>
> (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.

The elements of the offense are as follows: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) OR that such injury is caused by giving unwarranted benefits,

advantage or preference to the other party; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[33]

We sustain the Sandiganbayan in its finding of criminal and civil liabilities against petitioner Asilo and petitioner Mayor Comendador as here represented by his widow Victoria Bueta.

We agree with the Sandiganbayan that it is undisputable that the first two requisites of the criminal offense were present at the time of the commission of the complained acts and that, as to the remaining elements, there is sufficient amount of evidence to establish that there was an undue injury suffered on the part of the Spouses Bombasi and that the public officials concerned acted with evident bad faith when they performed the demolition of the market stall.

Causing undue injury to any party, including the government, could only mean **actual injury or damage which must be established by evidence.**[34]

In jurisprudence, "undue injury" is consistently interpreted as "actual." Undue has been defined as "more than necessary, not proper, [or] illegal"; and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.[35]

It is evident from the records, as correctly observed by the Sandiganbayan, that Asilo and Mayor Comendador as accused below did not deny that there was indeed damage caused the Spouses Bombasi on account of the demolition. We affirm the finding that:

xxx. Clearly, the demolition of plaintiff's store was carried out without a court order, and notwithstanding a restraining order which

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[33] *Bustillo v. People*, G.R. No. 160718, 12 May 2010.

[34] *Avila, Sr. v. Sandiganbayan*, 366 Phil. 698, 703 (1999).

[35] *Llorente v. Sandiganbayan*, 350 Phil. 820 (1998).

the plaintiff was able to obtain. The demolition was done in the exercise of official duties which apparently was attended by evident bad faith, manifest partiality or gross inexcusable negligence as there is nothing in the two (2) resolutions which gave the herein accused the authority to demolish plaintiff's store.

"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.[36] [It] contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[37]

It is quite evident in the case at bar that the accused public officials committed bad faith in performing the demolition.

First, there can be no merit in the contention that respondents' structure is a public nuisance. The abatement of a nuisance without judicial proceedings is possible if it is nuisance *per se*.[38] Nuisance *per se* is that which is nuisance at all times and under any circumstance, regardless of location and surroundings.[39] In this case, the market stall cannot be considered as a nuisance *per se* because as found out by the Court, the buildings had not been affected by the 1986 fire. This finding was certified to by Supervising Civil Engineer Wilfredo A. Sambrano of the Laguna District Engineer Office.[40] To quote:

An inspection has been made on the building (a commercial establishment) cited above and found out the following:

1. It is a two-storey building, sketch of which is attached.
2. It is located within the market site.
3. **The building has not been affected by the recent fire.**

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[36] *Sistoza v. Desierto,* 437 Phil. 117, 132 (2002).

[37] *Air France v. Carrascoso,* 124 Phil. 722, 737 (1966).

[38] *Parayno v. Jovellanos,* G.R. No. 148408, 14 July 2006, 495 SCRA 85, 93.

[39] *Jurado, Civil Law Reviewer,* 20th ed., 2006, p. 411.

[40] Exhibit C-1 of the Prosecution. Records, Vol. II, p. 215.

4. **The concrete wall[s] does not even show signs of being exposed to fire.**[41]

Second, the *Sangguniang Bayan* resolutions are not enough to justify demolition. Unlike its predecessor law,[42] the present Local Government Code[43] does not expressly provide for the abatement of nuisance.[44] And even assuming that the power to abate nuisance is provided for by the present code, the accused public officials were under the facts of this case, still devoid of any power to demolish the store. A closer look at the contested resolutions reveals that Mayor Comendador was only authorized to file an unlawful detainer case in case of resistance to obey the order or to demolish the building using legal means. Clearly, the act of demolition without legal order in this case was not among those provided by the resolutions, as indeed, it is a legally impossible provision.

Furthermore, the Municipality of Nagcarlan, Laguna, as represented by the then Mayor Comendador, was placed in *estoppel* after it granted yearly business permits[45] in favor of the Spouses Bombasi. Art. 1431 of the New Civil Code provides that, through *estoppel*, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The representation made by the municipality that the Spouses Bombasi had the right to continuously operate its store binds the municipality. It is utterly unjust for the Municipality to receive the benefits of the store operation and later on claim the illegality of the business.

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[41] Records, Vol. III, p. 180.

[42] Local Government Code of 1983, *Batas Pambansa Blg.* 337.

[43] Republic Act No. 7160.

[44] Section 149 of Local Government Code of 1983. *Powers and Duties.* –

(I) The *sangguniang bayan* shall:

x x x x x x x x x

(ee) Provide for the abatement of nuisance;

[45] Records, Vol. III, pp. 187-196.

The bad faith of the petitioners completes the elements of the criminal offense of violation of Sec. 3(e) of Republic Act No. 3019. The same bad faith serves as the source of the civil liability of Asilo, Angeles, and Mayor Comendador.

It must be noted that when Angeles died on 16 November 1997, a motion to drop him as an accused was filed by his counsel with no objection on the part of the prosecution. The Sandiganbayan acted favorably on the motion and issued an Order dismissing all the cases filed against Angeles. On the other hand, when Mayor Comendador died and an adverse decision was rendered against him which resulted in the filing of a motion for reconsideration by Mayor Comendador's counsel, the prosecution opposed the Motion specifying the ground that the civil liability did not arise from *delict*, hence, survived the death of the accused. The Sandiganbayan upheld the opposition of the prosecution which disposition was not appealed.

We note, first off, that the death of Angeles and of Mayor Comendador during the pendency of the case extinguished their criminal liabilities.

We now hold, as did the Sandiganbayan that the civil liability of Mayor Comendador survived his death; and that of Angeles could have likewise survived had it not been for the fact that the resolution of the Sandiganbayan that his death extinguished the civil liability was not questioned and lapsed into finality.

We laid down the following guidelines in *People v. Bayotas*:[46]

> Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> Corollarily, the claim for civil liability survives notwithstanding the death of (the) accused, if the same may also be **predicated on a source of obligation other than *delict***. Article 1157 of the Civil Code

[46] G.R. No. 102007, 2 September 1994, 236 SCRA 239, 255-256.

enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law

b) Contracts

c) Quasi-contracts

d) Acts or omissions punished by law; and

e) Quasi-delicts. (Emphasis ours)

Where the civil liability survives, as explained [above], an action for recovery therefore may be pursued but only by way of filing a separate civil action[47] and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the New Civil Code, which should thereby avoid any apprehension on a possible privation of right by prescription.

Upon death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal.[48]

The New Civil Code provisions under the Chapter, Human Relations, were cited by the prosecution to substantiate its argument that the civil action based therein is an independent

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[47] It must be noted that the independent civil action was instituted ahead of the criminal case before both cases were jointly heard before the Sandiganbayan.

[48] *People v. Bayotas*, *supra* note 58 at 251.

one, thus, will stand despite the death of the accused during the pendency of the case.

On the other hand, the defense invoked Section 4 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, in support of its argument that the civil action was dependent upon the criminal action, thus, was extinguished upon the death of the accused. The law provides that:

> Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan,** the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such action shall be recognized. (Emphasis ours)

We agree with the prosecution.

Death of Mayor Comendador during the pendency of the case could have extinguished the civil liability if the same arose directly from the crime committed. However, in this case, the civil liability is based on another source of obligation, the law on human relations.[49] The pertinent articles follow:

Art. 31 of the Civil Code states:

> When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

And, Art. 32(6) states:

> Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

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[49] Preliminary Title, Chapter 2, Civil Code of the Philippines.

(6) The right against deprivation of property without due process of law;

x x x x x x x x x

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

As held in *Aberca v. Ver*:

It is obvious that the purpose of the above codal provision [Art. 32 of the New Civil Code] is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. x x x.[50]

Indeed, the basic facts of this case point squarely to the applicability of the law on human relations. First, the complaint for civil liability was filed way AHEAD of the information on the Anti-Graft Law. And, the complaint for damages specifically invoked defendant Mayor Comendador's violation of plaintiff's right to due process. Thus:

x x x x x x x x x

In causing or doing the forcible demolition of the store in question, the individual natural defendants did not only act with grave abuse of authority but usurped a power which belongs to our courts of justice; such actuations were done with malice or in bad faith and constitute an invasion of the property rights of plaintiff(s) without due process of law.

x x x x x x x x x

The Court is in one with the prosecution that there was a violation of the right to private property of the Spouses Bombasi.

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[50] G.R. No. 69866, 15 April 1988, 160 SCRA 590, 601, as quoted from *Joseph Charmont French Legal Philosophy*, Mcmillan Co., New York, 1921, pp. 72-73.

The accused public officials should have accorded the spouses the due process of law guaranteed by the Constitution and New Civil Code. The *Sangguniang Bayan* Resolutions as asserted by the defense will not, as already shown, justify demolition of the store without court order. This Court in a number of decisions[51] held that even if there is already a writ of execution, there must still be a need for a special order for the purpose of demolition issued by the court before the officer in charge can destroy, demolish or remove improvements over the contested property.[52] The pertinent provisions are the following:

> Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:
>
> (d) Removal of improvements on property subject of execution. – When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.
>
> The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition.[53]

This special need for a court order even if an ejectment case has successfully been litigated, underscores the independent basis for civil liability, in this case, where no case was even filed by the municipality.

The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate

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[51] *Guariño v. Ragsac*, A.M. No. P-08-2571, 27 August 2009, 597 SCRA 235; *Torres v. Sicat, Jr.*, 438 Phil. 109 (2002).

[52] Sec. 10, Rule 39(d), Rules of Court.

[53] *Guariño v. Ragsac*, *supra* note 65 at 236.

act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[54]

Notably, the fact that a separate civil action precisely based on due process violations was filed even ahead of the criminal case, is complemented by the fact that the deceased plaintiff Comendador was substituted by his widow, herein petitioner Victoria who specified in her petition that she has "substituted him as petitioner in the above captioned case." Section 1, Rule III of the 1985 Rules in Criminal Procedure mentioned in *Bayotas* is, therefore, not applicable. Truly, the Sandiganbayan was correct when it maintained the separate docketing of the civil and criminal cases before it although their consolidation was erroneously based on Section 4 of Presidential Decree No. 1606 which deals with civil liability "arising from the offense charged."

We must, however, correct the amount of damages awarded to the Spouses Bombasi.

To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[55] In this case, the Court finds that the only evidence presented to prove the actual damages incurred was the itemized list of damaged and lost items[56] prepared by Engineer Cabrega, **an engineer commissioned by the Spouses Bombasi to estimate the costs.**

As held by this Court in *Marikina Auto Line Transport Corporation v. People of the Philippines*,[57]

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[54] *Id.* at 236-237.

[55] *Polo v. People*, G.R. No. 160541, 24 October 2008, 570 SCRA 80, 84 citing *People v. Tigle*, 465 Phil. 368 (2004).

[56] Exhibits "I" and "I-1" formally offered by the prosecution.

[57] G.R. No. 152040, 31 March 2006, 486 SCRA 284, 296-297.

x x x [W]e agree with the contention of petitioners that respondents failed to prove that the damages to the terrace caused by the incident amounted to ₱100,000.00. **The only evidence adduced by respondents to prove actual damages claimed by private respondent were the summary computation of damage made by Engr. Jesus R. Regal, Jr. amounting to ₱171,088.46 and the receipt issued by the BB Construction and Steel Fabricator to private respondent for ₱35,000.00 representing cost for carpentry works, masonry, welding, and electrical works.** Respondents failed to present Regal to testify on his estimation. In its five-page decision, the trial court awarded ₱150,000.00 as actual damages to private respondent but failed to state the factual basis for such award. Indeed, the trial court merely declared in the decretal portion of its decision that the "sum of ₱150,000.00 as reasonable compensation sustained by plaintiff for her damaged apartment." The appellate court, for its part, failed to explain how it arrived at the amount of ₱100,000.00 in its three-page decision. Thus, the appellate court merely declared:

> With respect to the civil liability of the appellants, they contend that there was no urgent necessity to completely demolish the apartment in question considering the nature of the damages sustained as a result of the accident. Consequently, appellants continue, the award of ₱150,000.00 as compensation sustained by the plaintiff-appellee for her damaged apartment is an unconscionable amount.

Further, in one case,[58] this Court held **that the amount claimed by the respondent-claimant's witness as to the actual amount of damages "should be admitted with extreme caution considering that, because it was a bare assertion, it should be supported by independent evidence." The Court further said that whatever claim the respondent witness would allege must be appreciated in consideration of his particular self-interest.**[59] There must still be a need for the examination of the documentary evidence presented by the claimants to support its claim with regard to the actual amount of damages.

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

[59] *Id.* at 55.

The price quotation made by Engineer Cabrega presented as an exhibit[60] partakes of the nature of hearsay evidence considering that the person who issued them was not presented as a witness.[61] Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[62] Further, exhibits do not fall under any of the exceptions provided under Sections 37 to 47 of Rule 130 of the Rules of Court.

Though there is no sufficient evidence to award the actual damages claimed, this Court grants temperate damages for ₱200,000.00 in view of the loss suffered by the Spouses Bombasi. Temperate damages are awarded in accordance with Art. 2224 of the New Civil Code when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty. The amount of temperate or moderated damages is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that the temperate damages should be more than nominal but less than compensatory.[63] Without a doubt, the Spouses Bombasi suffered some form of pecuniary loss in the impairment of their store. Based on the record of the case,[64] the demolished store was housed on a two-story building located at the market's commercial area and its concrete walls remained strong and

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[60] Records, Vol. III, p. 217; Exhibit "I".

[61] *People v. Narciso*, 330 Phil. 527, 536 (1996).

[62] *Philippine Home Assurance Corporation v. Court of Appeals*, 327 Phil. 255, 267-268 (1996) citing *Baguio v. Court of Appeals*, G.R. No. 93417, 14 September 1993, 226 SCRA 366, 370.

[63] *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, 22 November 2007, 538 SCRA 27, 40-41.

[64] Memorandum Letter of Laguna District Engineer Wilfredo A. Sambrano. Records, Vol. III, p. 181.

not affected by the fire. However, due to the failure of the Spouses Bombasi to prove the exact amount of damage in accordance with the Rules of Evidence,[65] this court finds that ₱200,000.00 is the amount just and reasonable under the circumstances.

WHEREFORE, the instant appeal is *DENIED*. Accordingly, the Decision of the Sandiganbayan dated 28 April 2003 is hereby *AFFIRMED WITH MODIFICATION*. The Court affirms the decision finding the accused Paulino S. Asilo, Jr. and Demetrio T. Comendador guilty of violating Section 3(e) of Republic Act No. 3019. We declare the finality of the dismissal of both the criminal and civil cases against Alberto S. Angeles as the same was not appealed. In view of the death of Demetrio T. Comendador pending trial, his criminal liability is extinguished; but his civil liability survives. The Municipality of Nagcarlan, Paulino Asilo and Demetrio T. Comendador, as substituted by Victoria Bueta *Vda. De* Comendador, are hereby declared solidarily liable to the Spouses Bombasi for temperate damages in the amount of ₱200,000.00 and moral damages in the amount of ₱100,000.00.

Costs against the petitioners-appellants.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *del Castillo, JJ.,* concur.

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[65] Rule 132, Section 20, *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per raffle dated 7 March 2011.

SECOND DIVISION

[G.R. No. 163530. March 9, 2011]

PHILIPPINE VETERANS BANK, *petitioner, vs.* **RAMON VALENZUELA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT THAT HAS BECOME FINAL AND EXECUTORY IS IMMUTABLE AND UNALTERABLE; WHILE THERE ARE RECOGNIZED EXCEPTIONS TO THE RULE, NONE OF THE EXCEPTIONS APPLY TO THE PRESENT CASE.— Settled is the rule that a judgment that has become final and executory is immutable and unalterable; the judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. While there are recognized exceptions – *e.g.*, the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable – none of these exceptions apply to the present case.

2. ID.; ID.; ID.; ID.; THE DETERMINATION OF QUESTIONS OF FACT AND OF LAW BY THE COURT OF APPEALS IN CA-G.R. SP NO. 65703 ALREADY ATTAINED FINALITY AND MAY NOT NOW BE DISPUTED OR RELITIGATED BY A REOPENING OF THE SAME QUESTIONS IN A SUBSEQUENT LITIGATION BETWEEN THE SAME PARTIES AND THEIR PRIVIES OVER THE SAME SUBJECT MATTER.— There is no dispute that the November 14, 2002 Resolution of the CA in CA-G.R. SP No. 65703, which is being questioned by petitioner, had already become final and executory. The petition for review on *certiorari* filed by petitioner assailing the said CA Resolution had been denied with finality as this Court found no compelling reason to grant the said petition. Consequently, an entry of judgment was already issued by this Court on September 1,

2003. It has been established in the assailed CA Resolution that the Certificate of Sale involving TCT No. T-105375 was not registered with the Register of Deeds of Bulacan. Owing to the finality of the said Resolution, the Court as well as the parties therein, which includes herein petitioner, are now bound by the said factual finding. The determination of the questions of fact and of law by the CA in CA-G.R. SP No. 65703 already attained finality, and may not now be disputed or relitigated by a reopening of the same questions in a subsequent litigation between the same parties and their privies over the same subject matter. On the basis of the foregoing, the Court finds that the RTC did not err in relying on the November 14, 2002 Resolution of the CA in CA-G.R. SP No. 65703.

3. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD NO. 1529); AMENDMENT AND ALTERATION OF CERTIFICATES; CAN ONLY BE GRANTED IF THERE IS UNANIMITY AMONG THE PARTIES, OR THAT THERE IS NO ADVERSE CLAIM OR SERIOUS OBJECTION ON THE PART OF ANY PARTY IN INTEREST.— In any case, petitioner is seeking relief under the provisions of Section 108 of PD No. 1529, otherwise known as the Property Registration Decree (formerly Section 112 of Act No. 496, otherwise known as the Land Registration Act). x x x While the abovequoted section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title or of any memorandum appearing therein, the prevailing rule is that proceedings thereunder are summary in nature, contemplating corrections or insertions of mistakes which are only clerical but certainly not controversial issues. Relief under the said legal provision can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest. In the present case, there is no question that there is a serious objection and an adverse claim on the part of an interested party as shown by respondent's opposition and motion to dismiss the petition for correction of entry filed by petitioner. The absence of unanimity among the parties is also evidenced by respondent's action for damages and annulment of petitioner's title over the subject parcel of land docketed as Civil Case No. 414-M-97. In fact, the RTC, in its decision in Civil Case No. 414-M-97, found partial merit in respondent's action so much so that it ordered

the cancellation of the TCT covering the subject property in the name of petitioner. The RTC made a categorical finding that the subject Certificate of Sale was not registered with the Register of Deeds of Bulacan leading to the conclusion that the one-year period within which respondent may exercise his right of redemption shall begin to run only after the said Certificate of Sale has been registered. Thus, petitioner may not avail of the remedy provided for under Section 108 of P.D. No. 1529.

4. ID.; ID.; ID.; ID.; THE MOST LOGICAL AND EXPEDIENT RECOURSE IN CASE AT BAR IS TO REGISTER THE CERTIFICATE OF SALE COVERING THE SUBJECT PROPERTY WITH THE REGISTER OF DEEDS OF BULACAN.— In view of the established fact that the Certificate of Sale covering the subject property was not registered, and considering that there is nothing which prohibits petitioner from registering the said Certificate of Sale, its most logical and expedient recourse then is to register the same with the Register of Deeds of Bulacan.

APPEARANCES OF COUNSEL

Alfredo F. Laya, Rydely Valmores and Mariano Y. Navarro for petitioner.

Law Firm of De La Rama De la Rama De La Rama and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* is the November 4, 2003 Order[1] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 8 in Case No. P-261-97, which dismissed herein petitioner's Petition for Correction of Entry in a Transfer Certificate of Title covering a property which it bought in a foreclosure sale.

[1] Penned by Judge Manuel R. Ortiguerra; *rollo*, pp. 76-78.

The petition, which was filed with the trial court on June 27, 1997, alleged as follows:

1. [Philippine Veterans Bank] PVB is a private commercial bank duly organized and existing under and by virtue of the laws of the Republic of the Philippines x x x.

2. PVB, as a banking institution, grants loan, among others, to its clients.

3. On various dates, Cafe Valenzuela, Inc. obtained a loan from PVB in the total amount of PESOS: SIX MILLION (₱ 6,000,000.00). As a security for said loan, a Real Estate Mortgage (REM), which was amended on March 8, 1979 and on June 22, 1979 (AREMs), was executed by Enrico Valenzuela as representative of Cafe Valenzuela, Inc. and as Attorney-in-Fact of Spouses Maximo and Honorata Valenzuela, covering several parcels of land, including TCT No. T-105375 which was subsequently reconstituted as TCT No. RT-35677, registered in the name of Spouses Maximo and Honorata Valenzuela.

xxx xxx xxx

4. Cafe Valenzuela, Inc. failed to fully pay its loan obligation. It has failed and continues to fail and/or refuse to pay its outstanding principal obligation. As a result, PVB, executed an application for the extra-judicial foreclosure of the REM, particularly TCT No. T-105375. The same property was subsequently sold by public auction and was awarded to PVB for being the highest bidder. A certificate of sale in the amount of ₱1,923,878.40 dated 31 July 1985 was issued to this effect, x x x.

5. PVB proceeded to register the said certificate of sale with the Register of Deeds (ROD) of Malolos, Bulacan on 23 July 1986. It was entered as Entry No. 9242 as shown in the stamp of the ROD at the back of the certificate of sale which is on file with the PVB. x x x

6. Entry No. 9242 was thereby annotated on TCT No. T-105375. However, the contents of the certificate of sale in the amount of ₱1,923,878.40 dated 31 July 1985 issued to PVB was not reflected in the Entry No. 9242. Instead, the contents of another certificate of sale in the amount of ₱31,496.00 dated 15 April 1986, which was simultaneously registered, was erroneously copied. The latter certificate of sale was entered as Entry No. 9244 on TCT No. T-249213 which is now reconstituted as TCT No. RT-35700.

x x x x x x x x x

7. The fees paid for by the PVB with the ROD relative to the registration of the certificate of sale also shows payment of fees corresponding to the amount of ₱1,923,878.40.

x x x x x x x x x

8. Entry No. 9242 must therefore be corrected to reflect the true contents of certificate of sale dated 31 July 1985 in the amount of ₱1,923,878.40 to avoid confusion and to put in proper order Entry No. 9242.

x x x x x x x x x[2]

Herein respondent then filed an Opposition with Motion to Dismiss claiming that: (1) he is one of the legitimate children of the spouses Maximo and Honorata Valenzuela, who are the registered owners of the subject property covered by TCT No. T-105375; (2) Enrico Valenzuela's authority as the attorney-in-fact of Maximo and Honorata is limited and that he is not authorized to mortgage the subject property; (3) the alleged certificate of sale involving the subject parcel of land was never duly registered or annotated as a memorandum on TCT No. T-105375 or the reconstituted TCT No. RT-35677; (4) what was really annotated as Entry No. 9242 on TCT No. T-105375 is an entirely different certificate of sale involving a different parcel of land owned by a certain Laida Mercado; (5) a civil case was filed by respondent against petitioner (Civil Case No. 414-M-97) for annulment of title wherein one of the issues involved is the non-registration of the abovementioned certificate of sale; and (6) petitioner does not seek a mere correction of Entry No. 9242, but the registration of a new, distinct and different certificate of sale. Respondent argues that where controversial issues, such as ownership of a disputed property, are raised in proceedings brought under Section 108 of Presidential Decree (PD) No. 1529, such as the instant case, it is the duty of the court sitting as a cadastral court or land registration court to dismiss the petition and the proper recourse for the parties

[2] *Rollo*, pp. 21-23.

would be to bring up said issues in an ordinary civil action or in the proceedings where the incident properly belongs.[3]

On April 30, 2002, the RTC issued an Order with the following dispositive portion:

> WHEREFORE, the Court hereby orders the Register of Deeds of Bulacan to correct Entry No. 9242 on TCT No. T-105375 which was reconstituted as TCT No. RT-35677 to reflect the contents of Certificate of Sale dated July 31, 1985 in the amount of ₱1,923,878.40 issued to Philippine Veterans Bank.
>
> SO ORDERED.[4]

Respondent filed a Motion for Reconsideration.[5]

On November 4, 2003, the RTC issued its presently assailed Order[6] granting herein respondent's Motion for Reconsideration. The RTC set aside its Order dated April 30, 2002 and dismissed the petition of herein petitioner for lack of merit.

The RTC based its Order in a Resolution[7] issued by the CA, dated November 14, 2002, in CA-G.R. SP No. 65703 wherein the appellate court made a finding that the Certificate of Sale involving TCT No. T-105375 was never registered with the Register of Deeds of Bulacan. The RTC held that since the subject certificate of sale was not registered, there is nothing to correct, alter or amend under Section 108 of PD No. 1529.

Petitioner moved for the reconsideration[8] of the November 4, 2003 Order of the RTC, but the trial court denied it via its Order[9] dated April 27, 2004.

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

[4] *Id*. at 43.

[5] *Id*. at 44-66.

[6] *Id*. at 76-78.

[7] *Id*. at 167-170.

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

[9] *Id.* at 82.

Hence, the instant petition raising the sole issue of whether the RTC erred in relying on the November 14, 2002 Resolution of the CA in dismissing petitioner's petition for correction of entry.

Petitioner claims that the CA in its subject resolution erroneously ruled that a previous order of the RTC of Bulacan, Branch 22 in a related case between the same parties, wherein the trial court passed upon the issue of non-registration of the certificate of sale in question and made a finding that the same was indeed not registered with the Register of Deeds of Bulacan, constitutes *res judicata* that would preclude the parties from litigating the factual issue of non-registration of the subject certificate of sale.

The petition lacks merits.

Settled is the rule that a judgment that has become final and executory is immutable and unalterable; the judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[10] While there are recognized exceptions – *e.g.*, the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable – none of these exceptions apply to the present case.[11]

There is no dispute that the November 14, 2002 Resolution of the CA in CA-G.R. SP No. 65703, which is being questioned by petitioner, had already become final and executory. The petition for review on *certiorari* filed by petitioner assailing

[10] *National Tobacco Administration v. Castillo*, G.R. No. 154124, August 13, 2010; *Spouses William Genato and Rebecca Genato v. Viola*, G.R. No. 169706, February 5, 2010, 611 SCRA 677, 690; *Spouses Heber & Charlita Edillo v. Spouses Norberto & Desideria Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 601-602.

[11] *Id*.

the said CA Resolution had been denied with finality as this Court found no compelling reason to grant the said petition. Consequently, an entry of judgment was already issued by this Court on September 1, 2003.

It has been established in the assailed CA Resolution that the Certificate of Sale involving TCT No. T-105375 was not registered with the Register of Deeds of Bulacan. Owing to the finality of the said Resolution, the Court as well as the parties therein, which includes herein petitioner, are now bound by the said factual finding.

The determination of the questions of fact and of law by the CA in CA-G.R. SP No. 65703 already attained finality, and may not now be disputed or relitigated by a reopening of the same questions in a subsequent litigation between the same parties and their privies over the same subject matter.[12] On the basis of the foregoing, the Court finds that the RTC did not err in relying on the November 14, 2002 Resolution of the CA in CA-G.R. SP No. 65703.

In any case, petitioner is seeking relief under the provisions of Section 108 of PD No. 1529, otherwise known as the Property Registration Decree (formerly Section 112 of Act No. 496, otherwise known as the Land Registration Act) which provides as follows:

Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have

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[12] *City Government of Tagaytay v. Guerrero*, G.R. Nos. 140734 & 140745 and G.R. Nos. 141451-52, September 17, 2009, 600 SCRA 33, 59; *Lee Bun Ting v. Judge Aligaen*, 167 Phil. 164, 176 (1977).

terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

While the abovequoted section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title or of any memorandum appearing therein, the prevailing rule is that proceedings thereunder are summary in nature, contemplating corrections or insertions of mistakes which are only clerical but certainly not controversial issues.[13] Relief under the said legal provision can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest.[14]

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[13] *Heirs of Miguel Franco v. CA,* 463 Phil. 417, 431-432 (2003).

[14] *City Government of Tagaytay v. Guerrero, supra* note 12*; Tagaytay-Taal Tourist Development Corporation v. CA,* 339 Phil. 377, 389 (1997).

In the present case, there is no question that there is a serious objection and an adverse claim on the part of an interested party as shown by respondent's opposition and motion to dismiss the petition for correction of entry filed by petitioner. The absence of unanimity among the parties is also evidenced by respondent's action for damages and annulment of petitioner's title over the subject parcel of land docketed as Civil Case No. 414-M-97. In fact, the RTC, in its decision in Civil Case No. 414-M-97, found partial merit in respondent's action so much so that it ordered the cancellation of the TCT covering the subject property in the name of petitioner. The RTC made a categorical finding that the subject Certificate of Sale was not registered with the Register of Deeds of Bulacan leading to the conclusion that the one-year period within which respondent may exercise his right of redemption shall begin to run only after the said Certificate of Sale has been registered. Thus, petitioner may not avail of the remedy provided for under Section 108 of P.D. No. 1529.

Lastly, in view of the established fact that the Certificate of Sale covering the subject property was not registered, and considering that there is nothing which prohibits petitioner from registering the said Certificate of Sale, its most logical and expedient recourse then is to register the same with the Register of Deeds of Bulacan.

WHEREFORE, the instant petition is *DENIED*. The November 4, 2003 Order of the Regional Trial Court of Malolos, Bulacan, Branch 8, is *AFFIRMED*.

SO ORDERED.

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

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

FIRST DIVISION

[G.R. No. 168523. March 9, 2011]

SPOUSES FERNANDO and ANGELINA EDRALIN, *petitioners, vs.* **PHILIPPINE VETERANS BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PROPER REMEDY TO COMPEL ISSUANCE OF A WRIT OF POSSESSION.— We rule that *mandamus* is a proper remedy to compel the issuance of a writ of possession. The purpose of *mandamus* is to compel the performance of a ministerial duty. A ministerial act is "one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done." The issuance of a writ of possession is outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides: SEC. 7. In any **sale made under the provisions of this Act**, the purchaser may **petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof** during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of [this] Act. Such petition shall be **made under oath** and filed in form of an ***ex parte* motion** x x x **and the court shall**, upon approval of the bond, **order that a writ of possession issue**, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. During the period of redemption, the mortgagee is entitled to a writ of possession upon depositing the approved bond. When the redemption period expires without the mortgagor exercising his right of redemption, the mortgagor is deemed to have lost all interest over the foreclosed property, and the purchaser acquires *absolute ownership* of the property. The purchaser's

right is aptly described thus: Consequently, **the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.** In this regard, the bond is no longer needed. **The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT.** After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. **At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.** Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment x x x With the consolidated title, the purchaser becomes entitled to a writ of possession and the trial court has the ministerial duty to issue such writ of possession. Thus, "the remedy of *mandamus* lies to compel the performance of [this] ministerial duty."

2. MERCANTILE LAW; BANKS; VETERANS BANK'S CHARTER (RA NO. 3518); DOES NOT PROHIBIT EXTRAJUDICIAL FORECLOSURE OF MORTGAGE.— The aforequoted Section 18 grants to mortgagors of Veterans Bank the right to redeem their judicially foreclosed properties. This provision had to be included because in judicial foreclosures, mortgagors generally do not have the right of redemption unless there is an express grant by law. But, contrary to petitioners' averments, there is nothing in Section 18 which can be interpreted to mean that Veterans Bank is limited to judicial foreclosures only, or that it cannot avail itself of the benefits provided under Act No. 3135, as amended, allowing extrajudicial foreclosures. Moreover, the availability of extra-judicial foreclosure to a mortgagee *depends upon the agreement of the contracting parties*. Section 1 of Act No. 3135 provides: Section 1. When a sale is made ***under a special power*** inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation,

the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power. In the case at bar, paragraph (c) of the parties' REM granted Veterans Bank the special power as attorney-in-fact of the petitioners to perform all acts necessary for the purpose of extrajudicial foreclosure under Act No. 3135. Thus, there is no obstacle preventing Veterans Bank from availing itself of the remedy of extrajudicial foreclosure.

3. CIVIL LAW; CONTRACTS; MORTGAGE; *PACTUM COMMISSORIUM*; DEFINED; ELEMENTS THEREOF NOT PRESENT IN CASE AT BAR.— *Pactum commissorium* is "a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale." "The elements of *pactum commissorium*, which enable the mortgagee to acquire ownership of the mortgaged property *without the need of any foreclosure proceedings*, are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period." The second element is missing to characterize the Deed of Sale as a form of *pactum commissorium.* Veterans Bank did not, upon the petitioners' default, automatically acquire or appropriate the mortgaged property for itself. On the contrary, the Veterans Bank resorted to extrajudicial foreclosure and was issued a Certificate of Sale by the sheriff as proof of its *purchase* of the subject property during the foreclosure sale. That Veterans Bank went through all the stages of extrajudicial foreclosure indicates that there was no *pactum commissorium.*

4. ID.; ID.; ID.; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE (ACT NO. 3135); WRIT OF POSSESSION; A PURCHASER'S RIGHT TO REQUEST FOR THE ISSUANCE OF A WRIT OF POSSESSION NEVER PRESCRIBES.— We have held before that the purchaser's right "to request for the issuance of the writ of possession of the land never prescribes." "The right to possess a property merely follows the right of ownership,"

and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof. In *Calacala v. Republic of the Philippines*,the Republic was the highest bidder in the public auction but failed for a long period of time to execute an Affidavit of Consolidation and to seek a writ of possession. Calacala insisted that, by such inaction, the Republic's right over the land had prescribed, been abandoned or waived. The Court's language in rejecting Calacala's theory is illuminating: [T]he Republic's failure to execute the acts referred to by the petitioners within ten (10) years from the registration of the Certificate of Sale cannot, in any way, operate to restore whatever rights petitioners' predecessors-in-interest had over the same. For sure, petitioners have yet to cite any provision of law or rule of jurisprudence, and we are not aware of any, to the effect that the failure of a buyer in a foreclosure sale to secure a Certificate of Final Sale, execute an Affidavit of Consolidation of Ownership and obtain a writ of possession over the property thus acquired, within ten (10) years from the registration of the Certificate of Sale will operate to bring ownership back to him whose property has been previously foreclosed and sold. x x x Moreover, with the rule that the expiration of the 1-year redemption period forecloses the obligors' right to redeem and that the sale thereby becomes absolute, the issuance thereafter of a final deed of sale is at best a mere formality and mere confirmation of the title that is already vested in the purchaser.

APPEARANCES OF COUNSEL

Cesar G. Otero for petitioners.
Christian Ron C. Esponilla for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The right to possess a property follows the right of ownership; consequently, it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof.

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] assailing the Decision[2] dated June 10, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 89248. The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated November 8, 2004 and January 28, 2005 dismissing the *ex-parte* petition for issuance of writ of possession and denying petitioner's motion for reconsideration, respectively, are hereby ANNULLED and SET ASIDE. Respondent Judge is hereby DIRECTED to issue the writ of possession prayed for by the petitioner Philippine Veterans Bank over the subject property covered by TCT No. 78332 of the Registry of Deeds for Parañaque City, Metro Manila.
>
> No pronouncement as to costs.
>
> SO ORDERED.[3]

Factual Antecedents

Respondent Philippine Veterans Bank (Veterans Bank) is a commercial banking institution created under Republic Act (RA) No. 3518,[4] as amended by RA No. 7169.[5]

On February 5, 1976, Veterans Bank granted petitioner spouses Fernando and Angelina Edralin (Edralins) a loan in the amount of Two Hundred Seventy Thousand Pesos (₱270,000.00). As security thereof, petitioners executed a *Real Estate Mortgage* (REM)[6] in favor of Veterans Bank over a real property situated in the Municipality of Parañaque and registered in the name of petitioner Fernando Edralin. The mortgaged property is more

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[1] *Rollo*, pp. 8-28.

[2] CA *rollo*, pp. 195-207.

[3] CA Decision, p. 12; *id*. at 206.

[4] An Act Creating the Philippine Veterans Bank, and For Other Purposes.

[5] An Act to Rehabilitate the Philippine Veterans Bank Created Under Republic Act No. 3518, Providing the Mechanisms Therefor, and For Other Purposes.

[6] CA *rollo*, pp. 70-71.

particularly described in Transfer Certificate of Title (TCT) No. 204889. The REM was registered with the Registry of Deeds of the Province of Rizal.[7] The REM and its subsequent amendments[8] were all duly annotated at the back of TCT No. 204889.[9]

The Edralins failed to pay their obligation to Veterans Bank. Thus, on June 28, 1983, Veterans Bank filed a *Petition for Extrajudicial Foreclosure*[10] of the REM with the Office of the Clerk of Court and *Ex-Officio* Sheriff of Rizal.

In due course, the foreclosure sale was held on September 8, 1983, in which the *Ex-Officio* Sheriff of Rizal sold the mortgaged property at public auction. Veterans Bank emerged as the highest bidder at the said foreclosure sale and was issued the corresponding *Certificate of Sale*.[11] The said *Certificate of Sale* was registered with the Registry of Deeds of the Province of Rizal and annotated at the back of TCT No. 204889 under Entry No. 83-62953/T-No. 43153-A on October 25, 1983.[12]

Upon the Edralins' failure to redeem the property during the one-year period provided under Act No. 3135, Veterans Bank acquired absolute ownership of the subject property. Consequently, Veterans Bank caused the consolidation of ownership of the subject property in its name on January 19, 1994.[13] The Register of Deeds of Parañaque, Metro Manila cancelled TCT No. 204889 under the name of Fernando Edralin and replaced it with a new transfer certificate of title, TCT

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

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

[9] Entry Nos. 24991/S-19595, 39423/S-19595, 52016/S-19595 (*id.* at 69).

[10] *Id.* at 76. Notice of Extrajudicial Sale appears on page 77 of the CA *rollo.*

[11] *Id.* at 79.

[12] Entry No. 83-62953 (*id.* at 69).

[13] Entry No. 3139 Affidavit of Consolidation (*id.*, back of p. 69); *id.* at 80-81.

No. 78332,[14] in the name of Veterans Bank on February 3, 1994.

Despite the foregoing, the Edralins failed to vacate and surrender possession of the subject property to Veterans Bank. Thus, on May 24, 1996, Veterans Bank filed an *Ex-Parte Petition for the Issuance of a Writ of Possession*, docketed as Land Registration Case (LRC) No. 06-060 before Branch 274 of the Regional Trial Court (RTC) of Parañaque City. The same, however, was dismissed for Veterans Bank's failure to prosecute.[15]

On July 29, 2003, Veterans Bank again filed an *Ex-Parte Petition for Issuance of Writ of Possession*,[16] this time docketed as Land Registration Case No. 03-0121, before the RTC of Parañaque City. Veterans Bank divulged in its Certification against Forum-Shopping[17] that the earlier case, LRC No. 96-060, involving the same subject matter and parties, was dismissed.

The Edralins moved to dismiss[18] the petition on the ground that the dismissal of LRC No. 96-060 constituted *res judicata*.

Ruling of the Regional Trial Court

The trial court denied the motion to dismiss explaining that the ground of failure to present evidence is not a determination of the merits of the case hence does not constitute *res judicata* on the petition for issuance of a writ of possession.[19]

Nevertheless, the trial court found no merit in the Veterans Bank's application and dismissed the same in its Order dated November 8, 2004.[20] The trial court explained that, under

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[14] *Id.* at 82.

[15] Respondent's Memorandum, p. 7; *rollo*, p. 300.

[16] CA *rollo*, pp. 83-91.

[17] *Id.* at 88.

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

[19] Order dated July 13, 2004 (*id.* at 123).

[20] *Id.* at 43-46; penned by Judge Brigido Artemon M. Luna.

paragraph (d) of the REM, the Veterans Bank agreed to take possession of the Edralins' property *without any judicial intervention*. The court held that granting the writ of possession to the Veterans Bank will violate the contractual agreement of the parties. Paragraph (d) reads:

> (d) ***Effective upon the breach of any condition of this mortgage*** and in addition to the remedies herein stipulated, the Mortgagee is hereby likewise appointed attorney-in-fact of the Mortgagor with full powers and authority, with the use of force, if necessary ***to take actual possession of the mortgaged property, without the necessity of any judicial order or any permission***, or power, to collect rents, to eject tenants, to lease or sell the mortgaged property or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient, to make repairs or improvements on the mortgaged property and pay for the same and ***perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property.*** The payment of any expenses advanced by the Mortgagee in connection with the purposes indicated herein is also guaranteed by this Mortgage and such amount advanced shall bear interest at the rate of 12% per annum. Any amount received from sale, disposal or administration above-mentioned may be applied to the payment of the repairs, improvements, taxes and any other incidental expenses and obligations and also the payment of the original indebtedness and interest thereof. The power herein granted shall not be revoked during the life of this mortgage, and all acts that may be executed by the Mortgagee by virtue of said power are hereby ratified. In addition to the foregoing, the Mortgagor also hereby agrees, that the Auditor General shall withhold any money due or which may become due the Mortgagor or debtor from the Government or from any of its instrumentalities, except those exempted by law from attachment or execution, and apply the same in settlement of any and all amount due to the Mortgagee;[21]

The trial court held that, assuming the contract allowed for the issuance of a writ of possession, Veterans Bank's right to seek possession had already prescribed. Without citing authority

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[21] *Id.*, dorsal portion, p. 70.

and adequate explanation, the court held that Veterans Bank had only 10 years from February 24, 1983 to seek possession of the property.

Veterans Bank moved for the reconsideration[22] of the adverse decision. It directed the court's attention to paragraph (c) of the real estate mortgage, which expressly granted the mortgagee the right to avail itself of the remedy of extrajudicial foreclosure in case of the mortgagor's default. Paragraph (c) reads:

> (c) If at any time the Mortgagor shall fail or refuse to pay the obligations herein secured, or any of the amortizations of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall, during the time this mortgage is in force, institute insolvency proceedings or be involuntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein, or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations of the Mortgagor secured by this Mortgage and all the amortization thereof shall immediately ***become due, payable and defaulted, and the Mortgagee may immediately foreclose this mortgage judicially in accordance with the Rules of Court, or extra-judicially in accordance with Act No. 3135, as amended, and under Act 2612, as amended.*** For the purpose of extra-judicial foreclosure the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property mortgaged under Act No. 3135, as amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact with the same powers as above specified. x x x[23]

The motion for reconsideration was set for hearing on January 28, 2005. Due to a conflict of schedule, Veterans Bank's counsel moved[24] to reset the hearing on its motion. In apparent denial of the motion to reset, the trial court proceeded to deny Veterans Bank's motion for reconsideration in the Order dated January 28, 2005.[25] The trial court reiterated that paragraph (d) of the

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[22] *Id.* at 49-58.

[23] *Id.*, dorsal portion of p. 70.

[24] *Rollo*, pp. 155-160.

[25] CA *rollo*, pp. 47-48.

REM allowed Veterans Bank to take immediate possession of the property without need of a judicial order. It would be redundant for the court to issue a writ of possession in its favor.

This prompted Veterans Bank to file a *Petition for Mandamus with Prayer for Issuance of a Preliminary Mandatory Injunction*[26] before the CA.

First among its arguments, Veterans Bank maintained that it was the trial court's ministerial duty[27] to grant a writ of possession to the mortgagee who has consolidated and registered the property in its name.

Veterans Bank then assailed the trial court's holding that its right to a writ of possession had already prescribed. Respondent maintained that the writ can be issued *at any time* after the mortgagor failed to redeem the foreclosed property.[28]

Lastly, Veterans Bank argued that, contrary to the trial court's finding, it did not contract away its right to an extrajudicial foreclosure under Act No. 3135, as amended, by the inclusion of paragraph (d) in the REM. Veterans Bank pointed out that, as evidenced by paragraph (c) of the REM, it expressly reserved the right to avail of the remedies under Act No. 3135.[29]

Ruling of the Court of Appeals[30]

The appellate court ruled in favor of Veterans Bank.

It held that the contractual provision in paragraph (d) to immediately take possession of the mortgaged property without need of judicial intervention is *distinct* from the right to avail of extrajudicial foreclosure under Section 7 of Act No. 3135,

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[26] *Id.* at 2-38.

[27] Petition in CA-G.R. SP No. 89248, pp. 14-17; *id.* at 15-18.

[28] *Id.* at 27-31; *id.* at 28-32.

[29] *Id.* at 20-25; *id.* at 21-26.

[30] *Id.* at 195-207; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Lucenito N. Tagle.

which was expressly reserved by Veterans Bank in paragraph (c) of the REM. The fact that the two paragraphs do not negate each other is evidenced by the qualifying phrase "*in addition to the remedies herein stipulated*" found in paragraph (c).

Having availed itself of the remedy of extrajudicial foreclosure, Veterans Bank, as the highest bidder, has the right to a writ of possession. This right may be availed of any time after the buyer consolidates ownership. In fact, the issuance of the writ of possession is a ministerial function, the right to which cannot be enjoined or stayed, even by an action for annulment of the mortgage or the foreclosure sale itself.

The trial court's ruling that Veterans Bank's right to possess has prescribed is likewise erroneous. As already stated, Veterans Bank's right to possess the property is not based on their contract but on Act No. 3135.

Since the issuance of a writ of possession is a ministerial act of the trial judge, *mandamus* lies to compel the performance of the said duty.

Petitioners immediately filed this petition for review.

Issues

Petitioners submit the following issues for our consideration:

1. Whether *mandamus* was resorted to as a substitute for a lost appeal

2. Whether *mandamus* is the proper remedy to seek a review of the final orders of the trial court

3. Whether the consolidation of ownership of the extrajudicially foreclosed property through a Deed of Sale is in accordance with law

4. Whether the issuance of a writ of possession under Act [No.] 3135 is subject to the statute of limitations[31]

[31] Petitioners' Memorandum, p. 10; *rollo*, p. 334.

Our Ruling

Propriety of the Remedy of Mandamus

Petitioners argue that Veterans Bank availed itself of the remedy of *mandamus* as a substitute for a lost appeal.[32] Petitioners narrate the relevant dates that allegedly show the belatedness and impropriety of the petition for *mandamus*. Veterans Bank received the Order dated November 8, 2004 on November 18, 2004, thus it had until December 3, 2004 to file a motion for reconsideration. Since December 3, 2004 was declared a non-working holiday, Veterans Bank filed its motion for reconsideration on the next working day, December 6, 2004. With the said dates, it had only one day left from receipt of the January 28, 2005 Order, or until February 10, 2005, to file an appeal (citing Section 2, Rule 22) of the Rules of Court. Since Veterans Bank did not file an appeal on the following day, it had lost its right to appeal and the assailed orders allegedly attained finality.

Respondent counters that the issuance of a writ of possession is not an ordinary action for which the rules on appeal apply. The writ being a mere motion or an order of execution, appeal is not the proper remedy to question the trial court's ruling. In fact, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken from an order of execution, but Rule 65 special civil actions are available.[33] Given that the issuance of the writ of possession is a ministerial act of the judge, respondent maintains that a petition for *mandamus* is the proper remedy.

Respondent adds that, even if appeal were available, the same is not the plain, speedy and adequate remedy to compel the performance of the ministerial act.[34] Respondent maintains that Section 3 of Rule 65 recognizes that the remedy of *mandamus* is available in conjunction with an appeal. The qualifying phrase "and there is no appeal [available]," which appears in *certiorari*

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[32] *Id.* at 11-12; *id.* at 335-336.

[33] Respondent's Memorandum, pp. 18-21; *id*. at 311-314.

[34] *Id.* at 22-23; *id*. at 315-316.

and prohibition petitions, is conspicuously missing for petitions for *mandamus*.

We rule that *mandamus* is a proper remedy to compel the issuance of a writ of possession. The purpose of *mandamus* is to compel the performance of a ministerial duty. A ministerial act is "one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done."[35]

The issuance of a writ of possession is outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides:

> SEC. 7. In any **sale made under the provisions of this Act**, the purchaser may **petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof** during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of [this] Act. Such petition shall be **made under oath** and filed in form of an ***ex parte* motion** x x x **and the court shall**, upon approval of the bond, **order that a writ of possession issue**, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

During the period of redemption, the mortgagee is entitled to a writ of possession upon depositing the approved bond. When the redemption period expires without the mortgagor exercising his right of redemption, the mortgagor is deemed to have lost all interest over the foreclosed property, and the purchaser acquires *absolute ownership* of the property. The purchaser's right is aptly described thus:

> Consequently, **the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.** In this regard, the bond is no longer needed. **The purchaser can demand possession**

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[35] FERIA AND NOCHE, *CIVIL PROCEDURE ANNOTATED*, Vol. II (2001 ed.), p. 487.

at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. **At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.**

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment x x x[36]

With the consolidated title, the purchaser becomes entitled to a writ of possession and the trial court has the ministerial duty to issue such writ of possession.[37] Thus, "the remedy of *mandamus* lies to compel the performance of [this] ministerial duty."[38]

Does the charter of Veterans Bank prohibit extrajudicial foreclosures?

Petitioners then assail Veterans Bank's power to extrajudicially foreclose on mortgages. They maintain that the legislature intended to limit Veterans Bank to judicial foreclosures only,[39] citing Section 18 of the Veterans Bank's charter, RA No. 3518, which provides:

Section 18. *Right of redemption of property foreclosed.* – The mortgagor shall have the right, within one year after the sale of the

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[36] *Saguan v. Philippine Bank of Communications,* G.R. No. 159882, November 23, 2007, 538 SCRA 390, 396-397. Emphasis supplied.

[37] *Bank of the Philippine Islands v. Tarampi,* G.R. No. 174988, December 10, 2008, 573 SCRA 537, 543; *Fernandez v. Espinoza,* G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150-151; *Spouses Carpo v. Chua,* 508 Phil. 462, 477-478 (2005); *Philippine National Bank v. Sanao Marketing Corporation,* 503 Phil. 260, 274-275 (2005).

[38] *Spouses Carpo v. Chua,* 508 Phil. 462, 477 (2005).

[39] Petitioners' Memorandum, pp. 13-14; *rollo*, pp. 337-338.

real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale, and for the custody of said property.

Respondent counters that the inclusion of the phrase "fixed by the Court" in Section 18 of RA No. 3518 does not necessarily mean that only judicial foreclosures are available to Veterans Bank. Moreover, resort to an extrajudicial foreclosure was voluntarily entered into by the contracting parties in their REM.[40]

There is no merit in petitioners' contention.

The aforequoted Section 18 grants to mortgagors of Veterans Bank the right to redeem their judicially foreclosed properties. This provision had to be included because in judicial foreclosures, mortgagors generally do not have the right of redemption unless there is an express grant by law.[41]

But, contrary to petitioners' averments, there is nothing in Section 18 which can be interpreted to mean that Veterans Bank is limited to judicial foreclosures only, or that it cannot avail itself of the benefits provided under Act No. 3135,[42] as amended, allowing extrajudicial foreclosures.

Moreover, the availability of extra-judicial foreclosure to a mortgagee *depends upon the agreement of the contracting parties*. Section 1 of Act No. 3135 provides:

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[40] Respondent's Memorandum, p. 28; *id.* at 321.

[41] Rule 68 (Foreclosure of Real Estate Mortgage), "Sec. 3. *Sale of mortgaged property; effect.* — x x x Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, ***subject to such rights of redemption as may be allowed by law.***" See *Limpin v. Intermediate Appellate Court*, 248 Phil. 318, 325-326 (1988).

[42] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

Section 1. When a sale is made ***under a special power*** inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, **the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected,** whether or not provision for the same is made in the power. (Emphasis supplied.)

In the case at bar, paragraph (c) of the parties' REM granted Veterans Bank the special power as attorney-in-fact of the petitioners to perform all acts necessary for the purpose of extrajudicial foreclosure under Act No. 3135. Thus, there is no obstacle preventing Veterans Bank from availing itself of the remedy of extrajudicial foreclosure.

Was the consolidation of title done in accordance with law?

Petitioners argue that Veterans Bank is not entitled to a writ of possession because it failed to properly consolidate its title over the subject property.[43] They maintain that the Deed of Sale executed by the Veterans Bank in the bank's own favor during the consolidation of title constitutes a *pactum commissorium*, which is prohibited under Article 2088 of the Civil Code.[44]

Respondent contends that petitioners never questioned the validity of the foreclosure proceedings or the auction sale. The failure to do so resulted in the ripening of the consolidation of ownership.[45]

There is no merit in petitioners' argument.

Pactum commissorium is "a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure

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[43] Petitioners' Memorandum, p. 14; *rollo*, p. 338.

[44] *Id*.

[45] Respondent's Memorandum, pp. 26-27; *rollo*, pp. 319-320.

proceedings, and a public sale."[46] "The elements of *pactum commissorium*, which enable the mortgagee to acquire ownership of the mortgaged property *without the need of any foreclosure proceedings*, are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period."[47]

The second element is missing to characterize the Deed of Sale as a form of *pactum commissorium.* Veterans Bank did not, upon the petitioners' default, automatically acquire or appropriate the mortgaged property for itself. On the contrary, the Veterans Bank resorted to extrajudicial foreclosure and was issued a Certificate of Sale by the sheriff as proof of its *purchase* of the subject property during the foreclosure sale. That Veterans Bank went through all the stages of extrajudicial foreclosure indicates that there was no *pactum commissorium.*

Does the right to a writ of possession prescribe?

Petitioners assail the CA's ruling that the issuance of a writ of possession does not prescribe.[48] They maintain that Articles 1139,[49] 1149,[50] and 1150[51] of the Civil Code regarding prescriptive periods cover all kinds of action, which necessarily include the issuance of a writ of possession. Petitioners posit that, for

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[46] PENA, *REGISTRATION OF LAND TITLES AND DEEDS* (2008 ed.), p. 351.

[47] *Ong v. Roban Lending Corporation*, G.R. No. 172592, July 9, 2008, 557 SCRA 516, 524. Emphasis supplied.

[48] Petitioners' Memorandum, pp. 24-25; *rollo*, pp. 339-340.

[49] CIVIL CODE, Article 1139. Actions prescribe by the mere lapse of time fixed by law.

[50] CIVIL CODE, Article 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

[51] CIVIL CODE, Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

purposes of the latter, it is the five-year prescriptive period provided in Article 1149 of the Civil Code which applies because Act No. 3135 itself did not provide for its prescriptive period. Thus, Veterans Bank had only five years from September 12, 1983, the date when the Certificate of Sale was issued in its favor, to move for the issuance of a writ of possession.[52]

Respondent argues that jurisprudence has consistently held that a registered owner of the land, such as the buyer in an auction sale, is entitled to a writ of possession at *any time* after the consolidation of ownership.[53]

We cannot accept petitioners' contention. We have held before that the purchaser's right "to request for the issuance of the writ of possession of the land never prescribes."[54] "The right to possess a property merely follows the right of ownership,"[55] and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof. In *Calacala v. Republic of the Philippines*,[56] the Republic was the highest bidder in the public auction but failed for a long period of time to execute an Affidavit of Consolidation and to seek a writ of possession. Calacala insisted that, by such inaction, the Republic's right over the land had prescribed, been abandoned or waived. The Court's language in rejecting Calacala's theory is illuminating:

> [T]he Republic's failure to execute the acts referred to by the petitioners within ten (10) years from the registration of the Certificate of Sale cannot, in any way, operate to restore whatever rights petitioners' predecessors-in-interest had over the same. For sure, petitioners have

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[52] Petitioners' Memorandum, pp. 25-26; *rollo*, pp. 349-350.

[53] Respondent's Memorandum, pp. 24-25; *id.* at 317-318.

[54] *Spouses Paderes v. Court of Appeals*, 502 Phil. 76, 97 (2005), citing *Rodil v. Judge Benedicto*, 184 Phil. 108 (1980).

[55] *Metropolitan Bank and Trust Co. v. Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234.

[56] 502 Phil. 680 (2005).

yet to cite any provision of law or rule of jurisprudence, and we are not aware of any, to the effect that the failure of a buyer in a foreclosure sale to secure a Certificate of Final Sale, execute an Affidavit of Consolidation of Ownership and obtain a writ of possession over the property thus acquired, within ten (10) years from the registration of the Certificate of Sale will operate to bring ownership back to him whose property has been previously foreclosed and sold. x x x

xxx xxx xxx

Moreover, with the rule that the expiration of the 1-year redemption period forecloses the obligors' right to redeem and that the sale thereby becomes absolute, the issuance thereafter of a final deed of sale is at best a mere formality and mere confirmation of the title that is already vested in the purchaser. x x x[57]

Moreover, the provisions cited by petitioners refer to prescription of *actions*. An *action* is "defined as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong."[58] On the other hand "[a] petition for the issuance of the writ, under Section 7 of Act No. 3135, as amended, is *not an ordinary action* filed in court, by which one party 'sues another for the enforcement or protection of a right, or prevention or redress of a wrong.' It is in the nature of an *ex parte* motion [in] which the court hears only one side. It is taken or granted at the instance and for the benefit of one party, and without notice to or consent by any party adversely affected. Accordingly, upon the filing of a proper motion by the purchaser in a foreclosure sale, and the approval of the corresponding bond, the writ of possession issues as a matter of course and the trial court has no discretion on this matter."[59]

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[57] *Id.* at 689-691.

[58] *Metropolitan Bank and Trust Co. v. Santos, supra* note 55 at 236, citing *Ancheta v. Metropolitan Bank and Trust Company, Inc.*, 507 Phil. 161 (2005).

[59] *Metropolitan Bank and Trust Co. v. Bance*, G.R. No. 167280, April 30, 2008, 553 SCRA 507, 515-516. Emphasis supplied.

WHEREFORE, premises considered, the Petition is *DENIED* for lack of merit. The CA Decision dated June 10, 2005 in CA-G.R. SP No. 89248 is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170071. March 9, 2011]

HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA, *petitioners, vs.* **G & S TRANSPORT CORPORATION,** *respondent.*

[G.R. No. 170125. March 9, 2011]

G & S TRANSPORT CORPORATION, *petitioner, vs.* **HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A RE-EXAMINATION OF THE FACTUAL FINDINGS CANNOT BE DONE THROUGH A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.— We have reviewed said issues and we find that the determination of the first, third and fourth issues raised entails re-examination of the evidence presented because they all involve questions of fact. In *Microsoft Corporation v. Maxicorp,*

Inc., we held that: Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in *Paterno v. Paterno* is illustrative on this point: Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proof on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such a gravity as to justify refusing to give said proofs weight – all these are issues of fact. In this case, the said three issues boil down to the determination of the following questions: *What is the proximate cause of the death of Jose Marcial*? *Is the testimony of prosecution witness Clave credible*? *Did G & S exercise the diligence of a good father of a family in the selection and supervision of its employees*? Suffice it to say that these are all questions of fact which require this Court to inquire into the probative value of the evidence presented before the trial court. As we have consistently held, "[t]his Court is not a trier of facts. It is not a function of this court to analyze or weigh evidence. When we give due course to such situations, it is solely by way of exception. Such exceptions apply only in the presence of extremely meritorious circumstances." Here, we note that although G & S enumerated in its Consolidated Memorandum the exceptions to the rule that a petition for review on *certiorari* should only raise questions of law, it nevertheless did not point out under what exception its case falls. And, upon review of the records of the case, we are convinced that it does not fall under any. Hence, we cannot proceed to resolve said issues and disturb the findings and conclusions of the CA with respect thereto. As we declared in *Diokno v. Cacdac:* It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule

45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.*

2. CIVIL LAW; CONTRACTS; COMMON CARRIERS; PRESUMED TO BE AT FAULT OR IS NEGLIGENT WHEN A PASSENGER DIES OR IS INJURED; THE STATUTORY PRESUMPTION MAY ONLY BE OVERCOME BY EVIDENCE THAT THE CARRIER EXERCISED EXTRAORDINARY DILIGENCE.— What is clear from the records is that there existed a contract of carriage between G & S, as the owner and operator of the Avis taxicab, and Jose Marcial, as the passenger of said vehicle. As a common carrier, G & S "is bound to carry [Jose Marcial] safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances." However, Jose Marcial was not able to reach his destination safely as he died during the course of the travel. "In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence." Unfortunately, G & S miserably failed to overcome this presumption. Both the trial court and the CA found that the accident which led to Jose Marcial's death was due to the reckless driving and gross negligence of G & S' driver, Padilla, thereby holding G & S liable to the heirs of Jose Marcial for breach of contract of carriage.

3. ID.; HUMAN RELATIONS; ACQUITTAL OF COMMON CARRIER'S DRIVER IN THE CRIMINAL CASE IS IMMATERIAL TO THE INSTANT CASE FOR BREACH OF CONTRACT; WHEN THE CIVIL ACTION IS BASED ON AN OBLIGATION NOT ARISING FROM THE ACT OR OMISSION COMPLAINED OF AS A FELONY, SUCH CIVIL ACTION MAY PROCEED INDEPENDENTLY OF THE CRIMINAL PROCEEDINGS AND REGARDLESS OF THE RESULT OF THE LATTER; CASE AT BAR.— This thus now leaves us with the remaining issue raised by G & S, that is,

whether the CA gravely erred in not taking note of the fact that Padilla has already been acquitted of the crime of reckless imprudence resulting in homicide, a charge which arose from the same incident subject of this case. Article 31 of the Civil Code provides, *viz:* When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. Thus, in *Cancio, Jr. v. Isip,* we declared: In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on culpa criminal, **a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, culpa contractual**. In this case, the action filed by the heirs is primarily for the recovery of damages arising from breach of contract of carriage allegedly committed by G & S. Clearly, it is an independent civil action arising from contract which is separate and distinct from the criminal action for reckless imprudence resulting in homicide filed by the heirs against Padilla by reason of the same incident. Hence, regardless of Padilla's acquittal or conviction in said criminal case, same has no bearing in the resolution of the present case. There was therefore no error on the part of the CA when it resolved this case without regard to the fact that Padilla has already been acquitted by the RTC in the criminal case. Moreover, while the CA quoted some portions of the MTC Decision in said criminal case, we however find that those quoted portions were only meant to belie G & S' claim that the proximate cause of the accident was the negligence of the driver of the delivery van which allegedly hit the Avis taxicab. Even without those quoted portions, the appellate court's ultimate finding that it was Padilla's negligence which was the proximate cause of the mishap would still be the same. This is because the CA has, in fact, already made this declaration in the earlier part of its assailed Decision. The fact that the MTC Decision from which the subject quoted portions were lifted has already been reversed by the RTC is therefore immaterial.

4. ID.; ID.; THE DENIAL BY THE COURT OF APPEALS OF THE HEIR'S CLAIM FOR LOST OF EARNINGS IS UNWARRANTED.— In *Ereño,* we denied the claim for loss of income because the handwritten estimate of the deceased's daily income as a self-employed vendor was not supported by competent evidence like income tax returns or receipts. This was in view of the rule that compensation for lost income is in the nature of damages and as such requires due proof of damages suffered. We reiterated this rule in *People v. Yrat* where we likewise denied the same claim because the only evidence presented to show that the deceased was earning ₱50,000.00 a month was the testimony of the wife. There we stated that for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough. In *People v. Caraig,* we declared that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages therefor may be awarded despite the absence of documentary evidence, provided that there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws."* However, we subsequently ruled in *Pleyto v. Lomboy* that "failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." Hence, we held as sufficient to establish a basis for an estimate of damages for loss of earning capacity the testimony of the victim's widow that her husband was earning a monthly income of ₱8,000.00. Later, in *Victory Liner, Inc. v. Gammad,* after finding that the deceased's earnings does not fall within the exceptions laid down in *Caraig,* we deleted the award for compensatory damages for loss of earning capacity as same was awarded by the lower courts only on the basis of the husband's testimony that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue with a salary of ₱83,088.00 per annum at the time of

her death. This same rule was also applied in the 2008 case of *Licyayo v. People.*

5. ID.; ID.; THE USAID CERTIFICATION CANNOT BE SAID TO BE SELF-SERVING BECAUSE IT DOES NOT REFER TO AN ACT OR DECLARATION MADE OUT OF COURT BY THE HEIRS THEMSELVES AS PARTIES TO THIS CASE.— In all of the cases mentioned except for *Ereño*, the sole basis for the claim for loss of earning capacity were the testimonies of the claimants. This is not the case here. Just like in *Ereño* where the testimony of the mother of the deceased was accompanied by a handwritten estimate of her daughter's alleged income as a fish vendor, the testimony of Jose Marcial's wife that he was earning around ₱450,000.00 a year was corroborated by a Certification issued by the USAID. However in *Ereño*, we declared as self-serving the handwritten estimate submitted by the mother hence we denied the claim for such award. Based on said ruling, the CA in this case deleted the award for lost income after it found the USAID Certification to be self-serving and unreliable. We disagree. The CA sweepingly concluded that the USAID Certification is self-serving and unreliable without elaborating on how it was able to arrive at such a conclusion. A research on USAID reveals that it is the "principal [United States] agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms." It is an "independent federal government agency that receives over-all foreign policy guidance from the Secretary of the State [of the United States]." Given this background, it is highly improbable that such an agency will issue a certification containing unreliable information regarding an employee's income. Besides, there exists a presumption that official duty has been regularly performed. Absent any showing to the contrary, it is presumed that Cruz, as Chief of Human Resources Division of USAID, has regularly performed his duty relative to the issuance of said certification and therefore, the correctness of its contents can be relied upon. This presumption remains especially so where the authenticity, due execution and correctness of said certification have not been put in issue either before the trial court or the CA. As to its being self-serving, our discussion on "self-serving evidence" in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien* is enlightening, *viz*: 'Self-serving evidence,' perhaps owing to

its descriptive formulation, is a concept much misunderstood. Not infrequently, the term is employed as a weapon to devalue and discredit a party's testimony favorable to his cause. That, it seems, is the sense in which petitioners are using it now. This is a grave error. "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. **The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*** x x x. Verily, the USAID certification cannot be said to be self-serving because it does not refer to an act or declaration made out of court by the heirs themselves as parties to this case. Clearly, the CA erred in deleting the award for lost income on the ground that the USAID Certification supporting such claim is self-serving and unreliable. On the contrary, we find said certification sufficient basis for the court to make a fair and reasonable estimate of Jose Marcial's loss of earning capacity just like in *Tamayo v. Señora* where we based the victim's gross annual income on his pay slip from the Philippine National Police. Hence, we uphold the trial court's award for Jose Marcial's loss of earning capacity.

6. ID.; DAMAGES; MORAL AND EXEMPLARY DAMAGES ARE BASED ON DIFFERENT JURAL FOUNDATIONS AND ARE DIFFERENT IN NATURE AND REQUIRE SEPARATE DETERMINATION; THE AMOUNT OF ONE CANNOT BE MADE TO DEPEND ON THE OTHER.— While we deemed it proper to modify the amount of moral damages awarded by the trial court as discussed below, we nevertheless agree with the heirs that the CA should not have pegged said award in proportion to the award of exemplary damages. Moral and exemplary damages are based on different jural foundations. They are different in nature and require separate determination. The amount of one cannot be made to depend on the other. In *Victory Liner Inc. v. Gammad* we awarded ₱100,000.00 by way of moral damages to the husband and three children of the deceased, a 39-year old Section Chief of the Bureau of Internal Revenue, to compensate said heirs for the grief caused by her death. This is pursuant to the provisions of Articles 1764 and 2206(3) which provide: Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Articles 2206 shall also apply to the death of a passenger caused by the breach of contract

by a common carrier. Art. 2206. x x x (3) The spouse, legitimate and illegitimate descendants and the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Here, there is no question that the heirs are likewise entitled to moral damages pursuant to the above provisions, considering the mental anguish suffered by them by reason of Jose Marcial's untimely death, as can be deduced from the testimony of his wife Ruby.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra and Suarez for Heirs of Jose Marcial K. Ochoa.

Gepty & Jose Law Offices for G & S Transport Corp.

D E C I S I O N

DEL CASTILLO, *J.*:

An accident which claimed the life of a passenger is the root of these two petitions - one brought before us by the common carrier and the other by the heirs of the deceased.

These consolidated Petitions for Review on *Certiorari* assail the Court of Appeals' (CA) Decision[1] dated June 29, 2005 in CA-G.R. CV No. 75602 which affirmed with modification the December 21, 2001 Decision and March 5, 2002 Order of the trial court. Likewise assailed is the Resolution[2] dated October 12, 2005 denying the parties' respective Motions for Reconsideration thereto.

Factual Antecedents

Jose Marcial K. Ochoa (Jose Marcial) died on the night of March 10, 1995 while on board an Avis taxicab owned and

[1] CA *rollo*, pp. 216-233; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[2] *Id.* at 309.

operated by G & S Transport Corporation (G & S), a common carrier. As narrated by the trial court, the circumstances attending Jose Marcial's death are as follows:

> It appears that sometime in the evening of March 10, 1995, at the Manila Domestic Airport, the late Jose Marcial K. Ochoa boarded and rode a taxicab with Plate No. PKR-534, a passenger vehicle for hire owned and operated by defendant corporation under the business name "Avis Coupon Taxi" (Avis) and driven by its employee and authorized driver Bibiano Padilla, Jr. on his way home to Teacher's Village, Diliman, Quezon City.
>
> At about 11:00 p.m., the taxicab was cruising along Epifanio delos Santos Avenue [EDSA], in front of Camp Aguinaldo in Quezon City at high speed. While going up the Boni Serrano (Santolan) fly-over, it overtook another cab driven by Pablo Clave and tried to pass another vehicle, a ten-wheeler cargo truck. Because of the narrow space between the left side railing of the fly-over and the ten-wheeler truck, the Avis cab was unable to pass and because of its speed, its driver (Padilla) was unable to control it. To avoid colliding with the truck, Padilla turned the wheel to the left causing his taxicab to ram the railing throwing itself off the fly-over and fell on the middle surface of EDSA below. The forceful drop of the vehicle on the floor of the road broke and split it into two parts. Both driver Padilla and passenger Jose Marcial K. Ochoa were injured and rushed to the hospital. At the East Avenue Medical Center, Ochoa was not as lucky as Padilla who was alive. He was declared dead on arrival from the accident. The death certificate issued by the Office of the Civil Registrar of Quezon City cited the cause of his death as vehicular accident.[3]

On May 13, 1999, Jose Marcial's wife, Ruby Bueno Ochoa, and his two minor children, Micaela B. Ochoa and Jomar B. Ochoa (the heirs), through counsel, sent G & S a letter[4] demanding that the latter indemnify them for Jose Marcial's death, his loss of earning capacity, and funeral expenses in the total amount of ₱15,000,000.00. As G & S failed to heed the

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[3] RTC Decision dated December 7, 2001; penned by Judge Librado S. Correa, records, pp. 298-303.

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

same, the heirs filed a *Complaint*[5] for Damages before the Regional Trial Court (RTC) of Pasig City which was raffled to Branch 164 of said court.

The heirs alleged that G & S, as a common carrier, is under legal obligation to observe and exercise extraordinary diligence in transporting its passengers to their destination safely and securely. However, G & S failed to observe and exercise this extraordinary diligence because its employee failed to transport Jose Marcial to his destination safely. They averred that G & S is liable to them for having breached the contract of common carriage. As an alternative cause of action, they asserted that G & S is likewise liable for damages based on *quasi*-delict pursuant to Article 2180[6] in relation to Article 2176[7] of the Civil Code. The heirs thus prayed for G & S to pay them actual damages, moral damages, exemplary damages, and attorney's fees and expenses of litigation.

In its Answer With Compulsory Counterclaims,[8] G & S claimed that Jose Marcial boarded an Avis taxicab driven by its employee, Bibiano Padilla (Padilla), at the Domestic Airport to bring him to Teacher's Village in Quezon City. While passing the Santolan

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

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

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

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[7] **Art. 2176** – Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called quasi-delict x x x.

[8] Records, pp. 48-54.

fly-over, however, the Avis taxicab was bumped by an on-rushing delivery van at the right portion causing the taxicab to veer to the left, ram through the left side of the railings of the fly-over and fall to the center of the island below. The taxicab was split into two and Jose Marcial was thrown 10 meters away. G & S posited that the proximate cause of Jose Marcial's death is a fortuitous event and/or the fault or negligence of the driver of the delivery van that hit the taxicab. It likewise claimed that it exercised the diligence required of a good father of a family in the selection and supervision of its employees including Padilla. By way of compulsory counterclaim, G & S sought to recover from the heirs the amount of ₱300,000.00 as attorney's fees and costs of suit.

Ruling of the Regional Trial Court

On December 27, 2001, the trial court rendered a Decision[9] finding the vehicular mishap not caused by a fortuitous event but by the negligence of Padilla. It likewise found the evidence adduced by G & S to show that it exercised the diligence of a good father of a family in the selection and supervision of its employees as insufficient. Hence, the trial court declared G & S civilly liable to the heirs. However, for lack of receipts or any proof of funeral expenses and other actual damages, the trial court denied the heirs' claim for actual damages. It also denied them moral and exemplary damages for lack of legal basis. The dispositive portion of said Decision reads:

> WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:
>
> 1. ₱50,000.00 as civil indemnity for the death of deceased Jose Marcial K. Ochoa;
> 2. ₱6,537,244.96 for the loss of earning capacity of the deceased;
> 3. ₱100,000.00 for attorney's fees;
> 4. And the cost of litigation.
>
> SO ORDERED.[10]

[9] *Id.* at 298-303.

[10] *Id.* at 303.

G & S filed a Notice of Appeal[11] while the heirs filed a Motion for Partial Reconsideration.[12] The heirs averred that they are entitled to moral damages pursuant to Article 1764[13] in relation to Article 2206(3)[14] of the Civil Code. They also cited applicable jurisprudence providing that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage where the mishap results in the death of the passenger.With respect to their claim for exemplary damages, the heirs relied upon Article 2232 of the Civil Code which provides that in contracts and *quasi*-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. And, since Padilla was declared by the trial court to have been grossly negligent in driving the taxicab, the heirs claimed that they are likewise entitled to exemplary damages.

After G & S filed its Opposition (To Plaintiffs' Motion for Partial Reconsideration),[15] the trial court issued an Order[16] on March 5, 2002. It found merit in the heirs' Motion for Partial Reconsideration and thus declared them entitled to moral and exemplary damages, *viz*:

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[11] *Id.* at 307-308.

[12] *Id.* at 316-323.

[13] **Art. 1764** – Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

[14] **Art. 2206** – The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

x x x x x x x x x

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[15] Records, pp. 331-341.

[16] *Id.* at 342-343.

WHEREFORE, the decision dated December 27, 2001 is hereby modified so as to order defendant Corporation to pay plaintiffs the amount of ₱300,000.00 as moral damages and ₱50,000.00 as exemplary damages. The dispositive portion of said decision is hereby amended to read as follows:

> 'WHEREFORE, defendant is hereby adjudged guilty of breach of contract of carriage and is ordered to pay plaintiffs the following amounts:
>
> 1. ₱50,000.00 as civil indemnity for the death of the deceased Jose Marcial K. Ochoa;
>
> 2. ₱6,537,244.96 for the loss of earning capacity of the deceased.
>
> 3. ₱300,000.00 as moral damages;
>
> 4. ₱50,000.00 as exemplary damages;
>
> 5. ₱100,000.00 for attorney's fees;
>
> 6. And the costs of litigation.'

SO ORDERED.[17]

Because of this, G & S filed another Notice of Appeal[18] and same was given due course by the trial court in an Order[19] dated April 23, 2002.

Ruling of the Court of Appeals

Before the CA, G & S continued to insist that it exercised the diligence of a good father of the family in the selection and supervision of its employees. It averred that it has been carrying out not only seminars for its drivers even before they were made to work, but also periodic evaluations for their performance. Aside from these, it has also been conducting monthly check-up of its automobiles and has regularly issued rules regarding the conduct of its drivers. G & S claimed that it was able to establish a good name in the industry and maintain a clientele.

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[17] *Id.* at 343.

[18] *Id.* at 344-346.

[19] *Id.* at 353.

In an effort to build up Padilla's character as an experienced and careful driver, G & S averred that: (1) before G & S employed Padilla, he was a delivery truck driver of Inter Island Gas Service for 11 years; (2) Padilla has been an employee of G & S from 1989 to 1996 and during said period, there was no recorded incident of his being a negligent driver; (3) despite his qualifications, G & S still required Padilla to submit an NBI clearance, driver's license and police clearance; (4) Padilla's being a good driver-employee was manifest in his years of service with G & S, as in fact, he has received congratulatory messages from the latter as shown by the inter-office memos dated August 23, 1990 and February 1, 1993; and that (5) Padilla attended a seminar at the Pope Pius Center sometime in December 1999 as part of the NAIA Taxi Operation Program.

G & S also argued that the proximate cause of Jose Marcial's death is a fortuitous event and/or the fault or negligence of another and not of its employee. According to G & S, the collision was totally unforeseen since Padilla had every right to expect that the delivery van would just overtake him and not hit the right side of the taxicab. Therefore, what transpired was beyond Padilla's control. There was no negligence on his part but on the part of the driver of the delivery van. For this reason, G & S opined that it was not liable to the heirs.

On the other hand, the heirs maintained that Padilla was grossly negligent in driving the Avis taxicab on the night of March 10, 1995. They claimed that Padilla, while running at a very high speed, acted negligently when he tried to overtake a ten-wheeler truck at the foot of the fly-over. This forced him to swerve to the left and as a consequence, the Avis taxicab hit the center of the railing and was split into two upon hitting the ground. The manner by which Padilla drove the taxicab clearly showed that he acted without regard to the safety of his passenger.

The heirs also averred that in order for a fortuitous event to exempt one from liability, it is necessary that he has committed no negligence or conduct that may have occasioned the loss. Thus, to be exempt from liability for the death of Jose Marcial

on this ground, G & S must clearly show that the proximate cause of the casualty was entirely independent of human will and that it was impossible to avoid. And since in the case at bar it was Padilla's inexcusable poor judgment, utter lack of foresight and extreme negligence which were the immediate and proximate causes of the accident, same cannot be considered to be due to a fortuitous event. This is bolstered by the fact that the court trying the case for criminal negligence arising from the same incident convicted Padilla for said charge.[20]

At any rate, the heirs contended that regardless of whether G & S observed due diligence in the selection of its employees, it should nonetheless be held liable for the death of Jose Marcial pursuant to Article 1759 of the Civil Code which provides:

> ART. 1759 – Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.
>
> This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

In sum, the heirs prayed that the appeal be dismissed for lack of merit and the assailed Decision and Order of the trial court be affirmed *in toto*.

In a Decision[21] dated June 29, 2005, the CA ruled in favor of the heirs. The appellate court gave weight to their argument that in order for a fortuitous event to exempt one from liability, it is necessary that he committed no negligence or misconduct that may have occasioned the loss. In this case, the CA noted

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[20] Decision of the Metropolitan Trial Court (MTC)-Quezon City, Branch 39 in Criminal Case No. 0011769 for Reckless Imprudence Resulting in Homicide, CA *rollo*, pp. 112-120. However, this MTC Decision was later reversed and set aside by the RTC, Quezon City, Branch 222 in Criminal Case No. Q03-118524 on December 11, 2003 where Padilla was accordingly acquitted; *id.* at 194-200.

[21] *Id.* at 216-233.

that Padilla failed to employ reasonable foresight, diligence and care needed to exempt G & S from liability for Jose Marcial's death. Said court also quoted pertinent portions of the MTC decision convicting Padilla of reckless imprudence resulting in homicide to negate G & S' claim that the proximate cause of the accident was the fault of the driver of the delivery van who allegedly hit the right side of the taxicab. And just like the trial court, the CA found insufficient the evidence adduced by G & S to support its claim that it exercised due diligence in the selection and supervision of its employees.

With respect to the award of ₱6,537,244.96 for Jose Marcial's loss of earning capacity, the CA declared the same unwarranted. It found the Certification[22] issued by Jose Marcial's employer, the United States Agency for International Development (USAID) through its Chief of Human Resources Division Jonas Cruz (Cruz), as self-serving, unreliable, and biased. While said certification states that Jose Marcial was earning an annual salary of ₱450,844.49 at the time of his untimely demise, the CA noted that same is unsupported by competent evidence such as income tax returns or receipts. This is in view of the ruling in *People v. Ereño*[23] where it was held that "there must be unbiased proof of the deceased's average income." Anent moral damages, the CA found the award of ₱300,000.00 excessive and thus reduced the same to ₱200,000.00 as to make it proportionate to the award of exemplary damages which is ₱50,000.00. The dispositive portion of said Decision reads:

> WHEREFORE, the assailed Decision dated December 27, 2001 and Order dated March 5, 2002 are AFFIRMED with the following MODIFICATION: appellant is ordered to pay appellees the sum of ₱50,000.00 as civil indemnity for the death of the deceased Jose Marcial K. Ochoa, ₱200,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱100,000.00 for attorney's fees and the costs of litigation. The trial court's award of ₱6,537,244.96 for the loss of earning capacity of the deceased is DELETED for lack of basis.

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[22] Records, p. 150.

[23] 383 Phil. 30, 46 (2000).

SO ORDERED.

Both parties moved for reconsideration[24] but the CA denied their respective motions for reconsideration in a Resolution[25] dated October 12, 2005.

Hence, G & S and the heirs filed their respective Petitions for Review on *Certiorari* before this Court. The heirs' petition was docketed as G.R. No. 170071 and that of G & S as G.R. No. 170125. These petitions were later consolidated pursuant to this Court's Resolution of November 21, 2005.[26]

G.R. No. 170125

G & S anchors its petition on the following grounds:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE PROXIMATE CAUSE OF DEATH OF MR. JOSE MARCIAL K. OCHOA WAS A FORTUITOUS EVENT AND/OR WAS DUE TO THE FAULT OR NEGLIGENCE OF ANOTHER AND SHOULD THUS EXEMPT THE PETITIONER FROM LIABILITY.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT TAKING NOTE OF THE FACT THAT THE PETITIONER'S EMPLOYEE HAD BEEN ACQUITTED OF THE CRIME OF RECKLESS IMPRUDENCE RESULTING (IN) HOMICIDE.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE TESTIMONY OF A WITNESS WHO SURFACED MONTHS AFTER THE INCIDENT WHILE DISREGARDING THAT OF AN EYEWITNESS WHO WAS PRESENT AT THE TIME AND PLACE OF THE ACCIDENT.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE PETITIONER EXERCISED THE

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[24] G & S' Motion for Reconsideration, CA *rollo*, pp. 240-249 and the heirs' Motion for Partial Reconsideration, *id.* at 250-263.

[25] *Id.* at 309.

[26] *Rollo* of G.R. No. 170071, pp. 114-115 and *rollo* of G.R. No. 170125, pp. 6-7.

DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES PARTICULARLY MR. BIBIANO PADILLA.[27]

G & S reiterates its arguments that the proximate cause of the accident is a fortuitous event and/or the negligence of the driver of the delivery van which bumped the right portion of its taxicab and, that it exercised the diligence of a good father of a family in the selection and supervision of its employees. It faults the CA when it overlooked the fact that the MTC Decision convicting Padilla of reckless imprudence has already been reversed on appeal by the RTC with Padilla having been accordingly acquitted of the crime charged. Moreover, it claims that the appellate court erred in according respect to the testimony of the lone prosecution witness, Pablo Clave (Clave), when it concluded that Padilla was driving negligently at the time of the accident. It asserts that Clave is not a credible witness and so is his testimony. Thus, G & S prays that the assailed CA Decision and Resolution be reversed and set aside.

On the other hand, the heirs posit that the determination of the issues raised by G & S necessarily entails a re-examination of the factual findings which this Court cannot do in this petition for review on *certiorari*. At any rate, they maintain that the trial court itself is convinced of Clave's credibility. They stress the settled rule that the evaluation of the credibility of witnesses is a matter that particularly falls within the authority of the trial court because it had the opportunity to observe the demeanor of the witnesses on the stand.

The heirs assert that fortuitous event was not the proximate cause of the mishap. They point out that as correctly found by the trial court, Padilla was running at an extremely high speed. This was why the impact was so strong when the taxicab rammed the fly-over railings and was split into two when it hit the ground. Also, while it is true that the MTC Decision in the criminal case for reckless imprudence has been reversed by the RTC, this does not excuse G & S from its liability to the

[27] *Rollo* of G.R. No. 170125, p. 16.

heirs because its liability arises from its breach of contract of carriage and from its negligence in the selection and supervision of its employees. Also, since the acquittal of Padilla is based on reasonable doubt, same does not in any way rule out his negligence as this may merely mean that the prosecution failed to meet the requisite quantum of evidence to sustain his conviction. Therefore, G & S cannot bank on said acquittal to disprove its liability.

G.R. No. 170071

The heirs, on the other hand, advance the following grounds in support of their petition:

THE COURT OF APPEALS MANIFESTLY AND GRAVELY ERRED IN COMPLETELY DELETING THE TRIAL COURT'S AWARD FOR THE LOSS OF EARNING CAPACITY OF THE DECEASED.

THE COURT OF APPEALS MANIFESTLY AND GRAVELY ERRED IN REDUCING THE TRIAL COURT'S AWARD FOR MORAL DAMAGES.[28]

The focal point of the heirs' petition is the CA's deletion of the award of ₱6,537,244.96 for Jose Marcial's loss of earning capacity as well as the reduction of the award of moral damages from ₱300,000.00 to ₱200,000.00.

The heirs aver that the appellate court gravely erred in relying upon *Ereño* as said case is not on all fours with the present case. They contend that in *Ereño*, this Court disallowed the award for loss of income because the only proof presented was a handwritten statement of the victim's spouse stating the daily income of the deceased as a self-employed fish vendor. The heirs argue that the reason why this Court declared said handwritten statement as self-serving is because the one who prepared it, the deceased's wife, was also the one who would directly and personally benefit from such an award.[29] This cannot be said in the case at bar

[28] *Rollo* of G.R. No. 170071, pp. 11-12.

[29] A reading of Ereño, however, reveals that it was the victim's mother, not the spouse, who submitted a handwritten statement of her daughter's daily income and claimed for the award for lost income.

since the same bias and personal interest cannot be attributed to Jose Marcial's employer, the USAID. Unlike in *Ereño*, USAID here does not stand to be benefited by an award for Jose Marcial's loss of earning capacity. Clearly, the Certification issued by it is far from being self-serving. At any rate, the heirs contend that *Ereño* has already been superseded by *Pleyto v. Lomboy*[30] where this Court held that in awarding damages for loss of earning capacity, "mere testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." In addition, the heirs point out that the authenticity and accuracy of said Certification was neither questioned by G & S nor discredited by any controverting evidence. In fact, its admission by the trial court was not even assigned by G & S as an error in their appeal before the CA.

As to the reduction of moral damages, the heirs claim that since the CA agreed with the factual circumstances of the case as found by the trial court, there is therefore no reason for it to alter the award of damages arising from such factual circumstances. They aver that the CA may only modify the damages awarded by the trial court when it is excessive and scandalous as held in *Meneses v. Court of Appeals*.[31] Here, they claim that the award of moral damages in the amount of ₱300,000.00 cannot be considered as excessive and unreasonable but only commensurate to the sufferings caused by the incident to a wife who became a young widow at the age of 33 and to two minor children who lost a father. Moreover, the heirs aver that the CA should not have reduced the award of moral damages just to make said amount proportionate to the exemplary damages awarded. This is because there is no such rule which dictates that the amount of moral damages should be proportionate to that of the exemplary damages. The heirs pray that the assailed CA Decision and Resolution be reversed and set aside insofar

[30] 476 Phil. 373, 389 (2004).

[31] 316 Phil. 210, 225 (1995).

as they deleted the award for loss of earning capacity and reduced the award for moral damages.

For its part, G & S avers that the Certification issued by USAID is self-serving because the USAID officer who issued it has not been put on the witness stand to validate the contents thereof. Moreover, said Certification was not supported by competent evidence such as income tax returns and receipts. G & S likewise finds the reduction of the award of moral damages appropriate in view of the settled rule that moral damages are not meant to enrich the complainant at the expense of the defendant. Hence, it prays that the petition be dismissed for lack of merit.

Our Ruling

We shall first tackle the issues raised by G & S in its petition.

The first, third and fourth issues raised by G & S involve questions of fact

We have reviewed said issues and we find that the determination of the first, third and fourth issues raised entails re-examination of the evidence presented because they all involve questions of fact. In *Microsoft Corporation v. Maxicorp, Inc.*,[32] we held that:

> Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in *Paterno v. Paterno* is illustrative on this point:
>
> > Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proof on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party,

[32] 481 Phil. 550, 561-562 (2004).

> weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such a gravity as to justify refusing to give said proofs weight – all these are issues of fact. (Citations omitted)

In this case, the said three issues boil down to the determination of the following questions: *What is the proximate cause of the death of Jose Marcial*? *Is the testimony of prosecution witness Clave credible*? *Did G & S exercise the diligence of a good father of a family in the selection and supervision of its employees*? Suffice it to say that these are all questions of fact which require this Court to inquire into the probative value of the evidence presented before the trial court. As we have consistently held, "[t]his Court is not a trier of facts. It is not a function of this court to analyze or weigh evidence. When we give due course to such situations, it is solely by way of exception. Such exceptions apply only in the presence of extremely meritorious circumstances."[33] Here, we note that although G & S enumerated in its Consolidated Memorandum[34] the exceptions[35] to the rule that a petition for

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[33] *Id.* at 563.

[34] *Rollo* of G.R. No. 170125, pp. 273-298; *rollo* of G.R. No. 170071, pp. 168-195.

[35] The rule that a petition for review on *certiorari* should raise only questions of law admits of exceptions, among which are: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record, *Marquez v. Espejo*. G.R. No. 168387, August 25, 2010.

review on *certiorari* should only raise questions of law, it nevertheless did not point out under what exception its case falls. And, upon review of the records of the case, we are convinced that it does not fall under any. Hence, we cannot proceed to resolve said issues and disturb the findings and conclusions of the CA with respect thereto. As we declared in *Diokno v. Cacdac:*[36]

> It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.* [Citations omitted.]

There is a contract of carriage between G & S and Jose Marcial

What is clear from the records is that there existed a contract of carriage between G & S, as the owner and operator of the Avis taxicab, and Jose Marcial, as the passenger of said vehicle. As a common carrier, G & S "is bound to carry [Jose Marcial] safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances."[37] However, Jose Marcial was not able to reach his destination safely as he died during the course of the travel. "In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence."[38] Unfortunately, G & S miserably failed to overcome this presumption. Both the trial court and the CA found that

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[36] G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461.

[37] CIVIL CODE, Article 1755.

[38] *Diaz v. Court of Appeals*, G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

the accident which led to Jose Marcial's death was due to the reckless driving and gross negligence of G & S' driver, Padilla, thereby holding G & S liable to the heirs of Jose Marcial for breach of contract of carriage.

The acquittal of Padilla in the criminal case is immaterial to the instant case for breach of contract

This thus now leaves us with the remaining issue raised by G & S, that is, *whether the CA gravely erred in not taking note of the fact that Padilla has already been acquitted of the crime of reckless imprudence resulting in homicide,* a charge which arose from the same incident subject of this case.

Article 31 of the Civil Code provides, *viz:*

> When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

Thus, in *Cancio, Jr. v. Isip*,[39] we declared:

> In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on culpa criminal, **a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, culpa contractual**. (Emphasis supplied; Citations omitted.)

In this case, the action filed by the heirs is primarily for the recovery of damages arising from breach of contract of carriage allegedly committed by G & S. Clearly, it is an independent civil action arising from contract which is separate and distinct from the criminal action for reckless imprudence resulting in homicide filed by the heirs against Padilla by reason of the same incident. Hence, regardless of Padilla's acquittal or

[39] 440 Phil. 29, 40 (2002).

conviction in said criminal case, same has no bearing in the resolution of the present case. There was therefore no error on the part of the CA when it resolved this case without regard to the fact that Padilla has already been acquitted by the RTC in the criminal case. Moreover, while the CA quoted some portions of the MTC Decision in said criminal case, we however find that those quoted portions were only meant to belie G & S' claim that the proximate cause of the accident was the negligence of the driver of the delivery van which allegedly hit the Avis taxicab. Even without those quoted portions, the appellate court's ultimate finding that it was Padilla's negligence which was the proximate cause of the mishap would still be the same. This is because the CA has, in fact, already made this declaration in the earlier part of its assailed Decision. The fact that the MTC Decision from which the subject quoted portions were lifted has already been reversed by the RTC is therefore immaterial.

In view of the foregoing, we deny G & S' petition for lack of merit.

The denial by the CA of the heirs' claim for lost earnings is unwarranted

Going now to the petition filed by the heirs, we note at the outset that the issues of whether the CA erred in deleting the award for loss of earning capacity and in reducing the award for moral damages made by the trial court likewise raise questions of fact as they "involve an examination of the probative value of the evidence presented by the parties."[40] However, we find that the heirs' case falls under one of the exceptions because the findings of the CA conflict with the findings of the RTC.[41] Since the heirs properly raised the conflicting findings of the lower courts, it is proper for this Court to resolve such contradiction.[42]

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[40] *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 131 (1999).

[41] *Meneses v. Court of Appeals*, *supra* note 31.

[42] *Id*.

In *Ereño,* we denied the claim for loss of income because the handwritten estimate of the deceased's daily income as a self-employed vendor was not supported by competent evidence like income tax returns or receipts. This was in view of the rule that compensation for lost income is in the nature of damages and as such requires due proof of damages suffered. We reiterated this rule in *People v. Yrat*[43] where we likewise denied the same claim because the only evidence presented to show that the deceased was earning ₱50,000.00 a month was the testimony of the wife. There we stated that for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough. In *People v. Caraig,*[44] we declared that "documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages therefor may be awarded despite the absence of documentary evidence, provided that there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws."* However, we subsequently ruled in *Pleyto v. Lomboy*[45] that "failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity." Hence, we held as sufficient to establish a basis for an estimate of damages for loss of earning capacity the testimony of the victim's widow that her husband was earning a monthly income of ₱8,000.00. Later, in *Victory Liner, Inc. v. Gammad,*[46] after

[43] 419 Phil. 435, 443 (2001).

[44] 448 Phil. 78, 97 (2003).

[45] *Supra* note 30.

[46] 486 Phil. 574, 591 (2004).

finding that the deceased's earnings does not fall within the exceptions laid down in *Caraig*, we deleted the award for compensatory damages for loss of earning capacity as same was awarded by the lower courts only on the basis of the husband's testimony that the deceased was 39 years of age and a Section Chief of the Bureau of Internal Revenue with a salary of ₱83,088.00 per annum at the time of her death. This same rule was also applied in the 2008 case of *Licyayo v. People*.[47]

In all of the cases mentioned except for *Ereño*, the sole basis for the claim for loss of earning capacity were the testimonies of the claimants. This is not the case here. Just like in *Ereño* where the testimony of the mother of the deceased was accompanied by a handwritten estimate of her daughter's alleged income as a fish vendor, the testimony of Jose Marcial's wife that he was earning around ₱450,000.00 a year was corroborated by a Certification issued by the USAID. However in *Ereño*, we declared as self-serving the handwritten estimate submitted by the mother hence we denied the claim for such award. Based on said ruling, the CA in this case deleted the award for lost income after it found the USAID Certification to be self-serving and unreliable.

We disagree. The CA sweepingly concluded that the USAID Certification is self-serving and unreliable without elaborating on how it was able to arrive at such a conclusion. A research on USAID reveals that it is the "principal [United States] agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms."[48] It is an "independent federal government agency that receives over-all foreign policy guidance from the Secretary of the State [of the United States]."[49] Given this background, it is highly improbable that such an agency will issue a certification

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[47] G.R. No. 169425, March 4, 2008, 547 SCRA 598, 615-616.

[48] *USAID: About USAID,* Last updated on December 8, 2010,*http://www.usaid.gov/(visited February 4, 2011)*.

[49] *Id*.

containing unreliable information regarding an employee's income. Besides, there exists a presumption that official duty has been regularly performed.[50] Absent any showing to the contrary, it is presumed that Cruz, as Chief of Human Resources Division of USAID, has regularly performed his duty relative to the issuance of said certification and therefore, the correctness of its contents can be relied upon. This presumption remains especially so where the authenticity, due execution and correctness of said certification have not been put in issue either before the trial court or the CA. As to its being self-serving, our discussion on "self-serving evidence" in *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien*[51] is enlightening, *viz*:

> 'Self-serving evidence,' perhaps owing to its descriptive formulation, is a concept much misunderstood. Not infrequently, the term is employed as a weapon to devalue and discredit a party's testimony favorable to his cause. That, it seems, is the sense in which petitioners are using it now. This is a grave error. "Self-serving evidence" is not to be taken literally to mean any evidence that serves its proponent's interest. **The term, if used with any legal sense, refers only to acts or declarations made by a party in his own interest at some place and time *out of court*** x x x. (Citations omitted; emphasis supplied.)

Verily, the USAID certification cannot be said to be self-serving because it does not refer to an act or declaration made out of court by the heirs themselves as parties to this case.

Clearly, the CA erred in deleting the award for lost income on the ground that the USAID Certification supporting such claim is self-serving and unreliable. On the contrary, we find said certification sufficient basis for the court to make a fair and reasonable estimate of Jose Marcial's loss of earning capacity just like in *Tamayo v. Señora*[52] where we based the

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[50] RULES OF COURT, Rule 131, Sec. 3(m).

[51] G.R. No. 155508, September 11, 2006, 501 SCRA 405, 416.

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

victim's gross annual income on his pay slip from the Philippine National Police. Hence, we uphold the trial court's award for Jose Marcial's loss of earning capacity.

While the trial court applied the formula generally used by the courts to determine net earning capacity which is, to wit:

Net Earning Capacity = life expectancy* x (gross annual income - reasonable living expenses),[53]

*Life expectancy = 2/3 (80 – age of the deceased)

we, however, find incorrect the amount of ₱6,537, 244.96 arrived at. The award should be ₱6,611,634.59 as borne out by the following computation:

Net earning capacity = $2\left(\frac{80-36}{3}\right)$ x 450, 844.49[55]-50%[56]

= $\frac{88}{3}$ x 225,422.25

= 29.33 x 225,422.25

= **₱6,611,634.59**

The award of moral damages should be modified

While we deemed it proper to modify the amount of moral damages awarded by the trial court as discussed below, we nevertheless agree with the heirs that the CA should not have pegged said award in proportion to the award of exemplary damages. Moral and exemplary damages are based on different jural foundations.[57] They are different in nature and require

[53] *Id*.

[54] Jose Marcial's age at the time of his death.

[55] Jose Marcial's annual income per Certification from USAID.

[56] If there is no proof of living expenses, as in this case, the net income is estimated to be 50% of the gross annual income, *People v. Templo*, 400 Phil. 471, 494 (2000).

[57] *Victory Liner Inc. v. Gammad, supra* note 46 at 592-593.

separate determination.[58] The amount of one cannot be made to depend on the other.

In *Victory Liner Inc. v. Gammad*[59] we awarded ₱100,000.00 by way of moral damages to the husband and three children of the deceased, a 39-year old Section Chief of the Bureau of Internal Revenue, to compensate said heirs for the grief caused by her death. This is pursuant to the provisions of Articles 1764 and 2206(3) which provide:

> Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Articles 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.
>
> Art. 2206. x x x
>
> (3) The spouse, legitimate and illegitimate descendants and the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

Here, there is no question that the heirs are likewise entitled to moral damages pursuant to the above provisions, considering the mental anguish suffered by them by reason of Jose Marcial's untimely death, as can be deduced from the following testimony of his wife Ruby*:*

Atty. Suarez:

Q: How would you describe Jose Marcial Ochoa?

(Ruby) A: My husband was a very loving husband, faithful husband, a very [good] provider[.] I depended on him so much financially [and] emotionally[.] He was practically my life then.

Q: How is he as a father?

A: A very good father, he is very committed to Micaela [. H]e has always time for her[. H]e is a family man, so it's really a great [loss] to me and to Micaela.

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[58] *Id*.

[59] *Id*.

Q: What was your reaction upon learning of your husband's death?
A: Immediately after I learned of his death, I tried very hard to keep a clear mind for my little girl, she was 3 ½ and she could not grasp what death is, so I found [it] so hard to explain to her [at] that time what happened [e]specially [because] she just talked to her father from the airport telling her that he is coming home, *tapos hindi na pala*.

Q: How did it affect you?
A: It was a painful struggle everyday just to get up and move on when someone who [you] really really love and [who] is important to you … it is very hard to move on and [it is even] harder to move on [when] I found out that I was pregnant with my second child, *parang tinabunan ka [ng] lahat eh*[. I]t's [too] hard to find happiness, you're pregnant, when you know *wala naman talagang* father *yung bata* later on x x x

xxx xxx xxx

Q: How did this affect your family?
A: *Yung* effect *kay* Micaela, she [used] to be a gregarious child, *yung* happy *ganyan*, but *nung wala na yong* father *niya* that time, [during] graduation ng nursery that time *naging* very very [quiet] *siya*, so a lot of emotional support from my own family was given to her at the time *para* makacope-up *siya sa* loss *kasi* she is very close to the father.

Q: Financially, how did it affect you?
A: I had to make do of what was left by my husband, I couldn't also work so much at the time because I was….and *hirap eh*, I cannot find enthusiasm in what I do, *tapos* pregnant *pa ako*, and *hirap talaga*.

Q: How else did it affect you?
A: We had to move houses like we used to live in Quezon City at (the) time of his death, *tapos kinuha kami* ni Gorjie my brother-in-law sa compound *nila para hindi*… [to] support us emotionally (at that time) *kasi nga* I was pregnant and then I also decided to move (to make it

> easy for me) to adjust *yung* lifestyle *ng mga bata*, because I cannot cope [here] financially on my own[. *N]ahihirapan na ako dito* because the living expenses here are quite high compared *sa probinsiya* so I decided to move.
>
> Q: If you would assign that pain and suffering that you suffered as a result of the death of your husband, what will be the monetary consideration?
> A: I struggled with that *kasi*….I can honestly say no amount of money can ever repay the [loss] that my children suffered, future *nila yan eh*, and my son was not given a chance to get to know his father, so I cannot imagine *kung ano yung sinasabi n'yong* amount that will compensate the suffering that I have to go through and my children will go through, '*yon* and *mahirap bayaran*.[60]

Under this circumstance, we thus find as sufficient and "somehow proportional to and in approximation of the suffering inflicted"[61] an award of moral damages in an amount similar to that awarded in *Victory* which is ₱100,000.00.

From the above discussion, we, thus, partly grant the heirs' petition.

WHEREFORE, the petition for review on *certiorari* in G.R. No. 170071 is *PARTLY GRANTED* while the petition in G.R. No. 170125 is *DENIED*. The assailed Decision and Resolution dated June 29, 2005 and October 12, 2005 of the Court of Appeals in CA-G.R. CV No. 75602 are *AFFIRMED with the MODIFICATIONS* that G & S is ordered to pay the heirs of Jose Marcial K. Ochoa the sum of ₱6,611,634.59 for loss of earning capacity of the deceased and ₱100,000.00 as moral damages.

SO ORDERED.

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

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[60] TSN, May 12, 2000, pp. 18-21.

[61] *Go v. Cordero,* G.R. Nos. 164703 &164747, May 4, 2010.

SECOND DIVISION

[G.R. No. 171189. March 9, 2011]

LORES REALTY ENTERPRISES, INC. and LORENZO Y. SUMULONG III, *petitioners, vs.* **VIRGINIA E. PACIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; QUESTIONS OF FACTS ARE NOT PROPER SUBJECT OF A RULE 45 PETITION.— [I]t must be emphasized that the issues raised in this petition are questions of fact which are not proper subjects of an appeal by *certiorari.* Well-settled is the rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court. A disharmony between the factual findings of the LA and the NLRC, however, opens the door to a review by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the NLRC contradict those of the LA, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REQUISITES OF WILLFUL DISOBEDIENCE AS A VALID GROUND FOR DISMISSAL.— The offense of willful disobedience requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful, that is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

3. ID.; ID.; ID.; ID.; INITIAL RELUCTANCE TO PREPARE CHECKS, NOT CONSIDERED AS AN ACT OF DISRESPECT AND DEFIANCE.— Pacia's initial reluctance to prepare the checks, however, which was seemingly an act of disrespect and defiance, was for honest and well intentioned reasons. Protecting

LREI and Sumulong from liability under the Bouncing Checks Law was foremost in her mind. It was not wrongful or willful. Neither can it be considered an obstinate defiance of company authority. The Court takes into consideration that Pacia, despite her initial reluctance, eventually did prepare the checks on the same day she was tasked to do it. The Court also finds it difficult to subscribe to LREI and Sumulongs's contention that the reason for Pacia's initial reluctance to prepare the checks was a mere afterthought considering that "check no. 0000737527 under one of the check vouchers she reluctantly prepared, bounced when it was deposited." Pacia's apprehension was justified when the check was dishonored. This clearly affirms her assertion that she was just being cautious and circumspect for the company's sake. Thus, her actuation should not be construed as improper conduct.

APPEARANCES OF COUNSEL

Jarabata & Esguerra for petitioners.
Dennis P. Ancheta for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioners Lores Realty Enterprises, Inc. *(LREI)* and Lorenzo Y. Sumulong III *(Sumulong)* seeking to reverse and set aside the November 25, 2005 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 59975, which affirmed the Decision[2] of the National Labor Relations

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[1] *Rollo*, pp. 32-42. Penned by Associate Justice Monina Arevalo-Zenarosa concurred in by Associate Justice Andres B. Reyes (now Presiding Justice of the Court of Appeals) and Associate Justice Rosmari D. Carandang.

[2] *Id.* at 52-59. Penned by Presiding Commissioner Lourdes C. Javier with Commissioner Ireneo B. Bernardo and Commissioner Tito E. Genilo, concurring.

Commission *(NLRC)*, in NLRC NCR CA No. 019221-99 (RAB-IV-10-10492-98-RI).

The Facts

In 1982, respondent Virginia E. Pacia *(Pacia)* was hired by LREI. At the time of her dismissal, she was the assistant manager and officer-in-charge of LREI's Accounting Department under the Finance Administrative Division.

On October 28, 1998, LREI's acting general manager, petitioner Sumulong, through Ms. Julie Ontal, directed Pacia to prepare Check Voucher No. 16477 worth ₱150,000.00 as partial payment for LREI's outstanding obligation to the Bank of the Philippine Islands-Family Bank *(BPI-FB)*. Pacia did not immediately comply with the instruction. After two repeated directives, Pacia eventually prepared Check No. 0000737526 in the amount of ₱150,000.00. Later, Sumulong again directed Pacia to prepare Check Voucher No. 16478 in the amount of ₱175,000.00 to settle the balance of LREI's outstanding indebtedness with BPI-FB. Pacia once again was slow in obeying the order. Due to the insistence of Sumulong, however, Pacia eventually prepared Check No. 0000737527 in the amount of ₱175,000.00.

To explain her refusal to immediately follow the directive, Pacia reasoned out that the funds in LREI's account were not sufficient to cover the amounts to be indicated in the checks.

The next day, October 29, 1998, Sumulong issued a memorandum[3] ordering Pacia to explain in writing why she refused to follow a clear and lawful directive.

On the same day, Pacia replied in writing and explained that her initial refusal to prepare the checks was due to the unavailability of funds to cover the amounts and that she only wanted to protect LREI from liability under the Bouncing Checks Law.[4]

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[3] *Id.* at 74.

[4] Batas Pambansa Blg. 22.

On November 6, 1998, Pacia received a notice of termination[5] stating, among others, that she was being dismissed because of her willful disobedience and their loss of trust and confidence in her.

Pacia then filed a Complaint for Unfair Labor Practice due to Harassment, Constructive Dismissal, Moral and Exemplary Damages[6] against LREI and Sumulong. Subsequently, Pacia filed an Amended Complaint[7] to include the charges of illegal dismissal and non-payment of salaries.

On March 11, 1999, the Labor Arbiter *(LA)* rendered a decision[8] finding that the dismissal of Pacia was for a just and valid cause but ordering payment of what was due her. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered, as follows:
>
> 1. Ordering respondent corporation to pay complainant her:
>
> | | |
> |---|---|
> | a. unpaid salary | ₱12,550.00 |
> | b. proportionate 13th month pay | 20,916.66 |
> | Total | ₱33,466.66 |
>
> 2. Dismissing the complaint for constructive/illegal dismissal, unfair labor practice, and claim for payment of damages and attorney's fees for lack of merit.
>
> SO ORDERED.

On appeal, the NLRC in its March 31, 2000 Decision[9] reversed the LA's Decision and found LREI and Sumulong *guilty* of illegal

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[5] *Rollo*, p. 75.

[6] *Id.* at 49.

[7] *Id.* at 50.

[8] *Id.* at 60-65.

[9] *Id.* at 52-59.

dismissal. Pertinent portions of the NLRC decision including the decretal portion read:

A careful perusal of the records reveal[s] that complainant's actuation herein cannot in any manner be construed as an act of insubordination. Neither can we classify it as an example of wilful disobedience by the employee of the lawful order of her employer in connection with her work.

Records show that Check No. 0000737527 in the amount of ₱175,000.000 bounced as shown by the Return Checks Advice issued by the BPI family Bank on 3 November 1998.

xxx xxx xxx

The above evidence clearly reveal[s] that there were no sufficient funds to cover the check which the acting Manager directed complainant to prepare. However, complainant nevertheless prepared Check Nos. 737527 and 737526 on 28 October 1998 and also corrected Check Vouchers Nos. 16477 and 16478 on 28 October 1998.

We take note and give due merit to complainant's explanation in her reluctance to issue checks against insufficient funds which was to protect the company and its signatories from liabilities resulting from issuance of bounced checks. Complainant's initial refusal was good intentioned. Respondents also insist that complainant refused to follow a lawful directive of her superior officer to make some corrections on the vouchers. However, we cannot see how an order to prepare a check at the time when there was no sufficient fund to cover the same can be classified as a lawful directive of the acting Manager.

xxx xxx xxx

Considering that complainant was illegally dismissed, the law provides that her reinstatement with payment of full backwages would be in order. However, mindful of the animosity and strained relations between parties emanating from this litigation we declare that in lieu of reinstatement, separation pay may be given to complainant, at the rate of one (1) month pay for every year of service.

WHEREFORE, the Decision dated 11 March 1999 is MODIFIED. Respondent Lores Realty Ent., Inc. is held liable for illegally dismissing complainant and is directed to pay her, in addition to her unpaid salary and proportionate 13th month pay for the year 1998, the following:

1. Backwages		
(6 November 1998 to 15 March 2000)		
Basic Pay ₱25,100.00 x 16.3 mos.	=	₱409,130.00
13th Month Pay ₱409,130.00 / 12	=	34,094.17
		₱443,224.17
2. Separation Pay (one month for every year of service)		
(18 years)		
₱25,100 x 18	=	₱451,800.00
		₱895,024.17

The other findings are AFFIRMED.

SO ORDERED.[10]

Dissatisfied, LREI and Sumulong elevated the case to the CA by way of a petition for *certiorari* under Rule 65 of the Rules of Court asserting grave abuse of discretion on the part of the NLRC in reversing the LA's finding that Pacia was guilty of wilful disobedience of a lawful order of her employer in connection with her work.

On November 25, 2005, the CA found no merit in the petition and dismissed it.[11] Thus:

WHEREFORE, the petition is **DISMISSED**. Public respondent's Decision dated 31 March 2000 and the Resolution dated 15 May 2000 in NLRC-RAB IV-10-10492-98-RI, CA NO. 019221-99, are **AFFIRMED**.

SO ORDERED.

The CA held that LREI and Sumulong failed to establish with substantial evidence that the dismissal of Pacia was for a just cause. It found that Pacia's initial reluctance to obey the orders of her superiors was for a good reason - to shield

[10] Citations omitted.

[11] *Rollo,* pp. 32-42.

the company from liability in the event that the checks would be dishonored for insufficiency of funds.

Hence, the petition.

THE ISSUES

1. **WHETHER OR NOT THE INSTANT PETITION FOR REVIEW RAISES QUESTIONS OF LAW.**

2. **WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE ESTABLISHED FACTS JUSTIFY RESPONDENT'S TERMINATION FROM EMPLOYMENT.**

3. **WHETHER OR NOT THE AWARD OF BACKWAGES MUST BE COMPUTED FROM THE TIME OF DISMISSAL UNTIL FINALITY OF THE DECISION ESTABLISHING HER ILLEGAL DISMISSAL.**[12]

In essence, the main issue to be resolved is whether Pacia's dismissal was justified under the circumstances.

The Court finds no merit in the petition.

At the outset, it must be emphasized that the issues raised in this petition are questions of fact which are not proper subjects of an appeal by *certiorari*. Well-settled is the rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court.[13] A disharmony between the factual findings of the LA and the NLRC, however, opens the door to a review by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the NLRC contradict those of the LA, this Court, in the exercise

[12] *Id.* at 159.

[13] *Gabunas, Sr. v. Scanmar Maritime Services Inc.*, G.R. No. 188637, December 15, 2010.

of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.[14]

LREI and Sumulong argue that Pacia's refusal to obey the directives of Sumulong was a "manifest intent not to perform the function she was engaged to discharge."[15] They are of the position that Pacia's claim of "good intentions" in refusing to prepare the checks was a mere afterthought. They stress that the instruction to prepare a check despite the absence of sufficient funds to cover the same was, nevertheless, a lawful order.

On the other hand, Pacia counters that her initial reluctance to prepare the checks, which she knew were not sufficiently funded, cannot "be characterized as 'wrongful or perverse attitude.'"[16] In her view, the directive to prepare the checks at the time it was not sufficiently funded was not a lawful order contemplated in Article 282 of the Labor Code. It was an unlawful directive because it asked for the preparation of a check despite the fact that the account had no sufficient funds to cover the same. She further explained that she did not comply with the directive in order to protect Sumulong and LREI from any liability in the event that the checks would be dishonored upon presentment for payment for insufficiency of funds.

Article 282 of the Labor Code enumerates the just causes for which an employer may terminate the services of an employee, to wit:

> ARTICLE 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or **willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work**;

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[14] *Diamond Motors Corporation v. Court of Appeals,* 462 Phil. 452, 458 (2003).

[15] *Rollo,* p. 170.

[16] *Id.* at 145.

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing. [Emphasis supplied]

The offense of willful disobedience requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful, that is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[17]

Let it be noted at this point that the Court finds nothing unlawful in the directive of Sumulong to prepare checks in payment of LREI's obligations. The availability or unavailability of sufficient funds to cover the check is immaterial in the physical preparation of the checks.

Pacia's initial reluctance to prepare the checks, however, which was seemingly an act of disrespect and defiance, was for honest and well intentioned reasons. Protecting LREI and Sumulong from liability under the Bouncing Checks Law[18] was foremost in her mind. It was not wrongful or willful. Neither can it be considered an obstinate defiance of company authority. The Court takes into consideration that Pacia, despite her initial reluctance, eventually did prepare the checks on the same day she was tasked to do it.

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[17] *Asian Terminals, Inc. v. Marbella*, G.R. No. 149074, August 10, 2006, 498 SCRA 389, 395, citing *Bascon v. Court of Appeals*, 466 Phil. 719, 730 (2004), citing *Dimabayao v. National Labor Relations Commission*, 363 Phil. 279, 284 (1999).

[18] *Supra* note 4.

The Court also finds it difficult to subscribe to LREI and Sumulongs's contention that the reason for Pacia's initial reluctance to prepare the checks was a mere afterthought considering that "check no. 0000737527 under one of the check vouchers she reluctantly prepared, bounced when it was deposited."[19] Pacia's apprehension was justified when the check was dishonored. This clearly affirms her assertion that she was just being cautious and circumspect for the company's sake. Thus, her actuation should not be construed as improper conduct.

In finding for Pacia, the Court is guided by the time-honored principle that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The rule in controversies between a laborer and his master distinctly states that doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor.[20]

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Abad, JJ.,* concur.

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[19] *Rollo,* pp. 41 and 56.

[20] *E.G. & I Corporation v. Sato,* G.R. No. 182070, February 16, 2011.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

SECOND DIVISION

[G.R. No. 174034. March 9, 2011]

HEIRS OF MARILOU K. SANTIAGO, represented by DENNIS K. SANTIAGO, LOURDES K. SANTIAGO and EUFEMIA K. SANTIAGO, *petitioners, vs.* **ALFONSO AGUILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; DISCRETION TO GRANT OR DENY A MOTION FOR EXTENSION SHOULD BE EXERCISED WISELY AND PRUDENTLY.— Although it is within the CA's discretion to grant or not to grant a motion for extension, such discretion should be exercised wisely and prudently. The rules regulating the filing of motions for extension of time to file certain pleadings are intended to promote the speedy disposition of cases in the interest of justice, not throw out such pleadings on pure technicality.

2. ID.; ID.; ID.; ID.; THE PARTIES HAVE THE RIGHT TO EXPECT REASONABLENESS FROM THE COURT IN RESOLVING THEIR MOTION FOR EXTENSION; CASE AT BAR.— [O]n March 15, 2006 petitioner heirs filed their motion for extension of 30 days (counted from March 21 when the original period was to run out) within which to file their petition. If the CA would want to deny that extension or shorten it to only 15 days up to April 5, 2006, it had technically at least 20 days (from March 15 to April 4) within which to so warn petitioners that they might have a chance to finish up and file their petition. Yet, it did not. While the parties have no right to expect the CA to grant their motion for extension, they have a right to expect reasonableness from it. Technically the CA waited 44 days up to April 28, 2006 before acting on the motion that petitioners filed on March 15, 2006. The CA knew, when it reduced to only 15 days the extension asked of it, that such reduced extension had already come to pass 23 days earlier on April 5, 2006. Surely, the CA did not expect petitioners to still be able to cope with the reduced extension. Since the rules allow the CA to grant an extra 15-day extension "for the most compelling reason," the CA ought to have given petitioners

reasonable notice that it did not regard its ground sufficiently compelling. The CA gave petitioner heirs absolutely no chance to file a timely petition. What is more, when the CA acted on the motion for extension on April 28, 2006 the petition was already at hand, having been filed earlier on April 20. The CA cannot pretend that it had been waiting with bated breath to have a look at the petition and that, consequently, it could only grant a shorter extension for its filing. Indeed, the CA did not dismiss the petition outright when it did not get the same by April 5, its desired deadline. The CA got the petition on April 20, 2006 but waited eight days more or until April 28, 2006 before looking at it. So what was the point in its denying the longer extension when it was not ready to act promptly on the petition?

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the dismissal of a petition for review after it was filed within the 30-day extension that the petitioners originally asked since the appellate court later granted them only a 15-day extension.

The Facts and the Case

Petitioner heirs of Marilou K. Santiago owned a 25,309-square meter coconut land that respondent Alfonso Aguila (Aguila) tenanted. For allegedly cutting down five coconut trees in violation of the Coconut Preservation Act of 1995 and depriving the heirs of their share in the harvest, the latter filed an ejectment suit against him before the Provincial Agrarian Reform Adjudicator (PARAD). Aguila resisted the action.

On May 31, 2000 the PARAD ruled that Aguila deliberately failed to pay his rents. Thus, it terminated the tenancy relationship

and ordered him to vacate the property and pay petitioners their past shares in the harvest. Aguila appealed on June 16, 2005 to the Department of Agrarian Reform Adjudication Board (DARAB), which set aside the PARAD's decision and ordered the execution of a new leasehold contract between the parties. On March 3, 2006 the DARAB denied petitioner heirs' motion for reconsideration.

Since petitioner heirs received a copy of the DARAB resolution denying their motion for reconsideration on March 6, 2006, they had until March 21 within which to file a petition for review with the Court of Appeals (CA). On March 15, 2006 they filed with the CA a motion for extension of 30 days or until April 20, 2006 within which to file their petition. The heirs filed their petition for review on April 20, 2006, the last day of the extension they sought.

Eight days later or on April 28, 2006 the CA granted petitioner heirs an extension of only 15 days or up to April 5, 2006 within which to file their petition.[1] The consequence of this was that the petition they earlier filed went beyond the allowed extension. Further, the CA also found the special power of attorney (SPA) attached to the petition defective in that it empowered petitioner Eufemia K. Santiago (Eufemia) as attorney-in-fact of a Dennis Matubis, who was not a petitioner, when Eufemia was supposed to stand as attorney-in-fact for petitioner Dennis K. Santiago. For these reasons, the CA dismissed the petition. Petitioner heirs moved for reconsideration but the CA denied their motion on August 7, 2006, prompting them to come to this Court on a petition for review.

The Issue Presented

The issue in this case is whether or not the CA erred in dismissing petitioner heirs' petition for review under Rule 43 for having been filed out of time.

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[1] RULES OF COURT, Rule 43, Sec. 4. *Period of appeal.*— x x x Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

The Court's Rulings

1. Regarding the defective SPA, petitioner heirs explained that it was an honest mistake because Dennis Matubis (who appeared not to be a party in the case) and petitioner Dennis K. Santiago are one and the same person. Since Aguila has offered no proof to counter the truth of this assertion and since the CA did not require the heirs to substantiate it, the Court may presume such assertion to be true. Besides, the CA cannot altogether throw out the entire petition for this reason since all the petitioners have a common interest in the success of the suit and since the petition was validly verified with respect to the rest of them.

2. Although it is within the CA's discretion to grant or not to grant a motion for extension, such discretion should be exercised wisely and prudently. The rules regulating the filing of motions for extension of time to file certain pleadings are intended to promote the speedy disposition of cases in the interest of justice, not throw out such pleadings on pure technicality.

Here, on March 15, 2006 petitioner heirs filed their motion for extension of 30 days (counted from March 21 when the original period was to run out) within which to file their petition. If the CA would want to deny that extension or shorten it to only 15 days up to April 5, 2006, it had technically at least 20 days (from March 15 to April 4) within which to so warn petitioners that they might have a chance to finish up and file their petition. Yet, it did not. While the parties have no right to expect the CA to grant their motion for extension, they have a right to expect reasonableness from it.

Technically the CA waited 44 days up to April 28, 2006 before acting on the motion that petitioners filed on March 15, 2006. The CA knew, when it reduced to only 15 days the extension asked of it, that such reduced extension had already come to pass 23 days earlier on April 5, 2006. Surely, the CA did not expect petitioners to still be able to cope with the reduced extension. Since the rules allow the CA to grant an extra 15-day extension "for the most compelling reason," the CA ought to have

given petitioners reasonable notice that it did not regard its ground sufficiently compelling. The CA gave petitioner heirs absolutely no chance to file a timely petition.

What is more, when the CA acted on the motion for extension on April 28, 2006 the petition was already at hand, having been filed earlier on April 20. The CA cannot pretend that it had been waiting with bated breath to have a look at the petition and that, consequently, it could only grant a shorter extension for its filing. Indeed, the CA did not dismiss the petition outright when it did not get the same by April 5, its desired deadline. The CA got the petition on April 20, 2006 but waited eight days more or until April 28, 2006 before looking at it. So what was the point in its denying the longer extension when it was not ready to act promptly on the petition?

Procedural rules are intended to facilitate the administration of justice, not frustrate it. It is always better that a case is decided on the merits rather than disposed of because of procedural infirmities. Considering that the case involves tenancy relations and possession of agricultural landholding and that PARAD and DARAB have made conflicting findings, a review of the case by the CA was clearly in order.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the Court of Appeals resolutions in CA-G.R. SP 93935 dated April 28, 2006 and August 7, 2006 and *DIRECTS* it to give due course to the petition of petitioner Heirs of Marilou K. Santiago and adjudicate it on its merits.

SO ORDERED.

Carpio, Velasco, Jr.,[*] *Peralta,* and *Mendoza, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 933 dated January 24, 2011.

FIRST DIVISION

[G.R. No. 177467. March 9, 2011]

PFIZER, INC. and/or REY GERARDO BACARRO, and/or FERDINAND CORTES, and/or ALFRED MAGALLON, and/or ARISTOTLE ARCE, *petitioners, vs.* **GERALDINE VELASCO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; REINSTATEMENT, CONCEPT OF.— It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated. The person reinstated assumes the position he had occupied prior to his dismissal. Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.

2. ID.; ID.; MANAGEMENT PREROGATIVE TO TRANSFER EMPLOYEE; LIMITATIONS.— The Court is cognizant of the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. Likewise, the management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. There must be no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.

3. ID.; ID.; DISMISSAL OF EMPLOYEE; A TRANSFER OF WORK ASSIGNMENT WITHOUT JUSTIFICATION CANNOT BE DEEMED FAITHFUL COMPLIANCE WITH THE REINSTATEMENT ORDER.— The June 27, 2005 return-to-work directive implying that respondent was being relocated

to PFIZER's Makati main office would necessarily cause hardship to respondent, a married woman with a family to support residing in Baguio City. However, PFIZER, as the employer, offered no reason or justification for the relocation such as the filling up of respondent's former position and the unavailability of substantially equivalent position in Baguio City. A transfer of work assignment without any justification therefor, even if respondent would be presumably doing the same job with the same pay, cannot be deemed faithful compliance with the reinstatement order. In other words, in this instance, there was no real, *bona fide* reinstatement to speak of prior to the reversal by the Court of Appeals of the finding of illegal dismissal.

4. ID.; ID.; ID.; EMPLOYER'S OPTION TO EFFECT ACTUAL OR PAYROLL REINSTATEMENT MUST BE EXERCISED IN GOOD FAITH; CASE AT BAR.— In view of PFIZER's failure to effect respondent's actual or payroll reinstatement, it is indubitable that the *Roquero* ruling is applicable to the case at bar. The circumstance that respondent opted for separation pay in lieu of reinstatement as manifested in her counsel's Letter dated July 18, 2005 is of no moment. We do not see respondent's letter as taking away the option from management to effect actual or payroll reinstatement but, rather under the factual milieu of this case, where the employer failed to categorically reinstate the employee to her former or equivalent position under the same terms, respondent was not obliged to comply with PFIZER's ambivalent return-to-work order. To uphold PFIZER's view that it was respondent who unjustifiably refused to work when PFIZER did not reinstate her to her former position, and worse, required her to report for work under conditions prejudicial to her, is to open the doors to potential employer abuse. Foreseeably, an employer may circumvent the immediately enforceable reinstatement order of the Labor Arbiter by crafting return-to-work directives that are ambiguous or meant to be rejected by the employee and then disclaim liability for backwages due to non-reinstatement by capitalizing on the employee's purported refusal to work. In sum, the option of the employer to effect actual or payroll reinstatement must be exercised in good faith.

5. ID.; ID.; ID.; UNJUST EFFECTS OF "REFUND DOCTRINE," WHERE A DISMISSED EMPLOYEE IS REQUIRED TO

REFUND SALARIES RECEIVED IN CASE OF AN UNFAVORABLE DECISION.— In the recent milestone case of *Garcia v. Philippine Airlines, Inc.*, the Court wrote *finis* to the stray posture in *Genuino* requiring the dismissed employee placed on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal. x x x [I]n *Garcia*, the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in *Genuino*: x x x Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency. Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. x x x Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement." In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal. x x x **The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.**

6. ID.; ID.; ID.; ID.; ORDER OF REINSTATEMENT IS IMMEDIATELY SELF-EXECUTORY; DISMISSED EMPLOYEE IS ENTITLED TO BACKWAGES NOTWITHSTANDING THE COURT OF APPEALS' FINDING THAT THE DISMISSAL WAS LEGAL AND FOR JUST CAUSE.— [T]he Court reiterates the principle that reinstatement pending appeal necessitates that it must be immediately self-executory without need for a writ of execution during the pendency of the appeal, if the law is to serve its noble purpose, and any attempt on the part of the employer to evade or delay its execution should not be allowed. Furthermore, we likewise restate our ruling that an order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received. It cannot be denied that, under our statutory and jurisprudential framework, respondent is entitled to payment of her wages for the period after December 5, 2003 until the Court of Appeals Decision dated November 23, 2005, notwithstanding the finding therein that her dismissal was legal and for just cause. Thus, the payment of such wages cannot be deemed as unjust enrichment on respondent's part.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Ronald Rex S. Recidoro for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure to annul and set aside the Resolution[1] dated October 23, 2006 as well as the Resolution[2] dated April 10, 2007 both issued by the Court of Appeals in CA-G.R. SP No. 88987 entitled, "*Pfizer, Inc. and/or Rey Gerardo Bacarro,*

[1] *Rollo,* pp. 42-44.
[2] *Id.* at 65-66.

and/or Ferdinand Cortes, and/or Alfred Magallon, and/or Aristotle Arce v. National Labor Relations Commission Second Division and Geraldine Velasco." The October 23, 2006 Resolution modified upon respondent's motion for reconsideration the Decision[3] dated November 23, 2005 of the Court of Appeals by requiring PFIZER, Inc. (PFIZER) to pay respondent's wages from the date of the Labor Arbiter's Decision[4] dated December 5, 2003 until it was eventually reversed and set aside by the Court of Appeals. The April 10, 2007 Resolution, on the other hand, denied PFIZER's motion for partial reconsideration.

The facts of this case, as stated in the Court of Appeals Decision dated November 23, 2005, are as follows:

> Private respondent Geraldine L. Velasco was employed with petitioner PFIZER, INC. as Professional Health Care Representative since 1 August 1992. Sometime in April 2003, Velasco had a medical work up for her high-risk pregnancy and was subsequently advised bed rest which resulted in her extending her leave of absence. Velasco filed her sick leave for the period from 26 March to 18 June 2003, her vacation leave from 19 June to 20 June 2003, and leave without pay from 23 June to 14 July 2003.
>
> On 26 June 2003, while Velasco was still on leave, PFIZER through its Area Sales Manager, herein petitioner Ferdinand Cortez, personally served Velasco a "Show-cause Notice" dated 25 June 2003. Aside from mentioning about an investigation on her possible violations of company work rules regarding "unauthorized deals and/or discounts in money or samples and unauthorized withdrawal and/or pull-out of stocks" and instructing her to submit her explanation on the matter within 48 hours from receipt of the same, the notice also advised her that she was being placed under "preventive suspension" for 30 days or from that day to 6 August 2003 and consequently ordered to surrender the following "accountabilities"; 1) Company Car, 2) Samples and Promats, 3) CRF/ER/VEHICLE/SOA/POSAP/MPOA and other related Company Forms, 4) Cash Card, 5) Caltex Card, and 6)

[3] *Id.* at 307-323; penned by Associate Justice Rosmari D. Carandang with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa, concurring.

[4] *Id.* at 187-201.

MPOA/TPOA Revolving Travel Fund. The following day, petitioner Cortez together with one Efren Dariano retrieved the above-mentioned "accountabilities" from Velasco's residence.

In response, Velasco sent a letter addressed to Cortez dated 28 June 2003 denying the charges. In her letter, Velasco claimed that the transaction with Mercury Drug, Magsaysay Branch covered by her check (no. 1072) in the amount of ₱23,980.00 was merely to accommodate two undisclosed patients of a certain Dr. Renato Manalo. In support thereto, Velasco attached the Doctor's letter and the affidavit of the latter's secretary.

On 12 July 2003, Velasco received a "Second Show-cause Notice" informing her of additional developments in their investigation. According to the notice, a certain Carlito Jomen executed an affidavit pointing to Velasco as the one who transacted with a printing shop to print PFIZER discount coupons. Jomen also presented text messages originating from Velasco's company issued cellphone referring to the printing of the said coupons. Again, Velasco was given 48 hours to submit her written explanation on the matter. On 16 July 2003, Velasco sent a letter to PFIZER via Aboitiz courier service asking for additional time to answer the second Show-cause Notice.

That same day, Velasco filed a complaint for illegal suspension with money claims before the Regional Arbitration Branch. The following day, 17 July 2003, PFIZER sent her a letter inviting her to a disciplinary hearing to be held on 22 July 2003. Velasco received it under protest and informed PFIZER via the receiving copy of the said letter that she had lodged a complaint against the latter and that the issues that may be raised in the July 22 hearing "can be tackled during the hearing of her case" or at the preliminary conference set for 5 and 8 of August 2003. She likewise opted to withhold answering the Second Show-cause Notice. On 25 July 2003, Velasco received a "Third Show-cause Notice," together with copies of the affidavits of two Branch Managers of Mercury Drug, asking her for her comment within 48 hours. Finally, on 29 July 2003, PFIZER informed Velasco of its "Management Decision" terminating her employment.

On 5 December 2003, the Labor Arbiter rendered its decision declaring the dismissal of Velasco illegal, ordering her reinstatement with backwages and further awarding moral and exemplary damages

with attorney's fees. On appeal, the NLRC affirmed the same but deleted the award of moral and exemplary damages.[5]

The dispositive portion of the Labor Arbiter's Decision dated December 5, 2003 is as follows:

WHEREFORE, judgment is hereby rendered declaring that complainant was illegally dismissed. Respondents are ordered to reinstate the complainant to her former position without loss of seniority rights and with full backwages and to pay the complainant the following:

1. Full backwages (basic salary, company benefits, all allowances as of December 5, 2003 in the amount of ₱572,780.00);
2. 13th Month Pay, Midyear, Christmas and performance bonuses in the amount of ₱105,300.00;
3. Moral damages of ₱50,000.00;
4. Exemplary damages in the amount of ₱30,000.00;
5. Attorney's Fees of 10% of the award excluding damages in the amount of ₱67,808.00.

The total award is in the amount of ₱758,080.00.[6]

PFIZER appealed to the National Labor Relations Commission (NLRC) but its appeal was denied *via* the NLRC Decision[7] dated October 20, 2004, which affirmed the Labor Arbiter's ruling but deleted the award for damages, the dispositive portion of which is as follows:

WHEREFORE, premises considered, the instant appeal and the motion praying for the deposit in escrow of complainant's payroll reinstatement are hereby denied and the Decision of the Labor Arbiter is affirmed with the modification that the award of moral and exemplary

[5] *Id.* at 307-310.

[6] *Id.* at 201.

[7] *Id.* at 234-248; penned by NLRC Commissioner Ernesto C. Verceles with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.

damages is deleted and attorney's fees shall be based on the award of 13th month pay pursuant to Article III of the Labor Code.[8]

PFIZER moved for reconsideration but its motion was denied for lack of merit in a NLRC Resolution[9] dated December 14, 2004.

Undaunted, PFIZER filed with the Court of Appeals a special civil action for the issuance of a writ of *certiorari* under Rule 65 of the Rules of Court to annul and set aside the aforementioned NLRC issuances. In a Decision dated November 23, 2005, the Court of Appeals upheld the validity of respondent's dismissal from employment, the dispositive portion of which reads as follows:

> WHEREFORE, the instant petition is GRANTED. The assailed Decision of the NLRC dated 20 October 2004 as well as its Resolution of 14 December 2004 is hereby ANNULED and SET ASIDE. Having found the termination of Geraldine L. Velasco's employment in accordance with the two notice rule pursuant to the due process requirement and with just cause, her complaint for illegal dismissal is hereby DISMISSED.[10]

Respondent filed a Motion for Reconsideration which the Court of Appeals resolved in the assailed Resolution dated October 23, 2006 wherein it affirmed the validity of respondent's dismissal from employment but modified its earlier ruling by directing PFIZER to pay respondent her wages from the date of the Labor Arbiter's Decision dated December 5, 2003 up to the Court of Appeals Decision dated November 23, 2005, to wit:

> IN VIEW WHEREOF, the dismissal of private respondent Geraldine Velasco is AFFIRMED, but petitioner PFIZER, INC. is hereby ordered to pay her the wages to which she is entitled to from the time the

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[8] *Id.* at 247.

[9] *Id.* at 265-266.

[10] *Id.* at 322-323.

reinstatement order was issued until November 23, 2005, the date of promulgation of Our Decision.[11]

Respondent filed with the Court a petition for review under Rule 45 of the Rules of Civil Procedure, which assailed the Court of Appeals Decision dated November 23, 2005 and was docketed as G.R. No. 175122. Respondent's petition, questioning the Court of Appeals' dismissal of her complaint, was denied by this Court's Second Division in a minute Resolution[12] dated December 5, 2007, the pertinent portion of which states:

> Considering the allegations, issues and arguments adduced in the petition for review on *certiorari*, the Court resolves to DENY the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

On the other hand, PFIZER filed the instant petition assailing the aforementioned Court of Appeals Resolutions and offering for our resolution a single legal issue, to wit:

> Whether or not the Court of Appeals committed a serious but reversible error when it ordered Pfizer to pay Velasco wages from the date of the Labor Arbiter's decision ordering her reinstatement until November 23, 2005, when the Court of Appeals rendered its decision declaring Velasco's dismissal valid.[13]

The petition is without merit.

PFIZER argues that, contrary to the Court of Appeals' pronouncement in its assailed Decision dated November 23, 2005, the ruling in *Roquero v. Philippine Airlines, Inc.*[14] is not applicable in the case at bar, particularly with regard to the nature and consequences of an order of reinstatement, to wit:

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[11] *Id.* at 43.

[12] *Rollo* (G.R. No. 175122), p. 238.

[13] *Id.* at 403.

[14] 449 Phil. 437 (2003).

The order of reinstatement is immediately executory. **The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him** despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In the case at bar, no restraining order was granted. **Thus, it was mandatory on PAL to actually reinstate Roquero or reinstate him in the payroll. Having failed to do so, PAL must pay Roquero the salary he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of the Court.**[15] (Emphases supplied.)

It is PFIZER's contention in its Memorandum[16] that "there was no unjustified refusal on [its part] to reinstate [respondent] Velasco during the pendency of the appeal,"[17] thus, the pronouncement in *Roquero* cannot be made to govern this case. During the pendency of the case with the Court of Appeals and prior to its November 23, 2005 Decision, PFIZER claimed that it had already required respondent to report for work on July 1, 2005. However, according to PFIZER, it was respondent who refused to return to work when she wrote PFIZER, through counsel, that she was opting to receive her separation pay and to avail of PFIZER's early retirement program.

In PFIZER's view, it should no longer be required to pay wages considering that (1) it had already previously paid an enormous sum to respondent under the writ of execution issued by the Labor Arbiter; (2) it was allegedly ready to reinstate respondent as of July 1, 2005 but it was respondent who unjustifiably refused to report for work; (3) it would purportedly be tantamount to allowing respondent to choose "payroll reinstatement" when by law it was the employer which had the right to choose between actual and payroll reinstatement; (4) respondent should be deemed to have "resigned" and therefore not entitled to additional backwages or separation pay; and (5)

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[15] *Id.* at 446.

[16] *Rollo*, pp. 394-415.

[17] *Id.* at 405.

this Court should not mechanically apply *Roquero* but rather should follow the doctrine in *Genuino v. National Labor Relations Commission*[18] which was supposedly "more in accord with the dictates of fairness and justice."[19]

We do not agree.

At the outset, we note that PFIZER's previous payment to respondent of the amount of ₱1,963,855.00 (representing her wages from December 5, 2003, or the date of the Labor Arbiter decision, until May 5, 2005) that was successfully garnished under the Labor Arbiter's Writ of Execution dated May 26, 2005 cannot be considered in its favor. Not only was this sum legally due to respondent under prevailing jurisprudence but also this circumstance highlighted PFIZER's unreasonable delay in complying with the reinstatement order of the Labor Arbiter. A perusal of the records, including PFIZER's own submissions, confirmed that it only required respondent to report for work on July 1, 2005, as shown by its Letter[20] dated June 27, 2005, which is almost two years from the time the order of reinstatement was handed down in the Labor Arbiter's Decision dated December 5, 2003.

As far back as 1997 in the seminal case of *Pioneer Texturizing Corporation v. National Labor Relations Commission*,[21] the Court held that an award or order of reinstatement is immediately self-executory without the need for the issuance of a writ of execution in accordance with the third paragraph of Article 223[22] of the Labor Code. In that case, we discussed in length the rationale for that doctrine, to wit:

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[18] G.R. Nos. 142732-33 and 142753-54, December 4, 2007, 539 SCRA 342.

[19] *Rollo*, p. 411.

[20] *Id.* at 304.

[21] 345 Phil. 1057 (1997).

[22] In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall

The provision of Article 223 is clear that an award [by the Labor Arbiter] for reinstatement *shall be immediately executory even pending appeal and the posting of a bond by the employer shall not stay the execution for reinstatement*. The legislative intent is quite obvious, *i.e.*, to make an award of reinstatement immediately enforceable, even pending appeal. **To require the application for and issuance of a writ of execution** as prerequisites for the execution of a reinstatement award **would certainly betray and run counter to the very object and intent of Article 223**, *i.e.*, the immediate execution of a reinstatement order. The reason is simple. An application for a writ of execution and its issuance could be delayed for numerous reasons. A mere continuance or postponement of a scheduled hearing, for instance, or an inaction on the part of the Labor Arbiter or the NLRC could easily delay the issuance of the writ thereby setting at naught the strict mandate and noble purpose envisioned by Article 223. In other words, if the requirements of Article 224 [including the issuance of a writ of execution] were to govern, as we so declared in *Maranaw*, then the executory nature of a reinstatement order or award contemplated by Article 223 will be unduly circumscribed and rendered ineffectual. In enacting the law, the legislature is presumed to have ordained a valid and sensible law, one which operates no further than may be necessary to achieve its specific purpose. Statutes, as a rule, are to be construed in the light of the purpose to be achieved and the evil sought to be prevented. x x x In introducing a new rule on the reinstatement aspect of a labor decision under Republic Act No. 6715, Congress should not be considered to be indulging in mere semantic exercise. x x x[23] (Italics in the original; emphasis and underscoring supplied.)

In the case at bar, PFIZER did not immediately admit respondent back to work which, according to the law, should have been done as soon as an order or award of reinstatement is handed down by the Labor Arbiter without need for the issuance of a writ of execution. Thus, respondent was entitled to the

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either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

[23] *Pioneer Texturizing Corporation v. National Labor Relations Commission, supra* note 21 at 1075-1076.

wages paid to her under the aforementioned writ of execution. At most, PFIZER's payment of the same can only be deemed partial compliance/execution of the Court of Appeals Resolution dated October 23, 2006 and would not bar respondent from being paid her wages from May 6, 2005 to November 23, 2005.

It would also seem that PFIZER waited for the resolution of its appeal to the NLRC and, only after it was ordered by the Labor Arbiter to pay the amount of ₱1,963,855.00 representing respondent's full backwages from December 5, 2003 up to May 5, 2005, did PFIZER decide to require respondent to report back to work *via* the Letter dated June 27, 2005.

PFIZER makes much of respondent's non-compliance with its return- to-work directive by downplaying the reasons forwarded by respondent as less than sufficient to justify her purported refusal to be reinstated. In PFIZER's view, the return-to-work order it sent to respondent was adequate to satisfy the jurisprudential requisites concerning the reinstatement of an illegally dismissed employee.

It would be useful to reproduce here the text of PFIZER's Letter dated June 27, 2005:

Dear Ms. Velasco:

Please be informed that, pursuant to the resolutions dated 20 October 2004 and 14 December 2004 rendered by the National Labor Relations Commission and the order dated 24 May 2005 issued by Executive Labor Arbiter Vito C. Bose, you are required to report for work on 1 July 2005, at 9:00 a.m., at Pfizer's main office at the 23rd Floor, Ayala Life–FGU Center, 6811 Ayala Avenue, Makati City, Metro Manila.

Please report to the undersigned for a briefing on your work assignments and other responsibilities, including the appropriate relocation benefits.

For your information and compliance.

Very truly yours,

(Sgd.)
Ma. Eden Grace Sagisi
Labor and Employee Relations Manager[24]

[24] *Rollo*, p. 304.

To reiterate, under Article 223 of the Labor Code, an employee entitled to reinstatement "shall either be admitted back to work **under the same terms and conditions** prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll."

It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated. The person reinstated assumes the position he had occupied prior to his dismissal. Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.[25]

Applying the foregoing principle to the case before us, it cannot be said that with PFIZER's June 27, 2005 Letter, in belated fulfillment of the Labor Arbiter's reinstatement order, it had shown a clear intent to reinstate respondent to her former position under the same terms and conditions nor to a substantially equivalent position. To begin with, the return-to-work order PFIZER sent respondent is silent with regard to the position or the exact nature of employment that it wanted respondent to take up as of July 1, 2005. Even if we assume that the job awaiting respondent in the new location is of the same designation and pay category as what she had before, it is plain from the text of PFIZER's June 27, 2005 letter that such reinstatement was not "under the same terms and conditions" as her previous employment, considering that PFIZER ordered respondent to report to its main office in Makati City while knowing fully well that respondent's previous job had her stationed in Baguio City (respondent's place of residence) and it was still necessary for respondent to be briefed regarding her work assignments and responsibilities, **including her relocation benefits.**

The Court is cognizant of the prerogative of management to transfer an employee from one office to another within the

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[25] *Asian Terminals, Inc. v. Villanueva*, G.R. No. 143219, November 28, 2006, 508 SCRA 346, 352.

business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[26] Likewise, the management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. There must be no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee.[27]

The June 27, 2005 return-to-work directive implying that respondent was being relocated to PFIZER's Makati main office would necessarily cause hardship to respondent, a married woman with a family to support residing in Baguio City. However, PFIZER, as the employer, offered no reason or justification for the relocation such as the filling up of respondent's former position and the unavailability of substantially equivalent position in Baguio City. A transfer of work assignment without any justification therefor, even if respondent would be presumably doing the same job with the same pay, cannot be deemed faithful compliance with the reinstatement order. In other words, in this instance, there was no real, *bona fide* reinstatement to speak of prior to the reversal by the Court of Appeals of the finding of illegal dismissal.

In view of PFIZER's failure to effect respondent's actual or payroll reinstatement, it is indubitable that the *Roquero* ruling is applicable to the case at bar. The circumstance that respondent opted for separation pay in lieu of reinstatement as manifested in her counsel's Letter[28] dated July 18, 2005 is of no moment. We do not see respondent's letter as taking away the option from management to effect actual or payroll reinstatement but, rather

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[26] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

[27] *Urbanes, Jr. v. Court of Appeals*, G.R. No. 138379, November 25, 2004, 444 SCRA 84, 95.

[28] *Rollo*, pp. 305-306.

under the factual milieu of this case, where the employer failed to categorically reinstate the employee to her former or equivalent position under the same terms, respondent was not obliged to comply with PFIZER's ambivalent return-to-work order. To uphold PFIZER's view that it was respondent who unjustifiably refused to work when PFIZER did not reinstate her to her former position, and worse, required her to report for work under conditions prejudicial to her, is to open the doors to potential employer abuse. Foreseeably, an employer may circumvent the immediately enforceable reinstatement order of the Labor Arbiter by crafting return-to-work directives that are ambiguous or meant to be rejected by the employee and then disclaim liability for backwages due to non-reinstatement by capitalizing on the employee's purported refusal to work. In sum, the option of the employer to effect actual or payroll reinstatement must be exercised in good faith.

Moreover, while the Court has upheld the employer's right to choose between actually reinstating an employee or merely reinstating him in the payroll, we have also in the past recognized that reinstatement might no longer be possible under certain circumstances. In *F.F. Marine Corporation v. National Labor Relations Commission*,[29] we had the occasion to state:

> It is well-settled that when a person is illegally dismissed, he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages. In the event, however, that reinstatement is no longer feasible, **or if the employee decides not be reinstated**, the employer shall pay him separation pay in lieu of reinstatement. Such a rule is likewise observed in the case of a strained employer-employee relationship or when the work or position formerly held by the dismissed employee no longer exists. In sum, an illegally dismissed employee is entitled to: (1) either reinstatement if viable or separation pay if reinstatement is no longer viable, and (2) backwages.[30] (Emphasis supplied.)

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[29] 495 Phil. 140 (2005).

[30] *Id.* at 159.

Similarly, we have previously held that an employee's demand for separation pay may be indicative of strained relations that may justify payment of separation pay in lieu of reinstatement.[31] This is not to say, however, that respondent is entitled to separation pay in addition to backwages. We stress here that a finding of strained relations must nonetheless still be supported by substantial evidence.[32]

In the case at bar, respondent's decision to claim separation pay over reinstatement had no legal effect, not only because there was no genuine compliance by the employer to the reinstatement order but also because the employer chose not to act on said claim. If it was PFIZER's position that respondent's act amounted to a "resignation" it should have informed respondent that it was accepting her resignation and that in view thereof she was not entitled to separation pay. PFIZER did not respond to respondent's demand at all. As it was, PFIZER's failure to effect reinstatement and accept respondent's offer to terminate her employment relationship with the company meant that, prior to the Court of Appeals' reversal in the November 23, 2005 Decision, PFIZER's liability for backwages continued to accrue for the period not covered by the writ of execution dated May 24, 2005 until November 23, 2005.

Lastly, PFIZER exhorts the Court to re-examine the application of *Roquero* with a view that a mechanical application of the same would cause injustice since, in the present case, respondent was able to gain pecuniary benefit notwithstanding the circumstance of reversal by the Court of Appeals of the rulings of the Labor Arbiter and the NLRC thereby allowing respondent to profit from the dishonesty she committed against PFIZER which was the basis for her termination. In its stead, PFIZER proposes that the Court apply the ruling in *Genuino v. National*

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[31] *F.R.F. Enterprises, Inc. v. National Labor Relations Commission*, 313 Phil. 493, 502 (1995).

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

Labor Relations Commission[33] which it believes to be more in accord with the dictates of fairness and justice. In that case, we canceled the award of salaries from the date of the decision of the Labor Arbiter awarding reinstatement in light of our subsequent ruling finding that the dismissal is for a legal and valid ground, to wit:

> **Anent the directive of the NLRC in its September 3, 1994 Decision ordering Citibank "to pay the salaries due to the complainant from the date it reinstated complainant in the payroll (computed at ₱60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision," the Court hereby cancels said award in view of its finding that the dismissal of Genuino is for a legal and valid ground.**
>
> Ordinarily, the employer is required to reinstate the employee during the pendency of the appeal pursuant to Art. 223, paragraph 3 of the Labor Code, which states:
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> xxx xxx xxx
>
> **If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices.** However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.
>
> Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision.[34] (Emphases supplied.)

Thus, PFIZER implores the Court to annul the award of backwages and separation pay as well as to require respondent

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[33] *Supra* note 18.

[34] *Id.* at 363-364.

to refund the amount that she was able to collect by way of garnishment from PFIZER as her accrued salaries.

The contention cannot be given merit since this question has been settled by the Court *en banc*.

In the recent milestone case of *Garcia v. Philippine Airlines, Inc.*,[35] the Court wrote *finis* to the stray posture in *Genuino* requiring the dismissed employee placed on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal. In *Garcia*, we clarified the principle of reinstatement pending appeal due to the emergence of differing rulings on the issue, to wit:

> On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the option of payroll reinstatement. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*, while on the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code x x x.
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> x x x x x x x x x
>
> The view as maintained in a number of cases is that:
>
> > x x x **[E]ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.** On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period. (Emphasis in the original; italics and underscoring supplied)
>
> In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless

[35] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view is articulated in *Genuino* which states:

> If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then **the employer has the right to require the dismissed employee *on payroll reinstatement* to refund the salaries [he] received** while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from [his] employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.
>
> Considering that *Genuino* was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision. (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases, the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

xxx xxx xxx

x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since

that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.[36]

Furthermore, in *Garcia*, the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in *Genuino*:

> Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.
>
> Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.
>
> Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."
>
> In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the

[36] *Id.* at 488-491.

proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal.

xxx xxx xxx

The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. x x x.[37] (Emphasis supplied.)

In sum, the Court reiterates the principle that reinstatement pending appeal necessitates that it must be immediately self-executory without need for a writ of execution during the pendency of the appeal, if the law is to serve its noble purpose, and any attempt on the part of the employer to evade or delay its execution should not be allowed. Furthermore, we likewise restate our ruling that an order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received. It cannot be denied that, under our statutory and jurisprudential framework, respondent is entitled to payment of her wages for the period after December 5, 2003 until the Court of Appeals Decision dated November 23, 2005, notwithstanding the finding therein that her dismissal was legal and for just cause. Thus, the payment of such wages cannot be deemed as unjust enrichment on respondent's part.

WHEREFORE, the petition is *DENIED* and the assailed Resolution dated October 23, 2006 as well as the Resolution dated April 10, 2007 both issued by the Court of Appeals in CA-G.R. SP No. 88987 are hereby *AFFIRMED*.

SO ORDERED.

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

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[37] *Id.* at 491-493.

SECOND DIVISION

[G.R. No. 181370. March 9, 2011]

JULIAN S. LEBRUDO and REYNALDO L. LEBRUDO, *petitioners, vs.* **REMEDIOS LOYOLA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); PROHIBITS TRANSFER OF AWARDED LANDS FOR A PERIOD OF 10 YEARS; EXCEPTIONS.— It is clear from the provision that lands awarded to beneficiaries under the Comprehensive Agrarian Reform Program (CARP) may not be sold, transferred or conveyed for a period of 10 years. The law enumerated four exceptions: (1) through hereditary succession; (2) to the government; (3) to the Land Bank of the Philippines (LBP); or (4) to other qualified beneficiaries. In short, during the prohibitory 10-year period, any sale, transfer or conveyance of land reform rights is void, except as allowed by law, in order to prevent a circumvention of agrarian reform laws.

2. ID.; ID.; ID.; WAIVER OF RIGHTS AND INTERESTS OVER THE AWARDED LAND WITHIN THE 10-YEAR PROHIBITORY PERIOD IS VOID.— The law expressly prohibits any sale, transfer or conveyance by farmer-beneficiaries of their land reform rights within 10 years from the grant by the DAR. The law provides for four exceptions and Lebrudo does not fall under any of the exceptions. In *Maylem v. Ellano*, we held that the waiver of rights and interests over landholdings awarded by the government is invalid for being violative of agrarian reform laws. Clearly, the waiver and transfer of rights to the lot as embodied in the *Sinumpaang Salaysay* executed by Loyola is void for falling under the 10-year prohibitory period specified in RA 6657.

3. ID.; ID.; QUALIFICATIONS OF A FARMER BENEFICIARY, NOT MET.— Lebrudo does not qualify as a beneficiary because x x x. First, Lebrudo is not landless. According to the records, Municipal Agrarian Reform Officer Amelia Sangalang issued a

certification dated 28 February 1996 attesting that Lebrudo was awarded by the DAR with a homelot consisting of an area of 236 square meters situated at Japtinchay Estate, Bo. Milagrosa, Carmona, Cavite. Next, Lebrudo is not the actual occupant or tiller of the lot at the time of the filing of the application. Loyola and her family were the actual occupants of the lot at the time Loyola applied to be a beneficiary under the CARP.

4. ID.; ID.; CERTIFICATE OF TITLE BECOMES INCONTROVERTIBLE UPON THE EXPIRATION OF 1 YEAR FROM THE ISSUANCE OF A REGISTRATION DECREE.— [T]he CA, in its Decision dated 17 August 2007, correctly observed that a certificate of title serves as evidence of an indefeasible title and after the expiration of the one-year period from the issuance of the registration decree upon which it is based, the title becomes incontrovertible.

APPEARANCES OF COUNSEL

DAR Legal Assistance Division for petitioners.
Gavino B. Mapanoo for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition[1] for review on *certiorari* assailing the Resolution[2] dated 4 January 2008 and Decision[3] dated 17 August 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 90048.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, p. 19. Penned by Justice Lucas P. Bersamin (now a member of this Court) with Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe, concurring.

[3] *Id.* at 20-29.

The Facts

Respondent Remedios Loyola (Loyola) owns a 240-square meter parcel of land located in Barangay Milagrosa, Carmona, Cavite, known as Lot No. 723-6, Block 1, Psd-73149 (lot), awarded by the Department of Agrarian Reform (DAR) under Republic Act No. 6657[4] (RA 6657) or the Comprehensive Agrarian Reform Law of 1988. This lot is covered by Certificate of Land Ownership[5] (CLOA) No. 20210 issued in favor of Loyola on 27 December 1990 and duly registered on 14 March 1991 under Transfer of Certificate of Title (TCT)/CLOA No. 998.

On 27 June 1995, petitioner Julian S. Lebrudo (Lebrudo), now deceased and represented by his son, petitioner Reynaldo L. Lebrudo, filed with the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Trece Martires City, Cavite, an action[6] for the cancellation of the TCT/CLOA in the name of Loyola and the issuance of another for the one-half portion of the lot in Lebrudo's favor.

In a Decision[7] dated 18 December 1995, the PARAD dismissed the case without prejudice on the ground that the case was filed prematurely. On 11 March 1996, Lebrudo re-filed the same action.[8]

Lebrudo alleged that he was approached by Loyola sometime in 1989 to redeem the lot, which was mortgaged by Loyola's mother, Cristina Hugo, to Trinidad Barreto. After Lebrudo redeemed the lot for ₱250.00 and a cavan of *palay*, Loyola again sought Lebrudo's help in obtaining title to the lot in her

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[4] An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes. Approved on 10 June 1988.

[5] Document evidencing ownership of the land granted or awarded to the beneficiary by DAR, and contains the restrictions and conditions provided for in R.A. 6657 and other applicable laws.

[6] Docketed as DARAB Case No. 269-95.

[7] *Rollo*, p. 32.

[8] Docketed as DARAB Case No. 0357-96.

name by shouldering all the expenses for the transfer of the title of the lot from her mother, Cristina Hugo. In exchange, Loyola promised to give Lebrudo the one-half portion of the lot. Thereafter, TCT/CLOA No. 998 was issued in favor of Loyola. Loyola then allegedly executed a *Sinumpaang Salaysay*[9] dated 28 December 1989, waiving and transferring her rights over the one-half portion of the lot in favor of Lebrudo. To reiterate her commitment, Loyola allegedly executed two more *Sinumpaang Salaysay*[10] dated 1 December 1992 and 3 December 1992, committing herself to remove her house constructed on the corresponding one-half portion to be allotted to Lebrudo.

Thereafter, Lebrudo asked Loyola to comply with her promise. However, Loyola refused. Lebrudo sought the assistance of the *Sangguniang Barangay* of Milagrosa, Carmona, Cavite; the Philippine National Police (PNP) of Carmona, Cavite; and the Department of Agrarian Reform to mediate. However, despite steps taken to amicably settle the issue, as evidenced by certifications from the PNP and the *barangay*, there was no amicable settlement. Thus, Lebrudo filed an action against Loyola.

In her Answer, Loyola maintained that Lebrudo was the one who approached her and offered to redeem the lot and the release of the CLOA. Loyola denied promising one-half portion of the lot as payment for the transfer, titling and registration of the lot. Loyola explained that the lot was her only property and it was already being occupied by her children and their families. Loyola also denied the genuineness and due execution of the two *Sinumpaang Salaysay* dated 28 December 1989 and 3 December 1992. The records do not show whether Loyola renounced the *Sinumpaang Salaysay* dated 1 December 1992.

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[9] *Rollo*, p. 73.

[10] *Id.* at 74-75.

In a Decision[11] dated 13 February 2002, the PARAD of Trece Martires City, Cavite decided the case in Lebrudo's favor. The dispositive portion of the decision states:

> WHEREFORE, in view of the foregoing, JUDGMENT is hereby rendered:
>
> a) Declaring Respondent Remedios Loyola disqualified as farmer beneficiary of the subject land identified as Lot 723-6, Block 1, under TCT/CLOA No. 998;
>
> b) Declaring the Deed of sales over the subject lot illegal and ordered the same set aside;
>
> c) Declaring Plaintiff JULIAN LEBRUDO entitled to one half (½) of the subject property under TCT/CLOA No. 998 in the name of Remedios Loyola;
>
> d) Ordering the other one half (½) of the subject lot ready for allocation to qualified beneficiary;
>
> e) Ordering the DAR PARO Office thru the Operations Division to cancel TCT/CLOA No. 998 and in lieu thereof, to generate and issue another title over the 120 square meters in the name of JULIAN LEBRUDO;
>
> f) Ordering the survey of the subject lot at the expense of the petitioner so that title be issued to plaintiff herein;
>
> g) Ordering the Register of Deeds, Trece Martires City to cancel TCT/CLOA No. 998 in the name of Remedios Loyola;
>
> h) Ordering the Register of Deeds, Trece Martires City to register the title in the name [of] Julian Lebrudo as presented by the DAR or its representative over the lot in question;
>
> No pronouncement as to costs and damages.
>
> SO ORDERED.[12]

Loyola appealed to the Department of Agrarian Reform Adjudication Board (DARAB).[13] In a

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[11] *Id.* at 31-39.

[12] *Id.* at 38-39.

[13] Docketed as DARAB Case No. 11565 (Reg. Case No. 0357-96).

Decision[14] dated 24 August 2004, the DARAB reversed the decision of the PARAD and ruled in Loyola's favor. The dispositive portion states:

> WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE and a new judgment rendered as follows:
>
> 1. Upholding and maintaining the validity and effectivity of TCT/CLOA No. 998 in the name of the respondent;
>
> 2. Declaring the Sinumpaang Salaysay dated December 28, 1989 and December 3, 1992 attached to the petition as Annex C and F, null and void without legal force and effect;
>
> 3. Directing the Register of Deeds of Trece Martires City, Cavite to reinstate TCT/CLOA No. 998 in the name of the respondent.
>
> The status quo ante order issued by this Board on November 3, 2003 is hereby LIFTED.
>
> SO ORDERED.[15]

Lebrudo filed a motion for reconsideration which the DARAB denied in a Resolution[16] dated 12 April 2005. Lebrudo then filed a petition[17] for review with the CA.

In a Decision[18] dated 17 August 2007, the CA affirmed the decision of the DARAB. Lebrudo filed a motion for reconsideration which the CA denied in a Resolution[19] dated 4 January 2008.

Hence, this petition.

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[14] *Rollo*, pp. 44-53.

[15] *Id.* at 52.

[16] *Id.* at 56-57.

[17] Docketed as CA-G.R. SP No. 90048.

[18] *Supra* note 3.

[19] *Supra* note 2.

The Issue

The main issue is whether Lebrudo is entitled to the one-half portion of the lot covered by RA 6657 on the basis of the waiver and transfer of rights embodied in the two *Sinumpaang Salaysay* dated 28 December 1989 and 3 December 1992 allegedly executed by Loyola in his favor.

The Court's Ruling

The petition lacks merit.

A Certificate of Land Ownership or CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by DAR, and contains the restrictions and conditions provided for in RA 6657 and other applicable laws. Section 27 of RA 6657, as amended by RA 9700,[20] which provides for the transferability of awarded lands, states:

> SEC. 27. *Transferability of Awarded Lands.* – **Lands acquired by beneficiaries under this ACT may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years**: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the *Barangay* Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.
>
> The title of the land awarded under the agrarian reform must indicate that it is an emancipation patent or a certificate of land ownership

[20] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor. Took effect on 1 July 2009.

award and the subsequent transfer title must also indicate that it is an emancipation patent or a certificate of land ownership award.

If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph. x x x (Emphasis supplied)

It is clear from the provision that lands awarded to beneficiaries under the Comprehensive Agrarian Reform Program (CARP) may not be sold, transferred or conveyed for a period of 10 years. The law enumerated four exceptions: (1) through hereditary succession; (2) to the government; (3) to the Land Bank of the Philippines (LBP); or (4) to other qualified beneficiaries. In short, during the prohibitory 10-year period, any sale, transfer or conveyance of land reform rights is void, except as allowed by law, in order to prevent a circumvention of agrarian reform laws.

In the present case, Lebrudo insists that he is entitled to one-half portion of the lot awarded to Loyola under the CARP as payment for shouldering all the expenses for the transfer of the title of the lot from Loyola's mother, Cristina Hugo, to Loyola's name. Lebrudo used the two *Sinumpaang Salaysay* executed by Loyola alloting to him the one-half portion of the lot as basis for his claim.

Lebrudo's assertion must fail. The law expressly prohibits any sale, transfer or conveyance by farmer-beneficiaries of their land reform rights within 10 years from the grant by the DAR. The law provides for four exceptions and Lebrudo does not fall under any of the exceptions. In *Maylem v. Ellano*,[21] we held that the waiver of rights and interests over landholdings

[21] G.R. No. 162721, 13 July 2009, 592 SCRA 440, 452, citing *Lapanday Agricultural & Development Corporation v. Estita*, 490 Phil. 137, 152 (2005).

awarded by the government is invalid for being violative of agrarian reform laws. Clearly, the waiver and transfer of rights to the lot as embodied in the *Sinumpaang Salaysay* executed by Loyola is void for falling under the 10-year prohibitory period specified in RA 6657.

Lebrudo asserts that he is a qualified farmer beneficiary who is entitled to the lot under the CARP. DAR Administrative Order No. 3,[22] series of 1990, enumerated the qualifications of a beneficiary:

1. Landless;
2. Filipino citizen;
3. Actual occupant/tiller who is at least 15 years of age or head of the family at the time of filing application; and
4. Has the willingness, ability and aptitude to cultivate and make the land productive.

Lebrudo does not qualify as a beneficiary because of (1) and (3). First, Lebrudo is not landless. According to the records,[23] Municipal Agrarian Reform Officer Amelia Sangalang issued a certification dated 28 February 1996 attesting that Lebrudo was awarded by the DAR with a homelot consisting of an area of 236 square meters situated at Japtinchay Estate, Bo. Milagrosa, Carmona, Cavite. Next, Lebrudo is not the actual occupant or tiller of the lot at the time of the filing of the application. Loyola and her family were the actual occupants of the lot at the time Loyola applied to be a beneficiary under the CARP.

Further, the CA, in its Decision dated 17 August 2007, correctly observed that a certificate of title serves as evidence of an indefeasible title and after the expiration of the one-year period from the issuance of the registration decree upon which it is based, the title becomes incontrovertible. The CA also declared that the basis of Lebrudo's claim, the two *Sinumpaang Salaysay* dated

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[22] Revised Rules and Procedure Governing Distribution and/or Titling of Lots in Landed Estates Administered by DAR. Issued on May 1990.

[23] *Rollo*, p. 50.

28 December 1989 and 3 December 1992, were illegal and void *ab initio* for being patently intended to circumvent and violate the conditions imposed by the agrarian law. The relevant portions of the decision provide:

> x x x It is undisputed that CLOA 20210 was issued to the respondent on December 27, 1990 and was registered by the Register of Deeds of Cavite on March 14, 1991, resulting in the issuance of TCT/CLOA No. 998 in her name.
>
> Under Sec. 43, P.D. 1529, the certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the land shall be the transfer certificate of title, which shall show the number of the next previous certificate covering the same land and also the fact that it was previously registered, giving the record number of the original certificate of title and the volume and page of the registration book in which the original certificate of title is found.
>
> The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. After the expiration of the one-year period from the issuance of the decree of registration upon which it is based, the title becomes incontrovertible.
>
> Accordingly, by the time when original petitioner Julian Lebrudo filed on June 27, 1995 the first case (seeking the cancellation of the respondent's CLOA), the respondent's certificate of title had already become incontrovertible. That consequence was inevitable, for as the DARAB correctly observed, an original certificate of title issued by the Register of Deeds under an administrative proceeding was as indefeasible as a certificate of title issued under a judicial registration proceeding. Clearly, the respondent, as registered property owner, was entitled to the protection given to every holder of a Torrens title.
>
> The issue of whether or not the respondent was bound by her waiver and transfer in favor of Julian Lebrudo, as contained in the several *sinumpaang salaysay*, was irrelevant. Worse for the petitioner, the DARAB properly held that the undertaking of the respondent to Julian Lebrudo under the *sinumpaang salaysay* dated December 28, 1989 and December 3, 1992 – whereby she promised to give him ½ portion of the homelot in consideration of his helping her work on the release of the CLOA to her and shouldering all the expenses for the purpose – was "clearly illegal and void *ab initio"* for being patently intended to

circumvent and violate the conditions imposed by the agrarian laws and their implementing rules. He could not, therefore, have his supposed right enforced. x x x[24]

We see no reason to disturb the findings of the CA. The main purpose of the agrarian reform law is to ensure the farmer-beneficiary's continued possession, cultivation and enjoyment of the land he tills.[25] To do otherwise is to revert back to the old feudal system whereby the landowners reacquired vast tracts of land and thus circumvent the government's program of freeing the tenant-farmers from the bondage of the soil.[26]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 17 August 2007 and Resolution dated 4 January 2008 of the Court of Appeals in CA-G.R. SP No. 90048.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 181566 and 181570. March 9, 2011]

DAVAO FRUITS CORPORATION, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; EXPROPRIATION; THE LAND BANK OF THE PHILIPPINES HAS THE LEGAL

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[24] *Id.* at 27-29.

[25] *Corpuz v. Sps. Grospe*, 388 Phil. 1100, 1110 (2000). *See* also *Torres v. Ventura*, G.R. No. 86044, 2 July 1990, 187 SCRA 96.

[26] *Corpuz v. Sps. Grospe, supra*.

[*] Designated additional member per Special Order No. 933 dated 24 January 2011.

PERSONALITY TO FILE PETITION FOR DETERMINATION OF JUST COMPENSATION BEFORE THE SPECIAL AGRARIAN COURT.— We stated in *Heirs of Roque F. Tabuena v. Land Bank of the Philippines* that "once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins." In *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, we thoroughly explained the important role of LBP in expropriation proceedings under RA 6657. We held that LBP is not merely a nominal party in the determination of just compensation, but an indispensable participant in such proceedings. As such, LBP possessed the legal personality to institute a petition for determination of just compensation in the SAC.

APPEARANCES OF COUNSEL

Rolando P. Arañas for petitioner.
LBP Legal Services Group for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 28 August 2007 Consolidated Decision[2] and 17 December 2007 Resolution[3] of the Court of Appeals in CA-G.R. SP Nos. 75473 and 01008. In the 28 August 2007 Consolidated Decision, the Court of Appeals (1) set aside the 26 December 2002[4] and 28 January

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

[2] *Rollo*, pp. 7-21. Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias concurring.

[3] *Id.* at 23-25.

[4] *Id.* at 174. Penned by Acting Presiding Judge Erasto D. Salcedo.

2003 Orders[5] of the Regional Trial Court, Tagum City, Davao del Norte (Branch 2), sitting as Special Agrarian Court (SAC) and remanded the case to the SAC for trial on the merits; and (2) denied the contempt petition filed by petitioner Davao Fruits Corporation against Land Bank of the Philippines and its counsel. The 17 December 2007 Resolution denied the motion for reconsideration.

The Antecedents

Davao Fruits Corporation (DFC) owns a bamboo plantation consisting of ten (10) parcels of land with a total area of 101.4416 hectares located in Montevista, Province of Compostela Valley.[6] DFC voluntarily offered such lands for sale to the government under Republic Act No. (RA) 6657 or the Comprehensive Agrarian Reform Law of 1988 at not less than ₱300,000 per hectare or ₱30,432,480 for the entire property.

After DFC's submission of the transfer certificates of title covering the lands and other documents, the Department of Agrarian Reform (DAR) initiated the survey, subdivision, and cancellation of the individual titles in favor of the government.

Land Bank of the Philippines (LBP) is a government banking institution designated under Section 64[7] of RA 6657 as the financial intermediary of the agrarian reform program of the government. The DAR and LBP computed the value of the property at ₱4,055,402.85 for 101.4416 hectares.[8]

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[5] *Id.* at 193-194. Penned by Acting Presiding Judge Erasto D. Salcedo.

[6] Covered by the following certificates of title: T-35846 (New Visayas), T-40570 (Tagbanao), T-40835 (Linoan), T-35850 (Linoan), T-35851 (Linoan), T-35849 (Linoan), T-35852 (Linoan), T- 35848 (Linoan), T-35847 (Linoan), and T-40836 (Bankerohan).

[7] This provision states:

SEC. 64. *Financial intermediary for the CARP*.—The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[8] *Rollo*, p. 8.

DFC rejected the valuation. Consequently, the Provincial Agrarian Reform Officer of Davao del Norte referred the issue on just compensation to the Department of Agrarian Reform Adjudication Board (DARAB), Office of the Regional Adjudicator for summary administrative proceedings.

During the proceedings, it was established that of 101.4416 hectares only 92.0625 hectares were planted with bamboo and the rest (9.371 hectares) was brush land. In his Decision of 26 April 2002,[9] DARAB Regional Adjudicator Norberto P. Sinsona fixed the price of the bamboo area at ₱300,000 per hectare because it was DFC's quoted price. For the brush land, the DARAB Regional Adjudicator fixed the value at ₱17,154.30 per hectare. Both DFC and LBP moved for reconsideration, which the DARAB Regional Adjudicator denied in an Order dated 30 September 2002.[10]

On 11 October 2002, LBP filed a petition[11] for the fixing of just compensation with the Regional Trial Court of Tagum City, Davao del Norte (Branch 2) sitting as SAC.

DFC moved to dismiss the petition,[12] arguing among others that LBP has no authority to sue on behalf of the Republic of the Philippines and question the valuation made by the DAR. LBP opposed the motion to dismiss.[13]

In an Order dated 26 December 2002, the SAC dismissed LBP's petition, reasoning that:

> It appears that the two agencies do not work in harmony with each other because the petitioner questions the decision of an agency, which is also under the umbrella of the PARC. The lack of coordination between the two (2) agencies, which may frustrate the implementation

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[9] *Id.* at 103-106.

[10] *Id.* at 156-159.

[11] *Id.* at 160-164.

[12] *Id.* at 165-169.

[13] *Id.* at 171-173.

program of the government, sends a wrong message to landowners and CARP beneficiaries. It could have been more logical if the landowners were the ones questioning the decision of the DAR Adjudicator. To say the least, the intention of the petition is to delay payment of just compensation, which has been properly adjudicated by the DAR Adjudicator.[14]

In an Order dated 28 January 2003,[15] the SAC denied LBP's motion for reconsideration.

On 11 February 2003, LBP filed a petition for review with the Court of Appeals,[16] docketed as CA-G.R. SP No. 75473, questioning the dismissal of its petition before the SAC. This case was consolidated with CA-G.R. SP No. 01008 involving a petition filed by DFC to cite LBP and its counsel in contempt for LBP's alleged violation of the rule against forum-shopping.

In its 28 August 2007 Consolidated Decision, the Court of Appeals set aside the SAC's dismissal of LBP's petition for determination of just compensation and at the same time denied the contempt petition against LBP and its counsel. The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, premises considered, the Petition for Review (CA-G.R. SP No. 75473) is GRANTED. The assailed December 26, 2002 and January 28, 2003 Orders of the Special Agrarian Court are hereby SET ASIDE. Let this case be REMANDED to the Special Agrarian Court for trial on the merits.
>
> The Petition to Cite Petitioner Land Bank of the Philippines and Counsel Danilo B. Beramo in Contempt of Court (CA-G.R. SP No. 01008) is DENIED and ordered DISMISSED.
>
> SO ORDERED.[17]

In its 17 December 2007 Resolution, the Court of Appeals denied reconsideration.

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[14] *Id.* at 174.
[15] *Id.* at 193-194.
[16] *Id.* at 12.
[17] *Id.* at 21.

Hence, DFC filed the instant petition assailing only the Court of Appeals' ruling in CA-G.R. SP No. 75473, and not the portion dismissing the contempt petition subject of CA-G.R. SP No. 01008.

The Court of Appeals' Ruling

The Court of Appeals found no factual basis to support SAC's ruling that the conflicting views of the LBP and the DAR on the value of compensation "may frustrate the implementation of agrarian reform" and that the filing of the petition was intended to delay payment of just compensation. Further, the Court of Appeals rejected DFC's contention that LBP has no personality to sue and question the valuation fixed by the RARAD. The Court of Appeals cited Section 74 of RA 3844[18] and Section 64 of RA 6657[19] and the case of *Gabatin v. LBP*[20] in pointing out that LBP has the personality to file a petition for fixing of just compensation.

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[18] Otherwise known as Agricultural Land Reform Code. Section 74 thereof provides:

Section 74. *Creation* - To finance the acquisition by the Government of landed estates for division and resale to small landholders, as well as the purchase of the landholding by the agricultural lessee from the landowner, there is hereby established a body corporate to be known as the "Land Bank of the Philippines," hereinafter called the "Bank," which shall have its principal place of business in Manila. The legal existence of the Bank shall be for a period of fifty years counting from the date of the approval hereof. The Bank shall be subject to such rules and regulations as the Central Bank may from time to time promulgate.

[19] This provision states:

SEC. 64. *Financial intermediary for the CARP*.—The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a Preference among its priorities.

[20] 486 Phil. 366 (2004). In this case, the Court held that "there would never be a judicial determination of just compensation absent respondent Land Bank's participation. Logically, it follows that respondent [Land Bank] is an indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program."

The Issue

The sole issue in this case is whether the LBP has the personality to file a petition for determination of just compensation before the SAC.

The Court's Ruling

The petition lacks merit.

DFC contends that in filing the petition for determination of just compensation, "the LBP acted as the expropriator [and] the dispenser of police power which are the sovereign powers of the State." DFC argues that the LBP has no authority to file an action for determination of just compensation "much less for the purpose of invalidating the finding of [the DAR] tasked to determine the initial valuation of lands covered by land reform."

We disagree.

The LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of RA 3844 or the Agricultural Reform Code and Section 64 of RA 6657 or the Comprehensive Agrarian Reform Law of 1988.[21] These provisions respectively state:

Section 74. Creation – To finance the acquisition by the Government of landed estates for division and resale to small landholders, as well as the purchase of the landholding by the agricultural lessee from the landowner, there is hereby established a body corporate to be known as the "Land Bank of the Philippines," hereinafter called the "Bank," which shall have its principal place of business in Manila. x x x

SEC. 64. *Financial intermediary for the CARP*.—The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

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[21] *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*, G.R. No. 180557, 26 September 2008, 566 SCRA 557, 565-566.

We stated in *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*[22] that "once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins."[23] In *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*,[24] we thoroughly explained the important role of LBP in expropriation proceedings under RA 6657. We held that LBP is not merely a nominal party in the determination of just compensation, but an indispensable participant in such proceedings. As such, LBP possessed the legal personality to institute a petition for determination of just compensation in the SAC. We ruled:

> There is likewise no merit in petitioners' allegation that LBP lacks locus standi to file a case with the SAC, separate and independent from the DAR. In *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*, we ruled that the LBP is an indispensable party in expropriation proceedings under RA 6657, and thus, has the legal personality to question the determination of just compensation, independent of the DAR. x x x
>
> LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. **It may agree with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination.**
>
> Once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins, which clearly shows that there would never be a judicial determination of just compensation absent respondent LBP's participation. Logically, it follows that respondent [LBP] is an

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[22] *Id.* at 566.

[23] *Id*.

[24] G.R. No. 166461, 30 April 2010, 619 SCRA 609.

indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program; as such, it can file an appeal independently of DAR.

xxx xxx xxx

It is evident from the afore-quoted jurisprudence that the role of LBP in the CARP is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the Court of Appeals or to this Court, if appropriate.[25] (Emphasis supplied; citations omitted)

It is therefore beyond dispute that LBP has the legal personality to institute the petition for determination of just compensation before the SAC. Hence, the Court of Appeals did not err in setting aside the dismissal of LBP's petition for determination of just compensation and remanding the instant case to the SAC for trial on the merits.

WHEREFORE, we *DENY* the petition and *AFFIRM* the 28 August 2007 Consolidated Decision and 17 December 2007 Resolution of the Court of Appeals in CA-G.R. SP Nos. 75473 and 01008.

Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

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[25] *Id.* at 631-634.

[*] Designated additional member per Special Order No. 933 dated 24 January 2011.

SECOND DIVISION

[G.R. No. 185758. March 9, 2011]

LINDA M. CHAN KENT, represented by ROSITA MANALANG, *petitioner, vs.* **DIONESIO C. MICAREZ, SPOUSES ALVARO E. MICAREZ & PAZ MICAREZ, and THE REGISTRY OF DEEDS, DAVAO DEL NORTE,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; DISMISSAL OF AN ACTION DUE TO FAILURE OF THE PARTY'S REPRESENTATIVE TO ATTEND MEDIATION PROCEEDINGS IS TOO SEVERE TO BE IMPOSED.— Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or flagrant disregard of the rules on mediation proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case. x x x Assuming *arguendo* that the trial court correctly construed the absence of Manalang on March 1, 2008 as a deliberate refusal to comply with its Order or to be dilatory, it cannot be said that the court was powerless and virtually without recourse. Indeed, there are other available remedies to the court *a quo* under A.M. No. 01-10-5-SC-PHILJA, apart from immediately ordering the dismissal of the case. If Manalang's absence upset the intention of the court *a quo* to promptly dispose the case, a mere censure or reprimand would have been sufficient for petitioner's representative and her counsel so as to be informed of the court's intolerance of tardiness and laxity in the observation of its order. By failing to do so and refusing to resuscitate the case, the RTC impetuously deprived petitioner of the opportunity to recover the land which she allegedly paid for. Unless the conduct of the party is so negligent, irresponsible, contumacious, or dilatory as for non-appearance to provide

substantial grounds for dismissal, the courts should consider lesser sanctions which would still achieve the desired end. The Court has written "inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets, while they lend a deceptive aura of efficiency to records of the individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.

APPEARANCES OF COUNSEL

Benjamin T. Etulle for petitioner.
Richard Miguel for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the July 17, 2008 Order[1] of the Regional Trial Court of Panabo City, Branch 34 *(RTC)*, dismissing the complaint for recovery of property filed by petitioner Linda M. Chan Kent *(petitioner)*, docketed as Civil Case No. 13-2007, and its November 21, 2008, Order[2] denying her motion for reconsideration.

The Facts

This petition draws its origin from a complaint for recovery of real property and annulment of title filed by petitioner, through her younger sister and authorized representative, Rosita Micarez-Manalang *(Manalang)*, before the RTC. Petitioner is of Filipino descent who became a naturalized American citizen after marrying an American national in 1981. She is now a permanent resident of the United States of America *(USA)*.

[1] *Rollo*, p. 34. Penned by Judge Rowena Apao-Adlawan.

[2] *Id.* at 38-39.

In her complaint, petitioner claimed that the residential lot in Panabo City, which she purchased in 1982, was clandestinely and fraudulently conveyed and transferred by her parents, respondent spouses Alvaro and Paz Micarez *(Spouses Micarez)*, in favor of her youngest brother, respondent Dionesio Micarez *(Dionesio)*, to her prejudice and detriment. She alleged that sometime in 1982, she asked her parents to look for a residential lot somewhere in Poblacion Panabo where the Spouses Micarez would build their new home. Aware that there would be difficulty in registering a real property in her name, she being married to an American citizen, she arranged to pay for the purchase price of the residential lot and register it, in the meantime, in the names of Spouses Micarez under an implied trust. The title thereto shall be transferred in her name in due time.

Thus, on October 20, 1982, a deed of absolute sale was executed between Spouses Micarez and the owner, Abundio Panganiban, for the 328 square meter residential lot covered by Transfer Certificate of Title *(TCT)* No. T-25833. Petitioner sent the money which was used for the payment of the lot. TCT No. T-25833 was cancelled upon the registration of the deed of sale before the Registry of Deeds of Davao del Norte. In lieu thereof, TCT No. T-38635 was issued in the names of Spouses Micarez on January 31, 1983.

Sometime in 2005, she learned from Manalang that Spouses Micarez sold the subject lot to Dionesio on November 22, 2001 and that consequently, TCT T-172286 was issued in her brother's name on January 21, 2002.

At the end, petitioner prayed that she be declared as the true and real owner of the subject lot; that TCT No. T-172286 be cancelled; and that a new one be issued in her name.[3]

Considering that all the respondents are now also permanent residents of the USA, summons was served upon them by publication per RTC Order[4] dated May 17, 2007. Meanwhile,

[3] *Id.* at 41-47.

[4] *Id.* at 48.

the respondents executed two special powers of attorney[5] both dated August 3, 2007 before the Consulate General of the Philippines in Los Angeles, California, U.S.A., authorizing their counsel, Atty. Richard C. Miguel *(Atty. Miguel)*, to file their answer in Civil Case No. 13-2007 and to represent them during the pre-trial conference and all subsequent hearings with power to enter into a compromise agreement. By virtue thereof, Atty. Miguel timely filed his principals' answer denying the material allegations in the complaint.

After the parties had filed their respective pre-trial briefs, and the issues in the case had been joined, the RTC explored the possibility of an amicable settlement among the parties by ordering the referral of the case to the Philippine Mediation Center *(PMC)*. On March 1, 2008, Mediator Esmeraldo O. Padao, Sr. *(Padao)* issued a Mediator's Report[6] and returned Civil Case No. 13-2007 to the RTC allegedly due to the non-appearance of the respondents on the scheduled conferences before him. Acting on said Report, the RTC issued an order on May 29, 2009 allowing petitioner to present her evidence *ex parte*.[7]

Later, Padao clarified, through a Manifestation,[8] dated July 15, 2008, that it was petitioner, represented by Atty. Benjamin Utulle *(Atty. Utulle)*, who did not attend the mediation proceedings set on March 1, 2008, and not Atty. Miguel, counsel for the respondents and their authorized representative. Padao explained that Atty. Miguel inadvertently affixed his signature for attendance purposes on the column provided for the plaintiff's counsel in the mediator's report. In light of this development, the RTC issued the assailed Order[9] dated July 17, 2008 dismissing Civil Case No. 13-2007. The pertinent portion of said order reads:

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

[6] *Id.* at 50.

[7] *Id.* at 26.

[8] *Id.* at 49.

[9] *Id.* at 34.

Being so, the Order dated May 29, 2008 is hereby corrected. For plaintiff's and her counsel's failure to appear during the mediation proceeding, this instant case is hereby ordered DISMISSED.

SO ORDERED.

Petitioner, through her counsel, filed a motion for reconsideration[10] to set aside the order of dismissal, invoking the relaxation of the rule on non-appearance in the mediation proceedings in the interest of justice and equity. Petitioner urged the trial court not to dismiss the case based merely on technicalities contending that litigations should as much as possible be decided on the merits. Resolving the motion in its second assailed Order[11] dated November 21, 2008, the RTC ruled that it was not proper for the petitioner to invoke liberality inasmuch as the dismissal of the civil action was due to her own fault. The dispositive portion of said order reads:

WHEREFORE, there being no cogent reason to depart from our earlier Order, this instant motion for reconsideration is hereby ordered DENIED.

SO ORDERED.[12]

The denial prompted the petitioner to file this petition directly with this Court claiming that the dismissal of the case was not in accordance with applicable law and jurisprudence.

ISSUES

1. WITH ALL DUE RESPECT, THE HONORABLE COURT *A QUO* GRAVELY ERRED IN DISMISSING THE CASE SIMPLY ON THE REASON THAT PLAINTIFF FAILED TO APPEAR DURING THE MEDIATION PROCEEDING, ALTHOUGH PRESENT FOR TWO (2) TIMES.

2. IS THE EXCUSABLE AND EXPLAINED FAILURE TO ATTEND THE MEDIATION PROCEEDING FOR TWO (2)

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[10] *Id.* at 35-37.

[11] *Id.* at 3.

[12] *Id.* at 14.

TIMES OR SETTINGS, OUT OF THE FOUR (4) SCHEDULED SETTINGS, BY THE PLAINTIFF A GROUND TO DISMISS THE CASE UNDER THE SUPREME COURT'S ADMINISTRATIVE CIRCULAR NO. 20-2002?

The pivotal issue in this case is whether the RTC erred in dismissing Civil Case No. 13-2007 due to the failure of petitioner's duly authorized representative, Manalang, and her counsel to attend the mediation proceedings under the provisions of A.M. No. 01-10-5-SC-PHILJA and 1997 Rules on Civil Procedure.

Petitioner claims that the dismissal of the case was unjust because her representative, Manalang, and her counsel, Atty. Etulle, did not deliberately snub the mediation proceedings. In fact, Manalang and Atty. Etulle twice attended the mediation conferences on January 19, 2008 and on February 9, 2008. On both occasions, Manalang was present but was not made to sign the attendance sheet and was merely at the lobby waiting to be called by Atty. Etulle upon arrival of Atty. Miguel. Manalang and Atty. Etulle only left PMC at 11:00 o'clock in the morning when Atty. Miguel had not yet arrived.[13]

Petitioner, however, admits that her representative and counsel indeed failed to attend the last scheduled conference on March 1, 2008, when they had to attend some urgent matters caused by the sudden increase in prices of commodities.[14]

In the interest of justice, the Court grants the petition.

A.M. No. 01-10-5-SC-PHILJA dated October 16, 2001, otherwise known as the Second Revised Guidelines for the Implementation of Mediation Proceedings, was issued pursuant to par. (5), Section 5, Article VII of the 1987 Constitution mandating this Court to promulgate rules providing for a simplified and inexpensive procedure for the speedy disposition of cases. Also, Section 2(a), Rule 18 of the 1997 Rules of Civil Procedure, as amended, requires the courts to consider the possibility of

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[13] *Id.* at 28.

[14] *Id.* at 29.

an amicable settlement or of submission to alternative modes of resolution for the early settlement of disputes so as to put an end to litigations. The provisions of A.M. No. 01-10-5-SC-PHILJA pertinent to the case at bench are as follows:

> 9. Personal appearance/Proper authorizations
>
> Individual parties are encouraged to personally appear for mediation. In the event they cannot attend, their representatives must be fully authorized to appear, negotiate and enter into a compromise by a Special Power of Attorney. A corporation shall, by board resolution, fully authorize its representative to appear, negotiate and enter into a compromise agreement.
>
> 12. Sanctions
>
> Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such other sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings. [Underscoring supplied]

To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the proceedings which includes censure, reprimand, contempt, and even dismissal of the action in relation to Section 5, Rule 18 of the Rules of Court.[15] The respective lawyers of the parties may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful

[15] Rule 18, Sec. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court.xxx.

amicable settlement of disputes[16] so as to effectively reduce docket congestion.

Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or flagrant disregard of the rules on mediation proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case.

The Court notes that Manalang was not entirely at fault for the cancellation and resettings of the conferences. Let it be underscored that respondents' representative and counsel, Atty. Miguel, came late during the January 19 and February 9, 2008 conferences which resulted in their cancellation and the final resetting of the mediation proceedings to March 1, 2008. Considering the circumstances, it would be most unfair to penalize petitioner for the neglect of her lawyer.

Assuming *arguendo* that the trial court correctly construed the absence of Manalang on March 1, 2008 as a deliberate refusal to comply with its Order or to be dilatory, it cannot be said that the court was powerless and virtually without recourse. Indeed, there are other available remedies to the court *a quo* under A.M. No. 01-10-5-SC-PHILJA, apart from immediately ordering the dismissal of the case. If Manalang's absence upset the intention of the court *a quo* to promptly dispose the case, a mere censure or reprimand would have been sufficient for petitioner's representative and her counsel so as to be informed of the court's intolerance of tardiness and laxity in the observation of its order. By failing to do so and refusing to resuscitate the case, the RTC impetuously deprived petitioner of the opportunity to recover the land which she allegedly paid for.

[16] Rule 5, A.M. No. 01-10-5-SC-PHILJA.

Unless the conduct of the party is so negligent, irresponsible, contumacious, or dilatory as for non-appearance to provide substantial grounds for dismissal, the courts should consider lesser sanctions which would still achieve the desired end. The Court has written "inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets, while they lend a deceptive aura of efficiency to records of the individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.[17]

It bears emphasis that the subject matter of the complaint is a valuable parcel of land measuring 328 square meters and that petitioner had allegedly spent a lot of money not only for the payment of the docket and other filing fees but also for the extra-territorial service of the summons to the respondents who are now permanent residents of the U.S.A. Certainly, petitioner stands to lose heavily on account of technicality. Even if the dismissal is without prejudice, the refiling of the case would still be injurious to petitioner because she would have to pay again all the litigation expenses which she previously paid for. The Court should afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from constraints of technicalities.[18] Technicalities should take a backseat against substantive rights and should give way to the realities of the situation. Besides, the petitioner has manifested her interest to pursue the case through the present petition. At any rate, it has not been shown that a remand of the case for trial would cause undue prejudice to respondents.

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[17] *Paguirigan v. Pilhino Sales Corporation*, G.R. No. 169177, June 30, 2006, 494 SCRA 384, 391, citing *Ruiz v. Judge Estenzo*, 264 Phil. 396 (1990).

[18] *Leyba v. Rural Bank of Cabuyao, Inc.*, G.R. No. 172910, November 14, 2008, 571 SCRA 160, 163.

In the light of the foregoing, the Court finds it just and proper that petitioner be allowed to present her cause of action during trial on the merits to obviate jeopardizing substantive justice. Verily, the better and more prudent course of action in a judicial proceeding is to hear both sides and decide the case on the merits instead of disposing the case by technicalities. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty or property on technicalities.[19] The ends of justice and fairness would best be served if the issues involved in the case are threshed out in a full-blown trial. Trial courts are reminded to exert efforts to resolve the matters before them on the merits and to adjudge them accordingly to the satisfaction of the parties, lest in hastening the proceedings, they further delay the resolution of the cases.

WHEREFORE, the petition is *GRANTED*. Civil Case No. 13-2007 is hereby *REINSTATED* and *REMANDED* to the Regional Trial Court of Panobo City, Branch 34 for referral back to the Philippine Mediation Center for possible amicable settlement or for other proceedings.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Abad, JJ.,* concur.

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[19] *Paredes v. Verano*, G.R. No. 164375, October 12, 2006, 504 SCRA 278-279.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

FIRST DIVISION

[G.R. No. 189981. March 9, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN GABRINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— We have held time and again that "the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality." As We have reiterated in the recent *People v. Combate*, where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial. Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial. In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is, therefore, no reason to disturb the findings of fact made by the RTC and its assessment of the credibility of the witnesses.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— For a person to be convicted of the offense of murder, the prosecution must prove that: (1) the offender killed the victim; and (2) that the killing was committed with any of the attendant circumstances under Art. 248 of the RPC, such as treachery. Particularly, *People v. Leozar Dela Cruz* enumerates the elements of murder, thus: 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.

3. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— Treachery exists when "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make." What is important in ascertaining the existence of treachery is the fact that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victim **no chance** to resist or escape the attack. In *People v. Lobino*, We held that a sudden attack against an unarmed victim constitutes treachery. In this case, x x x it is clear that accused-appellant deliberately hid behind the coconut tree at nighttime, surprising the victim, Balano, by his swift attack and immediate lunging at him. Obviously, the unsuspecting Balano did not have the opportunity to resist the attack when accused-appellant, without warning, suddenly sprang out from behind the coconut tree and stabbed him. This undoubtedly constitutes treachery. The fact that Balano was able to run after he was stabbed by accused-appellant does not negate the fact the treachery was committed. As We held in *Lobino*, that the victim was still able to run after the first blow does not obliterate the treachery that was employed against him. Clearly therefore, the RTC and the CA did not err in finding that treachery was committed. Accordingly, accused-appellant's conviction of murder is proper.

4. ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES, NOT ESTABLISHED.— According to Art. 14(3) of the RPC, an offense is aggravated when it is committed with evident premeditation. Evident premeditation is present when the following requisites concur: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. In this case, evident premeditation was not established. First, there is showing, much less an indication, that accused-appellant had taken advantage of a sufficient time to carefully plan the killing of Balano; or that a considerable time has lapsed enough for accused-appellant to reflect upon the consequences of his act but nevertheless

clung to his predetermined and well-crafted plan. The prosecution was only able to establish the fact of accused-appellant's sudden stabbing of Balano after he hid behind the coconut tree. This fact only successfully establishes the qualifying circumstance of treachery but not the aggravating circumstance of evident premeditation. In appreciating the aggravating circumstance of evident premeditation, it is indispensable that the fact of planning the crime be established. Particularly, "[i]t is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out." Accordingly, when there is no evidence showing how and when the accused planned to killing and how much time elapsed before it was carried out, evident premeditation cannot prosper. In this case, the prosecution failed to establish how and when the plan to kill Balano was devised. As this has not been clearly shown, consequently, evident premeditation cannot be appreciated as an aggravating circumstance.

5. ID.; ID.; PRIVILEGED MITIGATING CIRCUMSTANCE; INCOMPLETE SELF-DEFENSE; CANNOT BE APPRECIATED IN THE ABSENCE OF UNLAWFUL AGGRESSION.— In order that incomplete self-defense could prosper as a privileged mitigating circumstance, unlawful aggression must exist. In *People v. Manulit*, *People v. Mortera*, and *Mendoza v. People*, We reiterated the well-settled rule that unlawful aggression is an indispensable requisite in appreciating an incomplete self-defense. It is any one of the two other elements of self-defense that could be wanting in an incomplete self-defense, *i.e.*, reasonable necessity of the means to employed to prevent or repel it; or lack of sufficient provocation on the part of the person defending himself; but it can never be unlawful aggression. x x x In granting the privileged mitigating circumstance of incomplete self-defense, the burden to prove the elements during trial is incumbent upon the accused. It, therefore, follows that accused-appellant must prove before the RTC that there was indeed an unlawful aggression on the part of the victim, Balano. In this case, accused-appellant failed to demonstrate the existence of unlawful aggression that would warrant an incomplete self-defense.

6. ID.; ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION, DEFINED.— Unlawful aggression is defined as "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively

showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."

7. ID.; ID.; MURDER; PENALTY WHEN THERE IS NEITHER AGGRAVATING NOR MITIGATING CIRCUMSTANCES.— The penalty of murder under Art. 248 of the RPC is *reclusion perpetua* to death. Considering that the offense committed in this case is murder and there being neither aggravating nor mitigating circumstances, the RTC was correct in imposing the lesser penalty of *reclusion perpetua*.

8. ID.; ID.; ID.; CIVIL LIABILITY.— It is now settled that as a general rule, the Court awards civil indemnity, as well as moral and exemplary damages. And We have held in *People v. Combate* that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages." Accordingly, We increase the PhP 65,000 damages awarded by the RTC and affirmed by the CA as follows: PhP 50,000 in civil indemnity, PhP 50,000 in moral damages, and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum, in line with Our current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the August 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00731,

[1] *Rollo*, pp. 3-11. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Amy C. Lazaro-Javier and Edgardo L. Delos Santos.

which affirmed the April 3, 2007 Decision[2] in Criminal Case No. 1347 of the Regional Trial Court (RTC), Branch 10 in Abuyog, Leyte. The RTC convicted accused Allan Gabrino of murder.

The Facts

The charge against the accused stemmed from the following Information:

> That on or about the 30th day of December, 1993 in the Municipality of La Paz, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and wound one JOSEPH BALANO with the use of bladed weapon locally known as pisaw which said accused had purposely provided himself, thereby causing and inflicting upon the said JOSEPH BALANO wounds on his body which caused his death shortly thereafter.
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> CONTRARY TO LAW.[3]

On July 7, 2003, the arraignment was conducted. The accused, who was assisted by counsel, pleaded not guilty to the offense charge. A mandatory pre-trial conference was done on October 1, 2003. Thereafter, trial ensued.

During the trial, the prosecution offered the testimonies of Bartolome Custodio (Bartolome), laborer and a resident of *Barangay* Mag-aso, La Paz, Leyte; and Ismael Moreto (Ismael), farmer and a resident of *Barangay* Mohon, Tanauan, Leyte. On the other hand, the defense presented Nestor Sarile (Nestor), Municipal Planner of La Paz, Leyte and a resident of *Barangay* Mag-aso, La Paz, Leyte; and the accused as witnesses.

The Prosecution's Version of Facts

The first witness, Bartolome, testified that he is a resident of *Barangay* Mag-aso, La Paz, Leyte for more than 30 years and he knows the accused as they were classmate from Grade 1 to Grade 5. He also testified that on certain occasions, the

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[2] CA *rollo*, pp. 37-43. Penned by Judge Buenaventura A. Pajaron.

[3] *Id.* at 37.

accused would spend the night at their house. He stated that he likewise knows Joseph Balano (Balano), the deceased, as he was a former resident of *Barangay* Mag-aso, La Paz Leyte, but had to transfer to *Barangay* Cogon, Tanauan, Leyte because of an insurgency.[4]

He narrated that on December 30, 1993, he visited his uncle, Gorgonio Berones (Gorgonio) in *Barangay* Mag-aso, La Paz, Leyte with Balano. Upon arrival at the house of his uncle, he noticed that a certain Jom-jom and his friends, including the accused, were having a drinking session. Thirty minutes later, Jom-jom and his group left the vicinity. Bartolome and Balano stayed for less than an hour at the house of Bartolome's uncle, and left thereafter. On their way home, however, somebody suddenly sprang out from behind the coconut tree and stabbed Balano. As there was a bright moonlight at the time, and because of the two-arms-length distance between them, Bartolome easily recognized the assailant to be the accused. He even testified that he tried to calm the accused down. Bartolome further stated that he saw the accused stab Balano once, after which Balano ran away while being pursued by the accused. He stated that he asked the people for help in transporting Balano to the hospital but the latter died on the way there.[5]

The second witness, Ismael, testified that on December 30, 1993, he was in *Barangay* Mag-aso, La Paz, Leyte, working with Balano for the processing of copra of Guadalupe Balano. That night, he stayed at the house of Bartolome in the same *barangay*. He stated that while he was already at Bartolome's house at about 10:30 in the evening, he could not sleep yet as Bartolome and Balano were still out of the house looking for a helper. He, therefore, decided to go out of the house and upon going outside, he saw the accused suddenly stab Balano once with a *pisao* (small bolo or knife).[6] Fearing for his life, Ismael instantly went back to Bartolome's house.[7]

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[4] *Id.* at 38.
[5] *Id*.
[6] *Id*.
[7] *Id.* at 39.

The Defense's Version of Facts

Nestor, the first witness for the defense, stated that on December 30, 1993 at about 5 o'clock in the afternoon, he was in *Sitio* Siwala, *Barangay* Rizal, La Paz, Leyte, picking up passengers as a motorcycle driver for hire. Gorgonio was one of the passengers at that time who he brought to *Barangay* Mag-aso, La Paz, Leyte. When they arrived at the house of Gorgonio, the latter went inside to get money to pay for his fare. Consequently, Nestor waited in his tricycle outside of Gorgonio's house. During such time, Nestor saw four people going down the house: the accused, Jeffrey Erro (Jeffrey), Tap-ing Fernandez (Tap-ing), and Balano. According to Nestor's testimony, the accused went to the side of the house to urinate and while so doing, he saw Tap-ing throw something at the accused, which caused him to bleed, and then they ran away. Thereafter, Balano attacked the accused, and as they grappled, the former was stabbed by the latter on the chest. The accused ran away after the incident happened.[8]

Quite differently, the accused narrated that on December 30, 1993 at 5 o'clock in the afternoon, he was at the house of Gorgonio having a conversation with Leny Berones and Luna Berones. After an hour had passed, Gorgonio arrived with Nestor, Tap-ing, Balano and a certain Eddie who all came from the fiesta in *Barangay* Siwala. The accused stated that he went outside of the house to urinate when Tap-ing threw a stone at him, which hit him on the forehead and caused him to fall down. And when he saw Balano rushing towards him with an ice pick, he immediately stabbed him and then ran away.[9]

The Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its April 3, 2007 Decision reads:

WHEREFORE, finding the accused [Allan] Gabrino guilty beyond reasonable doubt of the crime as [charged], this Court hereby

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[8] *Id*.

[9] *Id*.

sentences accused to suffer the penalty of *RECLUSION PERPETUA*, ordering the accused to indemnify the offended party the amount of Sixty Five Thousand Pesos (₱65,000.00) and to pay the costs.

SO ORDERED.[10]

In finding for the prosecution and convicting the accused of murder under Article 248 of the Revised Penal Code (RPC), the RTC gave credence to the testimonies of the witnesses of the prosecution. The RTC found that treachery was employed by the accused in killing Balano. The RTC further held that the justifying circumstance of incomplete self-defense under Art. 11(1) of the RPC could not be applied in the present case as the element of unlawful aggression is absent.

The Ruling of the Appellate Court

On August 28, 2008, the CA affirmed the judgment of the RTC *in toto*. The dispositive portion of the CA Decision reads:

WHEREFORE, the herein appealed Decision convicting appellant Allan Gabrino of the crime of murder and imposing on him the penalty of *reclusion perpetua* and the payment to the victim's heirs of civil indemnity in the amount of ₱65,000.00 is hereby AFFIRMED *in toto*.

SO ORDERED.[11]

The Issues

Hence, this appeal is before Us, with accused-appellant maintaining that the trial court erred in convicting him of the crime of murder, despite the fact that his guilt was not proved beyond reasonable doubt. Accused-appellant also alleges that assuming that he could be made liable for Balano's death, the CA and the RTC erred in appreciating the qualifying circumstance of treachery. Another issue that he raises is the alleged existence of the mitigating circumstance of incomplete self-defense.

The Court's Ruling

We sustain the conviction of accused-appellant.

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[10] *Id.* at 43.

[11] *Rollo*, p. 11.

Factual findings of the RTC should be given credence and should therefore be respected

In the instant case, while both the prosecution and the defense agree on the date when the incident occurred and the fact that accused-appellant stabbed Balano, they conflict with the rest of the facts. It was, therefore, incumbent upon the RTC to appreciate the facts during trial and determine which information carries weight. And in doing so, the RTC gave credence to the testimonies of the prosecution's witnesses, with which the CA thereafter concurred. Accordingly, the RTC adopted the version of the prosecution as the correct factual finding.

We agree with the RTC's factual determination as affirmed by the CA.

We have held time and again that "the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality."[12] As We have reiterated in the recent *People v. Combate*, where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses.[13] This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial.[14] Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.

In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is, therefore, no reason to disturb the findings

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[12] *People v. Combate*, G.R. No. 189301, December 15, 2010.

[13] *Id.*; citing *People v. Gado*, 358 Phil. 956 (1998).

[14] *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 705.

of fact made by the RTC and its assessment of the credibility of the witnesses. To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan,* thus:

> In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge *a quo* was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.** It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, **because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case**.[15] (Emphasis Ours.)

Treachery was committed by accused-appellant

Art. 248 of the RPC defines murder as follows:

> 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;

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[15] G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

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 Ours.)

For a person to be convicted of the offense of murder, the prosecution must prove that: (1) the offender killed the victim; and (2) that the killing was committed with any of the attendant circumstances under Art. 248 of the RPC, such as treachery. Particularly, *People v. Leozar Dela Cruz* enumerates the elements of murder, thus:

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.[16]

In this case, it is undoubted that accused-appellant was the person who stabbed Balano and caused his death.[17] And this killing is neither parricide nor infanticide. The question, therefore, to be resolved in this case is whether the killing was attended by treachery that would justify accused-appellant's conviction of murder.

Treachery exists when "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make."[18] What is important in ascertaining the existence of treachery is the fact that the attack was made swiftly, deliberately, unexpectedly, and without a

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[16] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

[17] CA *rollo*, p. 30.

[18] *People v. Dela Cruz*, *supra* note 16; citing *People v. Amazan*, G.R. Nos. 136251 & 138606-07, January 16, 2001, 349 SCRA 218, 233 & *People v. Bato*, G.R. No. 127843, December 15, 2000, 348 SCRA 253, 261.

warning, thus affording the unsuspecting victim **no chance** to resist or escape the attack.[19] In *People v. Lobino*, We held that a sudden attack against an unarmed victim constitutes treachery.[20]

In this case, it is clear accused-appellant employed treachery in stabbing and killing Balano.

Relevant to the finding of treachery is the testimony of Bartolome, to wit:

Q: Will you please tell this Honorable Court what was that unusual incident that happen? [sic]

A: While we were on our way home, we have no knowledge that there was somebody who was waylaying us on the road.

Q: What happen [sic] on that road?
A: **He suddenly emanate [sic] coming from the coconut tree and immediately lounge [sic] at Joseph Balano and stabbed him.**

Q: Whom are you referring to [w]ho emanate [sic] from the coconut tree and immediately stab Joseph Balano?
A: Allan Gabrino.

Q: How far was the place of incident to the house of Gorgonio Berones?
A: Less than twenty (20) meters from the place of incident.

Q: **Since it was nighttime,** how were you able to identify Allan Gabrino as the one who stabbed Joseph Balano?
A: **Because during that night, there was a moon and my distance to Joseph Balano was only two arms length, I was near him and he was ahead of me and I saw that he was stabbed and I even pacified Allan Gabrino.**

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[19] *Id.*; citing *People v. Albarido*, G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208 & *People v. Francisco*, G.R. No. 130490, June 19, 2000, 333 SCRA 725, 746.

[20] G.R. No. 123071, October 28, 1999, 317 SCRA 606, 615.

Q: You mean you pacified Allan Gabrino?
A: Yes, Sir.

Q: How did you pacify him?
A: I said don't do that Lan. He did not heed because he had already finished stabbing.

Q: When you said Lan, it is the name of Allan?
A: Yes, Sir.

Q: How many times did you see the accused stab the victim Joseph Balano?
A: I only saw once.[21] (Emphasis Ours.)

From the foregoing testimony, it is clear that accused-appellant deliberately hid behind the coconut tree at nighttime, surprising the victim, Balano, by his swift attack and immediate lunging at him. Obviously, the unsuspecting Balano did not have the opportunity to resist the attack when accused-appellant, without warning, suddenly sprang out from behind the coconut tree and stabbed him. This undoubtedly constitutes treachery. The fact that Balano was able to run after he was stabbed by accused-appellant does not negate the fact the treachery was committed. As We held in *Lobino*, that the victim was still able to run after the first blow does not obliterate the treachery that was employed against him.[22] Clearly therefore, the RTC and the CA did not err in finding that treachery was committed. Accordingly, accused-appellant's conviction of murder is proper.

Evident premeditation was not established as an aggravating circumstance

According to Art. 14(3) of the RPC, an offense is aggravated when it is committed with evident premeditation. Evident premeditation is present when the following requisites concur:

(1) the time when the offender determined to commit the crime;

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[21] CA *rollo*, p. 40.

[22] *Supra* note 20.

(2) an act manifestly indicating that the culprit has clung to his determination; and

(3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[23]

In this case, evident premeditation was not established. First, there is showing, much less an indication, that accused-appellant had taken advantage of a sufficient time to carefully plan the killing of Balano; or that a considerable time has lapsed enough for accused-appellant to reflect upon the consequences of his act but nevertheless clung to his predetermined and well-crafted plan. The prosecution was only able to establish the fact of accused-appellant's sudden stabbing of Balano after he hid behind the coconut tree. This fact only successfully establishes the qualifying circumstance of treachery but not the aggravating circumstance of evident premeditation.

In appreciating the aggravating circumstance of evident premeditation, it is indispensable that the fact of planning the crime be established.[24] Particularly, "[i]t is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out."[25] Accordingly, when there is no evidence showing how and when the accused planned to killing and how much time elapsed before it was carried out, evident premeditation cannot prosper.[26] In this case, the prosecution failed to establish how and when the plan to kill Balano was devised. As this has not been clearly shown, consequently, evident premeditation cannot be appreciated as an aggravating circumstance.

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[23] *People v. Borbon*, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 188.

[24] *Id.* at 189 & 192.

[25] *Id*.

[26] *Id*.

Incomplete self-defense cannot be made as a justifying circumstance, because the element of unlawful aggression is absent

Accused-appellant's claim of incomplete self-defense cannot prosper. Art. 69 in relation to Art. 11 of the RPC explains when incomplete self-defense is permissible as a privileged mitigating circumstance, thus:

> ART. 69. *Penalty to be imposed when the crime committed is not wholly excusable*.—A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.
>
> ART. 11. *Justifying circumstances*.—The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances occur:
>
> *First.* Unlawful aggression;
>
> *Second.* Reasonable necessity of the means employed to prevent or repel it;
>
> *Third.* Lack of sufficient provocation on the part of the person defending himself.

In order that incomplete self-defense could prosper as a privileged mitigating circumstance, unlawful aggression must exist. In *People v. Manulit*,[27] *People v. Mortera*,[28] and *Mendoza v. People*,[29] We reiterated the well-settled rule that unlawful aggression is an indispensable requisite in appreciating an

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[27] G.R. No. 192581, November 17, 2010; citing *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[28] G.R. No. 188104, April 23, 2010, 619 SCRA 448, 462.

[29] G.R. No. 139759, January 14, 2005, 448 SCRA 158, 161.

incomplete self-defense. It is any one of the two other elements of self-defense that could be wanting in an incomplete self-defense, *i.e.*, reasonable necessity of the means to employed to prevent or repel it; or lack of sufficient provocation on the part of the person defending himself; but it can never be unlawful aggression.[30]

Unlawful aggression is defined as "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."[31]

In granting the privileged mitigating circumstance of incomplete self-defense, the burden to prove the elements during trial is incumbent upon the accused.[32] It, therefore, follows that accused-appellant must prove before the RTC that there was indeed an unlawful aggression on the part of the victim, Balano.

In this case, accused-appellant failed to demonstrate the existence of unlawful aggression that would warrant an incomplete self-defense. As properly pointed out by the RTC, the testimony of accused-appellant on cross-examination establishes this failure, thus:

Q: According to you, it was Tap-ing Fernandez who threw stone to you, is that correct?

WITNESS

A: Yes, sir.

Q: And you were hit on your forehead, is that correct?
A: No, sir, on the top of my head.

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[30] *Id*.

[31] *People v. Manulit, supra* note 27.

[32] *Mendoza v. People, supra* note 29, at 162.

COURT INTERPRETER

Witness pointing to the top of his head.

FISCAL MOTALLA

Q: And you became groggy according to you, is that correct?
A: Yes, sir.

Q: And you fell to the ground.
A: No, sir.

Q: So you did not fall to the ground, is that what you mean?
A: No, sir, I felt groggy.

Q: You said you saw the victim approached [sic] you with an ice pick, is that correct?
A: Yes, sir.

Q: And you immediately stabbed him?
A: Yes, sir.

Q: Meaning, he was not able to stab you because you immediately stabbed him, is that correct?
A: Yes, sir.

Q: But according to you, when the victim, was hit he went to a nearby coconut tree and stabbed the coconut tree, is that correct?
A: Yes, sir.

Q: And you were just two-arms length away from him, is that correct?
A: Yes, sir.

Q: He did not thrust towards you, he was only stabbing the coconut tree, is that correct?
A: He did not thrust towards me.

Q: He only kept on stabbing the coconut tree, is that correct?
A: Yes, sir.

Q: Despite the fact that you were near to him?
A: Yes, sir.

Q: And he was already wounded by you when he was stabbing the coconut tree?
A: He was already wounded.[33]

From the foregoing testimony of accused-appellant himself, it is clear that there was no unlawful aggression on the part of Balano that would justify accused-appellant to stab him. To justify an incomplete self-defense, the unlawful aggression must come from the victim himself against the person who resorted to self-defense.[34] In this case, if there was any, the unlawful aggression came from Tap-ing, who was the one who threw a stone and hit accused-appellant. The mere fact that Balano was alleged to be approaching accused-appellant with an ice pick does not constitute a real and imminent threat to one's life sufficient to create an unlawful aggression. Unlawful aggression requires more than that. In *People v. Arnante*, as it is here, the "mere perception of an impending attack is not sufficient to constitute unlawful aggression."[35] In this case, there was not even any attempt on the part of Balano to strike or stab accused-appellant. If at all and assuming to be true, Balano's demeanor could be deemed as an intimidating attitude that is certainly short of the imminence that could give rise to the existence of unlawful aggression.[36] What is more, it was not him, but Tap-ing who had previously hit accused-appellant. Accused-appellant's own testimony also negates any intention on the part of Balano to cause him any harm. As he testified, even after he stabbed Balano, the latter never retaliated and struck back. Instead, he stabbed the coconut tree notwithstanding the fact that accused-appellant was within his reach. Certainly,

[33] CA *rollo*, p. 42.

[34] *People v. Manulit, supra* note 27.

[35] G.R. No. 148724, October 15, 2002, 391 SCRA 155, 161.

[36] *People v. Lopez*, G.R. No. 177302, April 16, 2009, 585 SCRA 529, 539.

nothing in the facts indicate any circumstance that could justify the stabbing and the ultimate taking of Balano's life. Accordingly, as We are not convinced that there was an unlawful aggression in this case on the part of the victim, Balano, an incomplete self-defense is wanting and accused-appellant's offense, therefore, cannot be mitigated.

Accused is liable for damages and interest

The penalty of murder under Art. 248 of the RPC is *reclusion perpetua* to death. Considering that the offense committed in this case is murder and there being neither aggravating nor mitigating circumstances, the RTC was correct in imposing the lesser penalty of *reclusion perpetua*.[37]

It is now settled that as a general rule, the Court awards civil indemnity, as well as moral and exemplary damages.[38] And We have held in *People v. Combate* that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages."[39]

Accordingly, We increase the PhP 65,000 damages awarded by the RTC and affirmed by the CA as follows: PhP 50,000 in civil indemnity, PhP 50,000 in moral damages, and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum,[40] in line with Our current jurisprudence.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CEB CR-H.C. No. 00731 finding accused-appellant Allan Gabrino guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. As modified, the ruling of the trial court should read as follows:

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[37] See *People v. Lobino, supra* note 20, at 616.

[38] *People v. Combate, supra* note 12.

[39] *Id.*; citing *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[40] *Id*.

WHEREFORE, finding the accused, Allan Gabrino, *GUILTY* beyond reasonable doubt of the crime of *MURDER*, this Court hereby sentences accused to suffer the penalty of *RECLUSION PERPETUA* and is ordered to indemnify the heirs of the late Joseph Balano the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 30,000 as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 191388. March 9, 2011]

ASIA UNITED BANK, CHRISTINE T. CHAN, and FLORANTE C. DEL MUNDO, *petitioners, vs.* **GOODLAND COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONCEPT.— There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."

2. ID.; ID.; ID.; FILING AN ANNULMENT CASE AND AN INJUNCTION CASE BASED ON THE SAME REAL ESTATE MORTGAGE CONSTITUTES FORUM SHOPPING.— The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for

the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against consolidation of title. While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same — the alleged nullity of the REM. Thus, what is involved here is the third way of committing forum shopping, *i.e.*, filing multiple cases based on the same cause of action, but with different prayers. As previously held by the Court, there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues. There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping. The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The well-entrenched rule is that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated."

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioners.
Mondragon & Montoya Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The costly consequence of forum shopping should remind the parties to ever be mindful against abusing court processes.

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated June 5, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 90114, as well as its Resolution[3] dated February 17, 2010, which denied a reconsideration of the assailed Decision. The dispositive portion of the appellate court's Decision reads:

> WHEREFORE, the appeal is **GRANTED** and the appealed Order dated March 15, 2007 is **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered ordering the **DENIAL** of appellee bank's motion to dismiss and directing the **REINSTATEMENT** of appellant's complaint as well as the **REMAND** of the case to the trial court for further proceedings.
>
> SO ORDERED.[4]

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[1] *Rollo* of G.R. No. 191388, pp. 44-95. The prayer of the petition reads:

> WHEREFORE, petitioners respectfully pray that this Honorable Court REVERSE and SET ASIDE the assailed *Decision* dated 5 June 2009 and *Resolution* dated 17 February 2010 issued by the Court of Appeals in CA-G.R. CV No. 90114, and in lieu thereof, REINSTATE the *Order* dated 15 March 2007 of the Regional Trial Court of Biñan, Laguna, Branch 25, in Civil Case No. B-7110.
>
> Petitioners pray for such further or other reliefs as may be deemed just or equitable. (Petition, p. 50; *id.* at 93).

[2] *Id.* at 9-25; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.

[3] *Id.* at 27-32; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Japar B. Dimaampao and Normandie B. Pizzaro.

[4] *Id.* at 24.

Factual Antecedents

Respondent Goodland Company, Inc. (Goodland) executed a Third Party Real Estate Mortgage (REM) over two parcels of land located in the Municipality of Sta. Rosa, Laguna and covered by Transfer Certificates of Title (TCT) Nos. 321672[5] and 321673[6] in favor of petitioner Asia United Bank (AUB). The mortgage secured the obligation amounting to ₱250 million of Radiomarine Network, Inc. (RMNI), doing business as Smartnet Philippines, to AUB. The REM was duly registered on March 8, 2001 in the Registry of Deeds of Calamba, Laguna.[7]

Goodland then filed a *Complaint*[8] docketed as Civil Case No. B-6242 before Branch 25 of the Regional Trial Court (RTC) of Biñan, Laguna for the annulment of the REM on the ground that the same was falsified and done in contravention of the parties' verbal agreement (Annulment Case).

While the Annulment Case was pending, RMNI defaulted in the payment of its obligation to AUB, prompting the latter to exercise its right under the REM to extrajudicially foreclose the mortgage. It filed its *Application for Extrajudicial Foreclosure of Real Estate Mortgage under Act No. 3135, as amended* with the Office of the Executive Judge of the RTC of Biñan, Laguna on October 19, 2006.[9] The mortgaged properties were sold in public auction to AUB as the highest bidder. It was issued a *Certificate of Sale,* which was registered with the Registry of Deeds of Calamba on November 23, 2006.

Before AUB could consolidate its title, Goodland filed on November 28, 2006 another *Complaint*[10] docketed as Civil Case No. B-7110 before Branch 25 of the RTC of Biñan, Laguna,

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[5] *Id.* at 516-520.

[6] *Id.* at 521-525.

[7] *Id.* at 518, 523.

[8] *Id.* at 256-271.

[9] *Id.* at 502-505.

[10] *Id.* at 282-306.

against AUB and its officers, petitioners Christine Chan and Florante del Mundo. This *Complaint* sought to annul the foreclosure sale and to enjoin the consolidation of title in favor of AUB (Injunction Case). Goodland asserted the alleged falsified nature of the REM as basis for its prayer for injunction.

A few days later, AUB consolidated its ownership over the foreclosed properties and obtained new titles, TCT Nos. T-657031[11] and 657032,[12] in its name from the Registry of Deeds of Calamba.

Petitioners then filed on December 11, 2006 a *Motion to Dismiss with Opposition to a Temporary Restraining Order* in the Injunction Case.[13] They brought to the trial court's attention Goodland's forum shopping given the pendency of the Annulment Case. They argued that the two cases both rely on the alleged falsification of the real estate mortgage as basis for the reliefs sought.

Ruling of the Regional Trial Court (Injunction Case)

On March 15, 2007, the trial court acted favorably on petitioners' motion and dismissed the Injunction Case with prejudice on the grounds of forum shopping and *litis pendentia*.[14] The trial court explained that the Injunction Case and the Annulment Case are both founded on the same transactions, same essential facts and circumstances, and raise substantially

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[11] *Id.* at 599-602.

[12] *Id.* at 603-606.

[13] *Id.* at 370-431.

[14] *Id.* at 916-917. The dispositive portion of the trial court's Order states:

WHEREFORE, finding the Motion to Dismiss filed by the defendants to be meritorious and well-taken, the same is hereby GRANTED. Consequently, the above-entitled case is hereby ordered DISMISSED, with prejudice.

No costs.

SO ORDERED. (*Id.* at 917; penned by Acting Presiding Judge Romeo C. De Leon.)

the same issues. The addition of the application for a writ of preliminary injunction does not vary the similarity between the two cases. The trial court further noted that Goodland could have prayed for injunctive relief as ancillary remedy in the Annulment Case. Finally, the trial court stated that any judgment in the Annulment Case regarding the validity of the REM would constitute *res judicata* on the Injunction Case.

Ruling of the Court of Appeals*[15] *(Injunction Case)

Goodland appealed[16] the same to the CA.

Meanwhile, AUB filed an *Ex-Parte Application for Writ of Possession* on December 18, 2006, which was granted on March 15, 2007. The writ was issued on March 26, 2007 and AUB obtained possession of the foreclosed properties on April 2, 2007.

On June 5, 2009, the CA promulgated its assailed Decision, which ruled in favor of Goodland and ordered the reinstatement of the Injunction Case in the trial court.[17]

The CA rejected petitioners' contention that Goodland's appeal raised pure questions of law,[18] which are within the jurisdiction of the Supreme Court under Rule 45.[19] Instead, it found

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[15] *Id.* at 9-25.

[16] *Id.* at 958-993.

[17] *Id.* at 9-25.

[18] RULES OF COURT, Rule 50, Section 2. *Dismissal of improper appeal to the Court of Appeals.* — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. x x x

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

[19] RULES OF COURT, Rule 41, Section 2. *Modes of Appeal.* —

(a) *Ordinary appeal.* – x x x

(b) *Petition for review.* – x x x

(c) *Appeal by certiorari.* – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

Goodland's Rule 41 appeal to be proper because it involved *both* questions of fact and of law. The CA held that a question of fact existed because petitioners themselves questioned in their Brief the veracity of Goodland's *Certification of Non-Forum Shopping*.[20]

The CA conceded that Goodland's Brief failed to comply with the formal requirements, which are all grounds for the dismissal of the appeal,[21] *e.g.*, failure of the appellant to serve and file the required number of copies of its brief on all appellees and absence of page references to the record. However, it relaxed the rules so as to completely resolve the rights and obligations of the parties. The CA, however, warned Goodland that its future lapses will be dealt with more severely.[22]

The CA further ruled against petitioners' argument that the delivery of the foreclosed properties to AUB's possession has rendered Goodland's appeal moot. It explained that the Injunction Appeal involving the annulment of extrajudicial foreclosure sale can proceed independently of petitioners' application for a writ of possession.[23]

The CA then concluded that Goodland was not guilty of forum shopping when it initiated the Annulment and Injunction Cases. The CA held that the *reliefs sought* in the two cases were different. The Annulment Case sought the nullification of the real estate mortgage, while the Injunction Case sought the nullification of the foreclosure proceedings as well as to enjoin

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[20] *Rollo* of G.R. No. 191388, pp. 15-16.

[21] RULES OF COURT, Rule 50, Section 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence x x x of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44.

[22] *Rollo* of G.R. No. 191388, p. 16.

[23] *Id.* at 17.

the consolidation of title in favor of petitioners.[24] The CA further held that aside from the difference in reliefs sought, the two cases were independent of each other because the facts or evidence that supported their respective *causes of action* were different. The acts which gave rise to the Injunction Case (*i.e.*, the extrajudicial foreclosure proceedings) occurred long after the filing of the Annulment Case.[25]

The appellate court also held that any decision in either case will not constitute *res judicata* on the other. It explained that the validity of the real estate mortgage has no "automatic bearing" on the validity of the extrajudicial foreclosure proceedings.[26]

Moreover, according to the CA, the fact that Goodland stated in its *Certification of Non-Forum Shopping* in the Injunction Case that the Annulment Case was pending belied the existence of forum shopping.[27]

Petitioners filed a Motion for Reconsideration[28] on July 2, 2009, which was denied in the assailed Resolution of February 17, 2010.[29]

Hence, the instant petition.

Ruling in G.R. No. 190231 (Annulment Case)

Contemporaneously with the proceedings of the Injunction Case, the earlier Annulment Case (Civil Case No. B-6242) was also dismissed by the trial court on the ground of forum shopping on August 16, 2007.[30]

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[24] *Id.* at 18-22.

[25] *Id.* at 22.

[26] *Id.* at 22-23.

[27] *Id.* at 24.

[28] *Id.* at 123-158.

[29] *Id.* at 27-32.

[30] *Id.* at 1069-1074; penned by Presiding Judge Teodoro N. Solis.

Goodland filed an appeal[31] of the dismissal to the CA, which appeal was granted. The CA ordered on August 11, 2009 the reinstatement of the Annulment Case in the trial court.[32]

AUB then filed with this Court a *Petition for Review*,[33] docketed as G.R. No. 190231 and entitled *Asia United Bank and Abraham Co v. Goodland Company, Inc*.

On December 8, 2010, the Court's First Division reversed the CA ruling and resolved the appeal in AUB's favor.[34] The sole issue resolved by the Court was whether Goodland committed willful and deliberate forum shopping by filing Civil Case Nos. B-6242 (Annulment Case) and B-7110 (Injunction Case). The Court ruled that Goodland *committed forum shopping* because both cases asserted non-consent to the mortgage as the only basis for seeking the nullification of the REM, as well as the injunction of the foreclosure. When Goodland did not notify the trial court of the subsequent filing of the injunction complaint, Goodland revealed its "furtive intent to conceal the filing of Civil Case No. B-7110 for the purpose of securing a favorable judgment." Thus, the Court concluded that the trial court was correct in dismissing the annulment case with prejudice. The dispositive portion of the said Resolution reads as follows:

> WHEREFORE, the petition is hereby **GRANTED**. The August 11, 2009 decision and November 10, 2009 resolution of the Court of Appeals in CA-GR CV No. 9126[9] are **REVERSED** and **SET ASIDE**. The August 16, 2007 and December 5, 2007 orders of the Regional Trial Court of Biñan, Laguna, Branch 25 in Civil Case No. B-6242 are **REINSTATED**.[35]

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[31] *Id.* at 1078-1105.

[32] *Rollo* of G.R. No. 190231, pp. 40-51; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Celia C. Librea-Leagogo and Antonio L. Villamor.

[33] *Id.* at 3-38.

[34] *Id.* at 584-592.

[35] *Id.* at 591.

Goodland filed a Motion for Reconsideration[36] but the same was denied with finality in the Court's Resolution dated January 19, 2011.

Issue[37]

The parties present several issues for the Court's resolution. Most of these address the procedural infirmities that attended Goodland's appeal to the CA, making such appeal improper and dismissible. The crux of the case, however, lies in the issue of whether the successive filing of the Annulment and Injunction Cases constitute forum shopping.

Petitioners' Arguments

Petitioners maintain that Goodland is guilty of forum shopping because it sought in the Annulment Case to annul the REM on the ground that it was falsified and unlawfully filled-out; while in the Injunction Case, Goodland wanted to nullify the foreclosure sale arising from the same REM on the ground that the REM was falsified and unlawfully filled-out. Clearly, Goodland's complaints rise and fall on the issue of whether the REM is valid. This requires the presentation of the same evidence in the Annulment and Injunction Cases.[38]

Goodland's Arguments

Goodland counters that it did not commit forum shopping because the causes of action for the Injunction and Annulment Cases are different. The Annulment Case is for the annulment of REM; while the Injunction Case is for the annulment of the extrajudicial foreclosure sale. Goodland argues that any judgment in the Annulment Case, *regardless of which party is successful*, would not amount to *res judicata* in the Injunction Case.[39]

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[36] *Id.* at 593-611.

[37] *Rollo* of G.R. No. 191388, p. 60.

[38] *Id.* at 67-81.

[39] *Id.* at 1486.

Our Ruling

We grant the petition.

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[40] The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:[41]

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

Common in these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as "the act or omission by which a party violates the right of another."[42]

The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against

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[40] *Chua v. Metropolitan Bank & Trust Company,* G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[41] *Id.* at 535-536.

[42] RULES OF COURT, Rule 2, Section 2.

consolidation of title. While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same — the alleged nullity of the REM. Thus, what is involved here is the third way of committing forum shopping, *i.e.*, filing multiple cases based on the same cause of action, but with different prayers. As previously held by the Court, there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues.[43]

There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The well-entrenched rule is that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated."[44]

The CA ruled that the two cases are different because the events that gave rise to them are different. The CA rationalized that the Annulment Case was brought about by the execution of a falsified document, while the Injunction Case arose from

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[43] See *Prubankers Association v. Prudential Bank and Trust Company*, 361 Phil. 744, 756 (1999).

[44] *Ramos v. Pangasinan Transportation Company, Inc.*, 169 Phil. 172, 179 (1977).

AUB's foreclosure based on a falsified document. The distinction is illusory. The cause of action for both cases is the alleged nullity of the REM due to its falsified or spurious nature. It is this nullity of the REM which Goodland sought to establish in the Annulment Case. It is also this nullity of the REM which Goodland asserted in the Injunction Case as basis for seeking to nullify the foreclosure and enjoin the consolidation of title. Clearly, the trial court cannot decide the Injunction Case without ruling on the validity of the mortgage, which issue is already within the jurisdiction of the trial court in the Annulment Case.

The recent development in *Asia United Bank v. Goodland Company, Inc.*,[45] which involved substantially the same parties and the same issue is another reason for Goodland's loss in the instant case. The issue that Goodland committed deliberate forum shopping when it successively filed the Annulment and Injunction Cases against AUB and its officers was decided with finality therein. This ruling is conclusive on the petitioners and Goodland considering that they are substantially the same parties in that earlier case.

Given our ruling above that the Injunction Case ought to be dismissed for forum shopping, there is no need to rule further on the procedural infirmities raised by petitioners against Goodland's appeal.

WHEREFORE, premises considered, the Petition is *GRANTED*. The June 5, 2009 Decision of the Court of Appeals and its February 17, 2010 Resolution in CA-G.R. CV No. 90114 are hereby *REVERSED and SET ASIDE*. The March 15, 2007 Order of Branch 25 of the Regional Trial Court of Biñan, Laguna *DISMISSING* Civil Case No. B-7110 is hereby *REINSTATED and AFFIRMED*.

SO ORDERED.

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

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[45] G.R. No. 190231, *supra* note 34.

FIRST DIVISION

[G.R. No. 192649. March 9, 2011]

HOME GUARANTY CORPORATION, *petitioner, vs.* **R-II BUILDERS, INC., and NATIONAL HOUSING AUTHORITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; A COURT WHICH HAS NO JURISDICTION OVER THE CASE HAS NO AUTHORITY TO TRANSFER THE SAME TO ANOTHER COURT.— We find that, having squarely raised the matter in its Rule 65 petition for *certiorari* and prohibition docketed as CA-G.R. SP No. 111153, HGC correctly faults the CA for not finding that Branch 24 of the Manila RTC had no authority to order the transfer of the case to respondent RTC. Being outside the jurisdiction of Special Commercial Courts, the rule is settled that cases which are civil in nature, like the one commenced by R-II Builders, should be threshed out in a regular court. With its acknowledged lack of jurisdiction over the case, Branch 24 of the Manila RTC should have ordered the dismissal of the complaint, since a court without subject matter jurisdiction cannot transfer the case to another court. Instead, it should have simply ordered the dismissal of the complaint, considering that the affirmative defenses for which HGC sought hearing included its lack of jurisdiction over the case.

2. ID.; ID.; ID.; A RE-RAFFLE OF THE CASE CANNOT INVOLVE COURTS WHICH HAVE DIFFERENT JURISDICTIONS EXCLUSIVE OF THE OTHER; RE-RAFFLE OF THE CASE CANNOT CURE A JURISDICTIONAL DEFECT.— [T]he pronouncement of Br. 24, the Special Commercial Court, in its Joint Order of 2 January 2008 that the case is not an intracorporate controversy, amplified in its Order of 1 February 2008 that it "does not have the authority to hear the complaint it being an ordinary civil action" is incompatible with the directive for the re-raffle of the case and to "leave the resolution of the same to Branch 22 of this Court." Such a directive is an exercise of authority over the case, which authority it had in

the same breath declared it did not have. What compounds the jurisdictional error is the fact that at the time of its surrender of jurisdiction, Br. 24 had already acted on the case and had in fact, on 26 October 2005, issued the writ of preliminary injunction sought by herein respondent R-II Builders. At that point, there was absolutely no reason which could justify a re-raffle of the case considering that the order that was supposed to have caused the re-raffle was not an inhibition of the judge but a declaration of absence of jurisdiction. So faulty was the order of re-raffle that it left the impression that its previously issued preliminary injunction remained effective since the case from which it issued was not dismissed but merely transferred to another court. A re-raffle which causes a transfer of the case involves courts with the same subject matter jurisdiction; it cannot involve courts which have different jurisdictions exclusive of the other. More apt in this case, a re-raffle of a case cannot cure a jurisdictional defect.

3. ID.; ID.; ID.; JURISDICTION OVER THE CASE IS ACQUIRED ONLY UPON PAYMENT OF THE CORRECT DOCKET FEES; APPLICATION.— For failure of R-II Builders to pay the correct docket fees for its original complaint or, for that matter, its *Amended and Supplemental Complaint* as directed in respondent RTC's 19 May 2008 order, it stands to reason that jurisdiction over the case had yet to properly attach. Applying the rule that "a case is deemed filed only upon payment of the docket fee regardless of the actual date of filing in court" in the landmark case of *Manchester Development Corporation v. Court of Appeals*, this Court ruled that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. x x x [R]espondent RTC admitted R-II Builder's *Amended and Supplemental Complaint* and directed the assessment and payment of the appropriate docket fees in the order dated 19 May 2008. Rather than complying with said directive, however, R-II Builders manifested its intent to evade payment of the correct docket fees by withdrawing its *Amended and Supplemental Complaint* and, in lieu thereof, filed its *Second Amended Complaint* which deleted its cause of action for accounting and conveyance of title to and/or possession of the entire *Asset Pool*, reduced its claim for attorney's fees, sought its appointment as Receiver and prayed for the liquidation and

distribution of the *Asset Pool*. In upholding the admission of said *Second Amended Complaint* in respondent RTC's assailed 3 March 2009 Order, however, the CA clearly lost sight of the fact that a real action was ensconced in R-II Builders' original complaint and that the proper docket fees had yet to be paid in the premises. Despite the latter's withdrawal of its *Amended and Supplemental Complaint*, it cannot, therefore, be gainsaid that respondent RTC had yet to acquire jurisdiction over the case for non-payment of the correct docket fees.

4. ID.; ID.; ID.; ID.; IMPORTANCE OF FILING FEES, EXPLAINED.— The importance of filing fees cannot be over-emphasized for they 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. The payment of said fees, therefore, cannot be made dependent on the result of the action taken without entailing tremendous losses to the government and to the judiciary in particular.

5. ID.; ID.; ID.; ID.; WHERE A PARTY FAILED TO PAY THE CORRECT DOCKET FEES, THE TRIAL COURT SHOULD HAVE DENIED ADMISSION OF THE AMENDED COMPLAINT AND ORDERED THE DISMISSAL OF THE CASE.— For non-payment of the correct docket fees which, for real actions, should be computed on the basis of the assessed value of the property, or if there is none, the estimated value thereof as alleged by the claimant, respondent RTC should have denied admission of R-II Builders' *Second Amended Complaint* and ordered the dismissal of the case. Although a *catena* of decisions rendered by this Court eschewed the application of the doctrine laid down in the *Manchester* case, said decisions had been consistently premised on the willingness of the party to pay the correct docket fees and/or absence of intention to evade payment of the correct docket fees. This cannot be said of R-II Builders which not only failed to pay the correct docket fees for its original complaint and *Amended and Supplemental Complaint* but also clearly evaded payment of the same by filing its *Second Amended Complaint*. By itself, the propriety of admitting R-II Builders' *Second Amended Complaint* is also cast in dubious light when viewed through the prism of the general prohibition against amendments intended to confer jurisdiction where none has been acquired yet. Although the

policy in this jurisdiction is to the effect that amendments to pleadings are favored and liberally allowed in the interest of justice, amendment is not allowed where the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction upon the court. Hence, with jurisdiction over the case yet to properly attach, HGC correctly fault the CA for upholding respondent RTC's admission of R-II Builders' *Second Amended Complaint* despite non-payment of the docket fees for its original complaint and *Amended and Supplemental Complaint* as well as the clear intent to evade payment thereof.

APPEARANCES OF COUNSEL

HGC Legal Group for petitioner.

Ponce Enrile Reyes & Manalastas Law Firm for R-II Builders, Inc.

D E C I S I O N

PEREZ, *J.*:

Primarily assailed in this petition for review filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, is the Decision dated 21 January 2010 rendered by the Former Fifteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 111153,[1] the dispositive portion of which states as follows:

WHEREFORE, the petition for *certiorari* and prohibition is hereby DENIED.

The assailed *Orders*, dated March 3, 2009 and September 29, 2009, of the Regional Trial Court of Manila, Branch 22 are hereby AFFIRMED.

Consequently, the injunction earlier issued on December 4, 2009, restraining the proceedings in *Civil Case No. 05-113407*, is hereby *DISSOLVED*.[2]

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[1] *Rollo*, pp. 139-165.

[2] *Id.* at 165.

The Facts

On 19 March 1993, a *Joint Venture Agreement* (JVA) was entered into between respondents National Housing Authority (NHA) and R-II Builders, Inc. (R-II Builders) for the implementation of the Smokey Mountain Development and Reclamation Project (SMDRP). Amended and restated on 21 February 1994[3] and 11 August 1994,[4] the JVA was aimed at implementing a two-phase conversion of the Smokey Mountain Dumpsite "into a habitable housing project inclusive of the reclamation of the area across Radial Road 10 (R-10)."[5] By the terms of the JVA, R-II Builders, as *developer*, was entitled to own 79 hectares of reclaimed land and the 2.3 hectare commercial area at the Smokey Mountain. As *landowner/ implementing agency*, NHA, on the other hand, was entitled to own the 2,992 temporary housing units agreed to be built in the premises, the cleared and fenced incinerator site consisting of 5 hectares, 3,520 units of permanent housing to be awarded to qualified on site residents, the industrial area consisting of 3.2 hectares and the open spaces, roads and facilities within the Smokey Mountain Area.[6]

On 26 September 1994, NHA and R-II Builders, alongside petitioner Housing Guaranty Corporation (HGC) as *guarantor* and the Philippine National Bank (PNB) as *trustee*, entered into an *Asset Pool Formation Trust Agreement* which provided the mechanics for the implementation of the project.[7] To back the project, an *Asset Pool* was created composed of the following assets: (a) the 21.2 hectare Smokey Mountain Site in Tondo, Manila; (b) the 79-hectare Manila Bay foreshore property in the name of the NHA; (c) the Smokey Mountain Project Participation Certificates (SMPPCs) to be issued, or their money proceeds; (d) disposable assets due to R-II Builders and/or its

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[3] *Id.* at 1063-1077.

[4] *Id.* at 1078-1087.

[5] *Id.* at 1063.

[6] *Id.* at 1068-1069.

[7] *Id.* at 1088.

proceeds as defined in the JVA; (e) the resulting values inputted by R-II Builders for pre-implementation activities and some start-up works amounting to ₱300,000,000.00; (f) the 2,992 temporary housing facilities/units to be constructed by R-II Builders; and, (g) all pertinent documents and records of the project.[8]

On the same date, the parties likewise executed a *Contract of Guaranty* whereby HGC, upon the call made by PNB and conditions therein specified, undertook to redeem the regular SMPPCs upon maturity and to pay the simple interest thereon to the extent of 8.5% per annum.[9] The foregoing agreements led to the securitization of the project through the issuance of 5,216 SMPPCs upon the *Asset Pool*, with a par value of 1 Million each, classified and to be redeemed by the trustee or, in case of call on its guaranty, by HGC, in the following order of priority:

a) *Regular SMPPCs* worth ₱2.519 Billion, issued for value to the general public at specified interests and maturity dates. These were to be redeemed by the PNB which was obliged to exhaust all liquid assets of the Asset Pool before calling on the HGC guarantee;

b) *Special SMPPCs* worth ₱1.403 Billion, issued exclusively to the NHA for conveyance of the Smokey Mountain Site and Manila Bay foreshore property to the Asset Pool, redeemable upon turnover of the developed project; and

c) *Subordinated SMPPCs* worth ₱1.294 Billion, issued exclusively to R-II Builders for its rights and interests in the JVA, redeemable with the turnover of all residual values, assets and properties remaining in the Asset Pool after both the Regular and Special SMPPCs are redeemed and all the obligations of the Asset Pool are settled.[10]

Subsequent to R-II Builders' infusion of ₱300 Million into the project, the issuance of the SMPPCs and the termination of PNB's services on 29 January 2001, NHA, R-II Builders

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[8] *Id.* at 19-20 and 1094.

[9] *Id.* at 1112-1117.

[10] *Id.* at 20-22, 354, 142-143 and 505.

and HGC agreed on the institution of Planters Development Bank (PDB) as *trustee* on 29 January 2001.[11] By 24 October 2002, however, all the Regular SMPPCs issued had reached maturity and, unredeemed, already amounted to an aggregate face value of ₱2.513 Billion. The lack of liquid assets with which to effect redemption of the regular SMPPCs prompted PDB to make a call on HGC's guaranty and to execute in the latter's favor a *Deed of Assignment and Conveyance* (DAC) of the entire *Asset Pool*, consisting of: (a) 105 parcels of land comprising the Smokey Mountain Site and the Reclamation Area, with a total area of 539,471.47 square meters, and all the buildings and improvements thereon; (b) shares of stock of Harbour Centre Port Terminal, Inc. (HCPTI); and, (c) other documents.[12]

On 1 September 2005, R-II Builders filed the complaint against HGC and NHA which was docketed as Civil Case No. 05-113407 before Branch 24 of the Manila Regional Trial Court, a Special Commercial Court (SCC). Contending that HGC's failure to redeem the outstanding regular SMPPCs despite obtaining possession of the *Asset Pool* ballooned the stipulated interests and materially prejudiced its stake on the residual values of the *Asset Pool*, R-II Builders alleged, among other matters, that the DAC should be rescinded since PDB exceeded its authority in executing the same prior to HGC's redemption and payment of the guaranteed SMPPCs; that while the estimated value of *Asset Pool* amounted to ₱5,919,716,618.62 as of 30 June 2005, its total liabilities was estimated at ₱2,796,019,890.41; and, that with the cessation of PDB's functions as a *trustee* and HGC's intention to use the *Asset Pool* to settle its obligations to the Social Security System (SSS), it was best qualified to be appointed as new *trustee* in the event of the resolution of the DAC. Assessed docket fees corresponding to an action incapable of pecuniary estimation, the complaint sought the grant of the following reliefs: (a) a temporary restraining order/preliminary and permanent injunction, enjoining disposition/s of the properties in the *Asset Pool*; (b) the resolution or, in the alternative, the

[11] *Id.* at 22 and 356.

[12] *Id.* at 1118-1119.

nullification of the DAC; (c) R-II Builders' appointment as *trustee* pursuant to Rule 98 of the *Rules of Court*; (d) HGC's rendition of an accounting of the assets and the conveyance thereof in favor of R-II Builders; and, (e) ₱500,000.00 in attorney's fees.[13]

On 26 October 2005, Branch 24 of the Manila RTC issued the writ of preliminary injunction sought by R-II Builders which, upon the challenge thereto interposed by HGC, was later affirmed by the CA in the 17 December 2007 decision rendered in CA-G.R. SP No. 98953.[14] Having filed its answer to the complaint, in the meantime, HGC went on to move for the conduct of a preliminary hearing on its affirmative defenses which included such grounds as lack of jurisdiction, improper venue and the then pendency before this Court of G.R. No. 164537, entitled *Francisco Chavez vs. National Housing Authority, et al.*, a case which challenged, among other matters, the validity of the JVA and its subsequent amendments.[15] On 2 August 2007, R-II Builders, in turn, filed a motion to admit[16] its *Amended and Supplemental Complaint* which deleted the prayer for resolution of the DAC initially prayed for in its original complaint. In lieu thereof, said pleading introduced causes of action for conveyance of title to and/or possession of the entire *Asset Pool*, for NHA to pay the *Asset Pool* the sum of ₱1,803,729,757.88 representing the cost of the changes and additional works on the project and for an increased indemnity for attorney's fees in the sum of ₱2,000,000.00.[17]

Consistent with its joint order dated 2 January 2008 which held that R-II Builders' complaint was an ordinary civil action and not an intra-corporate controversy,[18] Branch 24 of the Manila RTC issued a clarificatory order dated 1 February 2008 to the

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[13] *Id.* at 348-376.

[14] *Id.* at 24 and 146.

[15] *Id.* at 1416-1423.

[16] *Id.* at 440-445.

[17] *Id.* at 446-489.

[18] *Id.* at 435-437.

effect, among other matters, that it did not have the authority to hear the case.[19] As a consequence, the case was re-raffled to respondent Branch 22 of the Manila RTC (respondent RTC) which subsequently issued the 19 May 2008 order which, having determined that the case is a real action, admitted the aforesaid *Amended and Supplemental Complaint,* subject to R-II Builders' payment of the "correct and appropriate" docket fees.[20] On 15 August 2008, however, R-II Builders filed a motion to admit it *Second Amended Complaint,* on the ground that its previous *Amended and Supplemental Complaint* had not yet been admitted in view of the non-payment of the correct docket fees therefor.[21] Said *Second Amended Complaint* notably resurrected R-II Builders' cause of action for resolution of the DAC, deleted its causes of action for accounting and conveyance of title to and/or possession of the entire *Asset Pool*, reduced the claim for attorney's fees to ₱500,000.00, sought its appointment as Receiver pursuant to Rule 59 of the *Rules of Court* and, after an inventory in said capacity, prayed for approval of the liquidation and distribution of the *Asset Pool* in accordance with the parties' agreements.[22]

On 2 September 2008, HGC filed its opposition to the admission of R-II Builders' *Second Amended Complaint* on the ground that respondent RTC had no jurisdiction to act on the case until payment of the correct docket fees and that said pleading was intended for delay and introduced a new theory inconsistent with the original complaint and the *Amended and Supplemental Complaint*. Claiming that R-II Builders had defied respondent court's 19 May 2008 order by refusing to pay the correct docket fees, HGC additionally moved for the dismissal of the case pursuant to Section 3, Rule 17 of the *1997 Rules of Civil Procedure*.[23] On 24 November 2008, R-II Builders also filed

[19] *Id.* at 438-439.

[20] *Id.* at 490-495.

[21] *Id.* at 496-500.

[22] *Id.* at 496-538.

[23] *Id.* at 539-549.

an *Urgent Ex-Parte Motion for Annotation of Lis Pendens* on the titles of the properties in the *Asset Pool*, on the ground that HGC had sold and/or was intending to dispose of portions thereof, in violation of the writ of preliminary injunction issued in the premises.[24] Finding that jurisdiction over the case was already acquired upon payment of the docket fees for the original complaint and that the *Second Amended Complaint* was neither intended for delay nor inconsistent with R-II Builders' previous pleadings, respondent RTC issued its first assailed order dated 3 March 2009 which: (a) denied HGC's motion to dismiss; (b) granted R-II Builders' motion to admit its *Second Amended Complaint*; and, (c) noted R-II Builders' *Urgent Ex-Parte Motion for Annotation of Lis Pendens*, to which the attention of the Manila Register of Deeds was additionally called.[25]

Undaunted, HGC filed its 22 March 2009 motion for reconsideration of the foregoing order, arguing that: (a) the case is real action and the docket fees paid by R-II Builders were grossly insufficient because the estimated value of properties in the *Asset Pool* exceeds ₱5,000,000,000.00; (b) a complaint cannot be amended to confer jurisdiction when the court had none; (c) the RTC should have simply denied the *Urgent Ex-Parte Motion for Annotation of Lis Pendens* instead of rendering an advisory opinion thereon. In addition, HGC faulted R-II Builders with forum shopping, in view of its 10 September 2008 filing of the complaint docketed as Civil Case No. 08-63416 before Branch 91 of the Quezon City RTC, involving a claim for receivables from the NHA.[26] In turn, R-II Builders opposed the foregoing motion[27] and, on the theory that the *Asset Pool* was still in danger of dissipation, filed an urgent motion to resolve its application for the appointment of a receiver and submitted its nominees for said position.[28]

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[24] *Id.* at 585-590.

[25] *Id.* at 325-332.

[26] *Id.* at 613-656.

[27] *Id.* at 775-793.

[28] *Id.* at 823-827.

On 29 September 2009, respondent RTC issued its second assailed order which (a) denied HGC's motion for reconsideration; (b) granted R-II Builders' application for appointment of receiver and, for said purpose: [i] appointed Atty. Danilo Concepcion as Receiver and, [ii] directed R-II Builders to post a bond in the sum of ₱10,000,000.00.[29] Imputing grave abuse of discretion against the RTC for not dismissing the case and for granting R-II Builders' application for receivership, HGC filed the Rule 65 petition for *certiorari* and prohibition docketed as CA-G.R. SP No. 111153 before the CA[30] which, thru its Former Special Fifteenth Division, rendered the herein assailed 21 January 2010 decision,[31] upon the following findings and conclusions:

a) Irrespective of whether it is real or one incapable of pecuniary estimation, the action commenced by R-II Builders indubitably falls squarely within the jurisdiction of respondent RTC;

b) From the allegations of R-II Builders' original complaint and amended complaint the character of the relief primarily sought, *i.e.*, the declaration of nullity of the DAC, the action before respondent RTC is one where the subject matter is incapable of pecuniary estimation;

c) R-II Builders need not pay any deficiency in the docket fees considering its withdrawal of its *Amended and Supplemental Complaint*;

d) A receiver may be appointed without formal hearing, particularly when it is within the interest of both parties and does not result in the delay of any government infrastructure projects or economic development efforts;

e) Respondent RTC's act of calling the attention of the Manila Registrar of Deeds to R-II Builders' *Urgent Ex-Parte Motion for Annotation of Lis Pendens* is well-within its residual power to act on matters before it; and

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[29] *Id.* at 333-347.

[30] *Id.* at 178-313.

[31] *Id.* at 139-165.

f) The withdrawal of R-II Builders' *Amended and Supplemental Complaint* discounted the forum shopping imputed against it by HGC.[32]

HGC's motion for reconsideration of the foregoing decision[33] was denied for lack of merit in the CA's resolution dated 21 June 2010, hence, this petition.

The Issues

HGC urges the affirmative of the following issues in urging the grant of its petition, to wit:

"Did the Honorable Court of Appeals Seriously Err When It Failed to Rule That:

I. The Regional Trial Court *a quo* had no jurisdiction to proceed with the case considering that:

(1) the original court was without authority to hear the case and;

(2) despite an unequivocal order from the trial court *a quo*, Private Respondent (R-II Builders) failed and refused to pay the correct and proper docket fees, whether it be for a real or personal action, based on the values of the properties or claims subject of the complaints.

II. Since the Honorable Court of Appeals had characterized the case as a personal action, the action before the Regional Trial Court *a quo* should have been dismissed for improper venue.

III. The order appointing a receiver was made with grave abuse of discretion as amounting to lack of jurisdiction for having been issued under the following circumstances:

(1) It was made without a hearing and without any evidence of its necessity;

(2) It was unduly harsh and totally unnecessary in view of other available remedies, especially considering that Petitioner HGC is conclusively presumed to be solvent;

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[32] *Id.* at 154-165.

[33] *Id.* at 1375-1415.

(3) It effectively prevented the performance of HGC's functions in recovering upon its guaranty exposure and was in contravention of Presidential Decree Nos. 385 and 1818, Republic Act No. 8927 and Supreme Court Circular Nos. 2-91, 13-93, 68-94 and Administrative Circular No. 11-00."[34]

Acting on HGC's motion for resolution of its application for a temporary restraining order and/or preliminary injunction,[35] the Court issued the resolution dated 23 August 2010, enjoining the enforcement of respondent RTC's assailed orders.[36]

The Court's Ruling

We find the petition impressed with merit.

Jurisdiction is defined as the authority to hear and determine a cause or the right to act in a case.[37] In addition to being conferred by the Constitution and the law,[38] the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint,[39] the law in effect when the action is filed,[40] and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted.[41] Consistent with Section 1, Rule 141 of the *Revised Rules of Court* which provides that the prescribed fees shall be paid in full "upon the filing of the pleading or

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[34] *Id.* at 40-41.

[35] *Id.* at 1451-1484.

[36] *Id.* at 1485-1488.

[37] *Union Bank of the Philippines v. Securities and Exchange Commission*, G.R. No. 165382, 17 August 2006, 499 SCRA 253, 263.

[38] *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, 16 October 2006, 504 SCRA 528, 540.

[39] *General Milling Corporation v. Uytengsu III*, G.R. No. 160514, 30 June 2006, 494 SCRA 241, 245.

[40] *Bokingo v. Court of Appeals*, G.R. No. 161739, 4 May 2006, 489 SCRA 521, 530.

[41] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, G.R. No. 166744, 2 November 2006, 506 SCRA 625, 654-655.

other application which initiates an action or proceeding," the well-entrenched rule is to the effect that a court acquires jurisdiction over a case only upon the payment of the prescribed filing and docket fees.[42]

The record shows that R-II Builders' original complaint dated 23 August 2005 was initially docketed as Civil Case No. 05-113407 before Branch 24 of the Manila, a designated Special Commercial Court.[43] With HGC's filing of a motion for a preliminary hearing on the affirmative defenses asserted in its answer[44] and R-II Builders' filing of its *Amended and Supplemental Complaint* dated 31 July 2007,[45] said court issued an order dated 2 January 2008 ordering the re-raffle of the case upon the finding that the same is not an intra-corporate dispute.[46] In a clarificatory order dated 1 February 2008,[47] the same court significantly took cognizance of its lack of jurisdiction over the case in the following wise:

> At the outset, it must be stated that this Court is a designated Special Commercial Court tasked to try and hear, among others, intra-corporate controversies to the exclusion of ordinary civil cases.
>
> When the case was initially assigned to this Court, it was classified as an intra-corporate case. However, in the ensuing proceedings relative to the affirmative defenses raised by defendants, *even the plaintiff conceded that the case is not an intra-corporate controversy or even if it is, this Court is without authority to hear the same as the parties are all housed in Quezon City*.
>
> Thus, the more prudent course to take was for this Court to declare that it does not have the authority to hear the complaint it being an ordinary civil action. As to whether it is personal or civil, this Court would rather leave the resolution of the same to Branch 22 of this Court. (Italics supplied).

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[42] *Lacson v. Reyes*, G.R. No. 86250, 26 February 1990, 182 SCRA 729, 733.

[43] *Rollo*, pp. 348-377.

[44] *Id.* at 1416-1423.

[45] *Id.* at 446-487.

[46] *Id.* at 435-437.

[47] *Id.* at 438-439.

We find that, having squarely raised the matter in its Rule 65 petition for *certiorari* and prohibition docketed as CA-G.R. SP No. 111153,[48] HGC correctly faults the CA for not finding that Branch 24 of the Manila RTC had no authority to order the transfer of the case to respondent RTC.[49] Being outside the jurisdiction of Special Commercial Courts, the rule is settled that cases which are civil in nature, like the one commenced by R-II Builders, should be threshed out in a regular court.[50] With its acknowledged lack of jurisdiction over the case, Branch 24 of the Manila RTC should have ordered the dismissal of the complaint, since a court without subject matter jurisdiction cannot transfer the case to another court.[51] Instead, it should have simply ordered the dismissal of the complaint, considering that the affirmative defenses for which HGC sought hearing included its lack of jurisdiction over the case.

Calleja v. Panday,[52] while on facts the other way around, *i.e.*, a branch of the RTC exercising jurisdiction over a subject matter within the Special Commercial Court's authority, dealt squarely with the issue:

> Whether a branch of the Regional Trial Court which has no jurisdiction to try and decide a case has authority to remand the same to another co-equal Court in order to cure the defects on venue and jurisdiction.

Calleja ruled on the issue, thus:

> Such being the case, RTC Br. 58 did not have the requisite authority or power to order the transfer of the case to another branch of the Regional Trial Court. The only action that RTC-Br. 58 could take on the matter was to dismiss the petition for lack of jurisdiction.

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[48] *Id.* at 211-217.

[49] *Id.* at 41-47.

[50] *Atwell v. Concepcion Progressive Association, Inc.*, G.R. No. 169370, 14 April 2008, 551 SCRA 272, 281.

[51] *Igot v. Court of Appeals*, G.R. No. 150794, 17 August 2004, 436 SCRA 668, 676.

[52] G.R. No. 168696, 28 February 2006, 483 SCRA 680, 693.

Certainly, the pronouncement of Br. 24, the Special Commercial Court, in its Joint Order of 2 January 2008 that the case is not an intracorporate controversy, amplified in its Order of 1 February 2008 that it "does not have the authority to hear the complaint it being an ordinary civil action" is incompatible with the directive for the re-raffle of the case and to "leave the resolution of the same to Branch 22 of this Court." Such a directive is an exercise of authority over the case, which authority it had in the same breath declared it did not have. What compounds the jurisdictional error is the fact that at the time of its surrender of jurisdiction, Br. 24 had already acted on the case and had in fact, on 26 October 2005, issued the writ of preliminary injunction sought by herein respondent R-II Builders. At that point, there was absolutely no reason which could justify a re-raffle of the case considering that the order that was supposed to have caused the re-raffle was not an inhibition of the judge but a declaration of absence of jurisdiction. So faulty was the order of re-raffle that it left the impression that its previously issued preliminary injunction remained effective since the case from which it issued was not dismissed but merely transferred to another court. A re-raffle which causes a transfer of the case involves courts with the same subject matter jurisdiction; it cannot involve courts which have different jurisdictions exclusive of the other. More apt in this case, a re-raffle of a case cannot cure a jurisdictional defect.

Prescinding from the foregoing considerations, and to show that the proceedings below was error upon error, we find that the CA also gravely erred in not ruling that respondent RTC's (Branch 22, the regular court) jurisdiction over the case was curtailed by R-II Builders' failure to pay the correct docket fees. In other words, the jurisdictionally flawed transfer of the case from Branch 24, the SCC to Branch 22, the regular court, is topped by another jurisdictional defect which is the non-payment of the correct docket fees. In its order dated 19 May 2008 which admitted R-II Builders' *Amended and Supplemental Complaint*, respondent RTC distinctly ruled that the case was a real action and ordered the re-computation and

payment of the correct docket fees.[53] In patent circumvention of said order, however, R-II Builders filed its 14 August 2008 motion to admit its *Second Amended Complaint* which effectively deleted its causes of action for accounting and conveyance of title to and/or possession of the entire *Asset Pool* and, in addition to reducing the claim for attorney's fees and seeking its appointment as a receiver, reinstated its cause of action for resolution of the DAC.[54] Acting on said motion as well as the opposition and motion to dismiss interposed by HGC,[55] respondent RTC ruled as follows in its assailed 3 March 2009 order,[56] to wit:

> 1. The docket fees of the original complaint has been paid, thus, the Court already acquired jurisdiction over the instant case. The admission of the Amended and Supplemental Complaint, is subject to the payment of docket fees pursuant to the Order of this Court dated May 18, 2008. The non-payment of the docket fees stated in the Order dated May 18, 2008 will result only in the non-admission of the Amended and Supplemental Complaint, which means that the Original Complaint remains. However, since the Amended and Supplemental Complaint is being withdrawn and in lieu thereof a new Amended Complaint is sought to be admitted, there is no more need to pay the docket fees as provided for in the said Order.
>
> 2. It is settled that once jurisdiction is acquired and vested in a Court, said Court maintains its jurisdiction until judgment is had (*Aruego, Jr., et al. vs. CA*). Such acquired jurisdiction is not lost by the amendment of a pleading that raises additional/new cause(s) of action. The jurisdiction of a Court is not even lost even if the additional docket fees are required by reason of the amendment.
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> Indeed, the Supreme Court held in *PNOC vs. Court of Appeals* (G.R. No. 107518, October 8, 1998) that:
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> *"Its failure to pay the docket fee corresponding to its increased claim for damages under the amended complaint should not be considered as having curtailed the lower court's jurisdiction.*

[53] *Rollo*, pp. 490-495.

[54] *Id.* at 496-538.

[55] *Id.* at 539-549.

[56] *Id.* at 325-332.

Pursuant to the ruling in Sun Insurance Office, Ltd. (SIOL) v. Asuncion, the unpaid docket fees should be considered as a lien on the judgment even though private respondent specified the amount of ₱600,000.00 as its claim for damages in its amended complaint.

Thus, even on the assumption that additional docket fees are required as a consequence of any amended complaint, its non-payment will not result in the court's loss of jurisdiction over the case.[57]

Distinctly, the principal reference remained to be the "original complaint," in which R-II Builders itself submitted that the case "is a real action as it affects title and possession of real property or interest therein." It was precisely this submission which was the basis of the conclusion of the SCC court, Br. 24 that the case is not an intra-corporate controversy and therefore is outside its authority.

We see from the assailed Order that the regular court accepted the case on the reason that "the docket fees of the original complaint has been paid," so that, furthermore, the Amended and Supplemental Complaint may be admitted "subject to the payment of docket fees." When the required fees were not paid, the court considered it as resulting in the non-admission of the Amended and Supplemental Complaint such that "the original complaint remains." That remaining original complaint can then be amended by "a new Amended Complaint" which is no longer subject to the conditions attached to the unadmitted Amended and Supplemental Complaint.

The Order of 3 March 2009, with its logic and reason, is wholly unacceptable.

In upholding the foregoing order as well as its affirmance in respondent RTC's 29 September 2009 order,[58] the CA ruled that the case – being one primarily instituted for the resolution/ nullification of the DAC – involved an action incapable of pecuniary estimation. While it is true, however, that R-II Builder's continuing stake in the *Asset Pool* is "with respect only to its

[57] *Id.* at 327-328.

[58] *Id.* at 333-347.

residual value after payment of all the regular SMPPCs holders and the *Asset Pool* creditors,"[59] the CA failed to take into account the fact that R-II Builders' original complaint and *Amended and Supplemental Complaint* both interposed causes of action for conveyance and/or recovery of possession of the entire *Asset Pool*. Indeed, in connection with its second cause of action for appointment as trustee in its original complaint,[60] R-II Builders distinctly sought the conveyance of the entire *Asset Pool*[61] which it consistently estimated to be valued at ₱5,919,716,618.62 as of 30 June 2005.[62] In its opposition to HGC's motion to dismiss, R-II Builders even admitted that the case is a real action as it affects title to or possession of real property or an interest therein.[63] With R-II Builders' incorporation of a cause of action for conveyance of title to and/or possession of the entire *Asset Pool* in its *Amended and Supplemental Complaint*,[64] on the other hand, no less than respondent RTC, in its 19 May 2008 order, directed the assessment and payment of docket fees corresponding to a real action.

Admittedly, this Court has repeatedly laid down the test in ascertaining whether the subject matter of an action is incapable of pecuniary estimation by determining the nature of the principal action or remedy sought. While a claim is, on the one hand, considered capable of pecuniary estimation if the action is primarily for recovery of a sum of money, the action is considered incapable of pecuniary estimation 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.[65] To our mind, the application of

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[59] *Id.* at 157-158.

[60] *Id.* at 364-371.

[61] *Id.* at 376.

[62] *Id.* at 357-358.

[63] *Id.* at 436.

[64] *Id.* at 460-463.

[65] *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 66 (2002).

foregoing test does not, however, preclude the further classification of actions into personal actions and real action, for which appropriate docket fees are prescribed. In contrast to personal actions where the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages, real actions are those which affect title to or possession of real property, or interest therein.[66] While personal actions should be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff,[67] the venue for real actions is the court of the place where the real property is located.[68]

Although an action for resolution and/or the nullification of a contract, like an action for specific performance, fall squarely into the category of actions where the subject matter is considered incapable of pecuniary estimation,[69] we find that the causes of action for resolution and/or nullification of the DAC was erroneously isolated by the CA from the other causes of action alleged in R-II Builders' original complaint and *Amended and Supplemental Complaint* which prayed for the conveyance and/or transfer of possession of the *Asset Pool*. In *Gochan v. Gochan*,[70] this Court held that an action for specific performance would still be considered a real action where it seeks the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance of real property. More to the point is the case of *Ruby Shelter Builders and Realty Development Corporation v. Hon. Pablo C. Formaran III*[71]

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[66] *Marcos-Araneta v. Court of Appeals*, G.R. No. 154096, 22 August 2008, 563 SCRA 41, 62-63.

[67] *Davao Light and Power Co, Inc. v. Court of Appeals*, 415 Phil. 630-631 (2001).

[68] *Infante v. Aran Builders, Inc.*, G.R. No. 156596, 24 August 2007, 531 SCRA 123, 129-130.

[69] *Russel v. Hon. Augustine A. Vestil*, 364 Phil. 392, 400 (1999).

[70] 423 Phil. 491, 501 (2001).

[71] G.R. No. 175914, 10 February 2009, 578 SCRA 283.

where, despite the annulment of contracts sought in the complaint, this Court upheld the directive to pay additional docket fees corresponding to a real action in the following wise, to wit:

> x x x [I]n *Siapno v. Manalo*, the Court disregarded the title/denomination of therein plaintiff Manalo's amended petition as one for *Mandamus* with Revocation of Title and Damages; and adjudged the same to be a real action, the filing fees for which should have been computed based on the assessed value of the subject property or, if there was none, the estimated value thereof. The Court expounded in *Siapno* that:
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> > In his amended petition, respondent Manalo prayed that NTA's sale of the property in dispute to Standford East Realty Corporation and the title issued to the latter on the basis thereof, be declared null and void. In a very real sense, *albeit* the amended petition is styled as one for "*Mandamus* with Revocation of Title and Damages," it is, at bottom, a suit to recover from Standford the realty in question and to vest in respondent the ownership and possession thereof. In short, the amended petition is in reality an action in *res* or a real action. Our pronouncement in *Fortune Motors (Phils.), Inc. vs. Court of Appeals* is instructive. There, we said:
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> > > A prayer for annulment or rescission of contract does not operate to efface the true objectives and nature of the action which is to recover real property. *(Inton, et al., v. Quintan,* 81 Phil. 97, 1948)
> > >
> > > An action to annul a real estate mortgage foreclosure sale is no different from an action to annul a private sale of real property. *(Muñoz v. Llamas,* 87 Phil. 737, 1950).
> > >
> > > While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental

> and prime objective and nature of the case, which is to recover said real property. It is a real action.[72]

Granted that R-II Builders is not claiming ownership of the *Asset Pool* because its continuing stake is, in the first place, limited only to the residual value thereof, the conveyance and/or transfer of possession of the same properties sought in the original complaint and *Amended and Supplemental Complaint* both presuppose a real action for which appropriate docket fees computed on the basis of the assessed or estimated value of said properties should have been assessed and paid. In support of its original complaint's second cause of action for appointment as trustee and conveyance of the properties in the *Asset Pool*, R-II Builders distinctly alleged as follows:

> 5.12. As the Court-appointed Trustee, R-II Builders shall have and exercise the same powers, rights and duties as if [it] had been originally appointed, having the principal duty of redeeming and buying back the Regular SMPPC's and thereafter liquidating the Asset Pool, which are also the end goals of the Agreement.
>
> 5.12.1. R-II Builders, as the Trustee, shall have the power and right to invest, transfer, convey or assign any of the assets of the Asset Pool, whether funds, receivables, real or personal property, in exchange for shares of stocks, bonds, securities, real or personal properties of any kind, class or nature, provided that any such investment, transfer, conveyance or assignment shall not impair the value of the Asset Pool.
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> 5.12.2. R-II Builders, as the Trustee, shall have the power and right to sell, change, assign or otherwise dispose of any stocks, bonds, securities, real or personal properties or other assets constituting the Asset Pool.
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> 5.12.3. R-II Builders, as the Trustee, shall have the power and right to enter into lease agreements as lessor or any other related contract for the benefit of the Asset Pool; and
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> 5.12.4. It is understood that the aforecited powers and rights of R-II Builders as the court-appointed Trustee, are non-exclusive; and is deemed to include all the rights and powers

[72] *Id.* at 302-303.

necessary and incidental to achieve the goals and objectives of the Agreement.[73]

From the foregoing allegations in its original complaint, it cannot be gainsaid that R-II Builders was unquestionably seeking possession and control of the properties in the *Asset Pool* which predominantly consisted of real properties. Having admitted that "the case is a real action as it affects title to or possession of real property or (an) interest therein,"[74] R-II Builders emphasized the real nature of its action by seeking the grant of the following main reliefs in the *Amended and Supplemental Complaint* it subsequently filed, to wit:

5. After trial on the merits, render judgment:

(i) Declaring the annulment of the Deed of Assignment and conveyance executed by PDB in favor of HGC; or in the alternative, declaring the nullity of the said instrument;

(ii) Appointing R-II Builders as the Trustee of the Asset Pool Properties, with powers and responsibilities including but not limited to those stated in 5.12.1, 5.12.2, 5.12.3 and 5.12.4 herein and those spelled out in the Re-Stated Smokey Mountain Asset Pool Formation Trust Agreement;

(iii) Ordering HGC to render an accounting of all properties of the Asset Pool transferred thereto under the Deed of Assignment and Conveyance and thereafter *convey title to and/or possession of the entire Asset Pool* to R-II Builders as the Trustee thereof which assets consist of, but is not limited to the following:

(a) 105 parcels of land comprising the Smokey Mountain Site, and, the Reclamation Area, consisting of the 539,471.47 square meters, and all the buildings and improvements thereon, with their corresponding certificates of title;

(b) shares of stock of Harbour Center Port Terminal, Inc. which are presently registered in the books of the said company in the name of PDB for the account of the Smokey Mountain Asset Pool; and

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[73] *Rollo*, pp. 369-370.

[74] *Id.* at 436.

(c) other documents as listed in Annex E of the Contract of Guaranty.

(iv) Ordering NHA to pay the Asset Pool the amount of Php1,803,729,757.88 including the direct and indirect cost thereon as may be found by this Honorable Court to be due thereon;

(v) Making the injunction permanent;

(vi) Ordering HGC and the NHA to pay Attorney's fees in the amount of ~~₱~~2,000,000 and the costs of suit.[75]

For failure of R-II Builders to pay the correct docket fees for its original complaint or, for that matter, its *Amended and Supplemental Complaint* as directed in respondent RTC's 19 May 2008 order, it stands to reason that jurisdiction over the case had yet to properly attach. Applying the rule that "a case is deemed filed only upon payment of the docket fee regardless of the actual date of filing in court" in the landmark case of *Manchester Development Corporation v. Court of Appeals*,[76] this Court ruled that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. To temper said ruling, the Court subsequently issued the following guidelines in *Sun Insurance Office, Ltd. v. Hon. Maximiano Asuncion*,[77] *viz.*:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may

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[75] *Id.* at 485-486.

[76] 233 Phil. 579, 584 (1987).

[77] G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274, 285.

also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

True to the foregoing guidelines, respondent RTC admitted R-II Builder's *Amended and Supplemental Complaint* and directed the assessment and payment of the appropriate docket fees in the order dated 19 May 2008. Rather than complying with said directive, however, R-II Builders manifested its intent to evade payment of the correct docket fees by withdrawing its *Amended and Supplemental Complaint* and, in lieu thereof, filed its *Second Amended Complaint* which deleted its cause of action for accounting and conveyance of title to and/or possession of the entire *Asset Pool*, reduced its claim for attorney's fees, sought its appointment as Receiver and prayed for the liquidation and distribution of the *Asset Pool*.[78] In upholding the admission of said *Second Amended Complaint* in respondent RTC's assailed 3 March 2009 Order, however, the CA clearly lost sight of the fact that a real action was ensconced in R-II Builders' original complaint and that the proper docket fees had yet to be paid in the premises. Despite the latter's withdrawal of its *Amended and Supplemental Complaint*, it cannot, therefore, be gainsaid that respondent RTC had yet to acquire jurisdiction over the case for non-payment of the correct docket fees.

In the 15 February 2011 Resolution issued in the case of *David Lu v. Paterno Lu Ym, Sr.*,[79] this Court, sitting *En Banc*, had occasion to rule that an action for declaration of nullity of

[78] *Rollo*, pp. 501-538.

[79] *En Banc* Resolution, G.R. Nos. 153690 and 157381.

share issue, receivership and corporate dissolution is one where the value of the subject matter is incapable of pecuniary estimation. Subsequent to the trial court's rendition of a decision on the merits declared to be immediately executory and the CA's denial of their application for a writ of preliminary injunction and/or temporary restraining order to enjoin enforcement of said decision, the defendants questioned the sufficiency of the docket fees paid *a quo* which supposedly failed take into consideration the value of the shares as well as the real properties involved for which the plaintiff additionally caused notices of *lis pendens* to be annotated. Finding that defendants were already *estopped* in questioning the jurisdiction of the trial court on the ground of non-payment of the correct docket fees, the Court discounted intent to defraud the government on the part of the plaintiff who can, at any rate, be required to pay the deficiency which may be considered a lien on the judgment that may be rendered, without automatic loss of the jurisdiction already acquired, in the first instance, by the trial court.

The factual and legal milieus of the case at bench could not, however, be more different. While R-II Builders styled its original complaint and *Amended and Supplemental Complaint* as one primarily for the resolution and/or declaration of the DAC, it simultaneously and unmistakably prayed for the conveyance, possession and control of the *Asset Pool*. Alongside the fact that HGC has consistently questioned the sufficiency of the docket fees paid by R-II Builders, *estoppel* cannot be said to have set in since, the lapse of more than five years from the commencement of the complaint notwithstanding, it appears that the case has yet to be tried on the merits. Having admitted that its original complaint partook the nature of a real action and having been directed to pay the correct docket fees for its *Amended and Supplemental Complaint*, R-II Builders is, furthermore, clearly chargeable with knowledge of the insufficiency of the docket fees it paid. Unmistakably manifesting its intent to evade payment of the correct docket fees, moreover, R-II Builders withdrew its *Amended and Supplemental Complaint* after its admission and, in lieu thereof, filed its' *Second Amended Complaint* on the ground that said earlier

pleading cannot be considered admitted in view of its non-payment of the docket and other fees it was directed to pay. In so doing, however, R-II Builders conveniently overlooked the fact that the very same argument could very well apply to its original complaint for which – given its admitted nature as a real action - the correct docket fees have also yet to be paid.

The importance of filing fees cannot be over-emphasized for they 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. The payment of said fees, therefore, cannot be made dependent on the result of the action taken without entailing tremendous losses to the government and to the judiciary in particular.[80] For non-payment of the correct docket fees which, for real actions, should be computed on the basis of the assessed value of the property, or if there is none, the estimated value thereof as alleged by the claimant,[81] respondent RTC should have denied admission of R-II Builders' *Second Amended Complaint* and ordered the dismissal of the case. Although a *catena* of decisions rendered by this Court eschewed the application of the doctrine laid down in the *Manchester* case,[82] said decisions had been consistently premised on the willingness of the party to pay the correct docket fees and/or absence of intention to evade payment of the correct docket fees. This cannot be said of R-II Builders which not only failed to pay the correct docket fees for its original complaint and *Amended and Supplemental Complaint*

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[80] *Suson v. Court of Appeals*, 343 Phil. 820, 825 (1997) citing *Pilipinas Shell Petroleum Corp. v. Court of Appeals*, 171 SCRA 674.

[81] *Serrano v. Delica*, 503 Phil. 73, 77 (2005).

[82] *Negros Oriental Planters Association, Inc. v. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City*, G.R. No. 179878, 24 December 2008, 575 SCRA 575, 587; *Spouses Go v. Tong*, 462 Phil. 256 (2003); *Soriano v. Court of Appeals*, 416 Phil. 226 (2001); *Yambao v. Court of Appeals*, 399 Phil. 712 (2000); *Mactan Cebu International Airport Authority v. Mangubat*, 371 Phil. 393, (1999); *Ng Soon v. Hon. Alday*, 258 Phil. 848 (1989).

but also clearly evaded payment of the same by filing its *Second Amended Complaint*.

By itself, the propriety of admitting R-II Builders' *Second Amended Complaint* is also cast in dubious light when viewed through the prism of the general prohibition against amendments intended to confer jurisdiction where none has been acquired yet. Although the policy in this jurisdiction is to the effect that amendments to pleadings are favored and liberally allowed in the interest of justice, amendment is not allowed where the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction upon the court.[83] Hence, with jurisdiction over the case yet to properly attach, HGC correctly fault the CA for upholding respondent RTC's admission of R-II Builders' *Second Amended Complaint* despite non-payment of the docket fees for its original complaint and *Amended and Supplemental Complaint* as well as the clear intent to evade payment thereof.

With the determination of the jurisdictional necessity of the dismissal of the complaint of R-II Builders docketed as Civil Case No. 05-113407, first before Br. 24 and later before Br. 22 both of the RTC of Manila, we no longer find any reason to go into a discussion of the remaining issues HGC proffers for resolution. In view, particularly, of its non-acquisition of jurisdiction over the case, respondent RTC clearly had no authority to grant the receivership sought by R-II Builders. It needs pointing out though that the prayer for receivership clearly indicates that the R-II Builders sought the transfer of possession of property consisting of the assets of the JVA from HGC to the former's named Receiver. As already noted, said transfer of possession was sought by respondent R-II Builders since the very start, overtly at the first two attempts, covertly in the last, the successive amendments betraying the deft maneuverings to evade payment of the correct docket fees.

WHEREFORE, premises considered, the assailed Decision dated 21 January 2010 is *REVERSED* and *SET ASIDE*. In lieu

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[83] *Tirona v. Hon. Alejo,* 419 Phil. 285, 300 (2001).

thereof, another is entered *NULLIFYING* the regular court's, RTC Branch 22's Orders dated 3 March 2009 and 29 September 2009 as well as the SCC's, RTC Branch 24's Order dated 26 October 2005 which was rendered void by the SCC's subsequent declaration of absence of authority over the case. The complaint of R-II Builders docketed as Civil Case No. 05-113407 first before Br. 24 and thereafter before Br. 22 both of the RTC of Manila is hereby *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178272. March 14, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODRIGO SALCEDO *alias* "DIGOL",** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON, ACCORDED GREAT WEIGHT.— The Court affirms the appellant's conviction. There is no cogent reason to disturb the finding of guilt made by the RTC and affirmed by the CA anent the credibility of the prosecution witnesses who testified during the trial of the case. The Court gives great weight to the trial court's evaluation of the testimony of a witness, because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying, thus, making it in a better position to determine whether a witness is lying or telling the truth.

2. ID.; ID.; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; FOUR REQUISITES TO BE ADMISSIBLE,

PRESENT.— In order for a dying declaration to be held admissible, four requisites must concur: *first*, the declaration must concern the cause and surrounding circumstances of the declarant's death; *second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death; *third*, the declarant is competent as a witness; and *fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which declarant is the victim. All the requisites for a dying declaration were sufficiently met. *First*, the statement of the deceased concerned the cause and circumstances surrounding her death. When asked who stabbed her, Analyn uttered the name of the appellant. Further, as proven during trial, appellant was the only person referred to as "Digol" in their place. *Second*, the victim must have been fully aware that she was on the brink of death, considering her bloodied condition and the gaping wounds on her chest when Efren saw her. True, she made no express statement showing that she was conscious of her impending death, however, the degree and seriousness of the wounds and the fact that death occurred shortly afterwards may be considered as sufficient evidence that declaration was made by the victim with full realization that she was in a dying condition. *Third*, the declarant, at the time she uttered the dying declaration, was competent as a witness. *Fourth*, the victim's statement was being offered in a criminal prosecution for her murder. Thus, Analyn's condemnatory *ante mortem* statement naming appellant as her assailant deserves full faith and credit and is admissible in evidence as a dying declaration.

3. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE, NOT SHOWN.— [T]he defense was unable to show that it was physically impossible for appellant to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.

4. ID.; ID.; ID.; ACCORDED LESS PROBATIVE WEIGHT WHEN IT IS CORROBORATED BY FRIENDS AND RELATIVES.— [T]he Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.

5. ID.; ID.; ID.; DEFENSE OF ALIBI IS DESTROYED BY POSITIVE IDENTIFICATION.— [P]ositive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical. Given the positive identification of the appellant Geraldino, who is a credible witness, and lack of physical impossibility for the appellant to be at the scene of the crime at the time of the killing, the defense of alibi must fail.

6. ID.; ID.; WITNESSES; ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY BOLSTERS WITNESSES' CREDIBILITY.— [O]ne thing which bolsters the prosecution witnesses' credibility is the fact that they had no motive to lie against the appellant. Where there is no evidence to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit. In the present case, there was no shred of evidence to indicate that the witnesses for the prosecution were impelled by improper motives to implicate appellant in the crime.

7. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; DETERMINED BY THE EXCESS OF THE AGGRESSOR'S NATURAL STRENGTH OVER THE VICTIM.— Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense, although not annulling it. The aggressor must have taken advantage of his natural strength to insure the commission of the crime.

8. ID.; ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH, PRESENT IN CASE AT BAR.— In the present case, the Court finds that there was abuse of superior strength employed by the appellant in committing the killing. The evidence shows that the victim

was a sixteen (16)-year-old female, who is 6 to 7 months pregnant. The victim was also stabbed by the appellant with a sharp bladed and pointed instrument while she was lying on her back. The victim was also unarmed when she was attacked. The Court has consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. The circumstance of abuse of superior strength was, therefore, correctly appreciated by the CA, as qualifying the offense to murder.

9. ID.; ID.; PENALTY WHERE NO AGGRAVATING CIRCUMSTANCE WAS PROVEN.— The penalty of *murder* under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Article 63 (2) of the same Code states that when the law prescribes a penalty of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Since the aggravating circumstance of abuse of superior strength already qualified the killing to murder, it can no longer be used to increase the imposable penalty. We note that while other aggravating circumstances, *i.e., evident premeditation, treachery and nighttime,* were alleged in the Information, the prosecution failed to adduce evidence to support the presence of these circumstances. Hence, the RTC and CA correctly imposed the penalty of *reclusion perpetua*. It must be stressed that under R.A. No. 9346, appellant is not eligible for parole.

10. ID.; ID.; CIVIL LIABILITY.— The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. The Court affirms the award of civil indemnity given by the trial court and the CA in the amount of PhP50,000.00. Anent moral damages, the same are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The CA correctly awarded moral damages in the amount of PhP50,000.00 in view of the violent death of the victim and the resultant grief to her family. Further, the CA correctly awarded exemplary damages. The award of exemplary damages is warranted because of the presence of the qualifying aggravating circumstance of abuse of superior strength in the commission

of the crime. The amount of PhP25,000.00 granted by the trial court and the CA should, however, be increased to PhP30,000.00 in line with current jurisprudence on the matter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00113, affirming with modifications the judgment of the Regional Trial Court (RTC) of San Miguel, Jordan, Guimaras in Criminal Case No. 0122 finding appellant Rodrigo Salcedo *alias Digol* guilty beyond reasonable doubt of the crime of Murder.

The Information against the appellant reads as follows:

That on or about the 6th day of November 1994, in the Municipality of Jordan, Province of Guimaras, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with evident premeditation and treachery and with intent to kill, taking advantage of his superior strength and the darkness of the night, did then and there willfully, unlawfully and feloniously attack, assault, and stab with a knife one Analyn Elevencione, who is pregnant at the time, hitting said Analyn Elevencione at the vital parts of her body which caused her instantaneous death.

CONTRARY TO LAW.[2]

Appellant was arraigned on March 22, 1995[3] and pleaded not guilty to the crime charged. Trial on the merits thereafter ensued.

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[1] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring; *rollo*, pp. 4-18.

[2] Records, p. 1.

[3] *Id.* at 45.

The evidence of the prosecution follows:

Geraldino Galido (Geraldino) testified that at 9 o'clock in the evening of November 6, 1994, while he was in his house together with his two brothers, his brother-in-law and second cousin, they heard three (3) shouts for help coming from the house of Efren Galido (Efren). They immediately went to the place and at the distance of about 7 to 8 meters,[4] he saw appellant stabbed the victim Analyn twice while she was lying on her back. He was able to identify the appellant because of the torch being carried by the women near him.

Efren, live-in partner of Analyn, testified that appellant is known as "Digol" in their place. At 9 o'clock in the evening of November 6, 1994, he was at the house of his elder brother Geraldino, which is about 100 meters away from his house. While at the house of his brother, he heard a shout coming from his niece, Ivy Jean Borra. Upon hearing Ivy, he immediately ran home. When he arrived home, he saw his son sleeping, so he went downstairs and proceeded to the road where he met his sister-in-law holding a torch. He got a torch from his sister-in-law, went ahead and looked for Analyn. He found Analyn lying and moaning on the grassy portion of the side of the road about 20 meters away from their house. He lifted Analyn and saw blood coming from her breast. He asked Analyn who did it to her and Analyn answered, "Digol." He placed Analyn on the ground and tried to run after the person who did it to her, but he was restrained by his brother.

Dr. Edgardo Jabasa testified that he conducted an autopsy on the body of Analyn. He found nine (9) stab wounds in the body of Analyn. Two of the stab wounds penetrated the heart, making it impossible for the victim to survive. He also testified that Analyn's uterus was enlarged at 6 to 7 months gestation with a dead male fetus. He further testified that the wounds appear to have been inflicted by a single sharp bladed and pointed instrument.

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[4] TSN, May 2, 1995, p. 20.

Upon the other hand, the defense adduced the testimonies of the appellant, Felimon Salcedo, Marcelina Lecta and Mario Manatoc. Appellant's main defense is alibi.

Felimon Salcedo, father of the appellant, testified that in the evening of November 6, 1994, before going home, he was at the house of his daughter, Marcelina Lecta. While there, appellant arrived and when Felimon left Marcelina's house at around 8:30 o'clock in the evening, appellant was still there.

Marcelina Lecta testified that the appellant is her younger brother. She said that at around 8 o'clock in the evening of November 6, 1994, appellant arrived at their house and slept there. Appellant then left the following morning and reported for work at the highway. At around 9 o'clock in the morning, the policemen arrived at their house looking for the appellant. Thereafter, she learned that appellant was arrested when he reported for work.

Mario Manatoc testified that he was a detainee at the Municipal Jail of Jordan. At around 2 o'clock in the morning of November 7, 1994, Efren arrived at the police station to report the killing of his wife. Investigator George Galon then interviewed Efren. After the interview, the police officers left the police station to look for the person who killed Analyn. At 10 o'clock in the morning of the same day, Police Officer George Galon arrived with the appellant and brought the latter to the investigation room. During the investigation, he heard moaning and thudding sounds. Mario said that appellant was mauled and was made to admit the killing of Analyn.

Appellant testified that in the afternoon of November 6, 1994, he was invited by the group of Efren, Geraldino, Ludrito, Pablo, Virgilio and Luis to drink, so they all proceeded to the house of Botchoy Galia located at *Barangay* Alaguisoc. They arrived there at 5 o'clock in the afternoon and they finished drinking four bottles of whisky at around 7 o'clock in the evening. After drinking, they all went home going their separate ways. Appellant went to the house of his sister, Marcelina Lecta, which is one (1) kilometer away from the house of Botchoy.

He arrived at his sister's house at about 8 o'clock in the evening where he met his father. He immediately went upstairs to sleep. He woke up at 6 o'clock in the morning the following day and went home to his father's house where he learned that Analyn died. He reported to work and was arrested by the policemen. At the police station he was mauled and was threatened to be killed if he will not admit killing Analyn. He was then forced to admit that he killed Analyn.

On August 18, 2000, the RTC of San Miguel, Jordan, Guimaras rendered a Decision[5] finding appellant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the Decision is as follows:

> WHEREFORE, premises considered, judgment is rendered finding the accused RODRIGO SALCEDO *alias* "DIGOL" GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code. Said accused is penalized to suffer a penalty of imprisonment of twenty (20) years and one (1) day to forty (40) years of *Reclusion Perpetua*, together with all accessory penalties attached thereto.
>
> Said accused is directed to pay the heirs of Analyn Elevencione the amount of:
>
> PhP50,000.00 – for the death of Analyn Elevencione;
> PhP10,000.00 – as reimbursement for burial expenses;
> PhP40,000.00 – as moral damages;
>
> or a total of PhP100,000.00.
>
> The detention of the accused during the pendency of the case shall be credited in his favor.
>
> SO ORDERED.

Appellant filed a Notice of Appeal and the case was elevated to this Court for review. However, pursuant to this Court's ruling in *People v. Mateo*,[6] the case was transferred to the

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[5] Records, pp. 297-317.

[6] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, modifying Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure.

CA. The CA rendered a Decision dated November 30, 2006 affirming with modification the decision of the RTC in Criminal Case No. 0122. The CA ruled that the appellant is guilty of murder qualified by abuse of superior strength. The CA did not appreciate the other aggravating circumstances alleged in the information for failure of the prosecution to establish them during the trial. The CA deleted the award of burial expenses amounting to PhP10,000.00 for failure of the prosecution to present receipts in support thereof. Further, the award of moral damages was increased from PhP40,000.00 to PhP50,000.00 and exemplary damages in the amount of PhP25,000.00 was also awarded, both in consonance with existing jurisprudence.

On January 3, 2007, appellant, through the Public Attorney's Office (PAO), appealed the Decision of the CA to this Court. Appellant had assigned two (2) errors in his appeal initially passed upon by the CA, to wit:

I

THE COURT *A QUO* ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF EFREN GALIDO AND GERALDINO GALIDO.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In the main, appellant put in issue the credibility of Efren and Geraldino. He contends that the testimonies of said witnesses did not establish his guilt for murder.

The Court affirms the appellant's conviction. There is no cogent reason to disturb the finding of guilt made by the RTC and affirmed by the CA anent the credibility of the prosecution witnesses who testified during the trial of the case. The Court gives great weight to the trial court's evaluation of the testimony of a witness, because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while

testifying, thus, making it in a better position to determine whether a witness is lying or telling the truth.[7]

Geraldino's testimony was categorical, convincing and unequivocal. He positively identified the appellant as the author of the crime. This witness declared, thus:

> Public Prosecutor Rolando Nielo:
> Q. While you were there in your house, did you hear anything unusual?
> A. Yes, sir.
>
> Q. What was that, that came to your attention?
> A. I heard three (3) shouts.
>
> Q. What was the nature of that shout that you heard?
> A. Three (3) shouts for help.
>
> Q. What did you do when you heard those shouts for help?
> A. We jumped out of our house and went to the place where the shouts came from.
>
> Q. Where did the shout came (sic) from, if you know?
> A. At the house of Efren Galido.
>
> Q. How far is this house of Efren Galido from your own house?
> A. About 100 meters.[8]
>
> x x x x x x x x x
>
> Q. Were you able to reach the place where those shouts came from?
> A. Yes, sir.
>
> Q. What did you witness or what did you see when you reached the place where the shouts came from?
> A. I have seen Digol Salcedo stabbing Analyn Elevencione.[9]

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[7] *People v. Pillas*, 458 Phil. 347, 369 (2003).

[8] TSN, May 2, 1995, p. 7.

[9] *Id.* at 8.

x x x x x x x x x

Q. How did you happen to see Rodrigo Salcedo stabbed Analyn Elevencione since it was already 9:00 o'clock in the evening of June 4, 1994?[10]
A. Because the women from our house were carrying torch and I was following them that is why I saw Analyn Elevencione.

Q. You were able to know Analyn Elevencione and Rodrigo Salcedo from that light coming from that torch?
A. Yes, sir.[11]

x x x x x x x x x

Q. And you said you saw Analyn Elevencione stabbed by Rodrigo Salcedo. How many times [did] you saw (sic) this Rodrigo Salcedo stabbed Analyn Elevencione?
A. Only twice.

Q. What was the position of Analyn Elevencione when you saw her being stabbed by the accused?
A. She was lying on her back.[12]

x x x x x x x x x

Geraldino on cross examination by Atty. Padilla.

Q. How about you? When you saw the accused stabbed Analyn Elevencione, how far were you from Analyn Elevencione and the accused.
A. About 7 to 8 meters.[13]

Clearly, Geraldino positively identified the appellant as the author of the crime. He testified that with the aid of the light cast by the torch carried by the women near him, he was able

[10] The correct date should be November 6, 1994.

[11] TSN, May 2, 1995, pp. 9-10.

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

[13] *Id.* at 20.

to see the appellant stab Analyn twice while she was lying on her back. Thus, even if the crime was committed during the night, it was not totally dark, as a torch illuminated the place where Analyn was stabbed by the appellant. The Court has consistently held that the illumination produced by a kerosene lamp, a flashlight, a wick lamp, moonlight, or starlight in proper situations is considered sufficient to allow the identification of persons.[14]

Appellant's allegation that there were inconsistencies in the testimony of the prosecution witnesses, as Geraldino could not have seen the appellant stabbing Analyn because his brother Efren said in his testimony that Analyn was alone when he saw her lying on the ground.[15]

The Court finds no inconsistencies in the testimonies of Efren and Geraldino. The CA correctly explained the events that transpired on the fateful night:

> It could be gleaned from [the] records that when the Galidos heard the shouts coming from their niece Ivy Jean Borra, they went outside and Efren went directly to his house to check his family. Geraldino and his other companions were not far behind him. When they reached the crime scene, Geraldino witnessed appellant (petitioner herein) stabbed (sic) Analyn Elevencione twice, then he tried to follow the perpetrator until the latter reached a dark place. So, when Efren arrived to (sic) the place coming from his house, he did no (sic) longer see the aggressor but was able to ask his live-in partner who her assailant was.[16]
>
> x x x x x x x x x
>
> It could be understood that when Efren was still inside his house, that was the time Geraldino saw appellant (petitioner herein) stabbed the victim.x x x[17]

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[14] *Marturillas v. People,* G.R. No. 163217, April 18, 2006, 487 SCRA 273, 301; *People v. Escote,* G.R. No. 151834, June 8, 2004, 431 SCRA 345, 351; *People v. Caraang,* 463 Phil. 715, 744 (2003).

[15] TSN, June 23, 1995, p. 24.

[16] *Rollo,* p. 10.

[17] *Id.* at 11.

Clearly, Geraldino, after witnessing the incident was no longer at the scene of the crime when Efren arrived because he tried to pursue the appellant. That is the reason why Efren saw Analyn alone as she laid on the ground.

Appellant also averred that the alleged dying declaration of Analyn was merely concocted in order to pin the blame upon herein appellant. Appellant argued that there is no chance for Efren to have talked to Analyn since he became hysterical[18] when he saw Analyn lying prostrate on the ground. The appellant's arguments are unavailing.

Appellant misconstrued the correct sequence of events that transpired that night. Efren testified as follows:

Public Prosecutor Rolando Nielo:
Q. What did you do when you heard your niece Ivy Jean Borra shouting for help?
A. I ran immediately towards my house.

Q. And, were you able to reach your house?
A. Yes, I reached my house and I only found my son sleeping.

Q. What did you do when you found your son sleeping, when you reached your house?
A. I placed him near the door and went down.

Q. What did you do after you went downstairs?
A. I went to the road where I met my sister-in-law holding a torch.

Q. Who is that sister-in-law of yours whom you met?
A. Melanie Galido.

Q. What kind of torch was she holding?
A. A torch made of a pocket size whisky bottle.

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[18] Prosecutor Nielo to Geraldino:

Q. How about your brother Efren? What did he do if he did anything?

A. He became hysterical and I restrained him. TSN, May 2, 1995, p. 11.

Q. What did you do when you met Melanie Galido, your sister-in-law having a torch there?
A. I also got a torch to look for my wife.

Q. Where did you get that torch you used?
A. From my sister-in-law.

Q. And then, after that, when you got the torch were you able to see your wife?
A. Yes. When I got the torch, I went ahead then I later on saw her near the side of the road, she was moaning.[19]

xxx xxx xxx

Q. You said you saw Analyn Elevencione. Where was she lying when you saw her?
A. On the grass beside the road.[20]

xxx xxx xxx

Q. What did you do when you saw Analyn lying? What was her position when you saw your wife?
A. She was lying on the ground.

Q. What did you do when you saw her lying on the ground?
A. I lifted her and asked her who did it.

Q. What was the condition of Analyn your wife when you lifted her?
A. She was moaning and the blood is coming out of her wounds.

Q. Have you seen the wounds where the blood was oozing from?
A. Yes, sir. It was coming from below her breast because her breast was open.[21]

xxx xxx xxx

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[19] TSN, June 23, pp. 9-10.

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

[21] *Id.* at 12.

Q. Did your wife say anything to you?
A. Yes, sir.

Q. What did your wife tell you if any?[22]

xxx xxx xxx

A. I asked her who stabbed her, and she answered, "Digol."

Q. That was all that your wife said?
A. Yes, sir.

Q. After that, what did you do?
A. I laid her down and ran.

Q. What was your purpose in putting her down and ran (sic)?
A. To run after the person who did it to her.

Q. Did you have a specific person in mind to run after when your wife told you about the statement?
A. Yes, but I was restrained by my brother not to go to their house.[23]

Clearly, before Efren became hysterical and was restrained by Geraldino,[24] he was able to talk to Analyn, who identified the appellant as the person who stabbed her. As correctly found by the CA:

When Efren went to the crime scene, Analyn was still alive and she was able to utter the name of her attacker. But when Efren came back after he failed to catch her aggressor, she was already dead and that was the time he became hysterical.[25]

Having established that Analyn indeed uttered the name of her assailant, the question to be resolved is whether her statement can be considered as a dying declaration.

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[22] *Id.* at 14.

[23] *Id.* at 15-16.

[24] TSN, May 2, 1995, pp. 10-11.

[25] *Rollo*, p. 11.

Section 37, Rule 130 of the Rules of Court, provides:

> The declaration of a dying person, made under the consciousness of impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

Generally, witnesses can testify only to those facts derived from their own perception. A recognized exception, though, is a report in open court of a dying person's declaration made under the consciousness of an impending death that is the subject of inquiry in the case.[26]

In order for a dying declaration to be held admissible, four requisites must concur: *first*, the declaration must concern the cause and surrounding circumstances of the declarant's death; *second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death; *third*, the declarant is competent as a witness; and *fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[27]

All the requisites for a dying declaration were sufficiently met. *First*, the statement of the deceased concerned the cause and circumstances surrounding her death. When asked who stabbed her, Analyn uttered the name of the appellant. Further, as proven during trial, appellant was the only person referred to as "Digol" in their place. *Second*, the victim must have been fully aware that she was on the brink of death, considering her bloodied condition and the gaping wounds on her chest when Efren saw her. True, she made no express statement showing that she was conscious of her impending death, however, the degree and seriousness of the wounds and the fact that death occurred shortly afterwards may be considered as sufficient evidence that the declaration was made by the victim with full

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[26] *Marturillas v. People*, *supra* note 14, at 305.

[27] *People of the Philippines v. Jonel Fabrica Serenas and Joel Lorica Labad,* G.R. No. 188124, June 29, 2010.

realization that she was in a dying condition.[28] *Third,* the declarant, at the time she uttered the dying declaration, was competent as a witness. *Fourth*, the victim's statement was being offered in a criminal prosecution for her murder. Thus, Analyn's condemnatory *ante mortem* statement naming appellant as her assailant deserves full faith and credit and is admissible in evidence as a dying declaration.

The dying declaration is given credence, on the premise that no one who knows of one's impending death will make a careless and false accusation.[29]

Going now to the appellant's main defense of alibi, appellant claims that at the time of the incident he was at the house of his sister Marcelina. Marcelina corroborated appellant's testimony, while Felimon alleged that before he left Marcelina's house at around 8:30 in the evening, appellant was still there.

Aside from the foregoing testimonies of the defense witnesses, the defense was unable to show that it was physically impossible for appellant to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[30] Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[31]

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[28] *People v. Tañeza,* 389 Phil. 398, 411 (2000).

[29] *Marturillas v. People*, *supra* note 14, at 306.

[30] *People v. Delim,* G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[31] *People v. Felipe Dela Cruz,* G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.

During the trial of the case, Marcelina testified that Analyn's house, which is near the crime scene, is one (1) kilometer away from her house.[32] In *People v. Cristobal,*[33] the Court ruled out alibi when it was proven that the appellant was only three kilometers from where the crime was committed, "a manageable distance to travel in a few minutes." Thus, it was not physically impossible for the appellant to be at the *locus criminis* at the time of the incident.

Further, the Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.[34] In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[35] Given the positive identification of the appellant by Geraldino, who is a credible witness, and the lack of physical impossibility for the appellant to be at the scene of the crime at the time of the killing, the defense of alibi must fail.

Appellant insisted that Efren and Geraldino's failure to immediately disclose the appellant's identity to the authorities show that they do not know the identity of the perpetrator. The argument does not hold water. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[36]

In his testimony,[37] Efren explained that he did not inform the police of the identity of the appellant because he feared that

[32] TSN, January 14, 1997, p. 7.

[33] 322 Phil. 551, 563 (1996).

[34] *People v Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

[35] *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[36] *People v. Lovedorial,* 402 Phil. 446, 460 (2001).

[37] Records, p. 8.

the appellant might escape.[38] In his sworn statement executed before the police, Geraldino explained that he did not inform the police of the identity of the appellant because it might result in the escape of the appellant.[39] Apparently, Geraldino thought it best to wait for the right time to reveal to the police authorities that he saw the appellant stab the victim, so as not to alarm the appellant, who may not know that Geraldino saw him stab Analyn. Otherwise, the immediate revelation might compromise appellant's arrest.

Appellant also cites the testimony of Mario Manatoc that when he asked Efren, in the early morning of November 7, 1994 at the police station, who killed his wife, Efren allegedly answered "*I do not know*."[40] Thus, appellant would like to impress upon the Court that Efren did not know the identity of Analyn's attacker. The Court is inclined to believe that Efren's failure to divulge the identity of the perpetrator to Mario is consistent with his reasoning that he did not inform anybody of the appellant's identity because the appellant might escape. Mario is a total stranger to Efren and the latter cannot be faulted in not trusting Mario. The Court therefore finds that Efren and Geraldino have sufficiently explained their failure to immediately report the identity of the appellant.

Further, there was no considerable delay in reporting the incident to the police. As testified to by Mario, Efren went to the police station to seek assistance because his wife was killed.[41] After reporting the incident, Efren and the policemen went to look for the perpetrator,[42] and later on, the police arrested the appellant.[43]

Additionally, one thing which bolsters the prosecution witnesses' credibility is the fact that they had no motive to lie

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[38] TSN, June 23, 1995, p. 20.

[39] Records, p. 7.

[40] TSN, September 8, 1999, p. 5.

[41] *Id.* at 4.

[42] *Id.* at 5.

[43] *Id.* at 6-7.

against the appellant. Where there is no evidence to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[44] In the present case, there was no shred of evidence to indicate that the witnesses for the prosecution were impelled by improper motives to implicate appellant in the crime.

The testimonies of Mario and appellant that the latter was forced to admit the killing of Analyn deserve scant consideration. As found by the trial court, the prosecution did not present evidence to show that the appellant admitted having killed the victim. The appellant interposed the defense of alibi.[45]

Appellant further argued that the trial court erred in ruling that the crime committed is murder. The fact that the victim is a woman and seven months pregnant cannot be considered as qualifying or an aggravating circumstance.

Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense, although not annulling it. The aggressor must have taken advantage of his natural strength to insure the commission of the crime.[46]

In the present case, the Court finds that there was abuse of superior strength employed by the appellant in committing the killing. The evidence shows that the victim was a sixteen (16)-year-old female,[47] who is 6 to 7 months pregnant.[48] The victim was also stabbed by the appellant with a sharp bladed and pointed instrument while she was lying on her back. The victim was also unarmed when she was attacked. The Court has consistently held that an attack made by a man with a deadly

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[44] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 226.

[45] Records, p. 315.

[46] *People v. Loreto*, 446 Phil. 592, 611 (2003).

[47] Records, p. 9.

[48] TSN, May 30, 1995, p. 13.

weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[49] The circumstance of abuse of superior strength was, therefore, correctly appreciated by the CA, as qualifying the offense to murder.

From all of the foregoing, we hold that appellant is guilty beyond reasonable doubt of the crime of murder, qualified by abuse of superior strength.

THE PENALTY

The penalty of *murder* under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Article 63 (2) of the same Code states that when the law prescribes a penalty consisting of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Since the aggravating circumstance of abuse of superior strength already qualified the killing to murder, it can no longer be used to increase the imposable penalty. We note that while other aggravating circumstances, *i.e.*, *evident premeditation, treachery and nighttime*, were alleged in the Information, the prosecution failed to adduce evidence to support the presence of these circumstances. Hence, the RTC and CA correctly imposed the penalty of *reclusion perpetua*. It must be stressed that under R.A. No. 9346, appellant is not eligible for parole.[50]

THE DAMAGES

The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the

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[49] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 411; *People v. Loreto, supra* note 46, at 612; *People v. Barcelona, Jr.*, 438 Phil. 335, 348-349 (2002).

[50] R.A. 9346, Section 3. Person convicted of an offense punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the *Indeterminate Sentence Law*.

commission of the crime.[51] The Court affirms the award of civil indemnity given by the trial court and the CA in the amount of PhP50,000.00.

Anent moral damages, the same are mandatory in cases of murder, without need of allegation and proof other than the death of the victim.[52] The CA correctly awarded moral damages in the amount of PhP50,000.00 in view of the violent death of the victim and the resultant grief to her family.[53]

Further, the CA correctly awarded exemplary damages. The award of exemplary damages is warranted because of the presence of the qualifying aggravating circumstance of abuse of superior strength in the commission of the crime.[54] The amount of PhP25,000.00 granted by the trial court and the CA should, however, be increased to PhP30,000.00 in line with current jurisprudence on the matter.[55]

The CA deleted the award of burial expenses for failure of the prosecution to substantiate the same with receipts. Although temperate damages may be awarded when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty,[56] the Court is inclined to deny the award of temperate damages. Efren testified that he did not spend any amount for the burial of Analyn, as the expenses were shouldered by his employer and by other people he knew.[57]

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[51] *People v. Molina*, G.R. No. 184173, March 13, 2009, 581 SCRA 519, 542.

[52] *Id*.

[53] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 571.

[54] *Id.* at 571-572.

[55] *People of the Philippines v. Pedro Ortiz, Jr. y Lopez*, G.R. No. 188704, July 7, 2010.

[56] *People v. Delima, Jr.*, G.R. No. 169869, July 12, 2007, 527 SCRA 526, 540.

[57] TSN, June 23, 1995, pp. 20-21.

On a final note, the prosecution should have been more prudent in determining the proper crimes that should have been filed against the appellant. Clearly, at the time of the death of the woman, she was carrying a 6 to 7-month-old fetus which probably died because of the stabbing incident. If indeed the fetus died at the time the woman was stabbed, then the crime of murder, defined in and penalized under Article 248 of the Revised Penal Code, complexed with unintentional abortion, defined in and penalized under Article 257 of the same Code, should have been filed against the appellant. Had this been done, the penalty of Death, which is the maximum penalty for the gravest offense among the two crimes committed as provided under Article 48[58]of the Revised Penal Code, should have been the proper penalty. Although, the penalty of death cannot be imposed in light of Republic Act No. 9346,[59] and that the same penalty of *Reclusion Perpetua* should be imposed, like in the present case,[60] the heirs of the victim should have been entitled to a higher civil indemnity and moral damages at PhP75,000.00[61] each.

WHEREFORE, the appeal is *DISMISSED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00113, dated November 30, 2006 is *AFFIRMED* with *MODIFICATIONS*. Appellant Rodrigo Salcedo, *alias Digol,* is found guilty beyond reasonable doubt of the crime of murder, and is sentenced to suffer the penalty of *Reclusion Perpetua* without any benefit of parole under R.A. No. 9346. He is further *ORDERED* to indemnify the heirs of Analyn Elevencione the amounts of PhP50,000.00, as civil indemnity *ex delicto,* PhP50,000.00, as moral damages, and PhP30,000.00, as exemplary damages.

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[58] *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[59] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[60] R.A. No. 9346, Section 2.

[61] *People v. Lopez*, G.R. No. 179714, October 2, 2009, 602 SCRA 517, 530.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181249. March 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BAIDA SALAK *y* BANGKULAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; COURTS; ORDERS; ORAL ORDER, NATURE OF; COURTS HAVE THE POWER TO AMEND AND CONTROL ITS PROCESS AND ORDERS.— It bears emphasizing that an oral order has no juridical existence until and unless it had been reduced into writing and promulgated, *i.e.* delivered by the judge to the clerk of court for filing, release to the parties [for] implementation. In fact, even if it had been written and promulgated, or even if it had already been properly served on the parties, it is still plainly within the power of the judge to recall it and set it aside because every court has the inherent power, among others, to amend and control its process and orders so as to make them conformable to law and justice.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972 (R.A. 6425); NON-COMPLIANCE WITH THE DANGEROUS DRUGS BOARD REGULATION DOES NOT RENDER THE ARREST ILLEGAL OR THE SEIZED ITEMS INADMISSIBLE IN EVIDENCE.— [N]on-compliance with the said regulation is not fatal to the prosecution as it does not render appellant's arrest illegal or the seized items inadmissible in evidence. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized drugs as the same would be utilized in the determination of the guilt or innocence of herein appellant.

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

3. ID.; ID.; ID.; ISSUE ON THE ADMISSIBILITY OF THE SEIZED ITEMS CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— It is also worthy to note that appellant never alleged that the drugs presented during the trial have been tampered with. Neither did appellant challenge the admissibility of the seized items when these were formally offered as evidence. In the course of the trial, the seized *shabu* were duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellant manifest or even hint that there were lapses in the safekeeping of the seized items as to affect their admissibility, integrity and evidentiary value. It was only during her appeal that she raised the issue of non-compliance with the said regulation. Settled is the rule that objections to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

4. ID.; ID.; FAILURE TO PRESENT THE BUY BUST MONEY IS NOT FATAL.— [A]s to appellant's argument that she should have been acquitted since the prosecution failed to present the buy-bust money used during the operation, again, the argument is without merit. Failure to present the buy-bust money is not indispensable in drug cases since it is merely corroborative evidence, and the absence thereof does not create a hiatus in the evidence for the prosecution provided the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.

5. ID.; ID.; ELEMENTS OF SALE OF ILLEGAL DRUGS, PROVEN.— In crimes involving the sale of illegal drugs, two essential elements must be satisfied: (1) identities of the buyer, the seller, the object and the consideration, and (2) the delivery of the thing sold and the payment for it. These elements were satisfactorily proven by the prosecution beyond reasonable doubt through testimonial, documentary and object evidence presented during the trial.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Bonifacio A. Tavera, Jr. for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated February 21, 2007 and Resolution[2] dated July 3, 2007 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01740, which affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 103, of Quezon City in Criminal Case No. Q-01-100879. The RTC found Baida Salak *y* Bangkulas guilty of illegal sale of a regulated drug in violation of Section 15,[4] Article III of Republic Act (R.A.) No. 6425 or the Dangerous Drugs Act of 1972, as amended by R.A. No. 7659.[5]

The Information dated May 25, 2001 filed against appellant reads:

That on or about the 23rd day of May, 2001, in Quezon City, Philippines, the said accused, conspiring, confederating with other persons whose true names, identities and personal circumstances have not as yet been ascertained and mutually helping each other,

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[1] *Rollo*, pp. 3-22. Penned by Associate Justice Marina L. Buzon, with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa, concurring.

[2] CA *rollo*, pp. 158-159.

[3] Records, pp. 103-111. Dated February 18, 2002. Penned by Judge Jaime N. Salazar, Jr.

[4] SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

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[5] The Death Penalty Law.

not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did, then and there wilfully and unlawfully sell or offer for sale 305.4604 grams of methamphetamine hydrochloride (*shabu*) which is a regulated drug.

CONTRARY TO LAW.[6]

When arraigned, appellant pleaded not guilty.

On September 25, 2001, following the failure of prosecution witnesses to attend scheduled hearings for the fifth consecutive time despite the issuance of subpoenas, the trial court orally ordered the provisional dismissal of the case.[7] Shortly after the order was given, however, the prosecution witnesses from the National Bureau of Investigation (NBI), Special Investigators Edgardo Kawada, Sr. and Raoul Manguerra, arrived. Hence, the order was recalled.[8] Trial then ensued.

The prosecution presented two witnesses: NBI Special Investigator Kawada, who acted as the poseur-buyer in the buy-bust operation, and Supervising Agent Dominador Villanueva III, who acted as backup during the NBI operation. Their version of facts is as follows:

In the morning of May 23, 2001, the NBI Special Task Force (STF) received information from one of their assets that a certain "Baida" is engaged in selling *shabu* at Litex Market in Commonwealth Avenue, Quezon City. Immediately, NBI-STF agents formed a team composed of Atty. Cesar Bacani, Supervising Agents Rommel Vallejo and Dominador Villanueva III, Special Investigators Raoul Manguerra, Job Gayas, Charlemagne Veloso, Eric Isidro, Eduardo Villa, Rolan Fernandez and Edgardo Kawada, Sr. to conduct a surveillance operation.[9] A briefing was held at around 12:00

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[6] CA *rollo*, p. 6.

[7] Records, pp. 33, 42, 45-49, and 52-55.

[8] *Id.* at 56; *See* TSN, October 2, 2001, p. 2.

[9] TSN, Special Investigator Edgardo Kawada, Sr., October 2, 2001, pp. 8-10.

noon[10] before the team proceeded to Litex Market. At 2:00 p.m., they arrived thereat.[11]

There, the NBI agents waited in strategic locations so they could see their asset while the latter talked with appellant. After a brief conversation with appellant, the asset informed the NBI team that appellant was in possession of *shabu* and was willing to make a transaction.[12] Thus, a clearance to conduct a buy-bust operation was issued by the Chief of the NBI-STF, Atty. Max Salvador, and a poseur-buyer was designated in the person of Special Investigator Kawada.

The asset then told appellant that he has a buyer. Appellant instructed the asset to go to Greenwich Pizza Parlor in Fairview, Quezon City with the buyer.[13] As instructed, the asset and Kawada, followed by the rest of the team, drove to Greenwich Pizza, but appellant later called the asset on the latter's cellular phone and instructed the latter to go instead to McDonald's restaurant, which was just across Greenwich Pizza. Kawada and the asset obliged.[14] After an hour, appellant arrived, accompanied by two men, whom she later introduced to Kawada and the asset as her husband, Karim Salak, and a certain Boy Life.[15]

The asset introduced Kawada to appellant and the two discussed the terms of the transaction. Kawada agreed to pay ₱60,000 per 100 grams of *shabu*, or a total of ₱180,000 for the 300 grams which appellant will supply. Kawada suggested that the exchange be made at the parking lot of Ever Gotesco Mall along Commonwealth Avenue, but appellant insisted that the venue be at Litex Market.[16] Kawada agreed so appellant boarded

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[10] TSN, Supervising Agent Dominador Villanueva III, October 9, 2001, p. 4.

[11] TSN, Special Investigator Edgardo Kawada, Sr., October 2, 2001, p. 11.

[12] *Id.* at 13.

[13] *Id.* at 14.

[14] *Id.* at 15-17, 40-41.

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

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

his vehicle with the NBI asset, and the three proceeded to Litex Market.

Upon arriving at Litex Market, appellant alighted and left to retrieve the drugs. She returned 30 minutes later, followed by Karim and Boy Life, this time carrying a plastic bag. Appellant entered Kawada's car, while her two companions stood guard outside.[17]

Inside the car, appellant showed Kawada three small heat-sealed plastic sachets packed inside a bigger plastic bag. Appellant gave the plastic bag containing the three heat-sealed sachets to Kawada who, in turn, gave ₱180,000 in genuine bills[18] to the former. The money was mixed with three one-hundred peso bills earlier marked with "ECK 5/23/01"[19] representing Kawada's initials and the date of the entrapment operation. While appellant was busy counting the money, Kawada identified himself as an NBI operative and arrested appellant. Meanwhile, outside Kawada's vehicle, appellant's two male companions, perhaps sensing that something was amiss, instantly took off and mingled with the crowd at Litex Market as other NBI agents rushed towards the location of Kawada's vehicle.[20]

Appellant was brought to the NBI office,[21] while the three heat-sealed plastic sachets, marked as "REM 1," "REM 2," and "REM 3," were submitted by NBI Agent Raoul Manguerra, upon Kawada's endorsement, to the NBI Forensic Chemistry Division for chemical analysis at 7:15 in the morning of the following day, May 24, 2001.[22]

A Certification[23] dated May 24, 2001 was issued by NBI Forensic Chemist II Juliet Gelacio-Mahilum stating that the

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[17] *Id.* at 21-22, 24.

[18] *Id.* at 23.

[19] Records, p. 9 and reverse unnumbered page.

[20] TSN, Special Investigator Edgardo Kawada, Sr., October 2, 2001, pp. 22-25.

[21] Records, pp. 13-14.

[22] *Id.* at 7-8.

[23] *Id.* at 8.

white substance contained in the three heat-sealed plastic sachets, marked "REM 1," "REM 2" and "REM 3," with a total weight of 305.4604 grams, yielded positive results for methamphetamine hydrochloride or *shabu*, a regulated drug.[24]

The defense, for its part, denied the charges and presented the following version of facts:

In the morning of May 23, 2001, while appellant and her husband Zaldy Pinorac were busy tending their stall at Manggahan Market in Commonwealth Avenue corner Litex Road, Quezon City, an acquaintance named Mila arrived. Mila was accompanied by two companions, one of whom was introduced as Aminola Kawada. The group talked to Zaldy while appellant busied herself in their store. Thereafter, Zaldy asked appellant if she could accompany Mila's group to McDonald's in Fairview as Mila's group wanted to buy VCD from Boy Life,[25] who, according to appellant, is her second cousin and whose real name is Karim Salak.[26] Appellant complied.

At McDonald's restaurant, appellant found Boy Life already waiting for them as Zaldy notified Boy Life over the phone. Appellant introduced Mila's group to Boy Life, and was asked to order some food. Appellant ate with the group and thereafter excused herself and returned to their store.[27]

At the store, Zaldy told her that Boy Life called him on the cell phone and disclosed that he sold 100 grams of *shabu* to Mila and her companions. Appellant claims that she got angry with Zaldy for putting her in such a precarious situation.[28]

Around seven o'clock that evening, Boy Life dropped by appellant's store, but appellant ignored him. An hour later, she heard a gunfire. She looked outside her store and saw Boy Life

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[24] *See* also Dangerous Drugs Report No. DD-01-480 dated May 31, 2001 issued by NBI Forensic Chemist II Juliet Gelacio-Mahilum containing the same information and result. (Records, p. 118, Exh. "C".)

[25] TSN, Baida Salak, November 27, 2001, pp. 6-10.

[26] TSN, Baida Salak, December 4, 2001, p. 2.

[27] TSN, Baida Salak, November 27, 2001, pp. 11-13.

[28] *Id.* at 14-15.

being chased by two men. When the men failed to apprehend Boy Life, they went to her stall accompanied by Aminola Kawada. Aminola Kawada's group grabbed Zaldy, but Zaldy resisted and ran. He was chased by Aminola Kawada's group but the latter also failed to arrest him so they returned to appellant's store and forcibly took her. Mangayao Angne, a fellow vendor who tried to intervene and help appellant, was also arrested. They were both brought to the NBI office in Taft Avenue, Manila,[29] but Angne was released the following day.[30]

Zaldy testified that he returned to their store almost an hour after the incident and learned from his fellow vendors that his wife and Angne were arrested. On May 24, 2001, he received a call from Aminola Kawada demanding information about Boy Life's whereabouts. Kawada also allegedly asked for ₱300,000 in exchange for his wife's release, but when he told Aminola that he does not have that much money, Aminola reduced the amount to ₱100,000.[31]

Two more witnesses, Mangrose Ampaso and Macapintal Angne corroborated appellant's testimony. Both men also own market stalls at Litex Market and claimed that they were present near the vicinity of appellant's store when the NBI operatives nabbed her on the night of May 23, 2001.

On October 11, 2001, the defense filed a motion requesting for a quantitative or purity analysis on the *shabu* specimen allegedly confiscated from the appellant.[32] The RTC granted the said motion and directed NBI Forensic Chemist Juliet Gelacio-Mahilum to conduct the necessary tests.[33] A Certification, albeit dated August 1, 2001, was thereafter issued by NBI Forensic Chemist Gelacio-Mahilum stating:

THIS CERTIFIES that representative samples taken from DD-01-480 specimen marked "REM-1," "REM-2" and "REM-3," when subjected to

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[29] *Id.* at 16-28.

[30] *Id.* at 32.

[31] TSN, Zaldy Pinorac, December 18, 2001, pp. 24-25.

[32] Records, pp. 66-68.

[33] *Id.* at 69.

quantitative analysis using HIGH PRESSURE LIQUID CHROMATOGRAPHY (HPLC) gave the following result:

xxx xxx xxx

NET WEIGHT	% PURITY
"REM-1" = 114.5932 grams	84.38%
"REM-2" = 97.0434 grams	95.90%
"REM-3" = 93.8238 grams	83.71%

Total Net weight of specimen = 305.4604 grams

Average % Purity = 87.99%[34]

On February 18, 2002, the RTC promulgated its decision finding appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the trial court's decision reads:

> ACCORDINGLY, judgment is hereby rendered finding **BAIDA SALAK OR SADAK, GUILTY** beyond reasonable doubt as principal in the sale of methylamphetahmine (*sic*) hydrochloride or *shabu* weighing 305.4604 grams[,] in violation of RA 6425 as charged, and she is sentenced to suffer a jail term of *reclusion perpetua* and to pay a fine of ₱500,000.00. Cost versus accused.
>
> SO ORDERED.[35]

Appellant appealed her conviction to the CA, but the CA affirmed the RTC decision *in toto*.[36] The CA also denied appellant's motion for reconsideration for lack of merit.[37] Hence this appeal.

Appellant alleges that:

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[34] *Id.* at 120, Exh. "E". The said Certification was also noted in the Minutes of the Trial, *id.* at 71.

[35] *Id.* at 111.

[36] CA *rollo*, p. 141. The dispositive portion of the Court of Appeals' February 21, 2007 Decision reads:

> **WHEREFORE**, the Decision appealed from is **AFFIRMED *in toto***.
>
> **SO ORDERED.**

[37] *Id.* at 158.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED WHEN THE RIGHT OF THE ACCUSED TO DUE PROCESS WAS VIOLATED; AND

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED WHEN THE EVIDENCE OF THE PROSECUTION WAS NOT SUFFICIENT TO COMPLY WITH THE QUANTUM OF EVIDENCE REQUIRED BY LAW FOR A CONVICTION AND WHEN THE EVIDENCES OF THE PROSECUTION WERE INCONSISTENT AND CONTRARY TO COMMON HUMAN EXPERIENCE.[38]

The appeal lacks merit.

Appellant assails the continuation of the trial against her notwithstanding the order of provisional dismissal earlier issued by the trial court following the repeated failure of the prosecution witnesses to attend scheduled hearings. Specifically, appellant argues that the case should not have been revived without the proper motion from the prosecution.

Appellant's contention is without merit. A careful perusal of the records shows that the provisional dismissal, which was declared in open court by the judge on September 25, 2001, was never reduced into writing after Special Investigators Kawada and Manguerra appeared at the last minute of the said hearing.[39] Moreover, it appears that the said issue was brought up by appellant's counsel in the next hearing and was settled when the trial court judge issued an order, again in open court, recalling and setting aside the September 25, 2001 order provisionally dismissing the case.[40]

It bears emphasizing that an oral order has no juridical existence until and unless it had been reduced into writing and promulgated, *i.e.* delivered by the judge to the clerk of court for filing, release

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[38] *Id.* at 40.

[39] Records, p. 56.

[40] TSN, October 2, 2001, pp. 2-5, the pertinent portion of which reads:

ATTY. SAVELLANO:

If your Honor please, may we ask for the implementation of the Order, your Honor, of Sept. 25 for the dismissal of this case because the accused was encarcerated (sic) in the City Jail.

to the parties and implementation.[41] In fact, even if it had been written and promulgated, or even if it had already been properly served on the parties, it is still plainly within the power of the judge to recall it and set it aside because every court has the inherent power, among others, to amend and control its process and orders so as to make them conformable to law and justice.[42]

Appellant likewise faults the trial court in convicting her despite the prosecution's alleged failure to establish the integrity of the *shabu* confiscated from her and presented in court. She points

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COURT:

But last [September] 25, the police (sic) arrived, although after we have already dismissed the proceeding orally, that is why we ask[ed] them to write in the minutes and I have to recall the oral order.

ATTY. SAVELLANO:

I don't know of the recall order, I was not furnished a copy. [A]t [a]ny rate, may we ask that this Police Officer (sic) or this, whoever the complainant be made to explain why they failed to arrive on so many dates and why they arrived too late when this case was called?

COURT:

Fiscal, it is your fault, you have to ask your witness to explain.

FIS. CEDILLO:

Yes, your Honor, after this witness's testimony.

ATTY. SAVELLANO:

If your Honor please, we are asking … (Interrupted).

x x x x x x x x x

COURT:

The dismissal [was] set aside before I [left] on that same day. Anyway, that is my order, I [have] set [it] aside because the police (sic) arrived.

x x x x x x x x x

COURT:

Anyway, the court will hear the witness.

The Order of Sept. 25 for provisional dismissal is hereby recalled and set aside, without prejudice to whatever the defense would want to file by way of Motion regarding this matter.

[41] *Echaus v. Court of Appeals*, G.R. No. 57343, July 23, 1990, 187 SCRA 672, 674 and 679.

[42] *Id.* at 679-680.

out that the NBI-STF team did not comply with the requirement that a physical inventory and photograph of the confiscated drugs be taken,[43] as provided in Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Dangerous Drugs Board Regulation No. 2, Series of 1990. Neither did the prosecution present the buy-bust money. These shortcomings, according to her, create reasonable doubt.

The Office of the Solicitor General, meanwhile, counters that the failure of the NBI-STF operatives to comply with the documentation and reportorial requirement, even if true, does not affect the actual conduct and regularity of the buy-bust operation itself because of the presumption of regularity in the performance of official functions which should be upheld here in the absence of evidence militating against its application.[44]

Appellant's assertion fails.

Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Dangerous Drugs Board Regulation No. 2, Series of 1990 reads:

> Subject: Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.
>
> xxx xxx xxx
>
> SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and[/or] paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the

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[43] *See* CA *rollo*, pp. 42-43.

[44] *Id.* at 83-84.

copies of the inventory and be given a copy thereof. Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.[45]

The records do not show that the NBI-STF team complied with the aforementioned procedure. Nevertheless, such failure is insufficient ground to acquit appellant.

In *People v. Gonzaga*,[46] wherein the very same issue was raised, we explained that:

While it appears that the buy-bust team failed to comply strictly with the procedure outlined above, the same does not overturn the presumption of regularity in the performance of their duty. **A violation of the regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established** and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board.

Further, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[47]

Moreover, non-compliance with the said regulation is not fatal to the prosecution as it does not render appellant's arrest illegal or the seized items inadmissible in evidence. What is of utmost importance is the preservation of the integrity and

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[45] As cited in *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51, 69 and *People v. Magat*, G.R. No. 179939, September 29, 2008, 567 SCRA 86, 95-96.

[46] G.R. No. 184952, October 11, 2010.

[47] *Id.* at 19. Emphasis supplied.

evidentiary value of the seized drugs as the same would be utilized in the determination of the guilt or innocence of herein appellant.[48]

A thorough review of the records of this case shows that despite the NBI-STF's non-compliance with said regulation, the integrity and evidentiary value of the confiscated drugs was nonetheless preserved. Evidence shows that the three heat-sealed plastic sachets of *shabu*, after being confiscated from appellant on the night of May 23, 2001, were duly marked by poseur-buyer Kawada as "REM-1," "REM-2" and "REM-3" using his own codename.[49] That same night, at the NBI-STF office, Kawada prepared the disposition form with file number DD-010480 indicating the transmittal of the same three heat-sealed sachets of *shabu* for laboratory examination. The said disposition form was duly noted by NBI-STF Chief Atty. Max Salvador.[50] The following day, the confiscated drugs including the disposition form Kawada prepared, were delivered and submitted by Agent Raoul Manguerra to the NBI Forensic Chemistry Division at 7:15 in the morning and were duly received by NBI Forensic Chemist Gelacio-Mahilum.[51] As indicated in her Certification dated May 24, 2001, the three plastic sachets marked "REM-1," "REM-2," and "REM-3" were still heat-sealed when she received them. She also certified that the three sachets have a total weight of 305.4604 grams and gave positive results for methamphetamine hydrochloride or *shabu*.[52] When presented during the trial, these specimens were also positively identified by Kawada as the very same sachets which were handed to him by the appellant.[53]

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[48] *People v. Hernandez,* G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645.

[49] TSN, Special Investigator Edgardo Kawada, Sr., October 2, 2001, pp. 27-29.

[50] Records, p. 7.

[51] Records at 7 and 8.

[52] *Id.* at 8.

[53] TSN, Special Investigator Edgardo Kawada, Sr., October 2, 2001, pp. 27-29, to wit:

It is also worthy to note that appellant never alleged that the drugs presented during the trial have been tampered with. Neither did appellant challenge the admissibility of the seized items when these were formally offered as evidence. In the course of the trial, the seized *shabu* were duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellant manifest or even hint that there were lapses in the safekeeping of the seized items as to affect their admissibility, integrity and evidentiary value. It was only during her appeal that she raised the issue of non-compliance with the said regulation. Settled is the rule that objections to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence

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FIS. CEDILLO:

Q. Now, you said in the deal Baida Salak gave you the *shabu*. What was the appearance of that *shabu* that was given to you?

WITNESS:

A. It was already in three (3) separate plastic sachet[s].

COURT:

What was the appearance of that?

WITNESS:

A. White crystalline substance. Three (3) plastic sachet[s], in separate.

FIS. CEDILLO:

Q. Was that given to you in fair or wrapped in plastic?

WITNESS:

A. It was wrapped in a plastic bag, but when she presented to me, she brought that out from the plastic.

FIS. CEDILLO:

I am showing to you [a] brown envelope consisting or rather containing the three (3) plastic sachet[s]. Will you please take a look at the plastic sachet and tell us the relation of that to the one as you said accused was given (sic) to you?

WITNESS:

A. These are the same plastic sachet we confiscated from the accused.

FIS. CEDILLO:

Q. Why do you say that is the very item?

WITNESS:

offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.[54]

It should also be noted that appellant failed to present evidence to show that the NBI-STF team was impelled by improper motives to testify against her. She merely gave the bare assertion that she was arrested by the NBI operatives to be used as leverage in pressuring her husband to divulge the whereabouts of *alias* Boy Life.

It must be stressed that the *shabu* confiscated from appellant weighed 305.4604 grams with 87.99% average purity. To the Court, the difficulty and enormous risk of obtaining such huge amount of regulated drugs, with a street value of at least ₱180,000, only for the purpose of incriminating and extorting money from an individual who was not shown to be of good financial standing and business importance, renders the allegation highly improbable.[55] If the NBI-STF operatives indeed wanted to frame-up appellant and extort money from her or her relatives, a small quantity of *shabu* would have been sufficient to cause her arrest.

Finally, as to appellant's argument that she should have been acquitted since the prosecution failed to present the buy-bust money

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A. Because we placed a marking[,] sir.

FIS. CEDILLO:

Q. What marking?

WITNESS:

A. Remington[,] sir, my code name.

FIS. CEDILLO:

Q. How about this one REM 1, 2, 3?

WITNESS:

A. That's the marking.

FIS. CEDILLO:

It has already [been] marked, the envelope as Exhibit D and the contents as D-1, D-2 and D-3[,] respectively.

[54] *People v. Araneta*, G.R. No. 191064, October 20, 2010, p. 13; and *People v. Domado*, G.R. No. 172971, June 16, 2010, 621 SCRA 73, 84, citing *People v. Hernandez*, *supra* note 47.

[55] See *People v. Uy*, G.R. No. 129019, August 16, 2000, 338 SCRA 232, 252.

used during the operation, again, the argument is without merit. Failure to present the buy-bust money is not indispensable in drug cases since it is merely corroborative evidence, and the absence thereof does not create a hiatus in the evidence for the prosecution provided the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.[56]

In crimes involving the sale of illegal drugs, two essential elements must be satisfied: (1) identities of the buyer, the seller, the object and the consideration, and (2) the delivery of the thing sold and the payment for it.[57] These elements were satisfactorily proven by the prosecution beyond reasonable doubt through testimonial, documentary and object evidence presented during the trial.

WHEREFORE, the appeal is *DISMISSED*. The Decision dated February 21, 2007 and Resolution dated July 3, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01740, affirming the Decision of the Regional Trial Court (RTC), Branch 103, of Quezon City in Criminal Case No. Q-01-100879 is *AFFIRMED*.

With costs against the accused-appellant.

SO ORDERED.

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

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[56] *People v. Gonzaga*, *supra* note 45 at 17.

[57] *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 560.

[*] Designated additional member per Special Order No. 940 dated February 7, 2011.

SECOND DIVISION

[G.R. No. 190171. March 14, 2011]

ALEN ROSS RODRIGUEZ and REGIDOR TULALI, *petitioners, vs.* **THE HON. BIENVENIDO BLANCAFLOR, in his capacity as the Acting Presiding Judge of the Regional Trial Court of Palawan, Branch 52, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CONTEMPT; POWER OF THE COURT TO PUNISH A PERSON IN CONTEMPT, EXPLAINED.— The power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness. It bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not the vindictive principle; and on the corrective, not the retaliatory, idea of punishment. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

2. ID.; ID.; DIRECT CONTEMPT; DEFINED.— Direct contempt is any 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.

3. ID.; ID.; ID.; A PROSECUTOR'S ACT OF VOLUNTARILY WITHDRAWING FROM A CASE DOES NOT CONSTITUTE DIRECT CONTEMPT.— [T]he act of Tulali in filing the *Ex-Parte* Manifestation cannot be construed as contumacious within the purview of direct contempt. It must be recalled that

the subject manifestation bore Tulali's voluntary withdrawal from the arson case to dispel any suspicion of collusion between him and the accused. Its filing on the day before the promulgation of the decision in the pending criminal case, did not in any way disrupt the proceedings before the court. Accordingly, he should not be held accountable for his act which was done in good faith and without malice.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY A JUDGE IN DECLARING TWO PROSECUTORS IN CONTEMPT WITHOUT FACTUAL OR LEGAL BASIS AND IMPOSING ON THEM UNREASONABLE AND EXCESSIVE PENALTY.— Judge Blancaflor's conclusion, that the subject manifestation containing derogatory matters was purposely filed to discredit the administration of justice in court, is unfounded and without basis. There being no factual or legal basis for the charge of direct contempt, it is clear that Judge Blancaflor gravely abused his discretion in finding petitioners guilty as charged. Such grave abuse of authority is likewise manifested from the penalty imposed on the petitioners. Under Section 1, Rule 71 of the Revised Rules of Court, direct contempt before the RTC or a court of equivalent or higher rank is punishable by a fine not exceeding ₱ 2,000.00 or imprisonment not exceeding ten (10) days, or both. The penalty of indefinite suspension from the practice of law and to pay a fine of ₱ 100,000.00 each with the additional order to issue a public apology to the Court under pain of arrest, is evidently unreasonable, excessive and outside the bounds of the law.

5. ID.; CONTEMPT; CONTEMPT AND SUSPENSION PROCEEDINGS ARE SEPARATE AND DISTINCT.— Contempt and suspension proceedings are supposed to be separate and distinct. They have different objects and purposes for which different procedures have been established. Judge Blancaflor should have conducted separate proceedings. As held in the case of *People v. Godoy*, thus: A contempt proceeding for misbehavior in court is designed to vindicate the authority of the court; on the other hand, the object of a disciplinary proceeding is to deal with the fitness of the court's officer to continue in that office, to preserve and protect the court and the public from the official ministrations of persons

unfit or unworthy to hold such office. The principal purpose of the exercise of the power to cite for contempt is to safeguard the functions of the court and should thus be used sparingly on a preservative and not, on the vindictive principle. The principal purpose of the exercise of disciplinary authority by the Supreme Court is to assure respect for orders of such court by attorneys who, as much as judges, are responsible for the orderly administration of justice.

6. ID.; ATTORNEYS; SUSPENSION FROM THE PRACTICE OF LAW; REQUIREMENTS.— This Court is not unmindful of a judge's power to suspend an attorney from practice for just cause pursuant to Section 28, Rule 138 of the Revised Rules of Court. Judge Blancaflor, however, must be reminded that the requirements of due process must be complied with, as mandated under Section 30, Rule 138 of the same Rules which specifically provide, x x x. Indeed, a lawyer may be disbarred or suspended for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. His guilt, however, cannot be presumed. It must indicate the dubious character of the acts done, as well as the motivation thereof. Furthermore, a disbarred lawyer must have been given full opportunity upon reasonable notice to answer the charges against him, produce witnesses in his own behalf, and to be heard by himself and counsel.

7. ID.; ID.; ID.; ID.; REQUIREMENTS TO SUSPEND A LAWYER, NOT COMPLIED WITH.— In the case at bench, there was no prior and separate notice issued to petitioners setting forth the facts constituting the misconduct and requiring them, within a specified period from receipt thereof, to show cause why they should not be suspended from the practice of their profession. Neither were they given full opportunity to defend themselves, to produce evidence on their behalf and to be heard by themselves and counsel. Undoubtedly, the suspension proceedings against petitioners are null and void, having violated their right to due process. Likewise, Judge Blancaflor's suspension order is also void as the basis for suspension is not one of the causes that will warrant disciplinary action. Section 27, Rule 138 of the Rules enumerates the grounds for disbarment or suspension of a member of the Bar from his office as attorney, to wit: (1) deceit, (2) malpractice, (3) gross misconduct

in office, (4) grossly immoral conduct, (5) conviction of a crime involving moral turptitude, (6) violation of the lawyer's oath, (7) willful disobedience of any lawful order of a superior court, and for (8) willfully appearing as an attorney for a party without authority to do so. Judge Blancaflor failed to show that the suspension was for any of the foregoing grounds.

8. ID.; CONTEMPT; AN ORDER OF DIRECT CONTEMPT IS NOT IMMEDIATELY EXECUTORY.— [A]n Order of direct contempt is not immediately executory or enforceable. The contemnor must be afforded a reasonable remedy to extricate or purge himself of the contempt. Where the person adjudged in direct contempt by any court avails of the remedy of *certiorari* or prohibition, the execution of the judgment shall be suspended pending resolution of such petition provided the contemnor files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgement should the petition be decided against him.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioners.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* and prohibition under Rule 65 of the Revised Rules of Court filed by Alen Ross Rodriguez *(Rodriguez)*, the Provincial Prosecutor of Palawan; and Regidor Tulali *(Tulali)*, Prosecutor I of the Office of the Provincial Prosecutor of Palawan, seeking to annul and set aside the October 13, 2009 Decision[1] of respondent Judge Bienvenido Blancaflor *(Judge Blancaflor)*, Acting Presiding Judge of Branch 52, Regional Trial Court, Palawan *(RTC)*. The petition likewise seeks to prohibit Judge Blancaflor from implementing the said decision.

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[1] Annex "A" of Petition, *rollo*, pp. 41-46.

In his October 13, 2009 Decision, Judge Blancaflor found petitioners Rodriguez and Tulali guilty of direct contempt and ordered them to issue a public apology to the court. In the same decision, Judge Blancaflor suspended them indefinitely from the practice of law. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondents PROVINCIAL PROSECUTORS OF PALAWAN ALEN ROSS B. RODRIGUEZ and PROSECUTOR REGIDOR TULALI as both guilty of direct contempt and for violation of their oath of office as member of the bar and as officer of the Court, and hereby sentence them to suffer the penalty of INDEFINITE SUSPENSION from practice of law and for each to pay a fine of ₱100,000.00.
>
> Respondents are further directed to issue a public apology to the Court for the above grave offenses and should they fail to do so after the finality of this Sentence, a warrant for their arrest will be issued, and they will not be released unless they comply with the order of this Court.
>
> Let a copy of this Order be furnished the Secretary of Justice for appropriate action.
>
> IT IS SO ORDERED.[2]

The Facts

Previously pending before Judge Blancaflor was Criminal Case No. 22240 for arson *(arson case)*, entitled *People of the Philippines v. Teksan Ami*, in which Tulali was the trial prosecutor.

During the pendency of the case, Tulali was implicated in a controversy involving an alleged bribery initiated by Randy Awayan *(Awayan)*, the driver assigned to Judge Blancaflor under the payroll of the Office of the Governor of Palawan, and one Ernesto Fernandez *(Fernandez)*, to assure the acquittal of the accused, Rolly Ami *(Ami)*, and the dismissal of the arson case.

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[2] *Id.* at 46.

On June 29, 2009, a day before the scheduled promulgation of the decision in the arson case, Tulali filed an *Ex-Parte* Manifestation withdrawing his appearance in the said case to prevent any suspicion of misdemeanor and collusion. He attached to the said manifestation a copy of the administrative complaint against Awayan filed (but eventually withdrawn) by his superior, Rodriguez, before the Office of the Governor of Palawan.

On June 30, 2009, Judge Blancaflor rendered his decision acquitting Ami of the crime of arson.

Purportedly on the basis of the administrative complaint filed against Awayan and Rodriguez, Judge Blancaflor summoned several witnesses including Tulali and heard their testimonies. On July 30, 2009, he issued an order summoning Rodriguez to appear before him for the purpose of holding an inquiry on matters pertaining to his possible involvement in Tulali's filing of the *ex-parte* manifestation and the administrative complaint against Awayan, among others.

On August 7, 2009, Rodriguez filed his Motion for Clarification as to the purpose of Judge Blancaflor's continued inquiries considering that the decision in the arson case had already been promulgated.

In an order dated August 13, 2009, Judge Blancaflor informed the petitioners that he was proceeding against them for direct contempt and violation of their oath of office on the basis of Tulali's *Ex-Parte* Manifestation.

As earlier recited, after the submission of petitioners' respective position papers, Judge Blancaflor issued the assailed October 13, 2009 Decision finding petitioners guilty of direct contempt. The penalty of indefinite suspension from the practice of law and a fine of ₱100,000.00 each were imposed upon them.

The petitioners filed a motion for reconsideration of the decision but it was denied in the assailed November 6, 2009 Order.[3]

[3] *Id.* at 47.

Hence, the petitioners interpose the present special civil action before this Court anchored on the following

GROUNDS

(A)

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION AND ORDER CONSIDERING THAT PETITIONERS WERE DENIED THEIR RIGHT TO DUE PROCESS.

(B)

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION AND ORDER CONSIDERING THAT HE GROSSLY VIOLATED THE RULES ON CONTEMPT.

(C)

SINCE THE ASSAILED DECISION AND ORDER ARE VOID, A WRIT OF PROHIBITION MUST BE ISSUED AGAINST RESPONDENT.[4]

Petitioners argue that the contempt proceedings are null and void for contravening their rights to due process of law. They claim that they were denied their rights to be informed of the nature and cause of the accusation against them, to confront the witnesses and present their own evidence. According to petitioners, Judge Blancaflor's disregard of due process constituted grave abuse of discretion which was further aggravated by the unlawful manner of simultaneously conducting suspension and contempt proceedings against them.

Petitioners further argue that the penalty imposed upon them in the "direct contempt" proceeding is clearly oppressive and without basis.

In its Manifestation in Lieu of Comment,[5] the Office of the Solicitor General *(OSG)* stated that Judge Blancaflor committed grave abuse of discretion amounting to lack or excess of

[4] *Id.* at 11.

[5] *Id.* at 67.

jurisdiction in holding petitioners guilty of direct contempt as the judgment was not based on law and evidence.

The petition is impressed with merit.

The power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness. It bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not the vindictive principle; and on the corrective, not the retaliatory, idea of punishment.[6] Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[7]

In this case, the Court cannot sustain Judge Blancaflor's order penalizing petitioners for direct contempt on the basis of Tulali's *Ex-Parte* Manifestation.

Direct contempt is any 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.[8]

Based on the foregoing definition, the act of Tulali in filing the *Ex-Parte* Manifestation cannot be construed as contumacious within the purview of direct contempt. It must be recalled that the subject manifestation bore Tulali's voluntary withdrawal

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[6] *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 80.

[7] *Bank of Philippine Islands v. Labor Arbiter Roderick Joseph Calanza, et al.*, G.R. No. 180699, October 13, 2010, citing *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253.

[8] Section 1, Rule 71 of the Revised Rules of Court.

from the arson case to dispel any suspicion of collusion between him and the accused. Its filing on the day before the promulgation of the decision in the pending criminal case, did not in any way disrupt the proceedings before the court. Accordingly, he should not be held accountable for his act which was done in good faith and without malice.

Neither should Rodriguez be liable for direct contempt as he had no knowledge of, or participation in, the preparation and filing of the subject manifestation. It was signed and filed by Tulali alone in his capacity as the trial prosecutor in the arson case. The attached complaint against Awayan was filed with the Office of the Palawan Governor, and not with the RTC.

Apparently, Judge Blancaflor's conclusion, that the subject manifestation containing derogatory matters was purposely filed to discredit the administration of justice in court, is unfounded and without basis. There being no factual or legal basis for the charge of direct contempt, it is clear that Judge Blancaflor gravely abused his discretion in finding petitioners guilty as charged.

Such grave abuse of authority is likewise manifested from the penalty imposed on the petitioners. Under Section 1, Rule 71 of the Revised Rules of Court, direct contempt before the RTC or a court of equivalent or higher rank is punishable by a fine not exceeding ₱2,000.00 or imprisonment not exceeding ten (10) days, or both.

The penalty of indefinite suspension from the practice of law and to pay a fine of ₱100,000.00 each with the additional order to issue a public apology to the Court under pain of arrest, is evidently unreasonable, excessive and outside the bounds of the law.

Petitioners also fault Judge Blancaflor for non-observance of due process in conducting the contempt proceedings. It must be emphasized that direct contempt is adjudged and punished summarily pursuant to Section 1, Rule 71 of the Rules. Hence, hearings and opportunity to confront witnesses are absolutely unnecessary.

In the same vein, the petitioners' alleged "vilification campaign" against Judge Blancaflor cannot be regarded as direct contempt. At most, it may constitute indirect contempt, as correctly concluded by the OSG. For indirect contempt citation to prosper, however, the requirements under Sections 3 and 4, Rule 71 of the Rules must be satisfied, to wit:

> Sec. 3. *Indirect contempt to be punished after charge and hearing.* – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
>
> xxx xxx xxx
>
> (d) any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
>
> xxx xxx xxx.
>
> Sec. 4. *How proceedings commenced*. — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

In the present case, Judge Blancaflor failed to observe the elementary procedure which requires written charge and due hearing. There was no order issued to petitioners. Neither was there any written or formal charge filed against them. In fact, Rodriguez only learned of the contempt proceedings upon his receipt of the July 30, 2009 Order, requiring him to appear

before the Court in order to clarify certain matters contained in the said order. Tulali, on the other hand, only learned of the proceedings when he was ordered to submit his compliance to explain how he came in possession of the administrative complaint against Awayan.

The fact that petitioners were afforded the opportunity to file their appropriate pleadings is not sufficient as the proceedings *ex-parte* to hear the witnesses' testimonies had already been completed.

In the course of his investigation, Judge Blancaflor showed that he no longer had the cold impartiality expected of a magistrate. He had clearly prejudged petitioners as manifested in the questions propounded in his July 30, 2009 Order, as follows:

a. Your [petitioner Rodriguez's] participation, if any, in the filing of the *ex-parte* manifestation by Prosecutor Tulali together with the attachment of your letter to Gov. Joel T. Reyes dated May 8, 2009 filed on June 29, 2009 with the Clerk of Court, Branch 52, Regional Trial Court, Palawan;

b. Whether or not the letter was received and read by Gov. Joel T. Reyes, if you know, and if so what was the official action thereon;

c. Before Randy Awayan was terminated on June 30, 2009 was he allowed to answer the charges against him, *i.e.*, calling him bag man and facilitator and Ernesto Fernandez, calling him "extortionist."

Aside from the allegations of Salam Ami, any other evidentiary basis for your conclusion that Ernesto Fernandez was an extortionist and that Awayan was a bag man and facilitator;

What was your role in obtaining the release of accused Rolly Ami from the City Jail without permission from the Court on June 29, 2009 at 2:00 o'clock in the afternoon and having been interviewed in the Office of the Provincial Prosecutor (c/o Prosecutor Tulali) and how long was Rolly Ami interviewed?

d. Rolly Ami is publicly known as illiterate (cannot read or write) but he was made to sign affidavits in the absence of his lawyer on June 29, 2009 at 2:00 o'clock in the afternoon, why?

e. Rolly Ami was fetched upon his release by SPO4 Efren Guinto, a close associate of yours, and directly went to the Palawan Pawnshop to pawn expensive jewelry (watch and ring), why?

What is your participation in the media coverage Re: VILIFICATION CAMPAIGN of the Judge of Branch 52 RTC-Palawan from July 1 to 10, 2009. Do you recognize that as a member of the Bar and as an officer of the Court, pursuant to the rules of judicial ethics and your oath of office as a lawyer, your loyalty and fidelity is primarily to the Court? Do you still recognize this duty and obligation?[9]

Indeed, Judge Blancaflor failed to conform to the standard of honesty and impartiality required of judges as mandated under Canon 3 of the Code of Judicial Conduct.

As a public servant, a judge should perform his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[10]

Contempt and suspension proceedings are supposed to be separate and distinct. They have different objects and purposes for which different procedures have been established. Judge Blancaflor should have conducted separate proceedings. As held in the case of *People v. Godoy*,[11] thus:

A contempt proceeding for misbehavior in court is designed to vindicate the authority of the court; on the other hand, the object of a disciplinary proceeding is to deal with the fitness of the court's officer to continue in that office, to preserve and protect the court

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

[10] *Baculi v. Belen,* A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 80, citing *Nazareno v. Barnes*, 220 Phil. 451, 463 (1985), citing *Austria v. Masaquel,* 127 Phil. 677, 690 (1967).

[11] 312 Phil. 977, 1032, 1033 (1995).

and the public from the official ministrations of persons unfit or unworthy to hold such office. The principal purpose of the exercise of the power to cite for contempt is to safeguard the functions of the court and should thus be used sparingly on a preservative and not, on the vindictive principle. The principal purpose of the exercise of disciplinary authority by the Supreme Court is to assure respect for orders of such court by attorneys who, as much as judges, are responsible for the orderly administration of justice.

x x x. It has likewise been the rule that a notice to a lawyer to show cause why he should not be punished for contempt cannot be considered as a notice to show cause why he should not be suspended from the practice of law, considering that they have distinct objects and for each of them a different procedure is established. Contempt of court is governed by the procedures laid down under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by files 138 and 139 thereof.

Thus, it was grossly improper for Judge Blancaflor to consider his July 30, 2009 Order on the contempt charge as the notice required in the disciplinary proceedings suspending petitioners from the practice of law.

Granting that the simultaneous conduct of contempt and suspension proceedings is permitted, the suspension of petitioners must still fail.

This Court is not unmindful of a judge's power to suspend an attorney from practice for just cause pursuant to Section 28, Rule 138 of the Revised Rules of Court. Judge Blancaflor, however, must be reminded that the requirements of due process must be complied with, as mandated under Section 30, Rule 138 of the same Rules which specifically provides, *viz*:

Sec. 30. *Attorney to be heard before removal or suspension*. – No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

Indeed, a lawyer may be disbarred or suspended for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. His guilt, however, cannot be presumed. It must indicate the dubious character of the acts done, as well as the motivation thereof. Furthermore, a disbarred lawyer must have been given full opportunity upon reasonable notice to answer the charges against him, produce witnesses in his own behalf, and to be heard by himself and counsel.[12]

In the case at bench, there was no prior and separate notice issued to petitioners setting forth the facts constituting the misconduct and requiring them, within a specified period from receipt thereof, to show cause why they should not be suspended from the practice of their profession. Neither were they given full opportunity to defend themselves, to produce evidence on their behalf and to be heard by themselves and counsel. Undoubtedly, the suspension proceedings against petitioners are null and void, having violated their right to due process.

Likewise, Judge Blancaflor's suspension order is also void as the basis for suspension is not one of the causes that will warrant disciplinary action. Section 27, Rule 138 of the Rules enumerates the grounds for disbarment or suspension of a member of the Bar from his office as attorney, to wit: (1) deceit, (2) malpractice, (3) gross misconduct in office, (4) grossly immoral conduct, (5) conviction of a crime involving moral turpitude, (6) violation of the lawyer's oath, (7) willful disobedience of any lawful order of a superior court, and for (8) willfully appearing as an attorney for a party without authority to do so. Judge Blancaflor failed to show that the suspension was for any of the foregoing grounds.

In fine, having established that Judge Blancaflor committed grave abuse of discretion amounting to lack or excess of jurisdiction,

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[12] *Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City, Against Atty. Samuel C. Occena*, 433 Phil. 138, 154 (2002).

petitioners are entitled to the remedy of prohibition under Section 2, Rule 71 of the Rules on Contempt which provides:

> 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 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.

Accordingly, an order of direct contempt is not immediately executory or enforceable. The contemnor must be afforded a reasonable remedy to extricate or purge himself of the contempt. Where the person adjudged in direct contempt by any court avails of the remedy of *certiorari* or prohibition, the execution of the judgment shall be suspended pending resolution of such petition provided the contemnor 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.[13]

WHEREFORE, the petition is *GRANTED*. The October 13, 2009 Decision and November 6, 2009 Order are hereby annulled and set aside. Judge Bienvenido Blancaflor is hereby permanently enjoined from implementing the said decision and order. This injunctive order is immediately executory.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Abad, JJ.,* concur.

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[13] *Tiongco v. Salao*, A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 583, citing *Oclarit v. Paderanga*, 403 Phil 146, 152 (2001).

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

SECOND DIVISION

[G.R. No. 191392. March 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY SORIAGA *y* STO. DOMINGO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — [W]hat is material to the prosecution for illegal sale of prohibited or dangerous drugs is the proof that the transaction or sale actually took place, plus the presentation of the *corpus delicti* as evidence. Thus, the elements essential to the crime of illegal sale of prohibited or dangerous drugs are: (i) the accused sold and delivered a prohibited drug to another; and (ii) he knew that what he had sold and delivered was a prohibited drug.

2. ID.; ID.; ID.; ELEMENTS, SATISFACTORILY PROVEN; FACTUAL FINDINGS OF THE RTC AND THE CA, ACCORDED FULL CREDENCE. — The RTC and the CA both found the above elements to have been satisfactorily proved by the prosecution in the present case. Soriaga sold and delivered the *shabu* for ₱100 to Facundo, the poseur buyer. Facundo herself testified that there was an actual exchange of the marked-money and the prohibited drug. Certainly, Soriaga was aware that what he was selling was illegal and prohibited. Thereafter, the *corpus delicti* or the subject drug was seized, marked and subsequently identified as a prohibited drug. At the trial, the same drug with the identifying marks intact was presented in evidence. Coupled with the unwavering testimony of Facundo who had no reason at all to falsely accuse Soriaga and who was only doing her job, the prosecution convinced the RTC to render a judgment of conviction. In the absence of any showing that substantial or relevant facts bearing on the elements of the crime have been misapplied or overlooked, the Court can only accord full credence to such factual assessment of the trial court which had the distinct advantage of observing the demeanor and conduct of the witnesses at the trial.

3. ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURES IN THE INVENTORY OF THE SEIZED DRUG IS NOT FATAL. — On the issue of non-compliance with the prescribed procedures in the inventory of seized drugs, the rule is that it does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. The requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the November 27, 2009 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 03108, which affirmed the finding of guilt by the Regional Trial Court, Makati City, Branch 64 *(RTC)*, in Criminal Case No. 03-4031, convicting accused Rolly Soriaga *(Soriaga)* of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.[2] The Information filed against him reads:

That on or about the 15th day of October, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport Methylamphetamine Hydrochloride, weighing zero point

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[1] *Rollo*, pp. 2-11. CA 7th Division: Penned by Associate Justice Japar B. Dimaampao with Associate Justice Bienvenido L. Reyes and Associate Justice Antonio Villamor, concurring.

[2] CA *rollo*, pp. 20-25. Penned by Judge Maria Cristina J. Cornejo.

zero five (0.05) gram, which is a dangerous drug, in consideration of one hundred (₱100.00) pesos, in violation of the above-cited law.

CONTRARY TO LAW.[3]

In the afternoon of October 15, 2003, Barangay Captain Manuel Adao of the Makati Anti-Drug Abuse Council – Cluster 2 *(MADAC)* received an information about Soriaga's unbridled selling of illegal drugs on Arellano and Bautista Streets, Barangay Palanan, Makati City. Consequently, a joint buy-bust operation was conducted by the police headed by PO3 Henry Montes *(PO3 Montes)* and the MADAC represented by Herminia Facundo *(Facundo)* and Leovino Perez *(Perez)*. Facundo was designated as the *poseur-buyer*.

Thereafter, the team proceeded to the target area accompanied by their informant. Facundo and the informant met Soriaga at the corner of Arellano and Bautista Streets. Soriaga asked the informant, "*Okay ba yan, pre*?" The informant assured Soriaga, "*Barkada ko yan, okay 'to*." Soriaga then asked Facundo how much she was going to buy, and the latter replied, "*Piso lang*." Thereafter, Soriaga took the ₱100.00 marked-money from Facundo and placed it in his front pocket. Instantaneously, Soriaga took out a plastic sachet with crystalline substance from his left pocket and handed it over to Facundo. The latter immediately gave the pre-arranged signal by throwing a lighted cigarette and the rest of the buy-bust team rushed to the scene. PO3 Montes ordered Perez to empty the pockets of Soriaga and recovered the ₱100.00 marked-money. Facundo marked the plastic sachet that Soriaga gave her with the letters "RSD." Facundo placed the same initials on the recovered money.

Soriaga was placed under arrest and brought to the office of the Anti-illegal Drugs Special Operation Task Force. The evidence seized was turned over to police investigator PO2 Reynaldo Juan. An examination was conducted on the contents of the plastic sachet which tested positive for Methylamphetamine Hydrochloride.[4]

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[3] *Rollo*, p. 14.

[4] *Id.* at 4-5; CA *rollo*, pp. 20-22.

In addition to the above-mentioned charge, Soriaga was also indicted for illegal use of dangerous drugs under Section 15, Article II, also of R.A. No. 9165. On July 14, 2007, the RTC rendered a decision acquitting Soriaga of this charge of illegal use of dangerous drugs but finding him guilty beyond reasonable doubt of the crime of illegally selling dangerous drugs. The *fallo* of said decision reads as follows:

> WHEREFORE, the premises considered, Judgment is rendered in these cases as follows:
>
> 1. In Criminal Case No. 03-4031, finding accused Rolly Soriaga *y* Sto. Domingo GUILTY beyond reasonable doubt of Violation of Section 5, Art. II, RA 9165, and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. Said accused shall be given credit for the period of his preventive detention.
> 2. In Criminal Case No. 03-5007, acquitting the said accused Rolly Soriaga *y* Sto. Domingo from the charge of Violation of Section 15, Art. II, R.A. No. 9165, upon a reasonable doubt.
>
> It is further ordered that the dangerous drugs subject of Criminal Case No. 03-4031 be transmitted to the Philippine Drug Enforcement Agency (PDEA) for the latter's appropriate disposition.
>
> SO ORDERED.[5]

On appeal, the CA affirmed *in toto* the July 14, 2007 Decision of the RTC.[6]

When the case was elevated to this Court, Soriaga, through the Public Attorney's Office, and the Office of the Solicitor General, both manifested that they would no longer file their respective supplemental briefs and, instead, they would adopt all the arguments in their briefs filed before the CA. In his Appellant's Brief, Soriaga presented the following:

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[5] CA *rollo*, pp. 24-25.

[6] *Id.* at 109.

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED *SHABU*.[7]

The Court finds no merit in the appeal.

"A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In this jurisdiction, the operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken."[8]

Soriaga argues that the buy-bust team failed to comply with the requisites of Section 21, Article II of R.A. No. 9165 and its implementing rules requiring the immediate inventory and photograph of the items seized in the buy-bust operation. Further, Soriaga proceeds to question the chain of custody of the seized *shabu*.

First of all, what is material to the prosecution for illegal sale of prohibited or dangerous drugs is the proof that the transaction or sale actually took place, plus the presentation of the *corpus delicti* as evidence. Thus, the elements essential to the crime of illegal sale of prohibited or dangerous drugs are: (i) the accused sold and delivered a prohibited drug to

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[7] *Id.* at 41.

[8] *People v. Rodante de Leon*, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 135.

another; and (ii) he knew that what he had sold and delivered was a prohibited drug.[9]

The RTC and the CA both found the above elements to have been satisfactorily proved by the prosecution in the present case. Soriaga sold and delivered the *shabu* for ₱100 to Facundo, the poseur buyer. Facundo herself testified that there was an actual exchange of the marked-money and the prohibited drug. Certainly, Soriaga was aware that what he was selling was illegal and prohibited. Thereafter, the *corpus delicti* or the subject drug was seized, marked and subsequently identified as a prohibited drug. At the trial, the same drug with the identifying marks intact was presented in evidence. Coupled with the unwavering testimony of Facundo who had no reason at all to falsely accuse Soriaga and who was only doing her job, the prosecution convinced the RTC to render a judgment of conviction.

In the absence of any showing that substantial or relevant facts bearing on the elements of the crime have been misapplied or overlooked, the Court can only accord full credence to such factual assessment of the trial court which had the distinct advantage of observing the demeanor and conduct of the witnesses at the trial.[10]

Absent any proof of motive to falsely charge an accused of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over his bare allegation.[11]

On the issue of non-compliance with the prescribed procedures in the inventory of seized drugs, the rule is that it does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[12] The requirements under R.A. No. 9165

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

[10] *People v. Tamayo*, G.R. No. 187070, February 24, 2010.

[11] *People v. Rodante de Leon, supra* note 8 at 136.

[12] *People v. Jakar Mapan Le*, G.R. No. 188976, June 29, 2010.

and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[13] Thus, in the case of *People v. Domado*,[14] it was written:

> From the point of view of jurisprudence, we are not beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case. In *People v. Resurreccion*, we already stated that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana, People v. Hernandez*, and *People v. Gum-Oyen*, the apprehending team marked the confiscated items at the police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused. We succinctly explained this in *People v. Del Monte* when we held:
>
> > We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. x x x

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[13] *Id*.

[14] G.R. No. 172971, June 16, 2010.

> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[15]

Following the consummation of the sale and the arrest of Soriaga, Facundo proceeded to mark the sachet received from Soriaga with the initials "RSD" while still at the crime scene. At the police station, the marked sachet was turned over to PO2 Reynaldo Juan. Thereafter, a letter request together with the marked sachet was sent to the Philippine National Police Crime Laboratory of the Southern Police District for a laboratory examination of the contents of the marked sachet. Thereafter, the Forensic Chemical Officer of the Crime Laboratory, Police Inspector Richard Allan S. Mangalip issued his report confirming that the specimen from the sachet marked "RSD" contained or tested positive for *shabu*.[16]

With the foregoing, the Court agrees with the RTC and the CA that the chain of custody was unbroken thereby ensuring the integrity of the *corpus delicti*. Necessarily, the conviction of Soriaga must be sustained.

WHEREFORE, the appeal is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Abad, JJ.,* concur.

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[15] *Id*.

[16] CA *rollo,* pp. 84-85.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933 dated January 24, 2011.

EN BANC

[A.M. No. 2010-11-SC. March 15, 2011]

RE: EMPLOYEES INCURRING HABITUAL TARDINESS IN THE SECOND SEMESTER OF 2009

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; HAVE THE DUTY TO MAINTAIN COURTS' GOOD NAME AND STANDING.— The exacting standards of ethics and morality imposed upon court officials and employees reflect the premium placed on the image of the courts of justice. That image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work in the Judiciary. It thus becomes the imperative duty of everyone involved in the dispensation of justice, from the judge to the lowliest clerk, to maintain the courts' good name and standing as true temples of justice.

2. ID.; ID.; ID.; ABSENTEEISM AND TARDINESS OF COURT EMPLOYEES ARE IMPERMISSIBLE.— There is no question that all the concerned employees incurred habitual tardiness within the context of CSC Memorandum Circular No. 04, Series of 1991, *supra*. Thereby, they fell short of the standard of conduct demanded from everyone connected with the administration of justice. Worthy of stress is that the nature and functions of the employment of the officials and employees of the Judiciary require them to be role models in the faithful observance of the constitutional canon that public office is a public trust. They are always accountable to the people, whom they must serve with utmost responsibility, integrity, loyalty, and efficiency. They can surely inspire public respect for the justice system by strictly observing official time, among others. Absenteeism and tardiness are, therefore, impermissible.

3. ID.; ID.; ID.; ID.; ILLNESS, TRAVEL DIFFICULTIES, FAMILY OBLIGATIONS AND OTHER SIMILAR CAUSES ARE NOT PERSUASIVE JUSTIFICATIONS.— The respective justifications of the concerned employees (consisting of illness or poor health, travel difficulties, household responsibilities,

and similar causes) are not unacceptable. Already in *Re: Supreme Court Employees Incurring Habitual Tardiness in the 2nd Semester of 2005,* we enunciated that justifications for absences and tardiness falling under the categories of illness, moral obligation to family and relatives, performance of household chores, traffic and health or physical condition are neither novel nor persuasive, and hardly evoke sympathy. If at all, such justifications may only mitigate liability.

D E C I S I O N

BERSAMIN, *J.*:

Employees of the Judiciary should observe punctuality in reporting to work. Tardiness, if habitual, prejudices the efficiency of the service being rendered by the Judiciary to the people, and cannot be tolerated. Thus, we sanction certain administrative employees of the Court for their habitual tardiness.

This administrative matter emanated from the reports dated June 16, 2010 and June 17, 2010 made by the Leave Division under the Office of Administrative Services (OAS) to the Complaints and Investigation Division, also under the OAS, to the effect that the following employees had been habitually tardy in the second semester of 2009, *viz*:

	No. of times Reported Tardy for the 2nd Semester of 2009					
Names	Jul	Aug	Sept	Oct	Nov	Dec
1. Mr. Marc Reman A. Bessat Computer Maintenance Technologist III Systems Planning & Project Evaluation Division, MISO	10			10		
2. Mr. Melquiades A. Briones Clerk III Office of the Clerk of Court, *En Banc*	14	15				
3. Mr. Benjie B. Cajandig Judicial Staff Assistant II Mediation Planning & Research Division PHILJA	12		10	12		
4. Ms. Sherrylyn A. Nate-Cruz Fiscal Clerk II Finance Division, FMBO	10			10		
5. Mr. Florentino A. Pascual Human Resource Management Officer II Personnel Division, OAS-OCA			10	11		
6. Mr. Albert C. Semilla Computer Operator III Records Division Office of the Chief Attorney			12		10	

7. Ms. Jolina Pauline T. Tuazon Executive Assistant II Publication Division, PIO			11	11		
8. Mary Jingle M. Villocero Court Stenographer III Judicial Supervision & Monitoring Division, CMO-OCA	11			10		

On July 5, 2010, the OAS directed the concerned employees to explain in writing why no administrative disciplinary action should be taken against them for their habitual tardiness during the covered period, which habitual tardiness was in violation of Civil Service Commission (CSC) Memorandum Circular No. 04, Series of 1991, *viz*:

An employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year. xxx

The concerned employees subsequently rendered their respective explanations, which the OAS summarized thuswise:[1]

A. Employees previously penalized for habitual tardiness:

1. **Mr. ALBERT C. SEMILLA** – He was tardy for twelve (12) times in the month of September and ten (10) times in the month of November. In his explanation dated July 9, 2010, Mr. Semilla readily admitted having incurred those tardiness and humbly submitted to any disciplinary action for the offense. He stated that due to financial difficulties, he reports to work and likewise returns home through his bicycle. He supports his family as a solo parent and even enrolled in a short course for Medical Transcriptionists in an attempt to improve their plight. He added that in the summer of 2009, his blood pressure started to rise abnormally. It was the cause why he was rushed to the hospital twice. Since May 2009, he was under the care of the SC Clinic for *Benign Prostatic Hyperthropy*, which ailment caused him many sleepless nights.

   As shown by the records, this is Mr. Semilla's fourth incursion of habitual tardiness. He was REPRIMANDED

[1] *Rollo*, left flap, pp. 2-5.

for his first incursion of the offense pursuant to the Court *En Banc* resolution dated August 8, 2000 in A.M. No. 00-6-09-SC, Re: Imposition of Corresponding Penalties to Employees Committing Habitual Tardiness; SUSPENDED for five (5) days for committing habitual tardiness for the second time pursuant to A.M. No. 00-6-09-SC dated November 27, 2002, Re: Imposition of Corresponding Penalties for Habitual Tardiness committed during the Second Semester of 2000; and SUSPENDED for ten (10) days for committing the same offense for the third time pursuant to A.M. No. 00-06-09-SC dated March 16, 2004, Re: Imposition of Corresponding Penalties for Habitual Tardiness committed during the 1st and 2nd Semester of 2003.

His service records show that Mr. Semilla entered the government service in the Supreme Court as Messenger on November 7, 1979. He was promoted as Clerk on July 1, 1983, Clerk III on July 1, 1989, and Computer Operator III on October 17, 2006, the position he is holding at present. His performance ratings for the 1st and 2nd semesters of the year 2009 show that he performed his work very satisfactorily. Since 2003, this is the only time again that he has incurred tardiness.

2. **Mr. FLORENTINO A. PASCUAL** – He was tardy for ten (10) times in the month of September and eleven (11) times in the month of October. In his letter dated July 7, 2010, he explained that his tardiness was caused by his unstable blood pressure and the traffic situation. He manifested that to the best of his ability, he will try to be punctual despite his present health condition caused by a mild stroke.

As shown by the records, this is Mr. Pascual's second incursion of habitual tardiness. He was REPRIMANDED for his first incursion of the offense pursuant to the Court *En Banc* Resolution dated March 16, 2004 in A.M. No. 00-06-09-SC, Re: Habitual Tardiness for the 1st and 2nd Semester of 2003.

B. Employees incurring habitual tardiness for the first time:

1. **Mr. MARC REMAN A. BESSAT** – He was tardy for ten (10) times each for the months of July and October. In his explanation dated July 9, 2010, he stated that during the said

period, he experienced abdominal cramping, bloating, gassiness and painful bowel habits, especially on mornings. He claimed that he consulted a Gastroenterologist on March 2010 and was diagnosed with Internal Hemorrhoids. He promised to do everything to improve his time of arrival.

2. **Mr. MELQUIADES A. BRIONES** – He was tardy for fourteen (14) times in the month of July and fifteen (15) times in the month of August. In his letter dated July 6, 2010, Mr. Briones explained that during those times, he was the only one who could manage to accompany his son in going to school and was always caught in traffic. His wife could not replace him in accompanying their son to school because she has fatal diabetes and could hardly move and travel far. He added that during the said period, he was also having his medication concerning his allergies in both hands and feet.

3. **Mr. BENJIE B. CAJANDIG** – He was tardy for twelve (12) times each in the months of July and October, and ten (10) times in the month of October. In his letter dated July 7, 2010, Mr. Cajandig explained that his tardiness was mostly due to the distance of his residence from the office and due to heavy traffic which he encounters when traveling from Marcos Highway to the LRT 2 Santolan Station. He averred that this was aggravated during the rainy season since most of his tardiness were incurred during those months. He manifested that he will do his best to address his tardiness.

4. **Ms. SHERRYLYN A. NATE-CRUZ** – She was tardy for ten (10) times each in the months of July and October. In her letter dated July 6, 2010, Ms. Cruz explained that due to the alarming increase in her blood sugar during those days, she was required to have a regular medical checkup that resulted to her tardiness in reporting for work. She added that at present, she is six (6) months pregnant on her second child and has pre-gestational diabetes. But she said she will try her best not to be late for work.

5. **Ms. JOLINA PAULINE T. TUAZON –** She was tardy for eleven (11) times each in the months of September and October. In her letter dated July 8, 2010, she explained that during the said period, she was preparing for an entrance examination scheduled for November aside from the reviews

she had in the evening. Thus during the months of September and October, she had been going home late which at times caused her to be late for work the next day. She expressed regret in committing the offense and promised to avoid the same violation.

6. **Ms. MARY JINGLE M. VILLOCERO** – She was tardy for eleven (11) times in the month of July and ten (10) times in the month of October. In her explanation dated July 8, 2010, Ms. Villocero stated that her tardiness was caused by the fact that she has three (3) children and without any maid to assist her in taking care of them. Her husband is under medication with anti-depressant, thus, she sometimes cannot compel him to take care of everything and attend to all her children's needs. She averred that she is also a working student with classes during Saturdays and Sundays, and has been working hard for the advancement of her career. She added that she has been trying her best to meet her duties and obligations, both as a responsible employee of the judiciary and as a mother, but in the process, she still incurred tardiness. She vowed not to violate again the rules on tardiness.

The OAS concluded that the concerned employees had incurred habitual tardiness and that their justifications were unacceptable. Thus, it recommended the penalties to be imposed on the concerned employees,[2] as follows:

1. **Mr. Albert Semilla**, for having been found habitually tardy for the fourth time, be meted the penalty of **SUSPENSION for three (3) months without pay with a FINAL WARNING** that a repetition of the same offense will be dealt with more severely;

2. **Mr. Florentino A. Pascual**, for having been found habitually tardy for the second time, be meted the penalty of **SUSPENSION for five (5) days** with a **WARNING** that a repetition of the same shall be dealt with more severely;

[2] OAS Memorandum dated August 9, 2010.

3. **Messrs. Marc Remman A. Bessat, Melquiades A. Briones, Benjie B. Cajandig, Mmes. Sherrylyn A. Nate-Cruz, Jolina Pauline T. Tuazon,** and **Mary Jingle M. Villocero**, for having been found habitually tardy for the first time, be meted the penalty of **REPRIMAND** with the same warning that a repetition of the same shall be dealt with more severely.

Ruling

We adopt the evaluation of the OAS.

It is a canon under the Constitution that a public office is a public trust.[3] This canon includes the mandate for the observance of prescribed office hours and the efficient use of every moment of such hours for the public service, because only thereby may the public servants recompense the Government and the people for shouldering the costs of maintaining the Judiciary.[4] Accordingly, court officials and employees must at all times strictly observe official hours to inspire the public's respect for the justice system.[5]

The exacting standards of ethics and morality imposed upon court officials and employees reflect the premium placed on the image of the courts of justice. That image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work in the Judiciary. It thus becomes the imperative duty of everyone involved in the dispensation of justice, from the judge to the lowliest clerk, to maintain the courts' good name and standing as true temples of justice.[6]

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[3] Section 1, Article XI, *Constitution*.

[4] *Re: Employees Incurring Habitual Tardiness in the First Semester of 2005*, A.M. No. 2005-25-SC, July 6, 2006, 494 SCRA 422, 429, citing Administrative Circular No. 2-99 (*Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness*).

[5] *Id.*, pp. 29-30, citing Administrative Circular No. 1-99 (*Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees*).

[6] *Id.*, citing *Basco v. Gregorio*, A.M. No. P-94-1026, July 6, 1995, 245 SCRA 614, 619.

There is no question that all the concerned employees incurred habitual tardiness within the context of CSC Memorandum Circular No. 04, Series of 1991, *supra*. Thereby, they fell short of the standard of conduct demanded from everyone connected with the administration of justice. Worthy of stress is that the nature and functions of the employment of the officials and employees of the Judiciary require them to be role models in the faithful observance of the constitutional canon that public office is a public trust. They are always accountable to the people, whom they must serve with utmost responsibility, integrity, loyalty, and efficiency. They can surely inspire public respect for the justice system by strictly observing official time, among others. Absenteeism and tardiness are, therefore, impermissible.[7]

The respective justifications of the concerned employees (consisting of illness or poor health, travel difficulties, household responsibilities, and similar causes) are not unacceptable. Already in *Re: Supreme Court Employees Incurring Habitual Tardiness in the 2nd Semester of 2005*,[8] we enunciated that justifications for absences and tardiness falling under the categories of illness, moral obligation to family and relatives, performance of household chores, traffic and health or physical condition are neither novel nor persuasive, and hardly evoke sympathy. If at all, such justifications may only mitigate liability.

We next discuss the penalties.

CSC Memorandum Circular No. 19, Series of 1999, considers habitual tardiness as a light offense with the following penalties:

First Offense	Reprimand
Second Offense	Suspension
Third Offense	Dismissal

[7] *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007: Ms. Marivic C. Azurin, et al.,* A.M. No. 2007-15-SC, January 19, 2009, 576 SCRA 121, 133-134.

[8] A.M. No. 2006-11-SC, September 13, 2006, 501 SCRA 638, 645.

The penalties recommended by the OAS are well taken. However, in the case of Albert C. Semilla, we moderate the recommended penalty of suspension for three months without pay to one month suspension without pay but with a *final* warning that a repetition will be dealt with more severely upon humanitarian considerations. Although we insist that every official or employee of the Judiciary must meet the standards of public service, we must practice compassion in deserving cases to avoid the wrong and unwanted impression that the Court wields only mailed fists. Semilla deserves a degree of mitigation. In that regard, Section 53 of Rule IV of the *Revised Uniform Rules on Administrative Cases in the Civil Service*[9] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Thus, the mitigating factors in Semilla's favor are the following:

(*a*) His length of service and satisfactory performance (*i.e.*, having started as messenger of the Court on November 7, 1979 and having served continuously until the present, with his performance in the first and second semesters of 2009, the year in question, being satisfactory);

(*b*) The fact that this infraction of habitual tardiness was his first since 2003; and

(*c*) His pleas for compassion (due to his medical condition of benign prostatic hyperthropy, for which he was under the care of the SC Clinic since May 2009, and due to his reporting to work and returning home through his bicycle to add to his financial capacity as a solo parent of his family).

Even so, we hereby emphatically hold all the concerned employees to their respective promises that they will not commit the same infraction hereafter, or else they will be at the end of the mailed fists of the Court. Our compassion, which is not limitless but discriminating, should not be taken for granted.

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[9] CSC Memorandum Circular No. 19-99 (September 14, 1999).

WHEREFORE, we find and pronounce:

1. Albert Semilla guilty of habitual tardiness for the fourth time and suspended for one (1) month without pay, with a final warning that a repetition of the same offense will be dealt with more severely;

2. Florentino A. Pascual guilty of habitual tardiness for the second time and suspended for five (5) days without pay, with a warning that a repetition of the same offense will be dealt with more severely; and

3. Marc Remman A. Bessat, Melquiades A. Briones, Benjie B. Cajandig, Sherrylyn A. Nate-Cruz, Jolina Pauline T. Tuazon, and Mary Jingle M. Villocero guilty of habitual tardiness for the first time and reprimanded, with warning that a repetition of the same offense will be dealt with more severely.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on leave.

EN BANC

[A.C. No. 8253. March 15, 2011]
(Formerly CBD Case No. 03-1067)

ERLINDA R. TAROG, *complainant, vs.* **ATTY. ROMULO L. RICAFORT,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; VIOLATION OF CANONS 16 AND 17 OF THE CODE OF PROFESSIONAL RESPONSIBILITY CONSTITUTE GROSS MISCONDUCT.— The *Code of Professional Responsibility* demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. In particular, Rule 16.01 of the *Code of Professional Responsibility* x x x Atty. Ricafort was required to hold in trust any money and property of his clients that came into his possession, and he needed to be always mindful of the trust and confidence his clients reposed in him. Thus, having obtained the funds from the Tarogs in the course of his professional employment, he had the obligation to deliver such funds to his clients (*a*) when they became due, or (*b*) upon demand. Furthermore, Rule 16.02 of the *Code of Professional Responsibility,* imposes on an attorney the positive obligation to keep all funds of his client separate and apart from his own and from those of others kept by him. x x x Atty. Ricafort's act of obtaining ₱65,000.00 and ₱15,000.00 from the Tarogs under the respective pretexts that the amount would be deposited in court and that he would prepare and file the memorandum for the Tarogs erected a responsibility to account for and to use the amounts in accordance with the particular purposes intended. For him to deposit the amount of ₱65,000.00 in his personal account without the consent of the Tarogs and not return it upon demand, and for him to fail to file the memorandum and yet not return the amount of ₱15,000.00 upon demand constituted a serious breach of his fiduciary duties as their attorney. He reneged on his duty to render an accounting to his clients showing that he had spent the amounts for the

particular purposes intended. He was thereby presumed to have misappropriated the moneys for his own use to the prejudice of his clients and in violation of client' trust reposed in him. He could not escape liability, for upon failing to use the moneys for the purposes intended, he should have immediately returned the moneys to his clients. x x x Atty. Ricafort's plain abuse of the confidence reposed in him by his clients rendered him liable for violation of Canon 16, particularly Rule 16.01, *supra*, and Canon 17, all of the *Code of Professional Responsibility*. x x x Without hesitation, therefore, we consider Atty. Ricafort's acts and conduct as gross misconduct, a serious charge under Rule 140 of the *Rules of Court*.

2. ID.; ID.; ID.; PREVIOUS OFFENSE OF THE SAME NATURE AGGRAVATES LIABILITY; DISBARMENT, APPROPRIATE PENALTY.— That this offense was not the first charged and decided against Atty. Ricafort aggravated his liability. In *Nuñez v. Ricafort*, decided in 2002, the Court found him to have violated Rules 1.01 of Canon 1 and Rule 12.03 and Rule 12.04 of Canon 12 of the *Code of Professional Responsibility* in relation to his failure to turn over the proceeds of the sale of realty to the complainant (who had authorized him to sell the realty in her behalf). His failure to turn over the proceeds compelled the complainant to commence in the RTC a civil action to recover the proceeds against him and his wife. The Court meted on him the penalty of indefinite suspension, and warned him against the commission of similar acts. x x x Bearing in mind his administrative record, and considering that the penalty for violation of Canon 16 ranges from suspension for six months, to suspension for one year, to suspension for two years, depending on the amount involved and the severity of the lawyer's misconduct, we rule that disbarment is the commensurate punishment for Atty. Ricafort, who has shown no reformation in his handling of trust funds for his clients.

APPEARANCES OF COUNSEL

Raneses, Taquio, Domingo & Associates for complainant.

D E C I S I O N

PER CURIAM:

We resolve a complaint for disbarment for alleged grave misconduct brought against Atty. Romulo L. Ricafort for his failure to account for and to return the sums of money received from his clients for purposes of the civil action to recover their property from a foreclosing banking institution he was handling for them. The original complainant was Arnulfo A. Tarog, but his wife, Erlinda R. Tarog, substituted him upon his intervening death.

Antecedents

In 1992, the Tarogs sought the advice of Atty. Jaime L. Miralles regarding their bank-foreclosed property located in the Bicol Region. Atty. Miralles advised them to engage a Bicol-based attorney for that purpose. Thus, they went to see Atty. Ricafort accompanied by Vidal Miralles, their friend who was a brother of Atty. Miralles.[1] They ultimately engaged Atty. Ricafort as their attorney on account of his being well-known in the community, and being also the Dean of the College of Law of Aquinas University where their son was then studying.

Having willingly accepted the engagement, Atty. Ricafort required the Tarogs to pay ₱7,000.00 as filing fee, which they gave to him.[2] He explained the importance of depositing ₱65,000.00 in court to counter the ₱60,000.00 deposited by Antonio Tee, the buyer of the foreclosed property. After they informed him that they had only ₱60,000.00, he required them to add some more amount (*dagdagan niyo ng konti*).[3] To raise the ₱65,000.00 for the Tarogs, therefore, Vidal solicited a loan from one Sia with the guarantee of his brother Atty. Miralles. Sia issued a check in that amount in the name of Arnulfo.[4]

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[1] *Rollo*, p. 126.

[2] *Id.*, p. 132.

[3] *Id.*, p. 183 (TSN dated June 18, 2004).

[4] *Id.*, p. 135.

On November 7, 1992, the Tarogs and Vidal went to the office of Atty. Ricafort to deliver the ₱65,000.00. When Arnulfo said that he had first to encash the check at the bank, Atty. Ricafort persuaded him to entrust the check to him instead so that he (Atty. Ricafort) would be the one to encash it and then deposit the amount in court. On that representation, Arnulfo handed the check to Atty. Ricafort.[5]

After some time, the Tarogs visited Atty. Ricafort to verify the status of the consignation. Atty. Ricafort informed them that he had not deposited the amount in court, but in his own account. He promised to return the money, plus interest. Despite several inquiries about when the amount would be returned, however, the Tarogs received mere assurances from Atty. Ricafort that the money was in good hands.

The Tarogs further claimed that the Regional Trial Court, Branch 52, in Sorsogon (RTC), where their complaint for annulment of sale was being heard, had required the parties to file their memoranda. Accordingly, they delivered ₱15,000.00 to Atty. Ricafort for that purpose, but he did not file the memorandum.[6]

When it became apparent to the Tarogs that Atty. Ricafort would not make good his promise of returning the ₱65,000.00, plus interest, Arnulfo demanded by his letter dated December 3, 2002 that Atty. Ricafort return the ₱65,000.00, plus interest, and the ₱15,000.00 paid for the filing of the memorandum.[7] Yet, they did not receive any reply from Atty. Ricafort.

In his defense, Atty. Ricafort denied that the ₱65,000.00 was intended to be deposited in court, insisting that the amount was payment for his legal services under a "package deal," that is, the amount included his acceptance fee, attorney's fee,

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[5] *Id.*, p. 126.

[6] *Id.*, p. 127.

[7] *Id.*, p. 167.

and appearance fees from the filing of the complaint for annulment of sale until judgment, but excluding appeal. He claimed that the fees were agreed upon after considering the value of the property, his skill and experience as a lawyer, the labor, time, and trouble involved, and his professional character and social standing; that at the time he delivered the check, Arnulfo read, understood, and agreed to the contents of the complaint, which did not mention anything about any consignation;[8] and that Arnulfo, being a retired school principal, was a learned person who would not have easily fallen for any scheme like the one they depicted against him.

Findings of the IBP Commissioner

Following his investigation, Commissioner Wilfredo E.J.E. Reyes of the Integrated Bar of the Philippines-Commission on Bar Discipline rendered his Report and Recommendation dated October 7, 2004,[9] in which he concluded that:

> It is respectfully recommended that respondent, Atty. Romulo L. Ricafort be DISBARRED and be ordered to return the amount of ₱65,000 and ₱15,000 which he got from his client.
>
> RESPECTFULLY SUBMITTED.

Commissioner Reyes regarded the testimonies of Erlinda and Vidal more credible than the testimony of Atty. Ricafort, observing:

> Based on the said testimony, statements and actuations of complainant Erlinda Tarog and his collaborating witness, we find their statements to be credible.
>
> Atty. Ricafort in his testimony attempted to show that the amount of ₱65,000.00 was paid to him by the complainant as acceptance fee on a package deal basis and under said deal, he will answer the filing fee, attorney's fees and other expenses incurred up to the time the judgment is rendered. He presented a transcript of stenographic notes

[8] *Id.*, p. 85.

[9] *Id.*, pp. 207-217.

wherein it was stated that complainant himself did not consign the money in court. The respondent admitted in his testimony that he did not have any retainer agreement nor any memorandum signed or any receipt which would prove that the amount of ₱65,000.00 was received as an acceptance fee for the handling of the case.

Atty. Romulo Ricafort stated that there was no retainer agreement and that he issued only receipt because the late Arnulfo Tarog will not pay unless a receipt is issued.

The Undersigned Commissioner asked the respondent "Basically you describe that thing that will happen in the litigation related to the payment of fees. But when you received that ₱65,000.00 did you not put anything there that you will describe the nature of legal work which you will undertake considering that you have considered this ₱65,000.00 as your attorney's fees? And Atty. Ricafort stated: Yes I did. I do not know why they were not showing the receipt. That is a big amount, Your Honor. They demanded for me the receipt of ₱30,000.00 how much more with that ₱65,000.00. They demanded for the receipt of that ₱65,000.00 but I cannot explain the reason why……

During the clarificatory questioning, the Undersigned Commissioner also asked Atty. Ricafort why he did not answer the demand letter sent by Arnulfo Tarog and the proof of service of the said letter was presented by the complainant. Conveniently, Atty. Ricafort stated that he did not receive the letter and it was received by their helper who did not forward the letter to him. He also adopted the position that the complainant was demanding the ₱65,000.00 wherefore this case was filed. When confronted by the testimony of Mr. Vidal Miralles, the respondent Atty. Ricafort just denied the allegation that he received the ₱65,000.00 for deposit to the court. He also denied that Mr. Miralles has visited his residence for follow-up the reimbursement.

The Undersigned Commissioner asked the respondent if he has personal animosity with Arnuldo Tarog, Erlinda Tarog and Vidal Miralles and if there are any reason why this case was filed against him. In his answer the respondent stated that we have been very good friends for the past ten (10) years and he said that in fact he was surprised when the complaint was filed against him and they even attached the decision of the Supreme Court for his suspension and maybe they are using this case to be able to collect from him.

The main defense of the respondent is that the complainant in this case testified that the total amount to redeem his property is ₱240,000.00 and when asked whether he consigned the money to the court to redeem the property he answered in the negative.

The alleged payment of ₱65,000.00 was made prior to the said testimony sometime in 1992. Hence, it was stated on complainant's affidavit that on November 7, 1992, prior to filing said complaint I had given him the sum of Sixty Five Thousand Pesos to be deposited to the Regional Trial Court representing redemption money of the Real Estate Mortgage. The amount of ₱65,000.00 is very much close to the amount of the principal obligation of the complainant and it is not surprising for a non-lawyer to hold on to the belief that with the filing of the case for annulment of foreclosure his case would be strengthened by making a deposit in court hence, the motivation to produce the deposit was logical and natural insofar as the complainant is concerned. The testimony of the complainant in court that the bank needed ₱240,000.00 for the redemption of the property will have no bearing on the actuation of the complainant who has been required to deposit ₱65,000.00 by his lawyer. The Undersigned Commission has no alternative but to believe in the credibility and truthfulness of complainant's narration that of Mrs. Erlinda Tarog and Vidal Miralles.[10]

Commissioner Reyes concluded that Atty. Ricafort violated Canon 15, and Rules 16.01, 16.02 and 16.03 of Canon 16 of the *Code of Professional Responsibility* by taking advantage of the vulnerability of his clients and by being dishonest in his dealings with them by refusing to return the amount of ₱65,000.00 to them.

On November 4, 2004, the IBP Board of Governors adopted Resolution No. XVI-2004-473,[11] resolving to return the matter to Commissioner Reyes for a clarification of whether or not there was evidence to support the claim that the ₱65,000.00 had been in payment of attorney's fees and other expenses.

[10] *Id.*, pp. 213-216.

[11] *Id.*, p. 206.

On October 11, 2005, Commissioner Reyes issued a second Report and Recommendation,[12] in which he declared that Atty. Ricafort did not present any retainer agreement or receipt to prove that the amount of ₱65,000.00 had been part of his attorney's fees; that Atty. Ricafort had willfully ignored the demand of Arnulfo by not replying to the demand letter; that, instead, Atty. Ricafort had insisted that the househelp who had received the demand letter had not given it to him; and that in his (Commissioner Reyes) presence, Atty. Ricafort had also promised to the complainant that he would settle his liability, but Atty. Ricafort did not make good his promise despite several resettings to allow him to settle his obligation.

Action of IBP Board of Governors

Through Resolution No. XVII-2006-569,[13] therefore, the IBP Board of Governors adopted and approved the Report and Recommendation of Commissioner Reyes and recommended the disbarment of Atty. Ricafort and the order for him to return the amounts of ₱65,000.00 and ₱15,000.00 to Erlinda, *viz*:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case herein made part of this Resolution as Annex "A" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent has taken advantage of his client [sic] vulnerability and has been dishonest with his dealings to his client, Atty. Romulo L. Ricafort is hereby DISBARRED and Ordered to Return the amount of ₱65,000 and ₱15,000 to complainant.

Atty. Ricafort moved for reconsideration,[14] maintaining that a retainer agreement was immaterial because he had affirmed having received the ₱65,000.00 and having issued a receipt for the amount; that he had not kept the receipt because "the practice

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[12] *Id.*, pp. 203-205.

[13] *Id.*, p. 201.

[14] *Id.*, pp. 219-227.

of lawyers in most instances is that receipt is issued without duplicate as it behooves upon the client to demand for a receipt";[15] that considering that the Tarogs had produced a photocopy of the receipt he had issued for the ₱30,000.00 in connection with their appeal, it followed that a similar receipt for attorney's fees had been made at the time when the case had been about to be filed in the RTC; that the testimonies of Erlinda and Vidal were inconsistent with Arnulfo's affidavit; and that he did not receive Arnulfo's demand letter, which was received by one Gemma Agnote (the name printed on the registry receipt), whom he did not at all know.

Acting on Atty. Ricafort's *motion for reconsideration*, the IBP Board of Governors downgraded the penalty from disbarment to indefinite suspension,[16] thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Recommendation of the Board of Governors First Division of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the Motion for Reconsideration is hereby DENIED with modification of Resolution No. XVII-2006-509 of the Board of Governors dated 18 November 2006, that in lieu of the Disbarment of Atty. Romulo Ricafort, he is INDEFINITELY SUSPENDED from the practice of law and Ordered to return the amount of ₱65,000 and ₱15,000 to complainant.

Atty. Ricafort filed a second *motion for reconsideration*,[17] assailing the resolution of the IBP Board of Governors for violating Section 12, Rule 139-B of the *Rules of Court* requiring the decision of the IBP Board of Governors to be in writing and to clearly and distinctly state the facts and reasons on which the decision was based.

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[15] *Id.*, p. 222.

[16] *Id.*, p. 231.

[17] *Id.*, p. 240.

Hence, the administrative case is now before the Court for resolution.

Ruling

We affirm the findings of the Commissioner Reyes, because they were supported by substantial evidence. However, we impose the penalty of disbarment instead of the recommended penalty of indefinite suspension, considering that Atty. Ricafort committed a very serious offense that was aggravated by his having been previously administratively sanctioned for a similar offense on the occasion of which he was warned against committing a similar offense.

A.

Version of the complainants was more credible than version of Atty. Ricafort

Atty. Ricafort admitted receiving the ₱65,000.00 from the Tarogs. Even so, we have two versions about the transaction. On the one hand, the Tarogs insisted that the amount was to be consigned in court for purposes of their civil case; on the other hand, Atty. Ricafort claimed that the amount was for his fees under a "package deal" arrangement.

Commissioner Reyes considered the Tarogs' version more credible.

We hold that Commissioner Reyes' appreciation of the facts was correct and in accord with human experience.

Firstly, it is easier to believe that Atty. Ricafort persuaded the Tarogs on the need for that amount to be deposited in court for purposes of their civil case. Being non-lawyers, they had no idea about the requirement for them to consign any amount in court, due to the substantive and procedural implications of such requirement being ordinarily known only to lawyers. Their ready and full reliance on Atty. Ricafort's representations about the requirement to consign that amount in court was entirely understandable in view of their awareness of Atty. Ricafort's standing in the legal community of the place. Besides, as

Commissioner Reyes observed, it was not far-fetched for the Tarogs to believe that an amount close in value to their original obligation was necessary to be deposited in court to boost their chances of recovering their property.

Secondly, Atty. Ricafort's denial of receipt of Arnulfo's demand letter was incredible. He already initially admitted receiving the letter through a househelp.[18] His denial came only subsequently and for the first time through his *motion for reconsideration* dated December 30, 2006,[19] in which he completely turned about to declare that the Gemma Agnote who had received the letter was *unknown* to him.[20] Expectedly, Commissioner Reyes disregarded his denial, because not only was the denial an apparently belated afterthought, it was even contradicted by his earlier admission of receipt. In any event, the fact that Gemma Agnote was even the househelp whom Atty. Ricafort had adverted to becomes very plausible under the established circumstances.

Thirdly, Atty. Ricafort explained that he had no copies of the receipts for the ₱65,000.00 and ₱15,000.00 issued to the Tarogs because "the practice of lawyers in most instances is that receipt is issued without duplicate as it behooves upon the client to demand for a receipt."[21] But such explanation does not persuade us. Ethical and practical considerations made it both natural and imperative for him to issue receipts, even if not demanded, and to keep copies of the receipts for his own records. He was all too aware that he was accountable for the moneys entrusted to him by the clients, and that his only means of ensuring accountability was by *issuing* and *keeping* receipts. Rule 16.01 of the *Code of Professional Responsibility* expressly enjoins such accountability, *viz*:

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[18] *Id.*, p. 214.

[19] *Id.*, pp. 219-227.

[20] *Id.*, p. 225.

[21] *Id.*, p. 222.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Definitely, Atty. Ricafort had a highly fiduciary and confidential relation with the Tarogs. As such, he was burdened with the legal duty to promptly account for all the funds received from or held by him for them.[22]

And, fourthly, to buttress his denial that the ₱65,000.00 was not intended for deposit in court, Atty. Ricafort insisted that Arnulfo did not object to the omission from the complaint in the civil action of any mention of consignation. However, the complaint that he himself had written and filed for the Tarogs contradicted his insistence, specifically in its paragraph 16, which averred the plaintiffs' (*i.e.*, Tarogs) readiness and willingness to deposit the amount of ₱69,345.00 (inclusive of the redemption price and interest) in court, thus:

16. And to show willingness and sincerity of the plaintiffs, they are ready and willing to deposit the amount of ₱69,345.00 as redemption price plus reasonable accrued interests, if there are any;[23]

Nor could the Tarogs have conjured or invented the need for consignation. The consignation was a notion that could have emanated only from him as their lawyer. In fact, Erlinda recalled while testifying before the IBP Commission on Bar Discipline that they had brought to their meeting with Atty. Ricafort only ₱60,000.00 for the consignation, but that Atty. Ricafort had to instruct them to raise the amount. The excerpt of her pertinent testimony follows:

Comm. Reyes: Madam Witness, in this affidavit you stated that your late husband and Mr. Vidal Miralles went to the office of Atty. Ricafort to advise the latter that we already had the sum of ₱65,000.00 in the form of check, how did you come to know this fact?

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[22] *Garcia v. Manuel*, A. C. No. 5811, January 20, 2003, 395 SCRA 386.

[23] *Rollo*, p. 34.

Witness:	***Paano po ba sabi nya na magdeposit ng ₱65,000.00 tapos may ₱60,000.00 kami sabi niya dagdagan niyo ng konti.***
Comm. Reyes:	*Kinausap ba niya kayo?*
Witness:	*Nandoon po ako.*
Comm. Reyes:	Where you present the check was given?
Witness :	Yes.
Comm. Reyes:	***So, alam niyo, nakita niyo na bibinigay yong ₱65,000.00 na tseke****?*
Witness:	Opo.
Comm. Reyes:	*Alam niyo ba kung ano ang nangyari doon sat seke n idinidiposit?*
Witness:	***Noong una sinabi niya sa amin na ididiposit niya sa court.***
Comm. Reyes:	*Nalalaman niyo ba na hindi naman pala idiniposit sa court.*
Witness**:**	***Opo.***
Comm. Reyes:	*Kailan niyo nalaman?*
Witness:	***Nagsabi siya tapos sinabi pa niya na yong interest sa bank ay ibinigay niya sa amin ang sabi naming salamat.***[24]

B.

Atty. Ricafort's acts and actuations constituted serious breach of his fiduciary duties as an attorney

The *Code of Professional Responsibility* demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship.[25]

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[24] *Id.*, pp. 182-185 (TSN dated June 18, 2004).

[25] *Berbano v. Barcelona*, A.C. No. 6084, September 3, 2003, 410 SCRA 258, 266.

In particular, Rule 16.01 of the *Code of Professional Responsibility* states:

> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Undoubtedly, Atty. Ricafort was required to hold in trust any money and property of his clients that came into his possession,[26] and he needed to be always mindful of the trust and confidence his clients reposed in him.[27] Thus, having obtained the funds from the Tarogs in the course of his professional employment, he had the obligation to deliver such funds to his clients (*a*) when they became due, or (*b*) upon demand.[28]

Furthermore, Rule 16.02 of the *Code of Professional Responsibility,* imposes on an attorney the positive obligation to keep all funds of his client separate and apart from his own and from those of others kept by him, to wit:

> Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Atty. Ricafort's act of obtaining ₱65,000.00 and ₱15,000.00 from the Tarogs under the respective pretexts that the amount would be deposited in court and that he would prepare and file the memorandum for the Tarogs erected a responsibility to account for and to use the amounts in accordance with the particular purposes intended. For him to deposit the amount of ₱65,000.00 in his personal account without the consent of the Tarogs and not return it upon demand, and for him to fail to file the memorandum and yet not return the amount of ₱15,000.00 upon demand constituted a serious breach of his fiduciary duties as their attorney. He reneged on his duty to render an accounting to his clients showing that he had spent the amounts for the

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[26] *Rollon v. Naraval,* A.C. No. 6424, March 4, 2005, 452 SCRA 675, 683.

[27] *Garcia v. Bala,* A.C. No. 5039, November 25, 2005, 476 SCRA 85, 92.

[28] Rule 16.03, Canon 16, *Code of Professional Responsibility*; *Garcia v. Manuel, supra,* note 22.

particular purposes intended.[29] He was thereby presumed to have misappropriated the moneys for his own use to the prejudice of his clients and in violation of the clients' trust reposed in him.[30] He could not escape liability, for upon failing to use the moneys for the purposes intended, he should have immediately returned the moneys to his clients.[31]

Atty. Ricafort's plain abuse of the confidence reposed in him by his clients rendered him liable for violation of Canon 16,[32] particularly Rule 16.01, *supra*, and Canon 17,[33] all of the *Code of Professional Responsibility*. His acts and actuations constituted a gross violation of general morality and of professional ethics that impaired public confidence in the legal profession and deserved punishment.[34]

Without hesitation, therefore, we consider Atty. Ricafort's acts and conduct as gross misconduct, a serious charge under Rule 140 of the *Rules of Court*, to wit:

Section 8. *Serious charges.* – Serious charges include:

xxx xxx xxx

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

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[29] *Mejares v. Romana*, A.C. No. 6196, March 17, 2004, 425 SCRA 577.

[30] *Almendarez, Jr. v. Langit*, A.C. No. 7057, July 25, 2006, 496 SCRA 402, 407; *Espiritu v. Ulep*, A.C. No. 5808, May 4, 2005, 458 SCRA 1, 9; *Aldovino v. Pujalte, Jr.*, A.C. No. 5082, February 17, 2004, 423 SCRA 135, 140.

[31] *Celaje v. Soriano*, A.C. No. 7418, October 9, 2007, 535 SCRA 217, 222.

[32] CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

[33] CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

[34] *Almendarez, Jr. v. Langit, supra*; *Espiritu v. Ulep, supra*.

xxx xxx xxx

That this offense was not the first charged and decided against Atty. Ricafort aggravated his liability. In *Nuñez v. Ricafort*,[35] decided in 2002, the Court found him to have violated Rule 1.01[36] of Canon 1 and Rule 12.03[37] and Rule 12.04[38] of Canon 12 of the *Code of Professional Responsibility* in relation to his failure to turn over the proceeds of the sale of realty to the complainant (who had authorized him to sell the realty in her behalf). His failure to turn over the proceeds compelled the complainant to commence in the RTC a civil action to recover the proceeds against him and his wife. The Court meted on him the penalty of indefinite suspension, and warned him against the commission of similar acts, stating:

We concur with the findings of the Investigating Commissioner, as adopted and approved by the Board of Governors of the IBP, that respondent Atty. Romulo Ricafort is guilty of grave misconduct in his dealings with complainant. Indeed, the record shows respondent's grave misconduct and notorious dishonesty.

There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent gravely abused the confidence that complainant reposed in him and committed dishonesty when he did not turn over the proceeds of the sale of her property. Worse, with palpable bad faith, he compelled the complainant to go to court for the recovery of the proceeds of the sale and, in the process, to spend money, time and energy therefor. Then, despite his deliberate failure to answer the complaint resulting in his having been declared in default, he appealed from the judgment to the Court of Appeals. Again, bad faith attended such a step because he did not pay the

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[35] A.C. No. 5054, May 29, 2002, 382 SCRA 381.

[36] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[37] Rule 12.03 - A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

[38] Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

docket fee despite notice. Needless to state, respondent wanted to prolong the travails and agony of the complainant and to enjoy the fruits of what rightfully belongs to the latter. Unsatisfied with what he had already unjustly and unlawfully done to complainant, respondent issued checks to satisfy the *alias* writ of execution. But, remaining unrepentant of what he had done and in continued pursuit of a clearly malicious plan not to pay complainant of what had been validly and lawfully adjudged by the court against him, respondent closed the account against which the checks were drawn. There was deceit in this. Respondent never had the intention of paying his obligation as proved by the fact that despite the criminal cases for violation of B.P. Blg. 22, he did not pay the obligation.

All the foregoing constituted grave and gross misconduct in blatant violation of Rule 1.01 of Canon 1 of the Code of Professional Responsibility which provides:

> A lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct.

Respondent's claim of good faith in closing his account because he thought complainant has already encashed all checks is preposterous. The account was closed on or before 26 February 1996. He knew that there were still other checks due on 29 February 1996 and 15 March 1996 which could not be encashed before their maturity dates.

By violating Rule 1.01 of Canon 1 of the Code of Professional Responsibility, respondent diminished public confidence in the law and the lawyers (*Busiños v. Ricafort*, 283 SCRA 407 [1997]; *Ducat v. Villalon*, 337 SCRA 622 [2000]). Instead of promoting such confidence and respect, he miserably failed to live up to the standards of the legal profession (*Gonato v. Adaza*, 328 SCRA 694 [2000]; *Ducat v. Villalon, supra)*.

Respondent's act of issuing bad checks in satisfaction of the *alias* writ of execution for money judgment rendered by the trial court was a clear attempt to defeat the ends of justice. His failure to make good the checks despite demands and the criminal cases for violation of B.P. Blg. 22 showed his continued defiance of judicial processes, which he, as an officer of the court, was under continuing duty to uphold.[39]

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[39] *Nuñez v. Ricafort, supra*, pp. 386-387.

Bearing in mind his administrative record, and considering that the penalty for violation of Canon 16 ranges from suspension for six months,[40] to suspension for one year,[41] to suspension for two years,[42] depending on the amount involved and the severity of the lawyer's misconduct, we rule that disbarment is the commensurate punishment for Atty. Ricafort, who has shown no reformation in his handling of trust funds for his clients.

WHEREFORE, we find and declare Atty. Romulo L. Ricafort guilty of a violation of Canon 16, Rule 16.01 and Canon 17 of the *Code of Professional Responsibility* and, accordingly, disbar him. The Bar Confidant is directed to strike out his name from the Roll of Attorneys.

Atty. Ricafort is ordered to return to Erlinda R. Tarog the sums of ₱65,000.00 and ₱15,000.00, plus interest of six percent *per annum* reckoned from the demand made on December 3, 2002, within twenty days from notice.

This decision is effective immediately.

Let a copy of this decision be furnished to the Office of the Court Administrator for circulation to all courts, and to the Integrated Bar of the Philippines, for its reference.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on leave.

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[40] *Espiritu v. Ulep, supra.*

[41] *Meneses v. Macalino,* A.C. No. 6651, February 27, 2006, 483 SCRA 212; *Unity Fishing Development Corporation v. Macalino,* A.C. No. 4566, December 10, 2004, 446 SCRA 11.

[42] *Mortera v. Pagatpatan,* A.C. No. 4562, June 15, 2005, 460 SCRA 99.

EN BANC

[G.R. No. 172087. March 15, 2011]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *petitioner, vs.* **THE BUREAU OF INTERNAL REVENUE (BIR), represented herein by HON. JOSE MARIO BUÑAG, in his official capacity as COMMISSIONER OF INTERNAL REVENUE,** public *respondent,*

JOHN DOE and **JANE DOE, who are persons acting for, in behalf, or under the authority of Respondent,** public and private *respondents*.

SYLLABUS

1. **TAXATION; TAX EXEMPTIONS; CONSTRUED STRONGLY AGAINST THE CLAIMANT.—** Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.

2. **ID.; TAX ON CORPORATIONS; CORPORATE INCOME TAX; THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION IS NOT EXEMPT FROM THE PAYMENT OF CORPORATE INCOME TAX.—** In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being

excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; NOT VIOLATED IN CASE AT BAR.— PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's exemption from payment of corporate income tax, as provided in Section 27 (c) of R.A. No. 8424, or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR's own request to be exempted.

4. ID.; ID.; ID.; NON-IMPAIRMENT CLAUSE; LIMITED IN APPLICATION TO LAWS THAT DEROGATE FROM PRIOR ACTS OR CONTRACTS BY ENLARGING, ABRIDGING OR IN ANY MANNER CHANGING THE INTENTION OF THE PARTIES.— The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

5. ID.; ID.; ID.; ID.; A FRANCHISE PARTAKES THE NATURE OF A GRANT, WHICH IS BEYOND THE PURVIEW OF THE NON-IMPAIRMENT CLAUSE OF THE CONSTITUTION.— As regards franchises, Section 11, Article XII of the Constitution provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress** when the common good so requires. In ***Manila Electric Company v. Province of Laguna***, the Court held

that **a franchise partakes the nature of a grant, which is beyond the purview of the non-impairment clause of the Constitution**.

6. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines. Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27 (c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

7. TAXATION; VALUE-ADDED TAX (VAT); THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION IS EXEMPT FROM THE PAYMENT OF VAT.— Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption from the payment of corporate income tax x x x. As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof x x x. Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes. Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424 x x x. As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate. Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* x x x Although the basis of the exemption of PAGCOR

and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.

8. STATUTORY CONSTRUCTION; STATUTES; IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND A RULE OR REGULATION ISSUED TO IMPLEMENT SAID LAW, THE BASIC LAW PREVAILS.— It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law. RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified.

APPEARANCES OF COUNSEL

Bautista Consolacion, Gloria Salvosa, Apigo Sevilla, Noblejas Siosana, Sagsagat Bagasbas & Papica for petitioner.
BIR Litigation Division for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for *Certiorari* and Prohibition[1] with prayer for the issuance of a Temporary Restraining Order and/or Preliminary Injunction, dated April 17, 2006, of petitioner Philippine Amusement and Gaming Corporation (PAGCOR), seeking the declaration of nullity of Section 1 of Republic Act (R.A.) No. 9337 insofar as it amends Section 27 (c) of the National Internal Revenue Code of 1997, by excluding petitioner from exemption from corporate income tax for being

[1] Under Rule 65 of the Rules of Court.

repugnant to Sections 1 and 10 of Article III of the Constitution. Petitioner further seeks to prohibit the implementation of Bureau of Internal Revenue (BIR) Revenue Regulations No. 16-2005 for being contrary to law.

The undisputed facts follow.

PAGCOR was created pursuant to Presidential Decree (P.D.) No. 1067-A[2] on January 1, 1977. Simultaneous to its creation, P.D. No. 1067-B[3] (supplementing P.D. No. 1067-A) was issued exempting PAGCOR from the payment of any type of tax, except a franchise tax of five percent (5%) of the gross revenue.[4] Thereafter, on June 2, 1978, P.D. No. 1399 was issued expanding the scope of PAGCOR's exemption.[5]

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[2] CREATING THE PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[3] GRANTING THE PAGCOR A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN GAMBLING CASINOS ON LAND OR WATER WITHIN THE TERRITORIAL JURISDICTION OF THE REPUBLIC OF THE PHILIPPINES.

[4] Section 4 of P.D. No. 1067-B, provides:

Section 4. *Exemptions.* —

(1) *Duties, taxes and other imposts on importations.* - All importations of equipment, vehicles, boats, ships, barges, aircraft and other gambling paraphernalia or facilities for the sale and exclusive use of the casinos, clubs and other recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imports.

(2) *Income and other taxes.* - **No income or any other form shall be assessed and collected under this Franchise from the franchise holder; nor shall any form of tax or charge attach in any way to the earnings of the franchise holder, EXCEPT a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by the franchise holder from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all taxes of any kind, nature or description, levied, established, or collected by any municipal, provincial or National authority.** (Emphasis supplied.)

[5] Section 3, P.D. No. 1399, in part, reads:

Section 3. Section 4 of Presidential Decree No. 1067-B is hereby amended to read as follows:

To consolidate the laws pertaining to the franchise and powers of PAGCOR, P.D. No. 1869[6] was issued. Section 13 thereof reads as follows:

Sec. 13. *Exemptions.* — x x x

(1) Customs Duties, taxes and other imposts on importations. - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt

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Section 4. *Exemptions*. — x x x

(1) Duties, taxes and other imposts on importation. – x x x

(2) Income and other taxes. —

(a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges, or levies of whatever nature, shall be assessed and collected under this Franchise from the Franchise Holder; nor shall any form of tax or charge attach in any way to the earnings of the Franchise Holder, except a Franchise Tax of five percent (5 %) of the gross revenue or earnings derived by the Franchise Holder form its operation under this Franchise. Such tax shall be due and payable to the National Government and shall be in lieu of all taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or national authority.

(b) Others: **The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation/s, association/s, agency/ies, or individual/s with whom the Franchise has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under the franchise and to those receiving compensation or other remuneration from the Franchise Holder as a result of essential facilities furnished and/or technical services rendered to the Franchise Holder.** (Emphasis supplied.)

[6] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all customs duties, taxes and other imposts, including all kinds of fees, levies, assessments or charges of any kind or nature, whether National or Local.

(2) Income and other taxes. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges, or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five percent (5%)of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or national government authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

(3) *Dividend Income*. — Notwithstanding any provision of law to the contrary, in the event the Corporation should declare a cash dividend income corresponding to the participation of the private

sector shall, as an incentive to the beneficiaries, be subject only to a final flat income rate of ten percent (10%) of the regular income tax rates. The dividend income shall not in such case be considered as part of the beneficiaries' taxable income; provided, however, that such dividend income shall be totally exempted from income or other form of taxes if invested within six (6) months from the date the dividend income is received in the following:

> (a) operation of the casino(s) or investments in any affiliate activity that will ultimately redound to the benefit of the Corporation; or any other corporation with whom the Corporation has any existing arrangements in connection with or related to the operations of the casino(s);
>
> (b) Government bonds, securities, treasury notes, or government debentures; or
>
> (c) BOI-registered or export-oriented corporation(s).[7]

PAGCOR's tax exemption was removed in June 1984 through P.D. No. 1931, but it was later restored by Letter of Instruction No. 1430, which was issued in September 1984.

On January 1, 1998, R.A. No. 8424,[8] otherwise known as the *National Internal Revenue Code of 1997*, took effect. Section 27 (c) of R.A. No. 8424 provides that government-owned and controlled corporations (GOCCs) shall pay corporate income tax, except petitioner PAGCOR, the Government Service and Insurance Corporation, the Social Security System, the Philippine Health Insurance Corporation, and the Philippine Charity Sweepstakes Office, thus:

> (c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities*. – The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned and controlled by the Government, **except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation**

[7] Emphasis supplied.

[8] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

(PHIC), the Philippine Charity Sweepstakes Office (PCSO), and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.[9]

With the enactment of R.A. No. 9337[10] on May 24, 2005, certain sections of the National Internal Revenue Code of 1997 were amended. The particular amendment that is at issue in this case is Section 1 of R.A. No. 9337, which amended Section 27 (c) of the National Internal Revenue Code of 1997 by excluding PAGCOR from the enumeration of GOCCs that are exempt from payment of corporate income tax, thus:

(c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities.* – The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned and controlled by the Government, **except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.

Different groups came to this Court via petitions for *certiorari* and prohibition[11] assailing the validity and constitutionality of R.A. No. 9337, in particular:

1) Section 4, which imposes a 10% Value Added Tax (VAT) on sale of goods and properties; Section 5, which imposes a 10% VAT on importation of goods; and Section 6, which imposes a 10% VAT on sale of services and use or lease of properties, all contain a uniform proviso authorizing the President, upon

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[9] Emphasis supplied.

[10] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[11] G.R. Nos. 168056, 168207, 168461, 168463 and 168730.

the recommendation of the Secretary of Finance, to raise the VAT rate to 12%. The said provisions were alleged to be violative of Section 28 (2), Article VI of the Constitution, which section vests in Congress the exclusive authority to fix the rate of taxes, and of Section 1, Article III of the Constitution on due process, as well as of Section 26 (2), Article VI of the Constitution, which section provides for the "no amendment rule" upon the last reading of a bill;

2) Sections 8 and 12 were alleged to be violative of Section 1, Article III of the Constitution, or the guarantee of equal protection of the laws, and Section 28 (1), Article VI of the Constitution; and

3) other technical aspects of the passage of the law, questioning the manner it was passed.

On September 1, 2005, the Court dismissed all the petitions and upheld the constitutionality of R.A. No. 9337.[12]

On the same date, respondent BIR issued Revenue Regulations (RR) No. 16-2005,[13] specifically identifying PAGCOR as one of the franchisees subject to 10% VAT imposed under Section 108 of the National Internal Revenue Code of 1997, as amended by R.A. No. 9337. The said revenue regulation, in part, reads:

Sec. 4. 108-3. *Definitions and Specific Rules on Selected Services.* —

x x x x x x x x x

(h) x x x

Gross Receipts of all other franchisees, other than those covered by Sec. 119 of the Tax Code, regardless of how their franchisees

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[12] See *Abakada Guro Party List v. Ermita*, 506 Phil. 1 (2005).

[13] Revenue Regulations No. 16-2005 states: "Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005."

may have been granted, shall be subject to the 10% VAT imposed under Sec.108 of the Tax Code. This includes, among others, the Philippine Amusement and Gaming Corporation (PAGCOR), and its licensees or franchisees.

Hence, the present petition for *certiorari*.

PAGCOR raises the following issues:

I

WHETHER OR NOT RA 9337, SECTION 1 (C) IS NULL AND VOID *AB INITIO* FOR BEING REPUGNANT TO THE EQUAL PROTECTION [CLAUSE] EMBODIED IN SECTION 1, ARTICLE III OF THE 1987 CONSTITUTION.

II

WHETHER OR NOT RA 9337, SECTION 1 (C) IS NULL AND VOID *AB INITIO* FOR BEING REPUGNANT TO THE NON-IMPAIRMENT [CLAUSE] EMBODIED IN SECTION 10, ARTICLE III OF THE 1987 CONSTITUTION.

III

WHETHER OR NOT RR 16-2005, SECTION 4.108-3, PARAGRAPH (H) IS NULL AND VOID *AB INITIO* FOR BEING BEYOND THE SCOPE OF THE BASIC LAW, RA 8424, SECTION 108, INSOFAR AS THE SAID REGULATION IMPOSED VAT ON THE SERVICES OF THE PETITIONER AS WELL AS PETITIONER'S LICENSEES OR FRANCHISEES WHEN THE BASIC LAW, AS INTERPRETED BY APPLICABLE JURISPRUDENCE, DOES NOT IMPOSE VAT ON PETITIONER OR ON PETITIONER'S LICENSEES OR FRANCHISEES.[14]

The BIR, in its Comment[15] dated December 29, 2006, counters:

I

SECTION 1 OF R.A. NO. 9337 AND SECTION 13 (2) OF P.D. 1869 ARE BOTH VALID AND CONSTITUTIONAL PROVISIONS OF LAWS THAT SHOULD BE HARMONIOUSLY CONSTRUED

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[14] *Rollo,* pp. 18-19; 318-319.

[15] *Id.* at 230-260.

TOGETHER SO AS TO GIVE EFFECT TO ALL OF THEIR PROVISIONS WHENEVER POSSIBLE.

II

SECTION 1 OF R.A. NO. 9337 IS NOT VIOLATIVE OF SECTION 1 AND SECTION 10, ARTICLE III OF THE 1987 CONSTITUTION.

III

BIR REVENUE REGULATIONS ARE PRESUMED VALID AND CONSTITUTIONAL UNTIL STRICKEN DOWN BY LAWFUL AUTHORITIES.

The Office of the Solicitor General (OSG), by way of Manifestation In *Lieu* of Comment,[16] concurred with the arguments of the petitioner. It added that although the State is free to select the subjects of taxation and that the inequity resulting from singling out a particular class for taxation or exemption is not an infringement of the constitutional limitation, a tax law must operate with the same force and effect to all persons, firms and corporations placed in a similar situation. Furthermore, according to the OSG, public respondent BIR exceeded its statutory authority when it enacted RR No. 16-2005, because the latter's provisions are contrary to the mandates of P.D. No. 1869 in relation to R.A. No. 9337.

The main issue is whether or not PAGCOR is still exempt from corporate income tax and VAT with the enactment of R.A. No. 9337.

After a careful study of the positions presented by the parties, this Court finds the petition partly meritorious.

Under Section 1 of R.A. No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1977, petitioner is no longer exempt from corporate income tax as it has been effectively omitted from the list of GOCCs that are exempt from it. Petitioner argues that such omission is unconstitutional,

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[16] *Id.* at 190-222.

as it is violative of its right to equal protection of the laws under Section 1, Article III of the Constitution:

> Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In *City of Manila v. Laguio, Jr.*,[17] this Court expounded the meaning and scope of equal protection, thus:

> Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances. The "equal protection of the laws is a pledge of the protection of equal laws." It limits governmental discrimination. The equal protection clause extends to artificial persons but only insofar as their property is concerned.
>
> xxx xxx xxx
>
> Legislative bodies are allowed to classify the subjects of legislation. If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause. The classification must, as an indispensable requisite, not be arbitrary. To be valid, it must conform to the following requirements:
>
> 1) It must be based on substantial distinctions.
> 2) It must be germane to the purposes of the law.
> 3) It must not be limited to existing conditions only.
> 4) It must apply equally to all members of the class.[18]

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[17] 495 Phil. 289 (2005).

[18] *Id.* at 326, citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957), 16B Am Jur. 2d § 779 299, citing *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938), reh'g denied, 305 U.S. 676, 59 S. Ct. 356, 83 L. Ed. 437 (1939) and mandate conformed to, 344 Mo. 1238, 131 S.W. 2d 217 (1939), *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539, 70 Fair Empl. Prac. Cas. (BNA) 1180, 68 Empl. Prac. Dec. (CCH) 44013 (1996), *Walker v. Board of Supervisors of Monroe County*, 224 Miss. 801, 81 So. 2d 225

It is not contested that before the enactment of R.A. No. 9337, petitioner was one of the five GOCCs exempted from payment of corporate income tax as shown in R.A. No. 8424, Section 27 (c) of which, reads:

(c) Government-owned or Controlled Corporations, Agencies or Instrumentalities. - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned and controlled by the Government, except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO), and the **Philippine Amusement and Gaming Corporation (PAGCOR)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.[19]

A perusal of the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997 would show that **the exemption of PAGCOR from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of PAGCOR that it be exempt from such tax**.[20] The records of the Bicameral Conference Meeting reveal:

HON. R. DIAZ. The other thing, sir, is we — I noticed we imposed a tax on lotto winnings.

CHAIRMAN ENRILE. *Wala na, tinanggal na namin yon*.

HON. R. DIAZ. *Tinanggal na ba natin yon*?

CHAIRMAN ENRILE. *Oo*.

(1955), cert. denied, 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782 (1955); *Preisler v. Calcaterra*, 362 Mo. 662, 243 S.W. 2d 62 (1951); *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, 145 (1919): *Nuñez v. Sandiganbayan*, 197 Phil. 407 (1982); Cruz, Isagani A., *Constitutional Law* 125 (1998) and *People v. Cayat*, 68 Phil. 12 (1939).

[19] Emphasis supplied.

[20] Emphasis supplied.

HON. R. DIAZ. Because I was wondering whether we covered the tax on — Whether on a universal basis, we included a tax on cockfighting winnings.

CHAIRMAN ENRILE. No, we removed the —

HON. R. DIAZ. I . . . (inaudible) *natin yong lotto*?

CHAIRMAN ENRILE. ***Pati* PAGCOR *tinanggal* upon request.**

CHAIRMAN JAVIER. Yeah, Philippine Insurance Commission.

CHAIRMAN ENRILE. Philippine Insurance — Health, health ba. *Yon ang* request *ng* Chairman, I will accept. (laughter) *Pag-Pag-ibig yon, maliliit na sa tao yon.*

HON. ROXAS. Mr. Chairman, I wonder if in the revenue gainers if we factored in an amount that would reflect the VAT and other sales taxes—

CHAIRMAN ENRILE. No, we're talking of this measure only. We will not — (discontinued)

HON. ROXAS. No, no, no, no, from the — arising from the exemption. Assuming that when we release the money into the hands of the public, they will not use that to — for wallpaper. They will spend that eh, Mr. Chairman. So when they spend that—

CHAIRMAN ENRILE. There's a VAT.

HON. ROXAS. There will be a VAT and there will be other sales taxes no. Is there a quantification? Is there an approximation?

CHAIRMAN JAVIER. Not anything.

HON. ROXAS. So, in effect, we have sterilized that entire seven billion. In effect, it is not circulating in the economy which is unrealistic.

CHAIRMAN ENRILE. It does, it does, because this is taken and spent by government, somebody receives it in the form of wages and supplies and other services and other goods. They are not being taken from the public and stored in a vault.

CHAIRMAN JAVIER. That 7.7 loss because of tax exemption. That will be extra income for the taxpayers.

HON. ROXAS. Precisely, so they will be spending it.[21]

The discussion above bears out that under R.A. No. 8424, the exemption of PAGCOR from paying corporate income tax was not based on a classification showing substantial distinctions which make for real differences, but to reiterate, the exemption was granted upon the request of PAGCOR that it be exempt from the payment of corporate income tax.

With the subsequent enactment of R.A. No. 9337, amending R.A. No. 8424, PAGCOR has been excluded from the enumeration of GOCCs that are exempt from paying corporate income tax. The records of the Bicameral Conference Meeting dated April 18, 2005, of the Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill No. 3555, show that it is the legislative intent that PAGCOR be subject to the payment of corporate income tax, thus:

THE CHAIRMAN (SEN. RECTO). Yes, Osmeña, the proponent of the amendment.

SEN. OSMEÑA. Yeah. Mr. Chairman, one of the reasons why we're even considering this VAT bill is we want to show the world who our creditors, that we are increasing official revenues that go to the national budget. Unfortunately today, Pagcor is unofficial.

Now, in 2003, I took a quick look this morning, Pagcor had a net income of 9.7 billion after paying some small taxes that they are subjected to. Of the 9.7 billion, they claim they remitted to national government seven billion. *Pagkatapos*, there are other specific remittances like to the Philippine Sports Commission, *etc*., as mandated by various laws, and then about 400 million to the President's Social Fund. But all in all, their net profit today should be about 12 billion. That's why I am questioning this two billion. **Because while essentially they claim that the money goes to government, and I will accept that just for the sake of argument. It does not pass through the appropriation process. And I think that at least if we can capture 35 percent or 32 percent through the budgetary process, first, it is reflected in our official income of government which is applied to the national budget, and secondly, it goes through what is**

[21] Emphasis supplied.

constitutionally mandated as Congress appropriating and defining where the money is spent and not through a board of directors that has absolutely no accountability.

REP. PUENTEBELLA. Well, with all due respect, Mr. Chairman, follow up *lang*.

There is wisdom in the comments of my good friend from Cebu, Senator Osmeña.

SEN. OSMEÑA. And Negros.

REP. PUENTEBELLA. And Negros at the same time *ay Kasimanwa*. But I would not want to put my friends from the Department of Finance in a difficult position, but may we know your comments on this knowing that as Senator Osmeña just mentioned, he said, "I accept that that a lot of it is going to spending for basic services," you know, going to most, I think, supposedly a lot or most of it should go to government spending, social services and the like. What is your comment on this? This is going to affect a lot of services on the government side.

THE CHAIRMAN (REP. LAPUS). Mr. Chair, Mr. Chair.

SEN. OSMEÑA. It goes from pocket to the other, Monico.

REP. PUENTEBELLA. I know that. But I wanted to ask them, Mr. Senator, because you may have your own pre-judgment on this and I don't blame you. I don't blame you. And I know you have your own research. But will this not affect a lot, the disbursements on social services and other?

REP. LOCSIN. Mr. Chairman. Mr. Chairman, if I can add to that question also. Wouldn't it be easier for you to explain to, say, foreign creditors, how do you explain to them that if there is a fiscal gap some of our richest corporations has [been] spared [from] taxation by the government which is one rich source of revenues. Now, why do you save, why do you spare certain government corporations on that, like Pagcor? So, would it be easier for you to make an argument if everything was exposed to taxation?

REP. TEVES. Mr. Chair, please.

THE CHAIRMAN (REP. LAPUS). Can we ask the DOF to respond to those before we call Congressman Teves?

MR. PURISIMA. Thank you, Mr. Chair.

Yes, from definitely improving the collection, it will help us because it will then enter as an official revenue although when dividends declare it also goes in as other income. (sic)

x x x x x x x x x

REP. TEVES. Mr. Chairman.

x x x x x x x x x

THE CHAIRMAN (REP. LAPUS). Congressman Teves.

REP. TEVES. **Yeah. Pagcor is controlled under Section 27, that is on income tax. Now, we are talking here on value-added tax. Do you mean to say we are going to amend it from income tax to value-added tax, as far as Pagcor is concerned?**

THE CHAIRMAN (SEN. RECTO). **No. We are just amending that section with regard to the exemption from income tax of Pagcor.**

x x x x x x x x x

REP. NOGRALES. Mr. Chairman, Mr. Chairman. Mr. Chairman.

THE CHAIRMAN (REP. LAPUS). Congressman Nograles.

REP. NOGRALES. Just a point of inquiry from the Chair. What exactly are the functions of Pagcor that are VATable? What will we VAT in Pagcor?

THE CHAIRMAN (REP. LAPUS). This is on own income tax. This is Pagcor income tax.

REP. NOGRALES. No, that's why. *Anong* i-va-Vat *natin sa kanya.* Sale of what?

x x x x x x x x x

REP. VILLAFUERTE. Mr. Chairman, my question is, what are we VATing Pagcor with, is it the . . .

REP. NOGRALES. Mr. Chairman, this is a secret agreement or the way they craft their contract, which basis?

THE CHAIRMAN (SEN. RECTO). **Congressman Nograles, the Senate version does not discuss a VAT on Pagcor but it just takes away their exemption from non-payment of income tax.**[22]

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[22] Emphasis supplied.

Taxation is the rule and exemption is the exception.[23] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[24] As a rule, tax exemptions are construed strongly against the claimant.[25] Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.[26]

In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.[27] Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.[28]

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[23] *National Power Corporation v. Province of Isabela*, G.R. No. 165827, June 16, 2006, 491 SCRA 169, 180.

[24] *Id*.

[25] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 259 (2003).

[26] *Id*.

[27] *Id.*; Ruben E. Agpalo, *Statutory Construction*, Fifth Edition, © 2003, p. 222.

[28] *C.N. Hodges v. Municipal Board, Iloilo City, et al.*,125 Phil. 442, 449 (1967); Ruben E. Agpalo, *Statutory Construction*, Fifth Edition, © 2003, pp. 222-223.

PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's exemption from payment of corporate income tax, as provided in Section 27 (c) of R.A. No. 8424, or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR's own request to be exempted.

Petitioner further contends that Section 1 (c) of R.A. No. 9337 is null and void *ab initio* for violating the non-impairment clause of the Constitution. Petitioner avers that laws form part of, and is read into, the contract even without the parties expressly saying so. Petitioner states that the private parties/ investors transacting with it considered the tax exemptions, which inure to their benefit, as the main consideration and inducement for their decision to transact/invest with it. Petitioner argues that the withdrawal of its exemption from corporate income tax by R.A. No. 9337 has the effect of changing the main consideration and inducement for the transactions of private parties with it; thus, the amendatory provision is violative of the non-impairment clause of the Constitution.

Petitioner's contention lacks merit.

The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties.[29] There is impairment if a subsequent

[29] *BANAT Party-list v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 498, citing *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009).

law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[30]

As regards franchises, Section 11, Article XII of the Constitution[31] provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress** when the common good so requires.[32]

In ***Manila Electric Company v. Province of Laguna***,[33] the Court held that **a franchise partakes the nature of a grant, which is beyond the purview of the non-impairment clause of the Constitution**.[34] The pertinent portion of the case states:

> While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of contracts and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. *Contractual tax exemptions, in the real sense of the term*

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[30] *Id.*, citing *Clemons v. Nolting*, 42 Phil. 702 (1922).

[31] The Constitution, Art. XII, Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. **Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires**. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied.)

[32] Emphasis supplied.

[33] 366 Phil. 428 (1999).

[34] *Id.* at 438. (Emphasis supplied.)

and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. **A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires**.[35]

In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.[36] Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27 (c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption

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[35] *Id.* at 438-439. (Emphasis supplied.)

[36] *See* P.D. No. 1869, Sec. 10.

from the payment of corporate income tax, which was already addressed above by this Court.

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof, which reads:

> Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>
> Section 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> x x x x x x x x x
>
> (k) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws,** except Presidential Decree No. 529.[37]

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. —
>
> (A) *Rate and Base of Tax*. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> x x x x x x x x x

[37] Emphasis supplied.

> **(B)** ***Transactions Subject to Zero Percent (0%) Rate***. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x x x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> x x x x x x x x x[38]

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*.[39] Acesite was the owner and operator of the Holiday Inn Manila Pavilion Hotel. It leased a portion of the hotel's premises to PAGCOR. It incurred VAT amounting to ₱30,152,892.02 from its rental income and sale of food and beverages to PAGCOR from January 1996 to April 1997. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR. However, PAGCOR refused to pay the taxes because of its tax-exempt status. PAGCOR paid only the amount due to Acesite minus VAT in the sum of ₱30,152,892.02. Acesite paid VAT in the amount of ₱30,152,892.02 to the Commissioner of

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[38] Emphasis supplied.

[39] G.R. No. 147295, February 16, 2007, 516 SCRA 93, 101, citing *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, 148 SCRA 36 (1987).

Internal Revenue, fearing the legal consequences of its non-payment. In May 1998, Acesite sought the refund of the amount it paid as VAT on the ground that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

x x x x x x x x x

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions*. —

xxx xxx xxx

(2) *Income and other taxes*. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations**. The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.**

The manner of charging VAT does not make PAGCOR liable to said tax.

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method,

and in particular, the first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

VAT exemption extends to Acesite

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services*.- (a) Rate and base of tax - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> x x x x x x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue* v. *John Gotamco* & *Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. **Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR**.[40]

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[40] *Id.* at 98-101. (Emphasis supplied.)

Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424,[41] it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.[42]

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[41] R.A. No. 8424, SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. — x x x

Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase "*sale or exchange of services"* means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; x x x

x x x x x x x x x

(B) ***Transactions Subject to Zero Percent (0%) Rate***.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;

x x x x x x x x x (Emphasis supplied.)

[42] Section 6 of R.A. No. 9337 states:

SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. —

(A) *Rate and Base of Tax.*— There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties x x x

x x x x x x x x x

It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[43] RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified.

WHEREFORE, the petition is *PARTLY GRANTED*. Section 1 of Republic Act No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1997, by excluding petitioner Philippine Amusement and Gaming Corporation from the enumeration of government-owned and controlled corporations exempted from corporate income tax is valid and constitutional, while BIR Revenue Regulations No. 16-2005 insofar as it subjects PAGCOR to 10% VAT is null and void for being contrary to the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on official leave.

(B) ***Transactions Subject to Zero percent (0%) Rate***.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;

x x x x x x x x x (Emphasis supplied.)

[43] *Hijo Plantation, Inc. v. Central Bank,* 247 Phil. 154, 162 (1988), citing *People v. Lim,* 108 Phil. 1091 (1960).

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— The legal academe is the preserve of the noble standards of legal reasoning and legal scholarship; it must itself demonstrate strength and independence and not to be punished when doing so. *(Id.)*

— The value of academic freedom as a necessary constitutional component of the right to freedom of expression, lies in the ability of the common man, aided by the expertise available in the academe to hold a magistrate accountable in the exercise of his official functions, foremost of which is the issuance of written decision. (*Re:* Letter of the UP Law Faculty Entitled "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court," A.M. No. 10-10-4-SC, March 08, 2011; *Sereno, J., Dissenting Opinion)* p. 1

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